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**Transgenderism Has No Basis in Science or Law**

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In a domain in which the proposed “therapies” are so drastic, it is not too much to ask for a solid, evidence-based statement of who is being treated, for what, and why, and before writing a prescription or passing a law.



In recent months, there has been an explosion of highly controversial legislation, threatened executive edicts, and heavy-handed federal mandates regarding discrimination and public accommodation laws that require—among other things—public and private institutions, businesses, and schools to allow biological males who self-identify as females to use the toilet facilities and locker rooms of females (and vice versa). These developments have been accompanied by a chorus of pundits and editors expressing derision for “bigoted” opponents and cheerleading the valiant proponents of “transgender equality.”

What is missing from the conversation about these laws is any sound legal or scientific basis for the proposed changes. Who, exactly, are the groups who are supposed to be protected or accommodated? On what legal basis are those groups to be protected or accommodated? What are the consequences and implications for the larger society?

**The Spectra of Nonconforming Sexuality**

Lawmakers and commentators should grasp the variety of people who claim to be “nonconforming” to American understandings and expectations of sex and gender before leaping into action on their behalf. A [continuing legal education program](http://www.mcle.org/product/delivery/code/2160202P01) held recently in Massachusetts taught participants that nonconformists fall on various places on five different spectra of being, expression, and attraction:

1. Sex: “The sex you were assigned by the doctor in the hospital” at birth. Sex is either Male or Female—a binary distinction.

2. Gender Identity: The sex you know yourself to be. Gender is also Male or Female, but is a spectrum, not binary.

3. Gender Expression: A characterization of how you dress, talk, style your hair, accessorize, use makeup, and so on, which is described as being more or less Masculine or Feminine.

4. Sexual Orientation: The sexual attraction you experience, whether to those of the same sex, opposite sex, or people of both sexes.

5. Affectional/Emotional Orientation: The pattern of romantic attachments you form; whether you tend to "fall in love" with and seek emotional closeness with men, women, both, or persons who see themselves as somewhere between or beyond the categories of male and female.

While there is no consensus even among transgender people on these distinctions and definitions, it seems abundantly clear that modern discrimination law based on dividing people into various subgroups is going to be under severe stress within such an extremely complex scheme. Is it possible or desirable for people with widely different types of “nonconformism” to be treated as a single identifiable group?

While the application of discrimination law to a particular individual can involve a complex analysis, “Nonstandard Sexuality” would be a protected group that truly makes a mockery of our already risible “protected” categories. Who, specifically, within the spectral clusters of nonconformist sexuality, is to be protected from discrimination? Should, for example, the simple desire to cross-dress place a man into a legal category of citizen “protected” against discrimination, or require businesses and institutions to accede to his request to use women’s facilities?

**Is Sexual Discrimination Really the Problem?**

The federal [Department of Education recently mandated](http://dailysignal.com/2015/11/03/countdown-district-has-30-days-to-change-transgender-student-locker-room-policy-or-lose-federal-funds/) that schools provide access for nonconformist students to the toilet and locker room facilities of their choice, on the grounds that requiring biological males and females to use the facilities appropriate to their biological sex amounts to a violation of rights under Title IX of the Education Amendments Act of 1972. That is, such biological sexual segregation constitutes sexual discrimination, because it discriminates against students who are of a “trans” sex and produces a hostile, intimidating, or offensive environment for them. This Title IX finding ignores any definition of the categories of students to whom it applies; it even ignores the research on the sexual development of children who outgrow their feelings of gender dysphoria.

The new regulations also ignore the very real possibility that such “inclusion” will create a hostile, intimidating, and offensive environment for sexually conformist students, staff, and teachers. This is remarkable, since less than two years has passed since the Department of Education mandated that every student who found any action—including speech—of anyone at her or his school offensive is entitled under Title IX to make a complaint of sexual harassment that must be investigated by the school.

Proposed accommodation statutes, commonly called “Bathroom Bills,” would require that toilet facilities and locker rooms must be made available according to the wishes of sexually nonconforming individuals—regardless of the wishes of the other individuals using the same facilities. The proponents of such laws ignore the invasion of female students’ privacy that can occur when males are admitted to facilities where the girls are often in the nude, and of males in the comparable situation. Invasion of teens’ physical privacy can be intensely painful—even traumatic—but most pundits belittle any harassment or privacy issues felt by conformist students or parents.

Lacking not only accepted and acceptable categories of disabilities—much less reliable diagnostic categories of mental disorders—such forced accommodations have no reasonable basis in law or medicine.

**Is Sexual Nonconformity a Mental Disorder?**

Return now to the complicated spectra of nonconforming sexuality and gender expression laid out above. On what basis are some or all of these myriad sexual nonconformists supposed to be protected under discrimination law if not on the basis of a specific sex? It is possible that these laws are being proposed not on the basis of sexual discrimination, but on the grounds of the Americans with Disabilities Act as applied to psychiatric disorders. If so, are they being proposed on the belief that sexual nonconformists suffer from the mental disorders of Gender Identity Disorder (the old term), Gender Dysphoria (the new term), or any of the other possible disorders of gender identity variants?

That poses a very large problem for legislators and enforcers. There exists no consensus among psychiatrists on the question of which nonconformists fall—or should fall—into the medical category of mentally disordered. There is no consensus among the nonconformists either. Difficult, too, is the fact that most transgendered people do not regard themselves as mentally ill and do not wish to be identified as “disabled.”

A “transgender disability”—should one exist and be accepted by those so labeled—would have to be a mental impairment that substantially limits one or more of the major life activities of an individual. What would that impairment be? In what ways would the life activities of affected individuals be limited? It is very hard to conceptualize nonconforming gender identity as a disabling condition.

Disabilities law requires reasonable accommodations. Even if we postulated that nonconformists were somehow disabled in pursuing some life activity, how are they to be reasonably accommodated under disabilities law? How is a state legislature to lay out the range of reasonable accommodations for the whole spectrum of sexual expression? What is a reasonable accommodation and for whom? One size clearly does not fit all. There is no rational basis upon which such determinations can be made.

**Where Is the Evidence?**

More fundamentally, there is no consensus on the etiology of the diverse expressions of “gender identity variants.” Some LGBTQ advocates theorize that nonconforming sexuality is caused by certain family dynamics in the context of a bi-gendered patriarchal society. Others postulate that unidentified genetically based sex-hormone abnormalities cause transgenderism or homosexuality, even when there are no abnormalities of the reproductive anatomy.

Evidence-based conclusions are utterly lacking, whatever the claims of activists. Without clear distinctions not only among categories of the potentially mentally disordered but also between the mentally disordered and the normal population, how are diagnosis and treatment decisions to be made? It is hardly possible to pass disability laws without reliable diagnostic categories.

Most proposed legislation is driven not by medical research or theoretical differences but by the desire to make private or government insurance money available for hormone and surgical “treatment” for nonconformists experiencing psychological distress. The American Psychiatric Association has stated this unambiguously in its DSM-5, the current diagnostic manual. Pathologizing states of mind—even distress—simply to make insurance money available for attempts to change those states through surgical, medical, and cosmetic alterations to the body is simply not sound science. Neither is it just to the larger community that pays for medical insurance and funds the Affordable Care Act. Surely, in a domain with such drastic proposed “therapy,” it is not too much to ask for a solid evidence-based statement of who is being treated, for what, and why, before writing the prescription.

Our society cannot reasonably be expected to unquestioningly accept psychiatric “treatments” that strain our concepts of medical ethics, standards of care, and malpractice up to and past the breaking point.

**Surgical Mutilation Is Not the Answer**

Some psychiatrists and surgeons have already collaborated to employ mutilation of healthy body parts as “psychotherapy.” The conviction that one is a “one-limbed person trapped in a multi-limbed body” is now being treated as an actual mental disorder called “Body Integrity Identity Disorder.” Seven such patients are reported as having had an arm or a leg electively amputated as “treatment” for this disorder. Immediate post-operative reports seem to be positive, but what about follow-up reports on life as a voluntary amputee ten and twenty years after the surgery? How about an extensive social discussion of the ethical limits of elective amputation—both for the doctors and for the society at large?

The genital mutilation of healthy bodies of men and women demands no less serious consideration. The suicide rate in post-surgical patients has been reported to be [twenty times higher](http://www.ncbi.nlm.nih.gov/pubmed/21364939) than in controls matched for birth year and birth sex. It is hard to imagine more iatrogenic treatment. As one prominent member of the DSM work group on Sexual and Gender Identity Disorders [put it](http://link.springer.com/article/10.1007/s10508-009-9532-4),

It is difficult to justify the term “natural” variation for a condition that compels the respective individual to severely alter a healthy body by gonadectomy with attendant infertility and the replacement of intact primary and secondary sex characteristics with those of the other gender.

Let us be clear: there is no such thing as “sex-reassignment” surgery. A mutilated male pumped full of estrogen remains just that—a mutilated male pumped full of estrogen. He has not “transitioned” into being a woman. He can never be a woman. Nor are the hundreds of thousands of women who have undergone total hysterectomies for various reasons transformed into males. They remain women whose ovaries and wombs have been removed. They are not men.

While no one is yet publicly advocating the surgical alteration of children, loud voices in the media and among advocates—even at [Boston Children’s Hospital](http://www.childrenshospital.org/centers-and-services/programs/a-_-e/disorders-of-sexual-development-dsd-and-gender-management-service-program/overview)—have called for and have even implemented hormone therapy to delay the onset of children’s puberty in order to facilitate gonadectomy later in their teens or young adulthood. Research on the sexual development of children who at some point are seen to be nonconformist shows that more than [80 percent of such children outgrow their “transgenderism” by the end of their teens](http://www.wsj.com/articles/paul-mchugh-transgender-surgery-isnt-the-solution-1402615120). Interference with the normal sexual development of children on the basis of political ideology is not just unethical—it is child abuse. It is not only past time for an extensive public discussion of this practice; it is past time to put an end to it.

**Stop Catering to Delusion and Make Laws Based on Reality**

Many both in and out of the mental health community see the conviction of oneself as “transgender” as a delusion—a technical term referring to a fixed belief that is not amenable to change in light of conflicting evidence.

The larger community should not accommodate this delusion by pretending to accept it as reality. A deluded person is not “treated” by requiring everyone who encounters him to accept the validity of his or her delusion, contrary to all reality.

Up until the very recent past, reality testing was a fundamental component of psychotherapy. The opposite approach is irrational and indefensible. Indeed, one prominent psychiatrist in this field has termed this accommodation “[collaborating with madness](http://www.firstthings.com/article/2004/11/surgical-sex).” That is what American society is being asked to do by people who are well-meaning but profoundly confused about the realities of transgenderism.

We expect our legislators to have rational bases for the laws they enact. We expect our judges to have rational bases for the decisions they reach. Even amid political pandering by those seeking reelection, we expect at least a veneer of rationality in the exercise of legislative and judicial powers. There is simply no rational basis for the laws being proposed and imposed in the realm of transgenderism. There is very little knowledge at all—no common definitions of terms, no accepted methodology, no outcome analyses, no testing and rejecting of hypotheses, no agreed-upon standards, no science. There currently exists no reliable foundation for making these laws that will shape the actions of the larger community as they relate to sexually nonconforming individuals.

Laws that restrict our freedoms and direct our actions should never be passed without a clear definition of the interests and parties to be affected and a precise explication of the ways the laws will serve those interests. At present, we have no such definitions or explanations. Put the brakes on transgender lawmaking until we do.

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