

Trans Rights are Emancipatory Human Rights

written by Heather A. Brown | February 21, 2025



Trump's executive orders on trans rights is not just an attack on trans and intersexed individuals, but an attack on human freedom. Most problematic was the first which set the stage for setting back gender and LGBTQ+ rights decades. This order states that "It is the policy of the United States to recognize two sexes, male and female. These sexes are not changeable and are grounded in fundamental and incontrovertible reality."¹ On the policy front, this means that immediately those who are trans, intersexed or non-binary have lost protection from the US federal government, and have, in fact, been written out of legal existence (as has been evidenced over the debate on allowing X as a gender on passports), all of which allows for legal discrimination and targeted violence. Such legal discrimination comes from later Trump executive orders to potentially bar anyone with professed gender dysphoria from serving in the military,² ending federal funding for gender affirming care, barring trans women from participating in women's sports, and setting rules for how schools could discuss gender.³

While it should be obvious what this will mean for those that identify as non-binary in a broad sense, equally problematic is the definition of sex as immutable and the order to not even discuss gender—meaning that "biological sex" is the sole basis in which the administration will classify individuals on these types of matters and that the social has no meaning outside what is decreed by Trump and his administration.⁴ Logic says that if there are people, no matter how small the number who are born in such a way that makes it difficult to determine whether they carry XX or XY (or XXY, XYY, etc.) chromosomes then sex is far from immutable, and that in nature a clear binary doesn't exist.⁵

Further, actual biological knowledge (v. Trump's fascist pronouncement of "fact") shows that biology is not immutable and with the definition in this executive order, we are all transgender. The order defines "man" and "woman" based on the reproductive cells that one has at conception—something that no fertilized egg has at this point.⁶ For most with XX chromosomes, egg cells are not produced until many weeks later, and for most with XY chromosomes, sperm cells are not produced until

puberty. Certainly, one can say that someone with XX chromosomes has the *potential* to become a woman under this definition and someone with XY chromosomes has the *potential* to become a man, but potential implies a certain degree of uncertainty. If the “normal” process is interrupted, that potential will not turn into actuality. Not all acorns become oak trees despite their potential to do so.

The difficulty that the Trump administration is facing is not only that biology is not destiny (human beings have subjectivity and may choose to go on a different path, although the state can make it much more difficult to accomplish), but also that simply making a decree doesn’t change the reality of a process. Certainly, it can change some people’s minds and with the power and wealth of the federal government behind it, it can force changes in policy. However, without the use of actual science, there is no way to assure that chromosomes and visible sex characteristics line up (assuming that that is even possible for science and desirable for society to dictate this as the only course possible). And of course, this says nothing about the choices of individuals who will resist being put into boxes that they don’t identify with.

While these orders clearly target transgender, intersexed and non-binary people, the writing is on the wall for those assigned female at birth (AFAB) as well as the rest of the LGBTQ+ community. If sex is immutable and based on reproductive cells, then how far off are we from saying that “biological women” have the primary purpose of carrying children to term and taking care of them at the expense of everything else in their lives? Similarly, does that mean that those who prefer relationships with same-sex individuals are “abnormal” and need to put aside their own happiness to produce their own biological children? The recent Dobbs decision paired with Trump’s executive orders seem to point in that direction—biology is written to mean destiny and privacy isn’t guaranteed in the Constitution even in terms of bodily integrity.

Even before these executive orders, the US was taking many steps backwards regarding issues of gender and sexuality. After the Dobbs decision, abortion is either greatly restricted or completely illegal in 23 states making it difficult or sometimes impossible for women to get the procedure. But as was indicated by a ruling of the Alabama Supreme Court, the goal of Christian fundamentalists is much broader. Using a law that calls for fetal personhood at the moment of conception, the Court ruled that an IVF clinic was liable for the destruction of embryos stored at their facility, causing a number of clinics to close their doors until the law was clarified. After much backlash, legislators carved out an exception to fetal personhood for IVF providers, however, the concept of life originating at the moment of conception remains in place,⁷ all but eliminating women’s reproductive choice in the state. It is far from surprising that other states are looking to Alabama as a potential model.

As of the summer of 2024, before Trump’s election there were 523 bills up for discussion in state legislatures throughout the US dealing with such issues as what can be taught in schools, healthcare issues, bathroom bills, book bans, drag bans, and a redefinition of sex on a solely reproductive basis.⁸ These bills are being put forward in nearly all states, even those like Massachusetts that is known for its liberal politics. Although these types of bills are unlikely to pass in most states, it illustrates the possibilities for LGBTQ+ individuals to face scorn and even violence from those that support these types of policies in their communities. In fact, hate crimes based on sexual orientation were up 13.8% and those based on gender identity 32.9% in 2022.⁹ We see similar trends as well in Europe with Britain banning gender affirming care last year for minors, for example.¹⁰ Given the vitriol from the far Right on these issues, this is far from surprising. Demonization of certain groups in the name of protecting the values of others will almost certainly lead to some level of violence against the reviled group. This demonization is likely to increase greatly as it is now based on federal policy.

Gender, the Family and the State¹¹

Every class-based society has clung to specific notions of what is “natural” by formulating certain social relationships as the only possible way of doing things. This is a means for the ruling class to stay in power without expending a huge amount of repressive force. From Aristotle to Confucius to John Locke, to modern politicians of all stripes, all have noted the close relationship between family and the rights of citizenship. Only those coming from the “correct” sorts of family models will be eligible for full citizenship rights.¹² This was the basis for the Chinese Exclusion Act of the nineteenth century here in the US just as today’s right-wing politicians point to the supposed breakdown of the Black family, “anchor babies,” Trump’s Mexican “rapists,” economic refugees that can’t support themselves, etc. All these supposed pathologies relate back to a notion of the family and its role for economic support and political socialization. While the examples above largely dealt with issues of immigration, certainly the attacks that we have seen on the LGBTQ+ community are also based on a similar logic. One must adhere to the gender codes of the time and fall into place in the “traditional” family structure; otherwise, political rights will be minimized. Without a significant transformation of gender as a social and economic category, attacks on non-gender conforming individuals will necessarily continue—all the more so now that a fascistic administration bent on turning the clock backward is now in power using both constitutional and extra-constitutional means to do so.

These attacks against the LGBTQ+ community and bodily autonomy more generally have played itself out worldwide as conservatives capture state power. The question remains of how to best respond to these egregious attacks on basic rights. Here, I borrow from Marx’s theory of the liberal democratic state and how it relates to individuals to illustrate the challenges faced by activists to stave off these Rightist attacks on gender nonconformists (although this was likely far from his intent).¹³ As Marx argues in “The Jewish Question”, the liberal democratic state at its best does not recognize the concrete individual, but only one abstracted from everything else. This citizen theoretically has equal rights in the political sphere, but in practice this is far from true since political equality is achieved only by abstracting out all difference (class, gender, sexuality, ability, education, etc.). This difference remains outside of the political sphere and can limit participation in civil society and politics. For example, a woman tasked with childcare duties may find it more difficult to lobby the government for change or even find time to vote as childcare is not provided by the state to make up for the socially unequal distribution of care responsibilities by gender, not to mention race and class. Similarly, the debate over mail in ballots often revolves around the issue of the potential for fraud rather than the issues of access for those who are differently abled and may not be as easily able to vote in person. Overall, the citizen tends to be viewed by the state as a white abled middle class cisgendered male, who can find a way to participate in politics (though this is often at the cost of access to civic participation for others).

Any effort by the state to remedy this inequality will lead to some arguing that the state is giving special treatment to these groups. Marx offers an incipient theory of why states will necessarily vacillate on LGBTQ+ rights because the nature of the state relative to the individual is contradictory. While we cannot rely on the state to be a consistent supporter of LGBTQ+ rights, as Marx points out in “The Jewish Question” and the *Critique of the Gotha Program*, an understanding of how the state functions is essential for its instrumental use in times where attenuation of oppression is needed in the short term and for theorizing a way out of this racist, sexist, classist, heteropatriarchal system in the longer term.

Marx specifically points out in “The Jewish Question” that although the liberal state is certainly a major advance over the repressive monarchies of the time, its limitations could be seen as it related to the possibility for equal rights for Jewish people. The general argument can certainly apply to any group that finds itself as a minority. As much as organization for change may have temporary results for groups that face either state or private oppression, it is clear that even state regulation of civil

rights is not nearly enough to secure full emancipation for women and non-traditional gender conforming individuals, as is indicated by the current multinational debate over transgender rights because these rights cannot go far enough.

As Marx points out, simple political equality is not human emancipation. In fact, the abolition of a distinction (often based on structural oppressions like race, class, gender, sexuality, ability, etc.) must presuppose that the distinction actually exists, "Far from abolishing these factual differences, its existence rests on them as a presupposition, it only feels itself to be a political state and asserts its universality by opposition to these elements."¹⁴ This distinction is then alienated from the individual's species being: the state ignores the differences of the individual in order to bring them into the community. Thus, the individual is fractured into multiple parts where only the most abstract aspects of humanity are acknowledged by the state and by other human beings. One remains a citizen, but qualifiers must always be added which can ultimately lead to a sort of second-class citizenship, all the more so, the more structural inequality exists. For example, people who identify as non-binary under the current administration are outside of governmental protection as being non-binary rather than being a "man" or a "woman." It is then fine to remove them from history and social commentary,¹⁵ not pay for lifesaving gender affirming treatments for depressed Trans youth or fire a teacher for talking about the gender spectrum in class. Currently, the Trump Administration is using the weaknesses of the liberal state which attempts to mediate class and other societal conflict to undermine the minimalist protections offered to non-binary individuals under Biden. It is able to do so because the liberal state is agnostic when it comes to rights for those facing these types of oppression.

Marx also critiques the liberal state in another sense for its notion of equal rights. Such rights can only be as advanced as the society in which it exists:

A right, by its very nature, can consist only in the application of an equal standard; but unequal individuals (and they would not be different individuals if they were not unequal) are measurable only by an equal standard insofar as they are brought under an equal criterion, grasped only in terms of a specific aspect, for instance, in the present case, are *regarded only as workers* and nothing more is seen in them, everything else being ignored.¹⁶

As Marx continues in the *Critique of the Gotha Program*, equal right in the labor force under the early stages of a transitional post-capitalist society could be based on how long they work. This does not account for variations in the intensity of labor that an individual can handle, nor does it account for the fact that "one worker is married, another is not; one has more children than another, and so on and so forth... To avoid all these defects, rights would have to be unequal rather than equal."¹⁷ Again, it is the neutrality of the state to issues of difference that leads to the potential for inequality for those who cannot or will not shed these differences. Only a recognition of difference and an incorporation of the uniqueness of each human into society along the lines of "from each according to their ability, to each according to their needs"¹⁸ will lead to a society where all can be free to self-develop.

That is exactly why it is necessary to support liberal elements that want to keep basic protections in place for all human beings while at the same time working for full human rights for all. It is nearly impossible to work for these rights under a government that doesn't allow for freedom of speech or assembly. Full human rights for trans, intersex and non-binary individuals would mean recognition based on the concrete individual rather than the liberal abstraction. This recognition of the concrete individual would necessarily mean that the state would have to act to smooth out economic and

other differences in order to create a truly equal playing field for all within the political sphere—something that is an anathema to capitalism which benefits greatly from these differences.¹⁹

Current policies are particularly insidious for trans, intersex and non-binary individuals, who can rightly feel like they do not have the right to be themselves in public spaces. This is not only the case because of the constant threat of being “outed” and subject to physical violence, but also because of laws and governmental policies that threaten to criminalize the most basic of human functions through, for example, forcing individuals to use bathrooms that do not conform to their lived gender. Further, even when these policies are not in place, these individuals may face the ire of private citizens enforcing traditional gender codes, something that is likely to be exacerbated in the current political climate.

It seems necessary at this point to return to the issue of identity this time in a more dialectical fashion in order to craft a strategy to fully overcome gender and sexually based oppression. To do this, a theory of the concrete individual is needed. Perhaps there is something that we can learn from Marx in his discussion of gender, albeit his interest was likely far from supporting what would become the LGBTQ+ community or fundamental change in gender roles.

As the International Marxist Humanists (IMHO) wrote in their trans statement:

“...Who we are, what we become, and how we define ourselves is not reducible to biology, since we are social beings with the capacity for conscious, purposeful creation. Any effort to prevent trans people from exercising that capacity violates the Marxist-Humanist understanding of what it means to be human.”²⁰

Alex Adamson (2024) drew exactly on this point regarding the labor of trans individuals. As individuals, cis-gendered or otherwise, we reproduce ourselves in our various identities based in part on the social norms in place at a particular time. This is a certain type of socially necessary labor that all must engage in. While not productive in the capitalist sense of directly producing surplus value, this labor is very much necessary to the continued survival of individuals and the social whole. How this social reproduction takes place can vary greatly depending on a variety of factors.

In *Transmarxism*, Gleeson makes a similar point, looking directly at the ways in which trans people must work to reproduce themselves and their preferred gender identity. Because of the economic and social marginalization of trans people, this is often not possible at the individual level. As a result, real and virtual networks have been created to help trans people with basic daily reproduction as well as with putting forward their preferred self through tips that they have developed from their own experiences.²¹

Adamson (2024) points to the ramifications of this labor process that must necessarily still be alienated as production of surplus labor for others is still necessary to survive and because as much as trans people may want to have full recognition of their personhood, this is simply not possible. We can look to the sorts of formal and informal networks that Gleeson discusses as starting points for an unalienated identity that acknowledges the full individual as integral to the social, but these groups, like any others will bear the scars that capitalist relations necessarily inflict. This doesn't mean, however, that they are not a potential starting point for developing a new society:

“If capitalism and its attendant forms of racism, cis-heteronormativity, anti-trans violence, imperialism, and ableism are a first order negation of social life, then what is

called for is a negation of a second order; a negation that abolishes the capitalist totality while simultaneously creating social relations corresponding to a new social totality.”²²

The 2023 IMHO statement on Trans rights points to the need to “stand against oppression and structural violence against transgender, non-binary, and other gender expansive peoples throughout the world... [and] recognize the transgender struggle as part of the broader struggle against patriarchy and misogyny, harmful gender norms, and gender-based violence... [and] recognize that free transgender people are an integral force towards greater gender and/or human liberation.”²³ This is a path that we must continue to go down especially now when so much in terms of the rights of the human being under threat. We must continue to assert the right of the individual to full self-development and work to theorize and enact the means to make individual self-development possible for everyone. Rosa Luxemburg’s argument that we face a choice of Socialism or Barbarism is particularly apt as we see an American Administration bent on hypostatizing all social relations in order to define them and undermine human self-development. It is up to us to fill in the details of what such a post-capitalist society would look like, lest we continue down the path of barbarism.

Notes

1 ACLU, “Trump’s Executive Orders Promoting Sex Discrimination, Explained,” <https://wp.api.aclu.org/news/lgbtq-rights/trumps-executive-orders-promoting-sex-discrimination-explained> Accessed February 9, 2025.

2 While one can justifiably question whether the right to serve in a military that’s imperialist at its base is a progressive right, the justification for possible removal of trans individuals in the military showcases the backwardness in thinking of this administration which could have implications well beyond military service. Specifically, the executive order claims that living as a different gender than the one that they were assigned at birth “conflicts with a soldier’s commitment to an honorable, truthful, and disciplined lifestyle, even in one’s personal life.” (Copp, Tara and Baldor, Lolita C. “Trump signs an order to revise the Pentagon’s policy on transgender troops” <https://apnews.com/article/hegseth-tuskegee-airmen-dei-pentagon-480d932c8bcb4c6056abe78e34010982>, Accessed February 16, 2025. Here, trans individuals are turned into undisciplined and untrustworthy individuals. When applied to a whole class of people this can only lead to discrimination and dehumanization, that given the number and oppressive nature of other executive orders on trans individuals is not likely to stay in the bounds of the military.

3 CBS News, “Transgender rights lawsuits challenge Trump policies on passport markers, gender-affirming care for minors,” <https://www.cbsnews.com/news/transgender-rights-lawsuits-challenge-trump-policies/> Accessed February 9, 2025.

4 Mulvihill, Geoff and Carla K. Johnson, “What to know about President Donald Trump’s order targeting the rights of transgender people,” <https://apnews.com/article/trump-transgender-passports-prisons-eggs-sperm-da1d1d280658a8c85c57cfec2f30cefb> Accessed February 9, 2025.

5 There is an awful history in the US that has sought to do away with this ambiguity by surgically altering the genitalia of infants, physically maiming and sterilizing them before they have a chance

to decide for themselves who they are and often depriving these individuals of most or any sexual pleasure later in life. (For more on this, see for example: Anne Fausto-Sterling, 1993, "The Five Sexes: Why Male and Female are Not Enough," *The Sciences*. P. 20-24. Of course, we can't expect the solicitousness of this administration for "protecting" youth from themselves to apply to these victims of a binary understanding of sex.

6 Mulvihill, Geoff and Carla K. Johnson, "What to know about President Donald Trump's order targeting the rights of transgender people," <https://apnews.com/article/trump-transgender-passports-prisons-eggs-sperm-da1d1d280658a8c85c57cfec2f30cefb> Accessed February 9, 2025.

7 Chung, Andrew. "US Supreme Court rejects IVF clinic's appeal of Alabama embryo ruling," <https://www.reuters.com/legal/us-supreme-court-rejects-ivf-clinics-appeal-alabama-embryo-ruling-2024-10-07/> Accessed February 9.

8 ACLU, "Mapping Attacks on LGBTQ Rights in U.S. State Legislatures in 2024." <https://www.aclu.org/legislative-attacks-on-lgbtq-rights-2024?state=> Accessed June 21, 2024.

9 Luneau, Delphine. "FBI's Annual Crime Report — Amid State of Emergency, Anti-LGBTQ+ Hate Crimes Hit Staggering Record Highs," October 16, 2023. <https://www.hrc.org/press-releases/fbis-annual-crime-report-amid-state-of-emergency-anti-lgbtq-hate-crimes-hit-staggering-record-highs>

10 John, Tara. "England's health service to stop prescribing puberty blockers to transgender kids," CNN, March 15, 2024. <https://www.cnn.com/2024/03/13/uk/england-nhs-puberty-blockers-trans-children-intl-gbr/index.html>

11 This section and the two paragraphs above are an edited version of sections of a talk given at the International Marxist Humanist Convention, July 2024: "The Environment, LGBTQ Rights and the Family: What Does Marx Offer for Theorizing Alternatives to Capital?"

12 Cott, Nancy F. 2000. *Public Vows: A History of Marriage and the Nation*. Cambridge: Harvard University Press.

13 Marx has been rightly subject to many critiques for his largely gender-blind notions of social reproduction which led him to often ignore the gendered implications of capitalist daily reproduction and his failure to see the full impacts of capitalism on women. See for example, Furgeson, Sue. 2022. "Engaging Federici on Marx, Capitalism and Social Reproduction," *New Politics*. Vol. XVIII, No. 4 for a balanced account of this type of argument. While a full explanation of Marx's strengths and limitations cannot be fully dealt with here (I take these issues up in much more detail in *Marx on Gender and the Family: A Critical Study*, 2013. Haymarket Books), I am following Raya Dunayevskaya who saw Marx's writings less as a static political oeuvre and instead sought to apply his overall theory of human society and especially the self-developing subjects of capitalism that resist and seek to overcome the limitations of capitalism. It is through these individuals and the progressive movements that they create, that we can learn about how to build a non-hierarchical

post-capitalist society. See her *Marxism & Freedom*, Chapters 5 and 6 for an example on how Marx learned from the Paris Commune and updated *Capital* as a result. See also *Philosophy & Revolution* Chapter 9 for Dunayevskaya's take on how Marxism should be updated to account for the US Civil Rights Movement and the Feminist Movement. One must of course remain vigilant when reading Marx this way so that the shortcomings of Marx, the human implicated in the prejudices of his own time are not glossed over, lest important grounds for critique and refinement of theory for today are lost.

14 Marx, "On the Jewish Question", p. 53. In McLellan, David. *Karl Marx: Selected Writings*: Oxford University Press.

15 The Park Service has recently removed any mention of the trans individuals who participated in the Stonewall Riot from their website and elsewhere on federal government websites, LGBTQ has been replaced with LGB. Kim, Juliana. "Park Service erases 'transgender' on Stonewall website, uses the term 'LGB' movement"

<https://www.npr.org/2025/02/14/g-s1-48923/stonewall-monument-transgender-park-service#:~:text=Hourly%20News-,Park%20Service%20erases%20'transgender'%20and%20'queer'%20from%20Stonewall,lesbian%2C%20gay%20and%20bisexual%20people>. Accessed February 16, 2025.

16 Marx, Karl. 2022. *Critique of the Gotha Program*, PM Press. p. 58-59.

17 Ibid. p. 59.

18 Ibid. p. 59.

19 What societal institutions might exist following an end to capitalist social relations to transition to a higher order of society is far from settled. As Marx noted, right cannot exceed the society in which it exists. There is no reason to believe that an end to capitalist social relations, in and of themselves would mean an end to all forms of oppression. Oppression and bigotry will not disappear overnight. Instead, society will have to find ways of trying to level the playing field and bring in all voices. Marx's support for the institution of the Paris Commune and its possibilities for a more direct and participatory democracy seem like a good starting point for theorizing a post-capitalist society. Having representatives that are not above the population because they are also workers receiving the same wages as workers and because they can be recalled by popular vote would help smooth out some contradictions to a capitalist representative democracy. More leisure time for workers would mean that they would have more time to participate in community institutions. There will likely be as many missteps as there are successes as this is all new territory. The key will be to find ways to allow all voices to truly be heard.

20 Algabre, Damian, Heather A. Brown and Rehmah Sufi. (2023) "A Marxist-Humanist Statement in Support and Defense of Transgender Rights."

<https://imhojournal.org/articles/a-marxist-humanist-statement-in-support-and-defense-of-transgender-rights/> Accessed February 11, 2025.

21 Gleeson, Jules Joanne, "How do Gender Transitions Happen?" in *Transgender Marxism*, Jules Joanne Gleeson and Elle O'Rourke, eds. 2021, Pluto Press.

22 Adamson, Alex. (2024) "Epistemological Foundations of Transmarxism: Queer Dialectics and Marxist Humanism" *The International Marxist Humanist*.
<https://imhojournal.org/articles/epistemological-foundations-of-transmarxism-queer-dialectics-and-marxist-humanism/> Accessed February 11, 2025.

23 Algabre, Damian, Heather A. Brown and Rehmah Sufi. (2023) "A Marxist-Humanist Statement in Support and Defense of Transgender Rights."
<https://imhojournal.org/articles/a-marxist-humanist-statement-in-support-and-defense-of-transgender-rights/> Accessed February 11, 2025.