



2012

## Response: The Death of the Bisexual Saboteur

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Georgetown Public Law and Legal Theory Research Paper No. 12-141

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100 Geo. L.J. 1093-1104 (2012)

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# Response: The Death of the Bisexual Saboteur

NAOMI MEZEY\*

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Professor Glazer offers us, in *Sexual Reorientation*, an appealing and intuitive way to deal with the difficulty of bisexual identity, an identity that has always fit uneasily and sometimes quite unhappily in the LGBT rights movement. If the principal problem of bisexuality is its very temporal changeability, its tendency to dissolve into heterosexuality or homosexuality depending on the gender of one's sexual partner, then Glazer's solution is elegant. She proposes that we bifurcate (so to speak) sexual orientation into two subcategories and acknowledge for everyone both a general and a specific orientation. General orientation "is the sex toward which the individual is attracted as a general matter,"<sup>1</sup> while specific orientation is determined by the sex of the individual's current partner.<sup>2</sup> Thus, for bisexuals and anyone whose specific coupling does not fall in line with how they generally understand their sexual identity, Glazer's sexual reorientation offers a neat way to own both a general and a specific identity.

Glazer elaborates on her new categories by analogizing to two deep tensions in the theorizing on sexual identity: the distinctions between status and conduct and between individual and group rights. Glazer suggests that one's sexual identity has a general characteristic—a "type," as she puts it, such as someone who is normally attracted to women—that may or may not align with the gender of one's partner at any given time.<sup>3</sup> This general orientation, or type, is analogous to one's sexual "status," whereas one's specific orientation recognizes the act or "conduct" of partnering with a specific person.<sup>4</sup> Moreover, according to Glazer, one's general orientation belongs to each person as an individual while one's specific orientation is necessarily more relational, as it "describes one's sexual orientation once coupled."<sup>5</sup> The result for Glazer is a reorientation

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1. Elizabeth M. Glazer, *Sexual Reorientation*, 100 GEO. L.J. 997, 1054 (2012).

2. *Id.*

3. *Id.* at 1055.

4. *Id.* at 1057, 1068.

5. *Id.* at 1067.

of sexual identity that would not only overcome some of the problems presented by the status/conduct distinction and accommodate both individual and relational conceptions of identity, but would also provide the law with the ability to protect “living identities.”<sup>6</sup>

There is plenty to praise, quibble with, and critique in this formulation, but I’d like to focus my comments on where this reconceptualization of sexual orientation leads, into what sort of future it may deliver us. Glazer herself acknowledges that the article is primarily a discursive and categorical intervention, but she claims potentially transformative results from these new categories:

This Article’s chief contribution is a set of words. Words that could have helped Kenji Yoshino talk to his students about sexual orientation without having to resort to the very binary he rejected. And words that can help the LGBT rights movement, legislatures, and courts protect against discrimination on the basis of sexual orientation as it is actually lived, rather than on the basis of sexual orientation as the law has until now imagined it to be.<sup>7</sup>

So what do these words do, what might they mean, and where do they take us? I’d like to explore these questions in relation to three themes: antidiscrimination law, lived identities, and identity sabotage. First, with respect to antidiscrimination law, my instinct is that these words will not change much. Although I do want to acknowledge the possibility that they might provide courts a useful mechanism for recognizing harms specific to bisexuals, this possibility seems both unlikely and limited. Second, although I appreciate the way these words open one avenue of dynamism into the narrow and static categories we use to describe sexual orientation, I do not think they begin to approach the way sexual identity is actually lived and experienced. Finally, to the extent that part of the power and disruptive potential of the very category of bisexuality is in its ability to evade categorization, to infiltrate and sabotage the too-tidy regimes of heterosexuality and homosexuality, these words may do some harm. To the extent they prove useful to people inside and outside the law, they may also occasion a loss that I think is important to acknowledge—the weakening of queer aspirations and the death of the bisexual saboteur.

#### I. ANTIDISCRIMINATION LAW

In addition to being a reconceptualization project, Glazer’s framework is also a bisexual-legitimation project. The reconceptualization of sexual orientation is meant to make bisexuality—although an undefined version of bisexuality—more socially acceptable and more legible to legal actors, to provide legal protection for the discriminatory harms bisexuals suffer at the hands of both gay

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6. *Id.* at 1068.

7. *Id.* at 1060.

and straight people. Glazer tends to distinguish between bi denial by straight people, which she terms “erasure,” and bi denial by gay people, which she calls “hypervisibility” or “spotlighting.”<sup>8</sup> The two cases that form the basis of Glazer’s claim that bisexuals suffer harm through hypervisibility—and which Glazer claims would be understood differently under her new categories—are the gay-softball case and the questioning of Sandy Stier during the Proposition 8 litigation of *Perry v. Schwarzenegger*.<sup>9</sup> Accepting for the moment what I take to be Glazer’s understanding of bisexuality,<sup>10</sup> I’d like to consider each case to see what Glazer’s new set of words might do.

In the gay-softball case, a San Francisco team was forced to forfeit its second-place finish in the 2008 Gay Softball World Series because it was found to have violated a rule of the North American Gay Amateur Athletic Association (NAGAAA) requiring that no team have more than two heterosexuals.<sup>11</sup> Three male team members were extensively questioned by representatives of the NAGAAA about whether they were “predominantly attracted to men” or women.<sup>12</sup> Apparently at least one of the men responded that he was attracted to both men and women, because a NAGAAA representative quipped that, “This is the Gay World Series, not the Bisexual World Series.”<sup>13</sup> Glazer asserts that her new categories would have allowed the three disqualified softball players to “successfully argue that the NAGAAA’s prohibition on having more than two heterosexual team members definitively did not apply to them.”<sup>14</sup>

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8. Glazer borrows “erasure” from Yoshino, whom she notes used it to describe bisexual elision by both gays and straights, but as the article proceeds she tends to split the terms so that erasure corresponds to bisexual denial by straights and spotlighting to bisexual denial by gays. *See, e.g., id.* at 1044–45. Although the object was much the same, in my own work I used the Frostian metaphor of a wall that is “vigilantly maintained” by both gay and straight people to protect heterosexuality and homosexuality as coherent and mutually exclusive identity categories. Naomi Mezey, *Dismantling the Wall: Bisexuality and the Possibilities of Sexual Identity Classification Based on Acts*, 10 BERKELEY WOMEN’S L.J. 98, 100 (1995). The actual metaphors matter less to me than the ideas they capture, and my point is merely that I am skeptical that the bi denial practiced by gay people as they protect the categorical purity of homosexuality makes bisexuals any more visible or invisible than the same bi denial practiced by straight people.

9. *See* Glazer, *supra* note 1, at 1027–35, 1057.

10. Glazer avoids defining bisexuality, but the article suggests that it may include anyone whose specific orientation and general orientation do not align. *See id.* at 1008, 1057. This clearly presents some problems because, according to Glazer’s framework, there is no bisexual specific orientation and some bisexuals may have a general orientation that is gay or straight. It also raises the issue of whether sexual orientation is self- or other-defined. If self-defined, then bisexuality is rendered more invisible than it otherwise might be. For example, someone whose general sexual orientation is straight but whose specific orientation is not consistent with that general orientation (or vice versa) may well be unlikely to ever identify as bisexual. Or someone who claims a bisexual general orientation might well reject the binary choices of specific orientation on the theory that all their couplings are also bisexual, regardless of the gender of the person they couple with.

11. Press Release, National Center for Lesbian Rights, NCLR Files Suit Challenging Discriminatory Athletic Policy (Apr. 20, 2010), available at [http://www.nclrights.org/site/PageServer?pagename=press\\_Apilado\\_v\\_NAGAA042010](http://www.nclrights.org/site/PageServer?pagename=press_Apilado_v_NAGAA042010).

12. *Id.*

13. *Id.*

14. Glazer, *supra* note 1, at 1057.

But it is not at all clear to me why this would be the case. Let's assume that the sexual identity interrogation conducted by the NAGAAA was more nuanced and allowed for the articulation of general and specific orientations. Let's also assume, as seems likely, that one or all of the men would have responded that their general orientation was bisexual. Given what we know, there is no reason to think such a reframing would have changed anything. Even though it did not use the terms *general* and *specific orientation*, the NAGAAA clearly recognized the existence of bisexuality and chose to interpret it as insufficiently gay. The comment that it was not the Bisexual World Series seems to confirm this. Or suppose one of the men had said his general orientation was gay but his specific orientation was straight, or the other way around. Either way, it seems entirely likely that either claim would have been read as insufficiently gay by the NAGAAA. In other words, the NAGAAA did what I earlier suggested happens all the time: they simply recategorized—or “erased”—bisexuality in order to maintain hetero- and homo-categorical purity. I'm not sure why the new words of sexual reorientation would change this practice unless it depends on the further assumption that the more dynamic categories would occasion greater acceptance of bisexuality by gay and straight people alike. Perhaps, but this is both much more speculative and not a claim I take Glazer to be making. To the extent that the words might allow a court to use a gender-stereotyping theory to protect the “status” of bisexuality, this also seems quite speculative for reasons I address below.

Likewise, in the Proposition 8 litigation, Perry's lawyers, in seeking to demonstrate that Prop 8 discriminated against people on the basis of their sexual orientation by not allowing them to marry, not surprisingly essentialized the sexual identity of their purportedly gay clients—implying they could not “choose” to marry someone of the opposite sex in much the same way that we assume someone who is straight could not choose to marry someone of the same sex. Like many gay rights strategists before them, Perry's lawyers hoped to rely on arguments from immutability.<sup>15</sup> In one exchange, David Boies elicited an explanation from one witness of what it meant to be “a natural-born gay.”<sup>16</sup> In this same vein, Ted Olson, on direct examination, sought to “rehabilitate” Perry's partner Sandy Stier—who had previously been married to a man—from someone who might be considered bisexual to someone who was sufficiently gay. During her testimony Stier admitted that she had been married to a man for over ten years, had loved her husband when she married him, and did not believe she was a lesbian at that time.<sup>17</sup> In response, Olson deftly elicited and sought to defeat the suggestion that Stier might be bisexual, proposing that some people might say of her sexual identity that, “it's this and then it's that and

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15. See generally Janet E. Halley, *Sexual Orientation and the Politics of Biology: A Critique of the Argument from Immutability*, 46 STAN. L. REV. 503 (1994).

16. Transcript of Record at 91, *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921 (N. D. Cal. 2010) (No. C 09-2292), available at <http://www.afer.org/wp-content/uploads/2010/01/Perry-Vol-1-1-11-10.pdf>.

17. *Id.* at 161–65.

it could be this again.”<sup>18</sup> In response, Stier reassured the court (and the public) that although she had come to the realization that she was gay late in life, she was convinced she was gay because Kris Perry was the only person she had ever fallen in love with.<sup>19</sup> In essence, Stier tried to make up for the mutability of her sexual preferences with romance.

Glazer contends that her new set of words would have allowed Boies and Olson to “skip[] the portion of their direct examinations in which they inquired about the stability of their clients’ sexual orientations,” or alternatively would have allowed the witnesses, despite specific orientations that were homosexual, to claim a general orientation anywhere “along Kinsey’s continuum.”<sup>20</sup> Again, I am skeptical that this is true. Much like the NAGAAA’s mockery and clear rejection of bisexuality as insufficiently gay, Boies and Olson understood that the politics of gay marriage required their plaintiffs to appear, in Glazer’s own words, “straight, but for the fact that they’re gay.”<sup>21</sup> Indeed, like the NAGAAA, Olson mocks bisexuality as malleable, changeable, and indecisive. Both the lawyers and their clients in *Perry* understood that the plaintiffs’ sexual identities needed to fit into the narrative espoused by most gay rights activists: that gay people are always and authentically gay regardless of how long it might have taken them to realize it, and regardless of the compulsive heterosexuality they may have previously performed (and perhaps continue to perform). In this narrative, as Glazer knows, claims to bisexuality are often recast as internalized homophobia and denial. Nothing about the new set of words that Glazer proposes seems likely to change this problem.

It may be that Glazer’s claim is not that her sexual-reorientation proposal will by itself change the hearts and minds of those who work to maintain the categorical purity of homosexuality and heterosexuality, but that it will at least enable courts to protect bisexuals from misrecognition or recategorization by anyone who pursues categorical purity through the conflation of “sexual-orientation status with sexual-orientation conduct, thereby excluding from the definition of ‘sexual orientation’ groups, like bisexuals, whose status and conduct are not identical.”<sup>22</sup> Here Glazer’s claim seems to be that the distinction between general and specific orientation can help courts apply the gender-stereotyping theory of *Price Waterhouse* to sexual-orientation discrimination when one’s sexual conduct (for example, presumably always either straight or gay) doesn’t correspond with one’s sexual status (for example, bisexuality).<sup>23</sup> This claim is both legally clever and laudable for the way it seeks remedy and respect for those who claim discrimination as bisexuals.

But the claim that courts will use Glazer’s framework to recognize a gender-

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18. *Id.* at 166–67.

19. *Id.* at 167.

20. Glazer, *supra* note 1, at 1057–58.

21. *Id.* at 1023, 1033–34.

22. *Id.* at 1047.

23. *Id.* at 1056–57.

stereotyping theory of sexual-orientation discrimination strikes me as both unlikely and of limited impact. It is of limited impact because it is not obvious how much sexual-orientation discrimination would be claimed by, or is specific to, bisexuals. To use Glazer's own example, it seems evident from Sandy Stier's testimony that she not only does not consider herself bisexual, but the harm she was actually complaining of (her exclusion from marriage) is not a harm specific to bisexuals. In other words, Stier does not seem to consider that there is a discrepancy between her sexual status and her sexual conduct. If that is right, then unlike the softball players, sexual reorientation does not appear to offer Stier anything she can use.

The claim that courts will apply such a theory of sexual-orientation discrimination is also unlikely because the line of argument that gets us there relies on at least three unsupported assumptions. First, it assumes that one's general orientation can and should be understood unproblematically as a status claim. But will it be understood that way, and do we want it to be? In the realm of sexual orientation, "status" and "conduct" have always been contested, unstable, and deeply discursive categories. They are not self-executing. Even if a "status" claim were uncontested, it works best within antidiscrimination law when it is meant to convey an essentialist identity about which we have no choice. Given that bisexuality is rarely viewed as an essentialist status claim (indeed, one of the reasons it is so threatening to gays and lesbians is precisely because it disrupts such a claim), why would calling it one's general orientation make it any more likely to be understood as such? Second, the argument that Glazer's sexual reorientation will allow courts to better protect discrimination against bisexuals sometimes appears to assume that we have a minimal understanding of what bisexuality is and is not.<sup>24</sup> I am not at all sure we do have such an understanding.<sup>25</sup> Lastly, Glazer's argument that these new words will do real work in the area of antidiscrimination law assumes that courts will in fact take the logic of gender stereotyping that they have found in the context of gender and transgender discrimination and apply it not only to sexual orientation, but to bisexuality, whatever that may be. It is entirely possible, but because it relies on an elision of legal categories (gender and sexual orientation) that do not enjoy equal status in antidiscrimination law,<sup>26</sup> as well as a set of problematic assump-

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24. Although Glazer presents Yoshino's definition of the bisexual as someone whose sexual desire for members of each sex is more than incidental, *id.* at 1005, she concludes that deciding on a particular definition is unimportant, *id.* at 1007–08. She later acknowledges that "bisexual discrimination" may be found even when someone does not identify as bisexual, calling bisexual discrimination any discrimination based on a discrepancy between one's sexual conduct and sexual status. *Id.* at 1057. But this quickly becomes rather circular as claims to a status may rely on a claim to bisexuality.

25. See Mezey, *supra* note 8, at 110–12; see also *supra* note 10.

26. I appreciate Andrew Koppelman's point, in this discussion and elsewhere, that gender and sexual orientation should not be separate legal categories. Andrew Koppelman, *Response: Sexual Disorientation*, 100 *Geo. L.J.* 1083 (2012). But even if that is the simpler doctrinal approach, it does not track the preferences of most gay rights advocates, the assumptions of judges, nor the ways the law has shifted to accommodate claims based on gender *and* sexuality.

tions about what bisexuality and bisexual status mean, I'm not betting on it.

## II. LIVED IDENTITY

One of the refrains throughout Glazer's article is that her reconceptualization of sexual orientation will provide a way to protect "the lived experience of human sexuality," or "living identities."<sup>27</sup> I admit an admiration for the elegance and lucidity of her model and acknowledge that it allows for more dynamism than currently exists in our sexual-identity categories by asserting the possibility of an identity not fully defined by the gender of one's current partner. But allowing for more dynamism than currently exists in our sexual-identity categories is a very low hurdle indeed. Along with my admiration is sorrow at how impoverished our collective understandings of sexual identity and desire are that this variation on the standard sexual-orientation scheme could be seen as even beginning to capture lived identity. Not only are our sexual-identity choices sadly limited, but how, when, and why we choose them is complex and partially constrained. Taking into account lived identity requires consideration of the complexities of identity choice; I briefly address that complexity by looking at the processes of socialization, external identification, and interpellation.

Glazer uses a *New York Magazine* story about the "Cuddle Puddle" at Stuyvesant High School—teens who pet boys and girls alike and shun labels—to suggest that a post-gay generation that calls their sexual orientation "just, whatever" is insufficient to the legal and human need for categories.<sup>28</sup> Are our lived identities so circumscribed and oppressed by sexual-orientation categories that a group of teenagers getting off with each other irrespective of gender and identity seems outside the bounds of the law and the human?<sup>29</sup> Can any new recombination of old sexual-orientation categories really get anywhere close to our lived experience, which I fervently hope and believe far surpasses the paucity of categories around which we continue to organize our self-conceptions, social judgments, laws, and politics?

While I deeply appreciate Glazer for momentarily retrieving my work from the dustbin of legal scholarship, less evident in her account of my bisexuality article is the way in which it fought against the relegitimation of sexual-orientation categories and proposed a classification based on acts not as a revision of sexual orientation, but as a way to smoke out the many different forms of bisexual and even non-gender-based sexual activities and preferences as they are actually lived and experienced.<sup>30</sup> Inspired by the queer interventions

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27. *E.g.*, Glazer, *supra* note 1, at 1004, 1040.

28. *Id.* at 1054 (citing Alex Morris, *The Cuddle Puddle of Stuyvesant High School*, N.Y. MAG. (Jan. 28, 2006), <http://nymag.com/news/features/15589/>).

29. Ruth Colker describes this problem as Glazer's inability to account for "sexual-orientation resisters." Ruth Colker, *Response: Hybrid Revisited*, 100 GEO. L.J. 1069, 1072–75 (2012).

30. Glazer suggests that my argument for the elimination of sexual-orientation classification was a way to show that "sexual orientation is really only about acts." Glazer, *supra* note 1, at 1043. In fact, it



of Eve Kosofsky Sedgwick,<sup>31</sup> I thought that perhaps talking about acts rather than identity would help unsettle the discursive hegemony of the hetero/homo regime.<sup>32</sup> I would have thought after all this time that the legacy of Sedgwick specifically and queer studies generally would have delivered us into a fuller understanding of sexuality as it is, and could still be, lived.

Even if we were content to continue to organize our sexual understandings in the traditional ways, allowing for the reorientation Glazer suggests, what exactly does it mean to claim a general and specific orientation? What does it mean to identify the “the sex toward which [one] is attracted the majority of the time”?<sup>33</sup> How do we know what we are and when we are it? For example, I am in a long-term monogamous relationship with a man, and whatever else it may say about my own lack of imagination, what does that mean for my general orientation? Is it a way to describe my actual psychic or fantasy life? Is it a hypothetical category of whom I would consider having sex with if I were to have sex with other people? Is it a history of the gender choices I made in my past couplings?<sup>34</sup> Nor is specific orientation self-evident. What, for example, is the specific orientation of a cisgendered woman who couples with a transgendered man when both wish to have a queer relationship?<sup>35</sup>

And even if we think we can identify our specific or general orientations, what does it mean to choose them: for whom does it matter or make a difference? And when? Not only is there an enormous amount of variety, change, and unknowability that is rendered static by the term “general orientation,” but self-identification seems an unnecessarily simplistic way to think through how we understand our desires, preferences, and sexual choices, and it ignores the powerful effects of how others perceive us. Identities are not just lived and understood through our self-narrations, but through socialization, external identification, and interpellation. Ruth Colker’s response to Glazer

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is the other way around. My argument for a classification system based on acts was a way to show the illogic and harms of our current sexual-identity classification scheme.

31. EVE KOSOFSKY SEDGWICK, *EPISTEMOLOGY OF THE CLOSET* (1990).

32. Mezey, *supra* note 8, at 99.

33. Glazer, *supra* note 1, at 1002 (footnote omitted).

34. As Ruth Colker rightly asks:

Is there some point at which we stop giving weight to an individual’s insistence that she is generally attracted to both men and women—despite a decade, or two decades, or a lifetime of an exclusive relationship with a man? What is the point of classifying a woman as a bisexual, merely based on her own feelings of general attraction towards men and women, if she is not genuinely open to acting on her feelings of attraction towards women?

Colker, *supra* note 29, at 1077.

35. See Rachel Luban, *When a Cis Woman Dates a Trans Man*, JEZEBEL (Dec. 17, 2010, 12:26 PM), <http://uk.jezebel.com/datingrelationshipsgendersex> (“We’re both committed to having a queer relationship; that is, one we make from scratch, considering our individual desires and needs, rather than what I think of as ticky-tacky relationships: they all look just the same.”). According to the online *Queer Dictionary*, “A cisgender person is someone who identifies as [the] gender/sex they were assigned at birth.” *Cisgender (adj.)*, QUEER DICTIONARY (Aug. 22, 2011, 10:22 PM), <http://queerdictionary.tumblr.com/post/9264228131/cisgender-adj>.

engages the issue of sexual socialization, and the way the sexual acts and identities we choose (and don't choose) are always partly the product of legal, cultural, and familial socialization.<sup>36</sup> The facts of socialization or any external influences on our identity choices may feel oppressive and limiting, but that doesn't mean they don't exist and that they don't render some identities more available and more likely than others.

In addition, identities are also experienced and negotiated through the perceptions of others. Along some axes and in some circumstances, it may make perfect sense for me to identify as bisexual, but absent a cardboard sign, a scarlet letter, or an interrogation by the NAGAAA, I am also rightly perceived and treated as straight—by my extended family, by my children's friends and teachers, by doctors, waiters, colleagues, and students, and even by my own friends who know otherwise. It would feel absurd to continue to insist in each of these quotidian encounters that I am not what I seem, that despite my social existence and social privilege as a perceived straight person that my general orientation is "actually bi." What does it mean to be "actually bi" anyway, and on what basis should I insist on it? I don't want to deny my queerness, but neither do I want to insist on it despite the substantial evidence to the contrary. Neither feels right and nothing about a sexual reorientation offers an "out."

Lastly, self-identification, socialization, and external identification are related to each other through interpellation, which complicates the very distinction between specific and general orientation. Louis Althusser used the concept of interpellation to explain the process by which ideology renders the abstract individual into an intelligible subject.<sup>37</sup> To wildly oversimplify, there is no self-understanding independent from socialization and external identification. All of our "individual" desires, preferences, and beliefs are partly the product of a complex process of ideological inculcation on the part of what Althusser inelegantly called "Ideological State Apparatuses," things like the media, family, law, education, religion, etc.<sup>38</sup> When we are "hailed" by another, we are made recognizable to ourselves; it "guarantee[s] for us that we are indeed concrete, individual, distinguishable and (naturally) irreplaceable subjects."<sup>39</sup> To analogize interpellation to the processes by which we are made specifically into sexual subjects, our sexual self-identification is always the product of both the categories available and the way we are hailed by others to fit within those categories. Therefore, we cannot entirely understand our general sexual orientation apart from our specific orientation. Our specific orientation influences the way we are hailed and constructed as sexual subjects by others, and the way we account for that sexual subjectivity is limited and influenced by the categories and social narratives available. For example, how can Sandy Stier account for

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36. Colker, *supra* note 29, at 1078–81.

37. LOUIS ALTHUSSER, *Ideology and Ideological State Apparatuses (Notes Towards an Investigation)*, in *LENIN AND PHILOSOPHY AND OTHER ESSAYS* 127, 170–77 (Ben Brewster trans., 1971).

38. *Id.* at 143.

39. *Id.* at 172–73.

her general orientation? The fact that she is in a long-term (presumably monogamous) relationship with Kris Perry means that she is consistently interpellated as gay in much the same way that I am consistently interpellated as straight. It influences one's self-conception and "general" sexual identity to go through the world being recognized, reflected, and narrated in a particular way by friends and strangers alike. The default social script for Sandy Stier is indeed the one offered by her lawyers and prepackaged by the gay rights movement: she discovered her "true" and "authentic" sexual identity by falling in love with Kris Perry. In this way, even if she were inclined to claim a general orientation as a bisexual, such a choice is complicated by the social and political reality of her specific relationship and the way in which it interpellates her as gay. By not accounting for the complications of sexual-identity choice and the subtle processes of socialization, external identification, and interpellation, Glazer's sexual reorientation can't begin to capture the complexities of lived identity and identification.

### III. DEATH OF THE BISEXUAL SABOTEUR

To the extent that Glazer's legitimation project succeeds and the law recognizes the harms that arise from a mismatch between one's general and specific orientations, this "success" would entail other failures, the most tragic of which is the failure of a less normative version of sexual identity.<sup>40</sup> Glazer seeks to enrich and deepen our understanding of bisexuality, to show us how it can and should fit more easily within the LGBT cuddle puddle, and to create legal remedies for the victimization and discrimination bisexuals face at the hands of both gay and straight people. But Glazer's envisioned future of bisexual understanding and acceptance, however attractive to some bisexuals, is not a future in which the bisexual saboteur has a place. If the bisexual saboteur has a future, it is one in which the very discomfort and uncertainty the word-act-idea of bisexuality occasions is also its power to destabilize, problematize, and undo the category of bisexuality and, with it, the other sexual-orientation categories as well.

The bisexual saboteur I am thinking of is the excess of the hetero/homo regime.<sup>41</sup> The bisexual saboteur is not all bisexuals, but those who find the

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40. See generally MICHAEL WARNER, *THE TROUBLE WITH NORMAL: SEX, POLITICS, AND THE ETHICS OF QUEER LIFE* (1999). Warner argues that the efforts of the gay and lesbian movement to be normalized require sanitizing homosexual identity by disentangling it from sex and the shame that sex always occasions. His argument is not just about identity, but also ethics. Embracing the "politics of normal . . . merely throws shame on those who stand farther down the ladder of respectability." *Id.* at 60.

41. See Leo Bersani, *Sociality and Sexuality*, 26 *CRITICAL INQUIRY* 641, 649 (2000) ("[Lack is] the precondition for metonymic excess—for all our productively mistaken desires for real objects and real people. Logically, there is no limit to this productivity, since the objects we pursue, while they trace the design of our individual desiring histories, are meant to recover that which preexists all object-choices, to 'repair,' not the anecdotal, anatomical castration of oedipal anxieties but, much more impressively, the ontological castration through which we presumably entered the human community of signification.").

prevailing options insufficiently descriptive of their sexual lives and desires, those who find “whatever” to be superior to the paucity of choices available. She is the embodiment of subversion, the spy, the betrayer, the unaccounted-for remainder produced by the enforcement of hetero/homo categorical coherence. The potential of the bisexual saboteur might be precisely that which gays and straights have always feared: she infiltrates and contaminates gay softball teams; she infiltrates and contaminates straight (and now gay) marriage; indeed, she has been infiltrating straight marriage since marriage began. But I think she is more than just the categorically transgressive sexual being that queers gays and straights alike. She might even be a way to “contest given categories and values by failing to relate to them either adaptively or transgressively.”<sup>42</sup> The bisexual saboteur is precisely that which cannot be normalized within sexual-orientation categories because she renders those categories incoherent.

In what I have said about lived identity, I have not focused on sexual identity as it is understood within the law,<sup>43</sup> and in fairness to Glazer, this is her primary concern. Antidiscrimination law thrives on intelligible categories and relatively simple forms of harm. But with the benefit of simplicity comes the loss of complexity—complexity in our erotic lives, in the way we understand and organize our very subjectivity. Glazer’s sexual reorientation has complicated sexual orientation just enough (and no more) to make it potentially intelligible to antidiscrimination law. The best that can come of that project is legal redress for some harms felt particularly by some bisexuals and those whose general and specific orientations (assuming we can easily identify them) diverge. This would provide to some bisexuals the protection and dignity that can come of understanding oneself as a rights holder. This is not insignificant, however aspirational it may be.

But it is important to acknowledge the costs as well. One cost of this best possible outcome is the normalization of some conceptions of the bisexual, making a place in which she too can come within the fold of “domesticated liberty” alongside her fellow gay and lesbian rights holders.<sup>44</sup> Based on what we know about the modern legitimation and integration project of homosexuality, there is no reason to assume that the triumphs of recognition will radically disrupt the paradigm of essentialized sexual identity and open up new possibilities for organizing our erotic lives. This cost falls on the Cuddle Puddle and those like them, who think there must be better options but whose own imaginations have no vocabulary with which to build them. The normalization

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42. See *id.* at 642 (emphasis omitted).

43. Koppelman seems to imply that by elaborating on lived identity, I share Glazer’s interest in trying to get the law to recognize sexual identity as it is actually lived. Koppelman, *supra* note 26, at 1088. That is not my aim, yet neither do I sufficiently share Koppelman’s confidence in, or commitment to, the private to say that “the way in which sexual orientation is actually lived is none of the law’s business.” *Id.*

44. See Katherine M. Franke, Commentary, *The Domesticated Liberty of Lawrence v. Texas*, 104 COLUM. L. REV. 1399 (2004).

of the bisexual within the law is the loss of her potential as the agent of creative sabotage of our current categories of sexual subjectivity. The death of the bisexual saboteur makes it less likely that we will soon emerge into a future that enables a “different economy of bodies and pleasures”<sup>45</sup> less enslaved to our impoverished understandings of sex and gender.

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45. MICHEL FOUCAULT, *THE HISTORY OF SEXUALITY VOLUME I: AN INTRODUCTION* 159 (Robert Hurley trans., Vintage Books 1980) (1978).