Queer Border Crossers: Pragmatic Complicities, Indiscretions and Subversions

Bina Fernandez*

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Borders are set up to define the places that are safe and unsafe, to distinguish *us* from *them*. A border is a dividing line, a narrow strip along a steep edge. A borderland is a vague and undetermined place created by the emotional residue of an unnatural boundary. It is in a constant state of transition. The prohibited and forbidden are its inhabitants. *Los atravesados* live here: the squint-eyed, the perverse, the queer, the troublesome, the mongrel, the mulato, the half-breed, the half dead; in short, those who cross over, pass over, or go through the confines of the 'normal'.¹

Gloria Anzaldúa's words provide an apt preface to the concerns of this chapter with borders, and the people who cross them, those whom she calls *los atravesados*. In a Spanish-English dictionary, the source verb '*atravesar*' means 'to cross, to pierce, to lay across, to go through (a situation or crisis)' and also 'to obstruct and to interfere'.² With Anzaldúa, I view queer border crossers as transgressors of boundaries whose disruptions of normative categories may be contradictory, provocative and alien, but have critical and transformative possibilities.

By invoking at the outset the work of Chicana lesbian feminist activist Gloria Anzaldúa, I engage the anti-identitarian and anti-normative traditions in queer critique that Anzaldúa pioneered a few years before the 'canonical' texts of queer theory by Judith Butler and Eve Sedgwick were published. It is nearly thirty years since Anzaldúa's pioneering work, and the robust scholarship on queer migrations that has since emerged acknowledges 'queer' is a contested term, and goes beyond the identitarian categories of lesbian, gay, bisexual, transgender, intersex (and the diverse gender and sexual identities and practices not captured by these terms). 'Queer' is used as a tool of critique that offers 'resistance to regimes of the normal' and is simultaneously 'calibrated to account for the social antagonisms of nation, race, gender, and class as well as sexuality'.³

'Borders' are also contested: they are not merely the physical markers of territory, lines on the map, barbed wire fences or check posts that demarcate divisions between states. Borders are ideological constructs that generate particular identities, denote power relationships and the ontological boundaries of political space. Anzaldúa described the border as '*una herida*

* I am grateful to Debolina Dutta and Dianne Otto for their comments on this chapter. Their thoughtful feedback enriched my thinking and helped me clarify arguments in the chapter. I also thank Isabella Ofner for her meticulous assistance with the references.

¹ Gloria Anzaldúa, *Borderlands/La Frontera: The New Mestiza* (Aunt Lute Books, 1987) 25.

² Spanish-English dictionary

³ Eithne Luibhéid and Lionel Cantú Jr (eds), *Queer Migrations: Sexuality, US Citizenship, and Border Crossings* (University of Minnesota Press, 2005) x–xi.

abierta [an open wound] where the Third World grates against the First and bleeds’.⁴ She challenged the imperial imposition of the (US) border that violently divided her people yet inevitably failed to contain them. Borders are ‘polysemic’, carrying meanings that are contingent on context and perspective.⁵ They may denote national cultural belonging, may be constitutive of the production of gender, sexualities, families and households, confer membership privileges of entitlements and protections due to national citizens, filter out ‘desirable’ from ‘undesirable’ workers and construct labour relations, and under globalisation, may also be irrelevant to the circulation of certain types of commodities, services and finances.

In focussing on queer border crossers, this chapter seeks to explore what happens when these two inherently unstable signifiers ‘queer’ and ‘border’ intersect. In doing so, I aim to move beyond the limited narrative of such individuals crossing international borders to ‘escape repression in the global South and gain freedom in the global North’, and ask instead, what are the modes of inclusion, dissidence, subversion, or normalisation that are produced when queers cross the border? How do the boundaries of the nation-state and citizenship get redrawn? While queer border crossers may be categorised by states as migrants, asylum seekers, refugees, economic migrants, family or partner migrants, business travellers and tourists; in this chapter I restrict my discussion to the first three categories, with the caveat that all these categories have fuzzy often overlapping boundaries, and that they must be recognised as contingent on the prior existence of nations and borders.

The chapter is structured as follows: the second section outlines some of the significant victories of LGBTI struggles for the recognition of gender and sexuality as grounds for migration and asylum seeking. I show that while there has been progress, particularly in immigration law in the past few decades, recognition of LGBTI asylum seeker claims has been troubled. In the third section I examine the practices of the law and activist responses in two domains: the practices around ‘credibility’ of LGBTI applicants for migration and asylum; and second, the paradoxes of sexual (in)visibility related to LGBTI claims. Here I argue that although such practices may be viewed as ‘pragmatic complicities’ supporting individual claimants, they legitimate the reification of identity politics and a homo-nationalist consolidation of power. In the concluding fourth section, the chapter introduces the ‘no borders’ position, differentiating it from an ‘open borders’ position, and develops my argument for why the former offers emancipatory possibilities for a politics of *los atravesados* or queer border crossers that seeks to transform rather than accommodate to, existing social structures.

Reforms in LGBTI Immigration and Asylum Law

In the nineteenth century, nation states’ prerogatives and capacity to control the entry of *los atravesados* to their territories became the mode of signalling state authority, indeed their very ‘stateness’. National identities were deeply entwined with ideologies of race, ethnicity, class and sexuality, particularly in settler colonial countries like the US, Australia and Canada. Citizenship became naturalised as delimited by the nation, and immigration legislation enacted in this period⁶ explicitly denied entry to a long list of people considered

⁴ Anzaldúa, above n 1, 25.

⁵ Étienne Balibar, *Politics and the Other Scene* (Verso, 2002) 81.

⁶ For instance, see *An Act Supplementary to the Acts in Relation to Immigration*, USC (1875); *Immigration Restriction Act 1901* (Cth); *Immigration Act*, C 1906.

undesirable: lunatics, criminals, sex workers, polygamists, paupers, people unable to take care of themselves without becoming a public charge, people suffering from contagious disease, anyone convicted of a crime of 'moral turpitude', people deemed to have 'psychopathic personalities', 'deviants', homosexuals and 'non-white' populations (Asians, Africans, Eastern Europeans).

The ban on people with mental illness was interpreted in practice to exclude lesbians, gays and gender non-conformist people in the US, Australia and Canada. These restrictions were tightened in the mid-twentieth century in the US (and to a lesser degree in the other two countries), largely in response to the Cold War wave of anti-communist paranoia.⁷ As Margot Canaday observes, 'homosexuals were, like communists, not only unnatural but dangerously subversive' unworthy of entry and citizenship.⁸ In 1952, the Diagnostic and Statistical Manual of Mental Disorders (DSM), published by the American Psychiatric Association (APA) officially classified homosexuality as a 'sociopathic personality disturbance'; in the same year, the *McCarran-Walter Act*'s ban on psychopathic personalities was used for the first time by the Immigration and Naturalisation Service in the US to explicitly refuse immigration of lesbians and gays. It was only in the 1990s that these explicitly discriminatory provisions of the law were removed in the US and several other countries, allowing individual lesbian and gay applicants to make immigration applications. Notwithstanding these changes, lesbians and gays continued to face significant barriers to immigration over the next two decades, due to the inability of lesbian and gay couples to marry, and the legal non-recognition of their families.

Australia and Canada were the first countries to allow immigration of the same-sex partners of nationals in the late 1980s, through compassionate and humanitarian visas that were issued by ministerial discretion. Today, around 20 countries⁹ recognise immigration rights for bi-national same-sex couples, *if one of them is a citizen*. These countries have followed two distinct routes to such recognition. The first route is the creation of an immigration sponsorship category broad enough to include same-sex relationships. This was the path adopted by Australia in 1991, through the introduction of the Emotional Interdependency Visa category to allow non-familial migration (amended in 2000 to the family stream same-sex interdependency visa); the majority of countries subsequently followed this pathway. Initially, many of these countries continued to make discriminatory distinctions between heterosexual and homosexual relationships — for instance, in the proviso for the number of years prior to and post-entry that the couple was required to provide evidence of a continued relationship. Since 2000, these differences have been gradually eliminated, and same-sex couples enjoy the same rights as opposite-sex couples to sponsor their non-citizen partners, or to include their partner in visa applications. The second route to recognition of same-sex immigration rights is through civil unions legislation, which confers some of the rights of heterosexual marriage, including partner sponsorship. This route was adopted by Norway, Iceland, Denmark and Switzerland.

⁷ Randolph W Baxter, "'Homo-hunting' in the Early Cold War: Senator Kenneth Wherry and the Homophobic Side of McCarthyism' (2003) 84 *Nebraska History* 118. Margot Canaday, "'Who Is a Homosexual?': The Consolidation of Sexual Identities in Mid-Twentieth-Century American Immigration Law' (2003) 28 *Law and Social Inquiry* 351.

⁸ Canaday, above n 7, 355.

⁹ These include Canada, Australia, New Zealand, Norway, Sweden, Denmark, Finland, Iceland, the Netherlands, Germany, France, Spain, Portugal, Belgium, Switzerland, Ireland, the UK, South Africa, Brazil, Israel and most recently, the US.

Until very recently, the US was the major outlier from this group of countries that recognise same-sex partner immigration rights. According to a study using US census data conducted by the Williams Institute in 2010, there were an estimated 28 500 bi-national same-sex couples and nearly 11 500 same-sex couples in which neither partner was a US citizen.¹⁰ However, estimates of actual numbers exceeded these 40 000 couples, as many would be unlikely to declare their status to authorities. Thus, over 40 000 lesbian and gay bi-national couples were prevented from sponsoring their non-citizen partners to live in the US.

In a comparative analysis of the US, Israel and Australia, S Iimay Ho and Megan Rolfe argue that the structure of political opportunity constrained the efforts of gay rights advocates in the US.¹¹ In contrast, in Israel and Australia, access to elite allies, ministerial autonomy and parliamentary politics allowed activists to successfully use a civil rights frame to legitimise their cause and reduce opposition. Conservatives in the US succeeded in mounting significant opposition at state and federal levels, which culminated in the regressive 1996 *Defense of Marriage Act* ('DOMA') that restricted marriage to the union of one man and one woman, and allowed states to refuse recognition of same-sex marriages granted under the laws of other states.¹² This restrictive definition of 'marriage' to heterosexual couples thus aggressively reinforced the bar against same-sex couples receiving federal marriage benefits, including the right to sponsor a non-citizen partner.¹³ These restrictions were recently lifted with two Supreme Court decisions: the 2013 ruling in *Windsor v United States* that section 3 of DOMA was unconstitutional, and the 2015 ruling in *Obergefell v Hodges* that state-level bans on same-sex marriage were unconstitutional. The US Department of Homeland Security now reviews immigration visa petitions filed on behalf of a same-sex spouse in the same manner as those filed on behalf of an opposite-sex spouse.¹⁴

In contrast to same-sex immigration reforms, legislative reforms that recognise the eligibility of lesbians and gays to be considered refugees and asylum seekers have been slower to be implemented and are still deeply contested, even in the core countries that accept immigration of same-sex partners. Drawing on the extensive scholarship documenting these struggles across national contexts, I identify below some of the key reform moments in this history.¹⁵

¹⁰ Craig J Konnoth and Gary J Gates, 'Same-sex Couples and Immigration in the United States' (Report, The Williams Institute, November 2011) <<http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-Konnoth-Binational-Report-Nov-2011.pdf>>.

¹¹ S Iimay Ho and Megan E Rolfe, 'Same-sex Partner Immigration and the Civil Rights Frame: A Comparative Study of Australia, Israel, and the USA' (2011) 52 *International Journal of Comparative Sociology* 390.

¹² John Medeiros, 'Immigration after DOMA: How Equal Is Marriage Equality?' (2014) 35 *Hamline Journal of Public Law & Policy* 196.

¹³ Logan Bushell, "'Give Me Your Tired, Your Poor, Your Huddled Masses' — Just as Long as They Fit in the Heteronormative Ideal: US Immigration Law's Exclusionary and Inequitable Treatment of Lesbian, Gay, Bisexual, Transgendered, and Queer Migrants' (2012) 48 *Gonzaga Law Review* 673; Daniela G Domínguez, Bernadette H Solórzano and Ezequiel Peña, 'Nonheterosexual Binational Families: Resilient Victims of Sexual Prejudice and Discriminatory Immigration Policies' (2012) 8 *Journal of GLBT Family Studies* 496.

¹⁴ See Department of Homeland Security, *Implementation of the Supreme Court Ruling on the Defense of Marriage Act* (21 July 2015) <<http://www.dhs.gov/topic/implementation-supreme-court-ruling-defense-marriage-act>>.

¹⁵ See Arwen Swink, 'Queer Refuge: A Review of the Role of Country Condition Analysis in Asylum Adjudications for Members of Sexual Minorities' (2006) 29 *Hastings International and Comparative Law Review* 251; Sabine Jansen, 'Fleeing Homophobia, Asylum Claims Related to Sexual Orientation and Gender Identity in Europe' in Thomas Spijkerboer (ed), *Fleeing Homophobia: Sexual Orientation, Gender Identity and Asylum* (Taylor and Francis, 2013) 1; Jenni Millbank, 'Sexual Orientation and Refugee Status Determination over the Past 20 Years. Unsteady Progress through Standard Sequences?' in Thomas Spijkerboer (ed), *Fleeing Homophobia: Sexual Orientation, Gender Identity and Asylum* (Taylor and Francis, 2013) 32; Heather Scavone,

The 1951 UN *Convention Relating to the Status of Refugees* ('*Refugee Convention*'), defines a refugee as:

any person who ... owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of [their] nationality and is unable or, owing to such fear, is unwilling to avail [them]self of the protection of that country.¹⁶

As the *Refugee Convention* did not explicitly include lesbians and gays as a group requiring protection, in the first three decades, lesbian and gay applications for refugee status were routinely denied until the Netherlands became the first Northern nation to recognise sexual orientation as grounds for protection from persecution,¹⁷ followed by the US in 1990 in the *Matter of Toboso-Alfonso*,¹⁸ Canada in a 1991 ruling by the Supreme Court in (*AG*) v *Ward* and other countries such as Australia and the UK.¹⁹ In the 1990s, international human rights organisations like Amnesty International and Human Rights Watch argued that protection from homosexual and gender-based persecution fell within the purview of refugee rights. The LGBTI rights activism by these organisations documented persecution on the basis of gender and sexual orientation around the world. This documentation was partially responsible for the UN High Commissioner for Refugees' (UNHCR) *Guidelines on International Protection: Gender-Related Persecution* in 2002, which recognised that 'membership of a particular social group' entailed sharing a common characteristic which is '*innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one's human rights*'.²⁰ The *Guidelines* explicitly stated that sexual orientation should be considered as 'membership of a particular social group' and thus a relevant ground in claims for protection against persecution under the *Refugee Convention*.

Two additional important steps forward taken in these *Guidelines* were the recognition first, that the criminalisation of homosexuality could amount to persecution; and further, that even when there is no explicit criminalisation, a claimant can establish a valid claim if the state condones the persecution or fails to protect the claimant from persecution. Second, the *Guidelines* recognised that non-state actors may also be responsible for persecution. Subsequently, the UNHCR has issued additional guidance, resource documentation and guidelines on sexual orientation and gender identity claims (in 2008 and 2011) which explicitly included LGBTI persons as amongst those migrants who 'may be at particular risk at international borders'.²¹ Similar legislative action followed within the EU: in 2004, EU member states adopted a Council directive that specified sexual orientation as 'membership

'Queer Evidence: The Peculiar Evidentiary Burden Faced by Asylum Applicants with Cases Based on Sexual Orientation and Identity' (2013) 5 *Elon Law Review* 389; Nan Seuffert, 'Haunting National Boundaries LBGTI Asylum Seekers' (2013) 22 *Griffith Law Review* 752; Rachel A Lewis, "'Gay? Prove it": The Politics of Queer Anti-deportation Activism' (2014) 17 *Sexualities* 958; Amy Shuman and Carol Bohmer, 'Gender and Cultural Silences in the Political Asylum Process' (2014) 17 *Sexualities* 939; Amy Shuman and Wendy S Hesford, 'Getting Out: Political Asylum, Sexual Minorities, and Privileged Visibility' (2014) 17 *Sexualities* 1016.

¹⁶ *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954).

¹⁷ Jansen, above n 15, 1.

¹⁸ Scavone, above n 15, 393.

¹⁹ Millbank, above n 15.

²⁰ UN High Commissioner for Refugees, *Guidelines on International Protection: Gender-Related Persecution within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, UN Doc HCR/GIP/02/01 (7 May 2002).

²¹ Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights at International Borders*, 69th sess, Agenda Item 69, UN Doc A/69/CRP. 1 (23 July 2014).

in a particular social group', which by 2015 was recognised in 24 EU countries either through case law or national legislation.²²

In an authoritative, longitudinal, comparative review of LGBTI refugee case law in the UK, Australia, New Zealand and Canada, Jenni Millbank outlines the development of legislative reforms through a sequence of steps that have been (and continue to be) undertaken by countries, which include:²³

- Acceptance of sexual orientation as constituting 'membership of a particular social group' in refugee claims;
- Recognition that criminalisation of homosexuality is persecutory;
- Acknowledgement that non-state actors are often primary agents of persecution;
- Development of information related to LGBT issues in the country of origin;
- Rejection of the role of 'discretion reasoning' (which allowed countries to deny LGBT claimants asylum on the grounds that they would be safe if they were discreet about expressing their sexual orientation); and
- Recognition of multiple, intersecting harms as persecution and not 'mere' discrimination.

Notwithstanding these gains Millbank argues that the recognition of sexual orientation within refugee status determination processes progressed unsteadily, with large 'symbolic' legislative gains not quite matched by equivalent advances in legal practice, especially at lower judicial levels.²⁴

To conclude this section, two observations about same-sex immigration and asylum law reforms are worth noting. First, the reforms discussed are relevant to a very small handful of countries. Queer border crossers who negotiate the borders of the majority of countries where such reforms do not apply must do so through various means of subterfuge, and are constantly at risk of exposure to laws that discriminate against and criminalise homosexuality and 'deviance', however defined.

Second, the parameters of 'successful' legislative reform in these countries are crucially contingent on structural and normative markers of difference such as race, citizenship and class, that mediate which queer migrants actually cross borders, and how. Queer border crossers without a partner who is a citizen or permanent resident, have only two possible, individualised, routes of legal entry: to apply as a refugee or asylum seeker, or to apply under an economic immigration category (such as the highly skilled migrant programs). In the latter case, usually only one spouse/partner needs to meet the selection criteria in order for both to enter the country. The income, education and skills requirements of these visa categories preclude the vast majority of potential migrants (gay or otherwise) from considering applications. Border laws thus work to produce a select group of lesbian and gay border crossers as 'acceptable' citizens.

Practices of LGBTI Immigration and Asylum Law

²² Alejandro Rada, 'Persecution on the Grounds of Sexual Orientation and Gender Identity — Asylum Rights, Procedures and Decisions in the European Union' (Report, Observatory for Sociopolitical Developments in Europe, March 2016) <http://www.sociopolitical-observatory.eu/uploads/tx_aebgppublications/2016-03_ENG_Expertise_Asylum_rights_for_LGBTI.pdf>.

²³ Millbank, above n 15, 36.

²⁴ Ibid.

By ‘practices of the law’ I refer not only to the activities of functionaries of the state who make, interpret and implement laws, but also to the interstitial engagements of LGBTI claimants and activists who are affected by the law — who conform to, ignore, resist, challenge or subvert it, and in so doing, reconstitute (though not always ‘queer’) the law. I focus here on two aspects of immigration and asylum law that scholars have drawn attention to: first, the need for LGBTI claimants to establish the credibility of their cases; and second the paradoxes of sexual (in)visibility produced through the practice of asylum law. I conclude the section with reflections on the contradictions and tensions wrought by the pragmatic complicities with LGBTI immigration and asylum law.

Telling Tales: The Credibility of LGBTI Individuals’ Claims

Close scrutiny of evidence to establish the *credibility* of LGBTI applicants is undertaken in the practice of both immigration and asylum law. The demand for evidence in immigration applications requires proving the credibility of the bi-national couple’s relationship; the demand for evidence in asylum cases has a higher credibility requirement of first, proving their sexual and/or gender identity, and second, proving that they are persecuted because of it. While the specific demand for evidence may vary, the demand itself must be marked as a mechanism that legitimates the state’s authority and assures citizens of its control of the border and the nation.

In countries that accept same-sex partner immigration, applicants must marshal credible evidence of a relationship. Depending on the country, this may be done through proof of marriage or domestic partnership; or it may be through personal testimony, testimonies of others as witness to the relationship, proof of joint residence, joint banking accounts, travel and so on. In many countries, proof of the stability and longevity of the relationship also needs to be established, and these requirements have in the past been more stringent than those for heterosexual couples.

Within the limited parameters of countries that accept same-sex partner migration, it is worth reflecting on the exclusions and inclusions effected through the credibility practices of immigration law. First, establishing the credibility of the relationship does not necessarily guarantee entry for *all* bi-national couples. As I pointed out previously, non-citizen bi-national couples are excluded. Further, bi-national couples in which the non-national partner has a chronic illness (such as HIV), a disability, or is ‘too old’ can be excluded on grounds that they would be a potential burden on the state because they would be unable to support themselves. Thus, the recognition of a bi-national same-sex relationship can be precarious and contingent on the inherently productivist assumptions underlying contemporary border control practices. There is also an implicit exclusion of people based on their class and education, as only those with the requisite financial capacity (to pay the required fees) and language capacity and internet literacy (to navigate complex application systems that are often now online) are in a position to apply for same-sex partner migration.

Second, immigration inclusion for bi-national couples is achieved in practice through homonormative appropriations of the construct of a ‘good citizen’. Lisa Duggan defined homonormativity as ‘a politics that does not contest dominant heteronormative assumptions and institutions, but upholds and sustains them, while promising the possibility of a demobilized gay constituency and a privatized, depoliticized gay culture anchored in

domesticity and consumption'.²⁵ Lesbian and gay couples make their immigration claims by establishing their status as happy families and productive workers. Audrey Yue offers an insightful analysis of how homonormativity plays out in the immigration of younger Asian men as the same-sex partners of older Anglo-Australian men. She describes this pairing of the 'rice and potato queen' as constituted through the sedimented histories of colonialism and the 'unequal neocolonial and neoliberal geopolitics of how marginalised groups within and outside the nation, are forced to conform to the norm so as to make claims to the resources of mobility'.²⁶

Establishing credibility is more difficult for LGBTI asylum seekers, in part because sexual and gender orientation are relatively new grounds, accepted only since 2002 under the *Refugee Convention* as constituting 'membership of a particular social group'. Although the broader principle of sexual orientation and gender-related persecution was accepted, individual LGBTI claimants still have to present credible evidence of first, the persecution they have suffered, and second, their sexual and/or gender identity. Evidence of persecution entails four aspects: evidence about the source of persecution, the location of persecution, that the persecution is sufficiently severe, and that it warrants a 'well-founded fear'. Initially, many LGBTI asylum applicants struggled to establish credible claims against the state as a 'source' as the existence of anti-sodomy statutes in the country of origin was considered the only evidence of persecution — that is, that the applicants were in violation of the laws of their country.²⁷ Non-state actors (family, community, employers and so on) as perpetrators of persecution were also not traditionally within the purview of political asylum cases, where the state was typically considered the source of persecution. Similarly, persecution within the private domain of the home was excluded from consideration. These exclusions particularly invalidated the dangers experienced by lesbian asylum seekers who typically faced violence within families.²⁸ Establishing that the persecution is severe, and not 'merely' everyday discrimination and oppression is the next requirement, which is linked to the need to establish 'well-founded fear'. Refugee law establishes a legal requirement to negotiate the intensely subjective emotion of fear in a rights claim, necessitating a complex subject positioning situated at the spatial and temporal intersections of bodily integrity, pain and trauma, sexual shame, erotic agency and desires, as well as other positions such as race, nationality, religion, gender and class.²⁹

Further, LGBTI applicants must prove their sexual and/or gender identity, and in order to credibly do so, they must fit their experiences into stereotypical asylum seeker narratives acceptable to immigration authorities in the global North. Some of the assumptions underlying decision making in asylum cases are that all lesbians and gays engage in cross-gender identification, are active in queer social spaces, are knowledgeable about queer culture, are sexually active but always only with persons of the same gender, don't have children, and if they have not 'come out', they will (or should) when they arrive in the

²⁵ Lisa Duggan, *The Twilight of Equality? Neoliberalism, Cultural Politics, and the Attack on Democracy* (Beacon Press, 2003), 50.

²⁶ Audrey Yue, 'Same-sex Migration in Australia: from Interdependency to Intimacy' (2008) 14 *Journal of Lesbian and Gay Studies* 239, 255–6.

²⁷ Scavone, above n 15, 411.

²⁸ See Susan A Berger, 'Production and Reproduction of Gender and Sexuality in Legal Discourses of Asylum in the United States' (2009) 34 *Signs* 659; Bushell, above n 13; Rachel Lewis, 'Lesbians under Surveillance: Same-sex Immigration Reform, Gay Rights, and the Problem of Queer Liberalism' (2010) 37(1) *Social Justice* 90.

²⁹ Senthorun Raj, 'Affective Displacements: Understanding Emotions and Sexualities in Refugee Law' (2011) 36 *Alternative Law Journal* 177.

country of immigration. These assumptions about identities and behaviours, even the terms LGBTI, are based on gendered, racialised and classed assumptions of a Western white gay male norm, and in effect erase experiences along the spectrum of sexual and gender diversity, and may lead to judgements such as the one below in the case of a Lebanese asylum seeker in Australia:

... the applicant's oral evidence to the Tribunal was that he had had no relationship with anyone who shared his sexual orientation since he left school — a period of over 20 years, spanning his entire adult life to date — either in Lebanon or in Australia. He does not claim ever to have spoken to a homosexual since then. He asks the Tribunal to accept that this was because he was, as he has said, a 'closet gay'. In my view this is implausible, and is far more consistent with his being heterosexual.³⁰

The evidentiary demands of the asylum process and Eurocentric models of identity as 'outness' necessitate the presentation of an 'authentic' or genuine LGBTI person such that those with previous histories of passing or concealment (as in the case of the Lebanese applicant above) create a 'credibility gap' in their narratives. Furthermore, cases primarily based on testimonial evidence can be considered personal and subjective, vulnerable to 'adverse credibility'.³¹

Paradoxes of Sexual (In)visibility

The credibility requirement in the practice of the LGBTI asylum law has produced paradoxes of sexual (in)visibility. At different times and places, queer border crossers have been expected to, or compelled to disavow their sexualities, be 'discreet' or invisible, in order to avoid state surveillance or persecution (whether perpetrated by the state or non-state actors). Thus, in countries that do not allow same-sex partner immigration (which included the US until very recently), such couples were often forced into invisibility as an adaptive strategy to deflect attention from the foreign partner's absence of legal status. This invisibility led to an underestimation of the number of such couples in the US.³² Forced invisibility is accompanied by fear of separation and deportation, and often necessitates staying under the radar of the government, which in turn has resulted in restricted access to essential services such as health care, education and housing.³³

Asylum seekers too were forced into invisibility, as initially 'discretion reasoning' was used as a common ground for the rejection of LGBTI applicants. This was the claim that if applicants lived 'discreetly' (basically, became invisible) in their country of origin, they could avoid persecution. Widely applied until the late 1990s (until sexual orientation was recognised as constituting 'membership in a particular social group'), the discretion argument worked against lesbian asylum applicants in particular, as women are already less visible in the private sphere, and 'less likely to engage in targeted public activities'.³⁴

Since the early 2000s, landmark judgements in Australia (2003), New Zealand (2004), the Netherlands (2007) and the UK (2010) have rejected 'discretion reasoning' as grounds for

³⁰ Raj, above n 29, 178.

³¹ Scavone, above n 15, 395–6.

³² Domínguez, Solórzano and Peña, above n 13.

³³ Karma R Chávez, 'Identifying the Needs of LGBTQ Immigrants and Refugees in Southern Arizona' (2011) 58 *Journal of Homosexuality* 189.

³⁴ Shuman and Bohmer, above n 15, 241.

denying LGBTI applications³⁵. These judgements led to intense debates on whether or not they were ‘bad law’.³⁶ While it is beyond the scope of this chapter to enter into these debates, what can be noted here is that the rejection of ‘discretion reasoning’ has only been partial, and resistance to LGBTI asylum claims persists now through the heightened scrutiny of credibility.

The paradoxes of visibility produced were made most apparent in the highly publicised case of Brenda Namigadde, a lesbian asylum seeker from Uganda who was initially denied asylum in the UK on the grounds that the UK government could not ‘see’ that she was lesbian in Uganda. The publicity around her case ‘ironically produced the very visibility [the British state] claimed it could not “see”’, as Brenda became visible to the Ugandan government and public, facing life imprisonment charges and death threats.³⁷ Thus, ‘in order to survive Brenda is expected to still prove in the UK that she is a lesbian and at the same time to prove that she is not a lesbian in Uganda’.³⁸

New practices of *indiscretion* have been generated by LGBTI responses to the demands of credibility and (in)visibility framed through ‘discretion reasoning’, which compel applicants to ‘prove’ their gender and sexual identities through ‘hyper-visible’ public performances of sexuality that are sometimes explicitly sexual, as a means of resisting deportation.³⁹ Illustrative of this is the experience of Kiana, an Iranian film-maker and gay rights activist documented by Rachel Lewis.⁴⁰ Kiana was initially told by UK officials that her asylum claim was rejected on the grounds that she could return to Iran and live ‘discreetly’. The release of her short documentary *Cul de Sac* which depicted her in an explicit lesbian sex scene, and its dissemination through multiple social media networks, resulted in a reversal of the decision, on the grounds that it was no longer possible for her to return and be discreet about her sexual orientation. Paradoxically, performing her identity as an out lesbian film-maker activist makes her un-deportable, but problematically also reproduces gendered, racial and classed stereotypes (of lesbians as butch, out and outspoken women who like to hang out in bars).⁴¹ Similar projects of queer migrant activism resisting deportation of undocumented LGBTI individuals, such as the Toronto based campaign ‘Let Alvaro Stay’ and Julio Salgado’s collaborative visual arts project ‘I am Undocuqueer’, draw on personal testimony and political protest imagery, but as Melissa White points out, rely on methodological nationalisms and visibility politics to make their claims hearable to the state.⁴²

Pragmatic Complicities?

³⁵ Jansen, above n 15.

³⁶ James C Hathaway and Jason Pobjoy, ‘Queer Cases Make Bad Law’ (2012) 44 *New York University Journal of International Law and Politics* 315; Jenni Millbank, ‘The Right of Lesbians and Gay Men to Live Freely, Openly, and on Equal Terms Is Not Bad Law: A Reply to Hathaway and Pobjoy’ (2012) 44 *New York University Journal of International Law and Politics* 497; see also other articles in the same issue of *New York University Journal of International Law and Politics*.

³⁷ Rachel Lewis, ‘Deportable Subjects: Lesbians and Political Asylum’ (2013) 25(2) *Feminist Formations* 174, 180.

³⁸ Melanie Nathan, ‘UK Judge & “Blogger” Precedent—“The Brenda Namigadde Effect”: Another Ugandan’s Deportation Stayed’ on *LezGetReal: A Gay Girl’s View on the World* (8 March 2011) <<http://lezgetreal.com/2011/03/uk-judge-blogger-precedent-thebrenda-namigadde-effect-another-ugandans-deportation-stayed/>>, quoted in Lewis, above n 37.

³⁹ Shuman and Bohmer, above n 15; Shuman and Hesford, above n 15.

⁴⁰ Lewis, above n 37.

⁴¹ *Ibid.*

⁴² Melissa Autumn White, ‘Documenting the Undocumented: Toward a Queer Politics of No Borders’ (2014) 17 *Sexualities* 976.

Taken together, the practices of breaking, re-making, and sometimes reinforcing immigration and asylum law have generated ‘successes’ for (some) LGBTI border crossers. Yet our appraisal of these successes must consider the instability of such gains, as even when the credibility both of identity and persecution is reasonably established, immigration officials are often inconsistent in their interpretations of case law and can be surprisingly inventive in their contorted counter-explanations justifying the denial of eligibility for asylum.⁴³

More critically, and without diminishing the gains achieved through LGBTI activist practices, we must pay attention to the ways in which queer border crossers become legible to the state through the establishment of credible evidence and responding to the contradictory demands of (in)visibility. This legibility works through prior acceptance of the official categories of trans-border movement (migrant, refugee, asylum seeker) sanctioned by states and supranational bodies. Legal legibility is also rendered through racialising, colonialist LGBTI identity categories understood in very specific ways. For example by privileging ‘coming out’, public (hyper) visibility, particular kinds of white desirable citizens (productive, skilled, healthy) and homonormative happy families.

Queer struggles in this modality not only ossify an identitarian politics, they set up yet another missionary rescue project, reinforcing queer border crossers as ‘victim subjects’ incapable of exercising agency. Citizenship in a country of the global North and its attendant entitlements (rights, welfare) are privileges that are contingent on conformity with these normative identity categories and subject positions. While such strategies may be pragmatic complicities with official regimes of knowledge about non-citizen queer lives, they produce a homonationalist⁴⁴ consolidation of power consonant with capitalist accumulation, the biopolitics of control over population movements, and liberal rights discourses. They simultaneously leave unproblematised the methodological nationalism of normative constructs of state borders and territorially based citizenship.⁴⁵

If, however, we remind ourselves of José Muñoz’s articulation of ‘*Queerness [as] essentially about the rejection of a here and now and an insistence on potentiality or concrete possibility for another world*’⁴⁶ we can envision alternative imaginaries that allow critical refusal of queer pragmatics’, to think and act beyond ‘pragmatic complicities’ of the here and now outlined above. One such imaginary would be to consider how a politics of ‘no borders’ resonates with the anti-normative thrust of a queer politics. Before I sketch the outline of these possibilities, I first clear the conceptual ground by distinguishing the ‘no borders’ from the ‘open borders’ perspective.

Border Controls, ‘Open Borders’ and ‘No Borders’

The control of human mobility across state borders is one of the most politically urgent, yet divisive issues of the twenty-first century, entangled as it is in concerns about employment,

⁴³ Millbank, above n 15, 14.

⁴⁴ Jasbir Puar, ‘Rethinking Homonationalism’ (2013) 45 *International Journal of Middle East Studies* 336; Jasbir Puar, *Terrorist Assemblages: Homonationalism in Queer Times* (Duke University Press, 2007).

⁴⁵ Liisa H Malkki, ‘Refugees and Exile: From “Refugee Studies” to the National Order of Things’ (1995) 24 *Annual Review of Anthropology* 495; Andreas Wimmer and Nina Glick Schiller, ‘Methodological Nationalism and Beyond: Nation-State Building, Migration and the Social Sciences’ (2002) 2 *Global Networks* 301.

⁴⁶ José Esteban Muñoz, *Cruising Utopia: The Then and There of Queer Futurity* (New York University Press, 2009) 1.

the economy, threats to national identity, terrorism and national security. Demographic pressures, colonial and neo-colonial legacies of structural inequality, poverty and conflict and the expansion of global transport and communication options have propelled increasing numbers of people to cross international borders. Yet border control policies to contain this migration have intensified, particularly in countries of the global North. Such policies are not only exercised at the border: they are activated in the surveillance of internal mobility, access to employment, social services and governance structures. They are exercised in the migrant origin countries in the global South, through aid and education programs designed to encourage people to ‘stay put’, particularly on the African continent. They are also increasingly exercised in ‘buffer zones’: territories ‘excised’ from the nation (such as Christmas Island for Australia) or outside national or regional borders in transit countries such as Libya or Indonesia (for Europe and Australia respectively) or in detention ‘holding’ countries (such as Nauru for Australia).

Scholarship and activism in the past three decades has drawn attention to the ways in which border control policies have established an oppressive ‘global apartheid’⁴⁷ that is gendered, heteronormative, racialised, and classed. State border control policies are deeply implicated in the production and maintenance of relations of power and dependency through two circuits of global mobility. In the privileged circuit, highly skilled professional elites from both the global North and South experience free mobility, usually through regular channels of migration, while in the underprivileged circuit, unskilled migrants experience immobility, or constrained mobility, through irregular ‘undocumented’ channels of migration.⁴⁸

Calls for liberalising border controls vary in the *degree* of liberalisation: they may offer an easing of quantitative restrictions, allowing larger numbers of migrants and/or asylum seekers. The 2015 pledge to welcome an increased intake of 800 000 Syrian refugees by Germany and 14 000 by Australia is in this mode. This modality does not disturb existing political arrangements in any significant way, as there is still a selective process of determining eligibility — who is ‘fit’ to enter the nation. The ‘open borders’ or ‘no borders’ perspectives are more radical in that they envision the free movement of *all* people. They point to the absurdity of the Universal Declaration of Human Rights’ recognition of the right to emigrate, without corresponding recognition of the right to immigrate and the ‘fundamental ... contradiction between the notion that emigration is widely regarded as a matter of human rights while immigration is regarded as a matter of national sovereignty’.⁴⁹

Although the terms ‘open borders’ and ‘no borders’ are often used interchangeably, there are important distinctions worth signalling.⁵⁰ The framework of mobility in the ‘open borders’ perspective assumes the continued existence of nation states and territorial borders, but articulates new modalities of citizenship and entitlements. Most liberal political arguments are situated in this framework, which defends open borders on egalitarian principles with the argument that freedom of movement within and across borders is an undeniable liberal right, and on the utilitarian principle that free mobility maximises collective utility.⁵¹ Yet the right

⁴⁷ Nandita Sharma, ‘Anti-Trafficking Rhetoric and the Making of a Global Apartheid’ (2005) 17(3) *NSWA Journal* 88; Michael Clemens, ‘A Labor Mobility Agenda for Development’ (Working Paper No 201, Centre for Global Development, January 2010).

⁴⁸ Saskia Sassen, ‘Two Stops in Today’s New Global Geographies: Shaping Novel Labor Supplies and Employment Regimes’ (2008) 52 *American Behavioral Scientist* 457.

⁴⁹ Myron Weiner, ‘Ethics, National Sovereignty and the Control of Immigration’ (1996) 30 *International Migration Review* 171, 171.

⁵⁰ Harald Bauder, ‘Perspectives of Open Borders and No Border’ (2015) 9 *Geography Compass* 395.

⁵¹ Joseph H Carens, ‘Aliens and Citizens: The Case for Open Borders’ (1987) 49 *Review of Politics* 251.

to free movement confronts an intractable deadlock in liberal political theory with the right to national self-determination. The latter is premised on border controls as central to the construction of shared identity and political membership. This presents a paradox that liberal political theorists have reconciled by either prioritising one or the other right: John Rawls argues that rich countries have the right to bar migrants from poor countries on grounds of the right to protect national interest;⁵² Michael Dummett makes the opposite case for freedom of mobility on the grounds of freedom of thought and action.⁵³ Other theorists have developed compromise positions that propose relatively open borders⁵⁴ and modalities of citizenship to accommodate new notions of the national and entitlements that are not merely contingent citizenship of '*jus soli*' (meaning 'right of the soil', or birthright citizenship granted to anyone born in the territory of a state) or '*jus sanguinis*' (meaning 'right of blood', or citizenship granted through descent, where one or both parents are citizens of the state). Thus, Veit Bader⁵⁵ proposes 'open borders' conjoined with the concept of 'domiciliary citizenship' as a form of citizenship based on residence. Similarly, Ayelet Shachar develops the concept of '*jus nexi*' that is premised on the principle of a 'real and effective link' and 'genuine connection of existence, interests and sentiments' to determine entitlements of irregular migrants or non-status persons as having a claim to citizenship entitlements.⁵⁶ Aligned with the liberal political perspective, the neoliberal economic perspective supports open borders because they are assumed to optimise efficiency and productivity globally; border controls conversely are assumed to distort labour markets. Yet, the liberal perspective that promotes free labour mobility serves the interests of cross-border global capital accumulation that is achieved through the exploitation of the cheapest (migrant) labour.⁵⁷

In contrast, 'no borders' advocates propose a more radical framework that 'calls into question the legitimacy of the global system of national states itself and the related global system of capitalism'.⁵⁸ It envisions a political and social reorganisation of societies that includes the elimination of borders and controls on mobility.⁵⁹ Bridget Anderson et al argue that:

A radical No Borders politics acknowledges that it is part of revolutionary change. If successful, it will have a very profound effect on all of our lives for it is part of a global reshaping of economies and societies in a way that is not compatible with capitalism, nationalism, or the mode of state-controlled belonging that is citizenship. It is ambitious and requires exciting and imaginative explorations, but it is not utopian. It is in fact eminently practical and is being carried out daily.⁶⁰

The examples they provide of this ongoing practical political project include a wide variety of groups, those that are explicitly political movements such as the *Sans Papiers* in France, *Sin Papeles* in Spain and the 'No one is Illegal' and 'Don't Ask Don't Tell' campaigns in the US, but also groups such as Doctors of the World who operate without consideration of

⁵² John Rawls, *The Law of Peoples: With, the Idea of Public Reason Revisited* (Harvard University Press, 2001).

⁵³ Michael Dummett, *On Immigration and Refugees* (Taylor and Francis, 2001).

⁵⁴ Veit Bader, 'Fairly Open Borders' in Veit Bader (ed), *Citizenship and Exclusion* (St Martin's Press, 1997); Jonathan Seglow, 'The Ethics of Immigration' (2005) 3 *Political Studies Review* 317.

⁵⁵ Harald Bader, 'The Possibilities of Open and No Borders' (2013) 39(4) *Social Justice* 76.

⁵⁶ Ayelet Shachar, *The Birthright Lottery: Citizenship and Global Inequality* (Harvard University Press, 2009).

⁵⁷ Nick Gill, 'Whose "No Borders"? Achieving Border Liberalization for the Right Reasons' (2009) 26(2) *Refuge* 107.

⁵⁸ Bridget Anderson, Nandita Sharma and Cynthia Wright, 'Editorial: Why No Borders?' (2009) 26(2) *Refuge* 5, 11.

⁵⁹ Pam Alldred, 'No Borders, No Nations, No Deportations' (2003) 73 *Feminist Review* 152; Nandita Sharma, 'No Borders Movement and the Rejection of Left Nationalism' (2003) 37(3) *Canadian Dimension* 37.

⁶⁰ Anderson, Sharma and Wright, above n 58, 12.

nationality or residence status. Central to their political vision is the concept of rights to ‘the commons’ as a political, social and economic alternative vision of the future.⁶¹

Although Anderson et al distance themselves from the notion of ‘utopia’ as some abstract, unrealisable project, the counter-border activism they refer to (above) as pre-figurations of the state of ‘no borders’ can potentially also signal the possibilities of what José Esteban Muñoz describes as a *concrete* utopia. In contrast to an ‘abstract utopia’ that is untethered to historical consciousness, Muñoz deploys the concept of a concrete utopia to describe the critical politics of hope that is positioned in relation to historically situated struggles:

In our everyday lives abstract utopias are akin to banal optimism... Concrete utopias can also be daydream-like, but they are the hopes of a collective, an emergent group, or even the solitary oddball who is the one who dreams for many. Concrete utopias are the realm of educated hope.⁶²

The potential of concrete utopia is thus realised through collective action; it is a ‘backward glance that enacts a future vision’.⁶³ It is this critical politics of hope that I wish to activate in the discussion below.

Queer Alignments with ‘No Borders’ Politics

In this concluding section, I draw out some of the emancipatory possibilities inherent in an alignment of queer politics with the vision of ‘no borders’. I outline below a few interrelated challenges offered by the ‘no borders’ perspective, and discuss how these challenges resonate with the experiences and activism of queer border crossers and activists.

First, the ‘no borders’ perspective offers a challenge to the sedentarist bias and temporal amnesia in our understandings of human migration. We must remember that migration is an essential human activity and human beings have always been on the move for varied reasons, even as these movements have often been forced, or restricted. Colonisation generated massive forced migration, through the slave trade and indentured labour. It also shaped settler colonial nations like the US, Canada and Australia, and countries in South America, through (ongoing) violence and subjugation of indigenous populations and mass migrations of ‘free’ labour to the colonies. Industrialisation also resulted in controls on mobility related to the creation and maintenance of ‘free labour’ for nascent capitalism. In these different histories, borders as we understand them today either did not exist or were ignored, or the control of mobility was exercised along different criteria, for instance class-based seigneurial control over serfs’ mobility, poor laws and vagrancy laws, and gender-based male control over women’s mobility. The introduction of border controls over migrants, as a ‘problem’ that needed to be ‘managed’, emerged in the late nineteenth century as a feature of the nation-state based organisation of citizenship, in contrast to the loose controls exercised by earlier city-based, or even empire-based models of citizenship.⁶⁴

⁶¹ Bridget Anderson, Nandita Sharma and Cynthia Wright, “‘We Are All Foreigners’ No Borders as a Practical Political Project” in Peter Nyers and Kim Rygiel (eds), *Citizenship, Migrant Activism and the Politics of Movement* (Taylor and Francis, 2012) 73.

⁶² Muñoz, above n 46, 3.

⁶³ Ibid, 3–4.

⁶⁴ John Torpey, *The Invention of the Passport: Surveillance, Citizenship and the State* (Cambridge University Press, 2000); Marlou Schrover et al (eds), *Illegal Migration and Gender in a Global and Historical Perspective* (Amsterdam University Press, 2008).

From the ‘no borders’ perspective then, the apparatus of contemporary border controls by nation-states is far from a logically inevitable, immutable outcome of the progressive development of nation-states. Rather, from this perspective, we could critique the inherent assumption of linear notions of development as sequential progress that holds the ‘developed’ global North as the normative standard, and pay attention instead to the diverse historically and culturally specific practices and structural arrangements around mobility, including queer mobilities. This critical attention to histories is particularly important for a queer politics of the border, as it allows us to interrogate the ways in which colonial and imperial states were, and continue to be, implicated in the production of homophobic laws that have generated global flows of queer refugees.

Following from above, a ‘no borders’ perspective challenges the nation-state centrism inherent in the presumption of the state’s power to control cross border mobility. As scholars have argued, the state enforces but also *produces* the border. The structural violence inherent in border controls (wherever they are exercised) is that they situate border crossers within relationships of power, vulnerability and dependency. They also make untenable differentiations through the categories such as ‘migrant’, ‘asylum seeker’ and ‘refugee’. From this perspective, appeals to the state in LGBTI immigrant and asylum cases reinforces and reproduces this structural imbalance of power and dependency. As I have discussed above, such appeals necessitate pragmatic complicities in the marshalling of evidence to demonstrate ‘credibility’ and ‘visibility’ to functionaries of the state. Yet, in doing so, as White cautions, activists need to heighten their awareness of the ways in which demands for better, ‘improved’ laws and regulations may reinforce the nation-building project.⁶⁵ Such an awareness would be foundational to any emancipatory project that is *not* nation-state centric.

Third, and related, is the challenge to the normative liberal construction of citizens as free and equal (implicitly homogenous) individuals with rights, entitlements and obligations, who ‘belong’ to a nation either through descent (*jus sanguinis*) or through birth (*jus soli*). The parameters of belonging and the inclusion of some as citizens are, however, invariably predicated on the exclusion of others as ‘non-citizens’. As we have seen, LGBTI applicants for immigration and asylum have to prove themselves ‘deserving’ recipients of state benevolence and, if they fail, they fall into irregular or ‘non-status’, and become vulnerable to deportation. The unfortunate effect is the reinforcement of a ‘deserving’–‘undeserving’ dichotomy in which some queer subjects are deemed worthy of citizenship. The hierarchy of oppression and sympathy produced through this ‘queer migrant exceptionalism’ is sutured on to the differentiated hierarchies of social, political and economic inequalities that exist even amongst citizens. Dissatisfaction with existing models of citizenship has generated a rich scholarship on citizenship,⁶⁶ including on queer citizens⁶⁷ which is beyond the purview of this chapter. All I wish to do here is signal first, that from a ‘no borders’ perspective, citizenship would have to be detached from its current mooring in the nation-state. Second, it would be worthwhile for explorations in this area to offer queer perspectives on existing practices of ‘irregular citizenship’,⁶⁸ practices of cultural citizenship,⁶⁹ and the multiple ways

⁶⁵ White, above n 42.

⁶⁶ See for example Aihwa Ong, *Flexible Citizenship: The Cultural Logics of Transnationality* (Duke University Press, 1999); Seyla Benhabib, *The Rights of Others: Aliens, Residents, and Citizens* (Cambridge University Press, 2004); Shachar, above n 56.

⁶⁷ Arnaldo Cruz-Malave and Martin F Manalansan (eds), *Queer Globalizations: Citizenship and the Afterlife of Colonialism* (New York University Press, 2002); Luibhéid and Cantú, above n 3.

⁶⁸ Peter Nyers, ‘Forms of Irregular Citizenship’ in Vicki Squires (ed), *The Contested Politics of Mobility: Borderzones and Irregularity* (Routledge, 2011) 184.

in which citizenship is no longer a territorially bound, nation-state centric institution or statute, but a 'collective practice'⁷⁰ that is transforming the boundaries of belonging.

The fourth challenge of 'no borders' is to global capitalism. It recognises that borders function to produce differentiated labour regimes that can be exploited and dispossessed by capitalist forces.⁷¹ A 'no borders' position resists the capitalist social relations dependent on productivist assumptions that encourage the entry of 'skilled workers' and on social reproductivist assumptions allowing entry of heteronormative families as well as unskilled workers essential to the care economy. This challenge forces queer politics to take class hierarchies and the global precariat⁷² more seriously than it has hitherto, and move beyond token acknowledgement of class as a dimension of intersectionality.

Finally, moving beyond the obsession with the state, a 'no borders' perspective challenges our predispositions to xenophobia (and I hope I am not being too optimistic here). As Leo Tolstoy famously (though possibly apocryphally) said: 'there are two primary stories: a person goes on a journey or a stranger comes to town'. Within these two archetypal plots, xenophobic reactions to the migrant stranger are not just a phenomenon of our contemporary age of anxieties. Erasing the salience of borders has the potential to diminish our fear of the foreigner, which is often premised on racialised, gendered, heterosexed, classed and national understandings of an 'us', positioned against a threatening 'stranger/other'. It offers the opportunity to explore the histories of queer travellers and the affective possibilities that are generated.⁷³ Perhaps also, the potential to open up new notions of 'belonging' that are not premised on exclusions, expanding our horizons of what is politically possible and morally desirable.

⁶⁹ See for example Fatima El-Tayeb, *European Others: Queering Ethnicity in Postnational Europe* (University of Minnesota Press, 2011); Renato Rosaldo, 'Cultural Citizenship, Inequality, and Multiculturalism' in Rodolfo D Torres, Louis F Mirón, and Jonathan Xavier Inda (eds), *Race, Identity, and Citizenship: A Reader* (Blackwell Publishers, 1999).

⁷⁰ Etienne Balibar, 'The Nation Form: History and Ideology' in Etienne Balibar and Immanuel Wallerstein (eds), *Race, Nation, Class: Ambiguous Identities* (Verso, 1991) 86.

⁷¹ Teresa Hayter, *Open Borders: The Case Against Immigration Controls* (Pluto Press, 2000).

⁷² Guy Standing, *The Precariat: The New Dangerous Class* (Bloomsbury Academic, 2011).

⁷³ Leela Gandhi, *Affective Communities: Anticolonial Thought, Fin-de-Siècle Radicalism, and the Politics of Friendship* (Duke University Press, 2006).