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Challenging Transphobic Hate Crime, 22nd June 2023**

Plenary Speech

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Rethinking Transphobia in the UK: What's Wrong with Rights?¹

I spent a long time thinking about how to approach this paper beginning with the most basic question – how did we get here? Why are we, in the year 2023 having to have a conference addressing the very fact of why a relatively small population are dehumanized on a daily basis by the state, the healthcare system, the education system, the media, the legislative process, religious institutions and ultimately individuals purely for existing.

When I re-read this opening paragraph, I could actually be talking about any minoritized community. In fact, we often pose a response to verbal or written attacks on trans+ people by saying what if we replace the word trans with disabled, Black, Muslim, Indigenous, Jewish or gay in order to highlight the targeting of trans+ people as disproportionate and hypocritical – in order to show that where we have supposedly won the discrimination argument against other identities we are yet to accept those beyond a cis-heteronormative existence as human. Moreover, why are we able to employ this reasoning to counter discriminatory statements against the trans+ populations? Because at some point in very recent history – nothing pre-20th C if you were to research – the concept of human rights as a unifying framework to protect and uplift specific individual or collective identities has been hard fought and supposedly won by many of the aforementioned populations and their allies. By having fought for and had enshrined in international and national tools of governance, those people have been humanised, been awarded human status by other humans who ultimately hold the power to say who or who cannot be human.

Yet, as we see consistently across the world, country specific human rights are derivative, can be removed on a whim by those who bestow them, they can also evolve and as a concept they can be manipulated to divide and conquer. In my classrooms I often explore the question of human rights with my students – we ask, whether as a framework and legislative function have they in any way eradicated discrimination? – clearly not otherwise they would have outlived their purpose by now – and ultimately what would a world look like without them? This risk of eradication, permanent precarity and fragile state of hard won rights is a fantastic tool of distraction for those that hold the actual institutional power.

Since 2018 the trans+ communities and their allies have been very much focussed on spreading the message that Trans Rights are Human Rights in an attempt to win support and

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empathy from the rest of humanity. The rapid and confusing discourse over reviews and amendments to legislation have sent the trans+ community and allies into defensive mode and appear to have turned all manner of political commentator and internet warrior into a supposed expert in the law. Hours of mass and social media output are devoted to 'debating' legislation that most citizens barely even knew existed, whilst at the same time, without any of these amendments actually happening as of yet, the trans+ community have been left with a barely functioning public healthcare system (meaning that those adults wishing to or able to undergo gender affirming medical care would now be on a pathway of anywhere between 6-15yrs from referral to access to treatment, and under 18s with a wait list of over 7000 youth currently have no functioning service to speak of), 56% rise between 2018-2022 in reported hate crime, 65% trans+ adults more likely to hide their identity in the workplace², are disproportionately impacted by homelessness, educational barriers and other financial insecurities, are statistically more likely to have a combination of poor physical and mental health resulting in life-long disabilities.

So, as I started to go down this rabbit hole, my quest to write this paper became about asking not how did we get here in terms of transphobia, but instead why have we become so focussed on preserving the few rights bestowed upon the trans+ population in the UK as a path to humanisation and peaceful existence? And should we really be focusing on what this is distracting us from and how can change be more revolutionary, less bureaucratic and driven by liberatory arguments centred on joy, human interconnection and co-existence?

Asking - how did we get here? Will tie us into so many knots, will make us feel so overwhelmed that we feel paralysed and run away from finding solutions. And I say this as an academic whose days are devoted to thinking about – how did we get here?! The paralysis is real. Sometimes we do have to meet the world where we are at and instigate change from there.

The issue of transphobia and its connection to hate crime is not unique, I mean no shade to my people, but there isn't anything specifically special about trans people – the issue is about the history of anything that has ever challenged the global minority yet dominant power of white supremacist cis-heteronormative imperialism. The white supremacist cis-heteronormative imperialist structures that so successfully dominate our interconnected world thrive off a lack of intersectionality and hyper categorisation. What can separate a continuing rise in transphobic hate crime from other types, IS the impact of accepted dehumanisation on the basis of gender identity and the legacy of pathologizing gender along with human sexuality.

Although I have said my intention today is not to explore the question – how did we get here? But to reflect on the current strategies to trans+ protections, I acknowledge that we

² Stats sourced from Trans Actual UK, Transition Access Survey <https://www.transactual.org.uk/transition-access-22> , Mermaids <https://mermaidsuk.org.uk/news/new-nhs-england-guidelines-restricting-future-access-to-puberty-blockers-our-analysis/> , UK Home Office <https://www.gov.uk/government/statistics/hate-crime-england-and-wales-2021-to-2022> , TotalJobs <https://www.totaljobs.com/advice/trans-employee-experiences-survey-2021-research-conducted-by-totaljobs> respectively.

do need a brief overview of what transphobia is and the key political economic factors that have led us here today.

I define transphobia in an all encompassing way as:

Discrimination against any human being on the basis of them being or being perceived as trans gender. Just like any other form of identity based discrimination – sexism, racism, ableism, ageism, genderism, homophobia etc – transphobia can occur overtly and directly as a form of violence towards an individual or group of people BUT it can only do so because it is enabled by structural and systemic inequalities brought about by **a combination of social history, politics, capitalist economics, collective trauma or irrational fear of another group of people.**

And so, without going into too much detail the definition I write here really does touch on how we got here. Where we are at is a consequence of history, European colonization of the mind, bodies, geographies and of course neoliberal capitalism. White supremacist cis-heteronormative imperialism is a highly successful ideology, successful because it took a global minority to create a dominant worldview of what it means to be an acceptable human. The definition of ‘the norm’, as it was created via a global minority has within it a highly restricted version of what it means to be a good human – a citizen of the state – and anything outside of that limited description falls foul to claims of the unnatural and dangerous. To dehumanisation.

Despite this narrow ideal of what makes a ‘good citizen’, the rest of humanity persists to exist. If anything, visibility of minoritized populations increases year by year. In 2021 we had the first census attempts to collect a broader range of sexual orientation and gender data. Though it has had its fair share of critiques, from all camps, publication of this data gives us a conservative estimate of the gender landscape across the UK for the time being.

Around 262,000 people in the England and Wales census (0.5%) said their gender identity and sex registered at birth were different. Not all of those 262,000 people identified explicitly as transgender and there are multiple reasons as to why this is the case. Around 48,000 people (0.1%) gave their identity as ‘trans man’ and another 48,000 (0.1%) gave their identity as ‘trans woman’, and 118,000 (0.2%) did not provide a write-in response. A further 30,000 identified as non-binary and 18,000 wrote in a different gender identity. So ultimately, in England and Wales at least we are still only focussing here on around 0.5% of the population over 16yrs of age. A tiny sub-population and in a purely binary context pretty much reflecting the cis gender balance between men and women.³

With the 2021 census being the first of its kind in the UK (for all UK countries) to attempt to collect data on gender identity beyond the cis binary it is difficult to have a chronological comparison. Up to this point there has only been NHS records and respondents to LGBT+ NGO surveys to reflect the population. What we do know from the various surveys and

³ UK Parliament Commons Library <https://commonslibrary.parliament.uk/2021-census-what-do-we-know-about-the-lgbt-population/> NB. Suspicious accounting – all genders adding up to 48,000

census is that the trans+ population is becoming more visible, and that visibility is translating to a perceived growth in population.

Studies of media discourse show (along with global trends) a hike in negative and defamatory articles in the mainstream press since 2018. A study carried out by Professor Paul Baker at Lancaster University found that the UK press wrote over 6,000 articles about trans people in 2018-19. Overall, the research found that there was three and a half times as many trans-hostile articles in 2018–19 compared to 2012, and that mentions of transgender children were 23 times as common in 2018–19 compared to 2012. Fast forward to 2022 and the number of articles published in UK news media (excluding lgbt+ media) on trans topics was 501 in the month of May alone, that's over 16 articles a day. Leader of this trend in the UK was the Daily Mail whose average during that same month of May was just over 5 articles per day – online and in print⁴. Such constant media attention on such a tiny population has connection to various court cases, debates over the Gender Recognition Act amendments and prolific mis-interpreting of Equality Act 2010. Misinformation and non-evidenced claims in the mainstream media have influenced Parliamentary debate and have led to bizarre leading questions around election activity about what a woman is, rather than what are your policies around poverty, education, housing and climate change.

Between the mainstream news and poorly regulated social media platforms, the state, and admittedly academia there has emerged a false argument around women and competing versions of feminism, a resurgence of the 1980s separatist feminist arguments that most people thought they had seen the back of as soon as they realised how ableist, racist, xenophobic, classist and non-equality based this particular era was. I will not address this aspect in this paper, one could quickly disappear down a never-ending rabbit hole of tying oneself in knots with contradictions and spurious connections with far-right movements, elite classes, extreme religious groups, and traumatised individuals. When we delve into the politics of neoliberal political economics and the function of oppositionality to ensure continuous confusion and fragmentation amongst populations, we can see how in the current climate cognitive dissonance reigns supreme.

Though we could easily dismiss this unhealthy obsession with a tiny minority population on the basis of no evidence whatsoever, we simply cannot because of the ways in which the obsessed individuals feed into the administrative state systems of oppression to point where there are real life consequences. Aside from the obvious political manipulation for distraction, the further real threats to healthcare access, murmurings of a return to Section 28 style education guidelines, and tensions over the Equality Act 2010 interpretations. The increased negative attention given to trans+ lives - this estimated 0.5% of the population - is beginning to impact on public attitudes. And part of that is resulting in an increase in reported Hate Crime stats both officially and according to LGBTQIA+ advocacy organisations who research on non-reported hate crimes. Yougov polls from 2022 also evidence this change in public attitude towards trans people and discrimination has changed significantly

⁴ Source Mermaids https://mermaidsuk.org.uk/news/exclusive-mermaids-research-into-newspaper-coverage-on-trans-issues/?_cf_chl_tk=tdKDnFj7RkIKWvBXETi4BmMVvuMTgSREsN_H0wHlq3k-1687100508-0-gaNycGzNDCU

since 2018.⁵ Where previous yougov respondents declared little interest in trans lives or any discussions in the media and therefore tended to conclude there was little issue, since 2018 the aforementioned daily mentions of trans+ lives across all forms of media have impacted on how the UK public see and understand trans issues. The yougov data highlights specifically attitudes surrounding mainly trans women and sport and changing room/toilets have become more divided. This arguably reflects the narrative of most public platform discussions on transgender people.

Administrative violence against trans+ people in the UK is characterised by privilege and inseparable from neoliberalism. Neoliberal societies do not trust the state to promote equality, as much as minority populations mistrust the political process of democracy they are generally left with no choice. How much grassroots activism promotes writing to local MPs, signing online petitions for issues to be raised in Parliament, contributing to consultations and reviews? From grassroots activism there is both an inherent mistrust in politicians and a need to trust in the democratic system to protect citizens. The liberal elite however, have mistrust in the state for different reasons and prefer to take their woes to the judiciary, who characterised by class allegiance will listen to what they have to say. The neoliberal insistence upon the individual as the foundational element in political economic life opens the door to individual rights activism. We only have to examine the cases taken to court over the last few years to see this individualism at work. The neoliberal concern of “I was harmed ...” supersedes any social democratic concern for equality, democracy, and social solidarities. The cases we have seen well publicised have not been characterised on the surface by their anti-transness or hatred per se but instead on the individuals’ right to a personal belief or expression of opinion. And so, these cases become about freedom of expression and liberty over discrimination. Or about attacking public services providing care to the trans+ populations.

The frequent appeal to legal action accepts the neoliberal preference for appeal to judicial and executive rather than parliamentary powers – yet what we have then seen in the UK is the results of legal action then being quoted as evidence in parliamentary debate, often from the mouths of politicians who are from the very judicial elite of human rights law themselves. Legal decisions tend to favour the individual’s rights over equality and social justice, so as we have seen, even where individuals have not necessarily won their cases outright – the lack of favour to broader social justice allows them to interpret the result as a success. Further bolstering and legitimising the oppression of their target group. These timely and costly court processes are a privilege of the liberal elite – or in the 21st Century the Crowdfunder’s of the liberal elite.

What’s wrong with Human Rights?

What’s wrong with human rights discourse and equality legislation is their creation under the guise of neutrality. The practice of human rights and equality sit within administration systems that are in general sites of production and implementation of racism, homophobia,

⁵ Source YouGov <https://yougov.co.uk/topics/society/articles-reports/2022/07/20/where-does-british-public-stand-transgender-rights>

xenophobia, sexism, transphobia and ableism. Whilst the people subject to these types of discrimination fight hard and make sacrifices to win the inclusion of their rights, whilst such privileges sit within archaic systems - can they ever be anything more than a temporary respite from oppression not a resolution?

Since the early 1980's, we (the global north) have been in a political economic existence described by Prof David Harvey as Accumulation by Dispossession⁶ – an existence that simultaneously produces and thrives on oppositional culture, yet one that is hard to pin down. Harvey explains how dispossession (as opposed to capital accumulation which thrives on a binary oppositional culture) is fragmented and particular – a privatisation here, an environmental degradation there, a financial crisis of indebtedness somewhere else. And so, it is hard to oppose all of this specificity and particularity without appeal to universal principles. What is more, dispossession entails the loss of rights. Hence the turn to a universalistic rhetoric of human rights, sustainable ecological practices, environmental rights, and the like, as the basis for a unified oppositional politics.

Yet, this appeal to universalism is a double-edged sword dependent on the commitment to a one size fits all approach. Universalism can work well on agreed global issues such as climate change, but it's result in the area of human rights are much more problematic, given the diversity of political economic circumstances and cultural practices to be found around the world. The idea that one identity-based rights priorities transfer directly to another identities is also a cause for concern – partly because it lacks intersectional contextuality from the outset, and also because it is impossible to universalise the human experience in such a way – where inequality and marginalisation is dependent on so many fragmented and multi-faceted social factors.

With gender identity – problematically isolated as a factor alone – the connection of trans+ people to the broader LGBTQIA+ community has led to a piggybacking of rights discourse that brings me to the core contention of this paper. It is easy to fall into thinking that trans+ protections need a similar approach to the gay rights movement of the 20th Century, after all trans+ people were central to that movement in its conception, and most of the discriminatory claims made against trans+ people today are a lazy rehashing of the claims used for decades towards people on the basis of being not heterosexual – protecting the children, the family ideal, going against 'nature', the overall degradation of society etc.

Therefore, it is logical to assume that a similar path to 'liberation' is required for gender diversity in whatever shape or form that may take. **BUT** we need to ask the question – at what point did the gay rights movement lose its path towards actual liberation to become one of assimilation? And has this assimilation (into the context of the industrialised, global north) become the strategy through which divisions have occurred within the LGBTQIA+ community itself – triggered by the fragility of heteronormative acceptance. For example, we only have to scan through the core arguments of marginal groups such as the LGBAlliance or Gays Against Grooming to see that the basis of their approach is – don't rock the boat or they'll want to kick us all out! Trans and gender non-conforming folk are an

⁶ See Harvey, D 2005 Brief History of Neoliberalism

integral part of the LGBTQIA+ rights and liberation movement, they have ALWAYS been there. We know this, and we know that so much of gender identity and expression is intertwined with sexual orientation and desire, that this union of non-cis-heteronormative human experience is essential. But when we commit properly to an intersectional lens, and an anti-master's house politics we see that shared non-cis-heteronormative experience does not equate to homogenisation of experience – and therefore our solutions do differ. Precisely because as a collective the LGBTQIA+ communities are a) not all starting from the same societal marker and b) liberation does not come about via assimilation – or in more contemporary parlance the politics of inclusion.

It is at this point I wish to shift to a practical focus on legal assimilation and equality law, but I would like us to retain the notion of neoliberal individualism and oppositional politics as discussed in relation to the human rights approach. This phenomenon is relevant to administrative violence and the limits of our current law. To paraphrase legal scholar Dean Spade, **neoliberalism has not only shaped the larger social, economic, and political conditions that trans+ people in the UK find themselves in. but has also produced a specific lesbian and gay rights formation that that trans politics operates in relation to.**⁷

Whilst focus in the social world has been on whether or not to review/amend UK Equality Legislation, and impacting on trans+ people only how to make Gender Recognition more accessible. I would like us to think about the limits of UK Equality Legislation and addressing the marginalisation of trans+ folk purely through the lens of anti-discrimination laws that bar discrimination in employment and in public spaces – when no other anti-discrimination legislation has succeeded in eradicating discrimination on the basis of any other characteristic. The aspect of individual regulation incorporated into equality legislation – what a trans+ person needs to have done and said in order to 'prove' they are trans enough to not be discriminated against will always lead to more vulnerable individuals being excluded from protections.

Advocates on trans+ equality across the industrialised world have tended to follow the path of lesbian and gay rights movements of the 1980s. As I have noted, they have primarily pursued two law reform interventions: anti-discrimination laws that list gender identity and/or expression as a category of non-discrimination, and hate crime laws that include crimes motivated by the actual or perceived gender identity/expression of the victim. The logic behind this approach is not complicated. The passing of anti-discriminatory laws can create a basis for the legal claims against discriminating employers, housing providers, public services and the like. Trans people's legal claims when facing exclusion in such contexts can often fail on this basis, often on the argument that exclusion was based upon the legitimate preference on the part of the employer, landlord, service provider or business owner. This is exactly how we have seen cases play out over recent years across all camps. There is a hope however, with this approach, that inclusion in anti-discrimination laws will send a preventative message to potential discriminators, and that these laws will ultimately increase access to public life and ability to thrive for trans+ folk.

⁷ See Spade D 2015 Normal Life: Administrative Violence, Critical Trans Politics, & the Limits of Law

Hate crime laws are promoted under a related logic. Proponents argue that trans+ people have a higher risk to overt forms of violence when recognised as trans in public spaces (including online as well as physical spaces). There is also an argument behind inclusion in hate crime laws that a) they will act as a deterrent and b) they will force police and prosecutors to take discrimination of this population more seriously. Additionally, proponents of anti-discrimination and hate crime laws argue that the very process of creating them, including media representation concerning the lived experiences of trans+ people and the communities' involvement with legislators to tell them about lived experience, increases positive trans visibility and advances the struggle for trans equality. The data-collection element of hate crime statutes alone are touted as a chance to make the quantity and severity of trans+ people's struggles more visible.

However, in practice, hate crime laws are not shown to have a deterrent effect, they focus on punishment and cannot be argued to actually prevent bias-motivated violence. They also show little impact for populations that have historically poor relations with the police and who are disproportionately impacted by structural violence. Similarly, anti-discrimination laws are not adequately enforced (outside of the employment context at least). Most people who experience discrimination, are already coming from a place of economic and social marginalisation, cannot afford to access the legal help required to bring a case to court. In addition for such cases, proving discriminatory intent has become central, making it almost impossible to win these cases when they are brought to court. As we have seen by the convoluted outcomes of cases brought by those also trying to prove discrimination on the basis of a right to their anti-trans beliefs.

So, where are we to go with this thinking? How do we imagine a world devoid of transphobia, a world where collective healing is paramount and our civil liberties and right to live without violence do not depend on the curtailing of the rights of others or going to court to try to prove one's legal right to discriminate against others.

I would like to make it very clear that my intention here is not to argue for a total eradication of a rights based approach, in a world so rampant with inequalities and injustice, that would be dangerous. What I am proposing however, is that in the case of transphobia and trans+ lives that we rethink the relationship between transphobia and power beyond a rights framework – towards a liberatory approach that ultimately benefits all. There is, after all an important role for rights to play, but they must be separated from a neoliberal political economic context of individualism, to the core tenants of the UN Convention of human rights. We must ask the question as to the practicalities and ethics of forcing trans+ people to engage with administrative systems that have historically worked to oppress and exclude them, in order for them to gain some form of protections.

In terms of anti-discrimination and hate crime, we must challenge the limits of the victim-perpetrator approach. Human behaviour and contradictions are far too complex to be reduced to a binary opposition to explain how violence comes about. If we want to understand properly how and why certain people fare poorly, do not have what they need to survive, and experience high levels of violence and vulnerability to premature death, we must examine how power operates beyond the individual discrimination approach. We must

examine and be more prolific in how we use our methods of knowledge exchange to not only speak of power dynamics within systems but find ways to translate speech into action.

Marginalised populations have the answers to addressing their marginality, they just lack the systemic and physical power to contribute meaningfully to making that change. Aside from the state the NGO industrial complex requires dismantling due to its inherent links with neoliberalism and compromised approach to negotiating with elite power structures.

In conclusion, we must be prepared to look each other straight in the eye (or above the eyes speaking personally as a neurodiverse person), share space with all kinds of lived experience and search for our collective humanity. At the core of any form of violence, I would argue from an anthropological point of view, is a complexity of unresolved trauma that is also intergenerational. As a species we are damaged, and as such we need to heal. As humans we are not inherently violent, this is why the majority of our populations live lives relatively free from violence, and also why we find violence such a perplexing issue to deal with. In terms of our administrative systems and our navigation of rights, we should be avoiding the temptation to twist each other in knots over who gets to the surface first.