

Asian Diasporas, Neoliberalism, and Family: Reviewing the Case for Homosexual Asylum in the Context of Family Rights

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I came to the United States from Pakistan in 1991 as a student. I had come to the United States because I had a thought that coming out as a gay man would be safer for me in this country. After graduating in 1995, I moved to New York City and became a member of the South Asian Lesbian and Gay Association, SALGA. I had realized that going back to Pakistan was not an option for me anymore. I would not be able to do the kinds of work that I wanted to do with safety in Pakistan. There is no infrastructure in place in Pakistan where I could obtain legal recourse if threatened for being queer. As queer immigrants in this country are usually placed outside immigration law, applying for asylum seemed to be the only strategy where I did not feel that I was compromising myself as a gay man. Heterosexual marriage and working a job I did not like for years to get a green card did not seem like attractive choices. Choosing to apply for asylum instead of availing myself of other options also became a political choice. Furthermore, I strongly believed in my claim and felt that under U.S. immigration law I fit the categories of asylum. I did have a genuine fear that if I led life as an openly gay man in Pakistan, my life would be in danger.

—Saeed Rahman, ARTICLE TITLE, *Columbia Human Rights Law Review* (1998)

The sexual history of Asian diasporas is being written across nations, institutions, their publics. In this essay, I would like to speak about one privileged site and set of institutions in which the “sexual history” of the Asian diaspora is produced, organized, and subjected to regulation. That is, I would like to investigate the “history of sexuality” for Asian diasporas whose lines of dispersion cross U.S. space. What kind of “history of sexuality” is being written in this collision of diasporic groups and U.S. space?¹

For nearly two centuries this collision has, in actuality, produced a genealogy of sex for both the U.S. nation-state and “modernized” diasporas. The “Chinese prostitute” consecrated by the Page Law of 1875 and the “Chinese bachelor” formed in the residue of successive Chinese Exclusion Acts from 1882 to 1943 are just some of the most famous figures to emerge from this collision. But I set my sights today on one of the newest figures to emerge from the annals of the sexual history of the

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Asian diaspora.² This figure, like his counterparts in previous historical periods, is to be found in the legal text and its supplementary genres, such as public health, anthropology, and psychology. The figure is named the “gay Pakistani immigrant,” and he is found in immigration proceedings, juridical cases, and legal journals. Though murmurs of his existence have been heard before, and debate as to whether he was real continued for a number of years, he crossed a certain threshold of reality in the mid-1990s and emerged onto the legal, cultural, and social scene in an attire and voice fully suited to claim equal personhood at the table. And like his predecessors, U.S. immigration law remains the defining apparatus for his juridical and discursive constitution.

The epigraph offers a representative instance of his speech as it has been produced by and deposited into the annals of law. It comes from the narrative testimony of Saeed Rahman, recorded in the pages of the *Columbia Human Rights Law Review* in 1998.³ Rahman is a “gay” South Asian immigrant living in New York City who successfully petitioned the Immigration and Naturalization Service (INS) for “asylee” status based on his claim of “belonging to a persecuted social group.” Rahman’s experience is one of only a few hundred cases in which the applicant’s “sexual orientation”—that is, his “homosexuality”—qualified him for membership in a “social group.” But Rahman’s discourse marks a certain liminality within both normative diasporic formations and the nation-state, each of which depends on the racialized institutions of kinship and family, a point to which I return later in this essay.

The very site in which Rahman’s homosexuality is recorded and protected by the law is also a site partially deterritorialized from the nation-state. For while asylum law within the United States is governed by the Immigration and Nationality Act, the judges who preside over these administrative cases are generally understood as exempt from some of the mandates of national immigration law that otherwise define admission into the United States. Instead, these judges are bound to broadly defined “international human rights” standards and international humanitarian law as established by the 1951 Convention Relating to the Status of Refugees. Hence, as the globalization scholar Saskia Sassen has argued, asylum law is one instance by which nonnational or global forces are creating a de facto immigration policy, one that far from binding the universality of the nation begins to delink sovereignty and the nation-state in important ways.⁴ In this way, asylum cases represent “anomalous states” from the perspective of national right, marking instead the emergence of supposedly new capitalist social formations that are parasitical of the modern institutions of the state and its forms of power. If Rahman, and the few hundred legal cases similar to his, enters the national record through the law and

the institutions of the border, such as the INS courtroom, that entrance betrays a transformation of those very institutions. Indeed, his designation as a “homosexual” within the legal record is at once a symptom of the contemporary forms and forces of a capitalist globalization.

In this essay I argue that the juridical appearance of the “gay Pakistani immigrant” must be situated within the context of the neoliberal restructuring of state power. Examining the broader discursive and material reorganization of U.S. immigration policy in the 1990s through the Family Reunification Act, moreover, I claim that the reconstitution of state power through the deployment of “family” constitutes the conditions of possibility for the juridical recognition of the gay Pakistani immigrant. As a figure at the limit of national law, the gay Pakistani immigrant marks in fact an important and constitutive tension within the national record and the practice of governance it subtends. For the figure, like the Chinese prostitute and Chinese bachelor before it, is produced in the conflicts and contradictions expressed by the state. This critique requires us to situate that enfiguring statement, the gay Pakistani immigrant, within the context of neoliberalism, the name for the contemporary mode of capitalist accumulation and the logics, broadly speaking, that organize current political practice and social rule, enfolding the discursive practice of “family.”⁵

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Neoliberalism and Its Citizens

While neoliberalism elaborates a world-historical context, it has articulated with the nation-state differently in the global North and the global South. In both cases neoliberal economic policies and programs, begun in the late 1970s, have stressed the opening of markets, the financialization of currency regimes, the privatization of the public services sector, and the commodification and capitalization of biological life. Composed of such practices and logics, neoliberalism has most powerfully affected the imagined relation between the state and civil society, disorganizing the fantasy structure if not the actual operation of the so-called closed welfare economies hegemonic during the period of neoliberalism’s emergence. As Gayatri Chakravorty Spivak has written, in an essay on the politics of diasporic studies in our transnational times, “within the definition of an ideal civil society, if the state is a welfare state, it is directly the servant of the individual. When increasingly privatized, as in the New World Order [of neoliberalism], the priorities of the civil society are shifted from service to the citizen to capital maximization.”⁶ Yet, while “the undermining of the civil structures of society is now a global situation,” Spivak suggests that

a general contrast can be made: in the North, welfare structures long in place are being dismantled. The diasporic underclass is often the worst victim. In the South, welfare structures cannot emerge as a result of the priorities of the transnational agencies. . . . Political asylum, at first sight so different from economic migration, finally finds it much easier to re-code capitalism as democracy. It too, then, inscribes itself in the narrative of the manipulation of civil structures in the interest of the financialization of the globe.⁷

As Spivak argues, the particular structural economic constraints on global Southern countries (the postcolonial and decolonizing countries) continue to effect a dismantling of the state and the national economy as agencies and sites for social redistribution. Under such constraints, the national citizen as a figure of recent decolonization is by necessity disintegrated from the state. This citizen then operates as the persistent reminder of the state's inability and failure to achieve security for its citizenry against the ravages that daily accompany neoliberal capitalism. Importantly, the seizure of citizenship discourse by the "new social movements" in the global South remains a compelling catachresis in the globalized fight for just life, in part because it necessarily foregrounds the splitting of nation and state from their modernist configuration as the "nation-state" because of the pressures of neoliberal capitalism.⁸

Yet, as Spivak reminds us, immigrant advocacy and social justice projects in the global North that make their appeals to the state are implicated in the very structure of global inequity that continues to separate nation from state in the global South. For in the global North, Spivak reveals, the citizen remains consonant with the state, not despite but precisely because of neoliberalism. We must therefore ask after how the promulgation of a politics of citizenship—most often expressed as the desire to partake in civil society and the social safety net designed by the welfare state—might only further the ends of neoliberalism rather than thwart it.

Indeed, this observation suggests that we respecify what has colloquially been understood as the contemporary "dismantling of the welfare state" in the United States. For, in actuality, neoliberalism has not precipitated entirely the state's dismemberment or the erosion of its social safety net. Rather, it has entailed the reorganization of the state through, first, the consolidation of a welfare state for lower-middle- through upper-class U.S. citizens and citizen clones (professional green-card holders). This consolidation promises not "social redistribution" but rather the *distribution of entitlements* and the security to wield and exercise those entitlements in a now "internationalized" civil society. In this process, the redistributive functions traditionally associated with the welfare state are indistinguishable from the social reproduction and growth of capital. Put otherwise,

we can say that while the welfare state is organized to reproduce labor power and simultaneously regulate/capture labor, the current “postwelfare state” governmentality is organized to produce wealth through the extension and production of new modes of valorization. The privatization and public investment of retirement funds and the growth of the 401(k) capital investment sector are a case in point.

Second, we have witnessed the state’s revocation of this welfare structure and of social rights for the racialized poor and the noncitizen class, also in the name of citizen security. Since the mid-1990s, this has become a particularly salient phenomenon. The 1996 passage of three linked federal laws—the Welfare Reform Act, the Illegal Immigration Reform Act, and the Counterterrorism Act—together worked to politically and economically disenfranchise the noncitizen and simultaneously to redirect capital’s surpluses back into the economy. In each instance, such acts were facilitated discursively through practices of security. Moreover, these acts specifically denied immigrants the basic rights of all workers at a time when the immigrant is a category primarily composed of Latino, Asian, and Caribbean people. Or take, for example, that the ending of affirmative action in major revenue states such as California and Texas coincided with the buildup of the “prison-industrial complex” in these very same states.⁹

In both cases, the political and economic disenfranchisement of the racialized noncitizen immigrant and the racialized citizen poor is devised in the name of securitizing civil society for its entitled subject, the citizen-as-capitalist and its juridical clones. In addition, the current war, originally justified as protecting “American” lives, has extended this governmentality, clarifying that the so-called quality of life and standard of living that we attach to U.S. citizenship is, like CNN, embedded directly in the machinery of the neoliberal imperial state, in the occupation and the destruction of the fragile but still active infrastructures of Afghanistan, Iraq, Venezuela, North Korea, and any other non-European or non-Zionist country that challenges U.S. policies for their region. The current war has only magnified the conceit that to occupy the place and logic of the U.S. citizen is to situate oneself structurally, and willy-nilly, within an imperial neoliberal state and social formation.

If these latest acts of international war and violence by which the citizen becomes the subject of both neoliberal and imperial forms of power are retroactively coded as a defense of American life, that coding has facilitated the cementing of a discourse of security in which the “terrorist” is figured as the racialized and sexualized “other” of the citizen.¹⁰ Within the binary that organizes this discourse, the “terrorist” is indistinguishable from any formation that seeks to contest the “welfare rights” of the U.S. citizen (as

a bearer of capital) in whose name the state survives. Through preemptive defense, the practices that are metaleptically “founded” on national security, the state has relied on the logics of racial discourse to suture imperial and American multinational corporate endeavors. The U.S. citizen—even and especially as the liberal multicultural subject—is in fact a racial figure on the global scene.¹¹ Splitting the totality of populations for which the U.S. state operates as a tactic of rule into the bifurcated categories of the citizen or the “international” subject of civility and the varieties of nonnationals and noncitizens whose imperatives to redirect the state as a figure of redistribution and social difference designates them as “terroristic.” The U.S. state has made “security” an aspect guaranteed almost exclusively to capital. Under such conditions, the keywords of modern political life, *democracy*, *citizenship*, *civil society*, and *rights*, become the very terms by which the liberal and now neoliberal representative state legitimates imperialism and racial exploitation as the socially good.

If the construct of the U.S. citizen, and more broadly the subject of international civility, ratifies the current mode of production, a mode for which the state is both a facilitator and decentered, that construct under the postwelfare state system inaugurates the very opposite of what it ideally represents: the citizen’s freedom requires the reduction of the immigrant worker to the state of chance, democracy designates military order, and the protection of civil rights ratifies the torture of the enemy combatant. Or, as Marx wrote of the French Empire under Louis Bonaparte during the era of monopoly capitalist colonialism, “only *one thing* was needed to complete the true form of this republic . . . the [President’s] motto, *liberté, égalité, fraternité* must be replaced with the unambiguous words *infantry, cavalry, artillery!*”¹²

We might say that the U.S. citizen-subject has become the twenty-first-century “conservative peasant” of which Marx spoke so scornfully in the Eighteenth Brumaire.¹³ Petty in its interests, heterogeneous to the formation of social classes on the global scale, and resistant to being politically and socially represented by the global proletariat on whose back society prospers; under neoliberalism, the U.S. citizen is not a figure for reflexivity and enlightenment. Indeed, the regulative discourse of citizenship, which continues to operate as the bearer of capitalist rationality, deconstitutes the very positions and locations from which U.S.-based subjects might grasp the world-historical context of neoliberalism and the order by which they are both ruled and sustained.

Family Rights and the Reunification of the State

The current conditions suggest that it is imperative that we refuse the figure of the citizen as the subject of knowledge and as the trope of unity. Moreover, in the context of U.S. asylum cases, as Spivak argues, a narrative that promotes the racially and sexually excluded's desire to enter into U.S. civil society that also fails to situate that desire within the context of other "desires" (of the gendered subaltern, for example) that are structurally foreclosed, violently refused, or made impossible by the "fulfillment" of the former trajectory in neoliberal times risks producing current struggles as alibis for exploitation. It also risks foreclosing and "forgetting" the critical disruptions and radical possibilities these very struggles open up. In order, then, to develop a critical reading of Rahman's testimony, I suggest examining the conditions that produce that testimony but are not directly visible in the text in which that testimony appears. That is, I want to explore how "family" as a regulative formation in the current governmentality organizes the conditions for "gay asylum." Hence we can resituate that supplementary figure as the site for a critique of the regulative function of family.

In a recent article in the *Los Angeles Times*, as part of its daily reporting on the rush of gays and lesbians seeking marriage petitions from the San Francisco County bureaucracy, the reader is offered the following testimony:

"We are already a family," said Mara McWilliams, a 34-year-old health worker from San Jose, as she waited in line for her turn [to receive a marriage certificate] in the clerk's office Sunday morning. Her 8-year-old daughter Serena, clutched her leg. . . . "This is to show the world we are already a family. We're normal professional people. We're not here with our freak on."¹⁴

In our contemporary moment in the United States we are witnessing a certain recrossing of what Foucault has named the "deployment of alliances" with the "deployment of sexuality" (HS, 106). These different historical currents have once again found their point of convergence and intersection in the space of "family." And, moreover, this domain of family, whose centrality to the current governmentality is as indisputable as it is unstable, is also the effect of new articulations of race and sexuality, articulations whose investigation poses specific challenges and critical opportunities for those of us working in the domain of queer studies.¹⁵

In *The History of Sexuality*, Foucault argues that the relations of sex organized by a "*deployment of alliance*: a system of marriage, of fixation

and development of kinship ties, of transmission of names and possessions” (106) were gradually transformed, incorporated by the deployment of sexuality, into a new set of apparatuses whose object is the individual body. While both deployments have a constitutive relation to economy, the system of alliances arranged the relations of sex to definite statuses in order to direct the proper transmission and circulation of wealth. In contrast, the deployment of sexuality, Foucault argues, “is linked to the economy through numerous and subtle relays . . . proliferating, innovating, annexing, creating and penetrating bodies in an increasingly detailed way, and in controlling populations in an increasingly comprehensive way” (HS, 107). If the deployment of alliance waned in importance because of shifts in the mode of production by the late eighteenth century, Foucault argues that its main institution—the family—was preserved and even extended by the new deployment, which emerged from within the peripheralized apparatuses that subtended the previous system of sexual relations. Since then “the family,” in the “West,” has remained “the interchange of sexuality and alliance: it conveys the law and the juridical dimension in the deployment of sexuality; and it conveys the economy of pleasure and the intensity of sensations in the regime of alliances.” This incorporation, in which alliance is sexualized and saturated by desire, is also the mode by which a new form of power links the “state” and the “family.”

As our current moment attests, in which representations of same-sex marriage reconcile homosexuality with the family, the state has emerged as a central locus by which certain “nonnormative sexualities” have sought to make it a terrain of freedom, destigmatization, and normality. In doing so, sexuality has once again become, quite powerfully, organized around questions of legitimacy and illegitimacy, intensifying the libidinal attachments to legal figures and subjecthood, and displacing many of the diverse knowledges and practices of sexuality whose aims and modes of existence are in excess of or relatively autonomous from concerns about legal ratification.¹⁶

It would appear that the current moment would require us to think also about how the deployment of sexuality subtends and is anchored by the contemporary capitalist mode of production. In the United States, that mode of production continues to rely on nonnational differences (of gender, race, and sexuality) to expand the proletarian class. Diaspora and migration have increasingly come to define and restructure these differences, subtending new formations of nonnormative sexualities.¹⁷ How might we enter the “focus on family,” as the U.S. Christian Right names it, in order to pursue an inquiry into the functions of capital, the U.S. state, and contemporary strategies of accumulation? In particular, what might be the different functionings of family in the current elaboration of racial and neoliberal capitalism?

For the last three years the Audre Lorde Project (ALP), a queer people of color organizing center in New York City, has been involved in developing a report on queer immigrants of color and the politics of immigration.¹⁸ The report reveals that since the 1980s the state has actively worked to produce a racialized and gendered labor migration through the rubric of family reunification. Designed to assess how current immigration policy creates the conditions for a certain “homophobia” within immigrant communities and yet remains unaddressed by both gay and lesbian and immigrant rights groups, the report and the broader organizing initiative sought to reveal how the depoliticization of certain social forms, such as the “family” deployed by the state at the current moment, became the very means by which the state racially stratified immigrant communities in relation to the broader citizenry and actively organized a social structure for global capital in the city while appearing to be pursuing facially “neutral,” and even just, social policy—one that corrected historical exclusions.

Since 1986 a large quotient of low-wage immigrant workers came to New York City through the Family Reunification program. For example, though many scholars have suggested that the major pull factor for immigration in the 1990s was a shortage within the United States of workers, especially for those located within the domestic, low-end services, and “unskilled” labor markets, the Immigration Act of 1990 capped the number of immigrant visas for so-called unskilled workers at a paltry ten thousand while it increased family-based immigrant visas to 480,000 annually beginning in 1995. While family immigration obviously includes minors and seniors who are either legally or functionally unable to enter the labor market, family-based immigration offers by far the largest pool of immigrant visas for so-called unskilled workers.¹⁹

In other words, while immigrants are recruited by the persistence of entry-level jobs in the services, industrial, and informal sectors of New York, the federal government continues to recruit such workers through the language and networks of family reunification. The effect of creating economic pull factors that recruit immigrants to the United States while using bureaucratic categories like “family reunification” to code that migration as essentially produced by the petitioning activity of resident immigrants living in the United States is to enable the appeasement of capital’s need for immigrant workers while projecting the state as either a benevolent actor reuniting broken families or an overburdened and effete agent unable to prevent immigrants’ manipulations of its (mandatory) democratic and fair laws. In either case, the recruitment of low-wage workers—who compose the majorities of the immigrant of color populations in New York City—is displaced from the state’s responsibility and relocated back onto immigrants themselves. In this manner, the state is

absolved politically from having created and expanded the conditions of noncitizen life within the territorial parameters of the United States and, at the same time, distinguishes itself as the apotheosis of Western Democracy by achieving the status of depoliticized neutrality.

Indeed, since its original passage of the Family Reunification Act in 1986, the state has increasingly elected to attach the wardship of the welfare of all incoming immigrants to the petitioning families themselves.²⁰ In a rather stunning move that has effectively destroyed the state's redistributive function within a managed economy, the state's mandate that petitioning families must now absorb the state's welfare functions for immigrants, in the context of the state's continuing bid to dismantle the welfare economy, has meant that it is now the role of the poor to absorb the social costs of poverty and a "healthy" unemployment rate! The state has effectively managed to both increase the numbers of immigrants arriving into the United States, as the economy continues to demand low-wage noncitizen labor, and at the same time to use immigration as the vehicle to dismantle its welfare responsibilities.²¹

In addition to the benefits the state accrues through coding the recruitment of labor under family reunification, these governmental practices also engender conditions within which the family unit is now a site and apparatus (willy-nilly) of state regulatory and capitalist power. For immigrants recruited through family reunification, patriarchal and heterosexual mandates have often become prerequisites to gaining family or welfare support. With the effective dismantling of welfare benefits of noncitizen racialized workers, workers brought in through family reunification have increasingly been forced to depend on family ties for access to room and board, employment, and other services, such as (what amounts to) workplace injury insurance, health care, child care, etc. In other words, federal immigration policies such as Family Reunification extend and institute heteronormative community structures as a requirement for accessing welfare provisions for new immigrants by attaching those provisions to the family unit.

In sum, the new federal structure has increased immigrants' exposure and structural dependence on heteropatriarchal relations and regulatory structures. Many queer immigrant interviewees spoke about the impossibility of "being gay" in a context in which one's dependence on "family"—broadly defined—is definitional to living as an immigrant in the City.²² While this is something spoken about commonly enough in progressive circles, the tendency is to immediately assume the supposedly more essential homophobic nature of immigrant cultures over "American" culture or to blame the extraordinary willingness of queer immigrants to accept homophobic silencing and closeting. However, such "culturalist"

arguments only further mask the state's role (as I have described it) in exactly engendering and enforcing the very immigrant homophobias that many claim are brought over by immigrants from their home countries. Both the intensity and specificity of homophobia in queer immigrants of color's lives are founded on local conditions (and not because of the "culture" that they bring from abroad, as so many scholars are quick to suggest) and are produced at the intersection of state immigration policies and their fixation on the heteropatriarchal family unit. Rather, the category of "gay" presumes a particular liberal order of "family," "civil society," and the "state" discursively and ideologically impossible for queer immigrants, deferring the queer of color into the status of the nonnational, produced at the limit of civil society.²³ More pointedly, the liberal isomorphism of family, society, and state requires as its condition of possibility the "queer of color" immigrant as a nonindividuated, nonrights-bearing "subject," whose conditions of existence confounds that isomorphism.²⁴

In addition to the state's official immigration policy, federal and state governments since the Clinton years also have been empowered to shift the delivery of services away from public and private nonprofit secular providers and toward religious organizations and groups. In New York City, rising numbers of church organizations petition for government money and an increasing number of immigrants access church services as their primary service provider. Again, it is the dislocating of the state's function as a welfare agent that has exposed queer immigrants of color in particular to remarkable heteropatriarchal coercion and that produces the disproportionate enforcement of heteropatriarchal relations within immigrant of color communities.

Some scholars have pointed to what they believe is a potential silver lining in the end of the traditional welfare state: the diminishing importance of the state in the private and social lives of citizens and residents.²⁵ However, as I have argued, the erosion of the welfare state has not only been manifested by the withdrawal of economic and social resources to working and poor people. In fact, and in addition, the continued deterioration of the welfare system will not result in the withdrawal of state power from the lives of immigrants of color, or queer immigrants of color in particular, but will instead foster the expansion of social regulation through a growing reliance on state-circumscribed or sponsored social forms, such as family and religion. Moreover, the state's dependence on these forms for social regulation and political economic reproduction suggests that these forms will increasingly be burdened by and restructured by the state's interest and demands, distancing them from their historical social forms, compelling them instead to conform to the state's representation of their limits, functions, and modalities.

Recruiting and socializing labor through the category of family reunification enabled the state to extend its regulatory power while disestablishing a welfare state for immigrant communities. Moreover, by posing the denial of family reunification as historically a racially restrictive and ascriptive state practice that denied equal citizenship to immigrant of color communities, the state was able to produce a racialized and gendered differentiated class of workers via its pursuit of equality and supposed “racial redress.” The state’s recourse to “family” to recruit noncitizen labor and simultaneously distance that labor from social rights, the ALP report suggests, also became the very conditions for a state-enforced heteronormativity that projected immigrant communities as antiliberal and sexually conservative. Lastly, the state began through asylum law—in which gender and sexuality were recognized as “membership in a social group”—in the very same decade to draft U.S. citizenship as a formally protective apparatus against patriarchy, homophobia, and supposed “illiberal” cultures. In other words, family reunification enabled state power to simultaneously create heteropatriarchal relations for the recruitment and socialization of labor while justifying the exclusion of immigrant communities from state power through a liberal language of U.S. citizenship as the guarantor of individual liberty and sexual freedom.

Homosexual Asylum and the Critique of Law

Returning to Rahman’s testimony, I would like to use the preceding discussion of neoliberal political economies of the family to pursue a “queer of color” critique of his petition for asylum. In *Aberrations in Black: Toward a Queer of Color Critique*, the theorist Roderick Ferguson argues that the “sexual,” as the expression of “racially gendered relations,” emerges in the United States in the conflict between capital and the political state, especially protracted since the twentieth century.²⁶ While industrial capital, Ferguson argues, seeks labor, regardless of its origins, the political state qualifies its body politic through a set of racialized and gender ideals that it narrates as fundamental. Ferguson writes, “Capital is based on a fundamentally amoral logic. Capital, without pressures from the state or citizenry, will assemble labor without regard for normative prescriptions of race and gender” (16). Yet “the modern nation-state has historically been organized around an illusory universality particularized in terms of race, gender, sexuality, and class, [and, as such,] state formations have worked to protect and guarantee this universality” (17).

Such imperatives come into conflict with one another as capital tends

toward the accumulation of “heterogeneities,” disrupting social hierarchies, while the state tends toward a “heteronormativity,” multiplying racial, gender, and sexual differences and particularities as it seeks universality within the material conditions of heterogeneity. In this way, industrial capital also disrupts modern political ontologies of rule: “While capital can only reproduce itself by ultimately transgressing the boundaries of neighborhood, home, and region, the state positions itself as the protector of those boundaries” (17). Reading sociology as an archive of the arts of governance, Ferguson argues that this tense contradiction is expressed in the rise of certain stock figures in the sociological archive across the twentieth century, such as the “transgendered mulatto,” the Negro as the “Lady among the Races,” and the “out-of-wedlock mother.” These figures (and others) constitute the genealogy and limit of “community,” “family,” and “nation.”

The gay Pakistani immigrant extends that genealogy as industrial capitalism is reconstituted by transnationality, neoliberalism, and the dominance of finance capital in our contemporary moment. In particular, working through Ferguson’s framework, we might suggest that the figure of the gay Pakistani immigrant offers a genealogy of “family” within the contemporary United States. Indeed, as I argue below, the gay Pakistani immigrant as produced by the law is a supplement within the discourse of family and kinship as the state seeks to survive in a “post-state class-system.”²⁷ Hence I would like to take up a “queer of color” critique of the current U.S. social formation and place that critique in critical opposition to citizenship, particularly as that practice is organized by the discourse of security to “free” capital. Situated within the shift from the welfare to the postwelfare neoliberal governmentality, such a reading would eschew an interpretation of his petition as seeking the security of U.S. citizenship to protect gay liberty or sexual freedom or a reading that posed the emergence of the gay Pakistani immigrant within the legal text as a victory for gay visibility in the archive.

Rather, this reading would discover and name in the legal record the strategies of repressive management that seek to define for their own ends what is knowable and thinkable about the figures ensnared in its web. Such a reading would resist the national archive we call the law whose regime of truth demands the daily conquest of multiple pasts and of the historical differences irreconcilable with that regime. It would read the figure of the gay Pakistani immigrant as formed in the contradiction between heteronormative social relations mandated for immigrants of color by the state’s policies and the liberal state’s ideology of universal sexual freedom as a mask for growing these social relations. In the annals of the sexual history of the Asian diaspora, sexuality materializes the conflict between an

emergent governmentality and the state's desire to perpetuate itself beyond its point of expiration, in which "family" is their site of intersection.

If, as Ethne Luibheid has argued, the U.S. nation-state has historically ascribed sexuality to its populace through the technologies of the border, then asylum law both extends and breaks with that historical practice.²⁸ For in this case, the set of logics, discourses, regimes of truth, and imperatives that establish and identify homosexuality as a "social group" and the gay Pakistani as a victimized member of that social group, available for the nation-state's protection, is paradoxically the expression of a transformation in contemporary governmentality. That is, the figure of the gay Pakistani immigrant is both a symptom of globalization and the transnationalization of U.S. capital, and a new formation developed in the interstices of the nation-state. This figure emerges in the breach between the nation-state and the political economy.

Returning, then, to Rahman's narrative we witness certain complexities. For, on the one hand, it names the legal and civil infrastructure of the United States as a protective space for freely conducting work or pursuing private enterprise, a work and enterprise that presumably connotes homosexuality or that subtends a homosexual existence. On the other hand, these very notions of freedom and security are negated or denied for Rahman by the same legal and civil infrastructure that denies "queer immigrants" through the apparatus of immigration permanent access to that civil and legal infrastructure of the U.S. nation-state. If his application of asylum "resolved" that contradiction, it also became a point of politicization, one whose trajectory, however, we are not given an account of here. In this way, Rahman's politicization is appropriable for a number of groups and interests. For example, it could be used by gay and lesbian "human rights" groups to claim the importance of sexuality as a human right and of human rights as incubators of political subjectivity, a presupposition of full personhood.²⁹ It could be used by U.S.-based gay and lesbian so-called civil rights groups such as the Human Rights Campaign (HRC) to expose the unfairness of immigration laws that deny gays and lesbians equal rights as citizens.³⁰ Alternatively, it might be appropriated by Asian American political and cultural groups to establish the authenticity and legitimacy of queer Asians.

Yet I want to ask how else we might read this statement, this racialized and sexualized "figure of speech." In doing so, I want to pose the law as more than a medium and terrain in which pressing social relations and the asymmetries and inequalities that subtend those relations are structured, adjudicated, and "resolved." Instead I situate the law, by which I mean more broadly the legal sphere, as an "archive," in this instance an archive or racialized sexuality. That is, the legal sphere might be approached as one

site in which the nation's official records are maintained and reproduced, giving those who seek identity through the law a history of their kin.

By naming the law an “archive” I mean to observe how the law seeks to be the record of the confrontation of social groups with the universality of “community” and the “state” posited by liberal political theory and epistemologies. Not just the law of record, the law's textuality is also the expression of the law *as* record. And, as an archive or mode of record keeping, the law seeks to produce an account of social differences that preserves the conditions for universality. Put otherwise, historical and social differences (of gender, race, sexuality, etc.) are subjugated by the law, as a precondition of their entrance into the national record, forced to preserve the liberal narrative of universality on which the legal sphere bases its notion of justice and the nation is said to be founded. As an archive, the law organizes social and historical differences in ways that promise both knowledge (of difference) and membership. In this way the law as an archive is not a dispassionate or disinterested space of records. Rather, it is the privileged ledger by which knowledge, idealized as dispassionate and disinterested, is, paradoxically, made coincident with community, idealized as nonalienated experience, producing that peculiar epistemo-affect associated with the “citizen.”

Like all archives, the law, and the broader textual legal sphere, as an archive is not simply an institutional site for the recording of the past and of historical and social difference. Rather, it is a framework that, ironically, promises its reader agency only through the perpetual subjugation of differences, a subjugation, then, that targets not only the past but also the future. Indeed the law as an archive addressed to the citizen or potential subject of “civility” seeks, above all, to be an archive of the future. If, as Foucault argues, the archive must be construed as “the law of what can be said,” in a particular social formation, then that which we understand as the law in a more limited sense is an archive of how the state has come to be organized necessarily on and within that broader social and material formation.³¹

Hence the archive is not a passive domain in which differences, such as the gay Pakistani immigrant, can be found, extracted, and restored to their fullness, if necessary. It is the active technique by which sexual, racial, gendered, and national differences, both historical and futural, are suppressed, frozen, and redirected as the occasion for a universal knowledge. It is the technique by which the modern U.S. state promotes the citizen as a universal agent through that knowledge production—to women, queers, people of color, etc.—demanding that we take up its framework for difference (both historical and social) as a prerequisite for a validated agency. U.S. capitalist society, as a differentiated social formation, is mediated by

the law, which operates as the regulative structure and archive for that very differentiation. The legal archive subjugates pasts and futures in the name of recording supposedly both difference and community.

Contending with the law as an active archive, or technique of self-making and the making of selves, as I do here, requires that we not simply “take up” its narrative and framework. Instead, we need to ask how regulation marks its interest in difference. Asking after this regulation requires reading these figures against the grain of the archive, situating that archive within and against the social formation—the forces and relations that constitute it—which bourgeois law cites but which it, haplessly, cannot comprehend. In other words, we need to read the figure as the limit of the archive, the point at which the archive’s own conditions for existence might be retraced.

Notes

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1. By a “history of sexuality” I mean to reference Michel Foucault’s argument that modern social power constitutes the very object “sex” that it then seeks to regulate. A historicist inspection of the repression of sexuality and its gradual emergence from repressive law, Foucault argues, naturalizes and disappears the diverse processes that affix “sex” as a unitary ideal. See Michel Foucault, *History of Sexuality*, vol. 1, *An Introduction*, trans. Robert Hurley (New York: Vintage Books, 1990), hereafter cited as HS in the text.

2. On the Chinese prostitute and Chinese bachelor as racialized and sexualized figures constituted by U.S. legal territory and its apparatuses, see Nayan Shah, *Contagious Divides: Epidemics and Race in San Francisco’s Chinatown* (Berkeley: University of California Press, 2001). See also Lisa Lowe, *Immigrant Acts: On Asian American Cultural Politics* (Durham, NC: Duke University Press, 1996), 1–36.

3. See the symposium “Shifting Grounds for Asylum: Female Genital Surgery and Sexual Orientation,” New York University School of Law, 16 October 1997. The proceedings have been transcribed, edited, and published in *Columbia Human Rights Law Review* 29 (1998).

4. See Saskia Sassen, *Losing Control? Sovereignty in an Age of Globalization* (New York: Columbia University Press, 1996), 33–62.

5. See David L. Eng, “Transnational Adoption and Queer Diasporas,” *Social Text*, no. 76 (2003): 1–37.

6. See Gayatri Chakravorty Spivak, “Diasporas Old and New: Women in the Transnational World,” *Textual Practice* 10 (1996): 248.

7. *Ibid.*, 249.

8. On the differences between postcolonial and postimperial (or global Southern and global Northern) state formations under neoliberalism, see M. Jacqui Alexander, “Erotic Autonomy,” in *Feminist Genealogies and Democratic Futures*, ed. M. Jacqui Alexander and Chandra Talpade Mohanty (New York: Routledge, 1999). On the splitting of nation and state in the compound abstraction “nation-state,” see Spivak, “Diasporas Old and New,” 249, 255–63. On the possibilities of postcolonial resignification of citizenship and more generally on the catechresis of Western regulative governmental terms in postcolonial space, see Spivak, “Postcoloniality, Marginality, Value,” in *Outside the Teaching Machine* (New York: Routledge, 1993).

9. See Ruthie Gilmore, “Globalization and US Prison Growth: From Military Keynesianism to post-Keynesian Militarism,” *Race and Class* 40 (1998–99): 171–87.

10. On the racialization of the “terrorist,” the organization of the state through the discourse of security, and the rise of new “racial formations,” see Leti Volpp, “The Citizen and the Terrorist,” *UCLA Law Review* 49 (2002): 1575–600; and Muneer Ahmed, “Homeland Insecurities: Racial Violence the Day after September 11,” *Social Text*, no. 72 (2002): 101–15. On the racialized sexualization of the figures of “terrorism,” see Jasbir Puar and Amit Rai, “Monster, Terrorist, Fag: The War on Terrorism and the Production of Docile Patriots,” *Social Text*, no. 72 (2002): 117–48.

11. Etienne Balibar, for example, pursues the allegorical reading of psychoanalysis in his theory of the nation-state and the citizen subject in his essay “Nation Form.” Balibar disaggregates the nation and the state as naming different processes and, hence, different components of the subject’s interpellation. While the nation figures as an “ideal-nation” and is responsible for the subject’s patriotism, ensuring the collective promise to face death for the nation, it is the state, as a mythicized abstraction, that prefigures the unity between individuals and between an individual and the collectivity, cementing/casting individuality on the model of citizenship. This latter feature is named “fictive ethnicity” and is critical in fusing the individual with the national community. Recasting the notion of identification, Balibar argues that individuals are “interpellated” through the structures of language and race into citizens who share an “ethnicity.” While whiteness has historically operated as the form of racialization that has secured the “fictive ethnicity” of the U.S. national citizen, in the contemporary period it is “multiculturalism” that secures the fictive ethnicity of the U.S. national citizen as multicultural citizen. The multicultural subject is the racial formation of the national citizen, prefiguring and promising the citizen’s ability to claim universality, for which the state figures as a synecdoche of the universal. This is nowhere more powerfully articulated than in our current social formation, in which the U.S. *citizen* of Arab descent or person of “Muslim faith” is promoted as a figure of multiculturalism while the Arab citizen of an Arab state or a Muslim citizen of an Arab or Muslim state is promoted as a figure of a monstrous monoculturalism that threatens the universality represented by the U.S. “multicultural” state and must be repudiated, expelled, persistently violated, or “preemptively” assaulted or killed. The racialization of the Arab and Muslim U.S. citizen-subject as a U.S. multicultural subject (who has available the possibility of membership in universal culture) is constitutively linked to the “negative” racialization of the Arab or Muslim immigrant, nonimmigrant resident, and non-U.S. national as a social

anachrony whose very presence invites violence and violation, a violation coded as violent humanization. Rewriting the seventeenth-century English jurist proclamation, “The king is dead, long live the king”—which distinguished between the crown and the king’s body, killing the body when it did not conform to the sovereign subject of the crown—we can argue that as the multicultural citizen-subject is now installed as the sovereign, it is possible for George W. Bush to say, “The Arabs and Muslims are dead, long live our (U.S. multicultural) Arab and Muslim brothers and sisters.” See Etienne Balibar, *Race, Nation, Class*, 96–100. On the sovereign’s two bodies, see Ernst H. Kantorowicz, *The King’s Two Bodies* (Princeton, NJ: Princeton University Press, 1997). See also David Lloyd, “Ethnic Cultures, Minority Discourse, and the State,” in *Colonial Discourse/Postcolonial Theory*, ed. F. Barker, P. Hulme, and M. Iverson (Manchester: University of Manchester Press, 1996), 221–38.

12. See Karl Marx, *The Eighteenth Brumaire of Louis Bonaparte*, trans. Ben Fowkes, in *Surveys from Exile: Political Writings: Vol. 2*, ed. David Ferbach (New York: Penguin Books, 1992), 184, emphasis in original.

13. *Ibid.*, 240.

14. See Nicholas Riccarei, “Same-Sex Marriages Often a Family Affair,” *Los Angeles Times*, 16 February 2004.

15. Judith Butler, characteristically prescient and perceptive, argued that the idea of gay marriage always already invokes the idea of kinship in the United States, France, and elsewhere. Family is the space of their intersection. See Judith Butler, “Is Kinship Always Already Heterosexual?” *Differences: A Journal of Feminist Cultural Studies* 13, no. 1 (2002): 14–44.

16. *Ibid.*, 17–23.

17. See Roderick A. Ferguson, *Aberrations in Black: Toward a Queer of Color Critique* (Minneapolis: University of Minnesota Press, 2004), 1–29, 135–48.

18. This report is forthcoming from the Audre Lorde Project’s Immigrant Rights Working Group. Lead investigators were Chandan Reddy and Natalie Bennett.

19. See Paul Wickham Schmidt, ed., *Understanding the Immigration Act of 1990: AILA’s New Law Handbook* (Washington, DC: American Immigration Lawyers Association, 1991), 5–9. See also and in particular the essays “Family Sponsored Immigration (The Numbers Game)” by Harry Gee Jr. and “Overview of Employment-Based Immigration—The First Three Preferences” by Lenni B. Benson in this compilation. On the expansion of the labor market in low-end services and unskilled labor, see Saskia Sassen, *Globalization and Its Discontents* (New York: Free Press, 1998); see also her earlier book, *The Global City* (Princeton, NJ: Princeton University Press, 1991).

20. See the Immigration Reform Act of 1990 that stipulates that petitioning families must agree to shoulder the possible social cost of admitted immigrants.

21. Moreover, this was effected by ideologically centering a “middle-class” subject of migration within immigration law.

22. See the interviews with LGBT immigrants of color collected for this study; all archived at the Audre Lorde Project.

23. In pursuing this reading I have been aided by Wendy Brown’s “Liberalism’s Family Values,” in *States of Injury* (Princeton, NJ: Princeton University Press, 1995), 135–65.

24. This has also been true of the figure of the “DL” as it is currently used by the Centers for Disease Control and Prevention and the media for naming certain African American nonheteronormative formations that cannot “become” homosexual.

25. For a review of this literature, see “Introduction: Freedom and the Plastic Cage,” in Brown, *States of Injury*, 3–29.

26. Ferguson, *Aberrations in Black*.

27. James Faubion writes of the supplement in relation to contemporary theories of kinship: “If the older anthropology of kinship is thus still with us, it has also had to endure the perturbations of an ever more unruly ‘supplement’ (a term I use in the Derridian sense, to denote the necessary and perhaps antithetical resolution of a primary, a hegemonic, an intellectually comfortable category).” See James Faubion, introduction to *The Ethics of Kinship: Ethnographic Inquiries*, ed. Faubion (Lanham, MD: Rowman and Littlefield, 2001), 1–28. See also John Borneman’s contribution to this anthology, titled “Caring and Being Cared For: Displacing Marriage, Kinship, Gender, and Sexuality.” As a “supplement,” the gay Pakistani immigrant must be distinguished from the Chinese prostitute and Chinese bachelor of the nineteenth and early twentieth century, which were produced both materially and discursively in the United States as constitutive exclusions and hence as constitutively excluded. On the post-state class system, see Spivak, “Diasporas Old and New,” 245–69; see also Michael Hardt and Antonio Negri’s use of the term *empire* to describe this formation in *Empire* (Cambridge, MA: Harvard University Press, 2000).

28. See Ethne Luibheid, *Entry Denied: Controlling Sexuality at the Border* (Minneapolis: University of Minnesota Press, 2002).

29. See, for example, the “Asylum Project” at the International Gay and Lesbian Human Rights Commission, www.iglhrc.org/site/iglhrc/.

30. This is, in fact, how the HRC has “addressed” queer immigrant formations and politics, seeking to pass the Permanent Partners Immigration Act of 2003 through U.S. legislators’ offices. The act would extend the same legal rights to gays and lesbians as heterosexual citizens possess in immigration matters. See David Crary, “U.S. Immigration Law Not Friendly to Gay Couples,” *Seattle Times*, 24 November 2003; see also www.hrc.org/Template.cfm?Section=Permanent_Partners_Immigration_Act.

31. See Michel Foucault, “The Statement and the Archive,” in *The Archaeology of Knowledge and the Discourse on Language*, trans. A. M. Sheridan Smith (New York: Pantheon, 1972), 00.

