

# SETTING RIGHT LGBTQ RIGHTS

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**Abstract:** In the current social and political turmoil, few issues are more divisive and cause more controversy than issues related to the rights of sexual minorities and gender dissidents. The polarizing impact of these issues is really astounding given the size of these two groups. Obviously, controversies over gender and sexuality have touched the nerve in wide segments of the population. Explanations for this divisiveness generally focus on either the recalcitrance of conservatives or on the recklessness of progressive advocates of change.

This article questions these explanations. It sees the main problem in the very approach used by groups on both sides of the divide. The LGBTQ community uses the human rights approach. In this approach, the rights of sexual minorities and gender non-conformists emerge as absolute, universal, and thus non-negotiable. The opponents of the LGBTQ agenda use universalistic claims of their own, usually centered on religion. These opposing claims make the controversy irresolvable.

The dominant view of human rights is that they are absolute, universal, and non-negotiable. They have roots in human nature that is also regarded as absolute and universal. The article offers an analysis of human nature and defines its fundamental properties. The conclusion that follows from this analysis is that only rights that protect these fundamental properties can properly be defined as human rights. These properties make human rights absolute, universal, and non-negotiable. Other types of rights (for example, civil rights or the rights related to self-expression) are important but they are not absolute and universal; consequently, they are negotiable. The tendency to assign the status of absolute and universal to rights that are not related to fundamental properties of human nature is what makes conflicts over LGBTQ rights irresolvable.

The article outlines a new approach to the rights of sexual minorities and gender non-conformists that would avoid the trap of absolutism and universalism. Through understanding of the process of creation that is central to human relationship with reality and, consequently, to human nature will make possible a realistic approach toward LGBTQ rights and will help create a more effective strategy for protecting these rights. The article also looks at sexuality education as an important contributor to the controversies related to gender and sexuality.

**Key words:** LGBTQ, human rights, gender differentiation, sexual orientation, transgender, sexuality education.

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## Introduction

Gender and sexuality are central to the current culture wars. Conflicts over issue related to gender and sexuality have erupted in many spheres of our life: from politics to religion, to sports, education, science, economy, and more. Even use of public restrooms has become the subject of bitter controversies and a theme of numerous protests. No

matter where conflicts over gender and sexuality emerge, they inadvertently prove to be extremely acrimonious and divisive.

The rights of sexual minorities and gender non-conformists undoubtedly cause the greatest discord. The LGBTQ movement is a major force that advocates for rights related to sexual orientation and gender identity. It serves to mobilize population in support of the agenda of rights, works incessantly through legislatures and court, stages numerous protest marches and rallies.<sup>1</sup> The LGBTQ movement has undertaken every effort to universalize its rights agenda by formulating it as a human rights agenda. The fact that rights of sexual minorities and gender dissidents are often under discussion in the general domain of human rights and global politics is in large degree due to the efforts of the LGBTQ movement.<sup>2</sup>

Gender and sexuality have invaded the arena of public politics. Democrats and Republicans—the two major political parties in America—routinely use the issues of gender and sexuality in their battles against each other to score political points. Foreign policy and international relations have not escaped the pervasive impact of these issues. They have been integral to the neoliberal consensus that guided American foreign policy since the end of the Cold War.<sup>3</sup> Today, gender and sexuality play a critical role in the systemic crisis that has engulfed the entire world. They mobilize and polarize numerous supporters and opponents of the LGBTQ agenda.<sup>4</sup> The rights of sexual minorities and gender non-conformists generate domestic culture wars in many countries and cause

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<sup>1</sup> “Human Rights Hero: The LGBTQ Rights Movement,” 2021, [https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/civil-rights-reimagining-policing/human-rights-hero/](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/civil-rights-reimagining-policing/human-rights-hero/).

<sup>2</sup> Shinsuke Eguchi, “Transnational LGBTQ Pride: Whiteness, Health, and Wellbeing in VICELAND’s Gaycation,” *China Media Research*, vol. 15, no. 3 (2019), pp. 83–95; “Human Rights Hero: The LGBTQ Rights Movement,” 2021. [https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/civil-rights-reimagining-policing/human-rights-hero/](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/civil-rights-reimagining-policing/human-rights-hero/); Markus Thiel, «LGBT Politics, Queer Theory, and International Relations,” *E-international relations*, October 31, 2014, <https://www.e-ir.info/2014/10/31/lgbt-politics-queer-theory-and-international-relations/>.

<sup>3</sup> Eszter Kováts, “Questioning Consensuses: Right-Wing Populism, Anti-Populism, and the Threat of ‘Gender Ideology,’” *Sociological Research Online*, vol. 23, no. 2 (June 1, 2018), pp. 528–38, p. 528, <https://doi.org/10.1177/1360780418764735>.

<sup>4</sup> Eszter Kováts, “Questioning Consensuses,” p. 528.

international diplomatic rows.<sup>5</sup> The politics of LGBT rights has even led to a theoretical rethinking of the premises that serve as the foundation of international relations.<sup>6</sup>

The divisive impact of issues related to gender and sexuality has prompted numerous attempts to bridge the gap between supporters and critics of LGBTQ rights. Despite sincere efforts, these attempts have so far proven to be futile. Not only they have not produced reconciliation between the warring sides, they have even failed to outline any way forward in ending this war. On the contrary, the lines of separation have hardened and the standoff appears to have turned into a permanent war of attrition where the only possible solution is a complete routing of one side by the other.<sup>7</sup>

These failures, however, have not discouraged further attempts; the search for a solution continues. Books and articles that discuss possible paths toward peace continue to appear, albeit irregularly.<sup>8</sup> They tend to stay away from ideological posturing and emphasize pragmatism. An article by Kamalini Ramdas is a good example. It focuses on ways in which LGBTQ activists in Singapore use communities to create a space for understanding and cooperation, rather than contention. The efforts have already brought lifting of the ban on gay/lesbian relationships in Singapore.<sup>9</sup>

This article is also a step in the direction of reconciliation. In contrast to the current approaches, this article does not emphasize a search for consensus and commonalities. Reconciliations based on consensus and commonalities are not lasting. They suppress differences that eventually come back to haunt such solutions. Differences do not have to present a problem. One can and should view them as opportunities to create new and more powerful levels of organization that will be universally inclusive and empowering. Such solutions based on recognizing and

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<sup>5</sup> “LGBT Politics, Queer Theory, and International Relations,” *E-International Relations*, October 31, 2014, p. 1 <https://www.e-ir.info/2014/10/31/lgbt-politics-queer-theory-and-international-relations/>.

<sup>6</sup> “LGBT Politics, Queer Theory, and International Relations,” *E-International Relations*, October 31, 2014, p. 1, <https://www.e-ir.info/2014/10/31/lgbt-politics-queer-theory-and-international-relations/>.

<sup>7</sup> Farhad Manjoo, “America Is Being Consumed by a Moral Panic Over Trans People,” *The New York Times*, September 1, 2022, <https://www.nytimes.com/2022/09/01/opinion/america-is-being-consumed-by-a-moral-panic-over-trans-people.html>.

<sup>8</sup> William N. Eskridge and Robin Fretwell Wilson, “Prospects for Common Ground: Introduction in Religious Freedom, LGBT Rights, and the Prospects for Common Ground,” *SSRN Scholarly Paper*. Rochester, NY, September 28, 2018. <https://papers.ssrn.com/abstract=3256999>.

<sup>9</sup> Kamalini Ramdas, “Negotiating LGBTQ Rights in Singapore: The Margin as a Place of Refusal,” *Urban Studies*, vol. 58, no. 7 (May 1, 2021), pp. 1448–62, <https://doi.org/10.1177/0042098020962936>.

embracing differences as particular cases of a more comprehensive whole will not only serve to reconcile conflicts but also to create a solid base for future evolution.

The article also sees that the claims made by LGBTQ theorists and activists present their agenda in absolute and universal terms—a claim that their opponents also use in their critique. The article will analyze the nature of LGBTQ rights. Concomitantly, it will also explore the nature of human rights. This parallel examination will allow drawing a conclusion as to whether the human rights approach is really appropriate for the LGBTQ agenda. The strategy that both sides in this conflict pursue places the entire controversy on the pedestal of absoluteness and universality, which makes a solution impossible.

### **What are Sexual Orientation and Gender Identity About?**

Sexual orientation and gender identity are the two important concepts at the heart of the LGBTQ movement. Although the interest in these concepts has a long history, the full clarity as to what they are about is still elusive. Are they associated with some universal ontological condition or are they human constructs? The literature on the subject is extensive, yet it has not produced a definitive answer.

One perspective views sexual orientation and gender identity in essentialist terms, that is, as originating in nature, rather than human mind. Critics of this formulation argue that both sexual orientation and gender identity are simply human preferences—mere mental constructs. The difference between the two perspectives may appear to be purely academic and not particularly important. That, however, is not the case. The proponents of LGBTQ rights who advocate the essentialist view of sexual orientation and gender identity claim that if the conditions that correspond to these concepts are objective and originate in nature. Consequently the rights associated with these conditions are absolute, unconditional and, as such, are non-negotiable. A close examination of what sexual orientation and gender identity represent will help to establish the veracity of these claims.

#### *Sexual Orientation*

Sexuality has an important place in human life. Sexual reproduction makes human survival possible. Yet sex, sexual differentiation, and sexual relations are not unique to humans. These features have emerged in the course of the evolution millions of years before the rise of the human race.

Therefore, we cannot consider sexuality as a uniquely human feature. Indeed, humans are sexual creatures. They have profoundly transformed sexuality that performs many different functions in human life, other than just reproduction. But this “humanization” of sexuality hardly changes the fact that sexuality and sexual relations per se belong to nature as a whole, not specifically to human nature. Since sex and sexuality are not uniquely human, there is no justification for including sexuality and the rights associated with it into the category of human nature.

Moreover, sexuality is not even universal to nature. It is not the only form of reproduction. Asexual reproduction is widespread throughout the animal world. It originated much earlier than sexual reproduction and has survived to this day. Consequently, as widespread as the phenomenon of sexuality is in the animal world, it is not universal.

Sexual practices and orientations represent modes of sexuality that pertain to individuals. In this sense, they are forms of self-expression. By their very nature, forms of self-expression are subjective and, as such, are not absolute and universal.

Our laws recognize the importance of self-expression and rights associated with it. However, this recognition does not make the freedom of self-expression unconditional, absolute, and universal. Freedom of self-expression is one of those important freedoms to which each human individual is entitled. Numerous statements about the right of self-expression, including those in documents adopted by the UN and human rights organization, express a view that the right to self-expression is subject to restrictions and limitations. For example, Article 10 of the Human Rights Act adopted in 1998 clearly lists the conditions under which governments have every right to constrain the freedom of self-expression.<sup>10</sup>

There is a widespread view in the LGBTQ community that sexual orientation and other forms of sexual dissent are not a matter of choice, but rather have roots in nature. The search for genes that define sexual behavior has been in progress for quite some time with no success. Moreover, it is not entirely clear what this search, even if successful, is supposed to prove.

The idea that someone's natural predisposition to a particular form of sexual behavior is not a result of choice is very influential in the mainstream LGBTQ movement.<sup>11</sup> This idea is far from being universally accepted; it certainly has its critics. William Wilkerson, for example, argues that sexual orientation is in a significant way constituted by human interpretations of sexual desire. Since interpretations reflect one's individual experiences, Wilkerson argues, sexual orientation is, at least to a significant degree, subject to individual choices.<sup>12</sup>

Attempts to bridge the gap between these two distinct positions have not been successful. Esa Diaz-Leon, for example, in her contribution on the subject criticizes Wilkerson's approach as excessively limiting and proposes a compromise solution. According to Diaz-Leon, two equally valid descriptions of the same sexual desire are

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<sup>10</sup> The Human Rights Act of 1998, Article 10, Equality and Human Rights Commission, <https://www.equalityhumanrights.com/en/human-rights/human-rights-act>.

<sup>11</sup> Esa Diaz-Leon, "Sexual Orientation as Interpretation? Sexual Desires, Concepts, and Choice." *Journal of Social Ontology* 3, no. 2 (2017): 231–48, p. 231.

<sup>12</sup> William S. Wilkerson, "Is It a Choice? Sexual Orientation as Interpretation," *Journal of Social Philosophy*, vol. 40 (2009), p. 97–116; William S. Wilkerson, (2013): "What is 'Sexual Orientation'?" in Nicholas Power, Raja Halwani, and Alan Soble, eds., *The Philosophy of Sex: Contemporary Readings*, (Lanham, MD: Rowman and Littlefield 2013), p. 195–213.

possible and they are dependent on respective concepts that we use. One can hardly see this attempt as successful, since in refuting Wilkerson, Diaz-Leon still recognizes the importance of choice.<sup>13</sup>

The argument that sexual orientation is due to special genes or combinations of genes, even if successful, will not make sexuality and sexual behavior any less representative of a particular individual and, thus, a form of expression that represents this particular individual—therefore, subjective. No genetic determinism will make sexuality and various forms of sexual practice universal. Even if sexual orientation is not a matter of choice, but rather of nature, it will still reflect a particular self and this self’s subjective experiences.

It is beyond the scope on this article to resolve this contention. For the purposes of this article, this issue, as important as it may be, is largely irrelevant. The main point is that sexuality is not unique to humans. It does not define human nature and, consequently, its association with the rights that originate in human nature is questionable at best.

Moreover, sexuality and sexual behavior can take a variety of forms, none of which is universal. Many researchers maintain that sexuality reflects different ethical, social, political, and cultural values.<sup>14</sup> They identify different ways in which sexuality is constructed in different parts of the world. Some see, for example, a particular Nordic variety of sexuality.<sup>15</sup> Others identify forms of sexuality that are specific for certain cultures or civilizations (for example, Western sexuality).<sup>16</sup> Still others see forms of sexuality characteristic for specific ethnic groups or regions, such as Norwegian or Finnish sexuality.<sup>17</sup> These observations and considerations lead to one conclusion: all forms of sexual orientation reflect individual experiences. For this reason, they are subjective forms of self-expression that are by definition liable to restrictions and limitations.

### *Gender Differentiation and Transgender*

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<sup>13</sup> Diaz-Leon, “Sexual Orientation as Interpretation?” p. 231.

<sup>14</sup> Rebecka Fingalsson and Hannele Junkala, “Constructing a ‘Nordic Nativeness’ in Swedish Sexuality Education,” 2022, <http://urn.kb.se/resolve?urn=urn:nbn:se:mau:diva-53033>.

<sup>15</sup> L. Allen and M. L. Rasmussen, M. L., *The Palgrave Handbook of Sexuality Education* (Palgrave Macmillan 2016); J. Bengtsson and E. Bolander, “Strategies for inclusion and equality – ‘norm-critical’ sex education in Sweden,” *Sex Education*, vol. 20, no. 2 (2020), pp. 154-169.

<sup>16</sup> J. W. Scott, *Sex and Secularism* (Princeton: Princeton University Press, 2018).

<sup>17</sup> V. Honkasalo, “Culture and sexuality in Finnish health education textbooks,” *Sex Education*, vol. 18, no. 5 (2018), pp. 541-554.

The term “transgender” refers to individuals whose gender identity, or their internal sense of being male, female, or something else, does not match the sex they were assigned at birth.<sup>18</sup> Although transgender issues and issues of sexual orientation are part of the same LGBTQ movement, in some way they do not entirely belong together. Even though many see issues related to transgender and sexual orientation to be part of one whole, they are actually very different. The relationship that has emerged between sexual minorities and gender dissidents is rather peripheral, opportunistic, and largely politically motivated. Both groups realized that they faced similar challenges and could combine their experiences in mutual benefit. This realization brought the two together.<sup>19</sup>

Transgender issues and issues related to sexual orientation are about different things. If issues with sexual orientation are about sexual behavior, transgender issues are ultimately about human intervention in nature and the extent of such intervention—the subject that is widely discussed in connection with the degradation of the environment.

The above discussion of sexual orientation shows how complicated and confusing issues of sexuality can get. By comparison, transgender issues involve even more confusion. The distinction between gender, on one hand, and sex and sexuality, on the other, is central to the LGBTQ movement. Traditionally, sex has been associated with biology. By contrast, gender is widely recognized as a social construct, which relates it more to psychology and behavior. Transgender theorists have upended this view. They argue that biological characteristics present at birth do not define one’s sexuality—they call it simply “assigned sex.” In response to criticism related to early gender transitions (in cases, that involve prepubescent adolescents), they argue that gender, or a mental construct about one’s identity, is actually what defines one’s sex. To make things even more complicated and confusing, transgender theorists and activists also argue that gender has biological roots, although they have failed to indicate what these roots actually are. Dr. Deanna Adkins, the Director of the Duke Center for Child and Adolescent Gender Care, has argued in her testimony that “evidence strongly suggests that gender identity is innate or fixed at a young age and that gender identity has a strong biological basis.”<sup>20</sup>

These disagreements have real implications in transgender cases. The recognition that gender is a mental construct created by a self-conscious mind supports the approach that favors gender transitions upon reaching the threshold of maturity (the age of consent). The argument about innateness of gender favors the approach in which transition can begin at a prepubescent age, as early as 6 or 7 years old. Some contend

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<sup>18</sup> WebMD, <https://www.webmd.com/sex-relationships/what-is-transgender>.

<sup>19</sup> TransHub. “Why Are Trans People Part of LGBT?” Accessed July 25, 2022, <https://www.transhub.org.au/101/trans-lgbt>.

<sup>20</sup> Ryan Anderson, “Transgender Ideology Is Riddled With Contradictions. Here Are the Big Ones,” The Heritage Foundation, February 9, 2018, <https://www.heritage.org/gender/commentary/transgender-ideology-riddled-contradictions-here-are-the-big-ones>.

that transition should even begin at 2 or 3 years old.<sup>21</sup> As one can see, the transgender theorists try to have both ways: although they recognize the constructed nature of gender, they also advocate early transitions before an individual reaches puberty, even though this individual is not fully capable of deciding on his or her gender; parents or guardians are usually make such decisions.<sup>22</sup>

A resolution of this issue that creates confusion in transgender theory is certainly beyond the scope of this article. For its purposes, the above discussion makes one thing clear: no matter where transgender theorists stand on the issue of nature vs. nurture, either side in these debates recognizes that subjectivity plays an important role in shaping one's gender identity, which means that gender identity, just like sexual orientation, is primarily about self-expression.

### **Critique of the Human Rights Approach Toward LGBTQ Rights**

Activists of the LGBTQ community usually formulate their legal claims in terms of human rights. In this formulation, the rights of sexual minorities and gender non-conformists acquire a very special status that distinguishes them from other rights related to self-expression. Like human rights in general, LGBTQ rights appear to be absolute and universal. Rights that belong to this category are not subject to limitations and restrictions, as many non-fundamental rights are; and they are ultimately non-negotiable.

Many theorists and activists of the LGBTQ rights movement accept this approach as self-evident and, more often than not, consider a justification for using this approach as redundant. However, nothing can be more misleading than what we see as self-evident. There is no harm in questioning what many regard as obvious. Such questioning can only contribute to a better understanding of issues involved.

Questioning a human rights approach in the case of the rights of sexual minorities and gender non-conformists will undoubtedly raise many eyebrows and is likely to evoke critical if not angry responses. Yet such questioning can only have positive results. It will either confirm the current approach and will lead to a new and more realistic perspective that will be more effective in protecting members of the LGBTQ community. We tend to make our judgment with regard to LGBTQ rights on the basis of our biases, either sympathetic or antagonistic. However, our personal feelings should not stand in the way of rational and unbiased conclusions.

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<sup>21</sup> Ryan Anderson, "Transgender Ideology Is Riddled With Contradictions. Here Are the Big Ones," The Heritage Foundation, February 9, 2018, <https://www.heritage.org/gender/commentary/transgender-ideology-riddled-contradictions-here-are-the-big-ones>.

<sup>22</sup> Anderson, Ryan. "Transgender Ideology Is Riddled With Contradictions. Here Are the Big Ones," The Heritage Foundation, February 9, 2018. <https://www.heritage.org/gender/commentary/transgender-ideology-riddled-contradictions-here-are-the-big-ones>.

## *Human Rights: Definitions*

Definition of the subject is perhaps the best way to start critical examination. There is certainly no shortage of different and diverse definitions of human rights. One of the most common, and simple, definitions says that human rights are rights that one has simply by virtue of being a human. Based on its Declaration of Human Rights adopted in 1948, the UN defines human rights as “rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status.”<sup>23</sup> Several points emerge from this definition. First, the definition indicates that there are some universal properties and needs possessed by all human beings and that human rights are derived from these properties and needs. The second point is that human rights are absolute and universal and they do not depend on any other conditions, such as race, sex, ethnicity, etc. In other words, all these specific properties, including sex and sexuality, have no relation to human rights; they do not affect them. Finally, this definition makes no distinction between individual and collective rights: what is due to one is due to all.

There are many alternative definitions. They may be more colorful or more detailed but hardly clearer. One example is the description of human rights provided on the site of the Council of Europe. This colorful description may appeal to one’s aesthetic taste but it lacks precision and lucidity.

Human rights are like armour: they protect you; they are like rules, because they tell you how you can behave; and they are like judges, because you can appeal to them. They are abstract—like emotions; and like emotions, they belong to everyone and they exist no matter what happens.<sup>24</sup>

The Stanford Encyclopedia’s definition is also not particularly successful. It describes human rights as “norms” that only “aspire to protect . . . people . . . from severe political, legal, and social abuses.”<sup>25</sup>

Numerous documents and publications make a distinction between human rights and other kind of rights, such as civil rights. These two kinds of rights emerge from this distinction as very different from each other. While human rights are absolute and inherent to every human being, civil rights are conditional and contextual. An individual possesses these rights as a citizen of a particular country, nation, or state. Unlike human rights that have roots in nature, the source of civil rights is legal acts issued by

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<sup>23</sup> “Human Rights,” United Nations, <https://www.un.org/en/global-issues/human-rights>.

<sup>24</sup> Council of Europe, <https://www.coe.int/en/web/compass/what-are-human-rights->

<sup>25</sup> “Human Rights,” *Stanford Encyclopedia*, <https://plato.stanford.edu/entries/rights-human/>.

governments.<sup>26</sup> The pedigree of civil rights includes, for example, such legal acts as the Magna Charta, the English Bill of Rights, the French Declaration on the Rights of Man and Citizen, and the US Constitution and Bill of Rights of 1791.

One should point out that obfuscations of the distinction between human rights and civil rights are quite common. Numerous human rights documents may list rights that by all criteria belong in the category of civil rights, rather than human rights. The current human rights approach to LGBTQ rights contains the same kind of confusion. Contrary to the definition of human rights provided in the Declaration of Human Rights adopted by the UN in 1948 mentioned earlier, the rights agenda promoted by the LGBTQ community clearly regards sexual orientation and gender identity to be in the domain of human rights. Theorists and researchers are aware of this confusion and even try to obviate it by making a distinction between absolute and non-absolute human rights—a distinction that only adds to the confusion. The latter, they point out, do not enjoy the same degree of protection as absolute human rights.

The Human Rights Act of 1998 recognizes that some human rights are subject to restrictions and lists specific applicable limitations. One of the examples is the freedom of expression but others are also mentioned.<sup>27</sup> The UN Office on Drugs and Crimes also points out in its documents to the distinction between “absolute” and “non-absolute” human rights—the latter having “inherent limitations.”<sup>28</sup> The confusion has even led many scholars to express doubts about the claims that human rights are universal, inalienable, and independent of legal enactments as justified moral norms. The substantial body of literature that discusses these doubts constitutes now an entire subfield of political and legal philosophy.<sup>29</sup>

There is another source of confusion that has emerged in the course of the evolution of the field of human rights. The original formulation regarded human rights as primarily individual rights—the view that was more consistent with the liberal ideology that shaped these original formulations. However, the evolution of the field of human rights has given rise to another distinction that differentiates human rights into individual and collective, or group rights—i.e. rights that belong to groups rather than individuals. Historically, the intention in introducing group rights was to assist in the implementation of individual rights. However, as time passed the concept of group rights has evolved into a category of its own that is different from and even opposed to individual rights. Dr. Aaron Rhodes, for example, argues that collective human rights undermine individual

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<sup>26</sup> “Human Rights vs Civil Rights,” usidhr.org., US Institute of Diplomacy and Human Rights, March 17, 2021, <https://usidhr.org/human-rights-vs-civil-rights/>.

<sup>27</sup> The Human Rights Act of 1998, Article 10, Equality and Human Rights Commission, <https://www.equalityhumanrights.com/en/human-rights/human-rights-act>.

<sup>28</sup> KKIENERM. “Counter-Terrorism Module 7 Key Issues: Limitations Permitted by Human Rights Law,” <https://www.unodc.org> (accessed July 30, 2022).

<sup>29</sup> “Human Rights,” *Stanford Encyclopedia*, <https://plato.stanford.edu/entries/rights-human/>.

human rights and create confusion.<sup>30</sup> The explanation of human rights provided by the Australian Human Rights Commission is a good illustration. On one hand, the statement from the Commission explains that human rights are both collective and individual and, as human rights, they are absolute and universal. Yet, on the other hand, the explanation recognizes the dependence of rights on collective identities and values that exist in different societies, which makes human rights relativistic and context dependent, rather than absolute and universal.<sup>31</sup>

The analysis of current definitions of human rights reveals a chaotic state of the field where contradictions and confusion have become a norm. This sad state of affairs is not an accident. It reflects the flaws and limitations in the original approach toward human rights that, with time, have become more pronounced. Perhaps the most important cause of these flaws and limitations is the fact that the conception of human rights has its roots in liberal thought and ideology. The philosophy and practice of human rights have deep roots in the tradition of the Enlightenment that is anything but inclusive and universal. Efforts to universalize the Western agenda of human rights have turned human rights policies into a vehicle for promoting Western values and norms. Although camouflaged in the guise of universality, this kind of advancement of human rights has become increasingly synonymous with the cultivation of Western influence and values. There is a growing view that today's human rights agenda represents little more than the attempts to promote Western culturally imperialistic ideals and influence.<sup>32</sup> The critique of this nature is widespread today both around the world and in the West.<sup>33</sup>

### *Defining Human Nature*

Despite many differences, all definitions of human rights stress one important point: human rights are related to some unique human properties—properties that are characteristic for humans as a species and that distinguish them from all other species. This commonality brings into focus what we usually call human nature—a subject that has its own share of disagreements and confusion.

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<sup>30</sup> Aaron Rhodes, “How ‘Collective Human Rights’ Undermine Individual Human Rights,” The Heritage Foundation, <https://www.heritage.org/global-politics/report/how-collective-human-rights-undermine-individual-human-rights> (accessed July 30, 2022).

<sup>31</sup> “What Are Human Rights?” Australian Human Rights Commission, 2010, [https://humanrights.gov.au/sites/default/files/content/education/understanding\\_human\\_rights/Individual%20files%20and%20downloads/1\\_RS\\_what\\_are\\_human\\_rights.pdf](https://humanrights.gov.au/sites/default/files/content/education/understanding_human_rights/Individual%20files%20and%20downloads/1_RS_what_are_human_rights.pdf).

<sup>32</sup> Cynthia Burack, “No Human Right to Sodomy: Christian Conservative Opposition to LGBTQ Human Rights,” 2015.

<sup>33</sup> For the opposition of anthropologists to “the applicability of any Declaration of Human Rights to mankind as a whole,” see Ann-Belinda S. Preis, “Human Rights as Cultural Practice: An Anthropological Critique,” *Human Rights Quarterly*, vol. 18 (1996), p. 286.

There is no shortage of claims about human nature. They come from all intellectual venues and academic disciplines. Perhaps the most influential ones, at least for our time, originate in science that generally views humans primarily in biological terms. Scientists tend to think about humans in the way that has been succinctly, if somewhat simplistically, summarized by philosopher Roger Scruton in his recent contribution on the subject. As Scruton explains, the scientific claim about human nature is that humans “are animals, governed by the laws of biology.”<sup>34</sup>

Newer attempts to define human nature have used different approaches. They include approaches that come from philosophy, psychology, moral philosophy, and even religion.<sup>35</sup> Another new development is the tendency to recognize, implicitly or even explicitly, the failure of all theories about human nature and call on theorists to refrain from formulating any definitive claims. Rather, they should limit themselves to mere recommendations as to how we should or might think about the subject.<sup>36</sup>

Even a short summary of contributions on human nature would require an extensive volume. Cutting through the multitude of arguments in order to formulate a definitive theory on the subject is an impossible task. Only a new approach can overcome these difficulties and arrive at some satisfactory answers.

Despite their variety and differences, all theories about human nature have one common feature. All of them—whether based in scientific, philosophical, or religious domains—are anthropocentric; that is, they rely on mental constructs created by humans. The solution of the problem may very well lie in formulating a non-anthropocentric perspective.

Before moving any further on the subject of human nature, one observation is in order and it is particularly relevant to human rights. Definitions of human rights almost invariably refer to human nature, rather than just nature. Such reference points out to the distinction between nature and human nature. There is no doubt that human nature is related to nature, since humans are products of the evolution of the natural world. However, this fact does not in any way deny the huge difference that separates humans from the rest of nature.

As has already been mentioned, the difference between nature and human nature must be in something that is distinctly human—something that is specific to humans and distinguishes them from other species. The first thing that comes to mind when we think about such distinctive feature is the human mind and symbolic operations that the human mind can perform. Indeed, other species may have a demonstrable capacity for performing some symbolic operations. However, no other species engages in this activity

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<sup>34</sup> Roger Scruton, *On Human Nature* (Princeton University Press, 2017), p. 1.

<sup>35</sup> John Cottingham, “Roger Scruton, On Human Nature,” *Philosophical Investigations*, vol. 41, no. 1 (January 2018), pp. 109–12, <https://doi.org/10.1111/ph.in.12184>.

<sup>36</sup> Douglas Allchin and Alexander J. Werth, “How We Think about Human Nature: The Naturalizing Error,” *Philosophy of Science*, vol. 87, no. 3 (July 2020), pp. 499–517, p. 499, <https://doi.org/10.1086/708707>.

so consistently and systematically as do humans. No other species has created a symbolic universe that would be even remotely comparable to human culture.<sup>37</sup> Humans have a unique capacity to create an infinite number of new and increasingly more powerful levels of mental organization that give rise to new ideas, concepts, approaches, and visions.<sup>38</sup>

As has been explained elsewhere,<sup>39</sup> the capacity to create an infinite number of new and increasingly more powerful levels of organization has roots in the very nature of our universe. Our universe is unique. It is all there is. Nothing can come into it from the outside because there is no outside. Nothing can disappear from it because there is nowhere to disappear. All has to be conserved.

Conservation requires resources and resources are always limited. When a particular resource is put to use, it immediately starts depreciating. Therefore, conservation constantly requires access to new hitherto unused resources. The only way to gain access to new resources is by creating new possibilities. New possibilities can only arise on the basis of new and more powerful levels of organization. Thus conservation requires the creation of new and more powerful levels of organization.

The emergence of new and increasingly more powerful levels of organization has been the subject of several prior contributions with specific focus on biology, social sciences, culture and management.<sup>40</sup> There is no reason to revisit this subject here. A brief summation is quite sufficient for the purposes of this article. A brief recapitulation, though, will be helpful.

The universal process of creation of new and more powerful levels of organization works on combining existing entities or systems into a new comprehensive whole. Combinations that have not existed prior to their creation constitute a new and more powerful level of organization since it includes combinations that did not exist prior

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<sup>37</sup> Gennady Shkliarevsky, “The Evolution of Civilization as a Process of Creation” (preprint), <https://hq.ssrn.com/submissions/AbstractComments.cfm?AuthorID=2286030&AbstractID=3526961>

<sup>38</sup> Gennady Shkliarevsky, “Understanding the Process of Creation: A New Approach,” *Management: Journal of Sustainable Business and Management Solutions in Emerging Economies* 22, no. 3 (October 31, 2017): 1–13, <https://doi.org/10.7595/management.fon.2017.0021>; Gennady Shkliarevsky, *The Civilization at a Crossroads: Constructing the Paradigm Shift* (book) (Raleigh, NC: Glasstree Publishing, 2017)

<sup>39</sup> Gennady Shkliarevsky, “Conservation, Creation, and Evolution: Revising the Darwinian Project,” *Journal of Evolutionary Science*, vol. 1, issue 2 (2019), pp. 1-30. <https://openaccesspub.org/journal/jes/current-issue>.

<sup>40</sup> Gennady Shkliarevsky, “The Universal Evolution and the Origin of Life,” SSRN, April 12, 2021, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3824365](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3824365); DOI: 10.13140/RG.2.2.18564.86404.

to their creation. The emergence of new and increasingly more powerful levels of organization is fundamental to the evolution since the evolution is nothing other than a succession of new and increasingly more powerful levels of organization. Thus conservation requires creation, and creation leads to evolution.

Our universe has no limiting conditions. It owes its existence only to itself. Since our universe is unconditioned, it is an absolute since the main property of the absolute is the fact that it is unconditioned. Since conservation and the process of creation have roots in the very nature of our universe, they have the properties of the absolute—that is, they are unconditioned, or absolute. The process creation is integral to our universe and all that is in it. Therefore, this process is universal.

Humans are products of the evolution. They inherited the properties of the process that powers the evolution, including the capacity to create new and increasingly more powerful levels of organization. The human mind represents the most powerful level of organization that exists in the universe. It is capable of creating an infinite number of new levels of organization. Each newly created level is more powerful than the one from which it has emerged. Therefore, the process that is central to their creation is empowering; it is the source of power. The capacity to create an infinite number of new and increasingly more powerful levels of mental organization is the distinct feature that defines human nature.

### *LGBTQ Rights vs. Human Rights*

As the preceding section shows, the creation of new and increasingly more powerful levels of mental organization sustains the life of the individual and civilization and makes their evolution possible. Since human capacity to create new levels of organization has its roots in the universal process of creation, it also inherits from this process its inherent properties of being absolute and universal. Like the process that makes it possible, the capacity to create new levels of organization is also universal and unconditional, hence absolute. This capacity is the defining feature of human nature. Therefore, the rights that pertain to human nature are also absolute and universal precisely because they safeguard the human capacity to create new and increasingly more powerful levels of mental organization.

Since the process of creation works on combining differences, the recognition of differences their autonomy is essential for this process. Recognition of autonomy is the basis of morality. Hence morality is integral to the human capacity to create new levels of organization. Also, the creation of new and increasingly more powerful levels of mental organization is most fundamental function of human beings. When humans engage in creation, they satisfy, or gratify, this most important function; and gratification is the source of pleasure. Therefore, when humans create new levels of organization, they experience joy and feel happy. The creation of new levels of organization is the foundation of our aesthetic experience and values.

Since this creative function is fundamental for the life of the individual and community, we need to safeguard it and make sure that no one is prevented from exercising this important function. The safeguarding of this function requires legal guarantees, or rights, against anything that may prevent us from performing this function.

Since these rights protect our fundamental functions, they are also fundamental as they make our survival and the survival of our civilization possible. The implementation of these rights has also important moral implications and is the path to a happy and enjoyable life.

Alternative sexual orientations and gender differentiations, including transgender, do not represent a new level of organization. They are mere inversions of the conventional forms of sexual orientation and gender differentiation. They operate on the same level of organization that sustains these conventional forms. Consequently, their emergence has not involved the process of creation. For this reason, they are not related to human nature. Since the rise of alternative forms of sexual orientation and gender differentiation has not involved the process of creation that is absolute and universal, the rights associated with these alternative forms are not absolute and universal.

This is not to say that the rights of sexual minorities and gender non-conformists are not legitimate or important. Various forms of self-expression and the rights associated with them, including LGBTQ rights, are important and legitimate and, as such, should be protected. However, these rights cannot possibly have the status of absolute and universal. Including LGBTQ rights in the category of absolute and universal puts them into a privileged position vis-à-vis other non-fundamental rights. Like other rights that are not derived from the unique human nature, LGBTQ rights are not fundamental; as such, they are negotiable and subject to legitimate restrictions and limitations.

To conclude, from a theoretical point of view, the human rights approach and LGBTQ rights simply do not go together. Sexual orientation and gender identity, including transgender, are not part of essential human nature. Therefore, the rights that protect these forms of self-expression are not absolute and universal. Human rights originate in the human nature. The distinct feature of the human nature is the capacity to create an infinite number of new and increasingly more powerful levels of organization that has its roots in the process of creation that sustains our universe and all in it. This process is absolute and universal. Therefore, the rights that protect the human capacity for infinite creation are also absolute and universal. There is a fundamental misunderstanding of what human rights represent in the application of the human rights approach to the rights of sexual minorities and gender dissidents.

## **A New Approach Toward LGBTQ Rights**

The preceding section shows that from the theoretical point of view the human rights approach is simply not applicable to LGBTQ rights. The application of this approach arbitrarily assigns a special status to LGBTQ rights that privileges them vis-à-vis various other non-fundamental rights. Such unjustified application creates tensions and conflicts that contribute to social and political instability that do not have to happen.<sup>1</sup> The use of this approach in the case of LGBTQ rights is ineffective in protecting the rights of sexual minorities and gender dissidents. To put it simply, this approach is not appropriate and should be changed.

### *Conflicts Over LGBTQ Rights*

Another reason to change the current approach toward the LGBTQ agenda is the fact that it generates unnecessary tensions and conflicts. Confrontations over sexual orientation and gender dissent are very acrimonious and, more often than not, prove to be irresolvable. Take, for instance, the well-known case that involved the owner of Masterpiece Cakeshop in Oregon who refused to make a wedding cake for a gay couple on religious grounds. He explained that honoring the wedding of a same-sex couple contradicted his religious beliefs, or, in other words, it would violate his right to self-expression.<sup>2</sup> The plaintiffs in this case argued that the owner's actions represented an act of discrimination against their form of self-expression. These opposing claims on the same basis of the right to self-expression made the case extremely confusing and difficult to decide on a legal basis.

The state of Colorado used its nondiscrimination accommodations and imposed penalties on the shop owner. Yet in a 7-2 decision the Supreme Court found for the defendant. The majority agreed that the state violated its constitutional duty to administer laws without "hostility to a religion or religious viewpoint."<sup>3</sup> But even the Court decision did not resolve the issue, as contestations over this case continued and led to mass protests staged by both sides in this conflict.

Discrimination relates specifically to human rights that are related to exercising the fundamental human function—the creation of new and increasingly more powerful levels of organization. Since this case is not about fundamental human rights, the two sides in this conflict represent rights that are not absolute and universal. As such, they are negotiable and subject to restrictions and limitations. In this case, the two sides limit each other as two equals. Therefore, their dispute must involve negotiations. A negotiated interaction can lead to combine, rather than suppress, their differences and create a new and more powerful level of organization that would give rise to a real solution. However, this approach would require both sides to use their creative capacity.

Debates over the use of public restrooms have produced transgender controversy that still remains the source of an on-going conflict. There are also issues of transgender females competing against biological females in athletic events, access of transgender individuals to healthcare benefits, and much else. Even the use of personal pronouns has become the source of acrimony. Transgender individuals take offense at being identified by their biological sex, rather than their chosen gender designation—and these designations can be very complex. They often use the legal system to address their grievances.<sup>4</sup>

Perhaps the most explosive issue associated with the transgender movement concerns children and adolescents. Decision to change one's gender has serious implications. It involves long, risky, and costly treatments and even surgical procedures that are not only expensive and also carry considerable health risks. Gender changes are in many instances irreversible, particularly when they involve surgeries. There are known cases when individuals who have underwent transgender procedures express regrets later in their life. Decisions about transgender changes are not to be taken lightly. Individuals who consider transitioning must be well informed and capable of making rational choices that will affect their future. Such choices require mature judgment. In this connection, critical questions arise with regard to transgender changes: who and at what age can make such decisions?

Gender is a concept that even adults find difficult to understand. Explaining this concept to adolescents, to say nothing of children, is impossible. Yet understanding this concept is essential if one is to make an informed decision regarding gender changes. Therefore, one would be well advised to exercise extreme caution in negotiating this difficult terrain.

Children and even adolescents are prone to fantasizing and often have difficulty differentiating between their fantasies and reality. That is why our law treats them differently than adults, and with good reason. The argument in favor of later post-pubescent transition is very strong. Starting transition before puberty and full maturity is likely to become the source of numerous problems later in life.<sup>5</sup>

Meet a poster child of the transgender movement—Miss Jazz Jennings. Jazz has been in the spotlight since 2007 when she gave an interview on “20/20” in which she, then still a boy of six, told Barbara Walters that she felt that she was a girl, not a boy. Obviously, when we deal with a child of six, or even older, we can only talk about vague desires and feelings, not a rational and informed decision. Jazz’s parents supported her transition. At age 11 Jazz began hormone therapy. She had her first gender confirmation surgery in 2018 at age 17. She subsequently underwent two additional and very difficult surgeries, and had a bout with serious infection that, luckily for her, ended well, at least for the time being.<sup>6</sup> This is the price that Jazz had to pay; this is the path that she had to travel. She says that she is proud of her scars but she still has to bear them, despite her heroic attitude.

Now at the age of 19 Jazz has finally achieved her goal of being a woman. She enjoys much attention and has made a remarkable career on television. She is in many ways a success story. Yet even she faces difficulties that ensue from her transition. She has recently complained, for example, that she is still waiting to fall in love. Others may not be so lucky.

Some researchers have found that many people who suffer from gender dysphoria—the medical diagnosis for transgender—feel distress over their biological sex because they know that they are not really the opposite sex. Most are not activists and do not wish to “transition.” They seek medical attention to help them accept their biological self; they do not accept the notion that their gender dysphoria actually defines who they really are. These facts should give one a pause before rushing with the decision to transition, particularly in cases of children and adolescents.

One can certainly admire the perseverance and determination demonstrated by Jazz and her parents. But one can legitimately ask questions about the rationality of pursuing something that involves many dangers and complications just to fulfill what a child feels at the age of 6. Many of us want to be many things at the age of 6. It is only later that we are able to tell which of these things we wanted are real and which are mere child fantasies. In a word, we would be well advised to delay the initiation of transition into a different gender until adulthood, rather than give in to early childhood impulses.

Public confusion over gender and transgender issues should not be surprising. Even the LBGTQ community has no clarity. Theorists and activists of the transgender movement argue that gender identity takes shape at an early age. Therefore, they contend, gender transitions must be initiated in the pre-puberty age. In his statement for the federal court in North Carolina, Dr. George Brown, a member of the board of World Association for Transgender Health, has argued, for example, that gender identity “is

usually established early in life, by the age of 2 to 3 years old.”<sup>7</sup> Consequently, the preparation for gender transition should start well before the onset of puberty. Critics point out that children and even adolescents are not in the position to make such important decisions in an informed and responsible manner; they cannot even comprehend their consequences.

These disagreements acquire particular importance since there is no clear understanding of general issues related to gender and sex. In fact, transgender activists even pride themselves on having no clear gender theory since, they argue, gender has to do with individual experience that defies categorization.<sup>8</sup> The variety of gender related terms is mind-boggling: transsexual, bisexual, metrosexual, cisgender, gender fluid, gender nonconformity, genderqueer, intersexual, pansexual, same-gender loving. The differences are hard to grasp even for specialists.<sup>9</sup>

While activists of the transgender movement argue that gender—a mental construct—defines sexual identity, they also argue that gender has biological roots. If the former argument supports the post-puberty transition, the latter argument favors the pre-pubescent transition. As one can see, this position is contradictory. It tries to have it both ways: while maintaining the primacy of gender, its claim that gender identity has biological roots seems to point in the opposite direction. Transgender activists do not see this contradiction, to say nothing about analyzing and resolving it.<sup>10</sup>

One can agree with the argument that mental constructs are real physical phenomena. Indeed, such constructs are products of emerging neural networks that sustain them. Therefore they entail physical changes. Human brain represents the most powerful level of organization in humans. It coordinates and regulates the physiological functions. It offers more possibilities than any other level of organization in our body. Given what we know about the power of the human mind, there are legitimate reservations and even objections to assertions that our mental constructs are determined by some biological factors; or if they are, then we must recognize that our biological sex must define our gender identity, not the other way around as transgender theorists argue.<sup>11</sup> One simply cannot have it both ways.

### *A Non-Anthropocentric Approach to LGBTQ Rights*

The broad resonance in response to the LGBTQ agenda suggests that it has touched the nerve. It reaches to the broad themes of our place in the universe and the extent of human interventions in nature. The appeal of the transgender movement, for example, resonates with the broader appeal of modernity with its affirmation of human autonomy and domination over nature. However, there is no recognition of our autonomy without recognizing also the autonomy of nature; conversely, recognizing the autonomy of nature does not entail abandoning our own agency. On the contrary, it opens broad prospects for complex interactions with nature that affirm human dignity and self-empowerment.

Yet the broad public consensus today is that human interventions in nature can be and often are detrimental and unsustainable. Many supporters of this consensus agree that the main problem is not a particular policy or policies, but rather, the problem lies much deeper. They see the source of this problem in anthropocentrism.

Anthropocentrism is not simply a worldview that places humans in the center of the universe, as many environmentalists argue. The roots of anthropocentrism lie much deeper. They go back all the way to the origin of the human race. The source of anthropocentrism is the failure to recognize the centrality of the process of creation in our relationship with reality. Anthropocentrism is very resilient and has survived to this day. There have been many occasions when humans tried to abandon anthropocentrism. Many theorists and practitioners of the environmental movement today are proposing various approaches that are supposed to end the domination of anthropocentrism. Yet despite all these efforts, anthropocentrism remains ineluctable; it comes back with vengeance and retains its powerful grip on our civilization.<sup>12</sup> The reason for this resilience is our failure to embrace and understand the centrality of the process of creation in our relationship with reality. We continue to view reality through the prism of mental constructs created by humans; and so far, humans have no idea how to view reality in any other way.<sup>13</sup> Only by adopting the process of creation as the main organizing principle of our worldview and reorganizing our relationship with reality, we can transcend anthropocentrism.

This article argues that the current approach toward LGBTQ rights is theoretically inconsistent, confusing, and controversial. It basically assigns the status of absoluteness and universality to what is not fundamental. No wonder that this approach contributes to divisions and conflicts. As a result, public criticisms of this approach are on the rise, which signals a difficult road ahead both for the proponents and the opponents of the current approach toward LGBTQ rights. There is a dire need to change this approach.

As has already been explained, the current approach originates in the tradition of the Enlightenment. This tradition has its roots in anthropocentrism that is exclusionary since it views reality exclusively through the prism of mental constructs that are by definition subjective. Therefore, the views that result from anthropocentrism are subjective and limited. They cannot successfully guide our interactions with reality.

By contrast, the universal process of creation works on inclusion. It combines differences, thus creating a common frame that includes all differences as its particular cases, i.e., cases that are true under specific conditions or assumptions. The inclusion and combination of differences conserves them and eliminates possibilities of conflict. Therefore, the new approach toward the rights of sexual minorities and gender non-conformists should use the process of creation as its main organizing principle. It is important to stress that both sides in controversies over sexuality and gender identity should use this practice, not just members of the LGBTQ community. The fact that one side refuses to do so certainly does not mean that the other side should follow the suit. One practices universal inclusion and empowerment for one's own sake, as the only way to conserve one's own differences.

Also, since the process of creation is universal, it does not rely on specific mental constructs created by humans. Such constructs are by definition exclusionary and limited. The universal process of creation makes a universal and thus objective view of reality possible. Moreover, the process of creation allows observing the process itself from a perspective that does not rely on human constructs or choices with their inevitable infinite regress.<sup>14</sup>

Consequently, the first step in formulating a new approach toward the rights of sexual minorities and gender dissidents is to abandon an anthropocentric perspective and

adopt one that uses the process of creation as the central organizing principle of its theory and practice. This new approach will be universally inclusive. It should correlate LGBTQ rights with other rights that protect other non-fundamental rights that do not originate in human nature. Claiming a special status for LGBTQ rights only provokes opposing groups to act in a similarly confrontational manner.<sup>15</sup>

The new approach should stop claiming a special status for LGBTQ rights. Such claims are unjustified. They only provoke other groups also to claim a special status, which usually leads to veritable wars that that goal of which is to defeat the opponent and establish one's own domination. Confrontations between the LGBTQ movement and various religious groups provide good examples of confrontations that are totally counterproductive. Eszter Kováts presents a very convincing case of how clashes over gender issues give rise to “gender ideology” that is just as destructive as “right-wing populism.”<sup>16</sup>

As this article has argued, human rights are associated with the human capacity to create an infinite number of new and increasingly more powerful levels of organization. When we use this capacity, we effectively promote and protect our common human rights. By promoting human rights we protect and conserve our specific interests, those of other groups and humanity as a whole. Instead of promoting their specific interests and concerns as absolute and universal, those involved in the LGBTQ would do well to focus on creating frames that are broad enough to include their interests and those of competing groups as particular cases—i.e., cases that are true under specific conditions or assumptions. This new practice will not only conserve and protect their own specific rights but will also prevent unnecessary and destructive confrontations that benefit no one.

A non-anthropocentric practice in matters of gender and sexuality will lose the ideological edge that is today so prominent in the LGBTQ movement. With the demise of the apocalyptic narrative that shapes today's discourse on sexual minorities and transgender, the new approach will be cautious and discouraging aggressive and confrontational approach that we see today on both sides of the controversy.

The cavalier treatment of important problems related to gender and sexuality can result in irreparable damage to individuals and society. Let's take as an example decisions about gender transition, particularly in cases that involve minors. Decisions about gender change involve a huge physical and emotional investment, as well as a considerable financial burden. More often than not, these decisions are hard to reverse or are completely irreversible. Many individuals who undergo transitions come to regret what they have done later in their life. They feel that activists and the medical community have betrayed their trust and left them stranded.<sup>17</sup> There is a vast body of literature that documents and discusses literally hundreds of cases of individuals who underwent transition only to insist on de-transitioning afterwards.<sup>18</sup> The number of problems, both physical and psychological, that they confront are mindboggling.<sup>19</sup>

By practicing universal inclusion and empowerment, the non-anthropocentric approach toward rights of sexual minorities and gender non-conformists will discourage a sense of self-righteousness that still permeates discussions related to this subject. All sides will stand to benefit from such non-ideological and pragmatic approach, including individuals whose rights need to be protected and society as a whole. There are some indications that this course may indeed be taking shape. The negotiated approach toward

same-sex marriage has already produced positive, if modest results.<sup>20</sup> Non-ideological, pragmatic approaches have brought success to LGBTQ activists in Singapore who used community issues to create a space for mutual understanding, rather than pursue a path of confrontation.<sup>21</sup> No doubt many obstacles still lie ahead, but success in overcoming them will be in creative interactions among all sides, not in battles for domination.

There is a growing awareness of the need for an inclusive approach toward the rights of sexual minorities and gender non-conformists that would include all concerns related to these rights. Although there have been some efforts to bridge the gap that separates the community of faith the advocates and supporters of LGBTQ rights, the prospects for such coming together remain rather grim.<sup>22</sup> The new approach with its focus on universal inclusion will remove this separation. This approach will not guide the participants to seek compromises and commonalities. Rather, it will emphasize the inclusion of all differences. It will encourage all contributors to their interactions to engage in creating a broad frame that will include all differences as particular cases of a new and comprehensive synthesis.

There is another benefit that will accrue from the new approach. One important limitation of the current LGBTQ movement is that it lacks prospects beyond the goals that it has formulated. There are concerns that a success of the movement will be its undoing; the movement will have no further prospects.<sup>23</sup> The new approach will encourage all contributors to the debates on the rights of sexual minorities and gender non-conformists to go beyond mere coexistence of different points of view. Centering on the process of creation, this approach will guide theorists and practitioners to combine all points of view. The resulting combinations will represent a new and more powerful level of organization that will give rise to totally new visions, ideas, forms, and directions that cannot be even envisioned within the current level of organization.

### *The New Approach to Sexuality Education*

Education is the one sphere that has experienced many controversies in connection with LGBTQ rights. Many of them have occurred in one particular area of education—sexuality education. Very frequently these controversies have had powerful political implications.<sup>24</sup>

There are two dominant approaches toward sexuality education.<sup>25</sup> One is comprehensive sexuality education (CSE) and another is holistic sexuality education (HSE). The two approaches are in many ways similar and often overlap. One important difference is that the latter approach adopts the so-called “positive sexuality”—a concept that embraces the notion of sexual liberation and sees enormous benefits in bringing sexual desire and pleasure into its educational format.<sup>26</sup>

Both CSE and HSE share a view that gender is a major focus of sexuality education. Rights of sexual minorities and gender non-conformists are another important preoccupation in both approaches and their literature.<sup>27</sup> Discussions of rights are a linchpin of “youth-centered pedagogy” used in current sexuality education.<sup>28</sup> Numerous national and international organizations that promote sexuality education such as International Planned Parenthood Federation, UNESCO, International Women’s Health Coalition, and others fully support this approach.<sup>29</sup> They also advocate the development

of “positive sexuality” and cultivate a benevolent view of sexual liberation and gratification.<sup>30</sup>

Contemporary sexuality education uses concepts of gender, sexual identity, as well as rights of sexual minorities and gender dissidents as its central organizing principles. As has been explained earlier, these concepts are human constructs. They are products of the human mind and, thus, are subjective. Therefore, sexuality education that uses these subjective constructs is not universal and, for this reason, often provokes opposition. As A. E. Gacoin correctly points out, sexuality education is always about politics.<sup>31</sup>

The surprising, if not paradoxical feature of modern sexuality education is the fact that although it generates more than its share of controversies and conflicts in public life, there is an overwhelming support for having sexuality education in schools around the world.<sup>32</sup> It has become an integral to grade school and university curricula in many countries and cultures.

Despite its early successes, sexuality education has experienced in recent years a powerful backlash, as parents demand more control over the education of their children.<sup>33</sup> Conservative and religious organizations such as Family Watch International (FWI) claim that under the guise of human rights CSE effectively teaches children “radical sexual ideologies,” including an “obsessive focus on and promotion of sexual pleasure for children.”<sup>34</sup>

The growing opposition is not the only problem faced by sexuality education. There are quite a few others. To start with, there is an uncomfortable discrepancy between the two main approaches in sexuality education. The HSE approach emphasizes the so-called “positive sexuality”—a concept that embraces the notion of sexual liberation and sees enormous benefits in bringing sexual desire and pleasure into its educational format. Many proponents of CSE find such inclusion counterproductive and even harmful to the promotion of sexuality education, particularly in trans-cultural global environments.<sup>35</sup>

The practice of sexuality education is not uniform. Rather, sexuality education has given rise to a variety of practices that differ in content, teaching methods, and their focus from country to country and even within individual countries; these differences can be significant. Different practices develop contradictions and come into conflict with each other.<sup>36</sup> The tendency toward differences, rather than uniformity, is particularly visible in cases of national educational programs where sexuality education is affected by “different ethical, social, political, and cultural values.”<sup>37</sup>

The variability of practices offers teachers a leeway to pursue their own subjective agenda that acquires a significant effect on what is happening in the classroom. As Marilyn Preston concludes in her study of instructors in sexuality education courses, “teachers rely on a unique sense of identity in order to justify challenging the regulatory and policy limitations to their curricula.”<sup>38</sup>

Also, there is very little coordination between the content in courses in sexuality education and courses offered in the general curriculum. Without such correlation, sexuality education often offers conceptions of sexuality that are narrowly fitted to the needs of LGBTQ advocacy. In many ways, this orientation defines what sexuality education is today.

Needless to say, LGBTQ rights are central to many course offerings dealing with sexual orientation and gender identity and they are usually presented in the context of universal human rights—the approach that has been criticized earlier.<sup>39</sup> Finally, the presentation of different topics on sexuality is often out of sync with the pace of students’ development and maturation, which hinders the appropriation of the material by students and often follows patterns of indoctrination, rather than education.

The approach that uses forms of sexual self-expression as organizing principles in sexuality education is decidedly anthropocentric and, as such, is subjective and arbitrary. It is very susceptible to criticisms and objections and, naturally, generates controversy and conflicts, hence the backlash against sexuality education. The solution to the numerous problems that beset sexuality education is not to defeat opponents and establish orthodoxy—such victory will inevitably turn to be a Pyrrhic one—but in creating an approach that will be inclusive and universal.

This task may strike many as impossible. Any mental construct created by humans will inevitably be subjective. However, this fact does not mean that an objective and universal approach is impossible. Indeed, mental constructs created by humans are subjective but the process that humans use in creating these constructs is not. The process of creation pre-existed the emergence of the human race and has given rise to humans. This process is universal, as it sustains the universe and all that is in it. Consequently, an approach that uses the process of creation as its main organizing principle will be universal. The process of creation even offers the opportunity to observe itself from a position that does not rely on human constructs or choices.<sup>40</sup>

Organizing sexuality education around the process of creation will have important beneficial effects. For one thing, it will be consistent in treating all forms of self-expression, all differences in the same way and will not privilege some forms over others. By connecting sexuality with the principle that has universal application, such approach will help students to gain a comprehensive view of the role of sexuality in human society where it serves multiple functions, including an important social function that brings people together and makes human community in all its forms possible.

With this broad understanding of sexuality, students may engage this subject even before they ever hear words “sex” and “sexuality” in the classroom. They will see sexuality as a form of social interactions that involves expressions of intimacy between and among humans, such as touching, hugging, and kissing. Even for students of very young age such exposure to sexual themes will be perfectly appropriate and will evoke no controversy. Children are very familiar with these expressions of intimacy and use them. Independent researchers complain that sexuality education frequently pays more attention to physiological and anatomical aspects of sexuality and not nearly enough to emotional, psychological, and moral concerns.<sup>41</sup>

Sexuality education starts early—in some countries as early as age 6. Rather than focusing on reproductive control, STD, alternative sexual practices, or the complexity of gender identity that are difficult and often inappropriate for young audiences, children of very young age will be able to embrace the concept of sexuality in a positive way long before they will be introduced to such topics as STD, sexual practices, contraception, or gender transition and sex reassignment. By the time they will confront these topics, they will already have known that intimate relations among humans are based primarily on love and caring, and not on sexual self-gratification or procreation.

The broad approach to sexuality education from the vantage point of the universal process of creation will also expose students to creative aspects of sexuality, including the creation of human life. There is a growing realization of the need to bring the process of creation more centrally into our educational practice in general.<sup>42</sup> Using the process of creation if sexuality education will help advance this positive change in the educational system as a whole. Embracing the process of creation will deepen the universal context of sexuality as intimately connected to the human capacity to create in general. It will also give an opportunity to discuss some ancillary topics related to the process of creation, such as morality, aesthetic gratification, pleasure, and joy, without focusing exclusively on the carnality of sex.

## **Conclusion**

There are many issues that contribute to instability and turmoil that we experience today. We cannot resolve all issues that cause them at once. As many realize, the path toward achieving peace and restoring social cohesion will be long and arduous.

LGBTQ rights are just one of many factors that contribute to the current turmoil. However, their impact on our social life and politics is disproportionate to the number of people who are actually affected by them. Controversies and conflicts related to the rights of sexual minorities and gender non-conformists are enormous and resolving them will be an important step both for securing these rights and stabilizing society.

The article has argued that controversies and conflicts over LGBTQ rights are not inevitable. The intensity of clashes over gender and sexuality are not due, as we often hear, to the recalcitrance of conservatives or to the irresponsible and reckless promotion of change at any cost by progressives, as many participants allege. Rather, this article has argued, the intensity of conflicts over gender and sexuality is largely a result of the inadequacy of the approach used by the participants. The approach used by LGBTQ activists today presents the rights of sexual minorities and gender non-conformists in terms of universal human rights. Such approach claims a special status for LGBTQ rights that, like other human rights, are not negotiable and are not subject to any restrictions. The apocalyptic narrative cultivated by this approach trips all the wrong wires on the side of the opponents of the LGBTQ movement. Social and religious radicals are only too ready to respond in kind with universalistic claims of their own.

This article contends that human rights are associated with human nature that is about unique property of human beings—their capacity to create an infinite number of new and increasingly more powerful level of mental organization. Human rights are exclusively about this unique capacity. Human nature has nothing to do with sexual orientation and gender identity. There is no justification for using the approach that identifies the rights of sexual minorities and gender dissidents with human rights. Human rights and LGBTQ rights simply do not go together. The former are absolute and universal and the latter are not. As this article argues, LGBTQ rights are not absolute and universal and, for this reason, are negotiable and subject to restrictions and limitations. In trying to promote the rights of sexual minorities and gender non-conformists, LGBTQ activists will be well advised to pursue the path of negotiations that seek to correlated their interests and concerns with those of their opponents, rather than embark on the high

road of militant public protests and pride parades that antagonize the opponents, create a confrontational environment, and offer no solutions. By taking the path that seeks to create new frames that include all differences as its particular cases, those who advocate LGBTQ rights will not only protect/conservate these rights but will also offer an example and encourage their opponents to engage in the mutual creation process and follow the path of stable progress.

This article has also explained that the claim of used in the case of rights that are not by their very nature absolute and universal is not fortuitous or accidental. It is a result of anthropocentrism that fails to grasp the centrality of the process of creation in our relationship with reality. The result of this failure is the tendency to take subjective representations of reality as objective. Even when we understand that our subjective representations are not how the world actually is, we still do not abandon the this tendency since without embracing the process of creation and understanding how it works, we do not know any other way to view and represent reality, other than through the prism of our subjective constructs.

One can see the influence of the anthropocentric bias in the LGBTQ agenda and its approach to rights of sexual minorities and gender dissidents. Sexuality education, to offer one example, sees sexuality and gender as essential parts of human nature, not mere forms of self-expression, and uses them, together with LGBTQ rights, as its organizing principles. The practice that results from this approach, just like its organizing principles, is exclusionary and subjective. It evokes negative responses that deny the universality it claims. Radical claims evoke radical responses. They do not invite mediation and negotiations. The result usually is a confrontation that involves opposite and mutually exclusionary sides.

The way to move forward on issues related to gender and sexuality is in rejecting anthropocentrism and adopting a new approach based on the process of creation as its main organizing principle. The distinct feature of the new approach is that it works on universal inclusion. It seeks to include all differences as particular cases of a newly created and comprehensive whole. The practitioners of the new approach will treat all differences as equal and equally important. The mutual equilibration and adaptation of these differences will have nothing to do with seeking consensus and emphasizing commonalities. Consensus and commonalities suppress differences. The new approach will view differences as opportunities to create new and increasingly more powerful levels of organization that will conserve differences. These new and more powerful levels of organization will give rise to new ideas, approaches, and solutions that will open paths of further progress.

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