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Paisley Currah

Abstract

Celebrating the re-election of Barack Obama as a win for GLB equality or denouncing the focus on marriage rights as honorific misses the point. Both approaches obscure what actually happens in local sites where authority is exercised. Looking into the cracks and crevices of regulatory apparatuses generates a more complex picture. In examining contradictory rules on sex classification, for example, it becomes clear those contradictions often reflect different state projects, such as security, distribution, reproduction. Construing the election as a victory for gay rights or for homonormativity elevates grand concepts—marriage, the state—over the quotidian actions that regulate life.

President Obama might have been returned to office, but many believe that gay, lesbian, and bisexual community was the real winner of the 2012 election. November 6, 2012 was “a big, gay, historic night!” writes the editor-in-chief of *The Advocate*, the US’ preeminent gay news organ. “Marriage won at the ballot box for the very first time, and we reelected Barack Obama, the most pro-equality president in our country’s history.”¹ When the president came out in support of same-sex marriage in May of 2012, the GLB community’s perennial position of political abjection—that of the partially unrequited lover to the Democratic Party—came to an end. The President explained in an interview with ABC news, “For me personally it is important for me to go ahead and affirm that I think same-sex couples should be able to get married.”² According to exit polls, lesbian, gay, and bisexual voters comprised 5 percent of voters. And 76 percent of them voted for Barack Obama. The straight vote was evenly split—49 percent for Obama, 49 percent for Romney—leading some commentators to assert that the “gay vote” won Obama the election.³

For the first time in history, the GLB community had a candidate with the right positions on all the key issues. Obama was not only in favor of marriage equality, he also supported the Employment Non-Discrimination Act, the rights of GLB parents and the recognition of GLB families. Although Romney had supported many forms of gay rights when he was governor of Massachusetts, in his more recent iteration as Republican presidential candidate he had moved far to the right on social issues: he opposed same-sex marriage; he thought non-discrimination laws should be left to the states; he was certainly not going to exercise mercy on the deportation of queer undocumented partners of US residents as officials at the Obama administration’s Immigration Control and Enforcement had promised. Unlike previous election cycles, which pitted Democratic candidates indifferent or vaguely supportive to GLB rights against a decisively “pro-family” Republican candidate, it was simply Obama the good versus Romney the bad. The gay community—at least the community as limned by GLB national advocacy and media institutions—was all in.

Of course, that the winner of the presidential election backs all the essential elements of the gay rights agenda does not mean that all or any of these issues will be favorably resolved in the next four years. It will still be difficult, if not impossible, to get the Employment Non-Discrimination Act through the Republican-dominated House of Representatives. There’s little the President can do to change discriminatory family laws governing adoption and parental recognition that remain

on the books in many states, aside from using the power of the bully pulpit. If marriage equality were to be imposed on the states by the federal government, it would be the doing of the Supreme Court, not Congress. (Though the Obama administration did stop defending the constitutionality of the Defense of Marriage Act two years into the president's first term.) It's far from likely that the Court will find bans on same-sex marriage unconstitutional, given its current composition. Still, the election results seem to sound the eventual death knell of state-sponsored discrimination against GLB people.

A Very Brief History of the Concepts of Heteronormativity, Homonormativity, and Homonationalism

For some, however, Obama's victory and the increasing likelihood that the Democratic Party will make good on its promise of equality to GLB people is not something to be celebrated. Gay marriage, the passage of non-discrimination laws that include sexual orientation, the end of the military's "Don't Ask, Don't Tell" policy, the repeal of sodomy statutes—all these, from the vantage point of queer politics and queer theory, reflect a hopelessly liberal politics of inclusion. Indeed, the ascendancy of the gay rights movement and the wholesale incorporation of its agenda into mainstream political discourse possibly signal the end of radical queer politics. In the early 1990s, queer politics was to be the vehicle for challenging what queer theorist Michael Warner called "heteronormativity," and defined as "the institutions, structures of understanding, and practical orientations that make heterosexuality seem not only coherent—that is, organized as a sexuality—but also privileged."⁴ Heteronormativity is not the same as heterosexuality, just as queer is not the same as lesbian and gay. Warner and Lauren Berlant explain that through heteronormativity:

[a] complex cluster of sexual practices gets confused, in heterosexual culture, with the love plot of intimacy and familialism that signifies belonging to society in a deep and normal way....A whole field of social relations becomes intelligible as heterosexuality, and this privatized sexual culture bestows on its sexual practices a tacit sense of rightness and normalcy. This sense of rightness—embedded in things and not just in sex—is what we call heteronormativity. Heteronormativity is more than ideology, or prejudice, or phobia against gays and lesbians, it is produced in almost every aspect of the forms and arrangements of social life: nationality, the state, and the law; commerce; medicine; and education; as well as the conventions and affects of narrativity, romance, and other protected spaces of culture.⁵

Confronting heteronormativity wasn't centered on challenging discrimination or demanding toleration. Instead, it was to be, in Warner's words, a "new style of 'queer' politics that, no longer content to carve out a buffer zone for a minoritized and protected subculture," would "challenge the pervasive and often invisible heteronormativity of modern societies."⁶ The queer attack on heteronormativity rejected the limited liberal aspirations of ending state-sponsored homophobia and installing principles of toleration in its place. Indeed, for queer theorists of the 1990s, it was almost as if the ontological revolutionary priority previously assigned to the working class was now attached to queer people. For Warner, "[o]rganizing a movement around queerness also allows it to draw on dissatisfaction with the regime of the normal in general. Following Hannah Arendt, we might even say that queer politics opposes society itself."⁷ In the heyday of the 1990s, of ACT UP and Queer Nation, for Warner and others, coming to queer self-understanding became a kind of revolutionary act.

Despite early queer theory's Foucauldian approach, which emphasized historicizing the politics of desire and the shifting social arrangements that sustained particular sexual formations, a sort of essentialism inflected its account of queer politics, even queer subjectivity, as inevitability radical. Warner and Berlant announce, "Because homosexuality can never have the invisible, tacit, society-founding rightness that heterosexuality has, it would not be possible to speak of 'homonormativity' in the same sense."⁸ In the span of fifteen years, however, the sense of radical

queer inevitability had disappeared; by 2003 it was indeed possible to imagine homosexuality integrated into normative social arrangements. In *The Twilight of Equality? Neoliberalism, Cultural Politics, and the Attack on Democracy*, Lisa Duggan identified a “new homonormativity” in gay politics “that does not challenge heterosexist institutions and values, but rather upholds, sustains, and seeks inclusion within them.”⁹ Instead of working to dismantle the institutions that structure inequality—marriage, the military, the family, the workplace—the gay and lesbian political imaginary had shrunk to seeking “a place at the table,” mere formal equality and recognition. Writing about what they fear to be an emerging “queer liberalism,” queer theorists David Eng, Judith Halberstam and Jose Munoz worry that the “contemporary liberal demands of a nationalist gay and lesbian US citizen-subject petitioning for rights and recognition before the law” reflects the reconstitution of gay rights as “a type of reactionary (identity) politics of national and global consequence.”¹⁰

Post 9/11, homonormativity morphed into homonormative nationalism, or “homonationalism.” In *Terrorist Assemblages: Homonationalism in Queer Times*, Jasbir Puar identifies “collusions between homosexuality and US nationalism” that lead to the incorporation of good gay and even queer subject “into the body of the normalized nation.”¹¹ The extended remarks on same-sex marriage that President Obama made when he announced his personal support for same sex marriage provides a very clear example of Puar’s point. President Obama told the ABC reporter:

Over the course of several years, as I’ve talked to friends and family and neighbors, when I think about members of my own staff who are incredibly committed in monogamous, relationships, same-sex relationships, who are raising kids together, when I think about those soldiers or airmen or marines or sailors who are out there fighting on my behalf and yet feel constrained even now that don’t ask don’t tell is gone because they’re not able to commit themselves in a marriage, at a certain point I’ve just concluded that for me personally it is important for me to go ahead and affirm that I think same-sex couples should be able to get married.¹²

Another example: as part of the campaign for marriage equality, the nation’s biggest gay political organization, the Human Rights Campaign, ran full page ads in publications with the image of a gay man holding a picture of his partner, a flight attendant who had died on American Airlines Flight 11. The large headline text quoted the surviving partner’s testimony before a Senate committee: “The terrorists killed people not because they were gay or straight—but because they were Americans.”¹³ For Puar, this homonormative nationalism is amplified even more by rhetoric that constructs the United States as a nation of “sexual exceptionalism”—a place of tolerance for queer folks—in contrast to the homophobic cultures that are also incubators of “the terrorist.” As a result, she argues, the cultural and legal normalization of homosexual/queer subjects is linked with the “national and transnational political agendas of US imperialism.”¹⁴ Homonationalism, then, provides an alibi for the necropolitical violence perpetrated on racialized and sexualized others inside and outside of US borders.

The conceptual apparatus of heteronormativity, homonormativity, and homonationalism produces a different reading of the 2012 election results. Supporters of GLB rights view President Obama’s victory and the votes for same-sex marriage in three states (and against a ban on same-sex marriage in a fourth) as an unquestionable good. From the perspective of the queer anti-racist anti-imperialist left, however, the “big gay historic night” of November 6 exemplifies a homonormative politics that seeks not redistribution but recognition. The promise of equal sexual citizenship in this moment of extreme income inequality, of the erosion if not gradual dismantling of the social safety net, of the “hyper-incarceration” of the prison industrial complex,¹⁵ and of record-high rates of deportation is not a cause for celebration. What does it mean that gay rights are to be delivered by an administration bent on fulfilling George W. Bush’s legacy of dismantling the tradition of *habeas corpus*? Can we celebrate the legal normalization of homosexuality by an

administration that assassinates individuals through “targeted” extrajudicial killing? As queers in the US are increasingly comfortable being open about their sexuality in public without fear of harassment, violence or discrimination, public life in some parts of Pakistan constricts in the face of “a wave of terror” created by drones hovering overhead. One person interviewed for a human rights report on drones recounted, “God knows whether they’ll strike us again or not. But they’re always surveying us, they’re always over us, and you never know when they’re going to strike and attack.”¹⁶ Since President Obama took office, there have been 300 such strikes. He’s the only sitting US president whose “kill list” has been publically acknowledged.¹⁷ There may be no necessary connection between the Obama administration’s support for GLB equality and the injustices it has wrought in the name of the “War on Terror.” Even the advancement of the neoliberal agenda does not absolutely require the abolition of state-sponsored homophobia. But neither are these convergences entirely coincidental. They have, no doubt, provided a good deal of progressive cover to the Obama administration.

De-fetishizing the State

While the queer critiques of homonormative and homonationalist agendas are more complex than the GLB mainstream’s celebration of recent victories, the emphasis on the interpellation of queer subjects through national biopolitical projects tends to frame the discussion around activities regulated by the federal government (commerce, war, immigration, national security, etc.) and national discourses of American identity (marriage and family). In doing so, this scholarship tends to overemphasize a unity of intention on the part of state actors and to imagine the “the state” as far more monolithic than it is. Similarly, while gay rights advocates have been forced to battle official homophobia at the state and local levels, they seek a singular, all powerful, champion to resolve the problem once and for all at the federal level. One act of Congress could end employment discrimination everywhere; one Supreme Court ruling could rid us of the patchwork quilt of laws and constitutional amendments on marriage, civil unions, and domestic partnership.

The problem is this: both perspectives naturalize the state, and attach certain properties to “it”—a totalizing logic, an ordered hierarchy, a comprehensive rationality, a unity of purpose and execution. Both assume the executive, as a single branch, produces non-contradictory policy outcomes. Both nationalize the state by overstating the capacity and power of the federal government compared to local state actors. Both situate the federal policy as the key target, either as the resolver of the problem or the cause of the problem. Both assume that the actual policy outcomes are always intended. Both assume a universalist rationality—good or bad—to “the” state’s actions. That marriage has become the focal point for both the GLB rights movement and the critique from the queer left demonstrates the hold of these assumptions. Gay rights advocates assume that inclusion in the institution of marriage will precipitate widespread social acceptance. On the other side, marriage has become the absolute *bête noire* of radical queer theory and activism. The 2006 “Beyond Marriage” statement, authored by Duggan and others, serves as the rallying cry for queer left activists.¹⁸ It’s not much of an overstatement to say that, for both the mainstream GLB community and the queer left, politics has been reduced to taking positions for or against same-sex marriage. Finally, both positions move too quickly into the land of “ought.”

Celebrating the victory of Obama as a win for GLB equality *or* denouncing the focus on marriage and formal equality as expressions of homonationalism/homonormativity misses the point. Fetishizing a generalized idea of the state—the conceptual state—obscures what is actually happening in the local, micro, particular sites where public authority is being exercised. Mariana Valverde reminds us that it’s important to heed Foucault’s “warnings against taking abstract concepts as more real than the practices that constitute them.”¹⁹ As one of those abstract

concepts, Foucault suggests, the state may be, at most, “no more than a ‘composite reality.’”²⁰ Perhaps this a little counterintuitive to political theorists, but in looking into states and their effects, an ethnographic approach might be more useful than a purely theoretical one. Accordingly, we might remember Gilles Deleuze’s admonition that a concept “should express an event rather than an essence.”²¹ Or Bruno Latour’s advice to “resist the idea that there exists somewhere a dictionary where all the variegated words of the actors can be translated into the few words of the social vocabulary.” Rather than trying “to settle any given controversy,” Latour recommends “the best solution is to trace connections *between* the controversies themselves” [italics in original].²² Moving too quickly (or at all, in Latour’s rigorous and labor intensive method of social inquiry) from the concrete to the conceptual, and framing local particular problems in relation to the already-agreed upon umbrella categories of the social analyst, reifies ideas, concepts, and abstractions and gets in the way of understanding what’s actually going on.

Governmentality, Not Laws or Elections

I’ll provide a brief example of the mundane technologies of governmentality, one that I hope will provide a bit of concrete context for the argument. While working on this article, I got a call from a woman in Colorado, someone I’d never met but who tracked me down with the hope that I could help her sort out a situation involving her marriage and the Social Security Administration. She and her husband had been married eleven years, but the officials at the Social Security administration wouldn’t acknowledge their marriage. Without that recognition, neither would be eligible for spousal social security benefits. Her husband’s original birth certificate identified him as female, but after “transitioning,” he had procured other documents that classified him as male. She wanted to find out what had to be done to change his sex designation in his records. The Social Security Administration, a federal agency, does allow transgender people to change their sex classification.²³ I knew all about her quandary because I’ve spent a lot of time looking into rules for sex classification for the purpose of marriage. I’d also changed my own sex classification in my “numident record” at the SSA and written an auto-ethnography on that experience. But I couldn’t help her. Even were the SSA to change his sex classification to M, that would not guarantee either of them benefits after the death of the other because the SSA’s decision on sex classification is not dispositive when it comes to the distribution of benefits. Whether that marriage is valid for the purpose of benefits distribution depends on state law. In fact, the field manual for SSA workers uses the phrase “not clear” several times in its section on the validity of “transgender marriages.” Field officers are advised to submit the claim to their Regional Chief Council for a legal opinion. The validity of a marriage might depend on the jurisdiction the marriage was performed in; where the spouse lived in at the time of their partner’s death; whether a party to a marriage “transitioned” before or after the marriage; the case law on intestate succession in the state the parties lived in, were married in, or where the surviving spouse resides; or it might depend on any number of particular combinations of those individual facts.²⁴ All that is to say—there’s not a lot of certainty in that policy document. When it comes to securing the connection between the individual’s sex and the M or F attached to their record in a particular context, it’s not only turtles all the way down—there are actually quite a few piles of turtles.

In fact, rules for sex classification are notoriously contradictory. When some individuals cross borders, walk into a government office to apply for benefits, get a driver’s license, go to jail or prison, sign up for selective service, try to get married, or have any interaction with any state actor, the sex classification of some people can and often does switch from M to F, or from F to M. Even within a single jurisdiction, almost every particular state agency—from federal to municipal—has the authority to decide its own rules for sex classification. And, to complicate matters even more, both state and federal judges have found that one’s sex classification for one social function may not hold for others. The lack of a uniform standard for classifying people as

male or female means that some state agencies will recognize the new sex of people who change it, some will not. For most people, this lack of uniformity doesn't present a problem. For others, it does: an individual can be both M and F, depending on the agency. In New York City the same person might be housed in a women's shelter, segregated with men in prison, be given a "pink" bus pass by one agency, have an M on her birth certificate, and an F on her passport—and be denied access to both men's and women's residential drug rehabilitation facilities. If such a thing as "transnormativity" exists, it would be very hard to assimilate into the categories when the definitions seem so capricious and arbitrary, and which shift depending on so many factors.

Policies and decisions on sex classification may be arbitrary (in that they're backed by a decision, not a fundamental truth) but they're not necessarily capricious. The different metrics for sex are telling, and much is lost when those differences are seen as irrational contradictions, vestiges of social structures long past. While these policies may appear to be contradictory, they're not. In fact, if we let go of the idea that there is any "there there," any *whatness*, to sex apart from what any particular state actor say it is, the contradiction evaporates. State decisions about the M or the F stamped on documents or coded in records become the only true thing we know. Everything else is in motion. In dropping the idea that there is any clearly delimited integrity to the thing we call "sex" when we refer to an M or F on an identity document, it becomes easier to see what the category *does* in particular instances. And what sex does depends on what state actors need it to do. As I explain elsewhere, different sex classification criteria often reflect different state projects—recognition, security, surveillance, distribution, reproduction. What seem to be contradictions in sex definition—across jurisdictions, between agencies, and at different times—are simply the consequences of the fact that "the state" is not a singular entity but multiple, does not do one thing, but many, is not produced through one process, but many.²⁵

In 2011, a transgender rights group sued the City of New York, claiming that its policy for sex reclassification on birth certificates is "arbitrary, capricious, discriminatory, and otherwise unlawful."²⁶ (The policy requires individuals who want to change the sex classification on their birth certificates submit evidence of genital surgery; the trans rights advocates wanted a different metric, one based on gender identity, that was backed by the medical community.) The suit accused the city of putting forth a number of contradictory "irrational" rationales in the justification for its particular rules for sex classification. In defending its policy, lawyers for the city disputed the claim that its policy was irrational. They countered that "[t]he existence of different approaches to similar problems does not render an agency's rule irrational."²⁷ These lawyers understood what advocates did not—that sex classification serves different purposes at different city agencies—and that to put in place a single policy on sex reclassification across all city agencies would undermine the particular political rationalities at work in those policies. And it's those particular political rationalities that ought to receive more critical attention.

To some, the 2012 election stands as a turning point in the quest for GLB rights; to others, it marks the continuation of a politics bent on increasing the power and reach of a national security state and eroding the living standards—measured by economic security, health, and mortality rates—of the population. However, construing the election as presenting a choice between Obama the good and Romney the bad, or as a battle between Obama the not-so-great and Romney the bad, elevates grand narratives and concepts—marriage, the state—over the thousands of ongoing and quotidian decisions that regulate life. That simplification is understandable. It's certainly much easier to talk about same-sex marriage than to do archival excavations of applications of SSA policy, to delve into the cracks and crevices of the regulatory state apparatuses. But in an article on Foucauldian theory of the state, Thomas Biebricher and Frieder Vogelmann suggest that to produce a "critical perspective on the state" one has to "step outside" the state's own discursive formation. They argue that we need to produce "unwieldy knowledge" that "does not function

according to the logic of politics,” that “neither fully embrace[s] nor simply reject[s]” governmental rationalities.²⁸ Becoming swept up in the romance, or tragedy, of the electoral narrative, gets in the way of understanding the minute technologies of governance that regulate our lives.

It’s not my intention to fall down the rabbit hole and to permanently foreclose making the impossible and yet necessary jump from the “is” to the “ought” on questions of gay rights, homonormativity, and sex classification. But it is my contention that we need to understand at a much more historical and granular level what states are, what they do, and the effects of particular policies on sex. For any particular state apparatus at a given moment, the apparently minor issue of the criteria for sex classification might be supporting more weight than we might imagine; calling for its reform might involve more changes than we had anticipated, and consequently engender more resistance than initially seems reasonable. So it’s important to understand in each particular context, no matter how apparently mundane, what sex is doing and how that doing is imbricated with other systems of social stratification. Universal solutions calling for uniform criteria for sex classification across all forms and levels of government (the liberal agenda) or for the complete elimination of sex as a legal identifier across the board (the more radical position) suggest that sex does the same thing in every location. Molar, large-scale accounts of “sex” and “the state” depend on assuming a sameness to sex or a singular rationality to state actors, decisions, and projects. We don’t know what a politics of resistance would look like until we understand what it is we’re resisting.

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Notes

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