



Prison Logics, Border Transgressions

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Abstract:

Border is a grand political metonym of late neoliberalism—it represents new subjects to be (often forcibly) integrated into global economies, as well as a membrane of exclusion which defines migrancy and citizenship, illegal and legal. Sex-gender marks some of the most violently contested borders in this moment of policies resulting from heightened phobias around trans identification and embodiment. Borders may be political fictions, serving a particular set of ends for those who benefit from invented lines on maps and binarized and separated sexes/genders/sexualities, but their effects are entirely too real for those either on the “wrong side” of them or interred by their agents and institutions. Sex-gender borders can be weaponized to stratify and (negatively) compare: if laws and socio-cultural norms are defined by/for cis-male bodies, then all others are measured in degrees of distance or difference therefrom. The sex-gender “undocumented,” the queer subjects who have no interest in participating in hetero/homonormative institutions of marriage, the military, or the criminal legal system (even if each of these seeks to make these subjects legible through inclusion or erase them through exclusion), and those who refuse phobic definitions which border their experiences from without—these actors deploy border strategies to resist, persist, and insist on self-definition and autonomy. This inquiry traces prison and abolitionist logics, those which impose borders and those which strategize how to subvert, transgress, and erase them. The particular fictions of borders-as-security are read against minoritarian tactics of community self-protection and safety, opening space for dissident sex-gender expressions and identities, as well as broader prospects for abolishing some of the most violent and repressive border ideologies.

Keywords: trans, sex-gender, disidentification, fictions, transgression



Borders are the metaphor of political exclusion *par excellence*; they are imaginary in that they were imagined through colonial/imperial activities, and so very real in the ways they transform those who transgress them. A border is a collapsed division, a spatial impossibility; one can be “at” the border, but not really “on” it. Thus, borders tend to delimit liminality, enforcing binaries (in/out, im/migrant, non/native, un/documented) and, upon the threat or actuality of penetration create classes of people and subject positions which play myriad roles in political fictions. But borders are also premised upon the idea of exclusion—excluding an idea of a space, albeit yet uninhabited, for its future sanctioned habitants.

This is all to say, borders protect in their invented exclusions. There are two actors in this exchange as well, the protected and those from whom they are being protected. We could here consider the border of the prison wall and its attendant logics. It protects the good from the bad, the sanctioned from the illicit, the law-breaker from the lawful. It is a logic of retribution and rehabilitation, though it offers a very nonreciprocal version of the former (only the proposed transgressor is impacted, the transgressed gets nothing, save for the state’s rendition of justice) and more often than not works against the harmed (who is rehabilitated by violent isolation? And to what are they rehabilitated, to what are they restored?). Mariame Kaba offers us a rendition of this carceral border logic that is instructive when considering the logics of state exclusion. In advocating for the dismantling of borders enacted by prison logics—that is to say, advocating for abolition—Kaba has noted the difference(s) between safety and security. The latter is reserved for the protected classes and subject positions, those on one side of gated communities, those whom the violence arm of the state—police, prisons, courts—protects. They are kept secure by laws and the logics which undercut them: certain people and situations are potential and not imminent or ‘actual.’ Criminals as well as crimes must be bordered off from them. Security is highly individualizing, it is measured in terms of threat level and likelihood of harm or its own loss, it is self-perfecting and under perpetual reform. Safety, on the other hand, is border-abnegating, communitarian, deindividuating. It is premised on the concept of trust and aid between those around you, to reduce the threat of the unknown, to understand one another in terms of mutual interest and one another’s strengths and needs. These last two—strengths and needs—are often defined in opposition or contradistinction to state dictates. The state wants to define (race, ability,



sexuality, sex-gender, class), the individual needs identificatory autonomy (in short, the flexibility of lived experience and the mandate of self-(re)presentation). The state demands control (carceral, informational, sexual), the individual needs accountability and respect, in the broadest senses of each. These forms of control draw “baseline” assumptions about bodies, sexes, and genders, assumptions that exclude both definitionally and in-practice, by code and by discretion. What follows is a consideration of some of those assumptions and how subjects unwilling or unable to satisfy them confront various exclusions. How do border logics think sex-gender exclusion, and how do trans logics—border crossing, border denying, border occupying logics—answer?

Principles of Exclusion

Exclusion is the organizing principle of sex-gender; it both binds together and separates the two valences of identity and representation around the en dash. Vivian K Namaste writes,

I consider how a gendered knowledge on violence—one that presupposes men’s bodies—ignores and excludes the bodies and experiences of transsexual and transgendered people. Since such an exclusion is made possible by a collapse between gender and sexuality, a careful theoretical reflection on the relations between these terms is warranted.¹

What’s most interesting about this formulation is what/whom it seems to exclude. A presumption of (cis) men’s bodies excludes trans and nonbinary experiences, sure, but does it not discount experiences of (cis) women’s bodies as well? If not, it is because the cis-exclusion overwhelms the gender wall; a presupposition of cis-men’s bodies includes cis-women’s bodies as its obverse—overwrought hetero-definitional colloquialisms such as referring to one’s “better half” in amative relationships belie as much. What to make of a possible (violent) collapse between sexuality and gender, how to strengthen the dash between sex and gender without calcifying it, leaving pliability for those who require it (who does not require it)? The tools available here are perhaps insufficient, too exclusive. Dean Spade notes, “the language of sex and gender is inherently limited. As trans people challenge their exclusion from language, and therefore from basic human rights, sex itself is increasingly becoming an unsafe foundation for the legal foundation of the order of human life”². The violence of collapse, the unsafety of legal foundations, the limitations of



“language of sex and gender;” is the “and” between sex and gender the problem, crying out for a different copula?

Fixity seems to be more enemy than ally. Leslie Feinberg speculated on, and actively protested against, the violence of rigid definition around both sex-gender and sexuality. Feinberg thinks “that if we define ‘woman’ as a fixed entity, we will draw borders that would need to be policed”³—security for some, unsafety for many others—“No matter what definition is used, many women who should be inside will be excluded.” This policing has resulted in trans exclusion from Sylvia Rivera at the 1970 Christopher Street Liberation Day Parade in New York to transwomen at Michigan Womyn’s Music Festival in the 1990s. The former in a certain sense gave birth to Street Transvestite Action Revolutionaries (STAR), the latter to Camp Trans; alternate inclusions which further underline the initial exclusion. Similarly, Feinberg considers the exclusion of fixity in congenital sexual desire: “Many lesbians went through a long period of heterosexuality before coming out. Would anyone argue that they should be excluded from lesbian gatherings because they were heterosexual during their formative years?”⁴. What does heterosexuality mean for a trans or nonbinary person facing the violences of institutions which offer no language for their sex-gender experience? And what does exclusion mean at the nexus of organizing around sexuality and sex-gender expression?

Exclusionary Organizing, Organizing around Exclusion

Dean Spade is an attorney, founding his legal aid work under the moniker of Sylvia Rivera Law Project. He casts doubt on the project of “rights” as foundation for trans safety, and ten years ago noted “Concern about the exclusion of trans people from gay and lesbian political strategies has heightened”⁵. A progressivist model of history would presume that this heightening would attenuate in the face of recognition: neoliberalism promotes a diversity ethic of inclusion and expansion of identitarian representation. In this case, though, the exclusion only becomes further marked for the most marginalized. Spade goes on, “Overall, the lesbian and gay rights agenda has shifted toward preserving and promoting the class and race privilege of a small number of elite the needs and experiences of people color, immigrants, people with disabilities, indigenous people,



trans people, and poor people”⁶. It is a devastating, if unsurprising, declamation. Multiple forms of nonnormative sex-gender expression and identity become the bad actors of gender justice and queer liberation movements; exclusion of some clarifies the inclusion of others. Jack Halberstam warns of the perils of using institutional diversity tools as means of treating marginalized subjects as themselves a kind of social problem: “Just as gay marriage was never the right solution to correcting the problems of the institution of marriage, with its exclusionary and regulatory mechanisms, so transgender bathrooms will not be the solution to the problems with gender-segregated bathrooms, locker rooms, clubs, lounges, gyms, and schools”⁷. Nor will openly allowing trans people in the military solve the problem of war, nor trans police or prisons as fixing state fetishization of carcerality. Gay marriage is federally indemnified by the oligarchy of the US Supreme Court (for now); the state’s interest in endorsing one-to-one amative bonding finally overwhelmed its homophobia. It is easier for two people assigned the same sex at birth to attain a marriage certificate than for many trans people to travel internationally.

Such legislative strategies can serve a dual purpose: to silence the most “moderate” of dissenting voices (that is to say, subjects who benefit materially from marriage rights or bathroom legislation), and to mark out the more radical demands which far supersede such apparent concessions. Halberstam notes that violence can take the form of “gentle coercion into the category of belonging; or it can operate through inclusion rather than exclusion, or through silence rather than hate speech”⁸. The inclusion of some into the neoliberal state necessarily comes at the exclusion of others: other subjects, other needs, other demands, other logics of safety. Preciado warns of liberation struggles’ risk of “crystallizing around the construction of a normative identity of exclusion”⁹, and for each exclusion within organizing (how does the “T” fit into statist conceptions of “LGBT?”) or conceptions of rights (where does the right to not participate in medico-legal or socio-cultural sex-gender definition begin and end?), that normative identity comes into sharper relief. Preciado worries about sex-gender borders in terms far more geopolitical:

Either masculinity, femininity, nation, borders, territorial and linguistic demarcations win out over the infinitude of a possible series of relationships recognized and still to be discovered, or we generate together the experimental enthusiasm capable of supporting a constituent process that is constantly open.¹⁰



Constantly open borders are among the greatest domestic terrors for both neoconservatism (which benefits enormously from the political efficacy and traditions of xenophobia) and neoliberalism (open borders for the Global North's market penetration, tightly sealed borders for those dispossessed or ejected from the adventure of economic imperialism). This resistance project needs to first name borders for what they are, and then draw in sharp relief those who enforce and benefit from them.

In 1977, the Combahee River Collective¹¹ wrote about the various separatisms that led to their formation and against which they organized. They note the National Black Feminist Organization (NBFO) as a group borne of the exclusion of Black, "Third World," and diasporic experiences from largely white, "second wave" feminism. They also note the difficulty in separating "race from class from sex oppression because in our lives they are most often experienced simultaneously." Here are multiple points of potential exclusion, experienced not additively, but at once, inseparably. But finally, the women of Combahee refuse "the fractionalization that white women who are separatists demand." The subject position of the activists "as Black people necessitates that we have solidarity around the fact of race, which white women of course do not need to have with white men, unless it is their negative solidarity as racial oppressors." The concept of a "negative solidarity" is doubly inclusive/exclusive. In one sense, it could be read as a solidarity of negation; white people in America occupy a racial subject position defined by what they are not. Not Black, not brown, not migrant, not Asian/African/Global Southern. On the other, it could be a solidarity defined by polarity, as opposite sides of a magnet. White women may have the opportunity to form solidarity with women of color not just as women, but as antiracists who understand that white supremacy routinely renders them second- or under-class as well. The organizers go on to "reject Lesbian separatism because it is not a viable political analysis or strategy for us. It leaves out far too much and far too many people, particularly Black men, women, and children." This specific claim brings us back to the topic at hand. The women of Combahee note the way in which Lesbian separatism—that is, self-exclusion based on both subject position and desire—not only excludes those who presumably cannot occupy the subject position of "Lesbian," i.e. Black men and children, but also those who seemingly can and do, Black women. The statement does not mince words; for the writers, this separatism negates "the facts of class and



race.” It is organizing around privilege, around the normative body, around the illusion of security for some at the expense of imagining safety for others.

Fictions of Security, Perils of Unsafety

Does individuation invoke exclusion? What are the stories about security I am told, and how do they relate to the ones about safety I imagine? Preciado suggests that:

“Subject and “nation” are nothing but normative fictions that seek to put an end to the process of subjectivation and to social creation as constant transformation. Subjectivity and society are made up of a multiplicity of heterogenous forces, and cannot be reduced to a single identity, a single language, a single culture, or a single name.”¹²

To end the process of subjectivation turns identity and identification over to the state, along with its categories, boxes, and fixed subject positions. Included amongst these are “criminal,” “minority,” and “undocumented,” to name a few. Donna Haraway writes, “Consciousness of exclusion through naming is acute. Identities seem contradictory, partial, and strategic”¹³. To be contradictory, there must be (seemingly) oppositional identities—contradictory right up until one embodies them. Sex-gender contradiction is defined from without, it is prison logic that defends binaristic sex-gender at the expense of other conceptions. “Partial” is equally unacceptable to phobic publics and their institutions, which demand circumscription and certainty. But strategy can be used by “both sides,” the minoritarian subject as well as the carceral state. Preciado goes on,

“In nation as in gender we cannot look for ontological truths or empirical necessities that allow people to decide who belongs where or what the borders are. There is nothing to verify or demonstrate; everything is to be by experiment. Like gender, the nation does not exist outside of collective practices, which imagine and construct it”¹⁴.

This collectivity is what is being sought, and it may neither have nor need a name. But what it resists goes by many names; Tourmaline offers a few,



“It is not enough to just be urgent and in opposition to state violence but uncritically practice it through exclusion, alienation, sexism, ableism, transphobia, and homophobia and a racist politic of policing authenticity”¹⁵.

Alongside the “naturalized” phobias and -isms in this list is an at-first peculiar adjunct: authenticity. But white supremacy, cis-male body normativity, and the fantasies of a middle-class American dream are all predicated on state dictates of the authentic. Prison logics have plenty of space for this kind of policing, both literal and figurative, as well.

Exclusion as Foucault

Preciado names it: “exclusion is an ancestral necropolitical technique”¹⁶. To exclude certain subjects from the living, to govern them as dead until they are dead—*persona non grata*, or *persona non vivit*? Spade has experienced it firsthand, this necropolitics, working with trans folks facing the criminal legal system:

[G]ender is an organizing principle of both the economy and the seemingly banal administrative systems that govern everyone’s daily life, but have an especially strong presence in the lives of poor people. My clients did not fit into gendered administrative systems, and they paid the price in exclusion, violence, and death.¹⁷

Gender helps organize the banal systems that weigh most heavily on the cash-poor (the walking dead), and any organization rendered by the state is likely to be necropolitical. Organization excludes, it has valences and conditions of access to categories of protection, of security. Stephen Dillon further contours this necropolitics, which marks who lives just as much as who dies: “It is those subjects who are physically and discursively forced to inhabit spaces of exclusion and deferred death who continually haunt and constitute the bodies and lives that are permitted to flourish”¹⁸. This hauntology marks the genderqueer, the gender nonconforming, the agender, the trans subject in various ways; as Haraway noted, in ways contradictory, partial, and strategic. Prison is deferred death—barely deferred—in corporeal and civic terms alike. But race, too, is often a space of exclusion, or at least a space for exclusion, and sex-gender is such a space as well. The sex working transwoman haunts the bodily autonomy of the married cis woman; the treatment



of the former under the law, the ways in which the state endeavors to protect “those allowed to flourish” from her labor and her very presence sends a clear signal about how it will treat the latter if her own autonomy should ever threaten security dictates. If she should defend herself against attack from within the marriage coupling, if she should attempt an unsanctioned exit from the coupling, if she fails to grant or revokes consent to access her body, her marital labor, her tacit assent. Security is always deferred death, whereas safety is prolonged life. Until or unless carceral systems are rethought and abolished, safety for the necropolitical subject will be primarily defined by insulation from security for those under state-supported flourishing. To be kept safe, they will have to continue to elude the security measures of the state and its phobic public institutions. Safety is first defined negatively, against security.

Halberstam frames exclusion as the afterwards of 20th century American politico-ideological domination.

In the new landscapes of power and domination that emerge at the beginning of a potentially disastrous shift from neoliberal mechanics of inclusion to the postdemocratic policies of violent exclusion and the enforcement of homogeneity, we need to situate sexual and gender minorities carefully rather than claiming any predetermined status of precarity or power.¹⁹

From neoliberal “mechanics” of inclusion (which always look better on paper than are experienced in the lives of the excluded) to “policies” of violent exclusion, which are both more honest and overt, if equally or more devastating. The Obama administration deports hundreds of thousands of migrants in a single year, the Trump administration separates and cages them. Halberstam’s suggestion that we “situate carefully” rather than “claim a predetermined status” is an interesting one. Perhaps predetermined statuses are individualizing, balkanizing, divisive, whereas careful situation requires community, mutual accord, reciprocity. Namaste rallies against predetermination as well:

I use the term ‘erasure’ to designate a conceptualization of gender that excludes the bodies and experiences of transsexual and transgendered people, and that informs the taken-for-granted work of institutions. ‘Erasure’ refers to the conceptual and institutional relations through which transsexual and transgendered individuals disappear from view.²⁰



Taken-for-granted certainly excludes that which is not actually granted, that which can or should not be taken, those relations which cannot be easily understood and adjudicated by phobic institutions.

At the Border

How to account for those border crossers, those border occupiers, those border deniers? Namaste names the violence of a collapse between desire and expression or embodiment, between gender and sexuality. Halberstam attempts a corresponding kind of opening-up with his account of “trans*,” which he notes “stands at odds with the history of gender variance, which has been collapsed into concise definitions, sure medical pronouncements, and fierce exclusions”²¹. It is not enough for the definitions and medical pronouncements to exclude, these exclusions unwrite the history of gender violence altogether. If anything, perhaps a more capacious sense of “violence” opens space for a more complex or satisfying sense of remedy. Susan Stryker offers a response to the ferocity of exclusion:

Transgender rage is a queer fury, an emotional response to conditions in which it becomes imperative to take up, for the sake of one’s own continued survival as a subject, a set of practices that precipitates one’s exclusion from a naturalized order of existence that seeks to maintain itself as the only possible basis for being a subject.²²

Stryker here offers a response-in-kind to trans de-subjectification: chosen exclusion that in fact accelerates removal from a “naturalized” order that marginalizes and discounts as a matter of course anything that is not readily inscribed in it. This “only possible” is precisely the sort of presumption that Preciado coded as “normative identity of exclusion,” but Stryker here considers exclusion-as-survival. Exclusion as violence does not implicitly invoke inclusion as safety; we must, as Tourmaline notes in slightly different terms, actively seek and build out our conceptions of safety. Strategic, chosen exclusion may provide a kind of answer—an answer endemically provisional, subject to mutation and reconsideration, against singularity and the security of a single grounds for subjecthood. Preciado, too, seeks border abnegation in the face of brutal exclusion:



A process of gender change in a society dominated by the scientific-mercantile axiom of binary sex-gender-sexuality regime—where social, labor, emotional, economic, gestational, etc., spaces are segmented in terms of masculinity or femininity, heterosexuality or homosexuality—implies crossing a border that may be, along with that of race, the most violent of political borders invented by humanity.²³

The border is violent, it is political, it segregates space (separating those within from those without), and crossing it is never only elective. Prison logics operate from separation and exclusion, and construct a particular set of political fictions, stories to tell phobic publics about minority and marginalized subjects. One constellation of these stories accretes around the border itself: it is well-protected, well worth protecting, and, in fact, protects those outside it just as well as within. Gender change, as Preciado terms it, is a particular kind of threat to the institutions which rely on empirical certainty as a measure of truth: medicine, psychiatry, formal education, the criminal legal system. Crossing it is tantamount to denying the “natural order of existence” Stryker notes above. These phobic institutions put up hard stops—borders—at various intervals in processes of subjectivation, and change or transformation. A sex is assigned at birth (or, if unable at the moments after birth, addressed surgically as immediately as possible), committed to a birth certificate, eventually shared on primary and secondary education documents, state identification (including driver’s license), marriage certificate, and so forth. In each of these instances, sex is not only tied to gender identification, the latter is subsumed into the former, save for when gender exceeds or transgresses sex. These are instances in which minoritarian sex-gender dissidents are forced to make decisions others are not, whether to situate carefully or claim a predetermined status, with specific consequences for either choice. Prison logics dictate that there is evil in deviance, harms and offenses inherent in subjects who presumably elect to operate outside of or against laws and social norms. The borders between sex-gender expression at once separate two, assumedly binary and mutually exclusive poles of sexual identity, and at the same time obliterate any alternative to the absent category of “other.” These borders are self-justifying; the fact that any would attempt to transgress them proves both their existence and their usefulness. They are indeed taken-for-granted by those institutions that benefit from erasure, that seek to uphold a version of security that is impossible to live without, irresistible to those for whom politics



and criminal legal systems uphold morality and social stratification (even when the latter disadvantages them, directly or indirectly).

Ultimately, the value of minoritarian, abolitionist logics of safety is not simply a matter of community self-protection; this, too, would be an exclusionary logic. Instead, seeking after collectivity means rejecting prison logics of exclusion—can one be excluded if they define their own terms of inclusion? In one sense, of course they can be: phobic public institutions have little regard, or reason to regard, minoritarian community other than recognition-in-difference. But in another, refusal to play the majoritarian game—to reproduce prison logics and simply redraw borders—defies exclusion as directly as possible. All minoritarian organizing and self-preservation is against prison logics, against exclusion, and against the political fictions spawned by and about borders. Against fixity, skeptical of rights-based doctrines as panegyric, resistant to negative solidarities, away from fictions of security, towards horizons of safety, denying erasure, clearing space for perpetual (re)subjectivation; trans border logics are those which embrace being at the border as a subject position from which to unmake it.

Notes

¹ Vivian K. Namaste, “Genderbashing: Sexuality, Gender, and the Regulation of Public Space,” in *Trans Studies Reader*, ed. Susan Stryker and Stephen Whittle, (New York: Routledge, 2006), 597.

² Dean Spade, *Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of the Law* (Durham: Duke UP, 2015), xiii.

³ Leslie Feinberg, *Transgender Warriors: Making History from Joan of Arc to Dennis Rodman* (New York: Beacon Press, 1997), 109.

⁴ *Ibid.*, 113.

⁵ Spade, xiv.

⁶ *Ibid.*, 34.



⁷ Jack Halberstam, *Trans*: A Quick and Quirky Account of Gender Variability* (Berkeley: University of California Press, 2018), 135.

⁸ Ibid, 75.

⁹ Paul B Preciado, *An Apartment on Uranus: Chronicles of the Crossing* (New York: Semiotext(e), 2020), 39.

¹⁰ Ibid, 102-103.

¹¹ Combahee River Collective, "The Combahee River Collective Statement," <https://www.blackpast.org/african-american-history/combahee-river-collective-statement-1977/>.

¹² Preciado, 39.

¹³ Donna Haraway, "A Cyborg Manifesto: Science, Technology, and Socialist-Feminism in the Late Twentieth-Century," in *Trans Studies Reader*, ed. Susan Stryker and Stephen Whittle (New York, Routledge, 2006), 107.

¹⁴ Preciado, 103.

¹⁵ Tourmaline (as Reina Gossett), "Abolitionist Imaginings," in *Captive Genders: Trans Embodiment and the Prison Industrial Complex*, ed. Eric A. Stanley, and Nat Smith, et al (Oakland, CA: AK Press, 2015), 327.

¹⁶ Preciado, 126.

¹⁷ Spade, xii.

¹⁸ Stephen Dillon. "The Only Freedom I Can See," in *Captive Genders: Trans Embodiment and the Prison Industrial Complex*, ed. Eric A. Stanley, and Nat Smith, et al (Oakland: CA, AK Press, 2015), 179.

¹⁹ Halberstam, 128.

²⁰ Namaste, 586.

²¹ Halberstam, 5.

²² Susan Stryker, "My Words to Victor Frankenstein above the Village of Chamounix," in *Trans Studies Reader*, ed. Susan Stryker and Stephen Whittle (New York, Routledge, 2006), 253.

²³ Preciado, 40.

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