

## **A Cluster Concept Approach to Thinking About Sexual Orientation**

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You cannot be a lesbian if you have had heterosexual relationships or you cannot be a lesbian if you have children. This is part of what the UK's Home Secretary barrister said to Aderonke Apata, a Nigerian lesbian and gay-rights activist seeking asylum in the UK on the basis of sexual orientation (Allegretti 2015). There is also a risk of not being able to count as a Lesbian and thus deported if you are not familiar with Oscar Wilde, do not go to gay clubs, or do not attend Pride (Bennett 2014). These real-life cases reflect troubling assumptions on which the UK's Home Office ascribes sexual orientation.

Cases like this show that thinking about what sexual orientation is, is important. As others have pointed out, there is currently a lot of confusion around sexual orientation (Stein 2001; Dembroff 2016). There are questions about whether one is born with a particular sexual orientation or whether one chooses it, what constitutes a sexual orientation, how one should ascribe sexual orientation, etc. What's more, governments, LGBTQI+ advocacy groups, scientists, and the average layperson, all seem to have different and conflicting answers to these questions. As a result, there is a lot of philosophical work that needs to be carried out in order to help clarify and address these issues. However, it is important that this work be carried out with care. It's important that we have a clear idea about who we have in mind when we address these issues and how we think these proposals might impact these groups of people.

In this paper, I put forward a new way of thinking about sexual orientation: a political cluster concept approach. Under this approach, sexual orientation relies heavily on one's social and political context and consists of three main sexual orientation markers: self-

identification, behaviour and internal manifestations. I engage with four metaphysical accounts of sexual orientation and argue that if we centre the concerns of some of the most marginalised groups in the LGBTQI+ community<sup>1</sup> these accounts fail at being able to address social injustice issues that arise due to discriminatory practices and attitudes on the basis of sexual orientation.

My aim is to think about the metaphysics of sexual orientation with the goal of advancing LGBTQI+ rights, especially for people of colour, immigrants, trans, and genderqueer people. In this sense, this paper is not an abstract metaphysical exercise. It is important to think about this issue in order to address social injustices. In particular, I focus on members of the LGBTQI+ community who seek asylum because they have had to flee or need to flee their home country due to severe violence and persecution, and who face persecution, harassment, and violence *on the basis of sexual orientation*. For example, what happens when someone from the LGBTQI+ community applies for asylum on the basis of sexual orientation? How is sexual orientation being understood by people making the decision to grant or deny asylum? And more importantly, how should sexual orientation be understood in these contexts to help better protect the LGBTQI+ community, especially its most disadvantaged members?

I begin by providing some context. I then move on to discuss four metaphysical accounts of sexual orientation: self-identification, behaviourism, ideal dispositionalism, and bidimensional dispositionalism. Drawing from Haslanger's method of ameliorative analysis (Haslanger 2012), I argue that if we centre the concerns of some of the most marginalised

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<sup>1</sup> We have good reasons for embracing this goal. Various feminist philosophers of science have argued that "contextual" values (the social, cultural, political, etc.) can contribute to good science. It is beyond the scope of this paper to explore and argue for any one of these specific proposals. However, this paper is very much situated within this feminist tradition of thought. For specific examples of feminist proposals about the positive role that contextual values can play in science, please see: (Clough 2012), (Solomon 2012), (Anderson 2004), and (Kourany 2010).

groups in the LGBTQI+ community, these four sexual orientation accounts fail at being able to address these concerns. To help in addressing these concerns, I put forward a new way of thinking about sexual orientation: a political cluster concept approach. I argue that we should allow for the possibility of taking into account the social and political context and that we should extend the number of sexual orientation markers to include self-identification, behaviour, and internal manifestations such as desires and fantasies.

I am specifically putting forward an account of sexual orientation for the purposes specified in this paper. For other purposes, such as a genetic understanding of sexual orientation (for example), a different account will be needed. I take this account and genetic understandings (to follow the same example) to do be doing different work. Not because the projects are from different disciplines and thus have different aims, but because the projects themselves have different aims. The aim of the account I put forward in this paper is to be better equipped to address social injustices faced by the most marginalised members of the LGBTQI+ community (this might be understood as a social scientific project). Oftentimes, this will require that we take into account sexual behaviour. Genetic accounts have other aims. One might be, for example, to learn more about the genetic basis of human sexuality, where sexual behaviour might (arguably) have nothing to with how we account for sexual orientation in the context of genetics. I do not think these two projects are incompatible. One can have an account of sexual orientation that aims to address social injustices while having another account that aims to understand the genetic basis of human sexuality, for example. My argument here is that, depending on the aim of the project, a different concept of sexual orientation will be required.

## Context

The 1951 Refugee Convention outlines what a refugee is, their rights, and the legal obligations of ratifying countries to protect refugees. Sexual orientation has oftentimes been protected under the Convention through what is outlined in Article 1A(2) as protection for a *particular social group*:

As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. (United Nations 1951, 14)

Because there is no explicit mention of sexual orientation, it is up to the countries who ratified the 1951 Convention to account for sexual orientation as they best see fit (if they consider members of a sexual orientation to constitute a particular social group that needs protection in the first place). Because there is no “universal” or agreed upon way of understanding sexual orientation, different countries understand sexual orientation differently. Furthermore, because most countries do not publish information on asylum applications, it is really hard to give a full report on the accounts they are currently using to assess sexual orientation. However, through information that has been made available (e.g. state reports, media reports, legal decisions, personal reports, LGBTQI+ advocacy groups,

and leaked documents), we know that different countries assess sexual orientation differently.

One way of understanding sexual orientation has been through sexual behaviour. For example, in the UK, a confidential Home Office document that was leaked in 2014 showed a disturbing focus on sexual acts as a way to assess an asylum seeker's sexual orientation (Diane Taylor & Mark Townsend 2014). Some of the questions asked, according to the leaked document, focused on specific sexual acts and the asylum seekers' physiological responses to these (Diane Taylor & Mark Townsend 2014).

A second way of understanding sexual orientation has been through sexual arousal examinations, which are highly invasive and unreliable indicators of sexual orientation. Such examinations have taken place in the Czech Republic and have included penile plethysmography and vaginal photoplethysmography (The BBC News 2010).

To give a third example, sexual orientation has also been understood through stereotypes. In 2018, it was reported that Austrian authorities rejected an asylum application on the basis of sexual orientation because according to them, the applicant did not walk, behave, or dress in a way that indicated that the applicant was homosexual (The Economist 2018).

While the Court of Justice of the European Union ruled in 2014 that EU countries (including the ones just mentioned) cannot use tests like penile plethysmography and vaginal photoplethysmography to assess sexual orientation, they did not entirely rule out the use of stereotypes or the use of information provided by asylum seekers about their sexual practices (*A, B, C v Staatssecretaris van Veiligheid En Justitie* 2014).<sup>2</sup>

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<sup>2</sup> For a short summary, please see (*A, B, C v Staatssecretaris van Veiligheid En Justitie* 2014)

## Sex and Gender

Before moving on to discuss the four metaphysical accounts of sexual orientation, it is important to draw attention to the often-confusing relationship between sex, gender, and sexual orientation. For one, the categories of sex and gender are important when engaging with the metaphysics of sexual orientation because they determine, to a certain extent, what the concept of sexual orientation refers to.

On some understandings, sexual orientation refers to a person's attraction, desire, etc. to people with a particular sex[es]. For example, under the UK's Equality Act 2010 sexual orientation has to do with a person's sex:

- (1) Sexual orientation means a person's sexual orientation towards—
  - (a) persons of the same sex,
  - (b) persons of the opposite sex, or
  - (c) persons of either sex. (Equality Act 2010, pt. 2, Ch.1, 12)

On other understandings, sexual orientation refers to a person's attraction, desire, etc. to people with a particular gender[s]. For example, according to the International Lesbian and Gay Association (ILGA), sexual orientation "Refers to each person's capacity for profound affection, emotional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender" (ILGA-Europe 2019). And to further complicate things, on some understandings of sexual orientation, sex and gender don't seem to figure at all. For example, Stonewall, an LGBTQ rights charity in the UK, defines sexual orientation as "A person's romantic and/or sexual attraction to another person" (Stonewall 2019).

A further problem is that, when sex and gender do figure, it is not clear how these categories are being understood or what the relationship between these categories is (if any). This is important because our understanding of these two issues will have a big impact on our resulting sexual orientation taxonomy.

The first three metaphysical accounts which I will be discussing (self-identification, the behavioural view, and the dispositional view), are all set up by Stein with the aim of not committing to any of the ongoing debates in the metaphysics of sex and gender<sup>3</sup>. In order to do this, Stein adopts “sex/gender” as a placeholder for “sex” or “gender”. For example, instead of saying something like: sexual orientation refers to a person’s attraction, desire, etc. to people with a particular “sex[s]”, under Stein’s proposal we would say: sexual orientation refers to a person’s attraction, desire, etc. to people with a particular “sex/gender”.

I think that a placeholder like “sex/gender” is not very helpful because it does not help us narrow down an account of sexual orientation that will be most useful for addressing social injustices faced by some of the most marginalised groups in the LGBTQI+ community. Following on from Dembroff, I will argue that both sex and gender should be included and that these categories should be understood as socially constructed and independent of each other. I remain neutral on the question of how many sexes or genders there are and whether these are discrete or continuous categories.

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<sup>3</sup> Stein is only committed to “sex” referring to biological features and “gender” to cultural ones. He remains neutral on what determines sex or what determines gender, how many sexes or genders there are, and whether these are discrete or continuous categories.

## Metaphysical Accounts of Sexual Orientation

I now turn to four existing metaphysical accounts of sexual orientation: self-identification, behaviourism, ideal dispositionalism, and bidimensional dispositionalism. I critically review each one of these in turn. The point of doing this is to show that none of these metaphysical accounts of sexual orientation are fit for the purposes we set out at the beginning of this paper, which is to address social injustices faced by some of the most marginalised groups in the LGBTQI+ community. Following this critical review, I propose a new way of understanding sexual orientation, one which is better suited for our purposes.

### Self-Identification View

One way of understanding sexual orientation is in terms of self-identification. According to Stein, this is the view that if a person X says that they have a “q” sexual orientation, then that is their sexual orientation. (Stein 2001, 44–45). This view is widely used in, for example, economic studies and statistical surveys and reports.<sup>4</sup>

Stein argues that the self-identification view is problematic because it does not allow for the possibility of self-deception (Stein 2001). That is, it is possible that someone might identify with a sexual orientation that does not match the one they actually have. The thought is that perhaps someone has repressed their desires so deeply, that they now believe they have a different sexual orientation to the one they actually have. I agree with Stein that this is a problem for the self-identification view, but I also argue that more importantly, this is a problem for the purposes set out in this paper. This is because this view does not allow for the possibility that someone’s self-identification and attraction, desire, etc. can come apart and be in opposition to each other. This is important if we want

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<sup>4</sup> Examples of these include: (Dilmaghani 2018; ONS 2019; Uhrig 2015)



to be able to account for the experiences of, for example, people who live in homophobic societies and who as a result of this are unable to come to terms with their sexual orientation as quickly as their heterosexual peers.

In the context of asylum applications on the basis of sexual orientation, the self-identification view is problematic because it is restrictive in terms of the number of cases it can account for. The view is restrictive because it is only able to account for one sexual orientation marker, self-identification, and fails to account for other markers typically associated with sexual orientation, such as behaviour. Most countries that criminalise homosexuality criminalise what they call “homosexual behaviour”. People with an LGBTQI+ sexual orientation who have been accused of engaging in “homosexual behaviour” are oftentimes subjected to extreme violence and in some cases, death. It seems that in cases like this part of the basis for which people are being persecuted for has to do with the behaviour or assumed behaviour that they are thought to be engaging in and not because they identify with “X”. For example, it is possible for a woman to be persecuted for engaging in sexual behaviour with other women while not identifying as a lesbian or a bisexual person, for example (because maybe these concepts are not available in her context). The self-identification view is thus problematic because it is unable to account for the kind of hate and discrimination that people in these situations are and have been subjected to, which is precisely what we want an account of sexual orientation that aims to address social injustices to be able to do.

### Behaviourism

Another way of understanding sexual orientation is in terms of sexual behaviour. Under this view, sexual orientation is determined solely on the basis of observable sexual

behaviour. According to Stein, this is the idea that one's sexual behaviour determines one's sexual orientation (Stein 2001).

This view runs into three main problems. The first is that it is not able to account for the fact that one's sexual desires and fantasies might be in conflict with one's actual sexual behaviour. For example, LGBTQI+ people living in extreme situations, like in Sudan, Iran, Saudi Arabia, or Yemen, might find that they are not able to express their sexual orientation through behaviour without putting their life at risk. The opposite is also true. There is a possibility that LGBTQI+ people living in these places might actually be engaging in sexual behaviour that does not reflect their sexual orientation. While these situations might sound extreme or only applicable to countries where homosexuality is criminalised, this is not the case. There is social pressure to avoid LGBTQI+ relationships, and enter heterosexual ones, even in countries where homosexuality is not criminalised. A good example is forced heterosexual marriages, where sexual behaviour is often expected. Consider the case of British South Asian communities in the UK. According to the Forced Marriage Unit (FMU), in 2017, 1,196 people reported or sought advice relating to a forced marriage. Out of these, 21 people identified as LGBT (The Home Office 2018). But it is important to note that the number is probably higher because people are not always asked by the FMU for their sexual orientation and as a result, this information is not always collected. These are, of course, cases that have been formally reported, but there are plenty of other cases that go unreported. The experiences of the LGBTQI+ British South Asian community being forced into heterosexual marriages is well documented, even if through anonymity (Kotecha 2017). This is another example of people who might be engaging in sexual behaviour that does not reflect their sexual desires and fantasies, even in countries where homosexuality is not criminalised.

Another reason that a behavioural account of sexual orientation is problematic is that if one has never had sex, then one does not have a sexual orientation (Stein 2001, 43). This doesn't seem right because it seems possible that people can have internal manifestations of their sexual orientation, including sexual desires and fantasies that haven't yet been expressed. Again, it is possible that, due to safety reasons, LGBTQI+ persons make a choice not to engage in sexual behaviour that best reflects their sexual orientation.

Furthermore, this view is unable to account for a lot of the hate crimes and discrimination faced by the LGBTQI+ community on the basis of sexual orientation. LGBTQI+ people are often subject to hate crimes and discrimination on the basis of sexual orientation that might not have anything to do with sexual behaviour. Take for example, political lesbianism. This was (mostly) a feminist second-wave political movement that aimed to challenge male supremacy. The idea was that the most effective way to challenge and disrupt the political system that benefited men and oppressed women was to stop taking part in that system. Political lesbianism challenged the idea that women were inferior to men. They refused to be defined by men and instead redefined themselves. They put women first. For some women, this commitment included engaging in sexual and romantic relationships with other women. Under patriarchy, it was (and still is) a political act to love and prioritise women. Some of these women were already self-described lesbians and bisexual women, and some were self-described heterosexual women who wanted to make a political statement. Political lesbianism was and still is controversial because it disrupts, amongst other things, patriarchy. Sexual behaviour aside, the idea that women do not need men to exist is (sadly), still a radical idea. Two women in a relationship challenge assumptions about the role of men in society; it disrupts power balances that benefit men.

In most social contexts, that is a political act. Lesbians are the subject of hate crimes and discrimination not just because of the assumed sexual behaviour they are thought to be engaging in. They are also the subject of hate crimes and discrimination because they challenge patriarchy, misogyny, and power relations that oppress women. Reducing sexual orientation to sexual behaviour fails to capture this complexity. This example, I think, highlights why it is a mistake to reduce sexual orientations to sexual behaviour.

Homophobes are not just angry because lesbians are engaging in or thought to be engaging in sexual behaviour with each other. They are also angry because lesbians challenge heteronormative and patriarchal systems. An account of sexual orientation that reduces sexual orientations to sexual behaviour misses the bigger picture when trying to address social injustice issues. And in doing so, it fails to account for many of the social injustices faced by the LGBTQI+ community.

### Ideal Dispositionalism

Another way of understanding sexual orientation is in terms of dispositions. The first dispositional account of sexual orientation on our list is what Stein calls Ideal Dispositionalism. According to Stein: “a person’s sexual orientation is based on his or her sexual desires and fantasies and the sexual behaviours he or she is disposed to engage in under ideal conditions” (Stein 2001, 45). According to him:

Conditions are ideal if there are no forces to prevent or discourage a person from acting on his or her desires, that is, when there is sexual freedom and a variety of appealing sexual partners available. (Stein 2001, 45)

This proposal, as pointed out by Stein, incorporates to a certain extent aspects of self-identification and sexual behaviour. It takes into account people's sexual desires and fantasies, in a way that a behavioural account of sexual orientation does not. It also manages to take into account sexual behaviour through dispositions. In other words, sexual behaviour is relevant to this account because it reflects dispositions.

One problem with this account, and one that Stein acknowledges (although he later dismisses), is what he calls "the counterfactual problem". According to ideal dispositionalism, in order for a person to know their sexual orientation, they need to know what they would do in a counterfactual situation (i.e. what they would do under ideal conditions). This, however, is difficult to assess because it is very difficult to know what one would do in a counterfactual situation. According to Stein, this is a problem but does not count against ideal dispositionalism because this account is a metaphysical one and the problem highlighted by the counterfactual problem is an epistemological one. In other words, Stein argues that his proposal is a metaphysical one concerned with the way things are, and the epistemological problem posed by the counterfactual problem is one about what we can know. One could ask if Stein is justified in separating the metaphysical question from the epistemological question, but I think that this misses the point. Instead, I argue that whether Stein thinks this is a problem for ideal dispositionalism or not is beside the point. If we want an account of sexual orientation that is helpful in addressing the social injustices faced by the LGBTQI+ community, then an account in which one might never have epistemological access to one's sexual orientation is not a very good one. An account in which one does not have access to one's sexual orientation would not be helpful in this actual world, where LGBTQI+ people are in need of reporting a hate crime, seeking asylum, or reporting discrimination on the basis of sexual orientation. It is not helpful in reporting

and it is not helpful for government officials assessing these reports and claims. This is a good reason to dismiss ideal dispositionalism.

### Bidimensional Dispositionalism

Another way of understanding sexual orientation is through what Dembroff calls Bidimensional Dispositionalism. This proposal is, I think, one of the best options for understanding sexual orientation out there. Dembroff proposes various changes to previous understandings of sexual orientation, including a new way of understanding the categories of sex and gender in relation to sexual orientation and as a result, a new taxonomy of sexual orientation categories. I argue that even with these changes, this account falls short of the aims that we have set out in this paper. According to Dembroff:

A person *S*'s sexual orientation is grounded in *S*'s dispositions to engage in sexual behaviors under the ordinary condition[s] for these dispositions, and which sexual orientation *S* has is grounded in what sex[es] and gender[s] of persons *S* is disposed to sexually engage under these conditions. (Dembroff 2016, 18)

This account follows Stein's account in that it appeals to dispositions. Contrary to Stein, however, Dembroff aims to move away from appealing to ideal conditions. Instead, they appeal to what they call "ordinary conditions". Ordinary conditions are meant to fall somewhere in between "actual conditions" and "ideal conditions". Ordinary conditions, according to Dembroff, are "conditions under which people *in fact apply* the term 'sexual orientation' (and relevantly associated terms)" (Dembroff 2016, 15). The conditions under which people in fact apply the term, according to Dembroff, are three. The first condition is

that, in order to ascribe a person a sexual orientation, that person must be attracted to persons because they are of a particular sex or gender (2016, 17). The second condition requires that there be a “reasonable diversity of potential sexual partners” (Dembroff 2016, 17). This move intends to move Dembroff’s proposal away from Stein’s ideal conditions. Under Stein’s account, ideal conditions required that one have a “variety” of sexual partners available. Dembroff aims to tone down this requirement, but not so much so that it reflects actual conditions in which people might have very limited options of sexual partners available. With this move, they seek to only capture sexual behaviours that arise when one has options, and not when one has limited options (like e.g. in prisons). The third condition requires that “one is willing and able to sexually engage with other persons” (Dembroff 2016, 17). This condition is meant to restrict the kinds of sexual behaviour that one should consider relevant to ascribing sexual orientation. According to Dembroff’s proposal, non-consensual sexual behaviour would not count as relevant to ascribing sexual orientation. Sexual orientation would also not be ascribed to those who are physically or psychologically unable to engage in sexual behaviour (Dembroff 2016). These three conditions make up the “ordinary conditions” under which we would ascribe sexual orientation under Dembroff’s proposed bidimensional dispositionalism.

### **Sex and Gender**

Another important departure from Stein’s ideal dispositionalism is that Dembroff treats sex and gender as different categories. Stein avoids making any specific distinction between the two and instead uses “sex/gender” as a placeholder to talk about sexual orientation. Dembroff treats them as separate categories. They argue that people can be attracted to people on the basis of certain sex[es] and gender[s], and that these two

categories won't necessarily align like they do under an account which takes one of these categories to determine the other. That is, some philosophers argue that the category of sex determines the category of gender. While other philosophers argue that the category of gender determines the category of sex. Dembroff calls the first the "cisnormative view" and the second the "unification view". Under these accounts, sex is taken to be a biological category and gender a social category (along the nature/culture binary divide). Dembroff rejects both the cisnormative view and the unification view. They argue that sex does not determine gender and that gender does not determine sex. They argue that there is a distinction between the two, although not one along the nature/culture binary. On their view, both of these categories (sex and gender) are "(at least partially) culturally constructed" (Dembroff 2016, 9). Although this distinction is not entirely clear, they seem to be committed to the idea that the category of sex tracks biological features (it is not clear what these features are), that the category of gender tracks social features, and that both of these are in some sense socially constructed. The reason this distinction is important when thinking about sexual orientation is because the way in which we account for sex and gender will determine, in part, how we account for sexual orientation.

According to Dembroff, if we do not distinguish between sex and gender, the sexual orientation account that will follow will be a one-dimensional account that will only ever be able to account for either 1) sex-attraction or 2) gender-attraction. Under a cisnormative view and a unification view, this means that we will only ever be able to treat the categories of sex and gender in relation to each other, but never independently of each other (because under these views, one category determines the other). This is a problem for Dembroff who not only argues that the cisnormative view and the unification view have got it wrong, they also argue that it makes more sense to treat these categories as independent categories



because it gives us the conceptual tools to account for the gender identity and/or anatomical transition of, for example, genderqueer and trans people. Dembroff wants to allow for the possibility that these categories can be combined in a variety of ways. Under their view, sexual orientation tracks both sex and gender, as independent categories. This makes their view bidimensional, instead of unidimensional.

Dembroff's account also makes an important move away from ideal dispositionalism by proposing that sexual orientation is grounded in the sex[es] and gender[s] one is disposed to sexually engage with and *not* on one's own sex and gender. The thought is that this move will do away with the assumption that cisheterosexuality is the norm and that all other sexual orientations are deviant. In order to carry this out, Dembroff proposes that we rearrange people into new sexual orientation categories that do not assume a distinction between cisheterosexuality and queer sexual orientations (Dembroff 2016). This means that under bidimensional dispositionalism, we end up with a completely new taxonomy of sexual orientation categories. Current understandings of sexual orientation categories such as heterosexual, lesbian, bisexual, etc., disappear under bidimensional dispositionalism. Take for example, Alfonso, who is a cis heterosexual man. Under bidimensional dispositionalism, he would have the same sexual orientation as Margarita, who is a cis lesbian woman. This is a big move away from current western understandings of sexual orientation. It's also a big move away from how we account for political distinctions that are able to bring light to certain forms of oppression. Under our current view, for example, it seems right that lesbians and heterosexual men have different sexual orientations and that we continue accounting for these sexual orientations in this way because lesbians and heterosexual men do not share the same political struggles. However, under Dembroff's proposed view, these two groups would share the same sexual orientation.

Dembroff's proposal is that if Margarita is discriminated against for having the same sexual orientation as Alfonso, that that should be treated as sex-discrimination or gender-discrimination, and not as discrimination on the basis of sexual orientation.

I think that, although this account raises important questions and worries about our current western understandings of sexual orientation, it ultimately fails to address the many social injustices that the LGBTQI+ community faces, something which Dembroff also wants to achieve. According to them, a new concept of sexual orientation should be (amongst other things): "conducive for establishing legal and social protections for persons who have queer sexual orientations" (Dembroff 2016, 5). In what follows, I will argue that the bidimensional dispositional account of sexual orientation does not achieve this goal. First, I will argue that the concept of sexual orientation put forward by Dembroff is ultimately unhelpful for establishing protections for people with an LGBTQI+ sexual orientation. Second, I will argue that, contrary to Dembroff's proposal, one's sex and gender should play an important role in understanding sexual orientation.

### **Problems with Bidimensional Dispositionalism**

For an account of sexual orientation to be useful for the aims we have set forth in this paper, it is important that we have a well-defined concept of sexual orientation. This is especially the case if we want the account to have any potential practical applications. To this end, in this section I begin by addressing issues of vagueness in Dembroff's account before moving on to address the more specific reasons as to why their account is not fit for the aims we have set forth in this paper.

The first problem has to do with vagueness about what the concept of sexual orientation refers to. According to Dembroff's second condition, "(II) The operative concept

assumes attraction to certain persons while having a reasonable diversity of potential sexual partners” (2016, 17). As it stands, this condition leaves unclear who a person is supposed to be ‘attracted to’ in order to be able to ascribe them a sexual orientation. According to Dembroff’s second condition, it is “attraction to certain persons” (2016, 17). However, it is unclear who these “certain persons” are or who counts as a “certain person”. Without clarification, “certain persons” could be taken to refer to persons without tracking the fact that these persons have their sex and gender in common. This is important because this is precisely why some people in the LGBTQI+ community are subject to hate and discrimination on the basis of sexual orientation. It is because they are attracted to people that are different from the sex or gender that society expects them to be attracted to. This is important in addressing social injustice issues within the LGBTQI+ community.

One way of clarifying this issue would be to say something along the lines of: “The operative concept assumes attraction to [persons of a certain sex or gender] while having a reasonable diversity of potential sexual partners”. However, it is unclear if this is what Dembroff aims to capture. If “certain persons” was employed by Dembroff with the intention of remaining ambiguous, then a different issue arises: this condition fails to capture details that are significantly relevant to our everyday concept of sexual orientation and that is especially important in addressing social injustice issues that arise on the basis of sexual orientation.

Leaving this issue aside, there is another problem that I would like to draw our attention to. According to Dembroff’s third condition, “(III) The operative concept assumes that one is willing and able to sexually engage with other persons” (Dembroff 2016, 17). In this condition, it is also unclear who these “other persons” are supposed to be. Again, if Dembroff aims to be vague on this issue, this condition would then be in danger of not

capturing details that are important to our everyday concept of sexual orientation and to addressing social injustice issues. The second problem that I would like to highlight has to do with the explanatory work that “willing” is tasked with carrying out. I agree with Dembroff that a concept of sexual orientation should not count nonconsensual sexual behaviour as reflective of a person’s sexual orientation. The problem is that Dembroff does not provide us with the conceptual tools that we need in order to stipulate what counts as “willing” in situations in which people *have* given their consent. Consider the case of a lesbian woman who is seeking asylum on the basis of her sexual orientation. This woman has only ever engaged in sexual behaviour with men. The behaviour was consensual, but according to the woman, this sexual behaviour is not reflective of her actual sexual orientation. She goes on to explain that when the opportunity to engage in said sexual behaviour arose, she thought to herself “why not”. Due to safety reasons, she was not able to engage in sexual behaviour that was consistent with her actual sexual orientation, so she had sex with men because it was better than nothing. In this case, it is not clear what sexual orientation one would ascribe her. According to Dembroff, “We refuse to ascribe sexual orientations to someone on the basis of their actual sexual behaviors if (*e.g.*) they are voluntarily celibate, subject to sexual contact without consent, or possess a prohibitive medical condition” (2016, 17). The woman in our example, however, did consent and was willing to engage in said sexual behaviour. Dembroff’s account does not give us the conceptual tools to be able to clearly claim that this is a lesbian woman. Under a strict reading of condition number three, this woman’s sexual behaviour would correspond to that of a heterosexual woman because she was willing to engage in sexual behaviour with men. This, however, is undesirable because it prevents her from getting the protection that she needs. This is a problem for Dembroff’s account, which aims to protect people with LGBTQI+ sexual orientations.

Another main issue with bidimensional dispositionalism has to do with its narrow focus on dispositions to sexual behaviour. Because Dembroff's account narrowly focuses on sexual behaviour, it fails to account for hate crimes and discrimination on the basis of sexual orientation that might not have anything to do with sexual behaviour. The political lesbian example discussed in the behaviourism section is a good example of this. This is a problem if we want an account of sexual orientation that is going to be able to help in addressing these issues.

Because of this and all of the unclarities that I have drawn attention to, Dembroff's view is undesirable and ineffective when it comes to addressing problems that some of the most marginalised groups in the LGBTQI+ community face. I have chosen to focus on issues to do with asylum because I consider asylum to be one of these such issues. However, I take this to be only one example out of many. The problems that I outlined also arise when we apply them to other situations in which people with an LGBTQI+ sexual orientation face hate and discrimination on the basis of their sexual orientation.

### **Political cluster concept approach**

With the aim of addressing the concerns of some of the most marginalised groups in the LGBTQI+ community, I propose a new way of thinking about sexual orientation: a political cluster concept approach. This political cluster concept consists of three main sexual orientation markers: self-identification, behaviour (sexual but also romantic), and internal manifestations, such as desire, attraction, and fantasies (sexual but also romantic). I propose that the weight of each of these markers should rely heavily on one's social and political context.

Self-identification is about self-identifying with a sexual orientation category. This can happen in various ways. The self-identification marker works as a cluster concept that is largely dependent on the social and political context of the person we are ascribing a sexual orientation to. In some cases, people will self-identify through sincere utterances. In other cases, where openly self-identifying is unsafe, self-identification will instead be a matter of an internal act of recognition. In yet other cases (for example, the case of someone who is unreflectively heterosexual) there won't be an act of self-identification, but there will be support for the thought that a person tacitly self-identifies in a particular way (this might be informed by other sexual orientation markers). The cluster concept account has the resources to accommodate all of these variations and more. The behaviour marker is the marker that allows us to account for the sexual as well as romantic behaviours that might be reflective of a person's sexual orientation. As I've argued in previous paragraphs, a person's sexual behaviour won't always be reflective of their sexual orientation, but in cases where it is, this marker is the marker that is able to account for these experiences. Internal manifestations is a marker that, as opposed to the behaviour marker, allows us to account for those desires, attraction, etc. that a person experiences internally and which they think are reflective of their sexual orientation.

My proposal has the advantage of having the conceptual capabilities to account for more than one sexual orientation marker. A reductive approach that only focuses on one marker, fails to account for people in vulnerable situations who might not be able to express their sexual orientation through that one sexual orientation marker. Furthermore, a reductive approach that only focuses on one marker, fails to account for social injustices on the basis of sexual orientation that fall outside of the scope of that one sexual orientation marker. For these reasons, my proposal seeks to account for three main sexual orientation

markers that are typically associated with sexual orientation, self-identification, behaviour, and internal manifestations. The hope is that this proposal will expand the number of conceptual tools available to people with an LGBTQI+ sexual orientation, so that they are better prepared to report a hate crime and or seek protection, should they need to.

According to this cluster concept approach, it is an a posteriori question what sexual orientation markers will count towards ascribing someone a particular sexual orientation. This ascription will depend largely on the social and political context. However, under this approach, as with other cluster concept accounts, there will sometimes be sexual orientation markers that people with a particular sexual orientation will have in common with each other, and which will help us to identify them as being a member of a particular sexual orientation category. In addition to this, I propose that instead of ascribing sexual orientation in terms of necessary and sufficient conditions, we ascribe sexual orientation in terms of factors that might be relevant to assessing a person's sexual orientation. The aim is that this proposal will provide us with a much more flexible framework by 1) not necessarily requiring any one sexual orientation marker in order to ascribe sexual orientation and by 2) allowing for the possibility of taking into account the social and political context of those reporting their own sexual orientation and of those assessing a person's sexual orientation. The three factors are:

1. That a person self-identify with a sexual orientation.
2. That they have internal manifestations such as desires and fantasies (sexual or romantic) about other people at least partly because those people (the people they have internal manifestations about) are of a particular sex[es] and gender[s].

3. That they've engaged in consensual sexual or romantic behaviour with other people at least partly because those people (the people they've engaged in consensual sexual or romantic behaviour with) are of a particular sex[es] and gender[s].

This account is able to account for intuitive cases in which all three of these sexual orientation markers line up. Consider the case of a woman who is a self-described lesbian. This woman only desires and fantasises about women and has only engaged in sexual behaviour with other women. This woman would count as a lesbian under this account. This account would also be able to account for the sexual orientation of people whose sexual orientation markers don't all line up. Consider the case of another woman. This woman also self-identifies as a lesbian but lives in a country where homosexuality is criminalised. She desires and fantasises about women, but due to the criminalisation of homosexuality in her country, she has never engaged in sexual behaviour with other women. Under this cluster concept approach, and according to her social and political context, we would assign her the sexual orientation she identifies with and that corresponds with her desires and fantasies. A woman who has only engaged in consensual sexual behaviour with women, only desires and fantasises about women, but who does not self-identify as a lesbian (because perhaps she lacks the concept, due to her oppressive social context), would be able to be accounted for as a lesbian under this proposal.

This cluster concept approach is not designed to clearly demarcate between all possible cases. It admits that there might be borderline cases that might be hard to pin down, but as far as I am concerned, this is not a big problem. This is because this approach does not seek to find out "what *really* makes one a heterosexual" or "what *really* makes one gay". This approach aims to find out what account of sexual orientation is best equipped to



address social injustices faced by some of the most marginalised groups in the LGBTQI+ community.

### **Sex and Gender**

Furthermore, I propose that a person's sexual orientation is based (partly) on the sex[es] and gender[s] of persons they are attracted to. I follow Dembroff on this point and agree with them that sex and gender are independent categories that are (at least partially) socially constructed. This theoretical move allows us to expand our current sexual orientation taxonomy. For example, on a binary account that takes sex to determine gender or where gender is taken to determine sex, there are very little to no conceptual resources for trans, genderqueer people, and people who identify outside of this binary to map their sexual orientation. This is because the categories of sex and gender, under these accounts, will always line up with each other, and so will not be able to account for someone whose sex doesn't line up with their gender or with someone whose sex and gender identity lie outside of this binary model. Since my aim in this paper is to advance the rights for some of the most marginalised groups in the LGBTQI+ community, including trans and genderqueer people, it is important that an account of sexual orientation be able to provide this community with the conceptual resources that are needed in order for these groups to be able to report social injustices and seek protection on the basis of sexual orientation. An account that allows these two categories of sex and gender to come apart is in a better position to be able to account for trans and genderqueer people whose sex and gender might not necessarily line up. An account like this would allow that someone could be attracted to someone on the basis of their sex and gender, independently of each other.

I disagree, however, with Dembroff's argument that one's own sex and gender should not play a role in understanding sexual orientation. For many people, their sex and gender play an incredibly important role in understanding their sexual orientation (Bettcher 2014). In addition to this, getting rid of this component would weaken our account of sexual orientation because it would leave us without the conceptual tools required to address many of the *current* social injustices faced by the LGBTQI+ community. This is because understanding sexual orientation only on the basis of the sex[es] and gender[s] one is attracted to and not on one's own, would get rid of our current western sexual orientation taxonomy and lead us towards a completely new one. For example, under a sexual orientation taxonomy that does not take into account one's own sex and gender, men who are attracted to women and women who are attracted to women would share the same sexual orientation. That is, heterosexual men would share the same sexual orientation as lesbian women. This is the same for women who are attracted to men and men who are attracted to men. They would share the same sexual orientation in virtue of being attracted to the same sex and gender. This means that heterosexual women and gay men would also share the same sexual orientation. This is not helpful in addressing some of the *current* discrimination faced by lesbians, bisexuals, and gay men.

The aims I have set forth in this paper are very practical. We need an account of sexual orientation that will help us address current social injustice issues faced by some of the most marginalised members of the LGBTQI+ community, such as those seeking asylum on the basis of sexual orientation. My argument against Dembroff's view is, quite simply, that their sexual orientation taxonomy does not give us the conceptual tools required for achieving our aims. People currently seeking asylum on the basis of sexual orientation are seeking asylum on the basis of sexual orientation categories such as lesbian, gay, and

bisexual. Dembroff's account does not make room for this. We need an account of sexual orientation that is able to account for this reality and not an ideal one in which, in order to map out one's sexual orientation, one needs to understand and be familiar with a radically new model for understanding sexual orientation (including the potential new sexual orientation categories 'C2' and 'MA-1' resulting from this model, according to Dembroff (2016, 22–23)).

I propose that in order to be in a better position to address social injustices faced by the LGBTQI+ community, such as seeking asylum on the basis of sexual orientation, we keep one's sex and gender as an important component of sexual orientation. This will allow us to keep the sexual orientation categories that are currently and widely in use. In addition to keeping some of our current sexual orientation categories, this proposal would also allow us to account for new sexual orientation categories. This is because if we take sex and gender to come apart, this allows us to be able to account for people who are attracted to various combinations of sex and gender.

What I would like to do now is give an example of how this would all look. However, before we do this, there are still big questions looming in the background about how many sex and gender categories there are and whether these categories are discrete or continuous. These questions are important to address because they will determine the number of our cluster concept sexual orientation categories and whether these categories are discrete or continuous. Unfortunately, addressing these is a project for the future. For this reason, I cannot provide a chart of our resulting sexual orientation taxonomy. However, I do think it is important to provide a few examples of how the cluster concept framework would be able to account for existing sexual orientation categories (something Dembroff's account is not able to do). To do this, let's assume that there are only three sexes and three

genders and that these categories are discrete. The resulting sex and gender tables would look something like the following:

Sex		
Female	Male	Intersex

Table 1

Gender		
Woman	Man	Genderqueer

Table 2

Because these categories (sex and gender) are discrete, the resulting sexual orientation categories would also be discrete. Under a sex and gender model like this, a cis woman whose sex and gender line up and who is only attracted to other women (whether these women be cis or trans), would be classified as a lesbian. In addition to this, this setup would also be able to account for a cis man who is only attracted to trans men, this sexual orientation category is sometimes described as “trans-oriented”. There is also room for asexuality. For example, consider the case of a cis man who is not sexually attracted to anyone but is romantically attracted to men and women (whether they be cis or trans). This person would be a biromantic asexual (this is another sexual orientation currently and commonly in use. This sexual orientation category describes a person who is romantically attracted to men and women).

What is important, then, is that we provide a sex and gender model in which sex and gender work as independent categories, where one does not determine the other. It is also important that we take into account the sex and gender of the person we are ascribing a sexual orientation to. This is important in order to be able to account for current sexual orientation categories.

I admit that this model is more complicated than the common unidimensional account and requires a lot more work. Again, up until now, many issues remain unresolved as regards the categories of sex and gender. This topic deserves full attention on its own, which I am not able to do here. I will say, however, that in order to move towards an account of sexual orientation that is better prepared to deal with social injustice issues faced by some of the most marginalised groups of the LGBTQI+ community, we need an account of sex and gender that is flexible enough to capture existing sexual orientation categories as well as provide the conceptual tools to be able to account for new sexual orientations. I have argued that the first step in being able to do this is through an account of sexual orientation that accounts for both sex and gender, where these categories are understood as independent of one another and socially constructed. I have also argued that we should understand sexual orientation not only on the basis of the sex[es] and gender[s] one is attracted to, but also on the basis of one's own sex and gender.

## **Conclusions**

I have put forward a political cluster concept approach of sexual orientation and argued that this account would be better suited than self-identification, behaviourism, ideal dispositionalism, and bidimensional dispositionalism to address some of the social injustices faced by some of the most marginalised groups in the LGBTQI+ community. This cluster concept includes three main sexual orientation markers: self-identification, behaviour, and internal manifestations of one's sexual orientation such as desires and fantasies. According to the cluster concept approach, no one sexual orientation marker is necessary for ascribing sexual orientation and the weight of each of these markers is dependent on the social and political context of those reporting their own sexual orientation and of those assessing a

person's sexual orientation. I have also argued that both sex and gender, understood as independent and socially constructed categories, are relevant when ascribing sexual orientation, this includes one's own sex and gender.

There remain some important questions about the nature of the categories of sex and gender and how these will impact our resulting cluster concept of sexual orientation categories. While I don't have the space to explore the issue of whether sex and gender categories are discrete or how many sexes and genders there are, I do think that the cluster concept framework is flexible enough to allow that we are both able to keep some of our existing sexual orientation categories and expand our conceptual tools to map new sexual orientation categories. An account of sex and gender that gets us closer to being able to capture these experiences will be better equipped to deal with some of the hate and discrimination that some trans, non-binary, and genderqueer people face. With this in mind, I leave open the question of whether we should understand the categories of sex and gender as discrete or how many sexes and genders there are. I do, however, think that the cluster concept offers a flexible framework and a good starting point to work through these questions.

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