

GENDER IDENTITY BASIC CONCEPTS

objective: To understand the basic terms we use to discuss gender identity and encourage students to begin thinking about the legal issues raised by the ways people identify and express their genders.

Activities/Discussion

■ ADVANCED/INTERMEDIATE:

Suggested ideas for discussion:

1. Basic Concepts: Sex and Gender Identity
 - a. What are some traditional ideas of masculinity and femininity?
 - b. We express our gender identities in many different ways because how we define “masculine” and “feminine” varies greatly from person to person. For example, a girl might express her femininity by wearing pants or cutting her hair short. What things do people do or wear that express their gender identity to others? Are there ways in which your appearance or activities do not conform to traditional ideas of masculinity and femininity?
2. The Constitution: Who Is Equal Under the Equal Protection Clause?
 - a. Sex is a category that the courts agree deserves heightened protection under the Equal Protection Clause. Laws that classify on the basis of sex receive intermediate scrutiny and must be substantially related to an important government interest. Courts have been more cautious about whether the Clause protects gender identity in the same way. Should people whose gender does not conform to traditional ideas of masculine and feminine be protected as discrete and insular minorities under the Constitution? (See Module 12 on discrete and insular minorities.)

b. Bathrooms and Gender Identity

- i. Do you think people have a right to use bathrooms that reflect their chosen gender identity? What if their gender identity does not conform to traditional ideas of masculinity and femininity? What if their gender identity is different from their biological sex? Should a biological male who identifies as female but still wears men's clothing be allowed to use a women's restroom?
- ii. Racially segregated bathrooms and other kinds of segregation in public places are prohibited under the Civil Rights Act of 1964. Are separate-sex bathrooms constitutional under the Equal Protection Clause? What about the right to privacy? Freedom of expression?
 1. How is gender identity like race? How is it different? What about sex?
 2. If you think separate-sex bathrooms might be unconstitutional, what solutions would you suggest? Consider gender-neutral bathrooms as a possible solution. What would they look like?
- iii. What other spaces in our society do we segregate on the basis of sex that might pose a challenge for trans individuals? (Hint: fitting rooms in clothing stores)

> definitions

GENDER IDENTITY

Gender identity is distinct from sexual orientation and refers to a person's innate, deeply felt psychological sense of gender, which may or may not correspond to the person's body or assigned sex at birth (the sex originally listed on a person's birth certificate).

GENDER EXPRESSION

Gender expression refers to all of a person's external characteristics and behaviors, including dress, mannerisms, grooming, speech patterns, and social interactions, that are socially identified with a particular gender.

TRANSGENDER

Transgender or "trans" is an umbrella term that refers to people who experience and/or express their gender differently from conventional or cultural expectations—either by expressing their gender in ways not generally associated with the sex they were assigned at birth or by physically altering their sex.

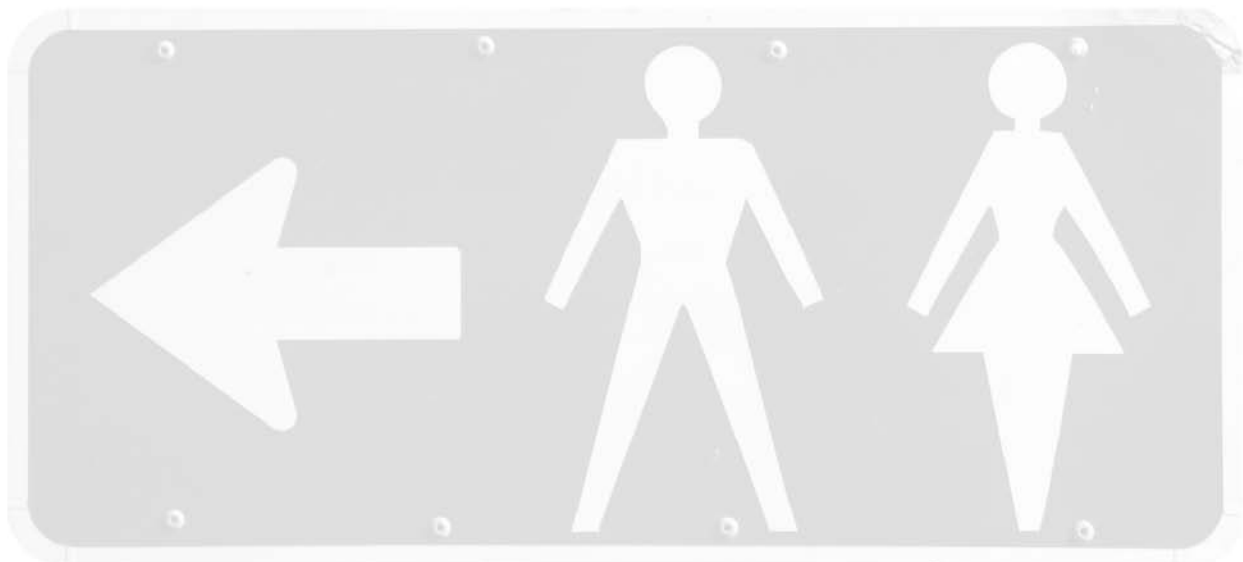
■ INTRODUCTORY:

1. Basic Concepts: Sex and Gender Identity

- a. Give some examples of things people usually think are masculine. How about things people usually think are feminine?
- b. We each express our gender identity in many different ways. This is because different people think different clothes, haircuts, or body languages seem "masculine" or "feminine." There are no strict rules about what is girly and what is boyish. For example, a girl might express her femininity by wearing pants or cutting her hair short. What other clothes might people wear that express their gender identity to others? How else might they express it? Do people's hobbies (like sports, reading, games, arts and crafts) express their gender identity?
 - i. Suppose someone knew your gender but nothing else about you. Are there clothes you wear or things you do that might surprise them?
 - ii. What things have you been surprised by that other boys or girls that you know do? No identifying names please.

2. The Constitution: Who Is Equal Under the Equal Protection Clause?

- a. Sex (being male or female) is a category that receives extra protection by courts under the Equal Protection Clause of the U.S. Constitution. Should the Equal Protection Clause protect gender identity in the same way? For example, suppose your neighbor was born as a man but thinks of herself as a woman and presents herself as a woman. Now suppose your state passes a law that treats her and others like her differently from the way it treats everyone else. Should courts look at that law extra carefully to decide whether it is constitutional? What if people who were born as men but who think of themselves as women have a long history of being discriminated against? What if there aren't enough people born as men who think of themselves as women to vote down laws that might discriminate against them?
- b. Bathrooms and Gender Identity
 - i. Do you think people have a right to use bathrooms that reflect their gender identity? What if their gender identity is different from what Americans expect about boys and girls? Which bathroom should a girl who dresses in boys' clothing use? Can she use the women's bathroom even if she looks so much like a boy that people often mistake her for a boy? What if even though she was born a girl she now thinks of herself as a boy and presents herself as a boy?
 - ii. We know it is illegal for public places to segregate bathrooms by race. Are separate men's and women's bathrooms constitutional under the Equal Protection Clause? What about the right to privacy? Freedom of expression?
 1. How is gender identity like race? How is it different? What about sex?
 2. If you think separate men's and women's bathrooms might be unconstitutional, what solutions would you suggest? Consider offering bathrooms that anyone could use as a possible solution. Would you provide these bathrooms instead of men's and women's bathrooms or as an additional option? What would they look like?
 - iii. What other public areas might prove to be challenging? What about fitting rooms at clothing stores?



GENDER IDENTITY BASIC CONCEPTS

> advanced/intermediate

■ BASIC CONCEPTS: SEX AND GENDER

ALTHOUGH MANY PEOPLE, INCLUDING PEOPLE IN THE LEGAL COMMUNITY, USE THE TERMS SEX AND GENDER INTERCHANGEABLY, THESE WORDS ACTUALLY REFER TO DIFFERENT THINGS.

Generally, *sex* refers to our biological sex, or the sex we were born with. This sex may be determined by genitalia, chromosomes, hormones, or other biological characteristics. (For most Americans, sex is assigned at birth solely according to genitalia; other factors are generally only considered when an infant's genitalia is ambiguous.) It could also refer to our *physical sex*. This is often the same as our biological sex, but, as we will see later, it may be different for some of us.

Gender, on the other hand, refers to our *gender identity*, or the way we feel and see ourselves as men, women, or another gender uniquely our own. Our *gender expression* is the way we express this identity to others. For example, someone who feels like a girl has a female gender identity. She might express that identity by wearing dresses and makeup—her gender expression.

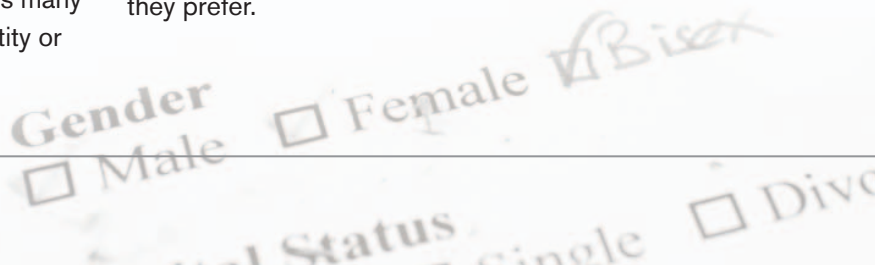
■ TRANSGENDER INDIVIDUALS

Although most people see continuity between their gender identity and assigned sex, some people do not. These individuals are called *transgender*. Transgender is an umbrella term that includes many different kinds of people whose gender identity or

expression does not conform to traditional notions of male and female. Transgender individuals can include cross-dressers, trans women (male-to-female or MTF) and trans men (female-to-male or FTM)—that is, people who transition from one sex or gender to another—drag kings and queens, and genderqueer individuals (people who do not identify as either male or female). Some transgender individuals have surgery and/or undergo hormone replacement therapy as part of this transition and others do not. There are many ways to be transgender. Gender identity is also different from *sexual orientation*. Some transgender individuals are gay, lesbian, or bisexual, and some are straight.

Some people are born with different combinations of female and male chromosomes or physiological characteristics other than those typically associated with the male and female. This is different from being transgender. These are *intersex* individuals or people with *disorders of sex development* (DSD) (a term some prefer to *intersex*). Like other folks, an individual with DSD may have a male gender identity or a female one, and may express his or her identity in a variety of ways.

Because the most important part of your gender identity is that you identify it for yourself, it is essential to respect other people's decisions about how they identify their own genders. You should always address people by the names and pronouns they prefer.



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introductory <

■ BASIC CONCEPTS: SEX AND GENDER

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Generally, *sex* refers to our biological sex, or the sex we were born with. *Gender*, on the other hand, refers to our *gender identity*, or the way we feel and see ourselves as men, women, or another gender uniquely our own. Our *gender expression* is the way we show this identity to others. For example, someone who feels like a girl has a female gender identity. She might express that identity by wearing dresses and makeup—her gender expression.

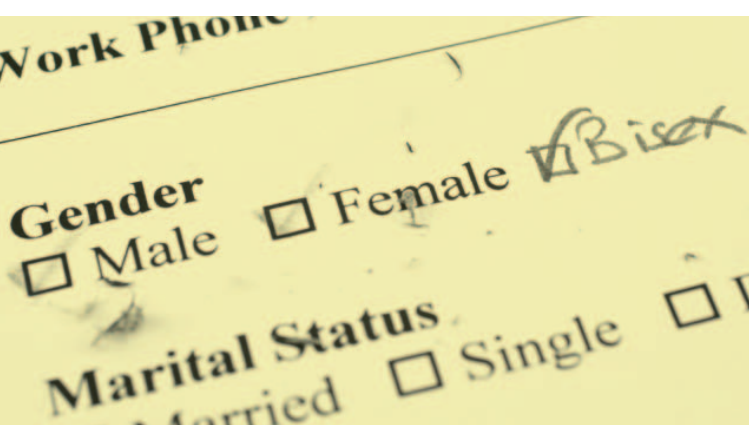
Although most people feel their gender identity matches their assigned sex, some people do not. These people are called *transgender*. Some transgender individuals transition from female to male, and some from male to female. Some have surgery as part of this change and others do not. Other peo-

ple do not identify as either male or female. There are many ways to be transgender. Gender identity is also different from *sexual orientation*. Some transgender individuals are gay, lesbian, or bisexual, and some are straight.

Some individuals are born with different combinations of male and female chromosomes (small pieces of DNA that determine our biological sex), or other male and female body parts. This is different from being transgender. These are *intersex* individuals or people with *disorders of sex development* (DSD) (a term some people prefer to *intersex*). Like other folks, a person with DSD may have a male gender identity or a female one, and may express his or her identity in lots of different ways.

The most important part of your gender identity is that you identify it for yourself. It is important to respect the way other people see their own genders. Decide how to refer to people based on how they refer to themselves. If someone you thought was a boy calls herself Ann and refers to herself as “she,” those are the words you should use, too.

The most important part of your gender identity is that you identify it for yourself.



background reading