BODILY BORDERS/NATIONAL BORDERS: TOWARD A POST-NATIONALIST VALUATION OF LIFE IN THE CASE OF KIMBERLY MEDINA-TEJADA

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ABSTRACT

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Drawing upon the theories of Judith Butler, William Godwin, Gloria Anzaldúa, and Michel Foucault, I perform a close reading and textual analysis of a February 24, 2006 court case from the United States District Court for the Eastern District of California entitled “Richardo Medina-Tejada, Plaintiff, v. Sacramento County; Sacramento County Sheriff’s Department; Sheriff Lou Blanas; and Does 1 through XXX, inclusive, Defendants.” In this case, Kimberly (Richardo) Medina-Tejada, a transgender illegal immigrant from Mexico, challenges the constitutionality of her classification by the Sheriff’s Department as a “T-Sep,” or “total separation” inmate, while detained in the Sacramento County Main Jail awaiting deportation. The project explores a particular convergence of nationally specific discourses on race, gender, and citizenship that render Medina-Tejada’s body unintelligible and incapable of being afforded moral worth. I argue that the Nation-State, as a unit of social, political, economic, and cultural organization, is a fragile concept that must be vigorously guarded against threats to its epistemological foundations. This case reveals the State’s profound fear of transgressive modes of embodiment that challenge the categories upon which it is built. As such, Medina-Tejada’s body becomes a site in which the State’s oppression and repression of individual bodies becomes evident. Finally, this thesis urges us to think through post-nationalist modes of valuing human lives, and opens up a space for anarchist critiques of the State to add to the conversation on postmodern accounts of subjectivity and bodily intelligibility.
This thesis is dedicated to Yancy and Sammy.
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INTRODUCTION

The fundamental concern of this project is that the Nation-State, as a unit of social, political, economic, and cultural organization, is a fragile concept that must be vigorously guarded against threats both internal and external. The State is, at its root, an ideological and epistemological construct: an organizing tool used to promote a sense of internal unity among the citizenry, and an exclusionary construct used to constitute those who belong in opposition to foreign Others. As is the case with many other ideological constructs like race, gender, class, sexuality, and species, the Nation-State relies on individuals’ belief in its unquestioned status as a natural phenomenon. This belief in the Nation-State as the true and natural organizing principal of the world is an ideology that produces a particular mode of knowing, or a particular means of conceiving of one’s relationship to the rest of the world. Under a statist epistemological framework it is natural to think of individuals as insiders and outsiders: those who are proper members of a particular Nation and those who remain hopelessly outside of that Nation or are improper members of the citizenry. Statist modes of social organization produce an epistemological framework based upon belonging in a particular nation: an ideological system that determines the criteria for proper citizenship.

In order to guard the Nation-State’s fragile unity, Nations must define the criteria for belonging. What constitutes a proper citizen? Who can become a proper American? This battle for definition is enacted on at least two fronts: one that defines the geographical boundaries of the national body, and one that defines the contours of the proper individual body. Bound up in this Statist project of determining proper citizenship, then, is a complex process that is enacted on the level of the individual body through ideologies of race and gender. The process by which unity is achieved in the definition of the proper citizen involves a determination of proper modes
of gender and racial presentation. Systems of racial and gender classification are intertwined with systems of classifying citizenship status.

In many cases citizens from a particular nation feel a greater sense of moral responsibility to those who share their citizenship status. Individuals are often willing to go to war and to fight to the death against individuals from another nation. In situations like these, citizenship status provokes an intrinsic sense of loyalty to members of one group and an equally intrinsic sense of dehumanization toward foreign Others. Similarly, many feminist theorists have pointed out that binary systems of gender categorization create a situation in which those who fall outside that system of categorization often suffer from an inability to be perceived as a life with moral value. Finally, American history has shown the dangers of systems of racial categorization that cast certain individuals as less than human. This project, then, is primarily concerned with the ways in which Statist modes of social organization and epistemologies of the Nation-State make certain individuals unintelligible as morally valuable lives based upon definitions of race, gender, and citizenship status.

Throughout the following pages I discuss a court case from the United States District Court for the Eastern District of California entitled “Richardo Medina-Tejada, Plaintiff, v. Sacramento County; Sacramento County Sheriff’s Department; Sheriff Lou Blanas; and Does 1 through XXX, inclusive, Defendants.” In this case, decided in February 24, 2006, the plaintiff, Kimberly Medina-Tejada, a transgender illegal immigrant from Mexico, challenges the constitutionality of her classification by the Sheriff’s Department as a “T-Sep,” or “total separation” inmate while detained in the Sacramento County Main Jail awaiting deportation for her illegal immigration into the United States (Medina-Tejada v. Blanas 2). According to the case record, Medina-Tejada was taken into custody in March of 2003 in Santa Clara County
California and transferred to the Sacramento County Main Jail in June of that same year, where she was incarcerated until she was granted asylum in September (2). The rest of the case deals directly with her claims that guards mistreated her and failed to intervene in the mistreatment perpetrated against her by other prisoners while classified as “T-Sep” during that period of 3 1/2 months in the Sacramento County Main Jail (2). Medina-Tejada alleges that her “T-Sep” classification was unconstitutional and resulted in unnecessarily harsh treatment while in custody (2).

According to another case that the Medina-Tejada case record references as legal precedent, all inmates who are admitted to the Sacramento County Main Jail are classified upon arrival and most receive a “general population” classification, which allows them to interact with other inmates in a variety of daily activities (Tates v. Blanas 5). Additionally, there are two other classifications that are relevant to this case including, “P.C.” or protective custody, which is given to inmates who need special protection from others, and “T-Sep” which is reserved for inmates who are presumed to be a threat to others or who have broken the rules while in custody (5). This case record suggests that the “T-Sep” classification carries with it a punitive association, Although Sheriff Blanas and the other defendants refute that claim (5). In fact, there are only two groups of inmates that are routinely classified as “T-Sep:” transgender inmates and violent gang members (5).

Although Sheriff Blanas and the rest of the Sheriff’s Department claim that the “T-Sep” classification is protective rather than punitive, the restrictive nature of “T-Sep” reveals otherwise in the case of transgender inmates who have exhibited no violent behavior. “T-Sep” inmates are not permitted to be in common areas of the jail with other inmates, including other “T-Sep” classified inmates (Tates 6). As a result, inmates with this restrictive classification are
often unable to attend religious events, recreational activities, and are prevented from talking on the phone or showering regularly since these are activities that must be performed in common areas (5-9). Certainly, most of these precautions seem to stem from a desire to protect transgender inmates from attack from other inmates. However, some features of “T-Sep” classification have a more evidently punitive character or are clearly devised to protect other inmates from attack. This aspect of the classification reveals a profound fear of transgender individuals.

All inmates who are classified as “T-Sep” in the Sacramento County Main Jail are forced to wear heavy shackles that other prisoners are not required to wear while being transported from one location to another within the jail (Tates 6). This policy, which might under other circumstances serve the function of preventing escape or protecting guards and other inmates from attack, is clearly unnecessary when applied to transgender inmates who show no signs of violent behavior. Instead, it is used to humiliate these individuals by making them into a spectacle in front of guards and other prisoners. Additionally, as “T-Sep,” transgender inmates are not even permitted to socialize with one another (8). This forced isolation contributes a profound psychological component to the punitive character of this classification. By walling off transgender inmates in solitude, the Sheriff’s Department has imposed upon them a sense that they are alone in their status as dangerous bodies unable to be incorporated into the general population. Finally, the Tates v. Blanas case reveals that “T-Sep” inmates are not provided with cleaning supplies, supposedly due to a fear that such items might be used to harm others (9). Because they are not permitted to be in common areas with other inmates, it is difficult for “T-Sep” inmates to be vacated from their cells for other staff members to clean and, as a result, these inmates’ cells tend to be far less clean than those of other “general population” classified
individuals (8). Again, if the purpose of “T-Sep” classification is for the protection of transgender inmates, as the Sheriff’s Department claims, then why are these precautions, the goals of which seem to be the protection of other inmates, applied to transgender individuals? It is evident that, regardless of any physical danger that transgender inmates pose, their presence within the body of the jail is framed by this policy as potentially volatile. However, it is unclear from where this perception of danger comes. Indeed, the Tates v. Blanas case found that routine T-Sep classification of transgender inmates was inappropriate and the judge ordered the policy to be terminated (Medina-Tejada 4).

Regardless of the outcome of the case, the fact that this policy ever existed reveals several interesting tendencies. The fact that Medina-Tejada and other transgender inmates are treated identically to violent criminals subtly reveals a significant association between these two seemingly incomparable groups. In fact, this policy casts Medina-Tejada as potentially dangerous and threatening. Routine classification of transgender inmates as “T-Sep” suggests bodies that call into question discrete gender categories threaten the social order and, as such, must be disciplined. Not only does Medina-Tejada’s status as transgender threaten the gender binary upon which the social order is based, but her situation in a liminal space between being male and female embodied further confounds categorization. Additionally, her illegal immigrant status casts her as a threat to America’s fantasy of impermeability, or the belief that American borders are theoretically capable of keeping out unwanted outsiders. “T-Sep” classification legally encodes the transgender body as a dangerous contaminant within the body of the nation revealing the importance of binary notions of gender to the maintenance of order within the American Nation. Medina-Tejada’s story is of particular importance because of the convergence of gender and national transgressions within it. This unique combination of identity markers
produces a profound classificatory difficulty for statist modes of assigning moral worth to individual bodies and reveals an epistemological blind spot in many citizens’ abilities to recognize that moral value.

In order to think through the ways in which statist ideologies place constraints on the intelligibility of Medina-Tejada’s body and subjectivity, I address the use of transgender bodies in various public discourses and Medina-Tejada’s in particular, in three distinct and interrelated spaces. In the first chapter, entitled “Abjection at the Border: Gender Transgression and the Establishment of a ‘Clean and Proper [National] Body,’” I argue that the language of the court record reveals a profound fear of transgender bodies. The Sheriff’s Department’s policies, and their treatment of transgender prisoners, suggest that this legal appendage of the State views transgender individuals as a threat to the epistemological categories upon which the Nation is based. In the second chapter, entitled “Unspeakable Bodies: Immigration, Nationhood, and Social Justice,” I argue that, Although many postmodern theorists have attempted to use their intellectual work to celebrate the breakdown of clear binary notions of gender, they have performed an erasure of actual transgender lives. Because of their refusal to address the daily, lived realities of specific individuals, and the historical conditions that have shaped their social landscapes; many of these thinkers perform a misappropriation of the transgender body, using it as a trope of postmodern fragmentation. In the second chapter, I also argue that an acknowledgement of the specific national histories that have shaped Medina-Tejada’s social context, reveals that current nationalist modes of valuing life are inadequate. Without posing a radical critique of the statist epistemologies that govern individuals’ bodily intelligibility, liberatory representations of transgender bodies are impossible. Medina-Tejada’s story reveals the limitations of these accounts and urges us to think through post-nationalist modes of
characterizing bodily intelligibility and social belonging. An anarchist critique will help to begin this difficult task. In this section, I analyze some activist accounts of several claims made against Sheriff Lou Blanas by transgender inmates. Most notably, I explore a campaign headed by Amnesty International that reveals a fascinating racial component of this story, which I only hint at in other chapters of this work.

Theoretical Framework

In order to think through the place Medina-Tejada occupies within the legal discourse of the State, I begin at the intersection of two very different thinkers from two very different historical periods: Judith Butler and William Godwin. Butler suggests, “governmentality is broadly understood as a mode of power concerned with the maintenance and control of bodies and persons, the production and regulation of persons and populations, and the circulation of goods insofar as they maintain and restrict the life of the population” (Precarious 52). Here, as elsewhere, Butler’s position comes remarkably close to an anarchist critique of governmentality and statism.1 She points very clearly to the coercive force of governmental power and its ability to shape the daily experiences of individuals and individual bodies. As a broadly defined collection of political philosophies that seek modes of social organization outside the Nation-State, anarchist theories share this belief in the fundamentally coercive nature of governmental power.

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1 I would suggest that in her later work, Butler’s thought becomes more concretely anarchist than it is in her earlier writing. She begins to augment her epistemological deconstruction with clear critiques of the Nation-State. Most importantly, she asks, “are there modes of belonging that can be rigorously non-nationalist?” echoing a question posed by Arendt (Who Sings 49). It seems that, like Foucault, Butler is wrestling with an anarchist tendency that cannot be named. It is clear that she is wondering about the possibility of the dissolution of the Nation-State, or at least wondering about different epistemological frameworks that might assign value to lives outside the conventions and norms propped up by the State. In discussing Arendt’s critiques of the Nation-State, Butler lingers on notions of the “public sphere” and the “polity” which might be more appropriate and less nationalistic replacements for statist modes of social organization (23).
The second quote comes from proto-anarchist and individualist political philosopher William Godwin. In his 1798 piece entitled “Enquiry Concerning Political Justice and its Influence on Morals and Happiness,” Godwin asserts that government is responsible for the moral and intellectual degradation of human kind and, as such, ought to be abolished. Throughout the volume, he explores the ways in which hierarchical and governmental power are mobilized to the benefit of the wealthy and to the detriment of the rest of the population. Additionally, he suggests that although government is ostensibly established to protect the citizenry from each other or from outside invaders, a far more insidious exertion of power is at work in the daily lives of those who live within the geographical body headed by a sovereign government (10). Regarding the citizens of a country, Godwin states,

It is only in peculiar emergencies, and matters that depart from the accustomed routine of affairs that they conceive a private individual to have any occasion to remember, or to be in the least affected by the government of his country. If he commit or is supposed to commit any offence against the general welfare, if he find himself called upon to repress the offence of another, or if any danger from foreign hostility threaten the community in which he resides, in these cases and these only is he obligated to recollect that he has a country. (10)

Here, Godwin alludes to the very same daily occurrence of governmental coercion mentioned by Butler. For Godwin, although the government of a country has the potential to inflict harm on the individual, to restrict her or his individual freedom, the government’s real power lies in its invisibility. That is to say, the coercive effect of governmental authority rests in the subtle manipulation of daily reality within the body of the Nation. Indeed, Godwin suggests that many citizens are unaware, in any significant sense, that they have a country or are subject to the laws
of that country except in moments that stray from the ordinary. It is only when the daily routine is disrupted through criminal acts or threat of foreign invasion that one becomes aware of the coercive influence of national laws. This point seems easy enough to apprehend. However, it is important to take note of the way Godwin phrases this particular legal disruption of the norm that makes governance visible. He refers to two specific types of normative disruption. In the first type, the State perceives an individual’s actions as threatening to the social order as a whole or to the “general welfare” (10). In the second there is a perceived external threat or “foreign hostility” which threatens “the community in which he resides” (10).

The Sacramento Sheriff’s Department’s treatment of Kimberly Medina-Tejada reveals a substantial fear of disruption to the social order on both of these accounts. The State and its regional appendages perceive her non-normative gender expression as a threat to the “general welfare” of the United States’ social order as it is propped up by a strict adherence to binary notions of gender. Additionally, her status as an illegal immigrant represents a single example of a very real foreign threat in the minds of those who are taken in by the xenophobic, anti-immigration rhetoric that circulates in popular discourse on national security. On both accounts, Medina-Tejada’s life is characterized by a permanent departure from the “accustomed routine” described by Godwin (10). Because of her situation outside the gender binary and outside the definition of “US citizen,” her body is a site perpetually exposed to governmental coercion that most citizens are spared: unlike most individuals in Godwin’s scheme, hers is a body that is perceived to inhabit a perpetual state of disorder. A thorough analysis of her case reveals the daily effects of authoritarian government on individual bodies.

This project takes as its starting point Butler’s definition of governmentality and adds to it Godwin’s understanding of the daily invisibility of coercive authority. Within this frame, I
embark upon an anarchist critique of state authority by looking at one specific example of the United States government’s “maintenance and control of bodies and persons” (Butler, *Precarious* 52). Although Butler’s definition of governmentality is reminiscent of anarchist critiques of state authority, she does not situate her body of work in opposition to statist modes of social organization. In works like her recent collaboration with Gayatri Chakravorty Spivak entitled *Who Sings the Nation State?*, it is clear that Butler’s negative characterizations of governmentality are meant to be largely descriptive rather than articulating a position against the very idea of governmentality as is typical of anarchist theorists’ work. I take her ideas further in order to argue that it is the State and the coercive power of centralized authority that forecloses the possibility of certain forms of subjectivity. The authority of the State is dependent upon oppressive modes of social organization, such as binary notions of gender, for national cohesion, social order, and the construction of consistently intelligible subjects. For this reason, it is important to look closely at moments when individual bodies clash with statist attempts at social control. Because of Medina-Tejada’s discursive situation as a body-out-of-order, her case is an important site to begin to unravel the coercive effect of the State on all of our individual bodies. Her case makes visible the invisible effects of governmentality on the daily lives of all citizens and non-citizens.

There are a few fundamental theoretical concepts with which I will be engaging throughout the project. First, and perhaps most significant, is Judith Butler’s treatment of the grievable life or the intelligible human subject. Throughout Butler’s work, she consistently returns to the ways in which we define the intelligible subject such that certain bodies and individuals fall outside of that definition. Butler’s body of work is particularly important to my project because she begins by dealing with the terms used to define gender. She suggests that
those who fall outside of a binary notion of gender are regularly perceived as threatening and are rendered unintelligible as lives deserving of moral consideration. Butler’s later work makes similar claims about the way the intelligibility of a life is determined through citizenship and “statelessness.”

Additionally, discussions of poststructuralist or postmodern anarchism in The Political Philosophy of Poststructuralist Anarchism by Todd May and Lewis Call’s Postmodern Anarchism have been incredibly important to this project. May’s book looks into the political and ethical undercurrents of several French Poststructuralists, including Michel Foucault, arguing that anarchism would benefit from an acknowledgement of Poststructuralist accounts of power, and vice versa. Central to this claim is Foucault’s notion of “bio-power” and “knowledge/power.” May suggests that Foucault’s analysis of more dispersed power, as opposed to a more centralized power that may have prevailed in previous eras, offers an important revision to previous anarchist notions of power.\(^2\) This approach to analysis locates power in multiple and daily practices in ways that reveal hidden sites where power can be exercised by individuals and the State. For this reason these concepts will play a central role in my analysis of Medina-Tejada’s case.

Finally, I draw on critical race theories generated by Latino/a studies scholars such as Gloria Anzaldúa, Pablo Mitchell, and Tomás Almaguer to gain a clearer picture of the intersections between the processes of Mexican racialization and gendering within the United

\(^2\) Call notes that Foucault never once claims to be a postmodern theorist nor an anarchist (Call 65). However, Call chooses to classify him as a postmodern anarchist. Call states that Foucault’s genealogy creates new possibilities for “the thought of the outside:” a mode of knowing that creates a space within discourse for types of knowledge that might be impossible otherwise (66). He, therefore, calls Foucault’s genealogy a postmodern anarchism “because of its antistatism, its critique of ‘governmentality,’ its antihumanism, and its assault on rationalism” (66). For Call, an essential feature of Foucault’s postmodern anarchism is that it goes unnamed and remains frustratingly elusive (65). This is an incredibly important because it allows for an organically evolving political philosophy that can change and adapt to different needs, contexts, and historical moments. Foucault’s postmodern anarchism is, paradoxically, an anarchism that cannot be explicitly named because, to do so, would risk a loss of the kind of fluidity that is necessary to it.
States. As David L. Eng points out in *Racial Castration: Managing Masculinity in Asian America*, racializing projects within a particular nation-state often are predicated upon specific modes of gendering (17). Although Eng refers specifically to the ways in which Asian American racializing projects include very specific modes of gendering men, the preceding authors make similar claims about the ways in which Mexican American racialization has a specifically gendered component within this particular national context.

In this project I perform a close reading and textual analysis of a court case entitled “Richardo Medina-Tejada, Plaintiff, v. Sacramento County; Sacramento County Sheriff’s Department; Sheriff Lou Blanas; and Does I through XXX, inclusive, Defendants” in order to explore the ways in which race, gender, and citizenship status intersect in the constitution of Kimberly Medina-Tejada’s subjectivity. I argue that, in a variety of different contexts, Medina-Tejada’s body is erased and reconstituted through the state’s claims to authority over her body, in ways that reflect alarming overlaps between the boundaries of the national body and the boundaries of the individual body. These overlaps reveal the ways in which all individual bodies are subsumed by the sovereignty of the government and used to prop up the state’s legal and territorial authority. These are instances in which the rules that govern the constitution of the national body are inscribed in the flesh that constitutes the individual body. Similarly, any deviance from the rules that govern what is a proper individual body are seen by the State as a threat to the integrity of the national body. I attempt to untangle these complex interactions between the individual and the social in this legal case in such a way that reveals them to be mutually constitutive.

In order to accomplish this task the following questions will guide my thinking. What constitutes a properly bounded individual body? What statist epistemologies produce a boundary
around the intelligible at both the national and individual level? In what ways does the State enact border wars at the boundaries of the individual body and of the nation? What happens when the State enacts a border war waged in individual flesh? By uncovering this example in which state power has projected itself upon one specific individual body, I hope to make more evident the coercive, indeed repressive, effects of the State’s claims on all of our individual bodies and to allow a conceptual space for post-nationalist modes of assigning moral value to take shape.
CHAPTER I: ABJECTION AT THE BORDER: GENDER TRANSGRESSION AND THE
ESTABLISHMENT OF A “CLEAN AND PROPER [NATIONAL] BODY.”

Kimberly Medina-Tejada’s story is a profound and timely one. Her initial claim was made against Sheriff Lou Blanas on May 27, 2004 and District Judge Frank C. Damrell Jr. made his decision on her court case on February 24, 2006. This is a period marked by a peculiar fragmentation in the political body of the United States. There has rarely been a time when the body politic has been more politically divided than during this moment. In fact, in its May 2008 volume, the New York University Law Review published a lecture given at NYU, in 2007, by U.S. Circuit Judge, The Honorable J. Harvie Wilkinson III in which the Judge makes this very case. He argues that this era of American history is marked by a uniquely ferocious mutual hatred that is dividing the country along party lines (323-324). As a result, Wilkinson lays forth seven recommendations that he feels the judicial branch of the United States should follow in order to repair the deep political wounds that afflict the body politic (325). It is Wilkinson’s belief that “law should consciously aspire to promote a stronger sense of national cohesion and unity” (324). In his mind, the Law is a social force that can heal the fragmentary nature of American social and political life. With this observation in mind, the case of Kimberly Medina-Tejada becomes an important moment for us to enquire into the effectiveness of the law of the Nation to repair what Wilkinson sees as a profound fragmentation in the political culture of the United States. Does the legal discourse of the State actually venture to repair this fragmentation, or does it contribute to further fragmentation?

In the same month and year that Wilkinson delivered his speech, anti-immigrant organization, FAIR (Federation for American Immigration Reform) was pushing to make the
issue of immigration more significantly divisive during the 2008 presidential election than it had been in the previous race. In an article entitled “On the Campaign Trail,” and published on fairus.org in May of 2007, the organization states that they do not endorse particular candidates, but merely report their stance on one issue of importance to voters. In the process, they actively create a sense that the “immigration problem” is a fundamental concern dividing people not only into groups of voters who support a more vigorous policing of the border from those who do not, but also into groups of those who are legal citizens and those who do not belong.

This chapter represents an attempt to point to the ways in which the language of the court case draws analogies between bodily and national fragmentation in the case. In this chapter I argue that this legal document uses Medina-Tejada’s body in a manner that very clearly presents her as irredeemably fragmented and hopelessly unintelligible. The official court record remakes her body in the image of the very same fragmentation that Wilkinson sees in the political landscape. I will also argue that this document presents the body of the nation as one that has been constituted through a process of abjection that renders Medina-Tejada’s body as a contaminant that must be contained. The Sacramento County Sheriff Department’s unconstitutional, routine, “T-Sep” classification of transgender inmates reveals the Sheriff’s Department’s understanding of the transgender body as a site where the State’s fantasy of wholeness is furiously guarded: a battleground upon which it enacts its fears of fragmentation.

The establishment of the border between Mexico and the United States is to constituting both nations as distinct entities. This boundary determines what geographical space is incorporated into the bodies of each nation. The imposition of this line between national bodies determines their contours and establishes a clear relationship between the inside and the outside of each national body. Similarly, the creation of this line delineates between individual bodies
that function as part of the national body, and those which do not. In this scenario, the border of
the national body has the power to classify individuals as either citizens or foreigners.

In her article entitled “‘Wavering on the Horizon of Social Being’: The Treaty of
Guadalupe-Hidalgo and the Legacy of Its Character in Ámerico Paredes’s George Washington
Gómez” María Josephina Saldaña-Portillo discusses the ways in which this treaty has
constructed Chicano identity while redefining the contours of the American border with Mexico
(136). Foundational to this process was Article IX of the treaty, which Mexican Americans in the
annexed territories to denounce their Mexican identities in order to avail themselves of the rights
and privileges afforded to American citizens (139). The treaty of Guadalupe-Hidalgo allowed the
body of the American nation to expand into formerly Mexican territory, redefining the contours
of the border between these two distinct nations. Likewise, the treaty forced the human bodies
that occupied that geographical space to redefine their own identities, to purge their bodies of
Mexicanness in order to more seamlessly incorporate themselves into the newly defined national
body.

Gloria Anzaldúa further ties geography to identity, stating, “Tejanos lost their land and,
onight, became foreigners” (28). Through the incorporation of this geographical appendage of
the Mexican national body into the body of the American nation, the inhabitants of that land
were redefined as outsiders in their own homeland.3 Here the arbitrary nature of the boundary
between these two national bodies becomes evident and border crossing begins to lose a clear
meaning. The Treaty of Guadalupe-Hidalgo serves as an important starting point for considering

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3 For this reason, Medina-Tejada’s “illegal” immigration to the United States can be reframed as a return to a
geographical space that once was rightfully owned by her home nation. Although, for Anzaldúa, it remains “a
homeland that does not want [her]” (34). Both Saldaña-Portillo and Anzaldúa reference Aztlán in their discussions
of this expansion of the American border. According to Saldaña-Portillo, Aztlán is the mythical homeland of the
Aztecs often presumed to be located in the American Southwest and used by many contemporary Chicana/o
theorists to counteract anti-immigrant discourses (160).
what is fundamentally at stake in this case. This specific moment in 1848 reveals the fluidity of national borders. Although this moment is, on one hand, an expression of the United States’ strength as evident in its ability to annex a large portion of another sovereign nation and legally incorporate its territory and citizens into its own body, this moment also represents a point of weakness in the American ideology. In many ways, the ideology of Americanness is founded upon unity and wholeness: it is a collection of United States, and one nation under God. Although expansion is also key to the myth of the American body politic, the ideology of statism thrives upon a fantasy of wholeness: in a citizenry unified under and subject to a centralized, sovereign, governing body. In the case record and the Sheriff’s Department’s policy of routinely classifying transgender inmates as “T-Sep,” Kimberly Medina-Tejada is treated as a fearfully fragmented body who, threatens the impenetrability of the border through her forceful penetration of it, threatens the illusion of unity in the citizenry through her refusal to abide by American immigration law, and her body’s inability to be neatly categorized.

Medina Tejada’s successful, illegal, entry into the American nation serves as a reminder of the flimsiness of the definition of the American as it calls upon the history of annexed Mexican Bodies. Additionally, her fragmented gender presentation calls upon the fragility of the border between “male” and “female” and, in so doing, calls into question the boundaries of seemingly discrete categories. These two fears, of permeability of the border revealed through her illegal immigration, and of the breakdown of discrete categories through her transitional gender presentation, produce an anxiety in the state reminiscent of those produced by the memory of the Treaty of Guadalupe-Hidalgo. This treaty calls attention to several important threats to American fantasies of wholeness and impermeability. First, it reminds us that the composition of the nation’s geography is in no way static. Pieces can be periodically added and
subtracted according to the whims of politicians and other citizens. Second, it reveals a potentially insurmountable lack of unity in the citizenry. The legal reclassification of formerly Mexican citizens as American citizens alone is not likely to enact substantial personal or cultural changes on individuals who may have been unwilling to assimilate. As a result, the treaty reminds us that there is no fundamental, inherent Americanness that binds all legal citizens together. Third, it calls into question clear distinctions between citizens and immigrants. If the “American” is defined in part by what she or he not, the “Mexican” for instance, the legal incorporation of the inhabitants of formerly Mexican territory into the American citizenry, reveals the fluidity of the definitions of both “American” and “Immigrant”. Finally, and most importantly, it reveals the constitution of the nation to be a socially agreed upon definition rather than a static truth. Medina-Tejada’s treatment frames her body as a threat to the American nation’s fantasy of wholeness as it calls upon a history of profound fragmentation that is inherent to the project of nation building. In order for the United States to exert its strength in the face of the flimsiness of the ideology of unity as revealed by the treaty, it must vehemently deny the possibility of fragmentation and banish it from its borders. The case then reveals a policy that had been used by the Sacramento County Sheriff’s Department to define Medina-Tejada’s very presence as a reminder of the nation’s fundamentally fragmented nature. As such, her body was policed furiously and rendered impossible in order to guard that fantasy of wholeness.

As I have alluded to previously, there is a fascinating gender component to Medina-Tejada’s hybridity in this case.\textsuperscript{4} According to the case record Kimberly Medina-Tejada, born

\textsuperscript{4} While Saldaña-Portillo’s analysis of the American Southwest focuses primarily upon the racialization process of the inhabitants, Anzaldúa’s analysis adds a gendered dimension. Both facets of these theorists’ analyses of border identities are key to understanding the hybrid and fragmented subjectivities that characterize this geographical space. Anzaldúa’s “mestiza” is not only a blending of racial backgrounds, one who transgresses racial borders, but also one who traverses gender borders and national borders. As a lesbian in her homeland, Anzaldúa’s inability to conform to gendered norms has resulted in being disowned by her own culture. She states, “nothing in my culture approved of me” (38). She also states “as a lesbian I have no race, my own people disclaim me” (102).
Richardo, had already begun to identify herself as female and to take hormones by the age of twelve (Medina-Tejada 2). This gender transgression seems to have been a fundamental precondition for her multi-valent border crossing that resulted in her incarceration in the Sacramento County Main Jail. The fact that these hormones were available to her in Mexico casts her home nation as the facilitator of this primary border crossing experience since it is unlikely that she could have obtained them at such a young age had she been born in the United States. Although her status as a border crosser in terms of her gender was dependent upon her inclusion in the body of the Mexican nation it also seems that it necessitated her transgression of the national border. The case record suggests that while in her native country Medina-Tejada experienced profound repression and illegally crossed into the United States in order to escape nearly daily harassment (2). Here Medina-Tejada reveals herself to be an individual disowned by her own culture: abjected from her home nation’s borders because of her gender transgression. Simultaneously, she is not home in the American Southwest: the historical Mexican territory recast as an appendage of the American national body. Here, she is “illegal:” an “alien.”

The court record, and the classification policy at issue in it, place the primary emphasis upon Medina-Tejada’s transgressive gender presentation. The case does not specifically pertain to her citizenship status, Although it is mentioned, and the question at hand deals with whether or not she was treated unconstitutionally as a result of her transgender status. Therefore, within the confines of the jail, the State is attempting to abject Medina-Tejada because it sees her particular mode of gender expression as categorically dangerous to the rest of the citizenry and inassimilable into the American body. In the moment that the State classifies Medina-Tejada as

5 In The Powers of Horror: An Essay on Abjection Julia Kristeva suggests that abjection is a fundamental characteristic of the process of subject formation. In order for a subject to define herself as an entity distinct from the rest of the world, she must expel those elements that exist outside the definition of the self. In this way, self-definition and abjection are inseparable for Kristeva (Kristeva 3).
“T-Sep,” it is making a bold proclamation that her particular mode of bodily existence stands in diametric opposition to the definition of the “American.” The routine “T-Sep” classification of transgender inmates an imposition of the State upon the body of an individual for the purpose of defining the contours of the “proper” American body. Kristeva claims that abjection allows the subject to begin a “mapping of the self’s clean and proper body” (72). In the policy’s abjection of Medina-Tejada’s body, the State is defining itself in opposition to something that must be considered to be categorically other. Although, Kristeva is referring to a process of individual subject formation in this text, her language frames the individual body as a location that is defined through the mapping of its borders. Noëlle McAfee uses Julia Kristeva’s notion of the abject to argue that just as the abject is necessary to the establishment of a border between the inside and the outside of the individual self, foreignness is essential to the establishment of national identity (117). Through the treaty of Guadalupe-Hidalgo the United States sought to expand its body mass and to remap the borders that surrounded it. Since this expansion grew to incorporate formerly Mexican territory, elements of foreignness needed to be abjected in order to establish the “clean and proper body” of the nation (72). The American nation achieved this goal through the previously mentioned Article IX. Medina-Tejada’s abjection not only represents an attempt by the State to shore up its fragile geographic border, but also, and perhaps more significantly, to strengthen its definition of what counts as a “proper” American Body.

Her transgressive gender expression not only necessitates her crossing into the United States but it also hinders her incorporation into the national body.6 Within this framework,

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6 In his book *Coyote Nation*, Pablo Mitchell explores the ways in which citizenship is established in individuals through bodily comportment. His book begins to break down the distinctions between bodily borders and national borders, since inclusion in the body of the nation necessitates a degree of conformity in the body of the individual. National borders are enacted on the surfaces of the citizens’ bodies. Of primary importance to my argument is Mitchell’s assertion that classification as Anglo or as civilized in the American southwest has been associated with clear distinctions between genders (39). He specifically refers to Pueblo Indian schools in the early 1900s, but suggests that the enforcement of citizenship on the level of embodied gender is a cross-cultural phenomenon that has
Medina-Tejada’s inability to be easily classified by gender makes her integration into the American national body difficult. Therefore, her presence within the nation’s borders poses a particular danger to the stability of national subjectivity. Chapter two considers more fully the importance of immigration policy in the constitution of intelligible bodies. However, what is important to recognize here is that Medina-Tejada’s perception as a dangerous, abject, element is not only dependent upon her status as a border crosser or an immigrant but as an individual whose body calls into question the very meaning of boundaries and, as such, threatens the United States’ fantasy of wholeness. The State fears that her body will reveal the fundamentally fragmented nature of the nation. Her ability to shatter the American myth of unity renders her body dangerously unintelligible, leading to her egregious mistreatment while incarcerated, and the vigorous policing of her body. The State fears that Medina-Tejada’s transgressive gender expression poses a threat to the gender system upon which the definition of the “proper” American body is based. As a result, she experiences severe repression at the hands of the judicial system.

The case record reveals that Medina-Tejada’s deviance from gendered norms led to her “T-Sep” classification. The document references a previous case in which it was discovered that the Sacramento County Sheriff’s Department automatically classified all transgender inmates as

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spanned historical periods and geographical space (19). In Mitchell, abjection and its preoccupation with bodily orifices not only takes on the power of the constitution of subjects, but, more specifically, it gains the ability to interpolate the subject as a citizen. He suggests that bodily comportment has been framed as an essential element in the establishment of social stability (19).

7 In Gender Trouble Judith Butler engages with Kristeva’s notion of the “abject.” She identifies in identity formation, a process of expelling that which is other in order to constitute the self as an internal reality with a stable boundary keeping out the external. Order is maintained through exaggerating the difference between binary opposites (Gender Trouble 131). She also states that the distinction between inside and outside that is essential to the process of abjection only makes sense in relation to a boundary between the two (133). Because that boundary can never be fully impermeable, that space becomes a dangerous one. She states “social systems are vulnerable at their margins and that all margins are accordingly considered dangerous” (132). Through abjecting foreign elements outside of the self, the subject establishes a boundary marker between the internal and external territory of the self: an imaginary line beyond which external elements are abjected.
“T-Sep” (Medina-Tejada 4). Although this classification was intended to be reserved for the most dangerous criminals the case record shows that Sacramento County applied it to transgender inmates in the same way that it would the “protective custody” classification for other inmates who required special protection (4). The result of this classification is that within the jail setting, transgender inmates are framed as necessarily more dangerous than other inmates for no other reason than their gender transgression. If the jail reveals itself to be a radically other or abject space within the body of the nation the solitary confinement of the “T-Sep” classification is equally so within the body of the jail.

As a “T-Sep” inmate Medina-Tejada claims that it took a week from the time of her request to receive hormone pills (Medina-Tejada 2). Additionally, she claims that she was only permitted to leave her cell for recreation or to make phone calls once or twice during the entirety of her stay, and was only permitted to shower two or three times a week. These activities involving leaving her cell, were permitted only between the hours of two and three a.m. (Medina-Tejada 3). Twice a week Medina-Tejada claims was required to participate in “laundry calls,” in which she was naked from the waist up, with only a towel covering the lower parts of her body from the gaze of fellow prisoners, who hurled sexual “catcalls” in Spanish (Medina-Tejada 3). Her experiences while classified as “T-Sep” not only confirm the ruling of the earlier Tates v. Blanas case that “T-Sep” classification was inappropriately punitive in the case of transgender inmates, but it also shows that it is ineffective in its stated goals of providing special protection. Routine “T-Sep” classification of transgender inmates reveals itself to be an isolating policy aimed at walling off polluting bodies from defiling the purity of the national body as she was barricaded off from the facilities she needed to maintain personal hygiene and and
cleanliness in her space and literally forced to become the unclean thing the designers of the policy feared that she already was.

The forced participation in “laundry calls” that Medina-Tejada was required to endure reveals a clear instance of her improper bodily comportment. On one hand, the fact that her breasts were exposed placed her in an incredibly vulnerable position as her female body was exposed to the gaze of male inmates. On the other hand, the presence of the towel covering the lower half of her body serves as a boundary erected between her body and the outside world. This wall, impervious to the gaze of others, serves a protective function as it prevents her pre-operative male genitals from being visible to the male inmates. The result is that, although her female characteristics are visible during the “laundry calls,” opening her up to harassment and making her vulnerable to unwanted sexual advances, the presence of the towel obscures her apprehension as transgender. At the same time, however, her presence in a men’s prison immediately casts doubt on the “authenticity” of her feminine identity. The viewer’s ability to easily categorize her based upon visual cues falters. If it is difficult to smoothly integrate her into the body of the jail, as is evident in the radical alterity of her “T-Sep” categorization, how much more difficult would it be to incorporate her into a national body in which citizenship is predicated upon proper bodily comportment?

The “laundry call,” thus, represents a moment in which Medina-Tejada’s body itself begins to fragment within the text of the case. In the same way that the border between Mexico and the United States arbitrarily divides the continent into two distinct geographical territories, the towel divides Medina-Tejada’s body into two distinctly gendered territories: one visible and female, and the other invisible and male. Here she straddles a border within her own body and is forced to occupy a third gendered space that is neither wholly male nor wholly female. The “T-
Sep” classification makes obvious the fear of this third gendered space and reinforces a sense that there is no intelligible place for Medina-Tejada’s body to occupy. The policy renders her body unintelligible and incapable of being interpreted as a recognizable human life in order to deal with the State’s anxiety about the epistemological rupture that it faces.

The bodily fragmentation perpetuated against Medina-Tejada becomes more evident in another occurrence described in the case record. On September 4, 2003, Sheriff Deputy Tiffany Mendonsa escorted Medina-Tejada to the infirmary. Because of a misunderstanding due to the language barrier, Medina-Tejada turned to return to her cell (Medina-Tejada 3). Thinking that she was heading for the common area, which was occupied by other inmates at the time, Mendonsa attempted to restrain her (3). According to Mendonsa, Medina-Tejada resisted, an allegation that the plaintiff denies, and a physical altercation ensued, resulting in Medina-Tejada’s broken wrist and a ruptured breast implant (3). Here again, the body of Medina-Tejada is fragmented and territorialized as a thin boundary had been constructed between the breast implant and the rest of her body. However, it seems clear that the border between this artificial female appendage and the remainder of her body is no more impermeable than the boundary surrounding the national body and certainly no less plagued by threat of danger. Due to the ruptured implant Medina-Tejada suffered an infection: a small-scale physical manifestation of the fear of penetration of the national borders (3). This episode reveals that the State’s fears of the infection and defilement of the citizenry by the abject Medina-Tejada are unfounded. In fact, her punished and abused body suffers the infection that the State fears for itself. While the State is attempting to guard against the reminders of its own conceptual fragility, Medina-Tejada suffers a painful and dangerous reminder of her very real physical fragility. In this instance, the State has projected its fears onto the individual body with disastrous consequences. Medina-
Tejada’s body-perpetually-out-of-order is disciplined in a way that registers the daily, coercive, influence of the State deep within her bodily tissue.

The State’s fear of Medina-Tejada herself is evident in this episode. Not only is she an individual body upon whom violence has been inflicted by the state through the body of Deputy Mendonsa, but that violence seems to be inflicted, at least in part, as a result of her situation as an unintelligible pollutant within the body of the nation. The entire occurrence resulting in her ruptured breast implant and subsequent infection seems to be based upon a simple misunderstanding. But, Deputy Mendonsa’s response was so extreme because of the violent connotations of the “T-Sep” classification. If “T-Sep” is generally reserved only for the most violent of criminals it seems reasonable that transgender inmates might be treated with similar suspicion. The classification policy necessarily casts transgender inmates as inherently dangerous and influences the behavior of the guards towards them accordingly. Medina-Tejada herself argues a similar point, claiming that Mendonsa “responded so quickly and violently to the interchange between them because of the plaintiff’s T-Sep classification” (Medina-Tejada 8).

Due to the punitive character of the T-Sep classification and the violent associations with prisoners who are classified as such, routine classification of transgender inmates as T-Sep constitutes these individuals as necessarily violent and dangerous. The State views their transgressive gender expression as a threat to notions of proper bodily comportment, a threat to definitions of the proper American body, and a threat to the intelligibility of discrete categories.

As a result of the preceding experiences the court found the defendants liable for the unconstitutional treatment of Kimberly Medina-Tejada. The fact that Medina-Tejada won her case is not the most interesting aspect of the ruling nor is the fact that she was granted asylum upon her release in 2003. My interest in the ruling has to do with the identities of those who were
accused in the case. According to the title of the case there are three primary defendants, all of whom were found liable. These include Sacramento County, the Sacramento County Sheriff’s Department, and Sheriff Lou Blanas (Medina-Tejada 1). In this case, Sheriff Blanas was found liable in both his official and personal capacities (8-9). Because he was Sheriff during the entire time that Medina-Tejada was incarcerated, and was, likewise, during the Tates case, Blanas was judged liable in that he was responsible for the institution of the policy that placed transgender inmates in T-Sep classification (8). Additionally, the Judge decided that he was to be held personally liable for the institution of a policy whose unconstitutionality should have been known to him due to the Tates ruling (9). Present here is the same strange blurring of the lines between national bodies and individual bodies that seems to permeate the entirety of the case. Blanas functions not only as an individual subject, but as an appendage of the state; his body is at once his own and, a fragment of the national body. In the ruling of this case, Sheriff Blanas is revealed to be a fragmented border-crosser comparable to Medina-Tejada herself.

Blanas’ dual function as an individual and as an appendage of the State reveals the complexity of State power. As Sheriff, Blanas wields the authority of the State and, obviously, is capable of using it to police the bodies of individuals. As an individual, he too is subject to the coercive influence of State power. In the moment that Blanas is brought to trial in his personal capacity, he is a body-out-of-order. He has departed from the usual routine and, as such, feels the coercive influence of his government in his life. However, as Sheriff, he is responsible for policing other bodies-out-of-order. Blanas wields State power, is wielded by State power, and is subject to State power. Blanas’ dual liability in the case cautions us against reifying “the State” as a centralized force and encourages us to think more complexly about functioning of State
power. When considering the constitution of the State our definition should remain as pliable as the geographical border itself.

In an effort to secure the border and protect the national body from infection, Medina-Tejada was imprisoned in Sacramento County Main Jail on June 11, 2003 (Medina-Tejada 2). When considering the constitutive function of borders the jail is a fascinating structure. On one hand, the jail functions as an appendage of the state: a disciplinary arm on the national body. The jail, therefore, is inextricably linked to the state as a structure that maintains order in society. On the other hand, however, the jail is also radically othered space within the boundaries of the nation. It is a space in which rights and privileges are dramatically restricted in ways that they aren’t in the rest of the nation. A solid wall is erected around the jail in order to keep inmates in and the rest of the population out. In some ways, the wall surrounding the jail reflects an idealized image of the border that surrounds the nation state. It is visible, strong, impermeable, effective, while the national border is, in most places, invisible, fluid, permeable, and ineffective in its prevention of penetration. The jail is the place where the state blocks off dangerous elements. It is a space inside the body of the nation that is marked by abjection.

In the case of Medina-Tejada the prison not only functions as an abject space but as an orifice which abjects. The jail here is both a place where Medina-Tejada is walled off from the rest of the country to protect infection and a place where she awaits deportation. The legal system, of which the jail is a part, is the mechanism that will eventually execute her expulsion from the body of the American nation into her homeland of Mexico which has already rejected her. However, as the case record indicates, the jail as excretory orifice has failed to execute its function properly. Medina-Tejada’s case takes place starting on February 3, 2006: roughly 2 1/2 years after she was released and granted asylum by a San Francisco immigration court (Medina-
Tejada 2). In this case, the jail’s function as an orifice for expelling unwanted foreign elements outside of the national body has been converted into an opening that holds foreign bodies within its borders. This second function of the jail in this case speaks to the ambiguously gendered and queered nature of the borderlands.

It is important to note that throughout the entirety of this case record, Although Medina-Tejada is of central importance, her voice is nowhere present. There is a significant silencing of her voice and a discursive erasure of her presence at work in the text. In her article “Bodily Confessions” from *Undoing Gender* Judith Butler discusses the constitutive function of the voice. She explains,

S]peaking is a bodily act. It is a vocalization; it requires the larynx, the lungs, the lips, and the mouth. Whatever is said not only passes through the body but constitutes a certain presentation of the body . . . The speaking is a sounding forth of the body, its simple assertion, a stylized assertion of its presence. (172)

For Butler, speaking is a bodily act that brings the body into being. Speech activates the body making it legible to an audience and giving it presence. Important to this formulation is the legibility and intelligibility of the body. If the body is, in part, a discursive object for Butler, then its ability to be interpreted accurately follows rules that are similar to those of any other linguistic sign. The sign or the body must be understood in order to effectively communicate its presence as a human life worthy of moral consideration. In order for a body to be valued it must be intelligible. It seems to be the case that the text of this court document has enacted an erasure of Medina-Tejada’s body through a silencing of her voice. This discursive erasure of her

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8 She begins by drawing upon Michael Foucault’s notions about confession to discuss the ways in which the self is made intelligible and real through confession and the knowledge an individual produces through that act (162-163). She then draws parallels between Foucault’s confession and the telling of misdeeds in the psychoanalytic encounter and makes the claim that speech is a bodily act (165). In the confession on the psychoanalyst’s couch the speaker recalls a previous bodily act and translates it into a new bodily act in the form of speech (165).
presence needs to be interrogated alongside the other ways in which the case record has rendered her body to be a fragmented contaminant within the National body.

If this is the case that speech gives substance to bodies within a discursive field, then, how does speech function within the text of the court document? What power relations are revealed by thinking through the text in relation to these observations about the constitutive power of the voice? Whose body is revealed in the speech act of the text and whose body is erased?

It might seem at first that the speaking at work in this text is drastically different than that which Butler references in her essay. The court document is a written speech act and does not necessarily rely on the same sorts of bodily acts that verbal speech does. When Butler suggests that speech is a bodily act she refers very specifically to the parts of the body that play into the production of the literal voice. Unless this written text is spoken aloud, it doesn’t rely on these same bodily organs. It might be fair to assert that the body that is called into being is the text’s body. The text’s body is literally composed of the words in it. Its materiality is writing and the sense used to perceive its materiality is sight. The body of the text is a purely visual body since it exists first in digital form in a legal archive. The body can be viewed on top of any number of substrates from a variety of different computer monitors, to any paper onto which it is printed. The fundamental character of the text’s body is not changed significantly by changing the surface upon which it is viewed. Its meaning and voice are still the same. The text’s body is a surface level presentation that suggests a depth of meaning. But there is nothing below the surface. There could just as easily be computer parts below the surface as there could be paper.  

9 Judith Halberstam offers a similar reading of the work of queer artist Linda Besmer in *In a Queer Time and Place: Transgender Bodies, Subcultural Lives*. She argues that Besmer’s “detachable strokes” draw attention to “transferability” and “performativity” by eliminating the ground onto which the piece is applied (120). She states that these pieces queer the traditional relation between a work of art and the substrate onto which it is applied by
With this lack of depth below the surface of the visible words, the body of the text speaks in a hollow voice that speaks the only tangible record of Kimberly Medina-Tejada’s story. That is to say that the text speaks its own body into existence and nothing more. There is no place within the text to see her body as a material body. There is no lasting record of her voice and no place from which she is able to speak her story audibly. There is merely a written account. Butler’s conception of the constitutive power of the speech doesn’t rely only on the audible voice. She states, “I am saying what I mean: but there is a body here, and there can be no saying without that body” (172). Throughout the body of her text she relies heavily on a self-referential voice. She places her own subjectivity, indeed her own body, prominently in the text. In writing this passage she is also performing a written speech act that hails her body into being. For this reason, it cannot be the case that the court document merely speaks its own body into existence. The text is a written speech act speaking in the voice of someone else in the way that Butler’s text is a written speech act that references her body separate from the body of the text.

Additionally, in his article entitled “Embodied Perception: Redefining the Social,” Joshua Soffer further characterizes the written speech act as an embodied gesture similar to the audible voice. Here, he explores the productive power of language and the voice in Maurice Merleau-Ponty’s Phenomenology. His approach to thinking through the links between the voice and the deniability that the canvas is the passive feminine while the painting is the active masculine (120). Without a stable ground the surface signification is able to drift offering an illusion of something stable beneath the surface. These pieces draw attention to the artificiality of the act of painting according to Halberstam (120). However, another reading could be advanced. These works could reveal not the performative falsehood of the perceptible but the lack of depth below the visible surface. This theoretical imagining offered by Halberstam represents an erasure of the body. In this conception of the body it is assumed to be a hollow surface. This focusing on surface signification to the detriment of subjective depth is diametrically opposed to Butler’s notion of the voice’s sounding forth of the depths of the body and may be a theoretical denial of that voice to transgender subjects.
body seem to touch upon some elements of Butler’s argument but also point to distinct ways in which language itself, even the written word takes on a nature that is similarly bodily.\textsuperscript{10}

The court record speaks, and it tells the story of a body somewhere. This text carries within it a constitutive proclamation of bodily presence. As a court record, it is written in language standardized in the norms of legal documentation. It is written to conform to rules of what a legal document of this sort should look like. The voice of the piece, therefore, takes on a very particular tone; it is a legal voice. This document was most likely composed by a court stenographer or some other official court recorder, but it is not written in her or his voice. The document tells the official story of the court, and, since the judicial branch is an appendage of the State, the court record documents the State’s voice. Therefore, following Butler’s line of reasoning, the text is a manifestation of the State’s voice in which the State appropriates a discussion of Medina-Tejada’s body in order to speak its own body into existence.

In performing a critical examination of the voice and the body in this case, it is important to first address the very title itself. In the very first line of the court record the case is framed as “RICHARDO MEDINA-TEJADA, Plaintiff, v. SACRAMENTO COUNTY…” (1). The wording throughout the document is written in a straightforward legal style giving the

\textsuperscript{10} Soffer begins by discussing Merleau-Ponty’s notion of “embodied perception” which he defines as a sensate interaction between people (657). He goes on to further explain this concept arguing that, for Merleau-Ponty, bodies do not exist as whole entities containing a record of sensations but as a boundary produced by sensation through sensible interaction between individuals (657). The moment of interaction between individuals does not represent a moment when a pre-existing body senses another pre-existing body or external world but is produced as that sensation that takes place in the moment of interaction (657). He goes on to suggest, as does Butler, that, “language is sensate” and represents a similar calling into existence of the bodily boundary (657-658). Where Soffer and Butler differ, however, is in the effect of speech on the body. Because Soffer denies that any sense of agency or subjective depth can be produced in the body through the speech act he seems to be more concerned with the role of the voice and body in the production of the social. For Soffer, sensate language produces the surface of the body as a site of social interaction. Butler, on the other hand seems to be attempting to resurrect the depths of the body through her invocation of the internal causes of the voice: “the larynx, the lungs, the lips, and the mouth” (172). For her, the voice is not producing a surface level signification but is calling into being the very depths of the body. Where Soffer asserts that sensation is all that exists in the moment of interaction, Butler states “it is not true to say that language substitutes for the body” (173). This statement suggests that, for her, there is something \textit{in} the body: something more outside mere sensation and language.
impression of the impartiality for which our court system is known. Although this passage seems to be a completely benign naming of the parties in the case, the simplicity, straightforwardness, and implied impartiality of the wording masks a deeply political project at work in this act of naming. In this seemingly harmless naming of the case hides the invisible presence of the State’s efforts to police Medina-Tejada’s transgressive gender expression. The plaintiff is listed under her male name of birth. Her preferred gender identity is entirely absent within the official title of the case. From the very beginning, the reader is permitted only to envision a male body in this case. Therefore, any future mention of Medina-Tejada as a woman is held in reference to this preexisting image of her as a man. The decision to name the plaintiff in such a way that she is presented as male, represents a reversal of the “laundry call” experience. While the “laundry call” obscured Medina-Tejada’s transgressive gender identity by exposing her status as female while erecting a wall that prevented the visibility of her male features, this naming presents her as male, while making her female name invisible. Although her gendered representation is reversed in the title of the case, the result is similar. Medina-Tejada’s body becomes fragmented and divided into male and female territories. Due to the need for bodily coherence and a single, clearly defined, gender identity, the necessary precondition for incorporation into the body of a civilized nation proposed by Mitchell, Medina-Tejada’s body resists full representation. It is possible for the case to present her as female or to present her as male but the privileging of one at any given moment serves to eclipse the other rendering her body incomplete and incomprehensible. This tendency to represent a single, unitary, gender identity at a time reveals a profound fear of fragmentation on behalf of the state.

Further down the first page of the document she is refered to as “Richardo ‘Kimberly’ Medina-Tejada.” Here, the document finally acknowledges her femininity within the language,
but treats “Kimberly” as an alias through the placement of her name within quotation marks preceded by her former male name. Additionally, the placement of her name “Kimberly” in quotation marks visually separates her female identity from the rest of the text: walling it off as Although the rest of the body of the text is in danger of being polluted by it, reinforcing the fear of her body revealed by the “T-Sep” classification policy.

Only on the second page does the document point out that Medina-Tejada “prefers to be identified as female. As such, the court refers to plaintiff herein in the female gender.” This narrative reenactment of her gender transition holds the potential to frame her femininity as a fiction that is to be placed in reference to the fact of her essential maleness for the reader. Therefore, the initial pages of the court document attempt to speak her body into being such that it is not permitted to be read as authentically female. In the following section the court document begins to refer to Medina-Tejada simply as “plaintiff” (2). Here, the politics of naming in the document rob her even of a name that points to a specific subject in favor of one that references a legal category. In this instance of naming, Medina-Tejada’s status as a particular subject is erased entirely. Doubtless, the decision to name Medina-Tejada in these ways conforms to legal guidelines, as it is unlikely that she had undergone a legal name change at the time, and referring to someone as “Plaintiff” or “Defendant” is consistently used in these types of documents. The law and legal precedent are popularly purported to be impartial. However, these conventions are firm and unyielding. This combination of characteristics of the legal genre makes it a textual space that forecloses the possibility of an “accurate” or self-defined presentation of Medina-Tejada’s body. The State enacts an erasure of Medina-Tejada as a subject and renders her body unintelligible.
According to Judith Butler, the voice is one of the ways in which the body is able to call itself into existence. She writes, “the speaking is a sounding forth of the body, its simple assertion, a stylized assertion of its presence,” and that in the speaking, “there is a body here, and there can be no saying without a body” (172). But where is Medina-Tejada’s speech within this text? In many places, her claims against the defendants are present within the text. However, these statements are presented as summaries and do not appear in her own words. In fact, it is likely that even the initial presentation of her claims to a legal audience, were given by her attorney. In this case, her claims were likely translated by a lawyer and presented according to legal standards of speech. However, the reader is not even given a glimpse into this process of translation and re-articulation of Medina-Tejada’s accusations. What is available within the document is a summary of a presumed re-presentation of her claims: not her words.

There are two places within the document where quotes from Medina-Tejada are present. The first is immediately following the first mention of her preference for female pronouns. The quote, in context, reads as follows: “Plaintiff alleged in her complaint that: ‘on two occasions [she] was physically forced into a straight male inmate’s cell and forcibly raped’…” (2). This passage presents a quote from Medina-Tejada in her own words. However, through the style of its citation in the document, her words are forced into the structure of the case record’s sentence. Note that “she” is placed within brackets suggesting that it is either filling the place of a missing word or replacing a word that was present in the original quote. It is possible that Medina-Tejada omitted the pronoun there when giving the original statement. However, it is more likely that she used the word “I” in discussing the treatment that she, herself, experienced. The word “I,” in this instance, is essential for signaling to the reader that the statement is being delivered in Medina-Tejada’s own voice. Its replacement with the word “she” recasts the entire comment as an
element of the document’s sentence and signals to the reader a re-articulation of her words in the document’s voice. Again, this erasure of the original voice is nowhere preserved within the text. It is impossible to know if a word was omitted in the original, if the word “she” was substituted for another that was present in the original, or, the later being the case, if the word “I” was the actual word that was changed. In this moment of reader interaction with the text, all that is present is the voice of the text speaking to the reader as its audience.

The bracketing off of her preferred female pronoun also frames her presence within the body of the Nation and of the text as a threat. Here again, her gender identity is clearly and distinctly segregated from the rest of the text. Her female gender identity is bracketed off from the rest of the text and visually placed behind bars in a way similar to the solitude of her own “T-Sep” classification.

Medina-Tejada’s body is even more conspicuously absent in her second, and final, quote. In response to an argument made by the defense, the record states, “Plaintiff states in opposition: ‘The defendant’s summary judgment…motion is preoccupied initially with challenging the complaint’s [allegations] under the Eighth and Fourth Amendments. As discussed above, and acknowledged by defendants, those amendments are inapplicable to pretrial detainees such as plaintiff” (7). This statement is very clearly framed as a comment made by Medina-Tejada herself, but is phrased in such a way that indicates that it is actually being given by her lawyer. The language makes use of legal conventions and references legal precedent in ways that Medina-Tejada would not likely have done had she been speaking in her own voice. In this instance, like the last, her voice is decidedly absent and replaced by that of an agent of the State even when the text suggests that a space has been allowed for her words and voice to take shape in some small way.
Where Medina-Tejada’s voice is absent or manipulated in the text, the voice of the law comes through with striking clarity. Much of the text is presented as a conversation between legal precedents. Periodically, the defense will present an argument and the prosecution will respond with legal precedent that refutes these claims and vice versa. Again, this style is clearly in line with the rigid conventions of the genre. But it is the rigidity of this style that, again, forecloses the possibility for Medina-Tejada to speak her body into existence. The only voices present are those of the state apparatuses: lawyers, judges, clerks and record keepers. As such, the only body that is spoken into existence is that of the state.

The question, then, in this discussion of speech, the voice, and language is, who has the ability to speak? What types of embodiment are possible within speech? It is evident that Medina-Tejada’s voice is denied within the text of the court document. Without a space for the voice to be heard, there is no space for the sounding forth of the body into existence. Without a discursive space for Medina-Tejada’s body to materialize it seems doomed to be relegated to a space marked by unintelligibility: a silent space from which she is unable to speak.11 Kimberly Medina-Tejada cannot speak through court record. Repeatedly her voice is silenced, ignored, manipulated, and appropriated by the court as an appendage of the State’s body. Through this discussion of her body, the State raises its voice to call its own body into being and, in so doing, erases her body by eliminating her capacity for speech. However, as I have argued above, the presentation of Medina-Tejada’s body that the court record offers is one marked by irredeemable fragmentation. I have argued that the State fears Medina-Tejada’s transgressive gender

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11 In her famous essay “Can the Subaltern Speak?” Gayatri Chakravorty Spivak concludes that, indeed, they cannot. In this piece she is discussing a very specific group of subordinated women within the Indian social hierarchy. However, her observations have been applied to other groups as well: sometimes problematically. Although this is a discussion that I cannot engage within this paper, I do believe that she has something important to add to my current project. The final paragraph in her essay reads as follows: “the subaltern cannot speak. There is no virtue in global laundry lists with “woman” as a pious item. Representation has not withered away. The female intellectual as intellectual has a circumscribed task which she must not disown with a flourish” (308).
expression, and illegal immigration, because it draws attention to the fragility of the borders between seemingly distinct categories. The State projects its fears of penetration and fragmentation onto her body and presents her as a dangerously, disorderly subject. However, there is another force at work in this document. If the State is appropriating her voice to speak its own body into existence through the court record, and the document presents her as irreparably fragmented, then the State is actively using her body and voice to call into existence its own fragmentation. It is using her story to call into being the very thing that it is trying so hard to guard against by so vigorously policing her body.

In light of these observations it is interesting to note that Medina-Tejada won the case and the court decided in her favor. Her T-Sep classification was, indeed, deemed to be inappropriate. However, it is unclear if this decision constitutes a “justice.” Although it is the incomprehensible and fragmentary nature of Kimberly Medina-Tejada’s body and gender identity, her improper bodily comportment, that prevents her easy assimilation into the body of the American nation, it seems that the case frames her bodily fragmentation as a mirror image of the fragmentation found in the body of the nation. In the end, it is her transgressive and fragmented identity that not only necessitated her crossing into the United States, but actually resulted in her successful claim to asylum (Medina-Tejada 2). Because of her transgender status Medina-Tejada was granted admission into the country. At the same time, the efforts of the Sacramento County Sheriff’s Department and Sheriff Blanas’ attempts to prevent her incorporation into the national body were proven to be unconstitutional and ineffective. Her improper bodily comportment facilitated her integration into the body of the United States. At the same time, the case reveals the slippery and complicated overlaps between individual bodily borders and those of national bodies. Additionally, the ruling of the case is of little consequence
to my analysis. What is significant is that the initial reaction to Medina-Tejada’s presence within the nation is one of fear and imminent danger. It reveals a fundamental flaw in State-centered modes of understanding and categorizing individuals whose bodies do not conform to the definitions of what constitutes a proper American body. In the next chapter I will address the inability of non-statist political body to render Medina-Tejada’s body intelligible. Here, I am primarily concerned with the inability of these appendages of the state, the Sheriff’s Department and Sheriff Lou Blanas, to accurately classify her: an inability with which they have chosen to deal through fear and punishment. Although she has been treated justly throughout this case according to the law, and justice has been upheld through the court’s decision, she is still denied a space in which to speak. As such, the possibility of her sounding forth of her own body is denied by the State. Although this is true, I am curious to ask, is it that Medina-Tejada cannot speak, or is it that she is unable to be heard? The first possibility implies an inability of the speaker while the second implies an inability of the listener or a gap between speaker and audience that prevents hearing. Because the power of the voice lies not only in the ability of the speaker to speak, but, in that of the listener to hear, both components in the dialogue are essential for a mutually constitutive embodiment. I feel fairly confident in asserting that Medina-Tejada does have a bodily presence somewhere and is likely able to speak from wherever she is. However, the control the state has exerted over the voice in this case makes it impossible for me to give audience to her embodied speech act. In the next chapter I argue that this inability of the audience to hear her speech is further evident in activist approaches to giving support to transgender inmates in Blanas’ jail.

12 Although, Spivak’s previously quoted conclusion to Can the Subaltern Speak? seems profoundly pessimistic, she implies a bit of hope for future action. The very last two sentences make the claim that “representation has not withered away” and intellectuals should not toss aside their responsibility to aid in representation of those who cannot speak (308). This curious aside prompts this question.
CHAPTER II: UNSPEAKABLE BODIES: IMMIGRATION, NATIONHOOD, AND SOCIAL JUSTICE

In the same way that Medina-Tejada’s story comes to be at an interesting moment in American political life, it also occurs during a particularly fascinating moment in the history of GLBTQ rights. In recent decades, many feminist theorists have pushed their work down postmodern and deconstructive avenues largely characterized by radical critiques of the epistemological categories of male and female. In the wake of important work by theorists like Judith Butler, it scarcely seems possible to advocate a feminist viewpoint that acknowledges gender essentialism as anything more than a strategic, tactical, choice. Even still, the transgender body has been repeatedly used and misused by theorists and philosophers as a trope for the irreconcilable fragmentation that characterizes the postmodern condition.

In the previous chapter, I addressed the ways in which the appendages of the State, the Sheriff’s Department and Sheriff Lou Blanas, read Kimberly Medina-Tejada’s body as a threat to the stability and unity of the State. In this chapter I turn away from these tendencies of state-centered legal language to erase transgender voices and to render these bodies fragmented and unintelligible. Instead, I address similar dangers present in feminist and other radical, critical, approaches to theorizing postmodern subjectivity. I then look at some activist approaches to dealing with this case that have performed the same kinds of erasures that the court record and legal discourse have done. Even in cases where feminist theorists seek to create new modes of knowing that allow transgender subjectivities to materialize as intelligible lives worthy of moral consideration, many of these theorists perform similar erasures to those which are apparent in the
court record. I will suggest that without critiquing the role of the Nation-State in the constitution of bodily intelligibility, these well-intentioned theories and activist projects are inadequate for addressing the complex realities of transgender lives. Without actively engaging in a complex critique of the State’s coercive and repressive influence on bodily intelligibility and representation, these theories are doomed to perpetuate the very same erasures that they are hoping to avoid.

In “Fin de Siécle, Fin du Sexe: Transsexuality, Postmodernism, and the Death of History,” Rita Felski shows some of the ways in which theorists like Jean Baudrillard and Donna Haraway have used the transgender body as a trope of postmodern fragmentation.13 As we have seen in the previous chapter, the language in the court record discusses Medina-Tejada in such a way that echoes this problematic usage of the transgender subject. The case reveals a symbolic erection of borders both within her body and in the body of the nation. The language in the court record reveals a profound fear of the links between the breakdown in the intelligibility of her body and the cohesion of the national body. I would like to point out the problem with these misappropriations of the transgender body is not that privileging fragmentation is necessarily wrong, but that using the transgender body as a symbol without specificity erases transgender subjectivities.

Although feminist and queer theorists are, largely, attempting to create a theoretical space for transgender subjectivities to become intelligible, Felski notes in their work a tendency toward erasures of actual transgender lives similar to those found in the court record. In the court record, Medina-Tejada’s bodily fragmentation is viewed with suspicion. She is cast as a dangerous

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13 Felski suggests that the use of this trope signals the end of history for these theorists (566). Baudrillard casts the transgender body as emblematic of the breakdown in meaning and unitary subjectivity as the problem of the gender binary stands in for the threat of disintegration that plagues all systems of classification in the postmodern world (Felski 567).
contaminant within the body of the Nation. Some postmodern feminists attempt to combat this negative characterization of gender transgression by ascribing a radical political dimension to individuals who trouble the gender binary. According to Felski, Haraway’s “Cyborg Manifesto” suggests the possibility of a hybrid entity combining male, female, human, and non-human in order to “explore the new possibilities, pleasures, and politics made possible by transgressed boundaries and fragmented selves” (Felski 568). Through this theoretical lens, the specificity of Medina-Tejada’s daily, lived, experience is reduced to an abstract political statement. There is no reference in this theoretical concept to any individual’s particular goals or desires. There is no acknowledgement that any one person may conceptualize her or his own transitioning outside of these more general political notions. Additionally, Haraway’s use of the phrase, “fragmented selves” reinforces our understanding of Medina-Tejada’s body and identity as not a unitary whole, but a series of fractured pieces.

However, Medina-Tjada’s story involves not only the transgression of gender boundaries, but of national boundaries as well. Her story, then, is bound up in a more complex set of circumstances than can be anticipated by abstract theoretical concepts like Haraway’s. Hers is a story that requires not only an understanding of gender transgression, but racial transgression, and national transgression as well. All of these boundaries are fundamental to the ways in which her body is repressed in the court document. Haraway discusses boundaries In Simians, Cyborgs, and Women: The Reinvention of Nature. However, because of her limited ability to consider the significance of citizenship status and specific national histories, her analysis ends up generalizing the transgender subject and converting her into a politically useful metaphor. In this book Haraway refers to the title characters as “boundary creatures:” monsters that disrupt “the great Western evolutionary, technological, and biological narratives” (2). Here, she invokes the border,
but the geographic specificity that these kinds of boundaries imply is lost: a national and geographic specificity that is essential to an adequate account of Medina-Tejada’s multi-dimensional border crossing. As such, the political value of Haraway’s theory becomes suspect. Haraway states that, “[t]he cyborg is a creature in a post gender world” (150). This quote, coupled with the previous, politically charged statements make clear Haraway’s belief that the post-gender cyborg is a political creature that seeks to destabilize established modes of social organization: an anxiety that is clearly echoed in the punitive, “T-Sep,” classification, policy. Where the court record reveals a fear of transgender body as a symbol of the postmodern dissolution of clear systems of categorization, Haraway uses this symbol as a liberatory position from which to imagine the transformative possibilities inherent in the radical indeterminacy of the fragmented subject. Although Haraway attempts to use the trope of the transgender body for positive political aims, her work represents a misappropriation of the transgender body for symbolic and theoretical purposes. Although I agree that this dissolution of discrete categories signaled by the cyborg metaphor can be liberatory, one must exhibit caution when running the risk of idealizing such subject positions. Perhaps a move away from the abstraction of high theory into a more concrete realm of politics that accounts for historical, cultural, national, and geographic specificity might help to soften this tendency. An account of postmodern subjectivity that acknowledges fragmentation as one appropriate mode of embodiment needs to consider regionally specific histories that constitute particular individual subjects. Medina-Tejada’s story reveals the importance of making clear the connections to actual lives and to consider the convergence of these forces on the oppression of specific individuals.

Medina-Tejada’s case requires an attention to national and geographic specificity that is not present in Haraway’s thought. Without a careful consideration of the influence of citizenship
status and national origin on bodily intelligibility, activists and critical theorists run the risk of generalizing the political importance of transgender bodies. Gloria Anzaldúa exhibits a tendency toward the privileging of hybrid subjectivities that is similar to Haraway’s, but, she also acknowledges the importance of considering racial, cultural, and geographical components of identity and oppression in *Borderlands: La Frontera*. In this book, Anzaldúa conceives of a *mestiza conscious* as a liberatory blending and fracturing of identities that destabilizes gender and racial binaries.

Race and national origin play significant roles in Medina-Tejada’s story. Although the court case sees her ambiguous gender presentation as a particularly dangerous threat to the stability of the proper American body, race emerges as a more significantly problematic feature in dealing with her case in relation to radical, theoretical, and activist accounts. In an article entitled “Battling the Blanas Machine: Bret Daniels’ Biggest Political Asset? He’s not John McGinness,” published on *newsreview.com*, the official website of the *Sacramento News and Review*, author, Cosmo Garvin addresses Brett Daniels’ repeated campaigns against Sheriff Lou Blanas for the job of Sheriff of Sacramento County. Daniels has been unsuccessfully running against Blanas and his hand picked successor John McGinness in spite of outcries from activist groups who claim that the Blanas administration has been marked by widespread mistreatment of people of color (Garvin 1). This article, published in May of 2006 draws attention, not only to a number of claims made against the Sheriff by transgender inmates, but also refers heavily to claims of wrongdoing made by the NAACP and the Jail Reform Coalition, an umbrella group that represents a number of activist and church groups (1). These groups, and a number of lawsuits filed against the Sheriff and his staff reveal that the Blanas administration may be marked by profoundly racist misconduct.
The tendency towards specifically racist modes of social organization has a long tradition in the region.\textsuperscript{14} Racism proves to be one of the undeniable building blocks of the historical construction of this region as an appendage of the American national body. Even the earliest social processes involved in the constitution of Americanness, were fundamentally marked by the abjection of racialized bodies. In order for the American Southwest to become seamlessly incorporated into the body of the nation, Mexican Bodies needed to be forcibly expelled from the definition of the proper American body. “Whiteness,” whatever its definition, was a primary means of determining who was considered worthy of citizenship and who was the “\textit{gente sin razon}”:” a descriptive category literally meaning “people without reason,” and used to define people as categorically inassimilable: incapable of being incorporated into the American nation (Almaguer 55).\textsuperscript{15} This historical constitution of Americanness as a legal category determined, in part, by race, is incredibly important to a more complete understanding of the cultural forces at work in Medina-Tejada’s story. This specific history of racial formation was being negotiated just at the time that the region was becoming incorporated into the body of the American nation.

\textsuperscript{14} In his book entitled \textit{Racial Fault Lines: The Historical Origins of White Supremacy in California}, Tomáš Almaguer analyzes the ways in which Anglo-Americans historically negotiated their privileged racial status in relation to elite and working class Mexican-Americans in the area. Almaguer points out that widespread migration of Anglo-American men into California was largely the result of the discovery of gold in 1848 (in the same year as the previously mentioned treaty of Guadalupe Hidalgo) and resulted in the significant repopulation of land that had previously been sparsely populated by native, Mexican Californios (26). He, then, goes on to assert that the spirit of manifest destiny that drove Anglos into these areas “implied the domination of civilization over nature, Christianity over heathenism, progress over backwardness, and, most importantly, of white Americans over the Mexican and Indian populations that stood in their path” (33). Indeed, in this year the editors of \textit{The Californian}, the first English language newspaper in the area boldly proclaimed that “we desire only a White population in California” (Almaguer 34).

\textsuperscript{15} Almaguer reminds us that the process of designing unique social hierarchies in this area was not a simple one. In order to accommodate preexisting social hierarchies, Anglos had to reevaluate the ways in which whiteness and, thus, Americanness were conceived. Faced with the presence of elite Mexicans who chose to emphasize their European heritage over their native roots, Anglos were forced to reconfigure American notions of whiteness to place importance on class as well as other markers of race. Interestingly, Almaguer points out that class position among \textit{Californios} often did correlate to a degree with phenotype (53). Important Although phenotype may have been, Mexican conceptions of racial hierarchy in the region were far more nuanced than Anglos might have expected (55). The ability of one’s class positioning to “whiten” an individual had profound effects upon what it meant to be white in this region of America during this historical period (55). However,
The history reveals the constitution of the State’s geographical space and that of the proper
American body to be historically and culturally intertwined. Most importantly, this racializing
project of separating “white” from “gente sin razon” represents a profound epistemological
move in establishing the very boundaries around the category of the human. This conception of
race determines who is worthy of moral consideration as an intelligible American and who is not.
Furthermore, this nationally and regionally specific background sets the stage for racial conflict
in the future of the state of California and helps to contextualize the racist conduct of Sheriff
Blanas’ administration.

Although she is subject to the racial conventions established by this history, Medina-
Tejada finds herself in a slightly different situation than the Mexican Californios who were
annexed along with the land as a result of the Treaty of Guadalupe Hidalgo. Her navigation of
the American racial hierarchy calls upon a different history as well: that of American
immigration policy. During the three months of her incarceration in Sacramento County,
Medina-Tejada’s asylum claim was under consideration. In the prison, she was a body without a
proper place. Not only was she imprisoned because of her lack of a legitimate claim to American
citizenship, but she was also a woman in a men’s prison. She was, therefore, in a liminal space
between a Mexican homeland that seemed to no longer want her and an America that might
reject her. In a scenario in which one’s access to rights is dependant upon one’s citizenship
status, the question of citizenship is largely a question of defining the boundary between those
with moral worth and those without. Medina-Tejada’s situation in this space between nations
renders her unintelligible as a moral agent.

Although Haraway and Anzaldúa have attempted to use gender transgression to imagine
a liberatory subject position marked by fragmentation and blending, Judith Halberstam, in some
ways, performs a very different misappropriation of the transgender body. Halberstam, too, tries to identify a liberatory space within gender transgression in her article “F2M: The Making of Female Masculinity.” However, where Anzaldúa and Haraway make a general reference to gender transgression in their theoretically politicized identity models, Halberstam more specifically and literally calls upon the transgender body as a symbol of her characterization of postmodern subjectivity. In this essay she argues that, “the postmodern lesbian body... remakes gender as not simply a performance but also a fiction” (125). Here, the variety of lesbian and transgender subjectivities confound traditional modes of categorization and create new transformative modes of embodiment and embodied action. She seeks to not only break down traditional notions of what constitutes maleness and femaleness by acknowledging the potential for crossing between the two but to obliterate the oppositional and binary conception of gender difference. Her assertion is that “the specificity of the transsexual disappears” in post modernity and that, “we are all transsexuals” (126). In this passage Halberstam is arguing that all who participate in the system of meaning-making called gender, whether they self-identify as

16 The conceptual links between the gender hybridity of Anzaldúa’s *mestiza consciousness* and Haraway’s “cyborg” are fascinating. In fact, in his book *Mestizaje* Rafael Pérez-Torres calls Haraway’s cyborg a combination of Anzaldúa and Chela Sandoval (49). Anzaldúa argues, “indigenous like corn, like corn, the *mestiza* is a product of crossbreeding, designed for preservation under a variety of conditions. Like an ear of corn—a female seed-bearing organ—the *mestiza* is tenacious, tightly wrapped in the husks of her culture” (103). In this simple and elegant metaphor a great deal of profound work is being done. Of primary importance to the project at hand is the transgressive blend of genders that Anzaldúa articulates. The comparison of the *mestiza* to an ear of corn points to her transgender nature since the ear is, according to Anzaldúa “a female seed-bearing organ” (103). Since the seed is commonly associated with the male, this metaphor represents a blending of the male and female that allows the *mestiza* to wield a transformative power that is available to neither male nor female alone. Anzaldúa’s metaphors seem drastically different from those used by Haraway; Anzaldúa looks to spiritual traditions from the past and natural phenomena like corn while Haraway looks to the future through metaphors of the technological. However, this passage points to a link between the traditional and the futuristic as corn, in the contemporary moment, has become a highly technological object masquerading as a “natural” one through the extreme genetic modification that has created modern day corn. Indeed, it is in part in this technological manipulation of the grain that Anzaldúa locates its potential as a symbol of power and survival. She says that the *mestiza* is “designed for preservation” (103). Here, the *mestiza* is revealed to be a blended identity that, much like Haraway’s cyborg, gains its power of survival through the combination of the male, the female, the technological, and the natural. Also, like Haraway, Anzaldúa attempts to employ the trope of transgenderism as a liberatory blending and fragmenting of identities. However, nowhere is the body itself present in the work. In *mestiza consciousness* gender transgression continues to serve as a postmodern trope while the transgender *body* remains a decidedly absent actor.
transgender or not, exhibit a transgender performance. Since gender, for Halberstam, is an artificial construct, all gender performances are equally contrived.

The hidden force at work in Halberstam’s symbolic usage of the transsexual is that the transgender body is actively erased within the text. Anzaldúa and Haraway have referenced gender transgression while allowing the transgender body to remain absent within their texts. Halberstam, however, has specifically invoked the trope of the transsexual to erase the transgender body. Throughout the essay she references very specific FTM individuals and bodily practices allowing a glimpse of transgender subjectivities to emerge within the text. However, this illusion of bodily presence is all but erased by the end of the piece. In the last sentence of her essay, Halberstam reiterates and augments her primary argumentative claim saying, “we are all transsexuals. There are no transsexuals” (132). Not only has she robbed the transgender subject of her uniquely embodied experience by generalizing that experience of gender to include all people, but she has erased the transgender body from the discourse all together.

Although, it may be simple to place blame on theorists and philosophers who misappropriate transgender subjectivities for use as a trope of the fragmentation inherent in the postmodern condition, similar critiques can be made of activist organizations who have specifically sought to raise awareness about this particular case. For this reason, I wish to extend this analysis to involve those who speak out on behalf of individuals who have been mistreated by the governmental and legal structures in countries in which they reside. Specifically, I am addressing a particular campaign headed by the international, human rights organization: Amnesty International. Amnesty International’s attempt at representation of several claims of mistreatment lodged against Sheriff Lou Blanas is severely limited by State-specific discourses on bodily intelligibility. Medina-Tejada’s body is further erased through Amnesty International’s
campaign because of historical discourses on race, gender, and citizenship status that are specific to the American national context. In this way, the State itself is responsible for her mistreatment not only to the extent that Blanas, its local appendage, has carried out and enforced unnecessarily repressive policies against her, but also in that the constitution of the proper American body through a history of immigration policy has rendered her body unintelligible as a life of value.

Several articles that I have discovered on the Internet draw attention to a number of different claims of mistreatment made against the very same Sheriff Lou Blanas by four or five different transgender women. One article on a psychological health website entitled “Kathi’s Mental Health Review,” run by author and patient advocate Kathi Stringer refers to four transgender women who were making claims of mistreatment against Sheriff Lou Blanas. They included Kelly McAllister, Jackie Tates, Raymond Sanders, and America Tejada (Nash 1). Another article entitled “What’s she doing in the men’s jail?” on the Sacramento News & Review website focuses more attention on a fifth woman: a transgender immigrant from Nicaragua by the name of Luisa Espinoza and also references McAllister, and Tates (Garvin). One of the preceding names should be familiar as the legal precedent set by the court’s decision in the Jackie Tates case was one of the primary factors in determining the success of Medina-Tejada’s case.

It is interesting to note that, with the exception of Raymond Sanders (about whom I can find very little information), McAllister is the only plaintiff who would clearly conform to contemporary, American, standards of whiteness. As has been previously stated, Espinoza is from Nicaragua and Medina-Tejada from Mexico. Tates, Although it is difficult to ascertain her national origin or ethnic self-identification from the evidence available, appears to be dark skinned in photographs accompanying Garvin’s article (What’s she doing in the men’s jail?).
The racial composition of this group of women becomes incredibly interesting when considering the internet-based calls for transgender justice mobilized against Sheriff Blanas and Sacramento County. According to a publicity piece on www.ai-lgbt.org, Amnesty International spearheaded an official campaign on September 25, 2005: four months after Medina-Tejada’s formally lodged complaint against Sheriff Lou Blanas. In the Amnesty International calls to action that have had some circulation among Internet activist sites, McAllister, the one white plaintiff, is the only name to be mentioned. In fact, many of the calls to action and supporting materials provided by Amnesty International specifically call attention to McAllister’s whiteness. In the description of her case in an official press release from ai-lgbt.org she is referred to as “Kelly McAllister, a white transgender woman” in the first line of text.

My question, then, is why it is that Amnesty International has chosen to employ the body of the one white plaintiff, McAllister, as the face of transgender struggle against Sheriff Blanas. Additionally, I am curious to discover why Amnesty International has chosen to specifically invoke McAllister’s whiteness in the body of their texts. In her essay entitled “Precarious Life” in a book by the same name, Judith Butler untangles the ways in which the face is used to stand in for the suffering of the nation in representations of individual suffering. Why then has McAllister’s white face been used as the face of this issue? Certainly, the representation of an individual through the face is one of the ways in which one is given a sense of humanity or moral worth. There is a profound identification that takes place when a viewer looks upon a face. In many ways the face is a visual rhetorical tool that communicates one’s humanity to a viewer. It is often more difficult to lie to someone, commit violence against them, or to steal from them when looking at them in the face. The moment of looking someone in the face often produces an

17 In this discussion Butler refers to Levinas’ conception of the face.
identification with that person that makes their moral worth more difficult to deny. In this way, the visibility of one’s face and the ability of another person to recognize humanity in that face seems to play a significant role in self preservation. Butler suggests that the equation between representation through the symbolic face and humanization of the one who is represented by the face is not as simple as we might be inclined to assume. She argues that representation does not necessarily equate to humanization (141). The recognition of a human face as a symbol of an individual’s humanity does not always translate into a sense that the viewer has a moral obligation to the individual represented by that face. The representation can either serve as a visible discursive symbol of a human person worthy of moral value, or of an abstract concept that sometimes is to be feared or despised. In both cases this representation defines the boundaries of the human category. It communicates what kinds of subjects are to be included in the definition of the worthy human and what abstract concepts and character traits lie outside of that definition.

In the history of immigration in the United States the face of the immigrant has stood in for an external threat against which the national body needed to be protected. I have shown that the routine classification of transgender inmates as “T-Sep” casts Medina-Tejada as a dangerous contaminant within the body of the Nation. Mai M. Ngai points out that after WWI the national borders of the U.S. began to be more vehemently policed out of a fear of foreign invasion (19). In order to maintain the bodily integrity of the nation the racial and cultural composition of the

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18 Butler, citing Levinas, suggests that the face also communicates a fragility and defenselessness: a precariousness of the life communicated through the face. Butler quotes Levinas stating “the face of the other in its precariousness and defenselessness, is for me at once the temptation to kill and the call to peace, the ‘you shall not kill’” (qtd. in Butler 134).

19 To illustrate this point Butler refers to the face of “the terrorist,” the face of Osama bin Laden, the face of Saddam Hussein, etc. (141). The discursive function of these faces is not to communicate a sense of humanity or moral worth on behalf of an individual who is represented by the face. On the contrary, these faces are used to communicate an abstract concept. These faces stand in for a perceived threat: “the terrorist,” “the blood thirsty dictator,” etc. This discussion of the face in Butler’s text reveals a dual function of attempts at representation of an individual.
citizenry needed to be vigorously controlled through immigration restrictions. This occasionally
took the form of exclusion of criminals, prostitutes, paupers, the diseased, and anarchists (18).
Through the legal definitions of the proper citizen, these individuals were excluded. Non-
European ethnic groups were similarly excluded out of fears of dangerous race mixing which
was although to threaten the unity and coherence of the body politic (24). In this discourse on
immigration those who wished to restrict the influx of racialized immigrants conceived of the
nation-state as a body in danger of contamination: one that could suffer from “alien indegestion”
(23). It is exactly this policy of immigration restriction that produced the category of the “illegal
alien” according to Ngai as a “new legal and political subject, whose inclusion within the nation
was simultaneously a social reality and a legal impossibility” (4). Exclusionary immigration
policies, therefore, have produced a class of people who are marked by a “non-belonging:” that
is, their primary defining trait is that they are where they should not be.

Amnesty International relies for their success on marketing sympathetic figures of
political prisoners who have been wronged by the governments of Nation-States in which they
reside. Why is it that Amnesty International seems to have deemed Kelly McAllister to be a
more effective spokesperson to serve as the face of this series of claims for trans justice? As I
have already shown, race has played an important role in the legal constitution of the proper
American body worthy of the rights associated with citizenship. It is, therefore understandable
that some residual effects of these ideological origins might remain in the law. However,
Amnesty International is an organization devoted to coming to the aid of individuals for whom
the law does not work: people wronged by the arbiters of legal sanction. Therefore, it seems
particularly curious that their campaigns should be marked by the same racist underpinnings. It is
my assertion that Amnesty International, an organization fighting for human rights is
subconsciously constrained by these very same nationally based ideological histories that have rendered Medina-Tejada’s body unintelligible within the court record. Because of her particular situation outside the boundaries of what constitutes the proper American Body, Amnesty International is incapable of mobilizing her body effectively in the symbolic way that they need to in order to garner support for their cause.

As I have pointed out, the previously mentioned thinkers have performed problematic misappropriations of the transgender subject in their theoretical works while trying to create a discursive space for gender transgression to be conceptualized as a liberatory identity position. Part of the problem here has been a lack of attention to nationally specific discourses on bodily intelligibility, and a lack of attention to specific transgender lives. The Amnesty International campaign, on the other hand, abounds in specificity. It deals with a very particular case and does not try to make broad theoretical generalizations. However, it still leaves unchallenged the nationally specific, racist, immigration, history that constrains Medina-Tejada’s bodily intelligibility. As such, the campaign performs a similar erasure of her body to that which I have uncovered in the court record.

In her monograph entitled *Impossible Subjects: Illegal Aliens and the Making of Modern America*, Mae M. Ngai charts the history of U.S. immigration policy and its role in the constitution of racial categories of difference within the nation. She argues that “the illegal alien is [...] an ‘impossible subject’ a person who cannot be and a problem that cannot be solved” (5). In this book Ngai, like Butler, sees a clear correlation between the intelligibility of a body and citizenship status. Nationally specific racial categories are mapped upon individual bodies in an effort to define the racial character of a proper citizen and to exclude those who do not fit into that definition.
The goal of Ngai’s text, however, is not to look at the ways in which the figure of the “illegal alien” has been constituted through immigration policy, but to look at the ways in which the American nation as an intelligible category has been built upon a foundation of these expelled bodies. Similarly, Butler suggests that it is exactly this forceful expulsion of bodies from either the definition of the citizen or from the geographical space that composes the nation, that draws national borders (Butler & Spivak 34). Therefore, the ideology of the Nation-State is dependent upon the production of impossible subjects suspended in a liminal space of statelessness.  

Within the context of this racist, immigration, history, Kimberly Medina-Tejada is unable to be read as a proper American worthy of moral consideration. As such, Amnesty international is unable to use her story as a sympathetic one for rallying support for the cause. I would like to point out that I am not suggesting that Amnesty International’s campaign is intentionally or overtly racist in its execution. However, I am suggesting that their ability to market the campaign is constrained by the nationally specific discourses on belonging and by their target audience’s ability to interpret human lives as morally valuable within these discursive constraints. Although she eventually gained asylum, Medina-Tejada’s body is not easily interpreted as a proper American. Instead, she resides in a liminal space marked by “statelessness.” In this state, the body of the migrant marked as one that has left or has been forcibly expelled from the body of one nation, and has come to inhabit another with the understanding that she or he does not quite belong there.

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In Judith Butler and Gayatri Chakravorty Spivak’s *Who Sings the Nation-State* Butler suggests that this statelessness is characterized by a sense of “non-belonging” within the geographical boundaries of a nation-state that one occupies (Butler & Spivak 4). Butler’s notion of “statelessness” is first and foremost based upon the experience of international migration. Later in the work she deals more specifically with the “statelessness” experienced by Palestine, a very different experience of “statelessness,” but it is the migratory experience that figures most prominently in the initial explication of the concept.
U.S. immigration history and Butler’s “problem of statelessness” have intersected on the body of transgender illegal immigrant, Kimberly Medina-Tejada to produce her as an “impossible subject.” In Amnesty International’s campaign, State-centered discourses on race, gender, and citizenship have created a blind spot which renders her body perpetually out of order, unintelligible, and incapable of claiming existence or rights. It should be noted that this is not merely a rhetorical or discursive problem at work. On the contrary, there are profound material consequences of Medina-Tejada’s impossible subjectivity.

The legacy of these attempts to police the racial contours of Americanness and the stateless bodies produced by this exclusionary project of definition are clearly present in Amnesty International’s calls to action on behalf of Kelly McAllister. It seems clear that McAllister’s white face is the only one out of the three or four others that can be mobilized effectively as a symbol of an American wronged by her own government through Amnesty International’s campaign. Although Medina-Tejada was granted asylum by the decision of her case, her situation outside of American definitions of whiteness seem to clearly mark her body as incapable of being mobilized effectively as an American to garner sympathy. Although she has gained asylum in the United States, her body remains inassimilable: a dangerous, foreign, contaminant within the statist fantasy of wholeness, unity, and homogeneity.

I would like to repeat that the primary issue here is not the discursive erasure of Medina-Tejada’s body, nor the silencing of her voice enacted by Amnesty International’s campaign. There is a more material problem to be addressed. Butler reminds us that the access to rights is often dependent upon one’s citizenship status. In this scenario the state is the sole arbiter of what rights are allocated to whom and they are rarely given to subjects who remain impossibly stateless. Butler asks us to begin the difficult task of thinking through post-nationalist modes of
assigning moral worth to individuals and of securing rights.\textsuperscript{21} This story of Kimberly Medina-Tejada reveals a profound inability to think about and to value stateless bodies. I argue that this is a problem inherent to statist modes of social organization. Although some might suggest that that we are now living in a post-racial society, the psychic legacy of our country’s constitution through the exclusion of undesirable bodies remains in the way we assign meaning to those bodies. Until statist modes of categorizing the world and its inhabitants can be dismantled certain lives will remain unintelligible: stateless, and, consequently, will have restricted access to rights, dignity, and sympathy.

\textsuperscript{21} Although she launches a harsh critique against the Nation-State, Butler does not offer any suggestions for what this post-nationalist understanding might look like. She merely hints at it at this stage in her work, with the understanding that it is a concept that may see further elaboration in future work.
CONCLUSION: TOWARD A POST-NATIONALIST MODE OF BELONGING

In light of the critiques of misappropriations of the transgender body that I have made in Chapter Two, I would like to be able to create a space for Medina-Tejada’s actual body to materialize through her own voice. One valuable step in that attempt would be to interview her or to find evidence of her own side of the story in some other way. However, this goal proves difficult to achieve, because it seems that Medina-Tejada has changed her name more than once. The court case refers to her as both Richardo and Kimberly Medina-Tejada. However, in additional articles that I have found scattered throughout the internet that discuss the legal claims made by the four transgender women against Sheriff Lou Blanas, she is referred to as America Tejada. Indeed, America Tejada may be a different person entirely, Although this possibility is highly unlikely. This difficulty in finding out where Medina-Tejada may be is compounded by her immigrant status, which adds to my inability to track down in order to conduct an interview.

Alternatively, I have made attempts to obtain the official court transcripts located in the archives of the office of the Court Reporter. This, too, has proven difficult, as I have been faced with procedural roadblocks and uncooperative informants. One attorney who I contacted greeted me with rude non-compliance and refused to aid me in my search, while procedural guidelines restricted me from gaining easy access to the documents through the Court Reporter’s Office. It seems curious that documents purported to be public record would be so difficult for the public to obtain. My difficulties in procuring these transcripts reinforce the importance of this project. If finding Medina-Tejada’s voice in the case record is impossible and tracking her down for the purpose of interviewing her is nearly so, then the transcript may be the only place to find something approximating an “unbiased” account of the court proceedings. Certainly, it is improbable that the transcript would be entirely unbiased, since the questions asked by attorneys
necessarily have certain motives and her ability to speak is confined by parameters these questions. However, the official court transcript should at least have Medina-Tejada’s own words. My difficulty with finding and obtaining this transcript represents an attempt by the State to muffle her voice even more than it already has. This blockage of judicial transparency is not specific to her case alone. I could have just as easily been trying to find any other court transcripts. Here, the State reveals its reticence to make its workings visible to the citizenry. In my inability to find these documents, the invisibility of the State becomes evident.

Ultimately, given the tools that I have at my disposal, I was unable to find Medina-Tejada and am unable to represent her story accurately. Therefore, my strategy has been to assert the importance of specificity in dealing with the complicated issues relating to the case, to thoroughly consider the cultural, ideological, and historical conditions that have shaped the discourses in which Medina-Tejada’s body is forced to circulate. I believe that I have had difficulty locating her and finding a space for her body to materialize because the intersections of Medina-Tejada’s race, gender, and citizenship status, point to blind spots in our ability to see certain people’s bodies or to hear certain people’s voices. She is, as I argued in the previous chapter, impossibly stateless. Although she has been granted asylum, Medina-Tejada seems to remain unintelligible because of dominant definitions of race, gender, and nationality. Therefore, I would like to imagine a post-nationalist mode of valuing human life that can unravel the epistemological frameworks that constrain our abilities as Americans to interpret bodies that are hopelessly marked by State-centered, racist and heteronormative historical traditions.

I suggest that anarchist critiques of statism would contribute important insights to this academic conversation.22 Medina-Tejada’s story and postmodern accounts of gender, race, and

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22 Here I am drawing on a growing body of literature on “postmodern anarchism.” Some of the most important works in this field include Todd May’s *The Political Philosophy of Poststructuralist Anarchism*, and Lewis Call’s
nationality reveal a missing element of anarchist accounts of power and domination. Similarly, anarchism reveals a missing element in postmodern political philosophy. Finally, Medina-Tejada’s particular case reveals the danger of engaging in theorizing without specificity and shows us concrete, daily, life experiences that augment these abstract theoretical principals.

In the previous chapter I argued that the specific history of immigration policy in the United States has created a situation in which Kimberly Medina-Tejada’s body is rendered unintelligible and unable to be mobilized as a symbol of an individual worthy of moral consideration even within Amnesty International’s campaign for human rights. I have argued the United States’ national context has contributed to her silencing and that in order for her to be capable of gaining a voice that can be heard, or claiming her own moral worth, a new means of valuing human life needs to be formulated: one that is able to escape these nationally specific histories of racist exclusion. Butler’s problem of “statelessness” can only be solved through a post-nationalist mode of valuing lives, for one cannot be “stateless” if the State is no longer a significant marker of humanity.

Some may take this line of reasoning to be one that stands to affect only a small portion of the population, those who are specifically rendered unintelligible and incapable of communicating their moral worth to others. However, this is not the case. The silencing that I have explored in Chapter One could be imposed upon any one of us and, as I have argued in Postmodern Anarchism. The work of Michel Foucault has been indispensable in the development of postmodern anarchism as conceived by both May and Call. May, drawing on Foucault asserts that postmodern or poststructuralist anarchism, “struggles not only on the economic or state levels, but on the epistemological, psychological, linguistic, sexual, religious, psychoanalytic, ethical, informational (etc.) levels as well” (95). He believes that this approach acknowledges the diffuse nature of power, and identifies multiple points in the spectrum of social life for resistance to occur. Although the State is not the only point from which power emanates, May argues it is no less important to an analysis of power relationships and social constraints. Indeed, it is the “state-form” that cements the norms, discussed by Foucault, into place (107). Although the State itself doesn’t produce the norms that govern social action and bodily intelligibility, the state-form helps to solidify these norms in practice. It is for this reason that the coercive influence of historical discourses on race, gender, and citizenship status are attributable to the State.
Chapter Two, the epistemic configurations produced by the State make all of us incapable of hearing certain voices even when there are attempts at speech. A nationalism that intentionally excludes particular populations from the category of the human through forceful expulsion into the realm of the stateless is an ideology that threatens to destroy the humanity not only of its particular victims, but also that of the entire citizenry.23 This is an ideology that nullifies the very category of the human even as it tries to defend the boundaries around that term through the abjection of undesirable bodies. However, where there is not a physical expulsion in the case, there is a discursive expulsion of Medina-Tejada that has material consequences evident in her treatment. The United States’ history of exclusionary immigration policies marked by actual, physical expulsion is still palpable in the form of a continued discursive expulsion from the category of the human.

Medina-Tejada’s story affects us all. I began this project with a quote by proto-anarchist and individualist, William Godwin in which he argues that it is only in moments when the routine social order is disrupted, that individuals are made aware of the State or are made aware that there are statist forces that govern their lives at all times (Godwin 10). During the vast majority of moments that do not diverge from the ordinary, the governance of people’s lives generally goes unnoticed by the citizenry according to Godwin.24

23 Agreeing with Hannah Arendt, Butler states that “what happens at the moment in which nationalism takes over a given nation-state – rule of law is suspended and minorities are deported or disenfranchised or, indeed, sent off to be annihilated – is nothing less than the complete destitution of the human as such” (Who Sings 45). Certainly, the nationalism to which Butler’s reading of Arendt refers, is subtly different than the one at work in this case. Arendt was writing at a time when Fascist nations were far more ubiquitous than they are today. She was almost certainly referring to a physical expulsion of minority groups that is not directly present in the story of Medina-Tejada.

24 Godwin anticipates Michel Foucault’s notion of “bio-power” within this sentiment. In The History of Sexuality: Volume I Foucault defines “bio-power” as the shift from a government’s ability to coerce its subjects into obedience through threat of death, to governmental control over the daily conditions of life (142-143).
This case reveals the equal importance of two different functions of power: Foucault’s notions of the law and the norm (144).\(^\text{25}\) The case stresses the significant overlap of these two modes of characterizing the effect of power on individual bodies. Additionally, this case reveals the importance of relying not only upon critical theorists such as Foucault and Butler, but also less commonly recognized anarchists like Godwin. It is my assertion that an accurate assessment of the significance of this case is not possible without fully engaging in a critique of the State and that this type of critique is only possible if anarchist theories are specifically and carefully considered.

I am drawn to Foucault’s notion of “bio-power” in considering the significance of this case because the function of the “norm” as an instrument for the exercise of power seems to have a more significant impact on Medina-Tejada’s story than does the “law.” Certainly, within the confines of this case, Medina-Tejada has come into contact with the “law.” But, in this case, the law has come down on her side. The case was decided in her favor. The Judge’s ruling was that Sheriff Lou Blanas’ policy of routine “T-Sep” classification of transgender inmates was unconstitutional. However, the more significant observation that needs to be made here is that this policy makes obvious the subtle circulation of social norms that classify Medina-Tejada’s body as hopelessly out of order, inassimilable, unintelligible, and dangerous. In this way, the case, and the exposure of this obviously egregious policy, serve as disruptions in the smooth functioning of this norm that Godwin fears as the unnoticed presence of governmental coercion. The case, itself, at once re-inscribes the norm through its repetition and opens it up to critique.

\(^{25}\) He goes on to emphasize the importance of the “norm” in the subtle manipulation of bodies, in opposition to the law (144). According to Foucault, the “Law” represents a threat of death characteristic of a past age, while the more subtle and diffuse rule of the “norm” represents a more pervasive and contemporary exercise of “bio-power” present in every aspect of daily life (144). Although Godwin does not anticipate this subtle distinction between the “law” and the “norm” presented by Foucault, his conception of governmental, state power does seem similar. Both rely on a subtle, imperceptible, presence of governmental power.
through making the norm visible. In the face of this ruling under the law, the norm may be positioned to lose the power that it would wield as an unnoticed presence of governmental power in daily life.

Contrary to Foucault’s positive view of power as productive, this case reveals the limitations inherent to post-modern projects like his that refuse to acknowledge the significance of centralized, governmental power. The case reveals that a nuanced understanding of the body’s place within nationalist matrices of power requires a multidimensional approach to characterizing power, one that acknowledges Foucault’s dispersed and productive model alongside Godwin’s subtle reinforcement of centralization.26

Regardless of whether or not power can be considered to reside in some central location, this case reveals the importance of acknowledging the coercive role of the State. Because of Sheriff Blanas’ role as an appendage of the State, he cannot be considered outside of a political structure that imbuers his position with coercive power. He cannot only be considered an individual node in a dispersed power structure. He is also acting on behalf of the State and is inseparable from it. In this way, the State has given Blanas the power to constitute, and act in accordance with, the norms that make Medina-Tejada unintelligible. The Judge’s ruling in the case has revealed that Blanas needs to be considered in both his official and his individual capacities. Therefore, any interactions that Medina-Tejada has with him must be considered to be

26 One important distinction to make between Godwin and Foucault’s conceptions of power is that Godwin seems to think of governmental control in a specifically negative light. For him, power constrains the citizenry’s natural, creative, productivity and renders society inefficient (10). Foucault, on the other hand, seems to imbue power with a creative and productive function. Foucault suggests that the exercise of power creates the very conditions necessary for its resistance and, in this way resistance does not exist outside of the matrix of power (95). For Foucault, then, power does not merely restrict action. Instead, it creates the possibility for new modes of expression that must arise in response to the attempted restriction. Therefore, Foucault sees power as something that permeates every level of the social world while Godwin sees governmental control and coercion present in all aspects of it. The fundamental difference here is that Godwin’s conception of power seems to rely on a centralized point, a state government, from which it emanates and permeates all aspects of social life, while Foucault sees power as both permeating and arising from all points in the social world.
both an interaction with an individual person and with the State. However, Blanas’ guilt in his individual capacity is also an attempt of the State to shift the blame away from itself. If Blanas, as an individual, is responsible for Medina-Tejada’s mistreatment, the State is able to portray him as an exceptional case. This ruling casts Blanas as an individual who acted outside the boundaries of legal propriety and helps the State to maintain a more innocent image. This strategy merely ensures that the systemic oppression of Medina-Tejada by the State will remain invisible and the authority of the government will remain unchallenged.

Additionally, as Chapter Two has shown, Medina-Tejada’s constitution as a dangerously abject body-out-of-order is intimately bound to nationalist discourses of race and immigration. Therefore, her story cannot be considered outside of its entanglement with a system of power bound to the Nation-State. It may be true that this power does not emanate from a centralized location, but the State is fundamental to its nature. In this way, a Foucauldian genealogy of American ideologies on bodily intelligibility has revealed Medina-Tejada’s erasure as a subject worthy of moral consideration to be dependent upon specifically nationalist histories.

This case raises a complex web of concerns and the theoretical tools available to unravel them leave many questions unanswered. How, precisely, can we begin to think through a post-nationalist mode of valuing human life? The most significant generalized claim that I can distill from this project is that the Nation-State, as the dominant mode of ordering social life in the modern world, is fundamentally flawed. It produces an episteme marked by a profound disavowal of the possibility of fragmentation within the social body, an inability to accept the dissolution of borders between seemingly discrete categories, and an unwillingness to acknowledge important, regionally specific histories that contribute to the oppression of non-normative embodiment. These three main flaws in statist ideologies have silenced Medina-
Tejada, erased her body, and made her voice inaudible to audiences when she attempts to speak. These tendencies have made her body unintelligible and incapable of claming moral worth. The fluidity and adaptability of anarchist modes of social organization can undo these statist ideologies that restrict our ability to assign value to complex, non-normative lives like Medina-Tejada’s.

A post-nationalist mode of social organization requires the dissolution of the Nation-State. I have argued throughout this project that the State produces particular ways of knowing that render certain lives unintelligible. I have chosen to look specifically at Medina-Tejada’s case because of the ways in which nationally specific discourses on race, gender, and citizenship status intersect to render her body unintelligible in a variety of different contexts. Other examples of similar erasures could be explored in order to make similar claims, although the specific configuration of these ideological mechanisms is unique to her case. However, what remains constant in Medina-Tejada’s case and in any number of other possible cases is that the dissolution of the Nation-State as a meaningful means of assigning value to human lives will allow for the elimination of the epistemic constraints on bodily intelligibility that I have outlined in the rest of this project.

Federalism is one possible way of conceiving of this dissolution of the Nation-State. In anarchist usage of this term, federalism refers to some form of ordering the social world through the creation of autonomous local communities who voluntarily work together as a federation. These modes of post-nationalist organization necessarily privilege the fragmentation of the social body that the State fears, as centralized authority is eliminated in favor of local or regional autonomy. This type of federalism would dissolve the State into a voluntary federation or free association of smaller communities. I have argued that the official case record frames Medina-
Tejada’s body as irredeemably fragmented and that the routine classification of transgender inmates as “T-Sep” reveals the State’s profound fear of fragmentation. A post-nationalist mode of social organization welcomes fragmentation of the nation.\textsuperscript{27} Indeed, there is already profound social and political fragmentation. Organizing the world in a way that acknowledges its fragmentary nature eliminates the need to vigorously police bodies who call attention to that fragmentation. Statist epistemologies deny fragmentation in favor of an illusory whole that necessarily excludes those modes of embodiment that do not fit. A post-nationalist mode of valuing life acknowledges fragmented subjects but is not threatened by them.

While the privileging of some form of federalism works toward the dissolution of the false sense of internal coherence of the national body, dissolution of the Nation-State also implies expansion of the post-nationalist body politic or a dissolution of the borders. Throughout this project, I have referred to the perceived fragility of the border, the State’s fear of its permeability, and the desires of the State to guard the borders against penetration. I have argued that Medina-Tejada’s body is framed within the court record as one that confounds boundaries between male and female, and in the process, calls into question the distinction between discrete categories. A post-nationalist dissolution of the State does not require borders to define one national body in opposition to another. Therefore, a post-nationalist epistemological framework would be unthreatened by the erasure of borders between categories. If, as I have argued, the State fears Medina-Tejada because her embodied blending of the male and female categories calls into question the belief in an America that stands in contradistinction to other nations, then, a dissolution of the need to draw firm distinctions between nations will eliminate that fear. Statist

\textsuperscript{27} I am intentionally using a lower-case “n” in the word “nation” here, while I have capitalized it in the rest of this project in order to mark a distinction in my discussion of post-nationalist modes of conceiving of social order in what now constitutes the “Nation.” Here the word “nation” refers to the geographical and social space that now constitutes the “Nation” of America.
epistemologies require firm boundaries between categories for them to be intelligible. On the other hand, post-nationalist epistemologies find power in the breakdown of firm boundaries. A post-nationalist mode of valuing life is adaptable and able to make legible those modes of embodiment that confound the boundaries between male and female, citizen and foreigner.

I have also argued that Medina-Tejada’s “illegal” crossing of the Nation’s border poses a threat to the State’s fantasy of impermeability and that nationally specific discourses on bodily intelligibility that are dependant upon histories of racist immigration policies, and geographical annexation render her a figure to be feared by the State. With the dissolution of statist epistemologies and the rigid boundaries that define them, there will be no reason to guard against threats to fantasies of impermeable borders. Finally, the elimination of borders will necessarily render the problem of statelessness meaningless as the State can no longer be the fundamental mode of valuing individual lives. Post-nationalist subjects are stateless, not because they do not belong anywhere, but because they belong everywhere.

This post-nationalist mode of social order, privileges regionalism over centralization. Dissolution of the conceptual framework that conceives of the Nation-State as a single, united, entity confounds attempts at the creation of grand narratives on social cohesion and notions of the “proper” American body. Without any sense of a centralized locus of power from which laws and normative definitions derive, there can be no cohesive understanding of what characterizes a worthy citizen. No unifying definition of proper bodily comportment is possible. As I have argued in the Chapter Two, Medina-Tejada’s body is unable to circulate symbolically as a “proper” American worthy of moral value, because nationally specific histories of racist immigration policies prevent her body from being easily read as such. Without a unified definition of “proper,” American, bodily comportment such a problem would not arise.
The focus on regionalism instead of centralism, which characterizes post-nationalist modes of belonging, also allows for greater specificity in dealing with issues that are particular to a single area. I have argued throughout this project that postmodern accounts of subjectivity perform misappropriations of the transgender body when it is used as an abstract trope without close attention to the regionally specific histories that shape the social space in which individuals are made to circulate. By privileging a regionally specific knowledge of the social realities that govern specific lives, post-nationalist modes of belonging dismiss generalizations that can create blind spots to particular social practices and bodily experiences. Additionally, placing value on regionally specific knowledges allows communities to accommodate more quickly and organically to changing social conditions than can centralized authorities. Regionally specific knowledges are necessarily more capable of understanding the everyday lived realities in a particular area than are distant authorities. Statist epistemologies create generalizations to make sense of the social world and to enforce bodily cohesion in the citizenry. Post-nationalist modes of valuing lives, on the other hand, value particularity and uniqueness. Regional and individual specificity are valued instead of centralized and unified definitions of belonging.

Similarly, many strains of anarchism privilege the individual, rather than the Nation, as the fundamental unit of social organization. This epistemic shift de-centers power over the law and over the creation of social norms and dissolves nationalist definitions of inclusivity. As is the case with regionalism and federalism, individualism eliminates the danger of statelessness through the creation of a post-nationalist mode of valuing life.

I have spent considerable time in Chapter Two arguing that postmodern accounts of subjectivity perform misappropriations and erasures of the transgender body that are similar to those found in the court record. However, this body of theory profoundly influences the post-
nationalist mode of valuing human life that I am offering. What I have provided above is merely a brief sketch of the anarchist implications of this case: a starting point for further consideration of post-nationalist modes of assigning value to lives and of conceptualizing belonging.

Throughout this project I have drawn attention to many places in which the transgender body in general, and Medina-Tejada’s body in particular, disappear both in the process of defining the contours of the national body and in attempts to articulate transgender rights and subjectivity. A post-nationalist mode of assigning value, like the one sketched out above, can have powerful implications in the creation of a space for transgender bodies to materialize as intelligible entities outside of nationalistic modes of categorization. As this project has shown, individual bodies are threatened by state-centered discourses on race, gender, and citizenship. These are issues that need to be addressed more fully in regards to other specific cases as well. Additionally, the theoretical issues pertinent to postmodern anarchism need to be further developed. The primary concern in my elaboration of postmodern anarchism and post-nationalist modes of valuing life is meticulous specificity. I am advocating a profound attention to the historical and regional forces that shape actual individual lives. In the process, I have offered a model for uncovering the invisible, statist, ideologies that threaten all of our bodies through a thorough analysis of a single woman’s story.


--- Undoing Gender. New York: Routledge, 2004


Richardo Medina-Tejada, Plaintiff, v. Sacramento County; Sacramento County Sheriff’s Department; Sheriff Lou Blanas; and Does 1 through XXX, inclusive, Defendants. No.
CIV. S-04-138 FCD/DAD. United States District Court for the Eastern District on California. 27 February 2006.


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