

What does it mean to be a woman? What does it mean to be a man? Is there a third category? And does law have any business employing these categories to differentiate between humans? The aim of this project is to reconsider the current understanding of the concept of gender in law, as well as of the gender-type concepts (such as a man, a woman, or others that fall outside of this binary). The nonlegal meaning of these concepts, once clear, has changed greatly over the past decades. It is discussed what determines a gender of a person – what makes one e.g., a woman – is it her body, her gender role, or maybe the inner sense of gender and self-identification?

Legal systems in every known country group people according to their gender. For instance, in Polish law, people are categorized as either men or women based on visible anatomical features. Such regulations deal with what I will call the ‘legal gender’. It is a legal concept that allows to determine, who counts as a man and who as a woman in each legal system. As I will argue, the legal gender does not correspond to a natural kind – it means that the criteria of membership to the legal gender are not based on observations on how our organisms differ and how biologists classify them into male, female, or intersex. Even though usually law categorizes people correctly, there are exceptions, such as trans people, or nonbinary people in Polish law, who are classified as either men or women, despite being intersex, or not identifying with the gender ascribed.

The current debate on the meaning of gender and gender-related concepts is connected to many real-world complications. For example, the lack of agreement on what ‘gender’ is has led to a great dispute in Poland about whether it is necessary to denounce the Istanbul Convention, because it refers to the term ‘gender’. Furthermore, the lack of consensus on who counts as a ‘woman’ brings controversies about access to spaces only for women (such as toilets or shelters) and activities (such as sports) by trans women. The legal systems are yet to answer these problems. The rigidity of the gender-related concepts in law does not fit the changing social world, and the transforming meanings of these terms outside the legal discourse. For this reason, the project is an attempt to provide a new, transformed concept of gender in law, based on the understandings of gender and gender-related terms in nonlegal discourses.

In my research, I will analyse three understandings of defining gender, each with distinct membership criteria, and each dividing people into separate categories. The first one will be ‘material gender’ relates to the facts about sexed bodies that lead to distinguishing between male, female, and intersex organisms. The second is ‘social gender’ which refers to the question of who counts as a member of a given gender according to sociocultural norms. The third level: ‘experienced gender’ is a private sense of self-identification as either a man, a woman, or a nonbinary person (by which I understand many distinct gender identities outside the binary, including identification with multiple genders or with none). This analysis will allow to create a conceptual framework for approaches to defining gender in law. As the next step, I will analyse the philosophical approaches to understanding of the non-legal concepts related to gender, because the legal concept of gender involves philosophical presuppositions. Understanding the relation between the philosophical and the legal meaning of gender will help to make a better sense of the latter.

The project will conclude with providing a transformed concept of legal gender (or concepts of gender adequate for different legal institutions), including membership criteria for legal concepts of a man, a woman, and other genders.