

# Acknowledging the Reality of the Sexes Is Not Discrimination: A Critical Analysis of Bill C-6

Brief on Bill C-6: An Act to amend the Criminal Code (conversion therapy)

Submitted By

Rh a Jean, Philosopher

(Ph. D. Philosophy, Laval University, 2011)

As an Individual

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## Executive summary

Bill C-6, An Act to amend the Criminal Code (conversion therapy), was introduced in the House of Commons on October 1, 2020 by the Department of Justice Canada. The definition of “conversion therapy” included in the bill and paraphrased by the Department of Justice, is “a practice that seeks to change an individual’s sexual orientation to heterosexual, to repress or reduce non-heterosexual attraction or sexual behaviours, or to change an individual’s gender identity to match the sex they were assigned at birth.”

While we recognize that “conversion therapy” is a problem when it comes to having the possibility to fully experience one’s sexual orientation, we believe that the portion of the bill concerning gender identity is problematic in several respects.

This brief seeks to show that the profound differences between the concepts of sexual orientation and gender identity mean that they cannot be treated in an equivalent manner when it comes to “conversion therapy.” It also seeks to show that acknowledging an individual’s sex as an observable reality in the animal kingdom (to which humans belong) should not be considered a crime of “conversion.” Sex being an observable reality that is imposed on us, it cannot be something that could be subjected to “conversion,” unlike one’s sex life, which encompasses a number of possibilities, depending on individual life choices.

## List of recommendations

1. We call on the government to exclude gender identity from Bill C-6, as the issue of “conversion therapy” as it applies to gender identity cannot be understood the same way as it does for sexual orientation.
2. We call on the government to focus more closely on the physiological and psychological impacts of “affirming” medical interventions on young people with gender dysphoria.
3. We call on the government to focus more closely on the cultural and ideological dimension of gender and the fact that social media and various supposedly educational initiatives can encourage young people to make “gender transitions” rather than question gender stereotypes (as many feminists do). Gender, as a social construct, should be examined more critically and not become how some would define the terms man, woman, boy, girl, to the detriment of the definition based on anatomical knowledge.
4. We call on the government to acknowledge the sexes as verifiable and important concepts for humanity. Referring to the reality of an individual’s sex, whatever it may be, should not be considered a crime. However, Bill C-6 suggests that acknowledging the true (anatomical) sex of a young person with gender dysphoria would involve seeking to “convert” that young person into a “cisgender” person. Sex is not subject to conversion, since it is an observable and immutable reality.

## Introduction

One of the problems with this bill is that it treats sexual orientation and gender identity the same way with respect to “conversion therapy.” However, these two concepts must be considered separately, as they do not involve the same issues at all, and thought needs to be given to what would constitute “conversion therapy” for either of them and to the consequences of seeking to penalize these practices. In the case of gender identity, we will see that what is suggested by “conversion” (to “cisgender”) raises important questions. We feel it is necessary to address the concepts of gender and sex, but also the concepts of transgender and “cisgender,” which are of a completely different order than those of homosexuality and heterosexuality.

First of all, a distinction must be made between affirming one’s sexual orientation and calling oneself a woman or a man. Our approach is a philosophical one. Philosophy certainly allows us to analyze concepts by drawing parallels with other concepts, but more importantly it allows us to distinguish between concepts that are not equivalent. Moreover, one of the constants that we find in philosophy involves distinguishing between moral and epistemic questions—understanding the reality of the world around us. Moral questions lead us to questions about “what should be” (according to our values); they relate to the actions that we do and over which we have some control. Conversely, epistemic questions concern our gaining of knowledge about things we are faced with, things over which we have no control. For example, knowing what a human being or any organic thing is forms part of our knowledge about the reality around us. These questions do not relate to “what should be,” as is the case with moral questions, but to “what is,” meaning the facts that we can observe, without having any control over them through our daily actions. As for moral questions, while we can say that actions are extremely diverse from one culture to another, from one era to another, from one person to another, and that it is possible to have some control over them, we cannot say the same of our material, physical reality, which is imposed on us. We do not choose the bodies we have.

## Homosexuality as a possibility

The issue of homosexuality is more one of action, a moral issue, regardless of whether one is for or against it. The debates that may have taken place on this issue have been about whether the individual actions of the persons concerned are justified. They were not epistemological debates about what homosexuality is from the point of view of knowledge, from the point of view of its definition. There was no question as to whether it was true or a fact, but rather whether it was morally justified. Certainly, it can be argued that homosexual (or heterosexual) desires are not necessarily a choice but are instead

imposed. However, the desires themselves are not what concerns the debates in society: it is not the thoughts, which we cannot access, that are the object of moral debates, but rather the actions of individuals. Moreover, while desire can certainly be imposed on us, the fact remains that acting on this desire through sexual or romantic encounters is a matter of action. The fact that our societies recognize the importance of sexual consent between partners is proof that we recognize that sexuality is a matter of choice (and when it is imposed on others without their consent, it gives rise to important and justified moral and political debates).

A sexual encounter between two people who want to have sex involves agency that has nothing to do with facts such as being 5 feet tall instead of 6 or having blue eyes instead of black. You do not choose your body, but you can choose who you have sex with. The debates that have taken place around homosexuality are essentially moral debates where people argue about the legitimacy (or otherwise) of having this type of sex. Those who are against homosexuality have sought to influence the actions of others. What has been called “conversion therapy” goes in this direction: this “therapy” seeks to induce individuals to have sex with people of the opposite sex, rather than of the same sex. For the most part, this kind of conversion therapy is religious in nature and seeks to overcome an individual’s desires and life choices.

This kind of therapy has understandably been condemned by gay rights activists. There is no fundamental principle that justifies preventing people from having the sexuality of their choice when it does not involve coercion and when all those involved are consenting. The argument of reproduction (which is only possible with the involvement of both sexes), used by some religious groups to justify “conversion therapy,” does not stand up: sexuality has no reproductive purpose for most people, including heterosexuals, who most of the time have sex without a reproductive purpose. Masturbation also has no reproductive purpose and is widely practised. This argument of reproductive purpose is therefore highly irrelevant in today’s world. Social conventions and tradition are also weak arguments for wanting to convert homosexuals, especially in a society where people’s individual choices are paramount. Neither does sexual orientation have any impact on a person’s social identity: it does not lead to a change of name or sex on identification cards. There has, rightly, never been any mention of sexual orientation on these documents. Someone’s sex life is first and foremost a private matter. This choice also has no long-term, if not irreversible, impact on one’s physical appearance. This means that a person can go from a heterosexual to a homosexual relationship, or vice versa, if that is their choice. Many bisexuals do this.

Therefore, it seems legitimate to us for Bill C-6 to propose banning “conversion therapy” when it comes to sexual orientation, since this type of practice undermines individual choice with respect to sexuality.

## Gender identity: Very different from sexual orientation

Now let us consider the fact that Bill C-6 also deals with gender identity. We find this aspect of the bill highly problematic.

When we refer to gender identity, we mean seeing oneself as male or female, boy or girl, or outside the usual categories for those who identify as non-binary, based on one’s personal feelings. But we cannot ignore the fact that these terms refer first of all to biological reality, to verifiable fact. “Woman” and “girl” are terms that have always applied to human females, while “man” and “boy” are terms that have always applied to human males. While gender identity is about the “personal feeling of being male or female, boy or girl,” these considerations do not come out of nowhere. First, these terms (“man,” “woman”) refer to something. Otherwise, people would not refer to themselves with these terms. Then, there is the question of how the “gender” associated with women appeared and how the “gender” associated with men also appeared. Gender is a social construct that did not just magically appear: it constitutes a discourse on the sexes, it says something about the sexes, which may appear to us to be right or wrong. In fact, feminists have often been opposed to the gender that has been imposed on them. “Gender,” unlike sex, has evolved in time and space. The way women were seen 200 years ago is very different from the way they are seen today. There are also great variations from one part of the world to another. So there is a dialogue that can take place about what we see as “gender.” Preventing a dialogue on this subject seems extremely harmful to us: what is socially considered “masculine” or “feminine” has been revolutionized. This must continue.

Gender is not a fixed reality like the sexes. We will say it again: as a social construct, it is a discourse on the sexes (“women are like this, men like that”). The discourse can be questioned. However, the object of this discourse, the sexes, cannot. Sex differences are well-established and immutable facts. Since the dawn of humanity, we have seen the difference between the sexes. We have also noticed it in the other species around us. Humans are not an exception to the animal kingdom: they too are sexual beings. This is a well-established fact and there cannot be any moral debate such as whether or not certain types of sexuality are acceptable.

Bill C-6 suggests, in our view, that it may be a criminal offence to try to have a child accept a verifiable fact, namely their sex. The bill seeks to criminalize “conversion therapy,” which it defines as follows: “In

sections 320.102 to 320.106, conversion therapy means a practice, treatment or service designed to change a person's sexual orientation to heterosexual or gender identity to cisgender, or to repress or reduce non-heterosexual attraction or sexual behaviour."

It is reasonable to wonder whether acknowledging a person's sex (a verifiable fact, important in terms of knowledge, particularly medical knowledge) could be considered an attempt to convert a young person who claims to be transgender into a "cisgender" person. Sex, unlike the choice of sexual partners, has nothing to do with individual choice: it is something imposed on us. Pointing out a person's true sex should not be criminalized, because knowledge of an objective fact should not be against the law.

Furthermore, it seems to us that it is in a young person's best interest to try to have them accept their body as it is rather than encouraging them to transition, which could cause them to accept medical procedures (hormones, surgery) with irreversible effects. How many vulnerable girls come to believe that they are in the "wrong body"? Accepting one's body should be the priority. Medical personnel who encourage a patient to accept their body should not be accused of engaging in conversion therapy. Talking about the factual reality of one's sex has nothing to do with imposing the idea on someone that only one type of sexuality (heterosexuality) is possible. They are two very different phenomena.

Contrasting the terms transgender and cisgender, drawing a parallel with the contrast between homosexuality and heterosexuality, seems problematic to us. According to the vocabulary in vogue in certain circles, the term "cisgender" designates people who accept the "gender" associated with their sex. However, it is highly questionable to use this term to refer to everyone who simply accepts their sex as reality: they are men or women according to their anatomy, not because they have a particular affinity for the stereotypes culturally associated with their sex. For example, many feminists do not adhere to the feminine "gender," to all the stereotypes associated with women (whether in terms of personality or clothing). They see themselves as women based on knowing what their sex is. Moreover, telling all oppressed women on this planet that they are "cisgender" is extremely problematic: it is not because these women know that they are female that they endorse the feminine "gender" culturally accepted in their country.

Gender is not as stable a fact as are the sexes: something that is a social construct fluctuates, varies by time and place, as well as by individual perceptions. We do not all have the same vision of what the "female" gender or the "male" gender is because our influences, education and models vary. Therefore, "proving" one's gender is an extremely perilous exercise, because it cannot be defined within specific

parameters, as is the case with sex. A person may very well claim to identify with the other sex, but this remains subjective and difficult to prove. However, there are stable and known features that have always been used to identify a person's sex. While there are a few cases of intersex individuals, the fact remains that for the vast majority of people, their sex can be clearly identified.

Some would argue that gender identity is not much different from sexual orientation and that, in the same way, we would simply be dealing with individual action and moral debate. While this moral dimension may be present in the debate, the epistemic dimension of the debate cannot be dismissed. Calling oneself "woman" or "man" necessarily raises the question: what is a woman, what is a man? In the case of homosexuality, there is no debate about how this term is defined: we all know that it concerns attraction to individuals of the same sex. There is therefore no epistemological debate on this subject.

The terms "man" and "woman" refer to the sexes and therefore to a verifiable and immutable physical reality. As for the genders attached to these words, they do not come from nowhere: they are based on how society refers to the sexes. To talk about "gender" while completely dismissing any reference to the underlying sexes is risky. The current discourse on gender identity claims that gender, which is the social discourse on the sexes, is what "actually" affirms what is a woman or a man. In doing so, it seeks to silence our common knowledge about the sexes. Bill C-6 may force healthcare professionals to deny the reality of the sexes in order to avoid being accused of engaging in "conversion therapy."

While an individual may identify with the gender other than that the one associated with their sex, this does not change the fact that sex is an immutable physical reality. A healthcare professional may have to refer to a patient's biological sex, as it is an important consideration when dealing with that person's health. For example, men and women, as sexes, have different reproductive issues. There are also health issues that are more specific to one sex than the other. Referring to biological sex should therefore not be seen as seeking to engage in "conversion": instead, it refers to a fundamental dimension of the human being (its sex-based dimension).

Moreover, it is appropriate to have young people understand and recognize the sex-based dimension of humans, similar to that of other animals. We live in a time when attempts are being made to put a very strong emphasis on "gender identity," which causes young people to not be aware of the fact that "man" and "woman" have always referred to the male and female of the human species. Since gender is a social discourse on these sexes, emphasizing this discourse while disregarding the object of the



discourse appears to be a risky gamble, going against the transmission of knowledge. It is our responsibility to continue transmitting knowledge to young people. The danger of Bill C-6 is that it interprets “conversion” to include references to an immutable biological reality, that of the sexes. There is no “conversion” involved in acknowledging an observable reality that is imposed on us and is not a choice. This is true about our sex.

## Conclusion

Based on the above analysis in this brief, we recommend that the Government of Canada exclude gender identity from Bill C-6 on conversion therapy. We recommend that the government focus more on the physiological and psychological impacts of “affirming” medical interventions on young people, as well as the cultural and ideological dimensions of gender. Lastly, we recommend that the government acknowledge the sexes as verifiable and important concepts for humanity; acknowledging an individual’s sex, an observable reality, should not be considered a crime.