

The Concept of Human Gender: Its Epistemological and Ethical Impact¹

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SUMMARY

This contribution presents a terminology intended to permit an adequate description of the realities of inter and trans persons. The epistemological appropriateness creates, at the same time, a basis for acquiring a fitting ethical attitude towards these persons. To this end, it is argued to be necessary to make a clear distinction between the concepts of 'sexuality' and of 'gender'² and to acknowledge a third, phenomenal dimension of gender besides the physical and social one. It is argued that a person's experienced gender should be accepted as their gender. Since the experienced gender is often understood as gender identity, which also induces criticism, the contribution concludes by presenting arguments in favor of conceiving the experienced or psychological dimension of gender as an identity.

INTRODUCTION

Philosophy does not only, but first of all deal with concepts. Words are important, particularly in everyday and public communication, but concepts are equally important in scientific and ethical respects. Different words or expressions³ such as hermaphrodite, intersexual or person with a sex development variation evoke different images and connotations for the same subject area and produce

1 | Original version in German.

2 | In this contribution, the term 'gender' also implies the physical dimension usually named 'sex' in English, as will be argued for. On the level of words, any derivative of 'sex' will be avoided when talking of the domain of gender, in order to clearly distinguish the two subject matters. The author thus proposes a terminological strategy that differs from that of the editors. His perspective is inspired by historical conceptual research showing that since Antiquity, matters of gender (being female, male or other) have always been reduced to matters of sexuality (intercourse, fertility, procreation), thus obliterating a proper investigation of the problems of inter or trans persons.

3 | An expression is a word or combination of several words.

different value judgments. Between the words and the objects signified by them, the concept reflects our understanding of this object.⁴ Since a term does not have a meaning but in connection with others, we denote by 'terminology' the framework of terms (in the sense of concepts), that structures a subject area.

When the terminology is not appropriate to a subject matter, the latter is understood incorrectly or not at all. As a result, we cannot do justice to the objects or we even violate them by attempting to align them to our terminology. The following analysis of concepts is therefore not only of epistemological but also of ethical relevance.⁵ It can contribute to avoiding violence – including symbolic violence – rooted in ignorance, and to reducing the suffering of persons who are subjected to inappropriate terminologies.

A glance at the numerous publications on the subject of gender reveals the following issue: Many texts in a wide range of disciplines use the triad sex/gender/sexuality (or in German: körperliches Geschlecht/soziales Geschlecht/Sexualität) for describing a person's sexual and/or gender constitution. This tripartition is confusing and does not correspond to any scientifically grounded and ethically justifiable terminology. The conceptualization presented now aims at satisfying these requirements.

As a first step it is necessary to make a clear analytical distinction between the concept of 'sexuality' and that of 'gender' (social, phenomenal and physical, i.e. including the so-called 'sex'). It is important to avoid mixing them, as for instance Hirschfeld (1914: ch. 19) has done with his concept of 'intermediate stages of sexuality' under which he subsumed homosexuals, transvestites and hermaphrodites, as if they manifested comparable phenomena with a common etiology.

Following this line of thought, we are confronted with the question what could serve as umbrella term for 'gender' and 'sexuality'. Since the disciplines that deal with sexuality, such as medicine and sexual studies, also address issues of gender, such as inter or trans gender topics, under the heading of sexuality, it seems appropriate to take 'sexuality' as a broadly conceived notion that also includes issues of gender.

On the other hand, gender studies not only analyze gender, social and physical, but also sexuality in a narrow sense, such that in this domain, 'gender' seems to be the general term.⁶

⁴ | Term and concept are roughly used as synonyms in this text, although term is more ambiguous in that it can mean both word and concept.

⁵ | The analysis was already carried out in Groneberg 2003, 2008, 2012a, 2012b, 2014 and 2015, however without defending the identity aspect of the experienced gender.

⁶ | See Christel Baites-Löhr's contribution in this publication: Always gender – always different.

Even if the umbrella term varies relative to disciplines and discourses, it contains, in each case, the reference to both domains, that of gender and that of sexuality. The relationship of terms is thus the following:

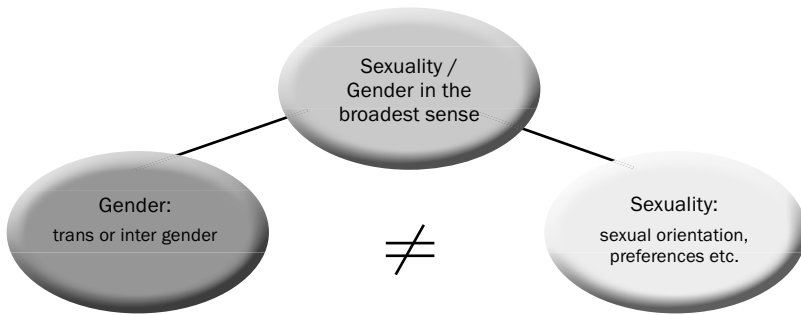


Figure 1: *Differentiation of Gender and Sexuality.*

What is at stake in the following analysis is not the umbrella term but the separation of issues of gender in the narrow sense from those of sexuality in the narrow sense. Hence, sexuality and gender are always understood in their narrow sense unless specified otherwise.

Since this contribution is about the conceptualization of gender, the subject of sexuality will only be briefly mentioned now in order to demarcate the subject matter. In its area are discussed questions of sexual orientation, sexual identities, sexual preferences as well as the social organization, cultural norming and historical development of what we today refer to as sexual intercourse or sex, conceived in medieval times as carnal desire and in Greek and Roman Antiquity as matters of Aphrodite or Venus.⁷

In a second step we need to complement the conceptualization of gender, within which the differentiation of physical and social gender ('sex' and 'gender') is widely acknowledged, by the third element of the experienced, phenomenal⁸ or psychological.

⁷ | See Foucault 1984.

⁸ | The English language renders difficult the necessary distinction between what there is (entities, phenomena) and the theories about it (ontology, phenomenology, psychology etc.). The term 'phenomenal' refers to self-conscious experience, that is, to a person's inner life or psyche. In German and French 'psychisch' or 'psychique' would be adequate adjectives, but the English 'psychic' does not work, for obvious reasons, neither does 'mental'. 'Psychological', on the other hand, refers to the discipline of psychology, as 'phenomenological' refers to the philosophical discipline of phenomenology, which tries to verbalize and conceptualize the experiences of the life-world. In any case, life-world experience (the phenomenal) is not to be reduced to what scientific or philosophical disciplines say concerning it.

Gender is thus differentiated as follows:

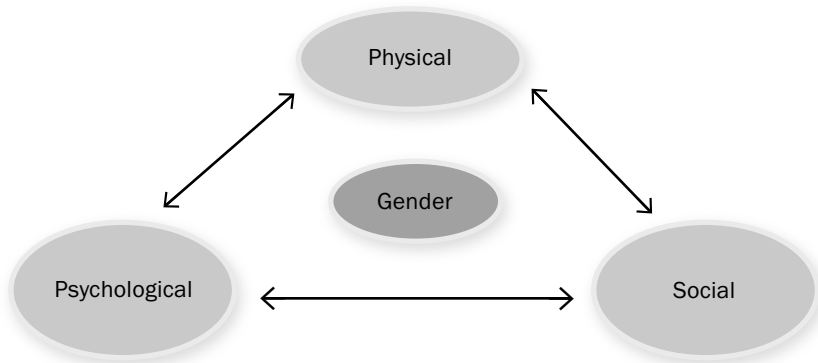


Figure 2: Dimensions of Gender: physical or bodily gender / 'sex'; psychological - experienced or phenomenal gender identity⁹; social gender.¹⁰

Every person occupies, at a given moment, a particular place in each of the three dimensions that are, in turn, each differently structured. The physical (synonyms: corporal, somatic) dimension assembles a series of somatic features connoted with gender: gonads, chromosomes, internal and external sexual organs as well as physique/build. The physical so-called sex, also misleadingly referred to as biological sex, is in itself multidimensional. By contrast, the social dimension is, in our 'Western' culture, one-dimensional and marked by the male/female dichotomy, traditionally ruled by a logic of either/or excluding any in-between. Third genders are known in many cultures, however (Herdt 1996). Current amendments to existing laws that provide for a third gender entry are also moving away from the exclusive dichotomy.¹¹ Finally, the third phenomenal dimension, i.e. the self-experience of the individual, reflects the social dichotomy with its traditional expectations to be either male or female on the one hand, and the development of the own physical gender characteristics on the other, without being determined by it in every person.

9 | 'Gender identity' is a term used in legal texts, in psychology and phenomenology, i.e. it is a juridical, psychological and phenomenological term conceived to express a part of personal experience (not to be confused with the sociological term denoting social gender identity).

10 | This is formulated on a disciplinary background that presumes as generally recognized the distinction of physical and social gender, which is at least the case in social sciences and Gender Studies, where the psychological dimension needs to be respected in its own right in order to obtain the proposed triangulation. Psychology, medicine and law, on the other hand, recognize the psychological gender identity as a self-evident factor, such that only the distinction of social and physical gender need be recognized, as well as the descriptive independence of the psychological from the physical and social.

11 | See the position of the German Ethics Council 2012.

Inter persons are confronted with physical developments with contradictory gender coding (the social aspect). Their self-experience confronts us with the question of the possible self-positioning (the phenomenal aspect). Studies show that the social dichotomy is not always reproduced one to one by the subject's self-experience, but can be broken up into a bipolar continuum.¹² But masculinity and femininity can also be represented on two independent coordinate axes. Such independence requires to no longer see masculinity and femininity as opposite ends of a spectrum. Moving a step further, the question arises whether, corresponding to the physical multidimensionality, a multidimensional self-positioning is also to be considered as a possibility (living oneself as a puzzle). In this regard we should expect more insights from future empirical longitudinal research on inter and trans gender issues.

THE DISTINCTION OF GENDER AND SEXUALITY

The situation of inter and trans persons can be understood independently of a reference to issues of their sexuality. Their constitution is not defined as sexual, but as gender-based. The conceptual separation of gender and sexuality has consequences for the choice of words: Instead of transsexuality the term 'trans' or 'transgender' is increasingly used, and instead of intersexuality the term 'intergender' should be used, if we follow this line of thought.¹³

The ambiguity of the English and French words 'sex' and 'le sexe', which denote the physical sexual apparatus as part of the physical gender on the one hand, and intercourse on the other (in German: das Geschlecht and Geschlechtsverkehr), has contributed to reducing one area to the other: the physical gender difference has been related to sex in the sense of sexual practices, the topic woman has – in a male heterosexual perspective – been reduced to the topic intercourse, and sexuality has been narrowed down in a phallogentric way. These ambiguities and reductions tend to reinforce the still common confusions of trans persons, so-called transsexuals, with homosexuals, and of inter persons, so-called intersexuals, with bisexual persons. Moreover, the distinction of gender and sexuality allows us to formulate empirical relations between the two areas that have been established since the last century in science and philosophy: gender differences between man and woman do not only concern the area of sexuality;¹⁴

12 | See Quindeau 2012; Giordano 2008.

13 | Self-help groups use the term *Zwischengeschlecht* (see www.zwischengeschlecht.org) in German speaking contexts. Using the term *Intergeschlecht* has the advantage of corresponding to the English and French terms *intergender* and *intergenre*. Both terms are currently used as synonyms.

14 | See in particular de Beauvoir who developed this aspect for the first time in phenomenology in her "Le deuxième sexe" (1949).

the gender of an individual does not determine their sexual orientation, identity or preference;¹⁵ gender assignment surgery in children can have disastrous consequences for their sexual sensibility later in life.¹⁶ The desire of trans persons for a reassignment of their somato-social gender is not motivated by their sexuality but rather by their need to make their somato-social gender existence correspond to their self-experience.¹⁷

Last not least, it is important to distinguish gender and sexuality, because the conceptual and imaginary connection of trans- and inter gender with collective erotic phantasms is deeply rooted in the traditional discourses and practices of our culture and has obscured the understanding of their real situation. The terms 'androgynous' and 'hermaphrodite' have since classical Greek antiquity denoted real and fictional bi-gendered persons who symbolized the sexual and/or marital union of man and woman. The remnants of this connotation of the hermaphrodite with sexual matters have impeded scientific understanding of the life realities of trans and inter persons well into the 20th century.¹⁸

The three components of sex/gender

If sexuality as a separate domain is secluded from the conceptual triad 'sex/gender/sexuality', a theory of the genderedness of human beings (in the narrow sense) is left with the notions of physical and social gender. As is evident in the cases of trans and inter persons, however, a person's gender constitution is not fully described by referring only to the corporeal and the social.¹⁹ For in that case it is neglected how persons establish themselves, i.e. how they experience and define themselves: as a girl or as a boy or as something else. The gender that is assigned after birth and then trained and acted out, can deviate from how the child experiences itself – regardless of whether social and physical gender are concordant or not.

The psychological gender

The experienced subjective gender has to be regarded as the defining criterion of a person's gender.²⁰ The last century's failed attempts at an alternative definition have shown that a person's gender is not defined by social gender identity nor by physical features such as chromosomes, gonads or build, nor by their

15 | As assumed by Ulrichs (1864) (see Groneberg 2008); Butler 1993, ch.8, pp.181 ff.

16 | See German Ethics Council, NEK statement, Richter-Appelt 2008, Schweizer/Richter-Appelt 2012.

17 | See the contributions in this volume with references to new literature; Groneberg 2003, 2008.

18 | See Groneberg 2008a, 2009, 2014, 2015.

19 | Details and literature in Groneberg 2003 und 2008.

20 | This does not depend on the term used by the persons to name what we here call gender; if they refuse the term gender and talk of sex, then their experienced 'sex' is what should be accepted as defining their gender.

combination.²¹ The fact that an individual's gender cannot be defined somato-socially (through physical gender features and social gender) does not exclude the possibility that the psychological gender interacts with somato-social components or is even caused or determined by them in certain persons. But what, in the final analysis, has to be acknowledged as a person's gender is the one experienced by that person – and this is an entity within her psyche –, formed in the first years of life on the basis of one's individual corporeality and of one's interactions.²² As a consequence, when human beings are born they do not yet have their gender.²³

The acknowledgement of this third element, the experienced gender, is epistemologically necessary in order to adequately describe the lived gender realities of trans and inter persons in all their complexity. It also lays the foundation for an appropriate ethical attitude that leads to respecting individuals' genderedness instead of violating them or denying them help and assistance.

Acknowledging experience as defining a person's gender (or so-called sex) implies a revision of our understanding of the gender of every human being: Being a woman, a man or else is not to be understood as a physiological given nor as a social fact, nor as a combination of both, but ultimately as a question of subjective experience influenced by corporeality and sociality. However, the acknowledgement of the psychological dimension, analytically an obvious step to take, continues to be the object of a struggle over definitional sovereignty, i.e. over who has the power to define if someone is to be regarded as female or male or other. This power, which in modern times had been delegated to medicine (see Foucault 1978), was questioned in the course of the 20th century by the social sciences and feminism by invoking social gender against the biological ('sex'). All positions, however, have a hard time transferring the power of definition to the individuals themselves. As current legal discourses illustrate, the experienced gender can be regarded as the place where the protection of the individual against somato-social ordering tendencies is anchored.²⁴ Only when sexuality and gender are decoupled conceptually and the individual's self-experience is acknowledged as an indispensable descriptive and defining factor, can inter and trans genderedness be described and understood adequately. This is the necessary condition for resolving the issues of violence related to the previously used terminology.

21 | Details in Klöppel 2002; Groneberg 2008.

22 | Formulated for the first time in this way in Groneberg 2003.

23 | In how far the future gender identity is already prenatally inherent or predetermined at birth is a question that the empirical sciences need to answer.

24 | For details see the end of this contribution: Legal and ethical anchor point.

Inter persons ('Intersex')

A plurality of physical features, primarily chromosomes, gonads, internal and external genitalia and build, but also voice and movements are gender coded, i.e. coded as male or female. Intergender is defined purely on this physical level as non-concordance, discordance or incongruence of the primary sexual traits. This means that an inter person is living with physical gender features of a contrary gender coding, for instance with female breasts and internally located testicles. The discordance does not need to be manifest for the individuals or their surroundings. If it is or comes to be this way it can result in problems for gender identity on a psychological or a social level or both – but these consequences do not define their constitution (Groneberg 2008; 2009; 2012a; 2012b).

Trans persons

Trans can also be defined as non-congruence. Often it is understood as one between the subjectively experienced and the physical gender, as a conflict between the phenomenal and the physical dimension. Trans people can indeed suffer from this, but the cause of their suffering can just as well lie in the discordance between their psychological and their assigned social gender identity.²⁵ We could also speak of a conflict of these two identities, suggested by the alternative term of 'transidentity'. In any case, the constitution of transgender or transidentical persons cannot be characterized, like that of inter persons, within only one dimension. It is rather an incongruence between the psyche on the one hand and the body²⁶ and/or sociality on the other.²⁷ As the opposite pole to transidentity, the term 'cisidentity' (Sigusch 1991) refers to people whose experienced gender conforms to their somato-social one (without preceding reassignment). A further term is 'person with AGIO' – the acronym stands for 'atypical gender identity organization' (German: Atypische Geschlechts-Identitäts-Organisation), coined by Giordano in 2008. The conceptual pair discordant-concordant has an advantage over atypical-typical in not referring to normality and in naming, without pathologizing, the specific cause of the suffering or the pressure to act. The term 'transman' and 'transwoman' describe the two most frequent forms of living trans. They are to be understood as abbreviations for a man or a woman with

25 | This definition also covers the so-called forced transsexuality, if inter children and persons who have been assigned medically or educationally to one gender (i.e. who are equipped with either a male or a female social identity), cannot identify with it.

26 | 'Body' can be rendered in German by Körper or Leib, terms that are generally, as in the original German version of this contribution, used synonymously. The same applies for the nouns Psyche and Seele ('psyche' and 'soul') and the adjectives and adverbs derived from them, psychisch and seelisch ('psychological'). The latter denote (self)consciousness, (self)awareness, the 'internal', experience, qualia and so on and do not imply any theological or metaphysical claims like immortality. The soul is the object domain of psychology, psychoanalysis or psychiatry and of the philosophical domain of phenomenology.

27 | Giordano (2008:269) assumes that the suffering can already begin at the age of four or five.

a trans constitution. A transwoman experiences a female gender identity that does not correspond to her somato-social gender at first, but that does so after a desired transition. By contrast, the abbreviations MTF (male to female) and FTM (female to male) do not refer to the experienced but to the 'objectively' observed somato-social dimension. Hence, a post-OP transwoman is called MTF. These expressions are appropriate for describing the purely external gender transition in absence of knowledge about the person's experienced gender, for instance if it is imposed. Finally, there is also talk of a social gender identity. If we use this term, we have to keep in mind, however, that 'social identity' is a different term than 'psychological identity'. Both concepts have in common to denote stability: From a certain age onwards, most people are either identifiable as male or female for the rest of their lives; in that sense they have a stable social gender identity – even if the latter does not correspond to the individual's experienced gender, the one assigned by the outside is (at least initially) in general acted out.

The physical level is the only one among the three where we cannot speak of an identity, but only of a series of gender features that are more or less concordant among each other and with the social and psychological gender identities.

Trans is often misunderstood: Trans persons have not necessarily changed their physical sex, i.e. have acquired via surgery and hormones the physical features of the opposite sex. Trans persons should not be reduced to a performed physical gender reassignment. The term 'trans', with respect to a person, says that the psychological gender and the somato-social gender of that person can only correspond after a transition of the latter. Before this transition is performed, the trans person may possibly experience agonizing conflicts that may even lead to suicidal tendencies. The term sex change is also frequently used. It is questionable, since it presumes that there are two sexes and that a change is made, or planned to be made, from one to the other, implying that the target sex constitutes a point of attraction. However, other identities (e.g. androgynous combinations of male and female) are not mere theoretical possibilities, but observable, and not only in cases of inter persons.²⁸ Hence we have to ask, concerning every trans person, whether the prevailing physical gender features do not rather constitute a point of repulsion, because they do not conform to the experienced gender identity. In other words, we have to distinguish whether a person wants to transition to the opposite gender or rather wants to discard their own physical gender. In case the latter is still developing during puberty, the person might want to prevent its further reinforcement, which is experienced as alien and repulsive. Finally, it is important to assess whether the trans person needs a reassignment of the physical gender. For even if this may be so in most cases, possibly the person only needs another social gender identity.

REASONS FOR INTERPRETING THE EXPERIENCED GENDER AS IDENTITY

The self-experienced gender is mostly denoted by the expression 'gender identity', which is also the target of strong criticism, particularly from within the social sciences.²⁹ We confront a problem of interdisciplinary communication here, since social sciences and psychology employ different concepts of identity. For the benefit of promoting a constructive interdisciplinary discussion and mutual understanding, I will in the following name the most important reasons for considering the experienced gender as an identity.

Stability

Psychological and philosophical concepts of identity imply the continuity and stability of a property³⁰ across various moments and contexts. Experiencing oneself as belonging to a gender does as a rule not change like the mood of the day and can in that sense be considered as an identity. Being cheerful or sad, or having mood swings are accidental features, i.e. they come and go. They become a feature of a person's identity only if the mood or its swinging is permanently present. The self-experience as male or female is connected with an open-ended complex of self-positioning, choice of dress, physical comportment, behavior, ways of speaking etc. In this respect one usually adopts a long-term and stable stance.³¹ A person's gender is not simply a characteristic like any other, but a permanent and rather stable feature which justifies calling it identity: it usually stays identical over long periods of time.

According to this terminology, we can say that if a trans person succeeds in making their social gender identity correspond to their self-experienced gender, the psychological gender identity possesses a higher stability than the social one. In such cases it is adequate to speak of a change of identity and not of a 'sex change'. Trans gender and transidentity can therefore be considered synonymous expressions, if we bear in mind that it is the social gender identity that is changed or performs a transition,³² while the psychological one remains constant.

Concerning the social dimension, the main objects of criticisms are role attributions as well as the partly violent imposition of social identities, as demonstrate the therapeutic guidelines for the treatment of inter children in the last

29 | See for instance Klöppel 2002.

30 | 'Property' (syn. 'quality') is here to be understood in a philosophical (more precisely ontological) sense, i.e. as distinguished from objects, events, points in time or other types of entities.

31 | If a person should continually change her (social or psychological) gender as others change their mood, then this transtemporal feature would constitute her gender identity.

32 | Phrased in role jargon, the person takes on the male or female gender role. I do not use role terminology here because there is a wide range of male or female role expectations and roles to be played (mother, lover, sister ...), addressed to persons who have already been pre-identified as either male or female. It is this prior gender identity present in the social space, which can deviate from the psychological identity that is questioned here.

century. With respect to gender, this concerns the historically and culturally variable gender roles, but also social gender identity, for the attribution of gender specific roles to persons presupposes their identification as male or female. However, this criticism of identity-impositions only concerns the social and not the psychological dimension. Moreover, we should bear in mind that psychological concepts of identity differ generally from those of the social sciences.

The endeavor to minimize the importance of social gender identity, for instance by deleting the gender entry in personal documents, insurance or application papers, in no way excludes appreciating the fact that persons in a given gender system can have problems in finding a place that corresponds to their experienced gender identity.

The expression 'psychosocial gender identity' does not constitute a compromise, but rather confuses analytically what should be distinguished. At best it can be used where psychological and social identity concord; it is thus precisely not suitable for an adequate conceptualization of the realities of trans and inter persons.

The term 'sexual identity' is sometimes used to denote gender identity, but mostly for the identification of a person as homo- or heterosexual, the currently still dominant distinction in the area of sexuality. As stated above, the term should for reasons of clarity remain reserved for the discussion of sexuality, which would contribute to putting an end to the already mentioned confusion of trans genderedness with homosexuality and of inter genderedness with bisexuality. While trans and inter persons do have specific problems with sexual categorizations, their situations are not defined by these.

The subject's autodetermination

Psychological gender identity is to be understood, more so than the social one, as the result of a construction process the individual participates in. This implies a departure from role theories that presume social role expectations to be simply adopted by the subject. The psychological gender identity is the temporary result of a process and is produced by individuals engaging with their surroundings.³³ It is an individual effort,³⁴ which does not mean, however, that it is a matter of

33 | According to Money/Hampson/Hampson (1957) at the age of 18 months to 3 years; Kreisler (1973, p. 186) mentions two and a half years; according to Beier/Bosinski/Loewit (2005, p. 99) children can tell the difference between men and women at 18 months, and at three and a half years that they themselves will one day be a man or a woman. Money and Ehrhardt (1973) assume that the "gate to gender identity" remains open for a year after birth, but then closes forever. Cases of changing psychological gender identity of intersex persons contradict this assumption, as well as the identity theories of Erikson, Habermas or Kohnstamm (see Rieben 2008, p. 172) or the theory of Stoller (1968).

34 | According to Rieben (2008, p. 173). The result is based on a broad analysis of the different psychological identity concepts, drawing on Piaget, Kohlberg, Erikson, Habermas, including Oerter, as well as concepts of gender identity and the interplay of social, personal and I-identity. For the development of psychoanalytical theory see Eckert (2010) or Quinneau (2012).

random choice. Psychological gender identity is just as far from being something essential or natural as nationality is. Whoever insists on understanding identity in an essentialist way, i.e. as preordained and immutable, cannot do justice to the lived gender realities. We know that for inter persons the self-positioning in the gender system can take longer than usual, that it can (particularly in puberty) change and that it can deviate from male or female.³⁵

We also know that trans people's adaptations of their somato-social gender to their psychological gender identity do not necessarily remain within the gender dichotomy. Even when complete concordance in the physical dimension is given, the self-positioning can adopt intermediary values on an assumed continuum between male and female or even go beyond this range (see above).³⁶

Independence from the somato-social gender

Acceptance of the psychological dimension of gender expresses respect for the special way of being of the particular person we are facing. This being cannot be reduced to the person's physical features or social position or, for that matter, to categories of the natural and the social sciences. Acceptance has not yet been achieved, however, if one only respects the experienced gender of the other as a feeling. Identity is more than merely a feeling or an impression of something that is somato-socially given. If one were to describe the situation of a trans boy as the feeling of a somato-socially clearly female young person of being a boy, this could – as has been the case for a long time – be interpreted as a delusion.³⁷ Experiences, impressions, feelings may change, they can delude and lead astray. The psychological concept of identity, by contrast, denotes a psychological reality that has highly positive significance for the individual. Thus understood, the concept of gender identity safeguards against the error of taking gender as something naturally given and of which the experienced gender would be purely a mental representation. For we may be inclined to see psychological gender as a pure proprioception, i.e. as a self-perception of one's own body. This view should be questioned, however, since it ignores the complexity of the human being. The conscious self-experience of its own gender is conveyed to every child from the very beginning through sociocultural interpretation patterns, so that it can never be a pure proprioception of the body. It is always also a positioning in the surrounding gender system, with all its accompanying meanings and implications

35 | See Beier/Bosinski/Loewit 2005, p. 62; Quindeau 2012, pp. 126 and 129; Richter-Appelt 2008, p. 59; Schweizer/Richter-Appelt 2012; Stoller 1968; Guhde (2002) describes a lived intergender identity.

36 | Giordano 2008, p. 253.

37 | In 1956 Jean-Marc Alby, a psychiatrist working with Lacan, introduced the term of transsexuality in the psychiatric nosography and treated it as a delusion (Fautrat 2001, p. 25).

of having to fit into a category, of having to be a girl, daughter, woman, potential mother, to wear pink dresses, to play with dolls etc., if you have a vagina; and if you have a penis, to be a boy, son, man, conqueror, potential hero, ruffian etc. As soon as proprioception reflects one's own physical gender in one's mind, these features and expectations found in the surrounding gender system are applied to oneself. But even this always already interpreted proprioception does not stand by itself but is accompanied by acceptance or refusal. The acceptance, up to the love for one's own physical gender features, is mostly too obvious to be noticed. In the case of trans persons, rejection can be profound, up to being repulsed by one's own bodily gender features and/or the position these imply in the given gender system. In contrast to proprioception that presents the body to the mind, gender identity contains the judgmental and emotional appropriation or rejection of one's own physical gender. When hormonal changes of the body occur, the individual proprioception also changes, and with it the knowledge of what it means to have a female body, or a male body, or an intergender body, and this is possible without a change in the awareness of being a girl or being a boy.³⁸ Only by differentiating the aspect of self-experience in gender-based proprioception on the one hand and gender identity on the other, are we capable of understanding and describing the situation of trans people adequately, without considering them as delusional or otherwise pathological. In inter adolescents it is in particular during puberty, due to the contradictory corporeal signals, that a questioning of their experienced gender identity is to be expected. Inter persons then have to re-establish, as they already did in early childhood, their place in the existing gender system.

Legal and ethical anchor point

The human right to live according to one's own gender ties in with the psychological gender identity with its relative stability, auto-determination and conceptual independence vis-à-vis the social and physical dimensions. Gender identity is defined as "each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth [...]"³⁹ This

38 | See the accounts of transmen about hormone treatments in the context of physical gender transitions.

39 | The Yogyakarta Principles of March 2007, p. 8 "Understanding". These principles define the human rights in matters of sexuality and gender identity. According to Principle 18F "States shall ensure that any medical or psychological treatment or counseling does not, explicitly or implicitly, treat [...] gender identity as medical conditions to be treated, cured or suppressed." (p. 23). The Argentine gender identity law of May 2012 implementing this principle (sanctioned on 9 May and promulgated on 23 May. URL: <http://www.infoleg.gov.ar/infolegInternet/anexos/195000-199999/197860/norma.htm> [06.12.2013]) uses the same definition of (psychological) gender identity. In Germany, the problems of inter persons are formulated as those of "the right to individual development of an own gender identity" (Plett 2012, p. 137). A ruling of the German Federal Constitutional Court on the country's transsexual law also puts "finding and recognizing one's own gender identity" under the protection of the German constitution (BVerfG 2011, Rn 51; quoted in Plett 2012, p. 137).

identity is, as soon as it has formed, to be respected as a person's gender, and they must be given the right to live according to their gender identity. But first of all it must be given the chance to develop, without being preempted, imposed or impeded by parents or the medical establishment.⁴⁰ Ethics commissions, basing their assessment on psychological research findings,⁴¹ have also come to use the concept of gender identity in this psychological sense, claiming that it should be put under the protection of the law.⁴²

LOOKING AHEAD

The scope of this paper did alas not permit a discussion of the arguments advanced against the interpretation of psychological gender as an identity. The analysis of the reasons that speak in its favor thus only aims to stimulate further discussion on this issue, which should be led with its critics.

The current debates in politics and legislation suggest that the term of 'psychological gender identity', already present in legal, ethical and medical discourses, will play an increasing role in the framework of the discussion on the well-being of children, since it serves to embed and clarify the protection of child well-being against societal, family or other interests. With growing awareness that neither the sciences nor ethics nor law can do without the psychological gender dimension, the interpretation of psychological gender will become more and more important. The 'identity'-controversy being rather an issue of interdisciplinary communication, it is of minor importance for the acute problems of trans and inter persons. The increasing acknowledgement of the psychological dimension of gender or so-called sex, no matter how interpreted, should in itself be conducive to improving their legal situation and lived reality.

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