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Transfeminist
Perspectives
in and beyond
Transgender and
Gender Studies
and nonacademically affiliated activists can play important roles in broadening trans-health activism’s engagement with social, racial, political, and economic justice. Scholars can advance politically and community-engaged scholarship, work collaboratively across disciplines, and develop frameworks that are theoretically rigorous and practically effective. Nonacademically affiliated activists (and, depending on context, scholars as well) can create alliances with people and groups that are similarly marginalized within health and medicine. All these changes will help us on a larger scale increase access and equity in health care.

Imagining Rights

On a panel called Queer Necropolitics at the American Anthropological Association meeting in 2009, Sima Shaksari related the story of Naz, a trans woman from Iran who was featured in a number of documentaries about transgender sexuality in Iran. In the global North, recent media attention to the situation of trans people in Iran has anxiously deliberated on the visibility of their “suffering.” The symptoms of this suffering may include social and familial repudiation, difficulty finding work, and the seemingly odd juxtaposition of a sympathetic medical establishment and government that, simultaneously, imprison gays and lesbians. Such media portrayals explicitly beg a further anxious query of whether trans people in Iran are not simply gays and lesbians undergoing enforced surgical mutilation to live with their partners. As Shaksari pointed out, the rash of documentaries on Iranian trans people generally portray transgender subjects as stuck in Iran as a repressive “elsewhere,” juxtaposed with the ostensible freedom of queer life in the global North. Naz, however, did not remain in Iran. After the documentaries were filmed, she went to Turkey and from there applied successfully for asylum in Canada. A year after arriving in Canada, Naz committed suicide, alone in state-subsidized housing from which she would soon have been evicted.

What happened to Naz is neither uncommon nor unexpected. Immigrants to the “developed” regions of North America, Australia, and Europe are subject to a host of laws regulating their lives and racializing and criminalizing the undocumented. The reality of Naz’s suicide acts as a counter-narrative to a familiar story in which an oppressed queer or trans person living in a developing country, a dictatorship, or a fundamentalist Islamic state immigrates to the “West” to encounter freedom, hope, and a better life. This narrative is a staple of feature films and documentaries about gender-variant and queer people immigrating. This immigration narrative folds into the (often-mistaken) assumption that models for transgender rights are generally initiated in “Western”
nation-states—the United States, Canada, Australia, the European Union—and will later spread to other, less-progressive "corners" of the globe.

Of course, models for transgender rights and citizenship do move, spread, and emerge, and often in locations that might seem unlikely. For example, the first International Congress on Gender Identity and Human Rights was held in Barcelona in 2010; but the agenda was not shaped by European or North American activists as much as by the presence of activists from India, Chile, Argentina, Thailand, the Philippines, Venezuela, South Africa, and a host of other locations. As gender-variant life has become more socially visible in particular locations around the world, concurrently more struggles are occurring to produce legislation, regulations, and administrative apparatuses that accord gender-variant subjects the privileges of citizenship (i.e., rights specific to gender-variant people). What Paisley Currah calls a "transgender rights imaginary" are the arguments and counter-arguments, rights claims, and forms of law being deployed in these struggles. Transgender-rights discourses are already contested: Many have critiqued the tendency to incorporate medicalized understandings of surgical transsexuality in the law or to enshrine a white, heterosexual, middle-class subject of rights as the "ideal" gender-variant subject. Yet the difficulty of survival for gender-variant people in the "developed" nations we champion as modern and progressive challenges this transgender-rights imaginary and begs a different question: What would happen if we thought about trans and gender-variant freedom outside and against the framework of the nation-state?

In this chapter, I intervene in emerging imaginaries of transgender rights and their usefulness in understanding and combating the global regulation of immigration and its effects on the lives of gender-variant people. In the realm of immigration, a transgender-rights imaginary can be seen emerging in several sites. One is a publication called Immigration Law and the Transgender Client (hereon referred to as Immigration Law), co-authored by the New York–based advocacy group Immigration Equality and the San Francisco–based Transgender Law Center. The only handbook available globally that addresses trans­gender immigration issues in detail, Immigration Law is intended as a practice manual for attorneys who represent gender-variant clients. Informally, this handbook also acts as a primer for gender-variant immigrants (or potential immigrants) to the United States on how to navigate different visa categories. Although it deals specifically with U.S. law, as a policy document it presages similar documents that may emerge in nation-states with a similarly high level of immigration and an exceptionalist image as the liberal location in which people may live as trans without harm. Through a close reading of Immigration Law, I interrogate the limits of neoliberal–rights frameworks that produce gender-variant people as subjects who must perfectly perform regulatory procedures to gain access to rights. In this framework, political transformation is displaced onto individuals, who are asked to be visible as "transgender subjects" (hence also to conform to the nation-state's idea about what that means) for their cases to become part of the precedential law-making machine. In doing so,
antidiscrimination and hate-crimes legislation—as the primary political goal of trans politics and remaining alert to how trans-political projects are mobilized toward neoliberal goals of inclusion, optimization, and incorporation. Rather than framing queer or transgender as categories that are excluded or invisible within the polis, Spade investigates how the emerging inclusion and visibility of transgender and gender identity as legal and administrative categories are fraught, often producing "targeted insecurities and death" for those who are unclassifiable or misclassified. Spade’s focus on populations most at risk of death or lifelong precariousness—such as immigrants, the incarcerated, those who engage in informal economies, and people of color—is instructive here: These populations are also targeted for increased surveillance and regulation in the context of sustained, ongoing wars—on drugs, on terror, on immigration.

This chapter contributes to that project by situating the forms of power that produce and govern gender-variant bodies within a framework that looks beyond the nation-state (and especially beyond the United States). Gender-variant movement needs to be understood as part of global movement, and trans communities need to be understood as composed not of "citizens" but of people who are also undocumented, stateless, or constantly on the move. This commitment is both personal and theoretical. As an Australian citizen living in the United States, I encounter immigration systems regularly. However, my status as a white academic whose skills are in demand have thus far meant success, if nerve-wracking, visa-application procedures (so long as I avoid presenting my female-assigned birth certificate alongside the passport that designates me as male, and possibly even then). As a scholar of transnationality, it is impossible for me to ignore how the majority of writing on queer and transgender studies and transnationality restricts critical attention to one nation-state or one diasporic community. This is not to say that we should make universalizing assumptions of generality at the expense of focusing on the local, acknowledging the specificity of juridical governmentalities, or acknowledging the specificity of differently racialized or ethnicized communities. What I sketch out here is a tactical commitment to approaching localized struggles as linked transnationally and politically, enabling us to grasp the contact points that bind gender-variant people into global migratory regulatory regimes regardless of which geographical regions they were born in, are traveling to, or are traveling from.

For a Biopolitics of Trans Migration

Despite the recent overuse of biopolitics as a conceptual tool, Michel Foucault’s insight that modern politics deploys the optimization and extension of life to control its subjects does necessary work here. To push against the assumption that the nation-state marks the perimeter of politics means tracing the trajectories of immigrants before they reach "destination" nation-states while recognizing that vectors of global-migration flow are modulated by many national borders acting as filters. Not only national governments but international and localized nongovernmental organizations and institutions contribute to global/local "regimes of mobility control." These regimes deploy a variety of contradictory mechanisms to optimize labor flows, to filter particular kinds of subjects into and out of territories, to secure those populations, and to manage popular political discourse around protecting nation-states from, or opening nation-states to, immigration.

Far from offering a perspective on immigration that privileges institutional calls for better "human rights," theorizing mobility control this way permits us to approach "humanitarian" and "nonhumanitarian" immigration laws as part of the same flexible set of assemblages, aimed at modulating the enclosures just in time, case by case. These assemblages include stratified visa categories (such as temporary-work visa categories, skilled-worker visa categories, partnership or family visa categories, or asylum-seeker visa categories); the detention and deportation of undocumented migrants or those who overstay their visas, often aimed at particular racialized populations; and transnational outsourcing of detention camps to nation-states located on migration routes to "developed" countries.

From this perspective, borders are not simply about exclusion. Rather, as Angela Mitropoulos puts it, "the regulation and transformation of the movements of bodies (become calculable, exchangeable) through space, the habituating of space as market and movement as commerce." The words "calculable" and "exchangeable" here alert us to how encountering the border forces us not only to become legible subjects in stratified categories (asylum seeker, permanent resident, temporary worker, skilled worker, student, visiting researcher, "illegal alien," citizen) but also to reinvent ourselves as entrepreneurial subjects under contract with the nation-state. In exchange for permission to enter a territory legally, we agree to comply with visa requirements—to work or to not work, to pay the agreed-upon fees, to leave on time, to present ourselves as hard-working, responsible, or, in the case of queer or transgender asylum seekers, as the traumatized victims of "barbaric" third-world trans- or homophobia. The symbolic and material debt incurred in such an exchange ensures the pliability and self-surveillance of the immigrant herself.

In exchange for not entering legally, undocumented migrants clandestinely fill a growing need for domestic or unskilled labor in "modernized" nation-states. Yet the undocumented are also characterized as having broken a contract with the state and are thus subject to an illegalized existence at higher risk of detention or deportation and the inability to harvest the other contractual benefits potentially accorded to "good immigrant" behavior, such as health benefits, sick leave, or collective bargaining. Like the Schmittian exception that enables the sovereign to suspend democracy (thus, for Schmitt, defining sovereignty itself), the suspension of the contract is built into contractualism: "the failure of will to prevail over 'custom,' the non-identity of the contracting parties, the inability of certain people to 'control themselves.'" At this juncture, racializing logics dictate that "those people" were never appropriate multicultural subjects.
to begin with and may be ejected forthwith. Calls for immigration reform often follow the same divisive logic, pitting “good” against “bad” immigrants. For example the now-dismantled DREAM Act would have been the most progressive immigration-reform bill on the agenda in the United States, in that it would have entitled undocumented minors to permanent residence on the condition that they complete college or serve in the military. Populist support for the DREAM Act framed the U.S. government as benevolently excusing “innocent” children for the crimes of their undocumented parents. Simultaneously, however, it must be acknowledged that those parents’ low-waged labor is central to the survival of millions of American corporations and government bodies, so much so that, at least in Indiana, Democrats and Republicans alike condemned the undocumented criminalizing SB590 law as counterproductive for Indiana’s (crisis-best) economy.

Within this framework, the legibility or illegibility of subjects is paramount. Thus it should not surprise us that, for gender-variant people, negotiating borders is filled with risk and anxiety: the risk that one’s documents will not match up with the gender read by strangers or immigration officials on the basis of appearance or the risk of being apprehended as being “in disguise” and therefore a potential threat. Recall the famous memo sent by the U.S. Department of Homeland Security in 2005 warning TSA guards to be on the alert for “cross-dressed” terrorists. The new generation of airport X-ray body scanners picks up “inconsistencies” not by matching appearance with documents but by looking at the body’s surface. Such biometric surveillance techniques complement skirmishes taking place at an administrative and legislative level, toward which I now turn.

**Calculable under What Name?**

I can’t find any information or guidance whatsoever, for transgendered people wishing to immigrate to the UK to be with their partner. There is no mention anywhere that I have found of how a trans person should properly apply, or under what visa category.

This plea for assistance, written by a participant on the United Kingdom Lesbian and Gay Immigration Group (UKLIGIG) online forum, appeared at the beginning of a thread entitled “Transgender visa application no help available.” “It’s as if Trans people do not exist,” the post continued. A male citizen of the United Kingdom, the forum participant lived in the Philippines with his partner, a Filipino trans woman. They intended to return to the United Kingdom to live. Under the United Kingdom’s relatively progressive partnership immigration laws, foreign nationals can obtain residency in the United Kingdom if they are married heterosexual partners, same-sex civil partners, or unmarried domestic partners of U.K. citizens. Unmarried partners must show they have cohabited for two years prior to immigrating, while civil partnerships or marriages do not have to provide evidence of prior cohabitation. The participant and his partner preferred to apply as a heterosexual couple—the author of the post considered himself to be a heterosexual male, and his partner identified as a woman. However, she was unable to obtain documents listing her gender as female in the Philippines. Because her documents designated her as male, it seemed that they must apply to the U.K. immigration authorities as same-sex civil partners. Once in the United Kingdom, she intended to gain legal recognition as a woman under the U.K.’s Gender Recognition Act (GRA), a process that would take two years of documented living as a woman. Neither party wanted to enter into a same-sex civil partnership as men—which would, at any rate, be dissolved once she was legally recognized as a woman under the GRA. If they applied as unmarried partners, the couple could not meet the requirements, because during their five-year long-distance relationship, they had not cohabited for two years. The forum participant could not decide how to proceed and found no helpful information in bureaucratic channels. Hence, he had turned to UKLIGIG for assistance. “If anyone has a view on this, and can point me at the contact for immigration services in U.K. immigration, both myself and my as yet unmarried trans Fiancee would be very grateful,” he wrote.

The dilemma in which this forum participant and his partner found themselves has all the hallmarks of a classical immigration story: faceless bureaucratic institutions, labyrinthine application procedures, a disconnect between the left and right hands of the body politic. It is a characteristic example of what transgender immigrants must contend with in nation-states that legally recognize either transgender persons’ change of legal gender designation or same-sex partnerships but do not consider how one may contradict the other. Because the Gender Recognition Act and same-sex civil-partnership laws were passed by the U.K. Parliament in the same year, this example seems particularly farcical. The two forms of legal recognition seem plagued by discontinuity at precisely the point where an overlap would assist those who may be most in need of legal protection. At any rate, volunteer advisers in the UKLIGIG message board offered advice regarding whether the length of time the couple had cohabited might “count” toward legitimating their unmarried partnership status but had no wisdom regarding the specificity of transgender immigration procedures. One moderator suggested the forum participant write to his member of Parliament, and there the exchange ended. UKLIGIG’s Web site still does not offer any advice for transgender immigration or asylum applicants. This episode illustrates how contradictory and complex immigration law may be for gender-variant people to negotiate. It also illustrates the need for comprehensive information about trans issues and the paucity of that information in purportedly T-inclusive LGBT immigration-advocacy work in the United Kingdom.

By contrast, the United States has quite comprehensive information available for transgender immigrants and their legal advocates in the form of a handbook, *Immigration Law and the Transgender Client*. Produced by Immigration Equality and the Transgender Law Center, the handbook articulates its
target as two major problems that contribute to the increased marginalization, detention, and deportation of gender-variant immigrants to the United States: the misapplication of the law in cases involving gender-variant applicants, and the high prevalence of immigration attorneys offering transgender immigrants inaccurate legal advice. It offers indispensable advice not only for immigrants seeking permanent residency but also for advocates acting for undocumented or criminalized immigrants in immigration detention.

However, a close reading of key chapters illustrates that Immigration Law requires its transgender "clients" to engage in precisely the form of neoliberal contractualism I critique above. Most of the advice offered deals with petitions for U.S. permanent residency through spousal and fiancée petition or asylum, because these are the categories of permanent-residency petition for which transgender status is perceived to have definite bearing on the outcome. To win permanent residency, the handbook insists, one must perform the correct legal maneuvers to gain strategic success within a system blatantly structured to filter entry exclusively to those who already have such skills.

Although Immigration Equality has worked extensively on lobbying for the Uniting American Families Bill to pass, which would open up permanent-residency petitions to binational same-sex partners, here the aim is more limited: to prevent the misapplication of the law and to quietly encourage law reform through precedent. Both policy initiatives address themselves to people who are already living in the United States, whether documented or undocumented. Advice is explicitly not provided for refugees—the refugee category under U.S. law designates those who apply under a humanitarian convention from outside the country, as opposed to asylum, which designates those who apply under a humanitarian category from inside the United States). These tactics may be the most immediately practical contribution either Immigration Equality or the Transgender Law Center can make with the resources at its disposal. Both organizations retain staff attorneys who represent trans and LGBT clients pro bono; the handbook's comprehensive "practice tips" demonstrate an ongoing familiarity with the logistics of negotiating lengthy application procedures. However, by focusing on how transgender immigrants can strategically negotiate immigration regulations with their attorneys through formalized case law, Immigration Law renders the struggle for freedom from harassment, discrimination, criminalization, and incarceration as an individual task. Although it is commendable that someone is doing this work at all, Immigration Law's format relinquishes the opportunity to create connections between immigrants in a more networked or collective struggle to transform public policy on immigration or to assist those who prefer not to be outed as transgender or have the "correct" documents at all.

The key question here is whether changing one's administrative gender is more important than moving through an invasive permanent-residency application process with as little difficulty as possible. Immigration Law addresses itself to an attorney who is not familiar with transgender issues and offers a number of preliminary tips so the attorney can treat their client with respect.

These include suggestions that the attorney do the following: "narrow the issues" by steering away from discussing the client's gender identity if it will not affect the client's immigration status; permit the client to direct the attorney how to address and perceive them; refrain from making assumptions about the client's gender identity based on their appearance; and use the correct name, pronoun, and mode of address in all correspondence with the client. This should happen, the authors write, even if the client self-presents in correspondence or appointments using their legal name:

- Often, clients will tell their attorneys their legal name (i.e., their birth name) rather than the name they feel comfortable using. If your client's legal name clearly does not match his or her corrected gender, you should ask whether there is another name that is preferred.

The authors also counsel that an attorney should see that the client makes all possible attempts to change their legal name and gender classification on documents. Ideally this should take place before an individual starts an immigration record. Thus, the authors advise attorneys that it is easier for your client to begin his or her immigration record with the name that corresponds to the gender identity. Therefore, especially for immigration clients, it is important to do all that you can to get your client's paperwork in order to file the application in the correct name. If your client has not legally changed his or her name, however, you will generally not be able to file in the name your client chooses. Nonetheless, it is best to explain in the cover letter to USCIS [U.S. Citizenship and Immigration Services] that your client is transgender and generally goes by a different name.

It is clearly admirable to advise non-trans "friendly" lawyers on how to be trans-friendly in their interactions with clients and to pursue whatever will make life easier for the client in terms of name and gender-classification changes. However, I want to trouble the final advice that an attorney should inform USCIS of the client's transgender status, even when filing applications under the birth name. The assumption here is that social, bodily, and administrative gender should be consistent. The corollary assumption is that a client will desire eventually to be administratively legible as the gender she socially identifies as and that name changes should be made before embarking on an immigration process that may take years. But must a gender-variant person always change their administrative gender? Depending on the state, it is not always possible or practical. In the United States, where a person might not need to change their gender classification on legal documents to access hormone therapy or surgeries, changing a legal name or gender classification may be unnecessary. This is not to say that the option to change legal identifiers should not
be available—it should. Rather, I question the necessity of being visibly marked as transgender in a process that renders immigrants vulnerable to surveillance, discrimination, and violence. Being administratively marked as transgender may make a gender-variant individual vulnerable to harassment from immigration officials. This is particularly important, because (as the handbook reminds readers in the same chapter) gender-variant immigrants may think of themselves in ways that are not consistent with Euro-American understandings of transgender as exclusively about gender identity rather than sexual orientation.

The implicit project animating Immigration Law's emphasis on transgender visibility becomes more clear in the chapter on spousal and fiancée permanent-residency petitions. To make clear the stakes of this reading, a brief summary of bureaucratic approaches to transgender permanent-residency applications is necessary here. In the United States, marriage-based petitions for permanent residency involving a transgender person are not officially "legal." But they can and have been approved by a mazelike process that exploits policy inconsistencies between different arms of government. Officially, USCIS's policy is to not recognize marriages between parties where one or both individuals claim to be transsexual, "regardless of whether either individual has undergone sex reassignment surgery, or is in the process of doing so." (It is unclear whether this is because of common garden-variety transphobia or because officially allowing transsexual marriages might stray too near a perceived infraction of the Defense of Marriage Act, or both.) After an application is first denied by USCIS, however, applicants are free to appeal. The Board of Immigration Appeals (BIA), administered by the Department of Justice, will often reverse the original decision and approve the petition. This approval dates from a 2005 case, In re Lovo Lara, what Immigration Law calls a "shockingly favorable precedential decision," which inaugurated a complex test to ensure the legality of a marriage. The Lovo Lara requirements include the following: that it be proven not to contravene the Defense of Marriage Act, which stipulates that a marriage be between a man and a woman; that the marriage be legal in the jurisdiction in which it occurred; that the transgender individual (or individuals) obtain "complete" surgical gender reassignment prior to making the petition; and that the applicant's gender is recognized administratively through a corrected birth certificate.

In Immigration Law's chapter on binational marriage petitions, the conflict between performing a legibly proper transgender identity and flying under the radar becomes even more explicit. Because around 25 percent of successful petitions for U.S. permanent residency each year are marriage-based petitions, Immigration Law's chapter on marriage is deservedly extensive. (Advice on how transgender employees might negotiate employer-initiated sponsorship for permanent residency warrants two paragraphs, the assumption being that workers skilled enough to attract employer sponsorship do not require human-rights advocates). So-called "green-card" marriage is notorious for the resources the Immigration and Naturalization Service (INS) devotes to surveillance and interrogation of binational couples in attempt to ensure that these marriages are based on romantic love rather than convenience. The authors offer advice on how to negotiate marriage-based petitions for permanent residency through all the permutations of transgender embodiment and foreign or national status, offering hypothetical situations to illustrate how the law works. For example, they advise that if a couple is married in a state that does not recognize such marriages, they should apply to have the marriage declared void and remarry in a state that does recognize the marriage. For couples who marry in a state that recognizes same-sex marriage, the authors stipulate that they should ensure they are marrying as a man and a woman, not as a same-sex couple (because, of course, same-sex marriages are not recognized federally).

A short section near the end of the chapter mentions cases involving a "Homosexual-Identified Couple but No Surgery." To quote the section in full:

A lesbian-identified couple is comprised of Bette who was born anatomically female and Tina who was born anatomically male but identifies as female. Tina has had no surgery and has taken no steps to change her gender marker on identity documents. For immigration purposes, this couple should be able to marry as an opposite sex couple and succeed with a marriage-based petition... 25

In theory, this strategy might make the petitioning easier, because there may be no need to out one's self as transgendered or transsexual to U.S. immigration officials. For a gender-variant person who does not desire to change the gender recorded on their documents and is marrying a person recognized to be the "opposite" gender, this seems like the most common-sense way to negotiate the system. Why be visible as transgender at all if it is possible to fly under the radar? After all, the point of a successful marriage-based petition in this case is not to be outed as transgender but to obtain permanent residency for an individual who may not even be transgendered at all. In the following paragraph, the authors subtly undercut this logic. Many transgender-rights organizations, they point out, will not accept cases like this to represent—in particular, Immigration Equality and the Transgender Law Center, Immigration Law's co-authors. "We feel uncomfortable," the authors explain, "advocating with DHS [Department of Homeland Security] for the position that a transgender individual who self-identifies as (in this example) female should be legally considered male simply because she has had no surgery." The booklet offers some advice to private legal practitioners who choose to take on cases of this kind, however: the decision of whether to "pass" as a normal heterosexual couple or whether to disclose that one partner is transgender "but has had no surgery."

I could make a number of demurrals in response to this curious section. To begin with, the question of surgical status seems an incidental, not to mention euphemistic, way of putting it. What is being proposed is that a person pass as their birth-assigned gender to enter into a marriage that everyone but the state
would regard as queer. Because “passing” takes many forms and is rather less concerned with embodied “reality” than appearance, the person’s surgical status should not matter. Secondly, what “transgender” means is very particular here: To the authors, it evidently means an uncomplicated transition from male to female or female to male, in which (as I note above) social, administrative, and embodied gender all ought to be consistent. Finally, the comment that transgender-rights organizations would “feel uncomfortable” advocating that a person is non-trans when they are “really” transgender gestures subtly to a subtext of political expediency: If we say you are non-trans, the authors seem to be saying, then the Department of Homeland Security will not recognize you when you say that you are trans. You cannot have it both ways.

Of course, there may be additional political costs for legal advocates who admit they represent clients who pursue this strategy on paper. If it became public, it would be easy for INS and the Department of Homeland Security to claim transgender-immigration lobbyists were secretly pushing same-sex marriages through the back door, as it were. Given that queer and transgender foreigners embody a threat to heterosexuality and to the cohesion of the nation and that anxiety about defending marriage from homosexuality hovers spectrally about every transgender marriage case, it is unsurprising that lobbyists should desire their own cases to present watertight instances of heterosexual transgender people. It could also be argued that providing representation to couples who can access heterosexual privilege, however precarious, is not the concern of an organization dedicated to GLBT rights. (The perennial ressentiment of some gay and lesbian community members who perceive trans people to be “lying” about their correct genders to claim advantages must surely raise its ugly head here.) However, given Immigration Equality’s other policy focus on bringing about legislative recognition of binational same-sex relationships, a refusal of association with even the whiff of same-sex partnership seems odd.

Is this simply another case of Immigration Equality’s investment in a “normative discourse on belonging,” as Karma Chávez puts it in an incisive critique of the Immigration Equality publication Family, Unvalued: Discrimination, Denial and the Fate of Binational Same Sex Couples Under U.S. Law? Family, Unvalued reports on nine hundred interviews with binational same-sex couples affected by the U.S. government’s refusal to recognize same-sex partnerships under immigration law. Chávez argues that Family, Unvalued plays to a perceived middle ground on immigration issues by framing same-sex couples as homonationalist good citizens, with the same desires to unite in romantic fusion and reproduce the nation as heterosexual couples. Meanwhile, U.S. citizens’ claims for rights to reunite their queer families via legal means deflect attention from undocumented immigrants—whose numbers are far higher, and whose criminalization and public demonization is far more serious, than legalized immigrants. Normative belonging signals a shift where the proper performance of citizenship offers a justification for legal reform rather than the ideal of universal rights.

Reading Immigration Law and the Transgender Client as another, transgender-focused facet of the discourse on normative belonging seems apt. Yet I want to stress another aspect of the “normative” here. Immigration Law rewards those who have the capacity to be entrepreneurial and to decide in advance on the best legal strategy. One can safely assume that although the targeted readers are immigration attorneys, the “smart” gender-variant prospective immigrant to the United States will discover the existence of the handbook, pore over it, and arrive in a lawyer’s office already familiar with the necessary procedures. In this sense, it calls into being a neoliberal entrepreneurial subject who is always and forever calculating her exchangeability.

**Intersectional Tactics**

What political tactics might refuse the logics of neoliberal calculability? Does a theorization of calculability run the risk of evacuating an analysis of racialization and sexual normativities? For these techniques do, in fact, still perform important filtering procedures for who counts as a body to be embraced by the nation or expelled from it.

Queer, feminist, and pro-immigrant work that deploys intersectionality as a critical tool may be instructive here. To illustrate what I mean by this, I want to detour into a discussion of theoretical and activist critical work on links between queer and immigrant politics. Eithne Luibhheidí’s work on the interlinking of sexuality and migration in the U.S. nation-state historically frames immigration as the locus of control of sexuality and vice versa. In a reading of *Family, Unvalued*, Luibhheidí refuses the homonationalist desire to gain queer rights through designating queer couples as “family.” Rather than complying with the seemingly static categories of “legal” and “illegal,” Luibhheidí reframes these seemingly universal categories as processes of legalization and illegalization that are contingent and shift according to need. The inclusion of queer couples as a category recognized in permanent residency application, she argues, would mean that same-sex couples would be subject to the same surveillance as heterosexual couples. Luibhheidí questions the biopolitics of intimacy that deploy couple relations as strategies to reproduce good citizens through economic and social incentives. She concludes by arguing that we should address how “other cross-cutting social hierarchies also shape the production of ill/legal status.”

A number of groups working on immigrant and queer issues have released statements arguing for an appreciation of the intersections between queer and immigrant politics. The New York–based group Queers for Economic Justice (QEQ) released a statement called *Queers and Immigration: A Vision Statement* in 2008; joint statements addressing measures against queer rights and immigration rights were made by the Arizona-based Coalición de Derechos Humanos (CDH) and Wingspan in the lead-up to and after the 2006 Arizona state
election that included four anti-immigrant propositions and an antigay amendment to the state constitution. QEI’s *Vision Statement* makes a number of calls on issues that affect not only queer immigrants but also immigrants (in general) and queers: for example, repealing the ban on HIV travelers to the United States, refuting the proposed building of a U.S.-Mexico border wall, calling for an end to the criminalization of harboring undocumented immigrants, and so on. The statement ends with a resounding call for queer and immigrant-rights organizers to “address the intersection where we live and love and struggle.”

Chávez calls the political work these statements do a form of “differential belonging,” in contrast to the normative belonging discourse of *Family, Unvalued*. For Chávez, these critiques reject normative inclusion by focusing on the connections between queers and immigrants (and other kinds of bodies) as threats to the nation and the focus of blame within nationalist discourse, drawing attention to the simultaneous homophobia, racism, and xenophobia of government: “At a fundamental level, migrants and queers are scapegoats that are easily blamed for a multitude of societal problems.” Thus, rather than focusing on the family as the mode of immigrant inclusion (which simultaneously excludes those who do not participate in recognizable family structures—i.e., queers), CDH, Wingspan, and QEI “rhetorically craft a justification for belonging across lines of difference.”

What would an intersectional approach look like in relation to a transgender-rights imaginary? Such an approach might resist a rights framework that privileges those who already have access to the most economic resources and forms of social capital and who fit best into the dominant medico-legal understanding of male and female. Instead, it might address the dilemmas and needs of transgender people who are most vulnerable to violence, death, and discrimination. This might involve an analysis of how laws stigmatizing apparently unrelated populations, such as prisoners, sex workers, and undocumented immigrants, impact gender-variant people (who are statistically overrepresented in each of these categories). Many groups organizing on such principles already exist in the United States: For example, the Sylvia Rivera Law Project (SLRP) works to increase the political participation and visibility of low-income people and people of color who are gender variant. Its mission statement states that SLRP begins from the premise that “gender self-determination is inextricably intertwined with racial, social and economic justice.” It is clear that groups such as QEI, SLRP, CDH, Wingspan, and others do very important work—work that is being done by no one else in the broader lobbying-focused political arena.

However, I want to challenge the assumption that an intersectional analysis is sufficient to harness a political project that desires to improve the lives of people who do not count as subjects at all under a national framework and paradoxically are also integral to that nation’s economic stability. An analysis of intersecting oppressions and the corollary that different groups must work coally along lines of difference assumes the coherence and stability of identity categories. As Jasbir Puar puts it, intersectional models of subjectivity “may still limit us if they presume the automatic primacy and singularity of the disciplinary subject and its identitarian interpellation.” Puur ascribes this insight to the affective turn within critical theory, citing Brian Massumi’s resistance to positionality as gridlock as well as feminist and queer work on affect as the feelings or sensations that precede identity categories. But we also need to challenge intersectional theories of politics that posit those who are excluded (strangers) as the groups who must form coalitions. If we accept an analysis of capitalist neoliberalism as relentlessly inclusive of bodies as long as they can present themselves as calculable (and even when they are not), we must also acknowledge that the imaginaries of liberal aspiration exhort us all to become calculable as the first step to self-improvement.

An analysis of gender-variant immigration that relies too heavily on intersectional politics risks reinsating terms such as transgender, queer, gay, person of color, immigrant, low-income, and family as uncontested or universal. When a person migrates through a number of different nation-states in which currency-exchange rates and what constitutes “poverty” fluctuate wildly, how does she come to know herself as “low-income”? When a feminine-appearing person who was assigned male at birth uses female pronouns but characterizes herself as hakla, sao prophet song, waria, fa'afine, travesti, or hijra (or gay)—all non-English terms that denote different gender-variant embodiments and identities—from which U.S. support organization will she seek assistance if she needs it? If we assume that “the border” always means the U.S.-Mexico border, what transnational networks that see borders as interconnected and coterminous are lost? Or, to give an example closer to my personal experience, perspectives on what counts as “white” in Australia and the United States differ entirely: in Australia, close Greek and Italian friends are racialized as nonwhite according to the white Australia policy’s shifting historical definitions, while in the United States, Greek- or Italian-American friends are now considered to be white. Their capacity to intervene in particular antiracist political debates thus changes according to geographical location (and contradictory racialized interpretations of the right to speak collide in transnational e-mail list and Weblog skirmishes). Intersectional political projects risk failure without an assessment of how transnational flows of people disrupt, transform, and resist these shifting lines of demarcation.

My final note on intersectional politics regards the symbolic burden placed on trans women of color, many times immigrants, to represent themselves consistently as victims of the most heinous crimes of transphobic violence. The Transgender Day of Remembrance (TDOR), which tallies a global list of transgender people murdered each year and commemorates their deaths with vigils and memorial services annually on November 21, offers a salutary example. Implicitly or explicitly, the statistics quoted on each nation-state imprint a shocking transnational sensibility on proceedings (nothing exemplifies this more ironically than watching mostly white Midwestern college students at a 2009 TDOR vigil in Indiana struggle to pronounce the “foreign” names of those...
on the list). Yet TDOR vigils often end in calls for nation-bound legislative rec-
compense, such as national hate-crime laws, which would not help most of the
people on the list of dead—not to mention that many seem to be vulnerable as
sex workers or undocumented immigrants who are also subject to criminalizing
anti-sex-work laws or the violence of numerous security agencies.38

A similar effect can be seen in writing on the global feminization of labor:
As Neferti Tadiar puts it, writing on feminist critiques of globalization, “immi-
grant female domestic and/or sex workers . . . come to embody the material con-
sequences of the gendered, racialized, and sexualized aspects of the norma-
tive logics of the capitalist economy.”39 Under this regime of representation,
the subject “serves as the axiomatic form of human equivalence” who becomes
the only player in moral-political narratives of dramatic suffering.40 As with the
story of Naz, whom I discuss at the beginning of this chapter, narratives about
dead trans women of color too often mobilize suffering to support the excep-
tionalist lie that life is better in the center—except on those occasions when it
proved, after all, not to be better. The abstraction of these bodies into subjects of
suffering also prevents the formation of a political model that might begin by
understanding precisely how the privileges and freedoms of those who are
documented, or not sex workers, or not transgender, are coexistent with and
intimately connected to those spoken for, in ways we cannot anticipate in
advance. These ways may not be about law reform, rights, representation, or
belonging at all.

Exiting, Imperceptibly

Throughout this chapter, I offer examples of salutary moments in which legisla-
tive recognition or nongovernmental attempts at negotiating recognition of
gender-variant people fail. The example of the poster on the UKLIGI message
board illustrates how “gender recognition” and “same-sex partnership recogni-
tion” neither remove the necessity of demonstrating one’s legitimate gender at
all points nor remove the boundaries between same-sex and heterosexual part-
nerships. When it is impossible to verify gender transition, an unsurpassable
gulf is created between subjectivation as a “same-sex partner” and a hetero-
sexual “fiancée.” My discussion of Immigration Law similarly demonstrates how
even minimal, partial recognition of transgender immigrants within U.S. spous-
al permanent-residency petitions depends on the willingness of the gender-
variant person to be administratively visible as transgender and to commit to a
male or female legal identity. That discussion also illustrates how nongovern-
mental organizations can be compliant with and supportive of these conditions.
Finally, I critique the assumptions of intersectional politics as reliant on the
stability of categories of identity that clearly are not stable geographically.

If we are to take these failures seriously, we also need to acknowledge that
the bodies we are dealing with in speaking of gender-variant immigration often
do not desire visibility at all. It is a truism of transgender and transsexual com-
munity advice that the best way to obtain identity documents with the correct
gender classification is to walk into any given bureaucratic institution and claim
indignantly that the gender designation on the license or certificate is mistaken.
One then relies on the embarrassment of the “customer service representa-
tive” one approaches to effect a quick, clandestine keystroke transforming one from
M to F or vice versa. The same kinds of advice columns often recommend pass-
ing as the gender listed on one’s documents while moving through airport
security, even if one never does at any other time. That is to say, at times it is
easier not to be visible (and vulnerable) as transgender—and there is no con-
tradiction in working around the law to ensure one’s safety. Undocumented immi-
grants, too, have a vested interest in passing under the radar. As theorists of
migration and gender variance, it is our business to remain fidelitous to that
need. In that case, it might be salient to reconceive of “the political” as designat-
ing exclusively representational and specular tactics. As post-autonomist theo-
rist Yann Moulier-Boutang writes in an interview on the politics of flight, “It is
the interpretation of the silences that interests me: to seize the silences, the
refusals, and the flight as something active.”41

In this final section, I challenge us to rethink gender-variant immigration as
a form of flight, or exodus: a performance of politics without necessarily privi-
leging visibility. This also means acknowledging that the mobility and flexibility
of immigrants, and the “spread” of a transgender rights imaginary, may be con-
venient to capitalism. Emerging forms of transgender rights also bring into
being new disciplinary mechanisms that operate transnationally. They depend
on the capacity of bodies to be mobile in order to enclose them. This is not to
downplay the efforts made by gender-variant activists and lobby groups to fight
for transgender rights in an enormous number of jurisdictions across the globe.
But it is to mark those struggles also as a way to bring gender-variant subjects
into new networks of circulation that demarcate the political spaces in which
“freedom” or “tyranny” are said to inhere.

For a forthcoming book, I researched the movements of gender-variant
people migrating to access health care if it does not exist in one’s home; moving
to access different forms of juridical recognition or laws about reassigning
gender classification, marriage, work, and so forth; moving to earn more valuable
currencies in the European Union or North America; and moving to take
advantage of unfamiliar places as laboratories for tweaking with the intricate
social interconnections that create, sustain, or shut down passing or identifying
as any kind of gender. My research subjects lived in a number of locations across
the globe and responded to my questions about their mobility in wildly differing
ways. They all negotiated risk, danger, a desire for autonomy or mobility, and
the incapacity to move. The desire of my informants to be mobile seemed be
coterminous with a pragmatic and expert knowledge about how to negotiate
visa restrictions, currency-exchange value, and transnational differences in
expression of gender variance. Rather than consigning these tactics to the realm
of the contingent, I regard them as politicized strategies of exodus.
Exodus gives one name to a political strategy that refuses to invest in the constitution of a state or in the affective and juridical forms of relation to statehood, such as inclusion or recognition. Exodus is an “engaged withdrawal,” a refusal to participate, a means of flight. Exodus is not necessarily passive, either: When Moulier-Boutang exhorts readers to view silences, refusals, and flight as something active, he asks us to reorient our conceptions of the political not only as recognition. Another name for similar strategies is imperceptible politics: the politics of the every day. Imperceptible politics approaches immigration as a “constituent force of the current social transformation”—millions of people moving, sustained by networks of solidarity, cooperation, sharing resources, and knowledge of how to navigate without identifying one’s self or how to best negotiate the filtering systems of multiple borders. This is a politics that is not quietist but quiet, not visible but disidentifying and invisible in the specular economies of representation and calculability inhabited by both non-governmental organizations and the state. Such silences and invisibilities are not necessarily apolitical but trace the refusal of an easy dialectic between recognition and misrecognition, visibility and invisibility, or discipline and escape. Read collectively as tactics moving toward a form of exodus, the practices of gender-variant mobility might be understood as a desertion of the calculus of contractualism, marginalizing categories, classificatory systems, refusals of adequate health care, discriminatory institutions, and misrecognitions gender-variant people must contend with almost everywhere. Rather than contributing to a transgender-rights imaginary, contributing to this imperceptible politics demands the emergence of an unimaginary: not imagined and future-oriented but present-minded, oriented to real, everyday, and important tactics; not based on identity politics, but on seeing the cosubstantiality and intimacy of all bodies, all the time.

III

Valuing Subjects

Toward Unexpected Alliances
People," Los Angeles Lawyer, 2008. Legal strategies to increase rights and to establish laws that protect trans people from discrimination (such as the Employment Non-Discrimination Act, or ENDA) may be strategic and important in many ways. However, they also devote resources to establishing laws that are (a) difficult to enforce, and thus largely symbolic; and (b) primarily beneficial to trans and gender-nonconforming individuals who are employed, who are able to secure funds for legal representation, or who otherwise have the resources to access and to pursue such protections. A few organizations have done this work, but it has not been widely pursued, even by organizations that claim “transgender rights” and “trans health” as central to their work. Several graduate student unions (among them the University of Michigan, the University of California system, and the University of Washington), the Sylvia Rivera Law Project, and American Friends Service Committee (AFSC) have all worked to increase trans health-care access and insurance coverage within their institutions or organizations. AFSC subsequently published a thorough account of its process for other organizations interested in adding health coverage for trans employees into their insurance plans.

72. This relative silence is also the case from LGBQ groups and organizations. The disproportionate investment (financial and otherwise) in gay marriage has led to a state of affairs in which legal marriage serves as the frame of analysis for a multitude of issues affecting LGBQ communities. Thus, access to health insurance is frequently discussed as an issue that may be resolved by legalizing same-sex marriage, so an individual may gain access to a partner’s insurance (assuming that at least one individual has insurance coverage). Universal health care has not been similarly pursued as a way to solve the health-care problem for mainstream LGBQ communities, perhaps because it does not serve to further the marriage agenda.


74. This is a concept that draws from critical race theorists in critical legal studies, such as Angela Harris and Richard Delgado, as well as one that is indebted to Freirean notions of pedagogy. It is used in practice in a variety of settings, including a variety of training curricula developed by organizations and groups working at the intersections of race, gender and sexuality, class, disability, and other axes of marginalization. I first encountered this as an explicit framing in a training developed by members of Seattle’s Communities against Rape and Abuse (CARA).

CHAPTER 8

Acknowledgments: This essay distills multiple conversations over a decade of attempting to unravel the evident links between emerging trans politics and the border wars waged on undocumented migrants globally. I extend my thanks to Angela Mitropoulos, Dean Spade, Lauren Taylor, Hugh Farrell, Emmett Ramstad, Eric Stanley, and members of the “Queer Necropolitics” informal study group (Jin Haritaworn, Sima Shakhsari, Adi Kuntsman, Gina Velasco, and others) for inspiration, challenges, and talk. I also thank A. Finn Enke for so kindly and patiently continuing to insist that I should be in this book, despite numerous deadline defaults.

1. For a critique of this tendency, see Afsaheh Najmabadi, “Transing and Transgressing across Sex-Gender Walls in Iran,” WSQ: Women’s Studies Quarterly 36, nos. 3–4 (2008): 23–42.
2. Also see the Israeli film Paper Dolls (Babot Niyar), dir. Tomer Heymann, 2006.
3. In this chapter, I use the term “gender variant” to designate persons who do not conform to the logic that one must remain the gender assigned at birth for the duration of one’s life or that gender can be only male or female. This avoids deploying identity catego-
ries, such as transgender or transsexual, with which many gender-variant people disidentify and that tend to be used in a universalizing manner.

9. Ibid., 368.
11. For example, although the U.S.-Mexico border is the locus of the xenophobic specular imaginary of U.S. nationalism, the border between Guatemala and Mexico is heavily policed by numerous formal and informal law-enforcement agencies. The European Union’s Schengen Treaty designates all the E.U. countries as one supranational territory that outsources detention camps for undocumented migrants to nations on the borders of Europe placed in high-flow locations, such as Morocco, Tunisia, Turkey, Croatia, and so forth.

12. These institutions include the United Nations High Commission for Refugees and the International Organization for Migration. On regimes of mobility control, I cite Dimitris Papadopoulos, Niamh Stephenson, and Vassillis Tsianos, Escape Routes: Control and Subversion in the 21st Century (London, UK: Pluto Press, 2008), 162; but also see the work of Angela Mitropoulos.


19. Ibid., section 1.2.4.1.

20. Ibid., section 1.2.4.1.


23. Immigration Law and the Transgender Client, section 1.2.4.1.

24. The preoccupation with romantic heterosexual coupledness as the only legitimate idea of family worthy of migration sponsorship has been critiqued by many, including Eithne Luibheid, who points out how U.S. immigration control has historically served as a mechanism for "constructing, enforcing and normalizing dominant forms of heteronormativity" and simultaneously casting a variety of non-heteronormative bodies as threats. See Eithne Luibheid "Sexuality, Migration, and the Shifting Line between Legal and Illegal Status,” GLQ: A Journal of Lesbian and Gay Studies 14, nos. 2–3 (2008): 296–307.


26. Ibid.


29. Ibid., 142.


34. Ibid., 148.


40. Ibid., 3.


43. Papadopoulos, Tsianos, and Stephenson, Escape Routes, 220.

CHAPTER 10

1. An extensive critique of such presumptions about femininity can be found in Julia Serano, Whipping Girl: A Transsexual Woman on Sexism and the Scapegoating of Femininity (Emeryville, CA: Seal Press, 2007).

2. Ibid.


4. More information about PitF: Female to Femme can be found at www.altcinema .com/fif.html.


6. This essay is a revised version of the keynote talk I presented at Femme 2008.

7. Joan Nestle, ed., “The Femme Question,” The Persistent Desire: A Butch Femme Reader (Boston: Alyson Publications, 1992), 138–146. The specific “femme question” that I am referring to here (and one that Nestle discusses in her piece) is the tendency of the straight mainstream as well lesbian and feminist communities to construct the existence of femmes as a problem and to project disparaging inferior motives onto femmes.

CHAPTER 11


4. See Ulane v. Eastern Airlines, 742 F.2d 1081 (7th Cir. 1984), where the Seventh Circuit Court of Appeals found that a transwoman who was dismissed from her job as an airline pilot was not protected under the sex-discrimination clause of Title VII of the Civil Rights Act of 1964, holding that “Title VII does not protect transsexuals”; and Oiler v. Winn Dixie, Louisiana Inc., No. Civ.A. 00-3114, 2002 WL 31098541 (E.D La. Sept. 16, 2002), where the U.S. District Court for the Eastern District of Louisiana found that a man who was fired from his job for occasionally cross-dressing outside work was not protected