



7-minute survey

Vol. 47 No. 6 · 3 April 2025

This Is Wrong

Judith Butler on Executive Order 14168

IN THE WEEKS since his inauguration, Donald Trump has issued a series of executive orders intended to undermine progressive law and, in some cases, the foundations of constitutional democracy itself. The impression, as the orders arrive one after another, nearly a hundred of them so far, is of a self-amplifying state bent on overcoming the rule of law and testing the limits of authoritarian power. The effect on many has been to induce a sense of disorientation and terror; they wonder when, or whether, it will stop. Some wave the orders away, stressing the difficulties of implementing them and affirming their faith that the courts will, in the end, prevent them from becoming law. Others, self-assured in their realism (or cynicism?), proclaim the inevitable end of democracy at the hands of authoritarianism, effectively giving up the struggle in advance. Many organisations succumbed to the orders as soon as they were issued. Some will have assented out of fear of the consequences of non-compliance. Others are excited by the fear Trump inspires, in thrall to the power to which they capitulate. Seemingly, they did not stop to ask themselves what the effect of their capitulation might be, or to recognise that by reproducing and enforcing the orders, they were strengthening them.

Executive Order 14168, issued on 20 January, is titled ‘Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government’. In the book I published last year, *Who’s Afraid of Gender?*, I noted that the campaign against ‘gender ideology’ was very late to gain ground in the US. The term itself was coined by the Vatican back in the 1990s. It was circulated in Latin America by both Catholic and evangelical churches (thus helping to mend a rift between them), and taken up by the World Congress of Families, especially in 2017, when Trump representatives were in attendance. It was an incendiary topic in presidential campaigns in Costa Rica, Uganda, South Korea, Taiwan, France, Italy, Argentina and Brazil, to name a few, though the US press hardly noticed. In Hungary, Viktor Orbán effectively allied with the Russian Orthodox Church in condemning ‘gender ideology’; in turn, Putin declared his fidelity to J.K. Rowling’s critique of trans

rights, asserting that the ‘gender freedoms’ associated with ‘the West’ were a threat to Russia’s spiritual essence and national security. The last two popes have both taken a position against gender ideology; Pope Francis, despite his occasional progressivism, has accelerated the discourse, insisting that gender is a threat to men and women, to civilisation, the family and the natural order of human relations.

Trump comes late to this party, though in 2018 he followed the Vatican’s invocation of natural law by instructing the Department of Health and Human Services to declare sex an ‘immutable’ feature of human personhood. The line taken by his administration was that genitalia and plain language were the only criteria to be used in determining sex. The political goal at that time was to block trans people from gaining protections under Title VII, which bars discrimination in employment on the basis of sex. But the new criteria proved difficult to implement in a legal landscape complicated by policy differences between the states.

Soon afterwards, the Supreme Court began hearing arguments in *Bostock v. Clayton County* (decided in 2020) on whether discriminatory treatment against trans people could be considered legally as sex discrimination. The nine justices decided 6-3 that Title VII could be used to protect trans people against discrimination, since (a) the sex assigned to a person at birth can be different from the sex the person assumes in time, but both are instances of sex and should be protected against sex discrimination; (b) to be treated unequally on the basis of the perception of one’s sex is an established form of sex discrimination. The problem in discrimination is not what sex you are, but how your sex is perceived and then treated. It is simply wrong if one is treated unfairly on the basis of a prejudicial perception of sex. The argument of *Bostock v. Clayton County*, written by Neil Gorsuch, a Trump appointee, seemed to have defeated any effort to make sex assigned at birth permanent and unchangeable.

It’s not surprising, then, that Executive Order 14168 includes among its dictates the need to correct any ‘misapplications’ of *Bostock v. Clayton County*. Indeed, the order shifts the basis of ‘an individual’s immutable biological classification’ away from genitalia to gametes: “‘Female’ means a person belonging, at conception, to the sex that produces the large reproductive cell . . . ‘Male’ means a person belonging, at conception, to the sex that produces the small reproductive cell.’ Why this shift? And what does it mean that the government can change its mind about what is immutable? Is the ‘immutable’ mutable after all? The existence of intersexed people has long posed a problem for sex assignment since they are living evidence that genitalia can be combined or mixed in certain ways. Gametes must have seemed less problematic. There is a larger one and a smaller one: let that be the immutable difference between female and male.

There are two significant problems with using gametes to define sex. First, no one checks gametes at the moment of sex assignment, let alone at conception (when they don’t yet exist). They are not observable. To base sex assignment on gametes is therefore to rely on an imperceptible dimension of sex when observation remains the principal way sex is

assigned. Second, most biologists agree that neither biological determinism nor biological reductionism provides an adequate account of sex determination and development. As the Society for the Study of Evolution explains in a letter published on 5 February, the ‘scientific consensus’ defines sex in humans as a ‘biological construct that relies on a combination of chromosomes, hormonal balances, and the resulting expression of gonads, external genitalia and secondary sex characteristics. There is variation in all these biological attributes that make up sex.’ They remind us that ‘sex and gender result from the interplay of genetics and environment. Such diversity is a hallmark of biological species, including humans.’ Interplay, interaction, co-construction are concepts widely used in the biological sciences. And, in turn, the biological sciences have made considerable contributions to gender theory, where Anne Fausto-Sterling, for example, has long argued that biology interacts with cultural and historical processes to produce different ways of naming and living gender.

The language of ‘immutability’ belongs more properly to a natural law tradition in which male and female kinds are established by divine will and so belong to a version of creationism. They are immutable features of the human, as Pope Francis has affirmed. Trump speaks in the name of science, but the cameo appearance of the gamete theory notwithstanding, he does so effectively to insist that God decreed the immutable character of the two sexes, and that he, Trump, is decreeing it once more, either to echo the word of God, or to represent his own word as the word of God. Religious doctrine cannot serve as the basis for scientific research or state policy. But that is what is happening in this executive order.

Trump’s edict aims at removing ‘gender ideology extremism’ from public discourse and all federally funded activity. The state takes it for granted that ‘gender ideology’ exists, but what if this term is actually a slur, something invented to reduce and demonise the complex, productive, often fractious, certainly indispensable work done by social movements, and by those involved in scholarship, social policy and law? We may reasonably ask if it is only the putatively ‘extremist’ forms of gender ideology that are to be opposed. If so, is there a proposed criterion by which ‘extremist’ gender ideology can be distinguished from the non-extremist kind? Since the federal government is opposing a phenomenon it takes to be real, it stands to reason that it should tell us how to recognise that phenomenon and how to tell the difference between its impermissible and potentially permissible forms. As things stand, any reference to ‘gender’ in the documentation pertaining to government-financed allocations, including university grants, healthcare and civil rights protections, puts those allocations at risk.

If there is no such thing as ‘gender ideology’, if it is a phantasm conjured up for the purpose of opposing a raft of social policies benefiting women, children and trans, queer, non-binary and intersexed people, then gender ideology can itself be said to be ‘constructed’. Of course it was the claim that gender is ‘socially constructed’ that enraged its opponents in the first place, especially when they misread that theory to mean that a social category somehow brings into being the thing it names. Now, in turn, they seek to

produce a social consensus that ‘gender ideology’ not only exists, but that it is a dangerous, even destructive force.

In order to respond to Trump’s rash of executive orders, we need forms of public pedagogy that involve reading them carefully, the better to explain what they are saying and doing with the language they use. What realities do they seek to create and normalise? The pace has been so quick that it has been impossible to take in the implications of all the individual orders; instead, we reel from their collective assault. But we can, given a little time, collectively take each one apart in public, and gradually build a counter-discourse.

In Section 1 of Executive Order 14168, its purpose is explained:

Across the country, ideologues who deny the biological reality of sex have increasingly used legal and other socially coercive means to permit men to self-identify as women and gain access to intimate single-sex spaces and activities designed for women, from women’s domestic abuse shelters to women’s workplace showers. This is wrong.

The decree claims to protect women by opposing gender ideology, relying on the trans-exclusionary argument that trans women are not women or constitute a threat to women, where a ‘woman’ is understood as an individual assigned female at birth. The accusation that gender or gender theorists are a threat to women forgets that the issue of ‘gender’ has been central to feminist thought at least as far back as the work of Simone de Beauvoir in the late 1940s. Biology, she argued, is part of a person’s situation, but does not determine the kind of work one will do, the person one will love, or the ‘destiny’ of one’s life. Trans people undergo surgery or take hormones, when they do, because they seek to alter anatomy: they certainly understand that there is an anatomy they seek to alter.

The statement of purpose attributes an instrumental aim to people assigned male at birth who seek to transition: they do so not because they hope for a more livable life, but because they – meaning only those who have taken steps to secure their identity as women – seek entry into women’s spaces in order, it is presumed, to harm the women there. This presumption is entirely unfounded. There are a few recorded instances in which such aims were clearly at work, but what allows any of us to take those cases as the model for transition? We do not point to the nefarious actions of particular Jews or Muslims and conclude that all Jews or Muslims act in that way. No, we refuse to generalise on that basis, and we suspect that those who do so generalise are using the particular examples to ratify and amplify a form of hatred they already feel. To borrow a phrase from the executive order, this is wrong.

We have to ask whether this order is a ruse conducted in the name of feminism, yet another way in which women are instrumentalised to advance state power. For this initiative surely undermines the ideals for which feminism has always stood: overcoming discrimination and inequality, and refusing offensive notions of who measures up as a woman and who fails in that regard. The putative feminist intent of the declaration is

belied by the fact that trans men are not worth even a mention. Neither are intersex people, who from birth do not fit neatly in either category and who constitute, on some definitions, 1.7 per cent of the US population: that is, more than five million people. The failure to recognise either of these categories of person is significant. It reminds us that oppression takes many forms: it is one thing to target a specific population, as this declaration targets trans women, and another to efface the reality of another group by failing to name them at all.

The order continues:

Efforts to eradicate the biological reality of sex fundamentally attack women by depriving them of their dignity, safety and well-being. The erasure of sex in language and policy has a corrosive impact not just on women but on the validity of the entire American system. Basing federal policy on truth is critical to scientific inquiry, public safety, morale and trust in government itself.

Although the order here opposes those who would ‘eradicate the biological reality of sex’, it also defines what women’s interests are, what trust in government requires and what is at stake for ‘the entire American system’. Thus, the regulation of sex assignment and the eradication of trans, intersex and non-binary legal existence is a matter of national concern: the ‘entire American system’ is at stake. Of course, the dignity, safety and well-being of women should be secured, but if we value these principles, then it makes no sense to secure one group’s dignity, safety and well-being by depriving another group of dignity, safety and well-being. Indeed, the order effectively consigns trans people to radical indignity and unsafety, if not non-existence. Women – including trans women – and trans, intersexed and non-binary people all deserve to be free of attacks on their dignity, safety and well-being, not only because the principle applies to all of them, but because these categories of person overlap. These are not always distinct populations.

The executive order seeks not only to defend women against gender ideology extremism but also to restore ‘biological truth’ to the federal government. What does it mean for the government to be involved in a project of restoration or, more precisely, to set about ‘restoring’ the biological reality of sex ‘to’ the government? It seeks to impose a mandatory order on the biology of sex: there shall be two sexes and only two sexes and each shall remain unchangeably as it was originally assigned. If that truth is restored ‘to’ the government, then biological truth is now whatever the government claims it is. So much for the science of developmental biology or research into sex-determination in anthropology, neurology, endocrinology or any other field. The gamete theory has won, or so says the government.

TRUMP issued Executive Order 14168 on the first day of his second term in office. Nine days later, he signed Executive Order 14188, 'Additional Measures to Combat Antisemitism', which draws attention to the 'unprecedented wave of vile antisemitic discrimination, vandalism and violence against our citizens, especially in our schools and on our campuses'. It undertakes to 'prosecute, remove, or otherwise hold to account the perpetrators'. On 8 March, Mahmoud Khalil, a permanent resident of the US with a green card who participated last year in protests against Israel's war on Gaza, was arrested by Immigration and Customs Enforcement agents. Trump posted online that 'this is the first arrest of many to come.' It may seem that the targeting of people protesting in support of Palestinian freedom has nothing to do with objections to 'gender ideology' and the government's efforts to strip rights from trans people. The link appears, however, when we consider who, or what, is being figured as a threat to American society. Educational institutions and non-profit organisations, especially progressive ones, are at risk of losing their federal tax breaks if they collaborate on projects concerned with Palestine or fail to expel students who engage in spontaneous or 'unauthorised' protest. If the Heritage Foundation's plans become official policy, institutions or organisations that fund work critical of the state of Israel – or, more precisely, work that could be construed as critical – will be deemed antisemitic and supportive of terrorism. If they fund work on race and gender, they will not merely be guilty of 'wokism' but regarded as antagonistic to the social order that now defines the United States – in other words, a threat to the nation.

What would be the nature of the 'order' restored if the Trump administration were successful? No funding for research or education without compliance with authoritarian demands; no tax exemption for non-profits; no place in the country for migrants or international students who dare to assert their rights. No healthcare for trans youth. Right-wing nationalist movements, when they incite hatred against migrants and trans people alike, call for a return to, or protection of, national cultures grounded in the supremacy of whiteness and the heteronormative family. Authoritarian regimes have increasingly resorted to a 'gender scare' as a way of deflecting from economic, ecological and social instability. The arguments mobilised against 'gender ideology' are like those used to oppose the study of 'postcolonial theory' in Germany or 'critical race theory' in the US; in each case, a caricature stands in for a complex field of study, while any actual scholarship in the field is ignored.

When authoritarians promise a return to an imaginary past, they stoke a furious nostalgia in those who have no better way to understand what is actually undermining their sense of a durable and meaningful future. We find this in the discourse of the AfD in Germany, the Fratelli d'Italia, Bolsonaro's followers in Brazil, Trump, Orbán and Putin. But we also see the anti-gender animus among centrists hoping to recruit support from the right in order to stay in power. When diversity, equity and inclusion become 'threats' to the order of society, progressive politics in general is held responsible for every social ill. The result, as we have seen in recent years, can be that popular support ushers in authoritarian powers who promise to strip rights from the most vulnerable people in the name of saving the nation, the natural order, the family, society or civilisation itself. Ideals of constitutional

democracy and political freedom are regarded as dispensable in the course of such campaigns, since the preservation of the nation must be put before all else: it is a matter of self-defence.

Any effective response to the anti-gender movement will entail a critique of the new forms of authoritarianism and the passions they exploit. It is right, of course, that we defend 'gender', point by point, against those who wage an ignorant war against it, but that alone will not be enough. We need a better understanding of the fears exploited by authoritarians: who is this 'migrant', so dangerous they must be deported; this 'Palestinian' whose death secures the social and political order; this notion of 'gender' that is so threatening to self, family and society? Any alternative to authoritarianism must address these fears with a compelling vision of a world in which there would be security for all who now fear their own vanishing and the vanishing of their communities. We know immediately that this imagined world, collectively wrought and inspired by democratic ideals, would have no place for rights-stripping, eliminationist politics and forcible dispossession, and that it would refuse all forms of violence, including legal violence, in affirming the equality, value and interdependency of all living beings. Foolish and unrealistic, no doubt. But no less necessary for that.

21 March
