

These three cases, which are a tiny sampling of hundreds of other important cases regarding women's issues, illustrate the material way that court decisions can shape women's lives. These court decisions have affected women's ability to accumulate wealth, attend prestigious institutions,

or remain on the job while pregnant. These are just a few of the ways that women's roles in the social structure of society are affected by the court system. As an important social institution, the Supreme Court's decisions have been a principal architect in the structuring of society more generally.

11.5 Sexuality and Stratification



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The rainbow flag is a symbol of lesbian, gay, bisexual, transgender, and queer (LGBTQ) pride and social movements for LGBTQ justice.

In recent years, sexuality has come to the fore and has been debated in the public realm, particularly as it relates to lesbian, gay, bisexual, transgender, and queer (LGBTQ) rights. On the one hand, the LGBTQ community has won victories in areas such as marriage equality, when the United States Supreme Court ruled in 2014 in *Obergefell v. Hodges* that same-sex couples have the right to marry in all 50 states. On the other hand, some states continue to pass anti-LGBTQ laws, such as the "Freedom to Service Children Act" passed by Texas House of Representatives in 2017, which allows state-funded child welfare agencies to prevent children from being placed in same-sex households (Lang 2017). This section delves into sexuality, exploring sexual orientation and preference and stratification around sexuality. As previously discussed, "transgender" reflects one's gender, not sexuality, but research on transgender issues is included where appropriate because it is included in the LGBTQ umbrella term.

Sexual Orientation and Sexual Preference

11.5.1 Explain the difference between gender identity and sexual identity.

Sexuality refers to a person's sexual feelings, thoughts, desires, and attractions. It includes **sexual orientation**, which is a person's romantic and/or sexual attraction

toward another person that includes both sexual behaviors and personal identity. Sexual orientation encompasses both **heterosexuality**—attraction to someone of the opposite sex—and **homosexuality**—attraction to someone of the same sex. But these categories are not always clear-cut, with people often falling on a continuum between heterosexuality and homosexuality and many having attractions to both or multiple sexes. **Bisexuality** refers to sexual attraction to people of both sexes, and **pansexual** refers to people who are attracted to multiple sexes or gender identities. Some people are even **asexual** in that they do not have attraction to either sex.

Some people prefer the term **sexual preference** over sexual orientation, as sexual preference refers to the preference a person has toward sexual interest in members of the same, opposite, or either sex or gender. Sexual preference brings attention to the *choice* one may have in sexual partners, whereas orientation suggests that one's sexual desire for the same or opposite gender is present from birth. While the term sexual preference can indicate empowerment, it may also be used against people who do not fit into the heterosexual mold in that it suggests we all have a "choice" whether to be gay or heterosexual and that this choice is social, not innate, and based on biology. The idea that people "choose" to be gay or lesbian may then

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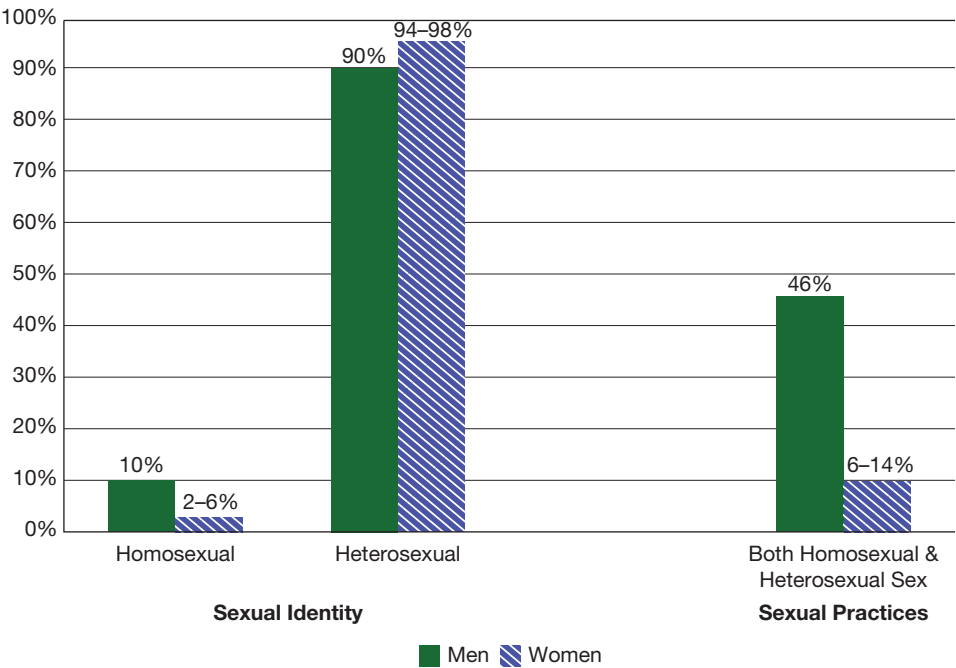
In 2015, the term “pansexual” became popular after Miley Cyrus used it to describe herself.

be used against them so that they do not receive the same political and social rights as heterosexual people.

It is important to note that too often, gender and sexuality are conflated. Ideas about what constitutes proper “manhood,” for example, include a strong belief in heterosexuality. Gay men have historically been stigmatized for their same-sex desire, and that desire has been conflated with a lack of masculinity. But recall that gender identity is an individual’s sense of him- or herself as male or female, or falling somewhere along the spectrum of male and female. Gender identity is not the same thing as sexual preference or orientation. Sexual preference and orientation call attention to the sexual interest one has in members of the same, opposite, or either sex or gender. Just because someone identifies as transgender, for example, does not mean the person identifies as gay. Both gender and sexuality can be seen as fluid constructions that may or may not change over time.

What does sexual behavior look like in the United States? In the 1940s and 1950s, Alfred Kinsey and his associates conducted research that set out to determine the range of human sexual behaviors. His 1948 and 1953 studies used in-depth, face-to-face interviews with subjects (5,300 white males and 5,940 white females) that focused on their sexual histories. He published two volumes—*Sexual Behavior of the Human Male* (1948) and *Sexual Behavior of the Human Female* (1953)—which are better known as the “Kinsey Reports.” These reports detail the extent of homosexual, bisexual, and other sexual practices. Figure 11.6 outlines some of his key findings.

Figure 11.6 Selected Kinsey Report Findings, 1948 and 1953



SOURCE: Adapted from the Kinsey Institute 2016.

While his research samples were not representative in that they focused on white men and women, the importance of Kinsey's research is not to be understated. These were the first studies that mapped out human sexual behavior. For the first time, it was publicly suggested that men and women have a broad range of sexual behaviors. This work pioneered the field of **sexology**, the study of human sexual life and behaviors.

What does sexuality look like today? Consider the following:

- **Bisexuality on the rise:** In a survey of more than 9,000 people, 5.5 percent of women and 2 percent of men identified as bisexual between 2011 and 2013, as compared to 3.9 percent of women and 1.2 percent of men between 2006 and 2010 (Copen et al. 2016). Indeed, the first openly bisexual woman, Kyrsten Sinema, was elected to the Senate in the 2018 midterm elections (Cooney 2018).
- **Same-gender sexual contact among women:** An increasing percentage of women (17.4 percent in 2011 and 2013, as compared to 14.2 percent between 2006 and 2010) report having had sexual contact with other women. These women do not necessarily identify as bisexual but have a range of sexual behaviors that include bisexuality. On college campuses, where same-gender sexual contact among women is growing, women who engage in same-gender sexual contact *and* heterosexual contact are more likely to identify as “queer” over “bisexual” (Budnick 2016). Some research also shows that women with the lowest levels of educational attainment report the highest lifetime prevalence of same-gender sexual contact and are more likely to identify as “bisexual” rather than “queer” (Budnick 2016). The increase in same-gender sexual contact among women could potentially result from a social structure that appears more accepting of female than male bisexuality, as sex between women is portrayed in the media, such as in music videos, more often than sex between men.
- **Rates of homosexuality:** There are conflicting reports as to the rate of homosexuality in the United States. Data from 2011 to 2013 found that only 1.3 percent of women and 1.9 percent of men aged 18 to 44 identified as lesbian or gay (Copen et al. 2016). A Gallup poll from 2016, though, showed that 4.1 percent of the population identified as gay or lesbian (Gates 2017). In both cases, the percentages of gay men and lesbians are below the Kinsey estimates of 10 percent and 2 to 6 percent, respectively. This is important to keep in mind, as Americans tend to overestimate the percentage of people they think identify as gay or lesbian. Studies show that Americans believe that

23 percent of the population is gay or lesbian (Newport 2015). This could partially be because the LGBTQ movement has successfully fought against discrimination in areas such as marriage and military service and has received a great deal of media attention for doing so.

- **Age at first heterosexual intercourse between males and females:** The Centers for Disease Control (CDC) report that the mean age for heterosexual intercourse between males and females is 17.3 for boys, and 17 for girls (CDC 2017).
- **Heterosexual premarital sex:** 88.8 percent of women and 89.9 percent of men report having premarital heterosexual sex (CDC 2015a).
- **Number of opposite-sex sexual partners in a lifetime:** On average, men have 6.1 opposite-sex sexual partners in a lifetime, whereas women have 4.2 opposite-sex sexual partners over the course of their lives (CDC 2015a). Only 10.1 percent of women and 21.1 percent of men have had 15 or more opposite-sex sexual partners (CDC 2015a). Unfortunately, there is very little comparable research on the number of lifetime sexual partners for LGBTQ individuals.
- **Pregnancy/birth outside of marriage:** A total of 40.3 percent of all births in the United States are to unmarried women (CDC 2015b). In the last 20 years, the fastest growth in out-of-wedlock births are to white women in their twenties who have some college education but lack a four-year college degree (DeParle and Tavernise 2012). In some cases, women are in committed partnerships and have a child but do not marry.

Heterosexism and LGBTQ Discrimination

11.5.2 Discuss individual and structural examples of heterosexism and LGBTQ discrimination.

The LGBTQ movement has achieved great gains. In 2010, “Don’t Ask, Don’t Tell” legislation, which barred openly gay and lesbian people from serving in the military, was repealed. In 2014, the Supreme Court ruled in *Obergefell v. Hodges* that same-sex couples have the right to marry in all 50 states. However, the LGBTQ population still faces social inequities, often due to **heterosexism**, or attitudes, biases, individual prejudices, and structural discrimination in favor of heterosexual people. Heterosexism is based on the belief that heterosexuality is superior to other forms of attraction and love.

Discrimination against any group can emerge between individuals, as when a person refuses to hire someone for a job based on the person’s race, gender, or sexuality, or it can be structural, as when laws codify

discriminatory treatment toward some members of society. For example, in November 2008, voters in California passed Proposition 8, which banned same-sex marriage in the state. Though this move received national media attention, California was not the first state to do this. In 1973, Maryland banned marriage between same-sex couples, followed by Hawaii in 1998; Nebraska in 2000; Nevada in 2002; Missouri and Louisiana in 2004; Kansas and Texas in 2005; Alabama in 2006; Idaho, Colorado, South Dakota, South Carolina, Tennessee, Virginia, and Wisconsin in 2006; and Florida and Arizona in 2008. During this time, there were battles at the federal level between opponents of same-sex marriage who wanted a federal amendment to the Constitution—which would have defined marriage as between a man and a woman—and proponents of same-sex marriage, who wanted to legalize it. California’s Proposition 8 and the other state bans on same-sex marriage exemplify structural discrimination against LGBTQ people because they ensured that LGBTQ individuals did not have access to the same rights and privileges as heterosexual couples, from tax benefits to the rights of surviving spouses to receive Social Security income. The Supreme Court’s decision to legalize same-sex marriage in 2015 was a major step in moving away from structural discrimination against LGBTQ people.

At the structural level of society, laws, policies, and other governmental acts can promote, discourage, or sanction discrimination. Though individuals may engage in discrimination against or hold prejudicial attitudes toward other members of society, structural discrimination ensures that some populations are not eligible, or do not receive, the same rights, privileges, and/or protections as dominant groups. Similar to how institutional racism works, structural discrimination exists when the laws and policies created at the institutional level of society intentionally or unintentionally impact people disproportionately based on their subordinated status, in this case, sexuality. Laws against marriage equality and the prevention of antidiscrimination measures that protect LGBTQ people—who have historically faced prejudice and discrimination—illustrate cases where discrimination goes beyond individual prejudice and becomes part of the social order.

Social Stratification in the LGBTQ Community

11.5.3 Recall how the LGBTQ community experiences stratification in the areas of employment, housing, adoption, and healthcare.

Keeping the ways that structural discrimination works in mind, the following sections focus on social stratification faced by the LGBTQ community, including employment

discrimination and poverty, housing, adoption, and healthcare.

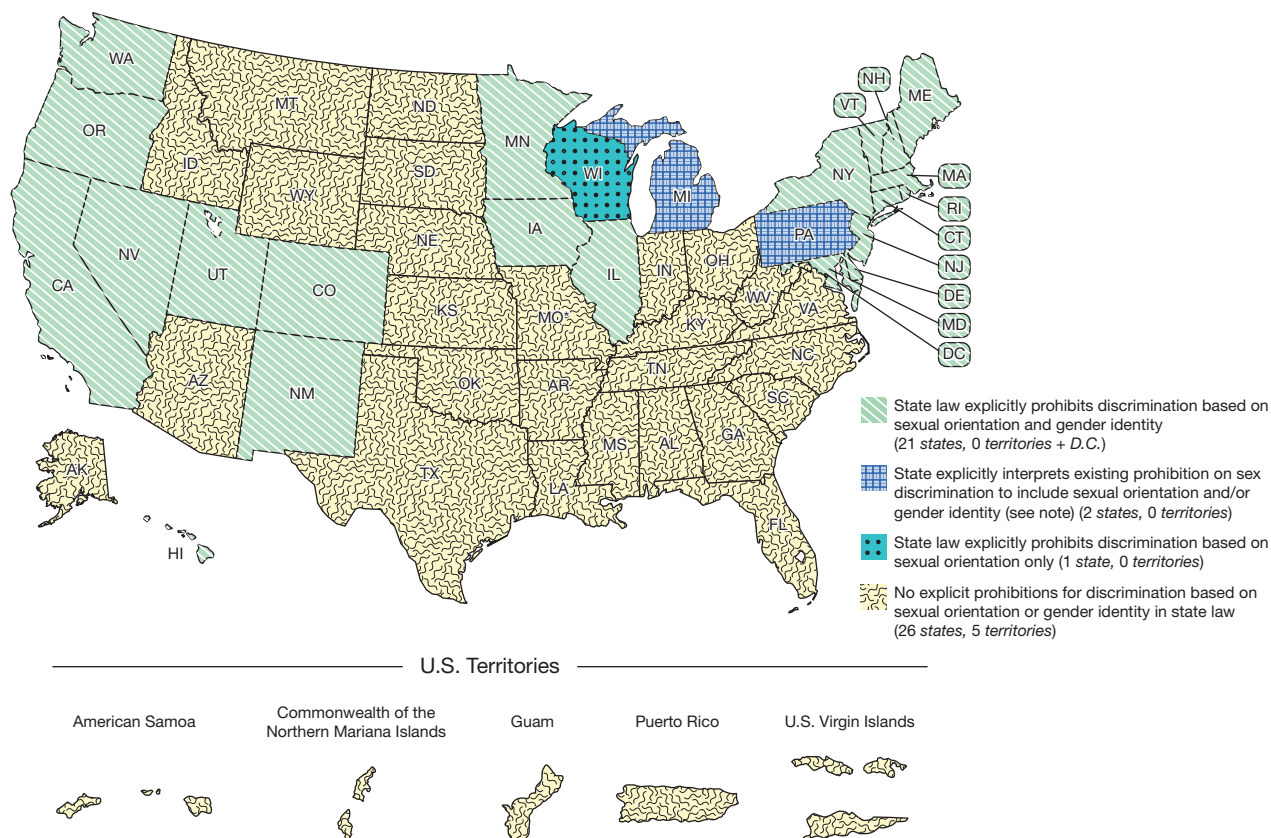
EMPLOYMENT DISCRIMINATION AND POVERTY

Gay, lesbian, bisexual, and transgender people still face discrimination in the workforce. Research suggests that 15 to 43 percent of LGBTQ workers have experienced employment discrimination in the form of being fired, denied promotions, or harassed (Badgett and Lee 2010). Twenty-seven percent of LGBTQ people have reported harassment at work, or have lost a job, because of their sexual orientation (Badgett 2012). Moreover, gay and bisexual men earn less than heterosexual men with the same qualifications (Badgett 2012). Transgender people report even higher levels of harassment: 78 percent of transgender respondents in one survey reported at least one form of harassment based on their gender identity, which is often conflated with sexual identity, as discussed earlier (Badgett 2012).

The rates of LGBTQ poverty are also higher than those in the heterosexual community. While gay and bisexual men have relatively equal rates of poverty as heterosexual men (13 percent), 24 percent of lesbian and bisexual women are poor, compared with 19 percent of heterosexual women (Sears and Badgett 2012). LGBTQ people of color are particularly more likely to live in poverty. African American same-sex couples are more likely to be poor than African American married heterosexual couples and are about three times more likely to live in poverty than white same-sex couples; African American lesbians have the highest rates of poverty among same-sex couples (Sears and Badgett 2012).

Transgender people are four times more likely to have a household income of less than \$10,000 a year and are twice as likely to be unemployed as individuals in the rest of the population; transgender people of color have an unemployment rate of four times the national average (Sears and Badgett 2012). In addition to sexual orientation or preference, then, variables such as gender and race factor into who experiences the highest levels of poverty among the LGBTQ community.

It is also important to note that transgender people in the military, and transgender people who want to serve in the military for employment, as a career, or out of love for their country, face government-sanctioned discrimination. Although President Obama had overturned a long-standing ban on transgender troops openly serving in the military, in early 2019 the Supreme Court allowed a ban on most transgender troops in the military to go into effect, without ruling on its legality (Lopez 2019). This ban was initially proposed by President Donald Trump via the social media platform Twitter in July 2017 (Vanden Brook 2019). President Trump justified the ban with the claim that transgender troops are associated with very high medical

Figure 11.7 Housing Discrimination Laws, by State, Based on Sexual Orientation or Gender Identity, 2018

SOURCE: Data from http://www.lgbtmap.org/equality-maps/non_discrimination_laws.

costs, which the military must pay. Research shows, however, that since 2016 the military has spent only about 1 percent of its healthcare budget on transgender care (Watson and McDermott 2019). Although the military does not allow discrimination based on gender identity, the new policy does not allow special accommodations for transgender people or troops diagnosed with gender dysphoria disorder, a condition that results from conflict between a person's assigned gender at birth and the actual gender with which the person identifies (Vanden Brook 2019). The medical community, however, has said that gender dysphoria should not prohibit one from serving in the military. Although the ban is in effect, ongoing Congressional hearings that began in February 2019—and the fact that transgender troops could openly serve in the military for a brief period—suggest that this debate is far from over (Watson and McDermott 2019).

There is hope for eradicating discrimination against LGBTQ employees. In July 2015, the U.S. Equal Employment Opportunity Commission (EEOC) ruled that workplace discrimination based on sexual orientation is illegal. The EEOC ruled that employment discrimination based on sexual orientation violates Title VII of the 1964 Civil Rights Act, which prohibits employment discrimination based on "race, color, religion, sex, and national

origin." The EEOC ruled that "sexual orientation discrimination is sex discrimination because it necessarily entails treating an employee less favorably because of the employee's sex" (Alter 2015). Congressional debates, too, around transgender service in the military will likely continue, suggesting that the ban may be overturned at some point in the future, as it was under President Obama.

HOUSING The Fair Housing Act, passed in 1968, makes it illegal to discriminate in rental, sales, and lending on the basis of race, color, national origin, religion, sex, disability, and familial status. But it does not include sexual orientation as a protected class (Gonzalez 2013). Twenty-one states, plus Washington, D.C., now have laws against discrimination based on sexual orientation or gender identity, as shown in Figure 11.7.

Despite state laws that protect LGBTQ people looking to rent or purchase homes, LGBTQ people continue to face housing discrimination. Forty-eight percent of same-sex older couples, in particular, face discrimination when they apply for senior housing (Eisenberg 2015). In one study, researchers had people age 50 and older apply for the same senior housing, posing as either same-sex or heterosexual couples (Eisenberg 2015). In 48 percent of the tests, those with same-sex spouses experienced

at least one type of discriminatory treatment such as fewer housing options, higher fees and rents, and more extensive application requirements than heterosexuals (Eisenberg 2015). Similarly, in a U.S. Housing and Urban Development study (2013), same-sex couples experienced unequal treatment more often than heterosexual couples when responding to online ads for rental units, with gay male couples experiencing more discrimination than lesbian couples (Gonzalez 2013). Same-sex couples were more likely to be told that units were unavailable, even if they were not.

Although the U.S. Department of Housing and Urban Development (HUD) has issued statements that discrimination against transgender renters or homebuyers based on gender identity or gender stereotypes constitutes sex discrimination and is prohibited under the Fair Housing Act (FHA), a lack of awareness contributes to discrimination, eviction, and homelessness of transgender people (National Center for Transgender Equality 2016).

According to the National Center for Transgender Equality (2016), 1 in 5 transgender people has faced discrimination when seeking a home, and more than 1 in 10 has been evicted because of their gender identity. This often leads to homelessness, with 1 in 5 transgender people experiencing homelessness at some point in their lives.

ADOPTION Gay marriage was legalized in all 50 states in 2014, but that does not automatically translate into adoption rights for gay and lesbian couples. Though same-sex couples have been able to adopt children from private, LGBTQ-friendly adoption agencies, adopting children from the foster care system continues to be challenging.

Some states, like Michigan and Texas, allow faith-based adoption groups, including those that receive public funding from the state, to refuse to allow gays and lesbians to adopt if it will violate the group's religious beliefs, but the Michigan law is currently being challenged in court (Hicks 2018). In 2018, House Republicans advanced an amendment that would allow state adoption agencies to refuse to work with same-sex couples on religious grounds, while the state agencies still received federal funding (Moreau 2018). The adoption rights of LGBTQ couples, therefore, continue to hang in the balance (Gray 2015).

HEALTHCARE Research shows that LGBTQ people are often denied healthcare because of their sexual orientation or gender identity. A recent study showed that 8 percent of LGBTQ people reported that a doctor or

other healthcare professional refused to see them because of their perceived or actual sexual orientation; 29 percent of transgender or gender nonconforming people reported that a doctor or other healthcare professional refused to see them because of their perceived or actual gender identity (Mirza and Rooney 2018). Among lesbian, gay, or queer people, too, 9 percent reported that a doctor/healthcare professional used harsh or abusive language when treating them, and 7 percent reported unwanted sexual contact from that healthcare provider, such as sexual touching, assault, or rape (Mirza and Rooney 2018). Among transgender or gender nonconforming people, 23 percent reported that a doctor/healthcare provider intentionally used the wrong name or gender when referring to them; 21 percent reported that a doctor/healthcare provider used harsh or abusive language toward them; and 29 percent reported unwanted sexual touching, assault, or rape from a healthcare provider (Mirza and Rooney 2018). LGBTQ people also report being excessively questioned about their sexuality, even when it has nothing to do with the reason for their healthcare visit (National Women's Law Center 2014). In addition, because LGBTQ people face high rates of poverty—particularly those who are of color—the cost of health insurance coverage is often prohibitive.

Homophobia and Violence

11.5.4 Discuss rates of intimate partner and sexual violence among the LGBTQ community.

Homophobia involves dislike of or prejudice against homosexual people. Sometimes, homophobia leads to violence against people in the LGBTQ community. Lesbian, gay, and transgender people experience high levels of violence, and often those levels are higher than those faced by heterosexuals.

The National Coalition of Anti-Violence Programs reports that in 2016, homicides of LGBTQ and HIV-infected people (HIV-infected people are not necessarily LGBTQ, but are often included in such studies) increased by 17 percent, from 24 in 2015 to 28 in 2016 (Yacka 2017). These statistics do not include the Pulse Nightclub shooting of 2015 in Orlando, Florida, in which 49 mostly LGBTQ people were murdered by a gunman; including the Pulse Nightclub shooting, there were 77 total homicides of LGBTQ and HIV-infected people in 2016 (Yacka 2017). Transgender women and LGBTQ people of color had a higher risk of homicide than LGBTQ people and HIV-affected communities as a whole (Yacka 2015). In the case of violent attacks

that are not homicide, many LGBTQ people face hostility from police when they report those violent incidents. Transgender women, in particular, are six times more likely to experience physical violence when interacting with the police than other members of the LGBTQ community (Michaels 2015).

When an LGBTQ person is targeted exclusively because of her/his gender or sexuality, it can be categorized as a hate crime. The Bureau of Justice Statistics' (BJS) most recent hate crime reports show that crimes motivated by bias against gender or gender identity accounted for 1.8 percent of the 7,227 reported hate crimes, and 16.9 percent of the reported hate crimes were motivated by bias against sexual orientation (FBI 2017). Of course, the rates of violence that the LGBTQ community experiences are underreported, as most people do not report incidents to the police. The Human Rights Campaign points out that LGBTQ people face higher rates of poverty, stigma, and marginalization, which place them at greater risk for sexual assault.

The LGBTQ community continues to struggle with discrimination, prejudice, and violence, but organizations across the United States (and the globe) continue to fight to create a safe, just, and compassionate world for all people. More media attention to the stratification that LGBTQ people continue to face helps to shed light on the issues at hand. To be sure, television shows like *Transparent* and *Orange Is the New Black*, which include lesbian, gay, bisexual, and transgender characters, help to create understanding about a population that has been marginalized for a very long time.



Rena Schild/Shutterstock

In *Orange Is the New Black*, actress Laverne Cox plays a transgender woman in prison. Cox is one of the first transgender actresses to gain widespread acclaim for her role in the show.

Summary

As this chapter has shown, sex refers to biology, whereas gender refers to the socially constructed traits of masculinity and femininity connected to being male or female. In Western societies such as the United States, there is a prevailing gender binary, where it is assumed that men are “masculine” and women are “feminine.” Gender roles, society’s expectations for how males and females should behave, are learned over the course of our lives from families, peers, schools, and mass media. Yet despite society’s sometimes rigid socialization processes, gender is a social construction that can be fluid and changing, with gender nonconforming people and societies like that of the Burgis people showing us gender’s malleability.

Because many societies are patriarchal, gender stratification is a part of life in much of the world. In the

United States, we see gender stratification play a role in the areas of education, the workplace, unpaid labor in the home, power and government, sports, and violence against women and girls. Feminism, which includes both social movements and theories about gender differences and inequality, continues to work for an end to gender stratification.

Related to studies of gender is sexuality, which refers to a person’s sexual orientation or preference. Gender and sexuality are often used interchangeably, as when ideas about proper “manhood” are equated with heterosexuality. But as this chapter has shown, gender identity is not the same thing as sexual identity.

Though Americans tend to overestimate the percentage of people they think identify as gay or lesbian, recent polls show that less than 5 percent of the population

identifies as gay or lesbian. Regardless, LGBTQ people still face a great deal of inequality in areas such as employment discrimination and poverty, housing, adoption, healthcare, and violence.

Agents of Change: What Can You Do?

This chapter focused on the issues of stratification by gender and sexual orientation. Stratification by gender and sexual orientation occurs in a variety of areas, from household labor and childcare, to violence and work.

Gender stratification in the area of work is particularly important to examine, as it affects a woman's ability to support herself. As we have seen, though occupational gender segregation explains a portion of the pay gap, gender discrimination also continues to be a partial explanation for the ongoing pay gap in the United States. Gender discrimination may also indirectly contribute to the pay gap because many women may be discouraged from pursuing high-paying, male-dominated jobs. Organizations like the American Association of University Women (AAUW), the National Committee on Pay Equity (NCPE), and the National Organization for Women (NOW) all continue

to fight for structural changes in society so that we may establish pay equity, or "equal pay for equal work." But as a society, we all have to come together to ensure, or demand, pay equity.

Your Turn: What Can You Do?

What structural forces do you think have inhibited the United States from establishing equal pay for equal work? Keeping these in mind, what types of suggestions do you have for minimizing or eradicating the pay gap? How might we move away from gender discrimination in pay in the workforce?

Essay Questions

1. How might society be different if traditional gender roles were reversed? How effective do you think the feminist movement has been in championing women's equality?
2. What are the underlying causes of sexism, and will society ever be able to overcome them?
3. How do homophobia and/or heterosexism influence the inequality faced by LGBTQ people?