

Why Sexual Orientation (and Gender Identity) is Not Really “a Thing”

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What does it actually mean when we refer to one’s sexual orientation or gender identity? The answers seem obvious to most, that is, until we actually have to land on an answer. This question takes on great importance when it involves consequential public policy as Houston citizens are presently facing.

You might recall, in 2014, Houston Mayor Annise Parker passed the smoothly titled Houston Equal Rights Ordinance ([HERO](#)) through her city council to much fanfare and then proceeded to demand her city’s pastors dutifully submit, as her diktat stated, “all speeches, presentations or sermons” related to HERO to her for approval. One appreciates confidence and boldness in their elected officials, but jeez.

The Texas Supreme Court unanimously ruled that the ordinance must either be repealed by the City Council or put up for a vote by Houston’s citizens. So the law’s future goes before Houston voters November 3rd. The only language in [Proposition 1](#) under debate is its inclusion of “sexual orientation” and “gender identity.” Contrary to elite assumptions, compelling reasons do exist for rejecting the ordinance beyond those mouth-breathers’ refusal to join the “right side of history” and all that.

A major reason is that the terms “sexual orientation” and “gender identity” are terribly subjective, meaning very different things to reasonable people finding no common definition even within the LGBT community. Consequential public policy demands more precision.

So...

- What does “sexual orientation” actually include and exclude?
- How is one’s “gender identity” determined and legally ascertained?

Neither of these are objective, measurable personal characteristics like race, sex, color, ethnicity, pregnancy, disability, etc but they are assumed as such in laws like this. There’s great trouble when we assume we are all talking about the same thing here but in fact are not. Let’s see how this is precisely the case we have today.

Gender Identity

Gender theorists confidently explain what gender is with this clever ditty: “Sex is what’s between your legs. Gender is what’s between your ears.” *I think, therefore I am.* He’s a man purely because he understands himself as such, regardless of what his original physical factory settings may indicate. She is a woman for the very same reasons. And no one can say

otherwise. Does a better example of subjectivity exist? But this understanding is far from settled among leading scholars.

Gender as something distinct from sex is a relatively new idea that originates, not from any scientific discovery, but pure ideology. As J. Richard Udry explained in a celebrated [presidential address](#) to the annual meeting of the Population Association of America, sex and gender have long meant the same thing, with gender generally used grammatically when one needed to distinguish physiology from coitus. But today, he explains, “In our urge to be politically correct... we use gender to indicate endorsement of a theory of gender as a human *social invention*.” But Udry was writing before the trans question became center stage. And this creates a fiery head-on collision between two fundamental dogmas of gender studies.

My maleness, your femaleness – the way we understand ourselves, the way we believe we *are* – is merely an artificial “social construct”. Unless you’re trans. Then the male or female you believe yourself to be is natural, absolute and beyond dispute. They don’t have a good answer for this conflict.

Back to *gender* as distinct from *sex*. David Haig, a professor of evolutionary biology at Harvard, conducted an intriguing [study](#) on how the terms “sex” and “gender” have been contrastingly used over the decades in the social and biological sciences by examining the titles of some thirty million academic articles. He found that prior to 1960, the use of *gender* was extremely rare in both the hard and soft sciences. In the following years, the term slowly grew in the social science and humanities literature, but was rarely used in the biological literature. Today, the harder sciences employ *gender* more frequently than 20 years ago, but for interesting reasons. Haig explains,

Among the reasons that working [natural] scientists have given me for choosing *gender* rather than *sex* in biological contexts are desires to signal sympathies with feminist goals, to use a more academic term, or to avoid the connotation of copulation.

He continues, “The major increase in the use of gender, and the associated decline of sex, occurred in the 1980s, after the adoption of *gender* as a technical term in feminist discourse.” It was not because any new scientific finding demanded such a distinction.

Now, to how gender is related to *identity*. Bruce Jenner is a woman and always has been. Disagree at your own [peril](#). But when was it that Bruce Jenner became Caitlyn? At birth? When he came to terms with it himself? When he first announced his news to the world? When he legally changed his name? When he appeared on the cover of *Vogue*?

Bruce is the *only* one that can tell us for sure. And this true for every trans individual. Even that could change from day to day and we have to honor each new telling. People ask honest and sincere questions, wanting to truly understand what’s going on here: Can Caitlyn really be Caitlyn if she still has Bruce’s penis? Would Caitlyn be Cait if she chose to kept a beard? What if she retained a total outer appearance suitable for the cover of GQ? Of course she would

because her gender, as with all other transgender folks, exists solely in what's between her ears, her own understanding of herself, regardless of how she chooses to display it to the world. It is her business, but we all have to honor it.

Another less famous real-world [example](#) of this reality was dumped in the lap of an unsuspecting Michigan woman at her local Planet Fitness gym. She entered the woman's locker room and was confronted by a man doing his business sporting a woman's wig and some poorly applied facial rouge. Mortified, she alerted the management and was told she would have to live with it because their corporate policy states that "members and guests may use all gym facilities based on their sincere self-reported gender identity."

"Sincere" and "self-reported". Is that not a can of worms? At least Planet Fitness as some sort of criteria. The Houston Ordinance offers no definition, language or guidelines whatsoever as to what does or does not constitute "gender identity". Laws backed by substantial fines and penalties, not to mention the potential for public shaming of violators, requires some form of objective clarity.

Sexual Orientation

Our culture uses the term "sexual orientation" with absolute confidence in its definition that to even raise the question would peg one as embarrassingly dull-witted. But this, even among LGBT leaders, is not clear at all. Professor [Randall Sell](#), one of the leading scholars researching the nature of sexual orientation, [observes](#),

At present it is clear that researchers are confused as to what they are studying when they assess sexual orientation in their research. ...Today's preferred terms and the term "sexual orientation" itself have a wide variety of definitions in the literature...

The serious student of this topic need only enter "definition of sexual orientation" into a search engine to prove the fact. For instance, the most authoritative organizations on the subject offer these definitions:

[Human Rights Campaign](#): "An inherent or immutable enduring emotional, romantic or sexual attraction to other people."

[American Psychological Association](#): "An enduring pattern of emotional, romantic and/or sexual attractions to men, women or both sexes. ...[O]ne's sexual orientation defines the group of people in which one is likely to find the satisfying and fulfilling romantic relationships that are an essential component of personal identity for many people."

[Psychology Today](#): "Sexual orientation is a term used to describe our patterns of emotional, romantic, and sexual attraction—and our sense of personal and social identity based on those attractions. A person's sexual orientation is not a black or white matter; sexual orientation exists along a continuum."

[WebMD](#): Sexual orientation is a term used to refer to a person's emotional, romantic, and sexual attraction to individuals of a particular gender (male or female).

[PFLAG](#): "Emotional, romantic, or sexual feelings toward other people.... One's sexual activity does not define who one is with regard to one's sexual orientation; it is the attraction that helps determine orientation."

[GLAAD](#): "Simply put: sexual orientation is about who you are attracted to and fall in love with; Sexual orientation describes a person's enduring physical, romantic, and/or emotional attraction to another person."

The words "emotional", "romantic" and "sexual" in relation to "attraction" and "feelings" seem to be the common characteristics in these various definitions. But these constancies do little to answer the question any attentive person should ask:

Precisely what kinds of "emotional, romantic and sexual attractions" denote what a "sexual orientation" actually is and isn't?

Many, but not all, assumptively confine it to being gay, straight or bisexual. But others in the LGBT community and elsewhere contend that these are given only because they are the main players on the current stage of sexual diversity. They contend there are more "sexual orientations" still. A stark example demonstrates the problem.

Salon recently published a provocative [piece](#) by a man who introduces himself this way:

I've been stuck with the most unfortunate of sexual orientations, a preference for a group of people who are legally, morally and psychologically unable to reciprocate my feelings and desires. It's a curse of the first order, a completely unworkable sexuality, and it's mine. Who am I? ...I'm a pedophile.

Now we can imagine a sea of eyes roll at the supposed ridiculousness of his claim that his deal is an orientation. But under what criteria should it be excluded?

Certainly not because this sexual attraction is repulsive. No current definition makes that qualification. If one's emotional, romantic and sexual attraction has to be socially approved in order to be a bona fide sexual orientation than when did bi- or homosexuality hit that critical tipping point in its public acceptance? Has it presently? The subjectivity in all this is obvious with just the slightest bit of thought.

Many will say an actual orientation must be something embedded within the individual, natural to what and who they are. Our pedophile understands this and says his sexual attraction to children – which he himself judges as horrific and claims he has intentionally never acted on and hopes he never does – is an orientation because it's how he has always been. He mimics the language of [those](#) (see pg. 2 under first heading) who explain the nature and origins of same-sex attraction:

Some researchers surmise that pedophilia can be traced back to genetics. Others believe the cause is congenital, and still others that it's environmental. Personally, I think the ultimate cause is likely some combination of those, and that it varies from person to person.

Again, by what criteria would we prove him wrong? Those who follow this topic very closely will remind us that the newest version of the Diagnostic Statistical Manual (DSM-V) holds the answer, as it originally listed pedophilia as an orientation. But a [press release](#) was circulated by the American Psychiatric Association, which publishes the DSM, stating that the designation should not be an orientation, but a "sexual interest." But it's not that simple.

Just as there was significant political pressure on the American Psychiatric Association decades ago to take homosexuality off the list of psychological illnesses, similar pressure was applied here as well. A professor in the school of psychiatry and behavioral sciences at Johns Hopkins, writing in *The Journal of the American Academy of Psychiatry and the Law*, [explains](#) that the APA removed the "orientation" designation "in the face of significant criticism" and not because of a misprint. This professor explains that for important clinical reasons "removing the term in response to public criticism would be a mistake." He contends that "experiencing ongoing sexual attractions to prepubescent children is, in essence, a form of sexual orientation..." and that an important distinction for clinicians is to distinguish between the psychiatric and criminal aspects of this orientation, attraction as distinct from behavior.

Agree with him or not, but his article – as well as the journal's editorial board's decision to publish it – demonstrates it's not just pervs seeking legitimacy who contend it's an orientation. How exactly would Houston's ordinance, or any other, legally exclude Mr. Pedophile?

But pedophilia is not the only romantic, emotional and sexual attraction confounding our assumed sureness of what an orientation is. The polys claim their place under the banner too.

Polyamorists (and non-polys) assert that desiring "many loves" simultaneously is an orientation. They take themselves and this understanding of their own romantic, emotional and sexual attractions very seriously, even hosting their own [annual conference](#). [Loving More®](#), the largest poly-support organization in the U.S., answers the question "Is polyamory an innate orientation?" this way:

For some it seems to be, for others not. Some people...are indeed polyamorous by nature. Despite good hearts and good intentions they repeatedly fail at monogamy, or live miserable lives if they do manage to stay romantically exclusive. ...The evidence seems to be that some people are just not wired for monogamy and need more than one love to feel complete as a person.

This, of course, would also be true of polygamists. If you hold that polys and polygs are mistaken in this, prove it by the definitions above or any that you can find. You'll be frustrated. But like our pedophile, it's not just the self-interested poly activists making the case for inclusion. Respected law professors working for LGBT causes make the case as well.

The most prominent, Columbia Law School's Elizabeth Emens, [contends](#) with all seriousness that as our national debate over same-sex marriage expands our understanding of intimate relationships, it is her hope "the everyone will take this opportunity to question monogamy" as a preference over non-monogamy. She holds that one's predilection for polyamory should legally be accepted as a sexual orientation because many polys report this is simply who they are. One person she features explains,

I've been Bi and Poly since around the age of 13, and always had more than one relationship going on as a teenager. . . . [M]onogamy is just not my nature.

Another, named Eddie, explains that those in his poly "family" have relative levels of "intrinsic polyness" leading to what he understands as a "grey scale" among his partners. He says he was polyamorous as a child, while Amber was not. She struggles with jealousy while Mike has learned to suppress his jealousy. He explains, "I think Adam came hard-wired [as poly] even more so than me."

Emens concludes that "knowledge of one's own 'sexual orientation' as we typically use the term" also "encompasses self-knowledge about one's sexual identity with regards to monogamy." In her paper, Emens properly spends a good deal of energy addressing the essentialist/constructivist question on the nature of sexuality, which of course brings its own distinct understanding of whether "orientation" even describes anything that actually exists. Consider the voices [asserting](#) that monogamy itself is not an orientation but an unnatural and unsustainable social construct, while being gay, lesbian or bi- is just as natural as having blue eyes or brown skin. As our parents told us, if you're going to start adjusting the truth, you better have a good memory. This advice would save gender theorists from these embarrassing contradictions.

The second scholar contending polyamory is an orientation is Ann Tweedy, a professor at Hamline University School of Law. In an article, crisply titled "Polyamory as a Sexual Orientation", she also argues for polyamory being recognized as a legal category in employment discrimination statutes because it is an orientation and such people deserve the protections everyone else has. Tweedy [notes](#), and enlists the voices of other scholars who agree with her, that the current usage of the term sexual orientation is "somewhat arbitrary", "inherently unstable" and "artificially limited."

She holds that "nothing in the definition of 'sexual' or 'orientation' suggests that the term 'sexual orientation' should be limited to identifying the sex of the people to whom one is attracted." Number of lovers should be included. She continues with logical consistency,

Rather, based on the ordinary meanings of its two constitutive words, the term 'sexual orientation' should refer to any type of settled sense of direction or relationship or choice or adjustment of associations, connections, or dispositions that relate to libidinal gratification.

The Inherent Difference in Male and Female Sexuality

Like Emens does with the constructivist theory, Tweedy introduces a major debilitating wrinkle into this issue by directing our attention to the differences in male and female sexuality. We cannot really speak of human sexuality generally, but male and female sexuality as they are very different animals. Research consistently reveals that male sexuality is more fixed while female sexuality is more [flexible](#). Women are substantially more likely to report being bi-sexual and it is not uncommon for self-identified lesbians to *behave* bi-sexually regardless of their actual identity or self-described orientation.

It is not uncommon for women to change their *identity/orientation* from heterosexual to lesbian and vice versa while men are extremely more likely to report being “100 percent homosexual” or “100 percent heterosexual” as the American Sociological Association explains. Thus, to speak of human sexuality as consistent and sexual orientation as an objective fixed human phenomenon is challenged by these facts. Given this, Tweedy logically contends that if we are going to speak accurately about what sexual orientation is and is not, then “individuals should be able to define their own sexual orientation” as they do their gender identity. No small number of LGBT theorists wholly agree, contending that there are as many gender identities and sexual orientations as there are people as each of us lives these out a tad differently than others. No one fully fits into any specific box, but we each create our own.

Under such constructs, we are socially (and legally) compelled to honor and respect each person’s self-determined orientation and self-expressed gender identity. Of course, this inherent subjectivity raises profound practical and legal concerns for adherence to and enforcement of laws like Houston’s equal rights ordinance. The subjectivity makes it ripe for an explosion of unanticipated lawsuits from people who refuse to play along with the “well we all know what it means” misbelief. Of course, the implications here stretch far beyond Houston. Consider this statement from this summer’s Supreme Court’s Majority Opinion in [Obergefell](#),

The nature of marriage is that, through its enduring bond, two persons together can find other freedoms, such as expression, intimacy, and spirituality. This is true for all persons, whatever their sexual orientation. (p. 13)

Whatever their sexual orientation...