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COMMENTS

GENDER AND SEX DESIGNATIONS FOR IDENTIFICATION PURPOSES: A DISCUSSION ON INCLUSIVE DOCUMENTATION FOR A LESS ASSIMILATIONIST SOCIETY

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INTRODUCTION

The United States federal government and the individual U.S. states’ failure to allow trans*¹ and gender non-conforming² persons a right to self-

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1. The term “trans*” will be used throughout to designate a catch-all umbrella for transgender, transsexual, two-spirit, transmasculine, transfeminine, transvestite, and other gender-nonconforming persons. The terms “gender non-conforming,” transgender, transsexual, et. al. will be stated in the text when individual consideration of such identity is necessary to distinguish from the umbrella characterization. See *LGBTIQ2SAA+*

identify³ on official documents causes an array of problems. Many such individuals experience identification-related difficulties in everyday life—in immigration, housing, and employment situations, among others.⁴ American

Definitions, REVEL & RIOT, available at <http://www.revelandriot.com/resources/lgbtq-and-trans-definitions/>; see also *What Does the Asterisk in “Trans*” Stand For?*, IT’S PRONOUNCED METROSEXUAL (Mar. 2015), available at <http://itspronouncedmetrosexual.com/2012/05/what-does-the-asterisk-in-trans-stand-for/>; Hugh Ryan, *What Does Trans* Mean, and Where Did It Come From?*, OUTWARD (Jan. 10, 2014), http://www.slate.com/blogs/outward/2014/01/10/trans_what_does_it_mean_and_where_did_it_come_from.html.

2. Dr. Eric Anthony Grollman, *What Is Gender “Non-Conformity”?*, KINSEY CONFIDENTIAL (March 8, 2011), <http://kinseyconfidential.org/gender-nonconformity/> (“Gender non-conformity . . . is behaving and appearing in ways that are considered atypical for one’s gender.”).

3. As noted below, many U.S. states require invasive medical procedures, other medical treatment, and professional consultation for individuals to have the sex designation changed on legal documentation. Moreover, the United States does not currently have any system in place for gender non-conforming individuals for whom a “male” or “female” designation is inaccurate, and would force such individuals to inhabit a role with which they do not identify; The problem of being discriminated against as a result of a person not appearing as the gender stated on legal documentation is well documented. See Andrew Cray & Jack Harrison, *ID Accurately Reflecting One’s Gender Identity Is a Human Right*, CTR. FOR AM. PROGRESS (Dec. 18, 2012), available at <https://cdn.americanprogress.org/wp-content/uploads/2012/12/TransgenderID-4.pdf> (public policy scholars estimate some 25,000 transgender U.S. voters could become disenfranchised as a result of stringent state voter ID laws due to anti-transgender discrimination and because such individuals may not appear to be the person on their voter identification).

4. When not seen as their true genders, trans* people are commonly placed into institutions based on, or considered as an “other” that institutions are unable to accommodate, or categorized with regard to their sex organs. Such a system often leads to traumatic experiences for the individuals in these positions. See, e.g., Jorge Rivas, *New Yorkers Brave the Cold To Rally for Transgender Asylum Seeker*, FUSION (March 5, 2015), <http://fusion.net/story/59091/new-yorkers-brave-the-cold-to-rally-for-transgender-asylum-seeker/> (Guatemalan transgender detainee Nicoll Hernandez-Polanco seeking asylum in the United States has been held since October 2014 in a room with 12+ men at an immigration detention facility in Arizona, where she has been the victim of physical and emotional assault. Activists in New York, Los Angeles, Arizona, and Washington D.C. to convey the message to the Obama Administration that “detention harms LGBTQ people,” and that transgender women face particularly awful conditions in detention. In detention, Nicoll is forced to sleep and shower next to cisgender men, and has been the victim of transphobic treatment by fellow detainees and guards. Advocates say she has been sexually assaulted by a male detainee, has been groped numerous times. Prison guards have groped her breasts, pulled her hair, and a prison cook has referred to her as “the woman with balls” on multiple occasions.). Trans* jobseekers have a notoriously high unemployment rate—reported around 14% in 2011—over twice the national average. As a result of transphobic job discrimination, trans* persons often are forced to sell sex in order to survive, work that is both illegal and places them at high risk of violence. Keisha Allen states that she has worked as a prostitute since being kicked out of her house as a teenager, and is now middle-aged. She has applied for many other jobs, including dishwashing and cashier positions, and has not been considered for any past the first interview. Because her “name doesn’t match [her] ID, and [her] body doesn’t match what it says on [her] ID,” she has not been considered for employment. Moreover, as a homeless person, she is relegated to the male section of a

society meets trans* issues with an air of disregard and misunderstanding – especially the concept of *self-identification*⁵ – a reality which perpetuates the mistreatment of the trans* community, and maintains an unavailability of resources for its members. An overhaul of our conception of trans* and other gender non-conforming people is vital to the well-being of the American trans* community and those trans* persons who seek support as they evade persecution.

This Comment compares recent international and domestic measures taken to alleviate trans* alienation and human rights violations to reveal possible solutions for the United States. This writing focuses heavily on background information exactly because much is missing in our society's understanding of the needs of the trans* community in terms of accommodations, rights, identities, and infrastructure. Because the proposed reforms essentially require building American gender consciousness from the ground up, background information helps illustrate how, why, and where American trans* accommodation is lacking.

The background section begins the Comment with an exposition of gender as a social concept, and starts to explain how a binary Male/Female dichotomous paradigm falls short of representing the wide variety of ways that people actually perform,⁶ relate to, and identify with their gender. The section

shelter, despite identifying as a woman. Another transgender woman states that despite 40+ years in the auto industry, she was fired after telling her employer she intended to transition from male to female. She says that word of her transgender identity spread throughout the industry, and she was only able to obtain employment, hundreds of applications later, in a position that paid less than half of what she was previously earning. As a result of such a significant pay cut, she has struggled to keep her home. Blake Ellis, *Transgender Job Seekers Face Uphill Battle*, CNN MONEY (Feb. 22, 2013), <http://money.cnn.com/2013/02/22/pf/transgender-unemployment/>.

5. Self-identification also appears in the critical race jurisprudence, through the concept sometimes termed “elective race” theory. *See generally* Camille Gear Rich, *Elective Race: Recognizing Race Discrimination in the Era of Racial Self-Identification*, 102 GEORGETOWN L. REV. 1501, 1505 (2014) (author notes modern anti-discrimination laws and the legal community must tackle the “dignity concerns of individuals as they attempt to control the terms upon which their bodies are assigned racial meaning”).

6. To “perform gender” can be understood as portraying one’s gender through action, to physically act it out. Gender performance as a concept was popularized by renowned gender theorist and cultural critic Judith Butler, who posits that gender should not be conceived of as fixed, but that it shifts and changes.

[G]ender is in no way a stable identity or locus of agency from which various acts proceed; rather, it is an identity tenuously constituted in time—an identity instituted through a *stylized repetition of acts*. Further, gender is instituted through the stylization of the body and, hence, must be understood as the mundane way in which bodily gestures, movements, and enactments of various kinds constitute the illusion of an abiding gendered self.

Judith Butler, *Performative Acts and Gender Constitution: An Essay in Phenomenology and Feminist Theory*, 40 THEATRE J. 519, 519-520 (Dec. 1988). *See generally* Juliet Jacques, *Gender Is a Performance – For Everyone, Not Just Transsexuals*, THE GUARDIAN (Dec. 29, 2010), <http://www.theguardian.com/lifeandstyle/2010/dec/29/gender-performance-stage> (“Underlying some of those stares and taunts is the assumption that my gender itself is a ‘performance’: that is, false (or less real than other people’s). Well, it is largely performative,

continues by examining U.S. institutions' progress and shortfalls in accommodating trans* citizens who wish to alter their legal identification documentation to accurately reflect their gender. The section emphasizes sex-gender conflation and some aspects of assimilationism.⁷

Next, this Comment looks at recent steps taken in other countries for the purpose of accommodating trans* citizens' needs for legal documentation. The types of documentation discussed include birth certificates, driver's licenses, and passports. This emphasizes foreign processes that do not mandate binary male or female identification. The countries this Comment focuses on most include India, Australia, and Canada, as those countries have made significant strides toward the inclusion of trans* rights in this area.⁸ This section of the Comment acts as a backdrop for the "solutions" section toward the end of the Comment. The last part of the analysis discusses routes the United States may take if it decides to address the non-binary identification needs of the trans* community. This final section compares the measures of the aforementioned

as it is for everyone: my style and mannerisms develop in relation to my personality, changing over time, and I enjoy the creative potential inherent in this.").

7. Assimilation and assimilationism refer to appearing, acting, or otherwise "passing" within a dominant paradigm. Here, I refer to trans* persons assimilating to dominant conceptions of queer culture—or rather, passing within society's most accepted notions of LGBT. This notion is based on inherent privileges of whiteness, of looking "traditionally male" or "traditionally female," as engaging in two-person relationships, and other constructs of identity that do not explicitly defy social norms of acceptable lifestyles and identities. In *Seeking Queer Visibility, Rejecting Assimilation*, author Lucas Waldron describes the privileges he recognizes as a white trans* person who "passes" as a man in social situations. He writes:

For me, assimilation is especially accessible. As a passing white transsexual man with a degree in political science, a job that pays for my San Francisco apartment, and a boyish appearance that makes elderly women at the grocery store smile at me with trusting eyes, it's easy for me to be satisfied with my own experience of assimilation into a society that already acknowledges white men as actively more powerful than others. I know, however, that the political and cultural successes my community has experienced in recent years disproportionately affect and favor me and leave much of my community in the margins, grasping for tangible change.

Lucas Waldron, *Seeking Queer Visibility, Rejecting Assimilation*, HUFFPOST GAY VOICES (Jan. 7, 2014), http://www.huffingtonpost.com/lucas-waldron/seeking-queer-visibility-_b_4525703.html. Author Sally Hines discusses varying opinions on the appropriateness of assimilation into dominant lesbian and gay culture among trans* persons. Hines notes, "[w]hile some interviewees considered gender assimilation to be both desirable and necessary for the protection of transgender civil rights, others offered a challenge to the notion of assimilation, proposing a (trans)gender politics in which different is considered as a site of importance and celebration in its own right." Hines further writes, that "[w]hole some [transgender persons construct] distinct transgender identity positions, consciously created in opposition to traditional ways of thinking about gender, sexuality and transition, others [articulate] individualism and [are] reluctant to position themselves as members of a collective transgender culture." SALLY HINES, *TRANSFORMING GENDER: TRANSGENDER PRACTICES OF IDENTITY, INTIMACY AND CARE* 187 (Policy Press 2007).

8. Additionally, Canada is the United States' "neighbor to the north," and arguably a country our government might look to first when contemplating how to address trans* inclusion measures.

countries and attempts to formulate a hypothetical framework for the United States—while accounting for concerns that have remained or arisen following changes in the “model” countries.

This Comment does not intend to solve the problem of the United States’ lack of non-binary designation options for official identification documents. Instead, this Comment aims to give the reader the information to spark discussion about a variety of approaches and possibilities for solving the issue. Full inclusion of non-binary-identified and trans* people will require substantial planning and reform. With that in mind, this Comment strives to provide many different outlooks on a difficult and nuanced subject, so that we might arrive at a more inclusive and safe society for trans* people.

I. BACKGROUND

“[G]ender is each person’s deeply felt internal and individual experience [thereof], which may or may not correspond with the sex assigned at birth, including personal sense of the body . . . and other expressions of gender, including dress, speech, and mannerisms.”⁹ Although the majority of trans* identified individuals continuously identify as man or woman, others identify somewhere along the spectrum¹⁰ of gender identity, and may feel at home as man and woman, or as neither binary gender.¹¹

People with nonbinary identities are members of the trans* community who identify outside of a gender binary comprised of the mutually exclusive categories of man and woman. Some trans* people have static gender identities of which they are definitively aware from very early childhood, while others have fluid identities that may change or evolve over the course of their lives.¹²

There has been a marked push in recent years in countries around the globe to respond to trans* communities’ demands for recognition of non-binary gender identity. Some countries have responded by recognizing a need for non-traditional gender and sex identifiers on legal identification documentation.¹³

9. Olga Tomchin, *Bodies and Bureaucracy: Legal Classification and Marriage-Based Immigration for Trans* People*, 101 CAL. L. REV. 813, 819 (2013).

10. A basic binary concept of gender based on the physical does not account for the variations between individuals, other than distinctions between men and women. The gender spectrum is a way to help explain that facets of a person’s life intersect to form their gender identity, that gender is nuanced, and comprises self-expression, biology, etc., to create a “multidimensional array of possibilities.” *Understanding Gender*, GENDER SPECTRUM, <https://www.genderspectrum.org/quick-links/understanding-gender/>.

11. See Tomchin, *supra* note 9, at 820.

12. *Id.*

13. See generally *Australian Government Guidelines on the Recognition of Sex and Gender*, AUSTL. GOV’T 2-8 (July 2013), available at <http://www.ag.gov.au/Publications/Documents/AustralianGovernmentGuidelinesontheRecognitionofSexandGender/AustralianGovernmentGuidelinesontheRecognitionofSexandGender.PDF>; Arshiya Khullar, *The Transgender Community: Legally Invisible No More?*, CNN (April 17, 2014), <http://www.cnn.com/2014/04/17/world/asia/countries-introduce-gender-neutral-policies-for-transgenders/> (discussing recent “victories” for nonbinary gender

These measures are significant because trans* persons fall by the wayside in societies where most individuals identify as a binary gender; that is, man *or* woman.¹⁴ This can be observed in everyday American life: public restrooms that presuppose an individual's identity fits neatly into a metaphorical box implicitly labeled "born male-bodied – Men" or "born female-bodied – Women."¹⁵ By and large, American society does not account for gender identities outside the traditional binary system, nor does it really even consider trans* existence except perhaps as a passing thought during Pride Week or, recently, tokenized and fetishized on television.¹⁶ Even so, mainstream "gender equality" and "LGBTQ" organizations rarely call attention to the trans* community or its related social issues¹⁷ other than in drag and Pride-related contexts.¹⁸ As a result, most Americans remain under-informed or hold

identification in India (recognition of a third or "other" gender), Australia (third gender recognition), Germany (allowing intersex children's birth certificates to be marked "X").

14. See Nico Dacumos, *All Mixed Up with No Place to Go: Inhabiting Mixed Consciousness on the Margins*, in *NOBODY PASSES: REJECTING THE RULES OF GENDER AND CONFORMITY* 20-36 (Mattilda ed., 2006) (author recounts how they do not know exactly how to character their gender identity; that it's "not quite FTM and still emotionally, historically, and politically attached to butchness;" that "any . . . honest articulation of my gender identity will never convince [those healthcare providers] who [base] access to medical treatments like gender reassignment surgery and hormone therapy based on a narrow and pathologizing understanding of "transsexuality," to allow me self-determination over how I choose to modify my body").

15. There are accounts of transgender students being denied access to facilities that appropriately accommodate their non-conforming gender identity. Harper Jean Tobin & Jennifer Levi, *Securing Equal Access to Sex-Segregated Facilities for Transgender Students*, 28 WIS. J.L. GENDER & SOC'Y 301, 301 (2013) ("Denial of equal access to facilities that correspond to a student's gender identity singles out and stigmatizes transgender students, inflicts humiliation and trauma, interferes with medical treatment, and empowers bullies.").

16. See, e.g., Julie Zeilinger, *No, TV Industry, Being Transgender Is Not a "Hot" Trend*, MIC (March 31, 2015), <http://mic.com/articles/114140/no-tv-industry-being-transgender-is-not-a-hot-trend>; E. Jessica Groothuis, *The Rayon Effect: What Cisgender Actors Bring to Transgender Characters*, TRANSADVOCATE (April 5, 2014), http://www.transadvocate.com/the-rayon-effect-what-cisgender-actors-bring-to-transgender-characters_n_13344.htm; Alissa Scheller & Cameron Love, *Transgender People Are More Visible Than Ever, But It's Still Legal to Discriminate Against Them in Most States*, HUFFINGTON POST (June 3, 2015 3:07 PM), http://www.huffingtonpost.com/2015/06/03/transgender-discrimination-laws_n_7502266.html (juxtaposing media frenzy surrounding Caitlyn Jenner with extreme disregard for important issues like trans* homelessness and violence toward transpeople).

17. The Human Rights campaign, which happens to be the most-recognizable gay rights in the United States today, has a long and sordid history of excluding transgender considerations from bills, from working for the organization, and from even consulting with the trans* community for input in its crusade for nationwide same-sex marriage. Executive Director of HRC Elizabeth Burch is infamously quoted as stating that including trans* protections in the Employment Non-Discrimination Act would happen "over her dead body." Monica Roberts, *Why the Transgender Community Hates HRC*, TRANSGRIOT (OCT. 8, 2007), <http://transgriot.blogspot.com/2007/10/why-transgender-community-hates-hrc.html>.

18. Noting that transgender activist Sylvia Rivera is lauded in the LGBT rights movement as a leader of the Stonewall protests (largely seen as the kick-off of the U.S. movement toward LGBT equality), and transwomen celebrities Laverne Cox and Janet

misconceptions about the trans* community. Thus, the community and its needs remain all too invisible to the public.

A. *Gender Designations in the United States*

The federal government and all states allow an individual to change a driver's license gender designation to or from Male/Female on account of gender identity.¹⁹ The requirements for such an alteration vary, though most states require the applicant to submit a document indicating that the applicant's gender has changed,²⁰ and many require writings from health care professionals showing whether an individual requesting a designation change suffers from a physical or mental condition and has undergone appropriate treatment.²¹ The District of Columbia requires a professional affirmation that the applicant's gender is either male or female and is expected to continue as such for the foreseeable future.²² Some states still require surgery before a gender

Mock had been chosen to grand marshal 2014 Pride events in New York City and San Francisco, Meredith Talusman argues that trans people are forgotten when the LGBT Pride celebrations end. Talusman remarks that the story of trans people being marginalized within the LGBT rights movement and tokenized where convenient, is never given enough attention. Meredith Talusman, *45 Years After Stonewall, the LGBT Movement Has a Transphobia Problem*, THE AM. PROSPECT (June 25, 2014), <http://prospect.org/article/45-years-after-stonewall-lgbt-movement-has-transphobia-problem> (Talusman staunchly criticizes HRC for billing itself as an organization that champions rights for all humans (evident in part by the organization's very name), but in reality apportions "resources primarily towards gay and lesbian rights causes, at a time when the trans people have become the most marginalized group in the American struggle for civil rights." Talusman further argues that "[i]f HRC's rhetoric is founded on the notion that it fights for the right to be human, then [it] must acknowledge that trans people are the most dehumanized group fighting for civil rights in the United States today. To have relied on [the human rights] argument at a time when that mantle belonged to gays and lesbians, then to disavow it when another group has come into existence as a greater priority, only reinforces the shameful truth that the Human Rights Campaign only prioritizes the cause of human rights when those humans happen to be gay and lesbian—but not trans.").

19. *ID Documents Center*, NAT'L CTR. TRANSGEND. EQUAL., <http://www.transequality.org/documents> (last updated Oct. 19, 2015).

20. For instance, the State of California requires that an applicant complete the Medical Certification and Authorization (Gender Change) form, which includes a physician or psychologist's certification of the applicant's gender identification, "gender demeanor," and whether applicant's gender identification is "transitional" or "complete." For minors, a parent's signature is required. CAL. DEP'T OF MOTOR VEHICLES, MEDICAL CERTIFICATION AND AUTHORIZATION (GENDER CHANGE) (2008), available at www.dmv.ca.gov/portal/wcm/connect/683f91d7-5c27-4260-970e-c23139bb8e22/dl329.pdf?MOD=AJPERES; see *Changing Your Legal Identification in California*, TRANSGEND. LAW CTR., <http://transgenderlawcenter.org/issues/id/changing-your-legal-identification-in-california> (applicants under the age of 18 must provide parent's signature to request gender designation change for a driver's license). See also *Changing Your Driver's License*, TRANS ROAD MAP, <http://www.tsroadmap.com/reality/drivers-license.html> (listing of requirements by state).

21. See, e.g., CAL. DEP'T OF MOTOR VEHICLES, *supra* note 20.

22. See *ID Documents Center*, *supra* note 19 (under the requirements for Washington D.C.).

designation on a driver's license may be updated,²³ and several require a court order as proof of gender.²⁴

However, federal and state measures allowing a sex/gender designation change can only be seen as inadequate. These government protocols conflate gender and sex,²⁵ a common and problematic confusion.²⁶ To conflate sex with gender is to reinforce an age-old paradigm as “the foundation of societal order”²⁷—that humans are either born male (to become men) or female (to become women), and that specific roles necessarily must follow.²⁸ The problem the system creates for members of the trans* community is predictable. A trans* individual will very likely be able to change the gender/sex designation on a driver's license so long as state procedure is followed. But for the individual who instead identifies as anything other than male/man or female/woman, the only choice is to assimilate,²⁹ or conform, to the dominant social order—at least for the purpose of obtaining a driver's license.³⁰

23. *Florida's Name Change Kit: A Guide for Transgender Individuals Seeking to Amend Their Identity to Conform to Their New Legal Name and Gender Designation*, NAT'L CTR. FOR LESBIAN RIGHTS (Aug. 9, 2006), http://www.nclrights.org/wp-content/uploads/2013/07/fl_namechg_kit.pdf (requiring that one must undergo surgery to obtain a different gender marker on a driver license or identification card in the State of Florida); cf. *Know Your Rights*, LAMBDA LEGAL, <http://www.lambdalegal.org/know-your-rights/transgender/identity-document-faq#Q2> (half of U.S. states have no surgery requirement at all for a gender designation change on a driver's license).

24. See, e.g., *Change Information on Your Driver License or ID Card*, TEXAS DEP'T PUB. SAFETY, <http://www.txdps.state.tx.us/DriverLicense/changes.htm> (“A transgender person must bring an original certified court order verifying the change.”); cf. *Know Your Rights: Transgender Inclusion & Protection*, SC EQUALITY, <http://scequality.org/knowyourrights/transgender/> (requiring medical documentation of gender change, plus a court order or certified birth certificate in the state of South Carolina, but stating that “[t]he general accepted method to change one's gender is to present medical documentation that gender has been changed and a court order to the local DMV”).

25. See, e.g., ALASKA DIV. MOTOR VEHICLES, CERTIFICATION FOR CHANGE OF DESIGNATOR ON DRIVER LICENSE OR IDENTIFICATION CARD, available at <http://doa.alaska.gov/dmv/forms/pdfs/427.pdf> (Alaska certification by a health provider refers to both “change of sex designator” and “applicant's gender identification”).

26. See Thu-Huong Ha, *How Should We Talk About Transgender Issues?*, TED (Mar. 31, 2014), <http://ideas.ted.com/2014/03/31/how-should-we-talk-about-transgender-issues> (discussing societal reactions to sex/gender distinction by cisgender people, noting “[m]ale and female are the two pillars upon which our society is built. Gender dictates everything from what kind of relationship you get into to where you take a piss. And if you upend that, it's very threatening for people. It challenges the system by which they live.”).

27. Francisco Valdes, *Chapter One: Modern Culture: Codification & Internalization*, 83 CALIF. L. REV. 36, 40 (1995).

28. See generally *id.* at 36-118 (discussion found throughout article).

29. See Angel Daniel Matos, *Gay Assimilationists Versus Radical Queers: The Death of Queerness?*, THE EVER AND EVER THAT FICTION ALLOWS (Apr. 6, 2013), <http://angelmatos.net/2013/04/06/gay-assimilationists-versus-radical-queers-the-death-of-queerness/> (“[A]ssimilationists seek complete integration within existing cultural norms and institutions, while radical queers reject integration because they view it as an embrace of the very values and institutions that have fostered sexual and gender-based oppression in the first place.”); see also *Transsexuals, from “Passing” to Radical Assimilation*, TRANSSEXUAL ROAD MAP, <http://www.tsroadmap.com/info/assimilation.html> (last visited Dec. 3, 2015)

Government requirements of various “proof” to alter a designation—from doctor’s notes, court orders, and diagnoses, to entire medical procedures—further indicates that American society is deaf to trans* identity issues and the deeply personal nature of gender. Because gender identity is grounded in self-identity,³¹ and is by its very nature not an objectively-derived designation, a state arguably cannot require any showing of proof without denying a person’s autonomy.³² At present, the United States government does not provide a gender designation option for persons who do not identify as either Male or Female, or for intersex persons who for medical reasons feel they do not fit in either binary category.³³

(regarding MtF transsexuals, the author states “Assimilationists are interested in acceptance as female within mainstream society, and many women in transition who desire to achieve this level of acceptance find it an elusive goal. For some, the price of silence is too high, but for others, it is simply not possible due to appearance and socialization issues. Unfortunately, our community and society at large places a hierarchy [*sic*] based on level of acceptance, which leads some visibly gender variant and unassimilated people to feel inadequate or resentful of being relegated to an “inferior” status.”); Kelby Harrison discusses “passing” in similar terms as I use “assimilation” here. In *Sexual Deceit: The Ethics of Passing*, Harrison mentions Claudia Mills’ exploration of passing as:

[E]ither: a) pretending to be x rather than a y, or b) trying in some artificial way to make yourself into an x rather than a y, instead of simply accepting or affirming yourself as a y [with the] motivation to pass . . . [as] grounded in conditions of oppression. One would not wish to be a x if the social conditions did not favor existing as x over y.

Going further, Harrison notes that “[t]o identify’ might be a form of performance, . . . a narrative, or . . . the self-application of an identity marker: such as declaring oneself a Yankees fan.” KELBY HARRISON, *SEXUAL DECEIT: THE ETHICS OF PASSING* 34 (2013).

30. Assimilate to the binary system by choosing either male or female in order to procure the identification documentation sought. See Christin Milloy, *Ontario Registrar Has Rejected More than Half of Sex-Designation Requests, Including Mine—and They Shredded My Birth Certificate!*, RISE UP AND SEIZE EQUAL. (June 16, 2013), <http://chrismilloy.ca/2013/06/source-ontario-registrar-has-rejected-more-than-half-of-sex-designation-requests-including-mine-and-they-shredded-my-birth-certificate/> (explaining that Canadian transgender individuals may—in theory, and often with difficulty in practice—change the designation on a birth certificate so long as it is changed from “male” to “female” or “female” to “male,” while “people with non-binary identities are left out in the cold.”).

31. Shuvo Gosh, M.D., *Gender Identity and Gender Role*, MEDSCAPE (June 11, 2012), <http://emedicine.medscape.com/article/917990-overview> (“Gender identity is defined as a personal conception of oneself as male or female (or rarely, both or neither). This concept is intimately related to the concept of gender role, which is defined as the outward manifestations of personality that reflect the gender identity. Gender identity, in nearly all instances, is self-identified, as a result of a combination of inherent and extrinsic or environmental factors; gender role, on the other hand, is manifested within society by observable factors such as behavior and appearance.”).

32. Here, “a state” refers both to country and to any of the several U.S. states. When it comes to passports, issued by the U.S. Department of State, there exists no legitimate interest in the federal government’s requirement that a person’s sex or gender be designated.

33. See Jacob Scobey-Thal, *Third Gender: A Short History: From Ancient Greece to Modern Pakistan, the Political and Cultural Emergence of a Complex, Controversial Term*, FOREIGN POLICY (June 30, 2014), <http://foreignpolicy.com/2014/06/30/third-gender-a-short->

For passports, the process is markedly different. As of 2010, an individual may obtain a passport with a changed sex designation, valid for ten years.³⁴ In order to obtain such a passport, however, the requesting individual must present a letter from a licensed physician familiar with the applicant's transition-related treatment.³⁵ Moreover, an individual applying for a changed-designation passport must have undergone "appropriate clinical treatment for gender transition" in order to be eligible.³⁶ The silver lining in the passport application process is that the U.S. Department of State loosely defines what qualifies as appropriate treatment—it really just amounts to whatever one's healthcare provider has decided is appropriate, in the applicant's individual case, to "facilitate gender transition."³⁷

While the change certainly means a step in the direction of trans* inclusion, it is far from enough. While the 2010 policy does not necessarily require surgical procedures,³⁸ only a change from "male" to "female" or from

history/ ("1951-1952: Christine Jorgensen, born George William Jorgensen in New York, completes sex-reassignment surgery in Denmark. Jorgensen, who served in the U.S. Army, gains national recognition as the first American widely known to have had the surgery. New York's *Daily News* runs a front-page story with the headline, 'Ex-GI Becomes Blonde Beauty.' (The United States, however, legally recognizes only two genders; this remains the case today.); James Michael Nichols, *White House Petitioned to Legally Recognize Non-Binary Genders*, HUFFPOST GAY VOICES (March 19, 2014 2:36 PM), http://www.huffingtonpost.com/2014/03/19/non-binary-gender-petition_n_4994200.html (Petition to Obama Administration demands that U.S. politicians "legally recognize individuals whose bodies and experiences fall outside of the male/female gender binary." The petition reads in part: "Legal documents in the United States only recognize 'male' and 'female' as genders. . . leaving anyone who does not identify as one of these two genders with no option. . . This petition asks the Obama administration to legally recognize genders outside of the male/female binary, and provide an option for these genders on all legal documents and records."); see also Jennifer Rellis, "Please Write 'E' in This Box" *Toward Self-Identification and Recognition of a Third Gender: Approaches in the United States and India*, 14 MICH. J. GENDER & L. 223, 223-27 (2008) (discussing that despite 1-4 percent of the world's population being intersex, American society-at-large does not accept the concept of "sexual identity outside the male-female binary"—a reality depicted in the fact that "the medical standard of care for intersex infants in the United States calls for corrective, [non-medically necessary] surgery aimed at 'normalizing' external genitalia to fit" male/female expectations).

34. See *Understanding the New Passport Gender Change Policy*, NAT'L CTR. TRANSGEND. EQUAL. (Last Updated Mar. 2014), http://www.transequality.org/sites/default/files/docs/kyr/passports_2014.pdf.

35. *Id.*

36. *Id.*

37. See *id.*; see also Bureau of Consular Affairs, *Gender Reassignment Applicants*, U.S. DEP'T OF STATE, <http://travel.state.gov/content/passports/english/passports/information/gender.html> (last visited Dec. 3, 2015) ("In order to have the passport issued in your new gender, you must submit a physician certificate with your application that validates whether your gender transition is in process or complete. . . . If a physician certifies that your transition is complete, you are eligible for a full validity ten-year passport.").

38. *Understanding the New Passport Gender Change Policy*, *supra* note 34 (explaining that the doctor need not certify applicant has undergone specific treatment or procedure for passport designation change).

“female” to “male” is allowed.³⁹ This reality makes circumstances difficult for gender non-conforming persons and those whose healthcare providers may recommend treatment that the passport applicants themselves do not want. It is further unclear as to what constitutes “appropriate” treatment under the new rules, leading commentators to speculate as to whether individuals may be subject to cissupremacist⁴⁰ understandings of gender identity.⁴¹ The U.S. government’s requirement that a person choose from the traditional gender binary when deciding which designation represents them legally and officially does not leave any options for persons who identify as neither binary gender—other than to choose to live the lie of an unsuitable designation.

B. *International Approaches Regarding Trans* Identification and Official Identification Documentation*

A handful of countries have taken measures in recent years to alleviate some of the problems trans* and gender non-conforming persons face when choosing a designation for legal documentation.⁴² Australia in particular took a

39. See Autumn Sandeen, *X for Indeterminate, Unspecified, or Intersex*, LGBT WEEKLY (Feb. 28, 2013), <http://lgbtweekly.com/2013/02/28/x-for-indeterminate-unspecified-or-intersex/> (discussing whether a third gender category should exist in the United States, comparing the most recent changes in trans*-accommodating passport measures in the U.S. with those in Australia which recognize and allow an option for persons who do not identify with their assigned sex, nor with “male” or “female” designations); see also Bureau of Consular Affairs, *Gender Reassignment Applicants*, supra note 37 (noting that “completed gender reassignment” or “transition,” or one that is “in process” as a qualification for changing the passport designation from M to F, or vice versa).

40. Cissupremacy may be defined as a discriminatory mindset that favors and values cisgender women and men over trans* people. For example, some “women-only” movements have made a point to explicitly exclude trans* women, based on the assertion that women not born with “traditionally female” biology are not real women. Parallels have been drawn with other historical hate groups, including “men’s rights” activists and the white supremacist Ku Klux Klan, often citing the transphobic call to action by anti-trans* feminist Janice Raymond that “transsexualism should be ‘morally mandated out of existence.’” See Joelle Ruby Ryan, *What They Call “Womyn-Only” Space Is Really Cisgender-Only Space*, TRANSADVOCATE (May 21, 2012), http://www.transadvocate.com/what-they-call-womyn-only-space-is-really-cisgender-only-space_n_6289.htm.

41. Aron Macarow questions the adequacy of U.S. passport-issuing policy. The author points out that U.S. Department of State language explaining the issuance of two-year passports (as opposed to the standard 10-year passport book for adults) for persons “in process” rather than “complete” does not make sense. For how does one complete gender? Moreover, societal views of individuals as either male or female still reign in the United States, making travel potentially hard for citizens of countries with more progressive non-binary passport designation options. Macarow offers an anecdote from Australian citizen Morgan Carpenter: “As an adult with an X passport I can tell you that actually using the passport is fraught with difficulty. I can’t fly to the US with that passport, indeed I can’t even book a meeting about that with their consulate.” Aron Macarow, *These Eleven Countries Are Way Ahead of the US on Trans Issues*, (Feb. 9, 2015), <http://www.attn.com/stories/868/transgender-passport-status>.

42. See *id.* (as of February 2015, Malta offers “X” as a third gender or “decline to state” option for passport applicants, Australia allows an X option, Bangladesh offers an

great stride toward trans* inclusion when Scottish-Australian Norrie May-Welby pursued the legal status of neither man nor woman (for *four years*), and achieved a landmark decision by the High Court.⁴³ The High Court of Australia eventually found, in April 2014, that the New South Wales Registry of Births, Deaths and Marriages possessed the power to record May-Welby's sex as "not specified."⁴⁴ May-Welby was born with male sex organs, and underwent bottom surgery⁴⁵ to transition to female.⁴⁶ However, May-Welby realized she⁴⁷ did not identify as woman, and doctors correspondingly found that she was "neuter," did not identify as male or female, and had neither male nor female sex organs.⁴⁸ However, the case of Norrie May-Welby was not the first step taken by Australia to account for nonbinary identified persons. Alex MacFarlane is believed to be the first person in Australia to obtain a passport displaying the sex designation "X"—on account of being intersex,⁴⁹ as opposed to May-Welby's status as neuter.

MacFarlane was issued a birth certificate that stated sex as "indeterminate—also known as intersex" in the state of Victoria, Australia.⁵⁰ As a result of the decision to allow the "X" marker for MacFarlane, Australian government policy until 2011 was to only allow the "X" marker on passports

"other" category, New Zealand offers an option for non-binary and transgender persons, Germany offers a blank or "X" designation for intersex citizens, India offers a third gender category for intersex, transgender, and hijra individuals, and Nepal offers a third gender category.).

43. In 2010, Norrie May-Welby received a designation of gender neutrality in New South Wales, Australia, becoming the first (publicized, at least) person to be officially recognized as neither man nor woman—or, gender "not specified." May-Welby's birth certificate was changed to reflect the "neutral gender." See *Norrie May-Welby: The World's First Legally Genderless Person*, THE WORLD POST (May 18, 2010, 5:12 AM), http://www.huffingtonpost.com/2010/03/18/norrie-may-welby-the-worl_n_502851.html.

44. Julia Baird, *Neither Female Nor Male*, N.Y. TIMES (April 6, 2014), http://www.nytimes.com/2014/04/07/opinion/neither-female-nor-male.html?_r=1 ("Last week . . . [Australia's] High Court, in a historic decision, ruled that . . . Norrie May-Welby could register as 'nonspecific' on official certificates.").

45. "Bottom surgery" refers to genital surgeries, often referred to as "gender reconstruction surgeries." *Hudson's FTM Resource Guide*, FTMGUIDE.ORG, <http://www.ftmguide.org/grs.html> (last visited Dec. 3, 2015); see also *Resources and Services – Terminology: Key Terms*, UNIV. OF MAINE, <http://umaine.edu/lgbt/resources-3/terminology/> (trans* terminology resource definition: "Bottom Surgery – Surgery on the genitals designed to create a body in harmony with a person's preferred gender expression.").

46. See Kirsti Rawstron, *NSW Registrar of Births, Deaths and Marriages v. Norrie: Implications for Sex Segregation Studies* TASA-THE AUSTRALIAN SOC. ASS'N 1, 4-5, <https://staging.tasa.org.au/wp-content/uploads/2014/12/Rawstron-K.pdf>.

47. Norrie May-Welby has stated "she" as the preferred pronoun. See *id.* at 1.

48. *Id.* at 4-5.

49. MacFarlane is regarded as possibly the first person in the world to be issued a passport recognizing their being intersex. While women typically possess a 46XX chromosomal makeup, and men 46XY, MacFarlane possesses a 47XXY chromosomal makeup. See Julie Butler, *X Marks the Spot for Intersex Alex*, W. AUSTRALIAN NEWSPAPER (Jan. 2003), http://www.crossdressing.pl/main.php?lv3_id=675&lv2_id=32&lang=en.

50. See JENNIFER E. GERMON, GENDER 182 (2009).

when the applicant could “present a birth certificate that notes their sex as indeterminate.”⁵¹ In 2011, government policy broadened to allow the issuance of passports with the “X” designation to anyone documented as indeterminate sex, with the guideline that “sex reassignment surgery is not a prerequisite to issue a passport in a new gender,” and stating further that the issuing of such a passport did not require amended birth or citizenship documents.⁵² The Australian government has further revised requirements for sex and gender recognition, and today extends the “X” designation to all adults who so choose, with the option available in all governmental matters.⁵³ Moreover, Australian Commonwealth guidelines state that the Australian government recognizes the difference between, and thus collects data regarding gender, as opposed to just sex,⁵⁴ stating that “[w]here sex and/or gender information is collected and recorded in a personal record, individuals should be given the option to select M (male), F (female) or X (Indeterminate/Intersex/Unspecified).”⁵⁵

The progress in Australian policy may serve as a model for similar measures in the United States, though not without thorough analysis. Substantial criticism of the Australian developments have since come to light (not least amongst the trans* community), and would have to be dealt with to create a beneficial policy. Critics of the Australian model argue that the Australian government has “further stigmatise[d] an already stigmatised minority” in intersex persons, by treating everyone who happens to fall under the umbrella of indeterminate/intersex/unspecified as one in the same.⁵⁶ Gina Wilson, President of Organisation Intersex International Australia, worries that the Australian government’s action may lead to unintended consequences for intersex persons—such as the inability to get married—in the event that the inclusion of the X category creates a legally-unrecognized “new class of people, a third sex,”⁵⁷ and a second class of citizens. To counter, some trans* rights advocates applaud the Australian government in recognizing that some of its citizens identify as neither male nor female, arguing that May-Welby’s court

51. Australian Human Rights Commission, *Sex Files: The Legal Recognition of Sex in Documents and Government Records*, THE SEX AND GEND. DIVERSITY PROJECT (Mar. 2009), available at https://www.humanrights.gov.au/sites/default/files/document/publication/SFR_2009_Web.pdf.

52. *Sex and Gender Diverse Passport Applicants*, AUSTRL. GOV’T DEP’T OF FOREIGN AFFAIRS AND TRADE, AUSTRL. PASSPORT OFFICE <https://www.passports.gov.au/passportsexplained/theapplicationprocess/eligibilityoverview/Pages/changeofsexdoborpop.aspx> [hereinafter *Passport Applicants*].

53. *Australian Government Guidelines on the Recognition of Sex and Gender*, AUSTL. GOV’T, ATTORNEY-GENERAL’S DEP’T (May 30, 2013) <http://www.ag.gov.au/Publications/Pages/AustralianGovernmentGuidelinesontheRecognitionofSexandGender.aspx>.

54. *See id.*

55. *See id.* (click full pdf version of the Guideline, quote at page 4).

56. Alex McKinnon, *Court Ruling “Stigmatises” Intersex People*, *STAROBSERVER (June 7, 2013), <http://www.starobserver.com.au/news/court-ruling-stigmatises-intersex-people/104671>.

57. *Id.*

victory means that increased scrutiny will be brought to the notion that the binary is the only means of correctly “doing gender”.⁵⁸

C. *The Indian Model*

India has also come remarkably far in accommodating trans* people on legal documents compared to other world governments. In *National Legal Services Authority v. Union of India*,⁵⁹ the Supreme Court of India recognizes a “third gender” for transgender individuals, which amounts to important changes in the rights of some trans* citizens. This includes a mandate that the Indian government provide transgender persons with the same rights and access to services as the country’s other minority groups.⁶⁰ The ruling paves the way for increased employment, education, and medical care for the country’s large transgender population, which previously had been turned away from such opportunities on the basis of being transgender.⁶¹ In support of the ruling, Justice K.S. Radhakrishnan notes, “Recognition of transgenders as a third gender is not a social or medical issue but a human rights issue.”⁶²

University of Iowa professor and trans* activist Aniruddha Dutta argues that the Indian “third gender” ruling is overly vague for failure to specify surgery requirements.⁶³ In one part of the decision, a reference is made to Argentina’s model, which does not require medical certification for a person to

58. Performing gender within particular, perhaps gendered, surroundings. Candace West and Don H. Zimmerman discussed “doing gender” in 1987. “Doing gender involves a complex of socially guided perceptual, interactional, and micropolitical activities that cast particular pursuits as expressions of masculine and feminine ‘natures.’” Candace West & Don H. Zimmerman, *Doing Gender*, 1 GENDER & SOC’Y 125, 126 (1987).

59. See generally *National Legal Services Authority v. Union of India and Others*, Writ Petition (Civil) No. 400 of 2012 (India: Supreme Court), available at <http://www.refworld.org/docid/5356279d4.html> [hereinafter India Court]; see also <http://www.equalrightstrust.org/ertdocumentbank/NLSA%20v%20Union%20of%20India.pdf>.

60. Terrence McCoy, *India Now Recognizes Transgender Citizens as “Third Gender,”* WASH. POST, April 15, 2014, <http://www.washingtonpost.com/news/morning-mix/wp/2014/04/15/india-now-recognizes-transgender-citizens-as-third-gender/>; *India Court Recognizes Transgender People as Third Gender*, BBC NEWS (April 15, 2014), <http://www.bbc.com/news/world-asia-india-27031180>; Michael K. Lavers, *India Supreme Court Recognizes “Third Gender,”* WASH. BLADE (April 15, 2014, 5:16 PM), <http://www.washingtonblade.com/2014/04/15/india-supreme-court-recognizes-third-gender/>.

61. *India Court*, supra note 59; see also Nikita Lalwani, *Landmark Ruling for Transgender Indians*, WALL ST. J. (April 15, 2014 5:56 PM), <http://blogs.wsj.com/indiarealtime/2014/04/15/supreme-court-recognizes-transgendered-indians/>.

62. *India Court*, supra note 59; see also Lavers, supra note 60 (Justice K.S. Radhakrishnan wrote in the decision, “Discrimination faced by this group in our society is rather unimaginable and their rights have to be protected, irrespective of chromosomal sex, genitals, assigned birth sex or implied gender role . . . [r]ights of transgenders, pure and simple, like hijras, eunuchs, etc., have to also be examined, so also their right to remain as a third gender as well as their physical and psychological integrity.”).

63. See *Here & Now: What India’s “Third Gender” Ruling Means*, WBUR (May 6, 2014), <http://hereandnow.wbur.org/2014/05/06/india-third-gender> [hereinafter Here & Now].

self-identify as a gender other than that to which they were assigned at birth.⁶⁴ Elsewhere, however, the decision suggests that psychological tests may be required. This is problematic “given the constraints of how diagnosis of gender dysphoria works in psychiatry and medicine, and is often based on binary and linear models of identification.”⁶⁵ Moreover, the ruling mandates hospital wards exclusively house transgender patients, a requirement that would take away what some see as an individual’s right to independently determine in which gender-designated ward they wish to receive treatment.⁶⁶ Lastly, Dutta argues that the lack of specificity contained in the decision will provide individual states the discretion to interpret the mandate as they please. Thus, a risk remains of “gender policing by state bureaucratic mechanisms (determining who can be third gender, who can be recognized as transitioned male or female, etc.),” and a return to surgical and hormonal requirements which many trans* people do not want or cannot access.⁶⁷

D. *The Ontario Model*

The international approaches to sex/gender designation policies that are most similar to those of the U.S. and those discussed in this paper come from Canada. This is not unexpected considering the country’s proximity to the United States, as well as its politics, neoconservative in comparison to those of Western Europe. The province of Ontario now allows transgender individuals to change the sex designation on birth certificates, but does not allow a change to anything other than Male or Female.⁶⁸ That said, the province no longer requires surgery for such a change to be obtained, upon order by the Human Rights Tribunal of Ontario.⁶⁹ However, in contrast with U.S. policy regarding the same matter, one is not required to undergo any medical treatment to change the designation on an Ontario driver’s license.⁷⁰ Today, at most, an “opinion letter” from a health care provider stating that the change is appropriate may be necessary.⁷¹

64. Aniruddha Dutta, *Thoughts on the Supreme Court Judgment on Transgender Recognition and Rights*, ORINAM (April 19, 2014), <http://orinam.net/thoughts-supreme-court-judgment-transgender-recognition-rights/>.

65. *Id.*

66. *See Here & Now*, *supra* note 63.

67. Dutta, *supra* note 64.

68. *See* Letter from Helen Kennedy, Exec. Dir., Egale Canada to Alexandra Schmidt, Senior Policy Advisor, SERVICEONTARIO (July 30, 2012), <http://egale.ca/all/sex-designation/>.

69. *See id.*

70. *See id.*

71. *How Do I Change the Sex on My Driver’s Licence?*, SERVICEONTARIO (Feb. 23, 2015), <http://www.ontario.ca/faq/how-do-i-change-sex-designation-my-drivers-licence>.

E. U.S. Treatment of Trans Detainees Based on Gender Characterization*

“Transgender women are frequently housed with men, dramatically increasing the likelihood of assault.”⁷² Upon being raped by her male cellmate, a transgender immigration detainee was told by an on-duty staff person to just “deal with it.”⁷³ This treatment is indicative of the federal government’s lack of understanding of the realities and needs of trans* people in general, and trans* immigration detainees in particular. Instead of being housed with regard to their self-identified gender, many trans* immigrants in detention are held based on their biology.⁷⁴ Other times, trans* detainees are held in solitary confinement for long periods of time, in an attempt by Immigration and Customs Enforcement (ICE) to keep them from being harmed. Such measures often simply usher in the mental harm that comes from being completely isolated for extended periods.⁷⁵ Some seventy-five trans* prisoners are detained by ICE any given night, most of them transwomen.⁷⁶ The grave repercussions of the federal government’s ignorance regarding trans* identity show that pigeonholing individuals into categories in which they do not belong has atrocious results.

It should be noted that non-immigration detention facilities in the United States also operate under an assumption of binary gender.⁷⁷ As in immigration detention facilities, prisoners are segregated based on genital appearance—binary segregation that leads to “especially horrific abuse of transgender and

72. Parker Marie Molloy, *Activists Call for Release of Trans Immigration Detainee Raped in Custody*, THE ADVOCATE (Aug. 1, 2014 5:13 PM), <http://www.advocate.com/politics/transgender/2014/08/01/activists-call-release-trans-immigration-detainee-raped-custody>.

73. *Id.*

74. Mara Kiesling, Executive Director of the National Center for Transgender Equality, expresses the dire situation of transgender immigration detainees.

They’re housed wrong because they’re trans. . . . There are so many alternatives to detention that could be used while waiting for asylum hearings, for deportation, for anything. There are alternatives like house arrest with ankle bracelets. Now, we’re not in the business of recommending ankle bracelets, but if people are going to be put into situations where authorities don’t want to protect them from frequent sexual assault, maybe ankle bracelets are the right way to go.

Molloy, *supra* note 72.

75. Joanna Vasquez recounts how she was treated in immigration detention due to a lack of appropriate measures for trans* detainees. She was with men, and attacked by a male cellmate. Guards told her the only way to ensure her safety was to house her in solitary confinement—a 6-by-13 foot cell where she was forced to live for 23 hours a day, completely alone, for the remaining seven months she spent awaiting an asylum decision. By the end of her detention, Vasquez “feared she was losing her mind as solitary took its toll.” Cristina Costantini et al., *Why Did the U.S. Lock Up These Women with Men?*, FUSION (Nov. 17, 2014 7:00 AM), <http://interactive.fusion.net/trans/>.

76. *Id.*

77. See Alexander L. Lee, *Nowhere to Go But Out: The Collision Between Transgender & Gender-Variant Prisoners and the Gender Binary in America’s Prisons*, JUST DETENTION INT’L (Spring 2003), <http://www.justdetention.org/pdf/nowheretogobutout.pdf>.

gender-variant prisoners whose genders and bodies do not conform to these stereotypes.”⁷⁸ For example, trans* prisoners who have not undergone surgery to appear “traditionally” male or female, but are imprisoned in wards for a specific binary gender or sex category, are easy targets for harassment and other abuse.⁷⁹

II. ANALYSIS

A. *Inadequacy of “Male/Female” as Official Document Fields*

We all interact with gender-segregated facilities and institutions, like bathrooms and locker rooms, but many of us haven’t thought about what it means that almost every institution designed to house, exploit the labor of, and control low-income people and people of color is gender-segregated. In all of these locations, gender binaries are enforced by means of humiliation, assault, and rape. . . . [I]n part because a white, liberal civil rights discourse has framed the LGBfakeT rights movement, the vital importance of these issues to the lives of most transpeople has often remained underdocumented, underanalyzed, and insufficiently acted upon. . . .⁸⁰

As most gender scholars agree, and briefly touched upon above, gender and sex are inherently separate concepts,⁸¹ and should therefore be addressed accordingly. The United States government, as well as many Americans, regard sex and gender as one and the same—a designation one receives at birth (or, perhaps, upon later surgical procedure) that corresponds to one’s sex organs.⁸²

78. *Id.* at 2-3.

79. *See id.* at 25 (“While all prisoners experience the gender-oppressive aspects of incarceration and conditions of confinement, [transgender and gender-variant] people’s unique genders make them special targets because [their] bodies and minds defy the gender binary system and therefore pose unique threats to the gender enforcement aspects of state punishment. . . . [They have been] sexually assaulted, raped, and beaten by fellow prisoners and prison staff; subjected to homophobic and transphobic slurs from staff, forced to submit to frequent and unnecessary demeaning strip searches (that are in truth only performed to satisfy staff curiosity about [transgender and gender-variant prisoners’] genitals.)”).

80. Dean Spade, *Fighting to Win*, in THAT’S REVOLTING! QUEER STRATEGIES FOR RESISTING ASSIMILATION 47, 50 (Mattilda Bernstein Sycamore 2008).

81. *See* OBOS Sexual Orientation & Gender Identity Contributors, *Separating Sex and Gender, OUR BODIES OUR SELVES* (April 10, 2014), <http://www.ourbodiesourselves.org/health-info/separating-sex-and-gender/> (“Sex is commonly understood to be based on a person’s genitals and reproductive organs; these anatomical details are thought to define a person as male or female. Gender is often understood to refer to gender identity, meaning your internal sense of yourself as female, male, or other, regardless of biology. . . . Gender also commonly refers to gender roles or expression, most often behaviors and physical characteristics considered masculine or feminine in a particular culture.”).

82. *See id.* (“In American culture, gender is believed to follow directly from one’s biological sex, so a baby born with a vagina is considered female, called a girl, and expected to grow up to be a woman who acts, dresses and talks in a manner considered by the culture

We know the refrain: boys, men, and males have penises, while girls, women, and females are by nature endowed with vaginas and vulvas. For cisgender⁸³ men and women—even those well-versed in gender studies—the pervasive gender/sex conflation likely glides past largely unnoticed. For trans* persons, however, society’s confusion can take a toll on daily lives. “[S]ex is the legal fiction that occurs when the appearance of an infant’s genitals at birth (as formalized by an ‘M’ or ‘F’ on a birth certificate) results in each person’s placement into a legal category of ‘male’ or ‘female.’”⁸⁴ But because many trans* persons do not identify with the “M” or “F” on their birth certificate, driver’s license, passport, or other legal documentation (the only legal designations currently available in the United States), they must constantly battle the incongruity between who they are and the narrow categories available.

Trans* people often experience dysphoria⁸⁵ and depression as a result of their appearance or identity not “matching” the sex or gender designation on, for example, a driver’s license. One FTM⁸⁶ trans* interviewee explained:

I started my transition in 2010, injecting [testosterone], but haven’t been able to change my license. As if I didn’t already feel sick every time someone thought I looked like a woman, now I deal with looking like the man that I am—but have to feel stressed-out and

and her community to be feminine. A baby born with a penis is considered male, called a boy, and expected to grow up to be a man who acts, dresses and talks in a manner considered to be masculine. In this binary way of thinking, our genitals, not our internal sense of self are the deciding factor.”).

83. Cisgender refers to a person who identifies with the gender assigned to them, typically at birth, in contrast to a person who is transgender and identifies with a gender not assigned at birth. Katy Steinmetz, *This is What “Cisgender” Means*, TIME (Dec. 23, 2014), <http://time.com/3636430/cisgender-definition/> (author describes “cisgender” as applying to the “vast majority of people, describing a person who is not transgender. If a doctor announces, ‘It’s a girl!’ in the delivery room based on the child’s body and that baby grows up to identify as a woman, that person is cisgender.” According to statistics, 99% of the population is cisgender, a term that some argue is the “an equal to” the term “transgender”).

84. Tomchin, *supra* note 9.

85. A term recently adopted by the Diagnostic and Statistical Manual of Mental Disorders (DSM-V) to “better characterize the experiences of” trans* persons than the DSM-IV’s “gender identity disorder.” The “critical element” of gender dysphoria is “the presence of clinically significant distress associated” in persons who identify as other than the gender assigned them at birth. According to the American Psychiatric Association, “[g]ender dysphoria is manifested in a variety of ways, including strong desires to be treated as the other gender or to be rid of one’s sex characteristics, or a strong conviction that one has feelings and reactions typical of the other gender.” *Gender Dysphoria*, AM. PSYCHIATRIC PUBLISHING, [available at](http://www.dsm5.org/documents/gender%20dysphoria%20fact%20sheet.pdf) <http://www.dsm5.org/documents/gender%20dysphoria%20fact%20sheet.pdf>.

86. *Transgender Terminology: FTM*, NAT’L CTR. TRANSGEND. EQUAL., <http://www.transequality.org/issues/resources/transgender-terminology> (last visited Dec. 3, 2015).

nauseous because of the potential questions I face if I have to show my ID.⁸⁷

The interviewee noted that his struggle with depression worsens when he feels the stress of potentially being pulled over by the police, or interacting with police in political protest, stating that “it makes me feel like I shouldn’t even be part of a demonstration, because the potential of getting arrested and assaulted in a jail is [too much].”⁸⁸

But the issues run deeper for some trans* persons who would prefer to be seen as neither man nor woman. Because gender lies on a spectrum and is fluid, much like sexual orientation, a trans* person might not identify as “wholly male” or “wholly female” at a given point in life.⁸⁹ As such, a person’s gender identity can also change over time—another reality government bureaucracies are far from understanding or accommodating. The second interviewee, when asked what designation they would prefer to use on official identification documents, stated they would like to be regarded as “something in between” or “queer,” but does not see such an option becoming a reality in the United States anytime soon.⁹⁰

I haven’t actually been harassed because I’m trans*, at least that I know of. But I would feel more comfortable with a [designation] that said something other than Male or Female, or maybe [simply not have such a field listed]. I don’t necessarily [appear as either-or] at this point, and I guess, until I do, I can see being hassled if I had to show my license [which still states my birth name and birth sex/gender].⁹¹

We must learn that the obstacles trans* people face, with regard to the “wrong” sex/gender designation, do not disappear when a government agency allows a change from “male” to “female,” or vice versa. The inherent fluidity of gender clashes with the binary classification scheme. This reality has serious consequences for those who do not identify as either/or and recognize that they

87. Interview 1 (author’s records).

88. *Id.*

89. Trans* advocacy group TransCentral PA provides an explanation of gender’s fluid nature.

[T]here are multiple domains defining gender. In turn, these domains can be independently characterized across a range of possibilities. Instead of the static, binary model produced through a solely physical understanding of gender, a far more rich texture of biology, gender expression, and gender identity intersect in multidimensional array of possibilities. Quite simply, the gender spectrum represents a more nuanced, and ultimately truly authentic model of human gender.

Transgender 101, TRANSCENTRAL PA, http://www.transcentralpa.org/resources_T101.htm.

90. Interview 2 (author’s records).

91. *Id.*

should not be forced to essentially lie or put forth a false veneer by choosing one designation over the other.

The legal option to change the sex/gender designation on one's documentation, even when the individual seeking the alteration *does* identify with either "M" or "F", hardly begins to scratch the surface of the issues the trans* community must endure on account of gender identity, even at the hands of our government. "Discrimination on the basis of gender identity is common in welfare offices, on workfare job sites, in Medicaid offices, and in Administrative Law Hearings for welfare, Medicaid, and Security Disability benefits."⁹² For those who manage to navigate the booby-trapped American benefits system, consistent access to entitlements often requires legal representation or other advocacy.⁹³ Unfortunately, however, "most poverty attorneys and advocacy organizations are still severely lacking in basic information about serving [trans*] clients and may reject cases on the basis of a person's gender identity, or create such an unwelcoming environment that a [trans*] client will not return for services."⁹⁴

B. Gender Policing Based on Binary Assumptions

This Comment refers to gender policing as the invisible framework of rules and punishments society uses to keep people's gender and sexuality in "check," to enforce a binary understanding of Male/Female-only gender. A simple example might be the anecdote of a boy who is made fun of by his peers for playing with dolls or wearing pink, or the parent who polices their child's gender by scolding that "boys don't cry."⁹⁵ Others have referred to gender policing in a trans* context to discuss instances of requests for identification by police leading to "presumptions that transgender people are fraudulent, deceitful, or inherently suspicious," or past sumptuary laws which gave police the authority to arrest anyone found "impersonating another gender" by not wearing "gender appropriate clothing."⁹⁶

Trans*-identified individuals note facing "almost insurmountable difficulty when instructed to check an 'F' or 'M' box on identification papers"⁹⁷—neither option is adequate. Some individuals choose to use non-

92. Spade, *supra* note 80, at 49.

93. *Id.* at 50.

94. *Id.*

95. Additionally, Stephanie Medley-Rath recounts her young daughter being socialized at preschool that her favorite color should be pink, as opposed to her own preference of "all the colors." Medley-Rath notes that her daughter "is learning that this inconsequential choice has already been made for her because of her gender." Stephanie Medley-Rath, *I Like All the Colors: Gender Policing Children*, SOCIOLOGY IN FOCUS (Oct. 10, 2012), <http://www.sociologyinfoocus.com/2012/10/10/i-like-all-the-colors-gender-policing-children/>.

96. *Enforcing the Gender Binary*, INCITE! 5, http://www.incite-national.org/sites/default/files/incite_files/resource_docs/3515_toolkitrev-policinggender.pdf.

97. LESLIE FEINBERG, *TRANS LIBERATION: BEYOND PINK OR BLUE 1* (Beacon Press 1999).

standard pronouns they feel more sufficiently represent their gender, including, but not limited to ze/hir,⁹⁸ and they.⁹⁹ When addressing the reasons for pronouns other than he/she or him/her, people often mention things like a need for society to recognize their actual gender and personal truth.

One proposed solution is, of course, to understand gender as a self-assigned social construct and instead use identification markers to signify a person's sex. As one may gather, a "solution" of this sort does not rectify the problem. As Dylan Vade points out: even sex is not a black or white, male or female issue—the biological traits that society and governments use to determine sex still constrain.¹⁰⁰ "[T]here are endless combinations of these categories. . . [of] biological variety,"¹⁰¹ but we degrade people who do not fit society's notions of the proper biological make-up of what we believe constitute the sexes. Intersex persons, for example, are often considered flawed, or seen as possessing biology that deviate from a "normal"—a "medical and social emergency . . . that must be 'corrected' immediately . . . with a knife."¹⁰² Because our concept of sex is socially constructed and prescribed, not to mention greatly oversimplified, it cannot be said that to only list an individual's sex on documentation is an adequate remedy to the identification designation problem.

Without delving too deeply into the matter, it seems that in due process terms, a government's only purpose in denying trans* persons a non-binary option on official documents is a discriminatory one—or at least one that does not recognize the liberty at stake.

C. Gender Policing in Detention

American gender policing has real consequences for trans* people in specific contexts, especially in circumstances where trans* people reside in government detention. Reports show that LGBTQ individuals are abused in these situations at higher rates than those perceived or who identify as outside of the community.¹⁰³ Trans* people in particular report especially high rates of

98. *Gender Neutral Pronouns*, TRANS@MIT, <http://web.mit.edu/trans/GenderNeutralPronouns.pdf> (last visited Dec. 3, 2015).

99. Steven Petrow, *Gender Neutral Pronouns: When "They" Doesn't Identify as Either Male or Female*, WASH. POST, Oct. 27, 2014, http://www.washingtonpost.com/lifestyle/style/gender-neutral-pronouns-when-they-doesnt-identify-as-either-male-or-female/2014/10/27/41965f5e-5ac0-11e4-b812-38518ae74c67_story.html.

100. Dylan Vade, *Expanding Gender and Expanding the Law: Toward a Social and Legal Conceptualization of Gender that Is More Inclusive of Transgender People*, 11 MICH. J. GENDER & L. 253, 271 (2005) (including such traits as chromosomes, reproductive organs, and hormones); see generally Julie A. Greenberg, *Defining Male and Female: Intersexuality and the Collision Between Law and Biology*, 41 ARIZ. L. REV. 265, 275 (1999) (internal citation omitted).

101. Vade, *supra* note 100, at 280.

102. *Id.* at 281.

103. Sharita Gruberg, *Dignity Denied: LGBT Immigrants in Immigration Detention*, CTR. FOR AM. PROGRESS (2013), <https://cdn.americanprogress.org/wp->

mistreatment in immigration detention, often as a direct result of trans* identity or appearance related to such identity.¹⁰⁴ Astonishingly, United States Immigration and Customs Enforcement (ICE) field offices failed to report some 40 percent of immigration detention center sexual assault allegations to ICE headquarters.¹⁰⁵ Measures have been recently implemented to protect transgender immigrant detainees, but their restrictions keep them from ensuring safe detention for all such persons.

In March 2014, the United States Department of Homeland Security (DHS) finalized standards for the Prison Rape Elimination Act (PREA),¹⁰⁶ which apply to immigrants held in immigration detention institutions owned by DHS, and to ICE.¹⁰⁷ Many of the protections set forth in the PREA standards directly apply to LGBTQ immigrants, and promote safer conditions for them in detention.¹⁰⁸ The standards require DHS to adopt a zero tolerance stance on sexual abuse. They also require all affected detention facilities to adopt written zero-tolerance policies and keep an outline of how they will go about detecting, preventing, and responding to “inappropriate conduct.”¹⁰⁹ Importantly, the PREA standards include “safe placement standards” mandating that transgender immigrants not be placed in detention “solely based on identity documents or physical anatomy.”¹¹⁰ Instead, decisions as to where to place transgender individuals must be made after looking at several factors, such as “gender self-identification, health, safety needs, and the advice of a medical or mental health practitioner.”¹¹¹ In some cases trans* immigrants may be subject to supervised release or other detention alternatives, but when they must be held at a detention facility, the standards dictate that an individual’s own gender self-identification should form the basis for placement location.¹¹² The standards further prohibit examination of an immigrant detainee “for the sole

content/uploads/2013/11/ImmigrationEnforcement.pdf (FOIA requests and complaints filed show that LGBT inmates face “increased risk of abuse in detention” when held in immigration facilities to a similar extent as in general prison populations, “where LGBT inmates are 15 times more likely to be sexually assaulted than the general population.”)

104. Amy Lieberman, *Complaints by Transgender Detainees Quantify Abuse*, WOMEN’S E-NEWS (Sept. 3, 2013) <http://womensenews.org/story/lesbian-and-transgender/130902/complaints-transgender-detainees-quantify-abuse>.

105. Gruberg, *supra* note 103, at 9.

106. See *DHS Announces Finalization of Prison Rape Elimination Act Standards*, U.S. DEP’T OF HOMELAND SECURITY, DHS PRESS OFFICE (Feb. 28, 2014), <http://www.dhs.gov/news/2014/02/28/dhs-announces-finalization-prison-rape-elimination-act-standards>.

107. Sharita Gruberg, *How the Prison Rape Elimination Act Helps LGBT Immigrants in Detention*, CTR. FOR AM. PROGRESS (April 2, 2014), <https://www.americanprogress.org/issues/lgbt/report/2014/04/02/86976/how-the-prison-rape-elimination-act-helps-lgbt-immigrants-in-detention/>.

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

purpose of determining [their] gender,” in order to protect detainees’ dignity and curtail wrongful touching by detention center employees.¹¹³

If followed, the standards appear to protect non-gender binary immigrant detainees from some of the harshest mistreatment typically suffered in detention centers—especially if such individuals are not forced into placement amongst detainee populations that will harm them. Given the reality that trans* people tend to at minimum experience harassment of some sort in any sizeable population of persons not specifically concerned with trans* welfare, it seems impossible that any placement of such individuals in detention facilities would be safe. But the standards appear to allow placement of immigrants in solitary confinement for extended periods so long as such placement was for sexual abuse reasons, and so long as no reasonable less-restrictive alternatives exist. This practice seems to make way for a singling-out of non-binary identified individuals who for identification reasons do not “belong” in either male or female detention facilities. It also allows such individuals to be subjected to the pitfalls of solitary confinement when they can only be held in detention centers.

Naturally, the PREA standards are immeasurably important for the wellbeing of trans* immigrant detainees who, if placed with members of their birth-assigned sex, would be at risk for harm. That said, the standards are not infallible and may even cause trauma in trans* detainees. To note, immigration detention facilities are required under PREA to notify an ICE supervisor within seventy-two hours of placing a detainee in solitary confinement based on “vulnerability to sexual abuse or assault” and determine the existence of less-restrictive options; however, solitary placement may nonetheless take place, a practice that has been found to cause psychological harm to the affected detainee.¹¹⁴ In contrast, DHS strictly prohibits placement in solitary confinement when such placement decision would be made on the sole basis of an immigrant’s gender identity.¹¹⁵

Surely we should applaud the U.S. government’s attention to the safety and health concerns that arise from the detention of trans* immigrants, but we cannot stop here. The PREA standards again only apply to the treatment of those detainees held in detention facilities DHS owns, which leaves many immigrant detainees housed in facilities owned by private corporations and space rented from county and local facilities without such mandated safeguards.¹¹⁶

113. Gruberg, *supra* note 103.

114. *See id.*

115. *See id.*

116. *See* Mary Meg McCarthy, *U.S. Department of Homeland Security’s Sexual Assault Regulations Take Effect Today*, NAT’L IMMIGRANT JUSTICE CTR. (May 6, 2014), https://immigrantjustice.org/press_releases/us-department-homeland-security%E2%80%99s-sexual-assault-regulations-take-effect-today.

D. Discussing Possible Solutions

When it really comes down to it, is it anyone's business what gender or sex a person states on their passport, driver's license, or birth certificate? Because we know neither sex nor gender are determined by a person's looks nor body, this Comment speculates that perhaps no such designation should be included on legal identification. Alternatively, if research proves a vital necessity in stating the shape of an infant's body parts on a birth certificate, then it makes the most sense to actually spell out what a child's genitalia look like. As Julie Greenberg argues, we determine biological sex in large part based on a person's ability to engage in reproductive heterosexual procreation.¹¹⁷ This seems perverse.

To use this type of system would almost certainly result in discrimination or at least "othering" when an adult or adolescent individual uses said birth certificate to, for example, apply for benefits or a passport if their appearance does not match an issuing agency's perception of how a particular organ-having person should look or act. A person's gender and sex are not to be publicly accessed, scrutinized, controlled, or evaluated. Instead, they are for each individual to know—and no one else, unless given permission by the affected person themselves.

We arrive at the question: where should government "draw the line"? How many designations are necessary to avoid discrimination? It seems the answer might lead down a slippery slope.¹¹⁸ I will therefore take the inquiry a step further and ask: Is any such designation truly necessary? And, at what point is an inquiry into where one "falls" in relation to "male" or "female" the government's business?¹¹⁹ Without delving too deeply into the matter, it seems that a government's only purpose in denying trans* persons a non-binary option on official documents is a discriminatory one—or at least one that does not recognize the autonomy at stake.¹²⁰ As Jillian T. Weiss argues, perhaps we must question what "putative state interests can be asserted in favor of gender regulations," their legitimacy, and their "rational nexus to the law."¹²¹ If the inability to possess a passport or birth certificate with the appropriate gender designation means that a person is subject to harassment, violence, or

117. Julie Greenberg, *Legal Aspects of Gender Assignment*, ENDOCRINOLOGIST 277, 278 (June 2003).

118. In the sense that, adding countless acceptable designations in the "sex" or "gender" field on documentation applications can never truly satisfy all people, given the fluid, self-identity-based nature of gender, and the many types of intersex.

119. See generally Jillian T. Weiss, *Gender Autonomy, Transgender Identity and Substantive Due Process: Finding a Rational Basis for Lawrence v. Texas*, 5 RACE, GENDER & ETHNICITY (Feb. 2010) (arguing that substantive due process may protect gender autonomy and gender self-identity).

120. These are intended as questions to the reader—not as solutions, or a call to action for a particular path toward trans* rights. Instead, the purpose is to begin a discussion as to how Americans should go about addressing lacking identification designations, and what the end goal may be.

121. See Weiss, *supra* note 119, at 2.

discomfort when in public situations, then it seems as though one lacks all meaningful autonomy.¹²²

E. Taking on the Passport Problem

For U.S. passports to accommodate non-binary identified citizens, several changes to current regulations have to be made. One option is to introduce “X” as an alternative to M and F as a designation in passports. This would not require persons to use “male” or “female” as a designation when they do not wish to have either designator represent them for international travel and identification purposes. Where the X marker is allowed, as in Australia, trans* and intersex persons may feel more able to be open about their gender, but it still does not solve the ultimate problem of gender identity being fixed by the government. This Comment argues that the institution of an “X” marker for passports, while better than no non-binary designation option at all, still confines people to a representation of their sex or gender that they themselves have not chosen. This problem must be rectified. No person should be obligated to live under any such designation with which they have not decided to identify.

Currently, the International Civil Aviation Organisation only allows M, F, and X as accepted designations.¹²³ The X designation in Australia is meant to signify intersex or unspecified sex. In reality, due to the conflation of sex with gender, it trivializes trans* individuals’ genders and encourages a perception that trans* persons are “other.” It further implicates a notion that genders other than man or woman can exist, but are not worthy of their own designations. For passport designations to be fair to all, there must be recognition that each individual has the right to personally determine what title best fits who they are as individuals. Either *all* identities should be acceptable on passports, or none at all. The former option should allow for individuals to write in the identifier they want to go by when applying for the document, and their choice should be adopted in the passport itself, no questions asked. We cannot accept for any person’s identity to be circumscribed or pigeonholed by institutions, and must instead accept any individual’s gender identity.

In the alternative, perhaps sex/gender designations should be scrapped altogether. We should ask: what purpose do they serve? If the purpose is to ensure that travelers are indeed who they portray themselves to be, alternative methods, such as photographs, can serve that function. Passport sex and gender designations are too constraining, not to mention long-lasting¹²⁴ to be accurate, effective, and nondiscriminatory. Typical U.S. passports are valid for five or ten years, a timespan during which a person’s gender or sexual identity may plausibly change. Not only is a person’s gender or sex no one else’s business, but to require an individual to pay for a new passport any time their sexual or

122. Weiss recalls her arguments regarding rights of self-determination of gender, and of self-identification of gender based on privacy protection of sensitive information. *Id.* at 6.

123. *Passport Applicants*, *supra* note 52.

124. Whereas gender can change from moment to moment.

gender identity slightly changes is prohibitively expensive.¹²⁵ To force the International Civil Aviation Organisation to accommodate all genders (the number of which is, due to the non-static nature of gender, necessarily indeterminate) with computer and infrastructure systems would also be too expensive to implement, not to mention update every time an individual realizes a change in sex or gender. Even further, gender and sex policing by federal passport agencies and international organizations is intrusive and evokes a sort of lifestyle-monitoring that seems to imply that citizens cannot be trusted to exercise personal agency and autonomy.

III. CONCLUSION

Trans*-identifying people are subject to discriminatory treatment based on gender when unable to obtain documentation that accurately depicts who they are. A parallel can be drawn from the lack of appropriate ID designations, to the violence and disparagement many experience in detention—appearing or identifying in some way that governments have yet to accept leads to one being “othered” in governmental institutions. It may be especially difficult to remove a gender/sex designation from, or to add additional designations to, a passport, on account of international rules. Even so, it has become apparent that the task is now upon us.

It appears that the common thread in the discussion regarding designations for non-binary and trans* persons is self-identification. Sex is a private matter, not solely based on a birth certificate (as is the case for intersex persons), and gender is widely regarded as based on one’s feelings and perceptions of self. As such, any one person should be able to choose their personal gender where documentation of it is needed. Additionally, it seems that allowing prisoners and detainees a choice of where they will reside while in government custody is the best way to ensure their wellbeing. More than humanitarian concerns, there may be true constitutional issues at stake in the designation debate.

A total restructuring of the American outlook on gender may need to take place for us to eliminate gender designations overall. That said, there is no time like the present to begin the task of better trans* inclusion. Many questions remain in this area of study, outside the scope of this Comment but worth exploration. Among them, what constitutional issues are implicated in a mandatory gender designation requirement? Further, how does such a requirement affect political refugees and international mobility? What bearing might an increase in social, media, and social media coverage of trans* celebrities and queer politics have on public and governmental dispositions toward the role of the binary gender in Millennial America? The author’s hope is for readers to discuss the information contained and conclusions drawn in this piece, and to arrive at new conclusions and ideas of their own.

125. Passports typically cost around \$100.00 to \$150.00. *Passport Fees*, U.S. DEP’T OF ST. AND CONSULAR AFF. <http://travel.state.gov/content/passports/english/passports/information/fees.html>.