

# Preface

---

## **LGBTQ: Issues, Perspectives, and Cultural Evolution**

The acronym LGBTQ, standing for lesbian, gay, bisexual, transgender, and queer, is an acronym created to refer to a broad group of people, living around the world and coming from a wide variety of different creeds and cultures, whose behavior is seen as “nonconformist” with regard to mainstream concepts of gender and sexuality. Defining what is mainstream or what is an outsider, or what is conformist and what is not conformist, is largely a matter of perspective. Behaviors seen as nonconformist in one era, can rapidly become mainstream within a single generation or less time depending on the average views of the average person within that society.

For most of history, those who failed to conform with mainstream ideas about gender and sexuality were forced to hide their behavior or faced social and legal penalties that could even include execution. Gradually, this is changing as cultures around the world are coming to recognize a spectrum of gender and sexual behaviors that are increasingly seen as acceptable expressions of an individual’s internal desires and sense of self (identity). Over time, LGBTQ people have fought for equal rights under the law and the right to express their sexuality or gender without reprisal. Despite a gradual, global movement towards acceptance of alternative sexuality and genderexpressions, LGBTQ individuals are still marginalized throughout most of the world and there remains a passionate facet of mainstream culture who believe that LGBTQ behavior is deviant or even dangerous and who therefore oppose normalizing LGBTQ behavior or providing legal and social protections for those who violate their perceived norms of expression and individuality.<sup>1</sup>

## **Linguistic Wisdom**

An ancient expression from Chinese Confucianism holds that the first step to wisdom, is to call things by their correct names. Over the centuries, there have been many colorful terms created to refer to people whose behavior defies convention, most of which are intentionally derogatory. This applies to many of the terms used to refer to LGBTQ people, as well as terms used to refer to individuals in other outsider groups, such as racial/ethnic minorities or people with physical deformities or handicaps. Terms used to refer to outsider individuals in this way reflect a perceived hierarchy of value that prizes conformity with regard to mainstream institutions (religion, political ideology, national identity) and fears behaviors that deviate from or threaten those norms. Derogatory terms used to refer to LGBTQ people occur in nearly every language and culture, and these terms have long been used to diminish

and delegitimize those who do not conform to mainstream standards of acceptable sexuality and gender identity.<sup>2</sup>

Stereotypes and their behavioral and linguistic manifestations thrive in isolation, but diminish with exposure to members of the outsider group. Over the course of the 20<sup>th</sup>-century LGBTQ rights organizations emerged, gained political influence, and spread around the world, fighting for equal rights and protections from their governments. As LGBTQ individuals became more visible in society, attitudes about language have begun to change. More and more, individuals have struggled to eliminate derogatory descriptors in favor of terms that meet with the approval of individuals within marginalized groups. Critics of this global phenomenon sometimes argue that “political correctness” has gotten out of control, creating hypersensitivity to terminology. The effort to steer the evolution of language in an effort to embrace, rather than exclude, individuals in various groups, is arguably essential to combating broader patterns of marginalization and prejudice. For instance, substituting terms like “black” and “African American” for outdated terms associated with racial persecution, like “colored” and “negro,” is meant to separate contemporary culture from its past and from the linguistic conventions that signified a less inclusive attitude about minority individuals. The LGBTQ acronym, and the terms that compose it, are part of this evolution; an effort to arrive at terminology that describes without diminishing and so allows for conversation freed from the derogatory attitudes of the past.<sup>3</sup>

While the LGBTQ acronym has gained widespread use and acceptance, gender and sexuality are fluid and complex. There are many individuals who feel their identities do not conform to the lesbian, gay, transgender, or queer labels and, therefore, a variety of other acronyms have been proposed to better reflect the actual variety of sexual or gender nonconformity. For instance, the unwieldy acronym LGBPTTQQI-IAA+ refers to lesbian, gay, bisexual, transgender, transsexual, queer, questioning, intersex, intergender, asexual, ally, and *more*.<sup>4</sup> There are a variety of other terms as well, referring specifically to individuals with various combinations of traits or who are at one or another stage of a process of discovering and exploring their gender and/or sexual identity. While the list of terms may seem overly complicated or overly politicized to some, and completely unnecessary to other critics, it can be argued that the effort is the most important part of the process, as it represents one aspect of a society in transformation, attempting to move away from overly simplistic standards and towards a more nuanced understanding of how humans develop gender and sexuality.

A brief description of common terms:<sup>5</sup>

*Gay or Homosexual* refers to an individual, typically male, who is emotionally, romantically, or sexually attracted to individuals of the same gender.

*Lesbian*, a term derived from ancient Greek culture, refers specifically to a woman who is emotionally, romantically, and/or sexually attracted to other women.

*Bisexual* refers to an individual who is romantically, emotionally, and/or sexually attracted to individuals or more than one sex or gender, in the same way or to the same level.

*Transgender* is a term that refers to individuals whose expression of, or internal representation of gender, is different from cultural expectations based on their biological sex. Transgender people are not necessarily gay, lesbian, or bisexual, though they may be, as the term transgender refers to an individual's gender identity and expression, rather than to an individual's sexuality.

*Transsexual* an older term still preferred by some individuals to refer to those who have changed, or seek to change, their bodies, permanently to change their biological sexual characteristics.

*Queer* is a generalized term for individuals who have fluid or non-conforming gender identities and/or sexual orientations and may be used by some who do not identify with conventional gender/sexual roles, but do not identify with the other broad categories used to refer to members of the LGBTQ community.

*Asexual* refers to an individual who displays a lack of sexual desire for other individuals.

*Intersex* refers to a variety of typically innate conditions that result in individuals whose physical and/or genetic makeup does not conform entirely to standard expectations of sex. For instance, an individual identified as female who is born intersex might have no vaginal opening or a variety of other vaginal differences resulting from an unusual combination of genetic and physical traits that blend biological expectations of birth sex.<sup>6</sup>

*Intergender* refers to individuals who internal manifestation of gender does not conform to standard models and blends aspects of traditional male and female gender manifestations. Sometimes called "non-gendered."

*Questioning* refers to a process through which an individual discovers what type of people he, she, or they, are attracted to or what gender, if any, the person identifies with.

*Ally* refers to an individual whose internal concept of gender and sexuality conforms to standard conventions, but who believes that LGBTQ people have been and are still marginalized and who takes an effort to promote equality.

It is important to note that LGBTQ refers to two very different, sometimes completely unrelated types of nonconformity. Lesbian, gay, bisexual, and asexual people

have romantic, sexual, emotional desires that deviate from mainstream expectations of heterosexual behavior. Gender nonconformity occurs when a person identifies as a gender other than that assigned at birth. Those who exhibit gender nonconformity might still identify as heterosexual, or might not. It is possible, therefore, for a trans man (identified as a woman at birth) to be interested in relationships with women and so sees himself as heterosexual: a man interested in women. Lesbian, gay, bisexual, transgender, and queer people share common interests in combating sexual/gender stereotypes and prejudice, but the two types of nonconformity do not always go together and gender nonconformists are not, as is sometimes believed, gay, lesbian, or bisexual.

## **Rights and Wrongs**

For most of history, in Western culture, laws, and social norms prohibited gender or sexual nonconformity. The world's dominant religions, Christianity, Judaism, and Islam, have, at times, all prohibited homosexual behavior and many other behaviors seen as violating what are seen as natural, spiritual laws. The gradual and ongoing transition from spiritual governance to secular governance had meant that, in Western societies, laws are less often based on religious scripture or morality, and more often based on philosophical virtues that can be tied to utilitarianism or protecting public welfare. As this occurred, LGBTQ people were gradually able to emerge from hiding and, in many nations, formed social groups that eventually evolved into political movements pushing for equal rights and the ability to express their gender and sexual identities without fear of legal or societal punishment. A number of nations around the world, such as Sweden, Canada, Uruguay, Finland, Iceland, Norway, and many others, have prohibited discrimination based on sexual or gender orientation and such measures are among the primary goals for LGBTQ rights activists and groups in places where LGBTQ people have yet to attain equal civil and legal rights.

On a spectrum, the United States is not among the world's most accepting nations when it comes to gender and sexual orientation, but is also not among the most prohibitive and/or prejudicial nations. In some countries, sexual behavior that violates expected norms is still treated as a disease or crime. While similar prohibitions were once widespread in the United States and Western Europe, western societies are, in general, moving away from this approach and towards the view that gender and sexuality are highly personal aspects of developing individuality and identity that should not be prohibited as a crime or treated as a psychological malady.

In 2017, the primary issues in the United States surrounding LGBTQ individuals concern the degree to which individuals have the right to determine their own gender and sexual identity and whether other individuals have the right to discriminate against LGBTQ individuals based on their cultural, religious, or personal beliefs. The United States courts have, for instance, determined through multiple cases over decades, that employers do not have the right to discriminate on the basis of race or ethnicity. In 2017, the United States is struggling to determine if gender and sexual minorities should also be protected from discrimination. Should

an employer, for instance, be allowed to refuse employment to a transgender individual based on the employer's personal beliefs? This question is the subject of legal debates in states around the country, and in countries around the world, as societies evolve in their views on and treatment of LGBTQ people. Opposition to LGBTQ rights also exists on a spectrum, from those who believe that LGBTQ behavior is a sign of mental illness and/or moral turpitude, to those who believe that LGBTQ individuals have already achieved sufficient equality and that governments and citizens should not therefore be responsible for taking any further steps to normalize the many varieties of gender or sexual behavior that exist within the population.

Whereas gender and sexuality were once seen as immutable products of spiritual creation and/or biological evolution, this perception is losing ground. Increasingly, it is understood that it is possible for biological and environmental factors to interact to create many different variations and approaches to gender and sexual behavior and that these manifestations are not maladaptive or detrimental as once believed, but are simply another example of the tremendous diversity of expression possible for humans. As humanity mingles, breaking down traditional barriers that separated races, sexes, and nationalities, there is an increasing realization that diversity—of opinion, culture, race, and other variations—can be a tremendously dynamic force in the evolution of human society. In that sense, the many types of gender/sexual diversity can therefore be seen as adding another beneficial or at least benign layer of diversity to human culture. Whether or not this evolution will continue, or whether societies will regress towards more traditional modes of viewing nonconformity, remains to be seen, but the global debate has raised interesting issues and questions, and the process of working through these has just begun.

Micah L. Issitt

## Works Used

- “GLAAD Media Reference Guide – Terms to Avoid.” *GLAAD*. GLAAD. 2016. Web. 23 Jun 2017.
- “Glossary of Terms.” *HRC*. Human Rights Campaign. 2017. Web. 14 Jun 2017.
- Gregoire, Carolyn. “Here’s What It Really Means To Be Intersex.” *Huffington Post*. Huff Post. Jan 15 2017. Web. 14 Jun 2017.
- “LGBT History Month: The 1950s and the Roots of LGBT Politics.” *HRC*. Human Rights Campaign. Oct 10 2014. Web. 23 Jun 2017.
- McElwee, Sean and Jason McDaniel. “Language matters: Concerns about ‘political correctness’ are deeply intertwined with race.” *Salon*. Salon Media Group, Inc. Jul 3 2016. Web. 23 Jun 2017.
- Zak, Emily. “LGBTQQIAA+ - How We Got Here from Gay.” *Msmagazine*. Liberty Media for Women, LLC. Oct 1 2013. Web. 3 Jul 2017.

## Notes

1. “LGBT History Month: The 1950s and the Roots of LGBT Politics,” *HRC*.
2. GLAAD Media Reference Guide – Terms to Avoid.” *GLAAD*.

# 1

## LGBTQ and the Law



Credit: Photo by Andy Katz/Pacific Press/LightRocket via Getty Images

Politicians & officials cluster around sign designating Stonewall Inn as national monument in June 2016. Mayor Bill de Blasio joined members of the NY city council, National Parks Service, Department of the Interior and veterans of the 1969 Stonewall uprising for a formal dedication of the Stonewall Tavern in Manhattan's West Village as a National Monument, the first LGBT themed in the US.

# Legalizing Identity: LGBTQ Rights and Laws

---

## Legalizing Identity: LGBTQ Rights and Laws

Throughout all of human history, individuals who deviated from mainstream standards of behavior or cultural norms have inspired suspicion, fear, and hostility from those who consider such behavior to be morally or socially injurious or threatening. Cultural norms form the basis of laws and, for thousands of years, societies around the world have established laws and regulations that penalize those who violate the cultural and behavioral standards of that era. Until recently in human history, those who did not conform to mainstream standards of sexuality and gender were subject to criminal penalties that included imprisonment, forced behavioral therapy, and even execution. The status of LGBTQ individuals in society has gradually changed thanks to shifting public attitudes about alternative lifestyles, but LGBTQ people still face social and legal sanctions that limit their access to the benefits of citizenship. In the United States, a large number of local, national, and international LGBTQ rights organizations are involved in a struggle to expand legal protections and to eliminate remaining legal prohibitions against gender and sexual nonconformity. Opposing this effort are conservative organizations who believe that deviation from traditional standards is immoral or in some other way poses a danger to the stability of their society or community.

## The Development of LGBTQ Rights

Until 1973, the American Psychological Association classified homosexuality as a form of mental illness, specifically called sociopathic personality disturbance. Following in this vein, in 1953 President Eisenhower signed an executive order prohibiting homosexuals for working for the federal government under the basis that, as sufferers of mental illness, homosexuals did not have the character or capacity to effectively protect national security.<sup>1</sup> Around this same time, the first LGBTQ rights groups began to spread in the nation's cities. Gradually, these organizations were able to exert sufficient influence to erode the long-held belief that deviation from sexual and gender norms was a sign of mental illness or immorality. The late 1970s was a major milestone for this effort, and saw the election of Harvey Milk, the first openly gay man to be elected to public office in a major city. Milk's murder, in November of 1978, brought LGBTQ rights to the forefront of the national debate and inspired thousands to join LGBTQ rights groups around the country. In October of 1979, the first LGBTQ rights march on Washington, D.C. was held, with as many as 125,000 attending.<sup>2</sup>

Wisconsin became the first state to outlaw discrimination based on sexual orientation in 1982 and, in the 1990s, a number of other states adopted similar provisions. The first US Supreme Court victory for LGBTQ rights came in the 1996 case of *Romer v. Evans*, in which the court ruled that LGBTQ people constituted a distinct class of people who could be protected by state laws prohibiting discrimination.<sup>3</sup> Though the *Romer v. Evans* case gave state governments the right to protect LGBTQ people and communities, it did not establish a federal law outlawing discrimination on the basis of sexual or gender identity and this has remained a goal of the broader LGBTQ movement since that time. Another battleground over LGBTQ rights involved laws in many states banning “sodomy,” defined legally as anal or oral sexual contact. In 2003 the US Supreme Court ruled that laws banning sodomy, or other forms of personal sexual behavior, violated constitutional rights to privacy and equal protection.<sup>4</sup>

The next major battleground in the LGBTQ rights debate involved the institution of marriage. For years, LGBTQ people were unable to marry in most states due to laws that defined marriage as a union between a man and a woman. In 1996, Hawaii Circuit Court Judge Kevin Chang ruled laws defining marriage as a legal union between a man and woman violated constitutional protections, thus making Hawaii the first state in the union to officially define marriage as a legal union between any two adults, regardless of sexuality or gender.<sup>5</sup> After the Hawaii ruling, the marriage issue remained highly controversial and went through a number of contentious legal battles in the states before the issue came to the Supreme Court. In the 2015 case of *Obergefell v. Hodges*, the Supreme Court ruled that denying marriage rights to same-sex couples violated constitutional guarantees. Writing the majority opinion, Justice Kennedy noted that “The right to marry is fundamental as a matter of history and tradition, but rights come not from ancient sources alone. They rise, too, from a better informed understanding of how constitutional imperatives define a liberty that remains urgent in our own era.”<sup>6</sup>

### **Protecting the Right to Discriminate**

Between 1977 and 2015, Gallup polls showed that the percentage of Americans who believed same-sex relationships should be legal fell from 43 percent to under 28 percent. Between 1996 and 2016, the percentage of Americans who believed same-sex couples should not be allowed to marry decreased from 68 percent to 37 percent. Polls on a variety of topics relevant to LGBTQ rights show that a majority of Americans believe that LGBTQ individuals should be afforded equal rights in every facet of American life, including the right to marry and to adopt and parent children.<sup>7</sup> Though an increasing majority of Americans support absolute equal rights and status for LGBTQ people, there remains a passionate lobby of conservative Americans who feel that LGBTQ individuals are in some way morally or psychologically flawed and that the United States should not extend equal rights of citizenship or protect LGBTQ people from discrimination.

In 2017 alone, there were more than 100 legislative bills concerning LGBTQ rights drafted in state legislatures, many of which were aimed at protecting the



institutional and personal right to discriminate against LGBTQ people on the basis of religious beliefs.<sup>8</sup> Such legislative efforts have been called “religious freedom” bills by supporters, and essentially prohibit the courts from penalizing institutions or individuals for discrimination based on personal beliefs. South Dakota was the first state to pass a religious freedom law, aimed specifically at adoption and foster care organizations, which gave such organizations the right to refuse to consider adoption applications from same-sex couples, based on religious principles. Other states, including Mississippi, Missouri, Texas, Oklahoma, Virginia, Washington, Wyoming, Arkansas, Illinois, and Oklahoma, have had similar bills proposed in state legislatures, some of which would allow employees in any industry to deny service to LGBTQ people based on their religious beliefs.<sup>9</sup>

The religious freedom approach to protecting a legal right to discriminate is based on constitutional protections covering individual liberty and religious beliefs. Supporters argue that the state should not have the right to compel an individual, whatever their function, to work with or provide service to individuals whose behavior or lifestyle violates the individual’s personally held beliefs. In some religions, same-sex romantic/sexual contact is viewed as a moral sin and supporters of religious freedom laws therefore argue that forcing a person to violate his or her religious principles is a form of religious persecution. However, protecting the right to discriminate also limits the rights and services available to LGBTQ citizens. In smaller communities, an LGBTQ couple might have limited options for healthcare, adoption, medical care, or other services, and thus religious freedom laws might greatly limit options for those living in conservative communities or states.

Federal laws, which supersede state laws, prohibit discrimination on the basis of race or ethnicity and, therefore, though interpretations of religious scripture have long been used to justify racial prejudice, the courts have determined that religious beliefs are not sufficient justification to permit racial or ethnic discrimination. As of June 2017, there is no federal law prohibiting discrimination based on sexual or gender orientation and it is the lack of federal antidiscrimination protection that has created a legal loophole allowing states to pass state laws protecting the right to discriminate against LGBTQ people. According to the Movement Advancement Project, less than half of all US states have laws specifically prohibiting discrimination against LGBTQ people and three states, Arkansas, Tennessee, and North Carolina, have passed laws that specifically prevent state legislators from enforcing or passing laws prohibiting discrimination based on gender or sexual orientation.<sup>10</sup>

In 2015, Pope Francis, leader of the global Catholic Church, said, in an interview, “If someone is gay and searches for the Lord and has good will, who am I to judge?” This landmark moment was seen by some as a sea change for Catholic attitudes about LGBTQ lifestyles. Pope Francis’s statements on the issue inspired other Catholic leaders to question the Church’s specific stance on same-sex marriage and same-sex participation in the faith; it has resulted in a more and more inclusive attitude towards LGBTQ members in Catholicism. This phenomenon is an example of how religious beliefs evolve along with cultural beliefs and attitudes, though perhaps typically at a slower pace.<sup>11</sup> In 2017, many Americans believe, for personal,

cultural, and/or religious reasons, that homosexuality and gender nonconformity are immoral or in some other ways signifiers of cultural or social degradation. It is not the role of state or federal governments to dictate belief, and the freedom of belief is a central tenet of American culture, but it is the role of governments to protect the rights of citizens and to prohibit individuals from abusing or violating the rights of others based on their beliefs.

## **Transgender Rights**

The LGBTQ rights movement encompasses two very different classes of behavior based on deviations from perceived social norms in sexuality or gender. Gender nonconformity occurs when an individual is seen as deviating from the generally accepted mainstream gender roles or definitions within their society at the current moment in time. In 2017, the most significant legal issue involving gender identity is the debate over whether or not trans individuals (those who identify as members of a gender other than the gender they were assigned at birth) should be allowed to use public facilities aligning with their gender identity or should be required to use facilities aligning with their assigned sex at birth or the type of genitals that the person possesses.<sup>12</sup>

Beginning in 2015, a number of states began debating state bills that would require individuals to use bathrooms and other gender-specific facilities aligning with their genitals or sex assigned at birth, rather than their gender identity. To justify such legislation, supporters argue that allowing transgender individuals to use bathrooms aligning with their gender identity poses a threat to the rights and privacy of others using the same facilities. Supporters of the “sex at birth” approach to transgender rights essentially believe that gender is a matter of genitals and chromosomes and not of acquired characteristics and identity. Bathroom bills thus legally define gender for the purposes of deciding who has access to which types of bathrooms, locker rooms, and other gendered facilities.

The genital type or “sex at birth” bathroom law movement has not been entirely successful, as there has been intense public backlash, with many in the LGBTQ community aligning behind the relatively small population of transgender individuals who might be affected by such legislation. The increasing realization that transgender people begin to deviate from expected gender norms at an extremely early age has become a major factor in the debate, as bathroom laws will also therefore force gender nonconforming children as young as preschool and kindergarten age, to cope with laws that they may not understand that essentially force them to violate their own developing ideas about their gender.

## **The Future of LGBTQ and the Law**

Public opinion polls, coupled with a growing record of related legal decisions, demonstrate that more and more Americans are gravitating away from the idea that sexual and gender nonconformity are indicative of immorality or mental illness, and towards the idea that a person’s gender and sexual identity are personal concerns that

should not affect access to the rights of citizenship. This means that the population opposed to equal rights for LGBTQ people is shrinking and this is reflected in the fact that the related legal battles rights are becoming narrower in scope and generate far less public support than in previous eras.<sup>13</sup> For LGBTQ rights activists, one of the most important goals is to achieve federal protection against discrimination based on gender or sexuality and such an effort, if successful, could immediately invalidate any number of state laws passed in the interim. Given a conservative surge in power, following the 2016 election cycle, conservative legislators and activists have been empowered to propose new approaches to limiting LGBTQ rights and citizenship, but neither the religious “freedom” approach, nor the transgender bathroom law lobby, has achieved majority support among the general population.<sup>14,15</sup> Outside of the transient legislative dominance that occurred in 2016-2017, therefore, it remains to be seen whether the lobby to limit LGBTQ rights can gain more widespread public support. Failing to do so would most likely mean that the current generation of laws, however they affect the lives of individuals living through the current moment in history, will have little meaningful impact on the evolution of American culture.

## Works Used

- “Executive Order 10450—Security Requirements for Government Employment.” *National Archives*. National Archives. Aug 15 2016. Web. 14 Jun 2017.
- Flores, Andrew R. “National Trends in Public Opinion on LGBT Rights in the United States.” *Williams Institute*. University of California School of Law. Nov 2014. Web. 23 Jun 2017.
- “Gay and Lesbian Rights.” *Gallup*. Gallup. 2016. Web. 22 Jun 2017.
- Goldberg, Carey. “Hawaii Judge Ends Gay-Marriage Ban.” *The New York Times*. The New York Times Co. Dec 4 1996. Web. 14 Jun 2017.
- Hale, Christopher J. “The Pope Francis Statement That Changed the Church on LGBT Issues.” *Time*. Time Inc. Jul 28 2015. Web. 15 Jun 2017.
- “*Lawrence v. Texas* (2003).” *PBS*. Educational Broadcasting Corporation. The Future of the Court. 2007. Web. 14 Jun 2017.
- “Legislation Affecting LGBT Rights across the Country.” *ACLU*. American Civil Liberties Association. 2017. Web. 14 Jun 2017.
- Lipka, Michael. “Americans Are Divided over Which Public Bathrooms Transgender People Should Use.” *Pew Research*. Pew Research. Oct 3 2016. Web. 23 Jun 2017.
- “Most Still Oppose Religious Freedom Laws.” *Rasmussen Reports*. Rasmussen Reports, LLC. Apr 13 2016. Web. 22 Jun 2017.
- “Non-Discrimination Laws.” *LGBTmap*. Movement Advancement Project. Jun 15, 2017. Web. 15 Jun 2017.
- “*Obergefell et al v. Hodges, Director, Ohio Department of Health, et al.*” *Supremecourt*. US Supreme Court. June 26, 2015. Web. 14 Jun 2017.
- O’Hara, Mary Emily. “Dozens of Anti-LGBT Bills Proposed This Year Target Kids and Families.” *NBC*. NBC Universal. Mar 14, 2017. Web. 14 Jun 2017.