Required Intimacy
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This draft is based on a paper written in Hebrew that I am developing into a broader article in English. Therefore, all comments are highly appreciated and can be sent to: einat.albin@mail.huji.ac.il.

Introduction

Intimacy is a notion used in literary articles discussing work relationships in services, mainly those involving what has been defined as 'body work.' Intimate work relationships include domestic work, as well as nursing, massaging, hairdressing, caring, and lap-dancing. In this paper I argue that in all these types of work, intimacy can be viewed as required, or as an integral part of the job. Indeed, regulation has shaped the requirement for intimacy within the job characteristics. Labour laws based on the idea of freedom of contract provide managerial prerogative to employers to define job requirements, including requirements for intimate behaviours, which the worker can accept, decline or theoretically bargain. International human rights laws, equality laws and labour protective-legislation place no limitations on intimacy, unless it falls into situations of sexual harassment, rape or other sexual assaults. Moreover, the notion of forced labour fails to address issues of intimacy and applies in very rare cases. Direct interaction with customers increases the workers’ required intimacy, due to the perception that what the client wants is sovereign. Hence, intimacy remains on unregulated ground, dependent mainly on the parties’ participation in work relationships within the service economy. Viewing intimacy as required legitimizes its existence and denies rigorous thought.

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1 E Albin, 'Required Intimacy and Forced Intimacy: Rethinking the Boundaries between Work, Family and the State' (Forthcoming in Hebrew).
2 See definition below.
regarding its boundaries. Moreover, required intimacy leads to objectifying those performing intimate work.

This paper aims to shed light on the way intimacy is shaped as required; I argue the need to rethink the boundaries of intimacy in work relationships. Moreover, I claim that in some instances, the legitimacy granted to required intimacy leads to situations of forced intimacy, especially considering the gendered and migratory dimensions of body-work services. Forced intimacy should be conceptualised as wrong, both morally and legally.

I begin the paper with a description of three types of intimacy found in service work relationships: performed intimacy, emotional intimacy, and sexual intimacy. After describing these three types of intimacy, I analyse the way regulation shapes required intimacy by reflecting on three main labour law rules: freedom of contract, equality, and un-free (or forced) labour. I then discuss justifications for bounding required intimacy and propose suggested theories for setting its boundaries.

**Part I: Three Types of Intimacy**

Intimacy derives its meaning from the Latin word 'intimus,' meaning innermost: 'pertaining to the inmost character of things; fundamental; essential; most private or personal.' By drawing on theories from economics and psychology, I offer hereunder three types of intimacy found in service work relationships: performed intimacy, emotional intimacy, and sexual intimacy. All three are interlinked, and typify almost all service work activities involving what has been termed in the literature as 'body work.' Body work includes work that individuals undertake on their own bodies and work done on the bodies of others, which thus become the objects of the worker's labour. With embodiment recently becoming a crucial sphere of analysis - stemming from the acknowledgment of the body as a key issue in social theory, since societies emphasise 'pleasure, desire, difference and playfulness' and may I add 'care' - intimacy in service work has also become a central sphere that should be at the focus of studies.

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5 Webster dictionary.
7 McDowell, note 4 above, 11-14.
**Performed Intimacy:** By 'preformed intimacy,' I refer to activities conducted by workers during the course of their work that include exposure to or physical contact with another person's body or intimate habits. These activities comprise of bathing, diaper changing, hairdressing, massaging, lap-dancing, and even cleaning, for as Linda McDowell has stressed, cleaning one's home can be seen as body work because 'hard physical scrubbing is necessary to remove the bodily traces and odours of the embodied others who live in the house, dusting to remove dirt largely composed of hair and skin cells shed by the occupants.' These activities are inherent to many service jobs, and they are also seen as 'dirty work,' i.e., work that does not enable the worker to define her own chores and activities, and residual in the sense that its clients do not wish to perform it themselves. Dirty work also comprises activities that require dealing with dirt or body organs that are less aesthetic. Scholars have argued that bodywork activities place it on the margins of the ambivalent territory of sexuality. This connection ties performed intimacy with sexual intimacy, which I discuss further below.

In most instances, people of lower classes - particularly women and migrants - are those who conduct performed intimacy. Most members of society are deterred from performing these acts of intimacy, given the low social status attached to them, their location at the low end of the labour market, and the sentiments of disgust and filthiness aligning with them. For this reason, voices are heard calling for the hiring of migrant workers for such jobs. Generally, workers engaged in types of work that are characterised by performed intimacy are aware of the negative social attitude towards such jobs and the unpleasant sentiment attached to them. Indeed, studies have shown the methods of detachment workers developed to deal with their own feelings of disgust and filthiness. However, employers and customers do not always welcome such methods of detachment, requiring the service worker to be submissive in fulfilling their every wish and demand. People interacting with service workers expect to receive generous, patient, tolerant and cooperative 'service with a smile,' replete with expressions of cheerfulness in acts of performed intimacy.

**Emotional Intimacy:** psychological scholarship considers emotional intimacy to be the glue of every relationship - more substantial to the individual than other forms of intimacy,

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9 McDowell, note 4 above, 86.
11 Twigg, note 6 above.
12 McDowell, note 4 above, 10; Anderson, note 10 above, Introduction.
13 See, for example, the research performed by Twigg, note 6 above.
including romantic intimacy and sexual intimacy. Emotional intimacy is seen as crucial to personal development and has meaningful and positive implications for individuals, including decreased feelings of loneliness, perception of social support, less illnesses, and better psychological adjustments to life circumstances.\textsuperscript{14} Simultaneously, the literature reveals difficulties that can be experienced in emotionally intimate relationships, including conflicts, feelings of abuse and loss of individualism, among other challenges.\textsuperscript{15}

Psychological studies have been devoted to finding ways to define and measure emotional intimacy. Initial definitions stressed self-exposure as the most necessary component for the creation of emotional intimacy, while later studies developed further measures, mainly pointing to the need for a supportive and emphatic reaction of the other to the building of an emotionally intimate relationship. Hence, for an interaction to become an act of intimacy, the person exposing herself before another must feel understood and cared for. Accordingly, exposure and reaction are the two fundamental components of emotional intimacy. A study conducted by Gaia pointed to seven qualities that exist (to varying extents) in emotional intimacy: (a) self-disclosure (a sharing of personal information); (b) emotional expression (telling one another about the concern, worry or affection felt); (c) support (experiencing physical and emotional support, especially during times of crises); (d) trust (feeling confident that the other person will not expose personal information); (e) physical intimacy (e.g., hugs, kisses, hand-holding); (f) mutuality, in the sense that the experience of intimacy seems to be described as a sharing experience resulting from the interaction of two people; and (g) ‘closeness,’ which is often a term people use to describe intimacy but is not a determining factor.\textsuperscript{16}

Seemingly, to a certain extent at least, emotional intimacy exists in many body-work services. Hence in domestic work, for example, emotional intimacy can be very strong, created either by the person cared for or by the worker herself. A migrant domestic-care worker’s need for emotional intimacy with her employer or the family relates to feelings of isolation, loneliness, and the intensity of relationships with the household members, resulting from her foreignness coupled with the governmentally-mandated terms required for the hiring of migrant domestic-care workers – 24 hours of service at the

\textsuperscript{15} Ibid, 637.
employer's household. When the worker reacts to the emotional exposure of the person under her care, expressing support and empathy is part of her job; thus, emotional intimate relations are formed automatically. Bridget Anderson noted this by asking whether a line can be drawn between care work (such as cleaning and bathing) and the emotions related to care. In other words, Anderson questioned whether we can distinguish between what I termed as ‘performed intimacy’ and ‘emotional intimacy.’ This question led her to claim that emotions are part of a caretaker’s job requirements. Such a conclusion corresponds with my argument regarding required intimacy.

While in the context of the family and romantic relationships - the spheres generally studied in this regard - emotional intimacy is an ‘act of love,’ domestic workers engage in such intimacy for pay. This situation leads Anderson to pose an additional question - whether pay is sufficient to compensate a worker for the emotional bond she creates with her employers or the people she cares for. The question of monetary compensation for emotional intimacy is especially problematic, considering that in most of these types of work, the pay is low, no job security or opportunities for promotion exist, and the workers (particularly migrants, who comprise a substantial workforce in this field) are never viewed as fully included in society. This question points to the difficulty entailed in required intimacy. But while Anderson contemplates the compensation for such intimate bonds - therefore seemingly accepting that such intimacy is required - I question, below, whether this is indeed should be the case.

**Sexual Intimacy:** As noted above, the line between body work and sexuality is blurry, since many of the chores required from those performing body work involve touch and exposure to intimate organs of the body. Such contact in itself creates a form of sexual intimacy. However, sexual intimacy includes further dimensions than these. Studies have shown how domestic workers, barmaids, waiters, masseuses, and lap-dancers, for

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17 S Fredman, note 3 above.
20 Notably, although the discussion above has focused on domestic work as an example for emotional intimacy, and while this is indeed the more obvious form of a worker’s emotional intimacy, such intimacy can be found in other types of service work that are conceptualized as body work. For example, bartenders are often seen as the ‘vailing wall’ for returning customers, who create intimate emotional relationships with them, while the bartender herself considers it part of her job to provide supportive and empathetic reactions. Such an emotionally supportive role is also a characteristic of various kinds of sex work, of hairdressing work, and of other service spheres.
example, are frequently exposed to sexual harassment and assault.21 Accepting sexually humiliating expressions, and even physical oppression - especially from clients - seems to be part of their job. Additionally, looks and behaviours required in these types of work can be sexual as well. For example, employers often outfit their workers in low-neck tops, short skirts or other sexually revealing forms of dress to make them appealing to customers.22 Moreover, employers' guidelines occasionally require workers to flirt with customers.23

The law addresses some of these situations, such as cases of sexual harassment and rape. Other related phenomena - such as required looks and behaviours; cleaning, bathing and touching intimate organs; and the demand to uphold the customer's wishes as sovereign, even when customers are flirting or making sexual remarks - have been addressed by regulation on a very limited basis. On the contrary, as the following part of this paper shows, work regulations view these obligations as legitimate job requirements, thus leading to workers' objectification. Notably, the view of these situations as legitimate arises not only from the way work regulation shapes required intimacy, but also from these obligations' perception as instrumental to service work. Indeed, throughout the discussion above, I have pointed out the ways in which the requirements that service workers provide service with a smile in a cooperative, accepting and docile manner strengthen the obligatory nature of performed intimacy, emotional intimacy and sexual intimacy.

**Part II: Shaping Required Intimacy**

How does labour regulation address these three forms of intimacy? As noted above, I argue that labour regulation shapes intimacy by viewing it as required, thereby legitimizing unbounded intimacy in work relations. Moreover, such legitimacy leads to the objectification of body workers by employers, customers, governments and social institutions, such as the law. I will exemplify this phenomenon by discussing three main

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23 Guerrier and Adib, note 21 above, 692.
rules of labour law - freedom of contract, equality laws and the notion of unfree labour (forced labour). This later notion is important because in some situations, especially when migrant workers are employed in body work (as is often the case with domestic workers and lap-dancers), the legitimacy of required intimacy and the objectification of the workers can lead to a situation of forced intimacy. The theoretical hypothesis posited in the first Part of this article - that intimacy’s attachment to service work strengthens the outcome that intimacy is obligatory - serves as the context for this discussion.

According to the idea of freedom of contract, the parties to the employment relationship are free to shape the job requirements as they please. Managers possess the prerogative to define the work requirements, which the worker can accept, decline or negotiate. Once accepting the job, the worker is obliged to perform what has been agreed upon according to the contract; if she is not pleased with the requirements, the law provides a way out, by means of resignation. Workers’ decision to accept, decline, or negotiate is seen as an expression of their autonomy. Exercise of the right to resign is also an autonomous expression in labour law. This framework is based on a liberal perception of the contract and of the individual, whereby the individual expresses her own wishes on a free and equal basis through the choices she makes regarding the contract. Scholars have criticized this liberal contractual perception, especially regarding its presumption of equality amongst the parties to the contract in a society that is embedded in unequal power relations.  

In the field of labour law, this criticism has led to the adoption of labour-protective legislation and international human rights documents, as well as to the courts’ placing of special duties on the parties to the employment contract. However, the liberal perspective has not changed regarding definitions of job requirements. For example, job requirements may include the provision of sex for pay, as they do in the sex industry. No limitations or boundaries exist in this regard, apart from the courts’ refusal to view the arrangement as a contract of employment on the basis of illegality.

Scholars in the field of contract theory, accepting the criticism noted above, have proposed ways to address it, offering, for example, that social justice be a defining element of contract law; that constitutional rights be used to frame contract law; and that

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25 In Israel, for example, in case 000247/07 Anonymous v Sophia Kutchick it was decided that a victim of trafficking could not be seen as having a contract of employment because the arrangement was illegal.
a thicker theory of autonomy should be used to deal with power relations in society.\textsuperscript{26} However, social justice theories and constitutional law have not addressed the issue of job requirements, and thus they can deal with required intimacy in a limited way. Moreover, the thicker notions of autonomy, as discussed by Gutmann,\textsuperscript{27} despite their appeal, are very hard to translate into legal tools. Presently, therefore, freedom of contract sets the basis for required intimacy.

In addition, equality laws have addressed the issue of intimacy only at its margins, thus accepting the view of intimacy as required. The main focus of equality laws in the field of work is to achieve an outcome of equal terms and conditions for all workers, irrespective of their gender, race, age, or other characteristics.\textsuperscript{28} Equality laws have been applied to interfere in issues of intimacy mainly regarding sexual harassment at work,\textsuperscript{29} and on a limited basis regarding dress codes. Hence, for example, British courts have intervened in dress codes in response to claims regarding race discrimination.\textsuperscript{30}

These examples demonstrate that equality laws leave instances of performed intimacy and emotional intimacy untouched, interfering only in situations that can be included in what I defined as sexual intimacy - and there, exhibiting minimal intervention. This situation leads to the granting of legitimacy to all other contexts of intimacy in work relations and to the perception that these activities are governed by the parties to the employment relationship on the basis of freedom of contract.

\[ \Rightarrow \text{On legitimation and objectification = Nussbaum 'Objectification' and Langton 'Sexual Solipsism'} \]

It is no wonder, then, that such legitimation of intimacy and its objectification can bring about forced intimacy, such as when migration and gender are taken into consideration in particular body-work services. Indeed, the scholarship has uncovered that despite the existence of an employment contract, migrant workers exhibit disadvantage in the workplace resulting from migration control policies,\textsuperscript{31} their isolation,\textsuperscript{32} work follows.

\[ \text{\textsuperscript{26} See a summary of these proposals in Gutmann, note 24 above.} \]
\[ \text{\textsuperscript{27} Ibid.} \]
\[ \text{\textsuperscript{28} See Article 2 of the Israeli Equal Opportunities at Work Act 1988; Chapter 2 of the British Equality Act 2010;} \]
\[ \text{\textsuperscript{29} See the Israeli Sexual Harassment Act 1998 and Chapter 2 of the British Equality Act 2010.} \]
\[ \text{\textsuperscript{30} Albin, note 22 above.} \]
\[ \text{\textsuperscript{31} G Mundlak, 'Workers or Foreigners? The "Foundational Contract" and Democratic Deficit' (2003) 27 Iyunei Mishpat 423 (Hebrew); B Anderson, 'Migrations, Immigration Controls and the Fashioning of Precarious Workers' (2010) 24 Work, Employment and Society 300; J Fudge, 'Precarious Migrant Status and Precarious Employment: The Paradox of International Rights for Migrant Workers' 34(1) Comparative} \]
arrangements that require them to stay at their employers’ establishment (household or other) 24 hours a day, and their very minimal ability to resign and find another job. In fact, as Mundlak noted, migrant workers’ consent to their job requirements is seen as given once the migrant worker enters the receiving country. When economic interests of the state and of employers merge in this context, forced intimacy can emerge. As I show in the article in Hebrew on which this summary is based, in the case of domestic care, Israel requires those who wish to receive authorisation to employ a domestic-care migrant worker to hire the worker 24 hours a day as a live-in employee. Additionally, domestic-care migrant workers cannot have any family ties or attachment in Israel. In this way, the policy not only shapes a 24-hour intimacy in the employer's household, but also denies possibilities of other intimate relationships that are based on real family connection. The worker must be dedicated solely to the work, and once the work is based on intimacy in all its three dimensions that have been noted above, this situation creates forced intimacy. When factoring for gender issues, the element of force in the arrangement is magnified.

Provisions regarding unfree labour are of no aid here. Such perspectives also hold job requirements to be part of the managerial prerogative and the parties’ agreement (and in the case of migration, they also view the state as sovereign to decide its migration, border control, welfare and care policy). While the idea of unfree (or forced) labour also rests on the notion of autonomy, the notion of autonomy it adopts is based on situations of coercion. International human rights tools addressing forced labour were established on the basis of the wish to deny slavery and developed only slightly to apply to phenomena emerging in the past few decades due to processes of globalisation, such as trafficking and work migration that is based on coercion. True, the definition of forced labour includes instances in which the worker has not entered her job of her own free will and has no possibility of leaving her job. Forced labour law recognizes legal, philosophical and physical constraints that can deny from a worker from exiting the work


32 Mundlak, ibid.
33 Albin, ibid.
34 See Fudge, note 31 above, and also a discussion on an Israeli court decision declaring the binding of workers to be unconstitutional in Albin, ibid.
35 Mundlak, note 31 above.
36 Note 1 above.
relationship. However, as noted above, when migrant workers perform body work services, their entry into the receiving country in itself is usually seen as consent to the terms of the employment, and the existence of even limited ability to leave the employer is viewed as emblematic of unforced labour. Hence, intimacy - even when it is forced - escapes the bounds of the law and remains largely inadequately explored.

Recently, scholars have criticised the limitations of the current idea of forced labour, stating that unfree labour should be viewed as a continuum because some form of coercion or at least lack of autonomy exists in every type of work relationship. Jens Lerche has criticised current legal framework for creating a binary distinction between what is forced and what is unforced, thus denying the ability to look more clearly at various situations at work that might be seen as problematic otherwise. This criticism is highly relevant to required intimacy.

Part III: Setting Boundaries for Required Intimacy

Should required intimacy be restricted, and what theoretical grounds should set its boundaries? Three different reasons justify a rigorous reconsideration of required intimacy and its boundaries. First, required intimacy has implications regarding a person’s well-being and emotional state. Service workers have been demonstrated to manage their feelings, especially when they are in contact with clients or customers, and to manipulate the process of producing the emotions required. Arlene Hochschild titled this as 'emotional labour.' Just as during the era of manufacturing, Marx's theory led to concern that the worker becomes merely a limb of the living machine system, in the service era, we should consider the consequences of the intimacy required in interactive services and body work and its implications regarding the emotional state of workers.

Second, in some situations, intimacy is used as a reason to deny workers their labour protection rights. While as I will argue below, the emotional consequences of intimacy should lead to a forceful application of labour protective regulation, in practice, in many instances, regulation adopts an opposite direction. Domestic workers are not entitled to

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38 Ibid 5-6.
41 K Marx, Capital, Vol 1 Chapter 15.
all benefits set in labour protective legislation, and the central reasons mentioned for lack of provision of these rights is that they are ‘part of the family’, or have personal relationships with their employers, or otherwise that they work at home and thus their work time and leisure time cannot be assessed. All of these arguments are related to intimacy, whether performed or emotional. Another example is that of lap-dancers. A court decision handed down last year by the British Court of Appeal concluded that a lap-dancer is not an employee because she depends on customers for pay, thus using the required intimacy of her work as a reason to deny her labour rights.

Third, as noted above, the law is generally sensitive to situations in which one individual interrupts another’s physical intimacy absent full consent and autonomous decision. However, this legal sensitivity applies exclusively to physical intimacy, at the exclusion of performed intimacy, emotional intimacy and some forms of sexual intimacy. Given the importance of emotional intimacy to one's well-being and emotional health; the emotional consequences that performed intimacy yields on workers; and the other dimensions of sexual intimacy that are not addressed by law, I question the reasoning of the current legal distinction between different forms of intimacy—in particular regarding work regulation.

On the basis of these justifications, I claim that required intimacy should be restricted. I intend to develop my argument on the ways boundaries should be set for required intimacy on the grounds of two theories: the theory of non-exploitation and the theory of dignified work. I stress that the regulation of required intimacy is not only an issue of equal rights that should be given to all those whose work is characterised by the three forms of intimacy presented above, although the distinction into these forms offers a significant dimension for dealing with the concerns of required intimacy. Ultimately, the regulation of required intimacy should also relate to a definition of dignified versus undignified work, especially when an element of force might be involved.

42 All these ways of viewing domestic workers can be seen in a recent Israeli judgment given by the Supreme Court in which it was decided that the Israeli Hours of Work and Rest Act does not apply to domestic workers, see Yulanda Glutan v The National Labour Court HCJ 10007/09 (unpublished).
43 Stringfellows Restaurants Ltd v Nadine Quashie ([2012] EWCAGv1735. For criticism on this case, see, E Albin, 'The Case of Quashie: Between the Legalisation of Sex Work and the Precariousness of Personal Service Work' (2013) 42(2) ILJ 180.
44 On non-exploitation, see, SC Bolton, Dimensions of Dignity at Work (Routledge 2007).