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Immigration Politics

13 May 2024

Gender Markers on Identity Documents as Sites of State Governmentality Endangering
Transgender and Nonbinary Citizens and Noncitizens

For American-issued identity documents, it is located below date of birth and beside height on the driver's license, next to place of birth on the passport, beside one's full name on the birth certificate: the 'sex' marker, typically an 'F' for 'female' or an 'M' for 'male,' there implied to be as identity-defining as one's name and as immutable as the other information (date and place of birth, adult height, etc.) alongside which it is recorded. The historical conflation of sex and gender contributed to the interchangeable naming of the marker as the 'sex marker' or 'gender marker.' Further, the expectation that identity documents help visually identify an individual and the recently implemented option to change the marker to accurately reflect one's gender identity – which may differ from one's sex assigned at birth – reinforce the notion that the marker represents gender presentation rather than genetic, hormonal, or genital sex. Many countries allow transgender citizens who identify within the gender binary to change their sex/gender marker on identity documents from F to M or from M to F, and some offer a third gender option for nonbinary and gender nonconforming citizens (Daum 2020). While third gender markers seem to symbolize governmental acceptance of nonbinary identities, they in fact make transgender and nonbinary people more easily governed; reinforce the gender binary by uniformly labeling them as a third, 'other' gender category despite many gender identities falling outside of the 'female' and 'male' options; and expose transgender and gender nonconforming people to greater discrimination while traveling by outing them.

The forced registration of all citizens as conforming to or falling outside of the sex/gender binary is an exercise of state governmentality and control. Sex/gender markers were implemented in the United States explicitly to police gender and enforce a binary gender system (DesRosiers 2022). Gender markers were added to passports in 1977 after experts auditing the passport system argued that “with ‘the rise in the early 1970s of unisex attire and hairstyles, photographs had become a less reliable means for ascertaining a traveler’s sex,’” implying that “gender was becoming ungovernable” and greater regulation of it must be exacted (DesRosiers 2022, 142). Such an argument also suggested that an identifiable and legible sex/gender – both visual and administrative – was requisite for crossing national borders. Sex/gender markers thus impose an alignment between one’s registered sex/gender and gender presentation, which is expected to align with genital or hormonal sex. Nations often require transgender citizens to undergo sex reassignment surgery or hormone replacement therapy to obtain a sex/gender marker change on their official documentation, forcing an alignment between sex, gender presentation, and registered sex/gender for an individual to be accepted as legible to the state (Daum 2020). As suggested by the requirements for surgery (which is often irreversible), the state expects such sex/gender marker changes to be lasting, enabling transgender citizens to “live permanently as one’s ‘true’ self” and allowing them to relocate in – yet remain within – the sex/gender binary (Daum 2020, 85). Through this regulation of sex and gender, “forces of governmentality work to force trans individuals to conform to conventional sex norms” of binary sex and gender alignment (Daum 2020, 67). Because state regulation defines and subjectifies its citizens through binary sex/gender markers, “Those who fail to comply are then marked as illegible and located outside of the legally recognized domain of the state,” leaving nonbinary

people as illegible and (essentially) ungoverned (Daum 2020, 67). However, the implementation of third gender markers annuls such ungovernability.

The legal registration of gender-nonconforming people through third gender markers officially recognizes their ‘otherness’ and expands the government’s control over them. The most common third gender marker is ‘X,’ which originated after World War II to speed up the registration of refugees since the aid workers issuing passports were unfamiliar with gender names or abbreviations in other languages, and the X bypassed this problem (Quinan and Bresser). The X is thus nonradical because, in this history, it functioned “as a third option to encompass the linguistically and culturally inaccessible – and, more recently, the sex/gender variant – Other” but did not challenge the system defining cultural or gender normativity to expand its narrow definition of ‘normal’ to include “non-Western and/or nonbinary subjectivities” (Quinan and Bresser 2020, 4). The third gender marker simply locates an individual as nonnormative yet reinforces the binary through their identifiable nonconformity to it; it marks them as partially legible to the state through the government’s reading of their nonbinary nonnormativity and otherness. The use of a World Passport, issued by the non-profit the World Service Authority, is a rejection of such state control, binary sex/gender markers, and partial legibility for nonbinary people (Quinan and Bresser 2020). World Passports offer many gender options outside of F and M, including “O for ‘other,’ ... T for transgender, A for androgynous or genderless or neutral, B for bigender, M for multigender, P for pangender, etc.” (Quinan and Bresser 2020, 6). The European Union and most nations do not recognize a World Passport as a valid identity document or allow entry to travelers holding a World Passport since it is not issued by a nation-state and the states read the many nonbinary gender markers as illegible, speaking to the intention of passports and other identity documents to control and

regulate gender among the population via state governmentality (Quinan and Bresser 2020). The limited inclusion and legibility of nonbinary citizens within the gender marker system of state-issued passports expands state governmentality through its failure to disrupt “the power of the nation-state to determine what identity is or could be” (Quinan and Bresser 2020, 4).

The partial legibility offered by third gender markers varies between nation-states, and third gender markers often explicitly ‘other’ their transgender and nonbinary citizens through administrative caveats. While Nepal was the first country to offer a third gender option on passports (which it did in 2007), the only gender marker changes allowed in Nepal are those from one’s sex assigned at birth to the third option of ‘O,’ signifying ‘other.’ Transgender citizens who identify within the gender binary therefore cannot change their gender marker from F to M or from M to F, so Nepal literally ‘others’ all transgender and nonbinary people by reinforcing the assumption that alignment between sex assigned at birth and gender identity is ‘natural’ and by suggesting that these citizens are unnaturally ‘other’ (Quinan and Hunt 2023). The inclusion of ‘O’ on documentation has ironically “singled out and rendered hyper visible the populations it seemingly intends to benefit,” potentially placing them in danger of discrimination or violence by outing them (Quinan and Hunt 2023, 383). Governments that self-label as feminist (like Canada) and recognize third genders still administratively acknowledge nonbinary citizens’ otherness yet place the responsibility for their safety while traveling in their citizens’ hands (Quinan and Hunt 2023). Although Canada offers an X marker option on passports, the government’s website warns that “the Government of Canada cannot guarantee entry or transit by border control authorities of another country” – gesturing to the fact that countries including Saudi Arabia have denied entry to travelers with nonbinary sex/gender markers – and advises its citizens to “Choose the sex that you feel would make it easier to travel” (Quinan and Hunt

2023, 385). This bureaucratic eschewing of responsibility leaves Canadian citizens vulnerable to discrimination, harassment, and violence from foreign immigration officials and reveals their partial legibility to the Canadian government. However, Malta “offers the option to possess two passports: one with a non-binary X [marker] and one with M or F (determined by self-declaration),” suggesting that the Maltese government fully understands the identities and needs of its trans and nonbinary citizens and truly cares about both their comfort and safety (Quinan and Hunt 2023, 386). The extent to which the state regulates gender marker selection thus determines the degree of ‘othering’ governmentality to which its citizens are exposed.

In the United States, citizens and noncitizens have varying access to accurate gender markers and are exposed to different levels of ‘othering’ governmentality because identity documents for those groups are issued by different agencies. The Department of State, which issues passports to American citizens, offers X as a third gender option by self-selection, meaning verification of gender identity from a medical professional – or any other form of supporting documentation – is not required to change one’s gender marker to X (DesRosiers 2022). The U.S. Citizenship and Immigration Service (USCIS), housed under the Department of Homeland Security, “issues Employment Authorization Documents (EADs or work permits) and lawful permanent resident cards (green cards), which often function as primary IDs for noncitizens” (DesRosiers 2022, 123). While the USCIS updated its policy in 2023 to allow noncitizens to self-select their binary gender marker (removing the requirement for a physician’s authorization), the agency only offers binary ‘F’ and ‘M’ options (USCIS 2023). This exposes noncitizens to greater ‘othering’ governmentality than citizens and confers less legibility to nonbinary noncitizens than to nonbinary citizens, suggesting that their (lack of) citizenship and gender identity both ‘other’ them in the perception of the state.

American citizens, however, have differing access to third gender and accurate binary gender markers on state-issued identity documents like driver's licenses and birth certificates because each state has different requirements for sex/gender marker changes. While twenty-one states offer a third gender option on driver's licenses and twenty of those states do not require physician certification to apply for gender marker changes, eight states require "Proof of surgery, [a] court order, or [an] amended birth certificate" to obtain changes within the binary gender markers (NCTE 2021). For gender marker changes on birth certificates, ten states offer an X option, ten require no supporting documentation, thirteen require certification of "'appropriate' treatment" (but not surgery), fifteen require proof of surgery, nine have no policy (which enables individual judges to grant or deny applications), and two (Ohio and Tennessee) do not allow such changes (NCTE 2020). The state policies requiring a physician's approval for gender marker changes pathologize and 'other' transgender and nonbinary citizens, and the policies prohibiting such changes deny those citizens any legibility to the state (Tomchin 2013). Inconsistent access to accurate gender markers on state-issued identity documents but national access to accurate markers on passports may leave transgender and nonbinary citizens with contradicting markers on different documents (which may dangerously out them) and expose them to varying degrees of 'othering' state governmentality.

Travel is dangerous for transgender and nonbinary people – especially for those with inconsistent gender markers across identity documents or inaccurate gender markers that do not reflect their gender presentation – because airport security polices a sex/gender alignment in its categorization of 'safe' and 'unsafe' travelers. Canadian airport security policies, for example, define a 'safe traveler' as one whose gender presentation matches the gender marker on their identity documents (Hodge et al. 2019). Previous policy that has since been repealed stated that

“An air carrier shall not transport a passenger if ... the passenger does not appear to be of the gender indicated on the identification he or she presents” (Hodge et al. 2019, 6). Such policy reveals that ‘intelligible’ gender is a requirement for border crossing, predisposing transgender, nonbinary, and queer travelers who do not exhibit such normative gender presentation to heightened scrutinization at the border (Hodge et al. 2019). To enforce such sex/gender alignment, airports often utilize millimeter-wave imaging machines, which “require security agents to interpret every passenger’s gender by pushing either a pink (‘female’) or a blue (‘male’) button as they approach the machine” and present an alert if the scan detects body parts not compatible with those of cisgender women or men, suggesting that those body parts may be weapons or other banned items (Quinan and Bresser 2020, 1). Trans women with a penis, for instance, are often flagged by this technology as suspicious and thus invasively searched and/or exposed to violence because their anatomy does not ‘normatively’ align with their gender presentation (Quinan and Bresser 2020). Since “identities can affect border crossing mobility,” it is not the geographical border but identities that are securitized by biometric security procedures in the airport, thus reinforcing a sex/gender alignment as a requirement for state entry, enforcing cisnormativity, and exposing travelers who do not fulfill such gender expectations to heightened scrutinization and violence (Hodge et al. 2019, 8). This reveals transgender and nonbinary identities to be illegible to state agents securitizing the national (and gender) borders.

For many transgender and nonbinary immigrants, danger does not cease when travel does because their gender identity and non-citizenship are illegible to the state. In the United States, the immigration system forces torturous conditions on detained undocumented transgender and nonbinary immigrants, some of whom are detained because their identities are read as suspicious even outside of a border-crossing setting and are therefore criminalized. Some are falsely

accused of theft or are assumed to be sex workers by police officers who interpreted their gender presentation as suspicious, and their criminal cases catch the attention the U.S. Immigration and Customs Enforcement (ICE), showing that gender illegibility to state agents endangers transgender and nonbinary immigrants and predisposes them to unjust detainment and deportation (Minero et al. 2022). Transgender immigrants are detained by ICE twice as long, on average, as cisgender immigrants (99 days and 44 days, respectively), and many are denied “necessary medical services, including hormone replacement therapy” while in custody although ICE policy requires trans detainees who took hormones prior to detainment to be granted access to them (Minero et al. 2022, 37). Detained immigrants of all genders are exposed to torturous conditions including extreme cold, insufficient personal hygiene supplies, insufficient or spoiled food, bright lights that remain on all day and induce sleep deprivation, and physical and verbal abuse from guards. The Department of Homeland Security’s 2015 policy for housing transgender detainees recommends that they be housed away from others, often in solitary confinement (another torturous condition), for their safety. Solitary confinement can worsen existing mental health issues and cause anxiety, depression, hallucinations, and other debilitating conditions in people who have not experienced them before. Because of their forced confinement for weeks or months at a time, many trans immigrants develop such health conditions, and some experience suicidal ideation or complete self-harm. Some decide they would rather deport themselves to their home countries, where they often experienced violence, than remain in custody in the United States, where state governmentality constructs their illegibility to state agencies and agents and exposes them to torture (Minero et al. 2022).

Administrative changes must be enacted to ensure full legibility and safety of transgender and nonbinary immigrants and citizens. The American immigration system must be reformed to

abolish solitary confinement policies for the ‘protection’ of transgender and nonbinary immigrant detainees and perhaps to abolish detention centers in favor of “community-based alternatives to detention” (including “referrals to legal, medical, and psychological support services”), so it cannot routinely impose torturous detainment conditions on any immigrants, regardless of gender identity (Minero et al. 2022, 52). The registration and regulation of gender identity contributes to such unjust treatment of trans and nonbinary immigrants. Some advocates argue that – in the short term – there is “An activist potential” in adopting an X on one’s identity documents regardless of one’s gender identity because it would reject state governmentality via regulation of cisnormativity and a female/male gender binary (Quinan and Bresser 2020, 6). However, sex/gender markers should ultimately be removed from all identity documentation because they tend to harm rather than protect trans and nonbinary individuals, and “legitimate goals such as fraud prevention, safety, security, and privacy [can] be met by alternative means” (Daum 2020, 69). The binary – or ternary – categories of sex/gender markers simply serve to “situate each and every one of us in [or outside of] the categories of male and female to facilitate social control” via state authority and governmentality (Daum 2020, 85-86). Gender markers reinforce the hierarchical identity system that confers and denies power and privilege, including the power of the nation-state to determine which identities are registrable, legible, and therefore legitimate. The registration of gender is predicated on its false conceptualization as “a more or less stable property of one’s personality,” so eliminating gender markers on identity documents would acknowledge its mutability, the non-necessity of the government to record it, and the unjustness of the government policing it (Quinan and Bresser 2020, 7). The elimination of gender markers thus would allow for greater freedom for citizens and noncitizens, transgender and cisgender people from harmful state governmentality.

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