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# Liberalism and the Construction of Gender (Non-)Normative Bodies and Queer Identities

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*Ligia Fabris, Holly Patch and Karsten Schubert*

## 1. Introduction

The Yogyakarta Principles for the application of human rights to sexual orientation and gender identity define gender identity as “each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body and other expressions of gender, including dress, speech, and mannerisms.”<sup>1</sup> This definition and its acknowledgement within human rights politics is a key step in the fight of trans<sup>2</sup> people for legal protection. Our aim is to analyze this definition both historically and systematically to find out how the Western liberal conception of rights fosters specific trans politics and limits the options for others. Specifically, we claim that political liberalism<sup>3</sup> and the

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1 Yogyakarta Principles. 2006. <https://yogyakartaprinciples.org/>.

2 We use the term ‘trans’ in this chapter to encompass the various and multiple gender identifications and self-namings of people who do not identify with the gender assigned at birth. Furthermore, as we historicize and contextualize gendered subjectification through law, ‘trans’ stands for the general phenomenon, and we use specific terminology like ‘transgender’ and ‘transsexual’ when this distinction is discursively relevant.

3 “Generally speaking, liberalism as an approach in political philosophy is a theory of state legitimacy. (...) More precisely, liberalism states that a state, in its actions or through its institutions, must respect the right to freedom of its citizens in order to be considered legitimate” (Bratu/Dittmeyer 2017: 13, translated by the authors). In the sense of Menke, “[l]iberalism means thinking law, or the legal system, on the basis of rights, or from the individual. Liberalism is ‘that political doctrine which regards as the fundamental political fact the rights, as distinguished from the duties, of man’ (Strauss, p. 188). Liberalism views the distinction between law and a right as the revolutionary act that separates modernity’s political order from tradition, because, with

form of subjective rights that it brings about influence concepts of identity and political strategies. While we analyze the limits of the liberal framework, our aim is to think about how it is possible that even within this framework, non-normative bodies and queer identities can be acknowledged and supported through law.

It is no coincidence that gender identity is defined as a deeply felt internal and individual experience of gender in this leading human rights document. It is an appeal to the givenness and naturalness of gender identity, which constitutes the legal grounds for its protection. To constitute a right, gender identity cannot be just a choice, but it needs to come from the individual nature of the subject who claims protection on these grounds. That rights are constructed from nature, however, is not natural at all, but a result of the form of modern liberal rights, that conceptualize rights as the natural power authorized by the law (Menke 2020: 36).

In what follows, after introducing the interpretation of human rights as naturalizing, we sketch the history of the fight for trans rights as a move from trans as an alleged unnatural pathology in the 19th century to trans as a 'natural medical condition' in the 21st century. In other words, it is through claims to naturalness that the trans movement went beyond pathological and medical accounts of trans and towards claiming rights based on gender identity. In light of this history, the claims to naturalness turn out to have an additional dimension next to their medical and biological soundness: They can be interpreted as a strategic construction of naturalness that is necessary because of the very structure of the form of liberal rights. If naturalness is also a strategic legal construction, the question is which forms of gender identity and which politics are produced and/or inhibited by it.

In order to explore some possibilities for struggling with and against the current paradigm, we look at the civic engagement of a trans chorus in the US. Their work and practices show us that spaces for gender non-hegemonic world-making matter, as they provide the conditions for a politics in which heterogeneity structures bodies and gender identities. However, as gender identity is legally constructed as given, and not as the result of practices of

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this distinction, the right as claim is first *set apart* from law as statute (the legal claim is no longer an effect of the legal system, as it traditionally was, but stands alone), so as to ultimately become *prior* to this system" (Menke 2020: 12-13, italics in original).

world-making, such practices are currently not protected by law.<sup>4</sup> What would be needed to go from a heteronormative understanding of protective rights of ‘different people’ to a queer approach of the pluralization of non-normative bodies and identities? We will explore this question by first introducing the interpretation of human rights as naturalizing. Second, we present the genealogy of the medical and legal construction of the naturalness of trans. Finally, we look at trans political engagement and world-making that goes beyond identity and discursive claims for recognition with the example of the Trans Chorus of Los Angeles (TCLA).

## 2. Naturalizing human rights

The contemporary human rights regimes are anchored in modern liberal law, which is based on the notion of individual subjective rights. As feminist and postcolonial critiques of Western liberalism have pointed out, the proclaimed universality of these rights is, in fact, particularistic. Feminist analyses have shown that liberalism is based on a universalizing notion of the autonomous subject that leaves out dependency, care, and community, thereby reinforcing patriarchal systems of privilege (Jaggar 1988; Nussbaum 1997). Scholars from the ‘Global South’ and postcolonial theorists have pointed out that the universality of the liberal conception of rights tends to dehumanize non-Western subjects and supports imperialism (Anghie 2005; Mignolo 2011, 2009; Barreto 2018). As both the feminist and postcolonial critiques show, these universalizations rest on particularistic understandings of human nature, naturalizing male and accordingly eurocentric norms. Indeed, naturalization is the deep structure of liberalism; the foundation of subjective rights is naturalistic, that is, based on claims about the nature of human beings as individual rights holders. However, as the feminist and postcolonial critiques show, deriving rights from human nature is a more active process than commonly thought: It is itself naturalizing, that is, it is actively constructing the nature it claims to depart from. Therefore, human rights-based politics can have naturalizing effects: They create subjects that conceptualize themselves in a naturalistic vocabulary.

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4 Cf. Schubert/Schwartz 2021 for the importance of identity based world-making practices as part of emancipative politics.

Christoph Menke's *Critique of Rights* (2020) offers a new way of viewing this naturalizing subjectification through liberal law. The book offers a systematic account of the naturalizing function of subjective rights, which have also been criticized by feminism and postcolonialism (cf. Theurer/Kaleck 2020), and thereby allows us to analyze liberal naturalization within trans politics. Subjectification means, following Foucault, the constitution of subjects through structures of social power (see Schubert 2018, 2020). And liberal law based on subjective rights permeates our society and thereby our self-conception so thoroughly that it can be described as an essential part of contemporary subjectification. According to Menke, subjective rights are the foundation of modern societies, which have invented the specific liberal form of subjective rights.<sup>5</sup> While ancient and Roman law was thought to express justice, reasonable order and ethical life, in Eurocentric modernity, the will of individuals becomes the philosophical foundation of law (Menke 2020: 32). The individual will is understood as a pre-social force of nature and individual freedom, and modern law aims at the recognition and protection of this nature. Therefore, modern law is based on subjective rights, and subjective rights are "(juridical) claims to (natural) claims, the juridical authorization of natural power" (ibid: 37). The form of modern subjective rights completely revolutionizes the relationship between norm and nature and puts nature in the foreground (ibid: 24). Natural rights are now primary to law; the 'objective right' is set up in order to secure 'subjective right'.<sup>6</sup> This naturalistic foundation of modern rights is equiprimordial with the modern liberal understanding of freedom in contrast to the ancient freedom (Constant 1819): negative freedom or freedom as non-interference (Berlin 2002).

This modern primacy of liberal rights has fundamental effects on society, as it changes the self-conception of human beings – and it determines who we are today. While Western liberalism's natural law tradition says that the autonomous subject is the ground for subjective rights, Menke critically turns

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5 Menke defines modernity as the departure from ancient and Roman law through natural law (cf. fn 3). Menke does not take into account the colonial and imperial effects of this modern naturalism, as laid out in Anghie (2005).

6 The very difference between 'das Recht' und 'einem Recht', between 'law' as the legal order and 'rights' as individual claims, is a modern invention and can be dated back to Wilhelm von Ockham (approx. 1288-1347). It is already taken for granted by Thomas Hobbes (1588-1679). The term 'subjektives Recht' (right) in difference to 'objektives Recht' (law) is used to make this distinction explicit, given that both concepts are signified by the same word 'Recht' (Menke 2020: 9).

the relationship of causation around through a quasi-genealogical analysis: We do not have the liberal order to secure our freedom and our natural, individual will, as classical liberalism argues, but we see ourselves as individual subjects only because of the liberal legal order. This is the subjectification by law.<sup>7</sup>

The autonomous and individual subject, freed from normative reasoning through subjective rights, is the product of the primacy of rights in liberal law. By aiming at protecting the individual will from political influence, liberal law creates the “morally indifferent self-will” (Menke 2020: 191). The private will of the subject is said to be protected from the interference of politics and ethics, but this ideology of non-interference is itself creating subjects that understand themselves as naturally independent. In sum, as subjectivities are always socially constituted, non-interference cannot exist. The liberal regime is therefore not the absence of subjectification and interference, but a specific form of subjectification that encourages individuals to develop a liberal ethos that is based on independence, individual nature, and individual will. This liberal subjectification, which stresses individual nature as the basis of rights claims in the ‘West’, has also had fundamental effects on how trans people have been able to, slowly but steadily, achieve rights that protect their gender identity, conceptualized as naturally given. We trace this historical development between medicine and law regarding trans rights in the following section. This analysis has implications beyond trans rights, as the problematic structure of rights naturalism structures liberalism as a whole. Liberal naturalism not only limits the options in the field of trans politics, but also for feminist, gay and lesbian as well as anti-racial struggles.<sup>8</sup> Our analysis of the importance of creative cultural politics beyond rights to given naturalness in the field of trans implies that such cultural politics are of general importance for emancipative politics.<sup>9</sup>

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7 Cf. Schubert (2021) for a detailed exposition of the consequences of such subjectification by law for the concept of freedom, and for an analysis of the contradiction between such individualism and family-based kinship relations in Muslim societies cf. Suad Joseph (in this volume).

8 See, for example, Schubert 2019 and 2022 for a non-naturalistic analysis of gay subjectification through body- and biopolitics.

9 Cf. Susanne Baer and Suad Joseph in this volume as well as Schubert/Schwartz (2021).

### 3. The history of trans: from unnatural and pathologized to natural and rights claims

The creation of the category ‘trans’ by modern Western medicine and law, in its multiple stages, is a history of contestations around nature. It uncovers specific views on sex and gender and their successive transformations alongside liberal ideology. It reveals the importance and ambivalences of claims to nature for gender concepts and gender rights in modern liberalism.

Several studies have shown the historical process of construction of what we call ‘sex’ and ‘gender’ as if they were part of an essence: stable, immutable, non-historical binary objectivities (cf. Scott 1986: 1065ff.; Laqueur 1992; Gallagher/Laqueur 1987; Schiebinger 2004). This notion is attributed to the advent of European bourgeois society in the 18th century and the origin of the idea of sexual differentiation that is still influential today (Laqueur 1992) – for example, the institution of segregated bathrooms by sex dates back to this period (Wright 1960; Cavanagh 2010; Molotch/Noren 2010; Case 2010; Fabris 2015),<sup>10</sup> as well as the idea of a private and public sphere (also as inherently gendered) (Pateman 1988; MacKinnon 1989).

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10 Historically, shared public latrines were the norm, as they still are today in many countries. The advent of the separation of toilets by gender is a Western European construct and dates back to 18th-century Paris and London. According to Lawrence Wright, the first record of this type of segregation occurred in a Parisian restaurant in 1739, which had posted on each of the doors, as a form of identification and distinction of sexes, the figures of a chambermaid and a butler. This conception came, therefore, according to the author’s account, from the French upper classes, and was intended to indicate class position and refined spirit, besides intending to accentuate, in the public space, the difference of sexes (Wright 1960: 103). According to Cavanagh, the differences between genders were made explicit and exaggerated by the spaces allocated to public bathrooms in England and in Europe as a whole, since they were linked to a heteronormative ideal and also marked a differentiation of class and culture. In London, in the 17th century, public bathrooms were exclusively for men’s use, since it was understood that men were the ones who should walk the city and public spaces. The woman – here, obviously, bourgeois and noble, since the poor woman always worked – would be exclusively responsible for the private and family space. The creation of bathrooms was based, therefore, on the consolidation of a class position and difference that, consequently, sought to highlight a gender difference (Cavanagh 2010: 28–29). This perspective was developed in Ligia Fabris (2015: 239–275). Cf. also Harvey Molotch and Laura Noren (2010), and, especially, Mary Ann Case (2010).

The biological determinism linked to this society model and its sexual dichotomy states that biological factors such as sex, i.e., genitals (and physiological factors supposedly triggered by it) determine specific, distinct and complementary behaviors. These ideas about metabolic states have consequences, not only for fixing understandings about cisgender<sup>11</sup> women (and men), but also about transgenderism.

Transgenderism as we know it today is a creation of 'Western' (especially German and US-American) medicine that began in the 19th century and became consolidated in the 20th century (Pfäfflin 2015: 12). Initially observed as a phenomenon of homosexuality, it was treated as a matter of moral deviation linked to the (Christian) religious disapproval of the challenge to the institution of the order of the sexes that was fixed in the Victorian era, in which "sexual differentiation (*Geschlechtsdifferenziertheit*) operated as a distinctive mechanism of class" (Hirschauer 1993: 77-78) and was necessary to the development of capitalism (Federici 2004).

The medical approach in the 19th century – termed scientific – actually reinforced these moral judgements by categorizing trans as unnatural and pathological deviation from the hetero norm. The search for establishing the corporeal 'coherence' of people with ambiguous body features (intersex) or behaviors (trans) outside the established standards, led to the medical question of what determines sexual identity, nature or culture (Castel 2001: 86), and whether this could be constructed corporeally and psychologically (ibid: 85). Mobilizing several fields of knowledge, Western medicine sought, in the 20th century, to establish some understanding, welcoming, but also rewriting the coherence between identity, desire and body.

Thus, the instruments to reestablish this coherence in a transgender person would be to perform surgery, use hormones and construct a "social/bodily adequacy" (Castel 2001: 85). "Transsexuality" then comes to be seen as a form of intersexuality of psychological origin in which a certain "social role" is claimed, establishing a differentiation between biological "sex" and psychosocial "gender" (ibid: 85-86). It was the studies on transsexuality, however, that led to questioning the idea of anatomical sex as destiny, leading to the realization that behaviors are socially constructed, therefore taught and learned. At the same time, the idea was that trans people were 'born in the wrong

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11 'Cisgender' refers to gender identification that is in line with the gender assigned at birth. In this chapter, 'trans' refers to any identification or gendered mode of being that is not 'cisgender'.



body', that their status was a deviation and 'nature's mistake'. Therefore, trans was categorized as a medical condition ('natural') and surgery was needed to reestablish 'coherence' between gender and sex (that is, anatomy and behavior). These medical standards were crucial for early demands for trans rights and to the legal regulation of trans existence: for allowing and limiting the conditions of possibility of their bodies as well as establishing requisites for the recognition of their rights as a specific group.

Therefore, instead of granting trans people the freedom to (legally) exist and be who they were, liberal law restricted and imposed several protocols and conditions on the recognition of their gender identification. Under liberal Western regimes, transgender people were ensured neither liberty, nor equality, nor dignity as promised to all. Thus, in this case, law operates as a sign of distinctive subordination: as a guardian of traditional understandings of gender.

So, if in the 19th century, transgender people were considered psychotic or delusional, and surgery was prohibited and considered a mutilation, in a second moment, by the end of the 20th century, they were considered as having a psychiatric condition whose treatment was surgery. Therefore, many Western countries issued laws recognizing the existence of transgender people (medically termed as 'transsexuals') obliging them to undergo gender reassignment and other surgeries (and sometimes also sterilization) in order to legally recognize their gender identification. Nowadays, after constitutional courts decisions and law reforms in several countries, surgery is no longer required for recognizing gender identification. But in some of them, as in Germany, for instance, a medical report is still needed.

Hence, law has been positioning itself as the guardian of a specific moral, prohibiting or enforcing surgery, hormone therapy and sterilization, safeguarding an old, strict understanding that there can be only women and men and of what they are, should or can be. Within the liberal bourgeois and Western framework, medicine and law produced dimorphism and heteronormativity as 'natural'. And by the aforementioned process, medicine created, and law regulated, the concept of 'transgender' as a deviation of it, which allowed to derive certain rights by arguing that trans is a result of a 'natural condition' that needs treatment. The possibility of surgery represented the path for the recognition of trans people as legal subjects and at the same time, tried to reinscribe them in the heterosexual norm.

In the history of this legal-medical struggle, the Yogyakarta Principles are an important next step: They disentangle gender identity from specific

bodily characteristics. However, they should be seen in coherent continuity with the medical-legal reasoning that we just laid out, as they are continuing to rely on nature for the constitution of the rights claims. The historical tracing helps us understand how trans politics became framed as a struggle about rights constituted by legal-medical claims to the naturalness of gender identity. The current situation of protection and the recognition of gender identity “as deeply felt internal and individual experience” is an important progress within this liberal rights framework, but it is nevertheless limited. In the next section, we examine how a trans chorus in the US articulates and practices their politics in light of the contestations of trans rights. The shifting legal landscape fundamentally shapes the material conditions of their lives as trans people. We explore some of the possibilities they show for trans resistance and claims-making under these conditions.

#### **4. Trans choral musicking: liberal politics and critical practices**

Established in 2015, the Trans Chorus of Los Angeles is one of few trans-identified choruses of the Gay and Lesbian Association of Choruses (GALA). In line with “queer choral musicking” (Balén 2017), their singing strives to “change hearts and minds” when it comes to how LGBTQ\* people are viewed. The TCLA singers are actors in a North American LGBTQ\* choral movement, which Strachan describes as “a harmonic convergence of music and politics” (2006: 259). The goal now is to understand this particular convergence for the trans chorus in light of the liberal frame for recognition of trans subjectivity. The shared experience of making music allows for (re)imagining trans futurity, and doing so with the voice, singing, is a move towards embodying trans vocality beyond the recognizable political voice. We explore both how the TCLA’s singing and performance practice communicate politics beyond the words and how they frame their politics discursively.

To start, we focus on the bodily practice of their collective singing as an all-trans chorus. Here, they sing with peers who know what it is like or can be like to exist as trans people. That being said, they also enjoy having a creative purpose for coming together which is not focused on trans experience

as such.<sup>12</sup> For most, it is the only time they are around other trans people (and so many, at that) outside of events like Trans Day of Remembrance (TDOR) or safe spaces or advocacy groups for trans people. When the chorus meets for rehearsal, it's all about the singing, which is fun, life-affirming, healing and helps build a sustained community (Patch 2022a). They generate social capital collectivizing as a trans choral body and, in their musicking, practice an embodiment of "the 'good society', one that transcends the harsh realities of daily life" (Street 2014: 893). This is the sensuous politics that serves as the impetus and motor for further political engagement and activism (Shotwell 2011). Lifting their voices to sing is an example of how music "is a more democratic artform" (Street 2014: 887) in that it is low-cost and mobile.

What are, though, the costs of vocalizing as a non-normatively gendered vocal body? As a chorus, they sound together, but outside of the chorus, the singers move through their everyday lives as *the* trans person in any given context. Given that the voice is often considered a secondary sex characteristic, we listen to voices for cues about the speaker's gender in a naturalizing way. We hear 'men' and 'women' and make that assumption based on their sexed bodies. As trans people whose vocal embodiment has been entrained in the cis-heteronormative Western culture, and given that most of the chorus members have gone through natal puberties in which sex hormones have altered their vocal structures, they know intimately how gender is perceived through the voice, and they invest work and resources into modifying their vocal sounds for reasons ranging from self-protection against anti-trans and transphobic violence to simply making sounds that they like and feel at home in their bodies.

The legacy of the medicalization and pathologization that continues to shape trans life is also reproduced in the fields of voice pedagogy and speech-language pathology as they begin to grapple with the phenomenon of 'transgender voices' and voice work. Especially earlier clinical work tended to consider transgender vocality in terms of 'passing' or of 'dysphoria' or wrong body/wrong voice narrative. Much of the more recent work, especially done by or in collaboration with trans singers, exposes the fallacy of sex binarism in vocal production and focuses on playing with the multivocality of voices

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12 "Music is one of the resources to which actors turn when they engage in the aesthetic reflexive practice of configuring self and/or others as emotional and aesthetic agents" (DeNora 2004: 158-159).

and exacerbating the 'overlap' between gendered voicing, understood in binary terms. It is increasingly resistant to cis-binary assumptions. At the same time, the clinical fields work in a complicated position between understanding that the benefits of voice work go beyond the pathology of voice, while such a diagnosis is often needed for access to such resources. As such, the notion of 'wrong body'/'wrong voice' still exists; voices potentially signifying a liability to the 'naturalness' of their felt gender.

The fact that the chorus is trans-identified and now increasingly sings standard four-part SATB (soprano-alto-tenor-bass) repertoire means that there is various gender representation and presentation in each of the voice parts. Collective singing as an all trans chorus introduces heterogeneous (trans) subjectivity, identity, visibility, aurality. How they present and sound individually does not need to be evaluated against a cis-binary gendered norm, because what matters is the sound they make collectively. Their variously embodied voices and sounds are legitimated through a (blended) choral sound, and they aim to normalize their modes of trans through the humanistic and humanizing practice of singing. They agentially engage in trans world-making (DeNora 2013) in which bodies and gender identities are heterogeneous, while as a collective, they sound normative. Filing the traditional choral form and blended sound makes them visible as (a) plurality of trans people, without the pressures of any one individual singer having to meet the criteria of gender cis-binarism. This effect is lost, however, when trans people are simply included in queer or other choruses (Patch 2022c).

The TCLA mission statement has gone through many iterations over the years, but the underlying sense of movement and transformation that was there from the start persists. Where they initially spoke of "striving to change the social ecology. Everywhere," they now use the language of "bring(ing) to the world awareness, understanding, power and victory for the Trans Community."<sup>13</sup> They use the all-encompassing version of the term 'trans' to gather and sing under. The identity category 'trans' provides the language for the

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13 "The Trans Chorus of Los Angeles is the first all Trans-Identified Chorus in America, consisting of Transgender, Non-Binary, Intersex, Gender-Non-Conforming and Gender-Fluid individuals. TCLA Celebrates diversity and acceptance in our appearance and vocal presentation so that others can see and feel the joy we share. Through our music we bring to the world awareness, understanding, power and victory for the Trans Community." ("About Us" (<https://transchorusla.org/about/>)) June 5, 2021.

singers to find each other, and it also is a language by which they can be recognized societally. They make sonic claims from a position of marginality, but resist being tokenized. They currently explicitly state their goal as being to shift the narrative from a place of victimhood to one of embodying victory. The program now pushes for normalization and power through humanizing singing, affective intersubjectivity and representation.

Over the years, their mission statement has increasingly articulated what kinds of identities they understand to be represented in their chorus: transgender, non-binary, intersex, gender non-conforming and gender fluid individuals. Most recently, they have adapted an African American spiritual turned Civil Rights song *'Ain't gonna let nobody turn me around'*, to name the medical and legal institutions they must resist, in 'marching for everyone trans' (Patch 2022a).

These developments happened alongside political shifts in US administrations and trans rights protections that immediately affected their livelihoods. In the US context, trans rights are argued along lines of civil rights protections on the basis of 'sex discrimination'. The Obama administration set out guidelines articulating how these protections extended to transgender and also gay and lesbian Americans. While Trump did not run on an anti-LGBTQ\* platform, his administration wasted no time actively disenfranchising transgender people in the US – reinstating a military service ban, pushing for anti-transgender discrimination at the workplace and trying to remove health care protections in the midst of a global COVID-19 pandemic. In June 2020<sup>14</sup>, the Supreme Court ruled that federal sex discrimination protections of Title VII of the Civil Rights Act of 1964 extend to gay and transgender workers.

On his first day in office, 20 January 2021, President Biden signed an executive order directing "agencies to enforce federal laws that prohibit sex discrimination to include discrimination based on sexual orientation and gender identity, [...]"<sup>15</sup>. After hearing that Biden had stated "trans rights are human rights," on *Transgender Day of Remembrance* in November 2020, the TCLA Artistic Director reached out to Inauguration Day organizers through contacts at the Human Rights Campaign (HRC), and the TCLA was featured in the Inau-

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14 R.G. & C.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission.

15 <https://www.hrc.org/press-releases/the-real-life-implications-of-bidens-bostock-executive-order>. January 21, 2021.

guration Day virtual “Parade Across America.”<sup>16</sup> The TCLA aligns itself with a liberal rights discourse, actively seeking to be a visual and aural representation of trans Americans, and a representation of Black trans Americans and trans Americans of Color at that. At the same time, they actively insert themselves into the musical communication of the liberal politics of the democratic leader (Street 2014: 886). In another example, the TCLA sang the national anthem *‘The Star-Spangled Banner’* at the first ever Democratic presidential town hall dedicated to LGBTQ\* issues put on by CNN and HRC (Patch 2022b).

The chorus may be articulating definitions of trans in terms of identity categories in order to be recognized, and the lure of trans-normativity and trans-nationalism can be observed in their choral politics.<sup>17</sup> They do so in a legal situation in which they have to rely on executive actions to determine the basic constitution of their livelihoods as trans people in the US. As Dean Spade (2015: 18) articulates, “[t]rans resistance is emerging in a context of neoliberal politics where the choice to struggle for nothing more than incorporation into the neoliberal order is the most obvious option”. The singers are making important life decisions, like changing their official documents and living openly, with limited security. Legal recognition is key to accessing and defending access to rights (Verloo/van der Vleuten 2020: 226), limited as they may be. However, even the naturalistic human rights, the ‘natural’ position that would offer basic protection, does not rest on steady ground, as the shifts in administrations and court opinions show; it is under constant threat from right-wing politics. And yet, the trans chorus’s self-naming and politics do not rely on a naturalist discourse. They engage in world-making beyond liberal rights by celebrating their diversity, enacting it with a sonic and visual aesthetic, joyfully. They have made trans sensuous politics part of their civic engagement, one that insists on the sonic, physical presence of gender non-hegemonic bodies, bodies that literally resonate regardless of their gender recognition.

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16 <https://www.them.us/story/bidens-inaugural-parade-trans-chorus-los-angeles> and <https://www.losangelesblade.com/2021/01/19/trans-chorus-of-los-angeles-performs-at-biden-inaugural>. January 20, 2021.

17 Thought in parallel to the concepts of homonormativity (Duggan 2004) and homonationalism (Puar 2007). These concepts refer to the normativity and nationalism of trans; trans-nationalism should not be confused with transnationalism in the context of international relations and global studies.

## 5. Conclusion

The described situation reaffirms the centrality of naturalness in the liberal rights discourse: In the face of right-wing politics, an evident strategic option is to appeal to the liberal tradition and to argue for protective rights. The TCLA thus works with this framework discursively in its politics, while working against its presumed “naturalness” when it comes to their (inherently political) singing practices.

While it is an important tool against adverse politics, the language of rights is also limited because it does not actively foster non-heteronormative experiences. Of course, non-heteronormative modes of gendered being very well do exist in spite of heteronormativity, however, it matters if there are social environments to support them. As we have seen, the world-making in the community space of the trans chorus is important because it is the creation of a social world and subjectivities outside of the confinements of generalized heteronormativity<sup>18</sup>.

Recognizing this need to have non-heteronormative social spaces for queer experiences, the question is if liberal law can also answer such need. We should dare to demand more from the law than to protect the mere existence of the forms of subjectivities that were created despite a generally hostile social and legal environment. The current legal regime, in all its small details, is tailored towards the construction of heteronormative subjectivities and bodies. To fundamentally change that, legal politics that dismantle this deeply rooted heteronormativity are crucial. Such law would start with the recognition of the fact that law itself is not gender-neutral, but leads to fostering or inhibiting the creation of certain gendered experiences, subjectivities and spaces, and currently is heteronormative. Note that this is a fundamental break with the naturalism assumption of liberalism, which takes gender as extra-legal naturalness. Such a break would allow us to move on to the second step: asking how to create law that makes queer lives more likely and livable.

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18 Such creation could be interpreted as “constructivist identity politics”, as recently described by Schubert/Schwiertz (2021).

## References

- Anghie, Antony (2005): *Imperialism, Sovereignty, and the Making of International Law*. Cambridge Studies in International and Comparative Law 37, Cambridge: Cambridge University Press. <https://doi.org/10.1017/CBO9780511614262>.
- Balén, Julia (2017): *A Queerly Joyful Noise: Choral musicking for social justice*, New Brunswick: Rutgers University Press. <https://doi.org/10.1163/15685314-04604006>.
- Barreto, José-Manuel (2018): “Decolonial Thinking and the Quest for Decolonising Human Rights.” In: *Asian Journal of Social Science* 46/4-5: pp. 484-502.
- Berlin, Isaiah (2002): “Two Concepts of Liberty.” In: Henry Hardy/Ian Harris (eds.), *Liberty*, Oxford: Oxford University Press, pp. 166-217.
- Bratu, Christine/Dittmeyer, Moritz (2017): *Theorien des Liberalismus zur Einführung*, Hamburg: Junius.
- Case, Mary Ann (2010): “Why Not Abolish the Laws of Urinary Segregation?” In: *Toilet: Public Restrooms and the Politics of Sharing*, New York: NYU Press.
- Castel, Pierre-Henri (not specified): “Quelques réflexions pour établir la chronologie du «phénomène transsexuel»”: pp. 1910-1995. January 27, 2021 (<http://pierrehenri.castel.free.fr/Articles/histoTS.htm>).
- Castel, Pierre-Henri (2001): “Algumas reflexões para estabelecer a cronologia do ‘fenômeno transexual’ (1910-1995)” In: *Revista Brasileira de História* 21/1, pp. 77-111. <https://doi.org/10.1590/S0102-01882001000200005>.
- Cavanagh, Sheila L. (2010): *Queering Bathrooms: Gender, Sexuality, and the Hygienic Imagination*, Toronto: University of Toronto Press.
- Constant, Benjamin (1819): “The Liberty of Ancients Compared with that of Moderns.”, November 17, 2021 (<https://oll.libertyfund.org/titles/constant-the-liberty-of-ancients-compared-with-that-of-moderns-1819>).
- DeNora, Tia (2004): *Music in Everyday Life*, Cambridge: Cambridge University Press.
- DeNora, Tia (2013): *Music Asylums: Wellbeing through music in everyday life*, Farnham: Ashgate.
- Duggan, Lisa (2004): *The Twilight of Equality? Neoliberalism, Cultural Politics, and the Attack on Democracy*, Boston: Beacon Press.
- Fabris, Ligia (2015): “Vagão rosa e o banheiro feminino segundo a população do Rio de Janeiro: Os espaços exclusivos entre discursos de proteção da



- mulher e mecanismos de disciplinamento da diversidade de gênero”. In: José Ricardo Cunha (ed.), *Investigando convicções morais: O que pensa a população do Rio de Janeiro sobre os Direitos Humanos. 1/1ed*, Rio de Janeiro: Gramma, pp. 239-275.
- Federici, Silvia (2004): *Caliban and the Witch. Women, the Body and Primitive*, New York: Autonomedia.
- Gallagher, Catherine/Laqueur, Thomas W. (1987): *The Making of the Modern Body: Sexuality and Society in the Nineteenth Century*, Oakland: University of California Press.
- Hirschauer, Stefan (1993): *Die soziale Konstruktion der Transsexualität*, Frankfurt am Main: Suhrkamp.
- Jaggar, Alison M. (1988): *Feminist Politics and Human Nature*. Reprint. *Philosophy and Society*, Totowa: Rowman & Littlefield.
- Laqueur, Thomas W. (1992): *Making Sex: Body and Gender from the Greeks to Freud*, Cambridge: Harvard University Press.
- MacKinnon, Catharine A. (1989): *Toward a Feminist Theory of the State*, Cambridge: Harvard University Press.
- Menke, Christoph (2020): *Critique of rights*, Cambridge: Polity.
- Mignolo, Walter (2009): “Who Speaks for the ‘Human’ in Human Rights?” In: *Hispanic Issues On Line 5/1 (Human Rights in Latin American and Iberian Cultures)*: pp. 7-24.
- Mignolo, Walter (2011): “Epistemic Disobedience and the Decolonial Option: A Manifesto.” In: *Transmodernity 1/2*: pp. 44-66. <https://doi.org/10.5070/T412011807>.
- Molotch, Harvey/Noren, Laura (2010): *Toilet: Public Restrooms and the Politics of Sharing*, NYU Press.
- Nussbaum, Martha C. (1997): *The Feminist Critique of Liberalism. The Lindley Lecture 1997*. Lawrence Kan. Dept. of Philosophy University of Kansas.
- Patch, Holly (2022a): “The Sensuous Politics of Singing in a Trans\* Chorus.” In: Janine Dahinden/Annelise Erismann/Dominique Grisard (eds.), *Violent Times, Rising Resistance. Questions de genre/Geschlechterfragen*, Zurich: SEISMO pp. 98-111 (forthcoming).
- Patch, Holly (2022b): “Trans\* American/a Citizenship in Performing The Star-Spangled Banner.” In: Knut Holtsträter/Sascha Pöhlmann (eds.), *Americana: Ästhetik, Authentizität und Performance in der amerikanischen populären Musik*, Final publication of the DFG Scientific Network (forthcoming).

- Patch, Holly (2022c): "Blend and Balance in Trans\* Choral Musicking." In: Kay Norton/Esther Morgan-Ellis (eds.), *The Oxford Handbook of Community Singing*, New York: Oxford University Press (forthcoming).
- Pateman, Carole (1998): *The sexual contract*, Cambridge: Polity Press.
- Pfäfflin, Friedemann (2015): "Transgenderism and Transsexuality: Medical and Psychological Viewpoints." In: Jens M. Scherpe (ed.), *The Legal Status of Transsexual and Transgender Persons*, Intersentia.
- Puar, Jasbir K. (2007): *Terrorist Assemblages: Homonationalism in Queer Times*, Durham: Duke University Press.
- Schiebinger, Londa L. (2004): *Nature's Body: Gender in the Making of Modern Science*, Rutgers University Press.
- Schubert, Karsten (2018): *Freiheit als Kritik: Sozialphilosophie nach Foucault*, Bielefeld: transcript.
- Schubert, Karsten (2019): "The Democratic Biopolitics of PrEP." In: Helene Gerhards/Kathrin Braun (eds.), *Biopolitiken – Regierungen des Lebens heute*, Wiesbaden: Springer, pp. 121-153. [10.1007/978-3-658-25769-9\\_5](https://doi.org/10.1007/978-3-658-25769-9_5).
- Schubert, Karsten (2020): "Freedom as critique: Foucault beyond anarchism." In: *Philosophy & Social Criticism*: pp. 1-26. <http://doi.org/10.1177/0191453720917733>.
- Schubert, Karsten (2021): "The Challenge of Migration. Is Liberalism the Problem?" In: Stephan Kirste/Nober Paulo (eds.), *Populism: Perspectives From Legal Philosophy*. *Archiv für Rechts- und Sozialphilosophie (ARSP)* 167, Stuttgart: Franz Steiner, pp. 173-192.
- Schubert, Karsten (2022, in print): "A New Era of Queer Politics? PrEP, Foucauldian Sexual Liberation, and the Overcoming of Homonormativity." In: *Body Politics* 8 (2020/12).
- Schubert, Karsten/Schwartz, Helge (2021): "Konstruktivistische Identitätspolitik: Warum Demokratie partikuläre Positionierung erfordert." In: *Zeitschrift für Politikwissenschaft* 31 (4): pp. 565-593. <https://doi.org/10.1007/s41358-021-00291-2>.
- Scott, Joan W. (1986): "Gender: A useful category of historical analysis." In: *The American Historical Review* 91/5: pp. 1053-1075. <https://doi.org/10.2307/1864376>.
- Shotwell, Alexis (2011): *Knowing Otherwise: Race, Gender, and Implicit Understanding*, Penn State University Press.
- Spade, Dean (2015): *Normal life: Administrative violence, critical trans politics, and the limits of law*. 2nd ed., New York: South End Press.

- Strachan, Jill (2006): "The Voice Empowered: Harmonic Convergence of Music and Politics in the GLBT Choral Movement." In: Karen Ahlquist (ed.), *Chorus and Community*, Champaign: Illinois University Press, pp. 248-260.
- Street, John (2014): "Music as Political Communication." In: Kate Kenski/Kathleen Hall Jamieson (eds.), *Oxford Handbook of Political Communication*, Oxford: Oxford University Press. <https://doi.org/10.1093/oxfordhb/9780199793471.013.75>.
- Theurer, Karina/Kaleck, Wolfgang (eds.) (2020): *Dekoloniale Rechtskritik und Rechtspraxis*, Baden-Baden: Nomos.
- Verloo, Mieke/van der Vleuten, Anna (2020): "Trans\* Politics: Current Challenges and Contestations Regarding Bodies, Recognition, and Trans\* Organising." In: *Politics and Governance* 8/3, pp. 223-230. <https://doi.org/10.17645/pag.v8i3.3651>.
- Wright, Lawrence (1960): *Clean and Decent: The Fascinating History of the Bathroom and the Water-Closet*. Classic Penguin – History, London: Penguin Books.
- Yogyakarta Principles. (2006): "The Yogyakarta Principles", November 17, 2021 (<https://yogyakartaprinciples.org/>).

ALEXANDRA SCHEELE,  
JULIA ROTH,  
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GLOBAL  
CONTESTATIONS  
OF GENDER  
RIGHTS

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Alexandra Scheele, Julia Roth, Heidemarie Winkel (eds.)  
Global Contestations of Gender Rights

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