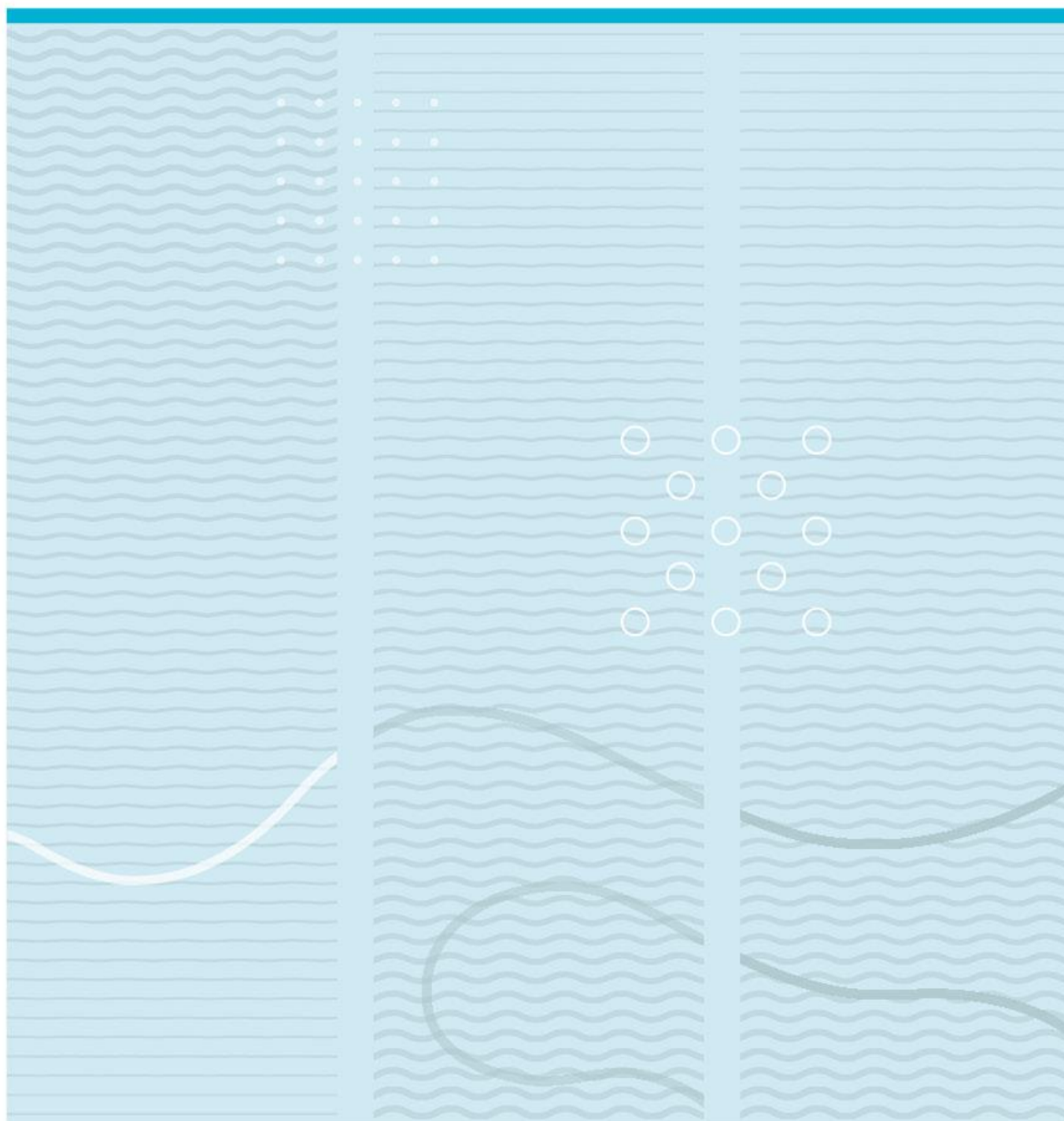


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Institutional misgendering

A qualitative study of non-binary people's experiences of social invisibility and a lack of legal recognition in Norway



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Abstract

Norway has an institutionalised binary system of gender that is reproduced through gender-specific regulations. One of these regulations is the fact that there are only two legal genders. This means that only people who identify as men or women are able to have a legal gender that correlates with their gender identity, and non-binary people are excluded from this right. The OHCHR argues that everyone should have their gender identity legally recognized, and that not offering this is a breach of state obligations on “freedom from discrimination, equal protection of the law, privacy, identity and freedom of expression”. This thesis will discuss Norwegian non-binary people’s experiences with this lack of recognition, and the social invisibility it can lead to. This will be done through discussing gender pluralism and degendering as strategies for recognition, as well as concepts of misrecognition, social invisibility, and institutional misgendering.

The findings of 14 qualitative interviews with non-binary people show that not having legal recognition can feel like being socially invisible. Additionally, lack of recognition was likened to misgendering, which led to the term “institutional misgendering” to explain non-binary people having to choose a legal gender that does not reflect their gender identity. Several of the informants saw a lack of legal recognition as a message from the government that they do not exist. This was the main reason they would like a nonbinary legal gender: as a proof of their existence. This is referred to as being institutionally visible, and legal recognition could be an important step towards reducing non-binary people’s feelings of social invisibility. However, some of the informants would prefer to remove gender markers instead, because they were worried about the consequences of a nonbinary gender marker. This can be called a dilemma between safety and recognition. Some of the informants are worried about the visibility a nonbinary legal gender could bring, while others are afraid degendering would render them socially and institutionally invisible.

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“The ultimate, hidden truth of the world is that it is something that we make, and could just as easily make differently.”
(Graeber, 2015, p. 54).

1 Introduction

In *Human Rights, Sexual Orientation and Gender Identity: Guidelines for the Norwegian Foreign Service*, the Norwegian Ministry of Foreign Affairs claims that “Norway is a staunch defender of human rights, including the rights of lesbian, gay, bisexual and transgender persons (LGBT¹). We will have the courage to speak out when others are silent” (2012, p. 2). In 2015, the Office of the United Nations High Commissioner for Human Rights (OHCHR) urged states to legally recognize non-binary² identities (OHCHR, n.d.). Despite claiming that they want to fight for LGBT rights, Norway has still not implemented a nonbinary legal gender³.

ILGA-Europe, which is an international non-governmental umbrella organisation composed of over 600 organisations from 54 countries in Europe and Central Asia, creates yearly rapports on how well European countries are doing with regards to LGBTI human rights (ILGA-Europe, n.d.). One of the three main critiques they had for Norway in 2022 was about the lack of legal recognition for non-binary people (ILGA-Europe, 2022). This has been ILGA-Europe’s critique of Norway since 2017 (ILGA-Europe, 2017).

Norway has an institutionalized binary system of gender – one that is reproduced through gender-specific regulations. One of these regulations is that there are only two legal genders. Only people who identify as men or women can have a legal gender that correlates with their gender identity⁴.

¹ LGBT/LGBTI/LGBTIQ/LGBTQ+ are acronyms for lesbian, gay, bisexual, trans, intersex, queer and others who fall under the queer umbrella. There are different preferences for which letters to include, and I will use the one originally used in the given text. Otherwise, I will use LGBTQ+.

² Some trans people identify as something outside of the gender binary. There are a lot of different identities outside of the binary (e.g. agender, genderqueer, genderfluid, bigender, two-spirit), as some people identify as something between man and woman, or as something completely different (Richards et al, 2016). For this thesis I will use “non-binary” to refer to all people who identify as something other than man or woman.

³ When talking about legal gender, and about adding another gender category, I will use “nonbinary”. The lack of a hyphen in the word is to create a distinction between the word as an identity (non-binary) and the word as a legal gender category.

⁴ With gender identity, and gender, I mean the identity and experience of being a man, woman, both, or neither. Gender is seen as binary, which means the belief that there are only two genders: man and woman. From the moment we are born, and sometimes even before that, humans are categorised as one of these genders, based on their external genitals (Nagoshi & Brzuzy, 2010; Holzer, 2018; Skeiv Ungdom, n.d.)

This means that not everyone is recognized as the gender they identify as (Arnesen, 2017). Excluding non-binary people from legal recognition is illegal differential treatment based on the Discrimination Act, according to Arnesen (2016). Monro and Van der Ros (2017) argue that not having legal recognition means non-binary people do not have access to full citizenship in Norway. One of the consequences of this is the fact that non-binary people are excluded from gender-affirming healthcare. Another consequence is the lack of legal recognition itself; non-binary people must choose between having a male legal gender or a female one (Monro & Van der Ros, 2017).

The OHCHR (n.d.) explains that not having their gender identity legally recognized negatively impacts all features of a person's life: "their right to health, to housing, to access social security, to freedom of movement and residence". In addition, it can lead to discrimination, violence, and social exclusion. Thus, the OHCHR (n.d.) concludes that a lack of gender recognition is a breach of state obligations on "freedom from discrimination, equal protection of the law, privacy, identity and freedom of expression".

In line with this, Byrne (2014) argues that not having access to legal recognition can be understood as a denial of fundamental human rights such as the right to recognition before the law, non-discrimination and equality before the law, right to privacy, and the right to health. If Norway wants to live up to their self-understanding as an egalitarian and humanist country, and a "staunch defender" of LGBT rights, one could expect them do something about the lack of legal recognition for non-binary people.

This thesis will not discuss whether or not there are more than two genders, nor whether non-binary is a valid identity – because the premise of this thesis is that there are and that it is. Instead, I will discuss non-binary people's rights, and examine their experiences of social invisibility and recognition. When it comes to non-binary people's rights, some claim that removing gender markers from identity documents would be the best course of action, while others argue that legal recognition is the essential goal (Quinan & Oosthoek, 2021). These two strategies will be further discussed throughout the thesis.

1.1 Research question

The research question this thesis seeks to answer is: How does a lack of legal recognition impact the social visibility of non-binary people in Norway, and what would the implementation of a

nonbinary legal gender do for their feelings of recognition? Through this research question, this thesis will explore non-binary people's experiences with living in a country that does not legally recognize their gender identity, as well as examine their thoughts and feelings regarding a potential implementation of a nonbinary legal gender.

It was important for me to give voice to non-binary people and hear their perspectives on this topic, as the debate about a nonbinary legal gender is mostly dominated by the opinions of politicians and organisations. Thus, the main goal of this thesis is to produce knowledge about a topic that has been underrepresented in research and society, as well as to give voice to members of a marginalised group. Hopefully the reflections of the affected group can be considered in political debates on legal recognition for non-binary people, and lead to informed political decisions. Additionally, I hope this thesis can give people, politicians and regular people alike, an understanding of non-binary people's experiences. For this reason, I chose to carry out qualitative interviews with people who identify outside of the gender binary.

1.2 Structure

The next chapter will give an introduction to the background and context of this topic, as well as to previous research. I will explain the differences between sex and gender, and the fact that they are socially constructed as binary, before discussing how the binary systems of sex and gender are Western hegemonies. I will also present some previous research on the living conditions of trans and non-binary people, both nationally and internationally. I will discuss the status of the international political landscape regarding a nonbinary legal gender, including which countries have already introduced it, as well as recommendations from international human rights organisations. A discussion of the political landscape in Norway follows, which looks at specifics concerning the implementation of a nonbinary legal gender in Norway.

The third chapter is the theoretical framework, which consists of several concepts that will help explain and discuss my findings. The first concept I explain is Charles Taylor's (1994) concept of authenticity, with some additions from Lauren Bialystok (2013) who has discussed authenticity in relation to trans identity. Recognition is also a concept discussed by Taylor (1994). Recognition includes concepts that show some consequences of a lack of recognition: Taylor's (1994) and Nancy Fraser's (2003) misrecognition, Axel Honneth's (2001; 2004) social invisibility, and Surya Monro's (2005) erasure. Then, the concept of misgendering, as discussed by McLemore (2013) and

Sue (2010), and institutional misgendering, which is a concept explained by looking at institutional racism (Maughan et al, 2022). The next two concepts are strategies for recognition: Monro's (2005; 2007; 2008) gender pluralism and degendering, with supplements from other authors such as Aboim (2020) and Holzer (2018; 2020). Some conflicts between these two strategies will be discussed further by looking at Fraser's (1997) concepts of affirmative and transformative remedies and Brown's (2000) paradox of rights.

After theory comes method and methodology. I will reflect on the methodological premises of the thesis, like having an interpretivist epistemology, a constructionist ontology, as well as my positionality as a researcher. Then I will explain my choices regarding qualitative interviews, like sampling, semi-structured interviews, how I stored my data, as well as the transcription and translation. I will also discuss the ethical considerations related to this project. Lastly, I will discuss and explain my choice to do a thematic analysis, describing what I have done by using Braun and Clarke' (2006) six-step thematic analysis.

Chapter 5 describes the findings from my qualitative interviews. This chapter is divided into five main parts. It opens with gender identity and experience to introduce us to the topic and explain how the informants defined their identities. Additionally, I will look at their thoughts regarding one specific experience, which is their gender identity being perceived as a trend. After that, I will describe their encounters with misgendering, both from individuals and from the state⁵. Then comes recognition, and their experiences with not having legal recognition. The next part is about how they feel about introducing a nonbinary legal gender, as well as potential negative consequences. Finally, the informants' thoughts on the strategy of degendering, and how they did not think this was a realistic course of action.

Then lastly comes the discussion, which is based on these subjects, though with some additions. I will quickly look at gender identity and experience, before explaining how a lack of recognition can occur through misgendering and social exclusion. This is further discussed in the subcategories misrecognition, social invisibility, and erasure. I will discuss the concept of institutional misgendering, before moving on to a discussion about the implementation of a nonbinary legal gender, and whether that would bring recognition. I will also discuss some of the negative consequences of adding another gender category. Following this is a discussion of degendering, and

⁵ The state refers in this thesis to the institutions of government (Britannica, 2020). The state has a monopoly on creating and enforcing laws and legislations (Cudworth et al, 2007).

how it could reduce state control over people's lives, before a comparison of degendering and gender pluralism. This comparison includes what the informants would prefer, as well as the conflict it highlights between wanting to be visible and being afraid of what that visibility could bring.

2 Background and literature review

The literature about non-binary legal recognition is mostly focused on which strategy is better – gender pluralism or degendering – not on what non-binary people themselves think and feel. Qualitative studies are often preoccupied with the general experience of being non-binary, not specifically about their experience with recognition. Additionally, a lot of the literature focuses on trans people as one homogeneous group, making no distinction between binary and non-binary trans people. Thus, I think this thesis is an important addition to the topic of non-binary people and of legal recognition. Part 2.1 and 2.2 of this chapter is included in order to describe the background context for this thesis – which is the idea that gender and the gender binary are socially constructed. The other three parts describe the literature related to the living conditions and health of trans and non-binary people, the international political landscape regarding nonbinary legal genders, and the political situation in Norway.

2.1 Gender and sex as socially constructed

We live in a world that is deeply structured by sex and gender (Monro, 2005), and it is crucial to understand the difference between these two concepts if we are to understand the concept of a non-binary identity. Additionally, one of the premises of this thesis is that sex and gender is socially constructed, which will be explained in this section.

The binary system is the presumption that there are only two genders and two sexes: man/woman and male/female, which are seen as separate and opposite categories. From the moment we are born, and sometimes even before that, humans are categorised as either of these genders, based on their external genitals (Nagoshi & Brzuzy, 2010; Holzer, 2018). In contrast to this common assumption, Monro (2005) argues that gender should be seen as plural, and as a spectrum. Additionally, Monro (2005; 2008) argues that gender is a social process, and that it is constructed through interactions and the internalisation of discourses – a set of meanings and ideas present in a

society. This means that Monro sees gender as something that is socially constructed by the people in society.

Though gender is seen as socially constructed, it does not mean that it is not significant, or that it is easy to let go of the notions of gender (Sullivan, 2003). People “embody the discourses” (Sullivan, 2003, p. 37) that exist in their culture; the discourses become internalised. There is often a dominant discourse in a society that is unquestioned and seen as unchangeable (Monro, 2008). Powerful institutions (families, schools, churches, states) follow this discourse, and the discipline they administer affects and shapes real bodies (Connell, 2012). The sex/gender binary is one such discourse.

Sex is usually defined as the biological identity of a person, made up of genitals, gonads, chromosomes, and hormones, which together decide whether you are female or male. Gender is viewed as learned behaviours and expectations (Fausto-Sterling, 2000; Ingraham, 1994). Gender identity refers to people’s internal and individual experiences of gender, and is often expressed through appearance, speech, and mannerisms. Some people have a gender identity that correlates with the sex they were assigned at birth, while others do not (OHCHR, n.d.).

Sex is constructed to divide human bodies into the biological categories of male and female. Sex is explained as biology, which implies that it is natural, while gender is seen as something learned or achieved, and thus seen as something social (Ingraham, 1994, p. 213). Nonetheless, the natural world is also something humans apply meaning to, not just the social world. Biologically, human bodies come in all variations and all combinations of sex characteristics, chromosomes, and hormones (Fausto-Sterling, 2000; Connell, 2011). Whenever these combinations make it difficult to place a person firmly into one of the two binary sexes, the person is considered intersex. Intersex people are seen as anomalies; deviations from the binary. However, intersex people are proof of natural variations in bodies and can instead be viewed as proof that the binary is not natural (Fausto-Sterling, 2000).

Sex as a concept is meant to divide human bodies into categories, but there is no natural reason that there should be only two categories. This means the categories of male and female have been socially constructed (Fausto-Sterling, 2000). Sex as a concept is meant to make sense of the body, and place people into categories, but the way this is done is not inherently “natural” and has immense ramifications (Ingraham, 1994). That it is not inherently natural means that there is no

natural or biological reason to divide humans into just two dichotomous sex categories. There is a bigger diversity in human bodies that is not reflected in the binary construction of sex categories (Connell, 2011).

2.1.1 Constructionism and poststructuralism

The ontology that sees concepts as socially constructed is called constructionism. Constructionism sees social phenomena, and the categories used to understand them, as socially produced and constructed through social interaction (Bryman, 2012). The view of categories is what is most important for this thesis, and constructionism sees all labels and categories, and the meanings they carry, as socially defined; as products of the specific cultural and historical context they exist in. The categories are created by humans, and as such they are not fixed or pre-given (Bryman, 2012).

Relatively similar to constructionism is poststructuralism. Poststructuralism is based on the idea that what we perceive as truth is constructed through the discourses of a particular culture (Sullivan, 2003; Monro, 2008). The premise of this thesis is the poststructuralist idea that gender is socially constructed, and so is sex. Something being socially constructed means that its meaning is created through interactions and processes in society. It is produced by society, becomes part of the discourse, and is then internalised by the members (Monro, 2008). This is the reason for my quote at the beginning of the thesis: “The ultimate, hidden truth of the world is that it is something that we make, and could just as easily make differently.” (Graeber, 2015). Poststructuralism argues that gender and sex are socially constructed, and thus, there is no reason why we cannot change the meaning and significance of these concepts.

In the binary system, gender is often seen as connected with, or as the equivalent to, biological sex. This means that when a person, through visual inspection of their external genitals, is assigned female, it is assumed that their gender will follow that, and they will be a girl/woman. The same thing happens with people assigned male at birth, with the assumption that they will be a boy/man (Richards et al., 2016).

An important part of poststructuralist theory regarding gender is to remove this connection to biological sex. The link between sex and gender is constructed and is not innate. Humans are the ones that have created and decided the meanings behind these terms (Monro, 2008). The fact that the link is constructed means that there is nothing that inherently binds the two; the binary construction of sex and gender assumes that they should be understood as contingent upon each

other. Butler, however, argues that gender identity should not be linked to biological sex: “man and masculine might just as easily signify a female body as a male one” (Butler, 1990, p. 10).

2.1.2 Gender as the focus of this thesis

The link between sex and gender is often used as an argument against gender diversity; because there are only two sexes, there can only be two genders. However, as previously stated, biology shows that human bodies cannot be neatly fixed into two categories (Connell, 2012), and neither can gender identity. Including a biological element can be helpful when criticising the gender binary, because gender and sex are commonly understood as interrelated. When we look at the variety of bodies, knowing there are only two sex categories, it demonstrates that binaries are not as accurate and innate as they may seem. This can be transferred to the gender binary (Monro, 2008).

I have mentioned intersex people in this section, and while intersex rights is an important topic, I do not have space to include an in-depth exploration of it in this thesis. I bring up the distinction between sex and gender to point out that I will focus on gender in this thesis. This means that I will focus on people’s experienced gender identities, and not on their bodies. Gender identity is the experience and feelings you have with being a man, woman, non-binary, or any other gender (Skeiv Ungdom, n.d.).

When I talk about implementing an additional legal gender, I will call it nonbinary legal gender, and not “third gender” as it is often called. This is because “third gender” makes it seem like there are only three genders: man, woman, and a third one. Using nonbinary to refer to additional gender categories does not imply that there is a fixed number of gender identities, but instead indicates that gender is a spectrum (Holzer, 2020; Monro, 2005).

2.2 Hegemony of the gender binary

Most people in the West are raised to believe that gender is binary and oppositional (women vs. men) and that it follows directly from biological sex (female vs. male). This is called the gender/sex binary, and it is a central concept in contextualising this thesis (Morgenroth & Ryan, 2020). There will also be a short illustration of the fact that the hegemony of the gender binary is a Western idea. This is a further sign that our understanding of gender as a binary is constructed, and as with other social customs, the understanding of gender has varied depending on geographical and historical contexts.

As we have seen in the previous section, the gender/sex binary is based on incorrect assumptions, and science shows us that the understanding of gender and/or sex as binary is overly simplistic and not accurate (Morgenroth & Ryan, 2020). Through this binary construction, the physiological differences of human bodies become meaningful by sorting people “into only two socially and legally recognized gender statuses” (Budgeon, 2013, p. 318).

The hegemony of the binary system means that the dominant idea in society is that there are only two genders, and that society and its institutions are organised to make this seem so normal and natural that we take it for granted. Language, the medical system, the educational system, and legislative powers are all institutions that are based on this idea (Monro, 2005; Monro, 2008; Verloo & van der Vleuten, 2020). Gender is such a normal aspect of society that many people do not realise that gender is constantly created and re-produced through human interaction and social life (Lorber, 1991). Through social interaction, individuals learn what is expected of them with regard to their gender. Unless someone deliberately disrupts our expectations of how women and men are supposed to act, we usually do not notice that their gender is being produced (Lorber, 1991).

Hegemonies are created by power structures, like capitalism, the patriarchy, colonialism. These structures shape social interaction, and individual people’s choices, but the individual’s choices also help to create, uphold, and reshape the current structures (Monro, 2005; Budgeon, 2013). Gender and sexuality as a hegemony was created within a patriarchal power structure, according to Monro (2005), and the assumption of binary gender and heterosexuality is crucial for the patriarchy’s existence. One of the ways that the hegemony of the gender binary is apparent is in the way that masculinity and femininity are seen as complementary opposites.*what does this mean To sustain this hegemony, masculinity and femininity are fixed as hierarchical with men having more power than women (Budgeon, 2013). The fight for non-binary recognition is therefore a fight against the hegemony of the binary gender system (Monro, 2005).

Herdt (1993) argues that Western scholars have often projected their own beliefs on other cultures, assuming that their ideas are universal. In doing so, they have ignored a lot of sex and gender variations in other societies (Herdt, 1993). Non-binary and other similar terms have been used in the West since around the 1990s, but several concepts used to describe people who are not men and women have been used for centuries in non-Western contexts (Verloo & van der Vleuten, 2020). For example bissu (one of five genders among the Bugis people in Indonesia), fa’afafine and

fa'atane (Samoa), hijra (in Pakistan, India, and Nepal), and māhū (in Hawaiian and Tahitian cultures) (Verloo & van der Vleuten, 2020).

Lugones (2007) references Oyewùmí and Allen who write about the Yoruba people of West Africa and Native Americans respectively. Oyewùmí and Allen both claim that gender as we know it is a concept that was introduced to these cultures through colonialism; that these cultures either did not have gender as an organisational category or that gender was based on more than biology. Lugones (2007) agrees that gender, and especially the idea of a strict gender binary, is a colonial introduction. Lugones (2007) claims that the idea that there are only two genders has been, and continues to be, used to destroy peoples, cosmologies, and communities. For example, the British undermined the established position of Hijra people in India during their rule and removed the Hijra communities' land rights (Monro, 2007).

2.3 Living conditions and health of trans and non-binary people

There are few studies done exclusively on non-binary people, both in Norway and internationally. Non-binary people are often included as a subgroup within studies on trans people⁶, or trans people are seen as just one group, with no distinction between binary and non-binary trans people (Scandurra et al, 2019). Thus, some of the studies and articles referenced in this section talk about trans people as one group, while some discuss non-binary people as a separate group.

Van der Ros (2013) argues that there is a lack of knowledge about gender identity and non-binary genders in all areas of society – school, workplace, family, health services, and other official institutions. Several studies (e.g. Nordic Council of Ministers, 2021; Flatnes, 2018; Boddington, 2016; van der Ros, 2013) point to this lack of knowledge about non-binary genders as a reason for the discrimination, stigmatization, and harassment that non-binary people face.

In 2020, the Norwegian Directorate for Children, Youth and Family Affairs (Bufdir) commissioned a study on sexual orientation, gender diversity, and living conditions (Anderssen et al, 2021). It was the first time trans people were included in this kind of survey in Norway. The numbers showed a

⁶ A trans person, or someone who is transgender, is an umbrella term for people whose gender identity differs from the sex they were assigned at birth. Some trans people are men, some are women, and some identify as something outside the gender binary (Bufdir, 2020).

remarkable difference in living conditions and discrimination for trans people compared to cis⁷ people. Half of the trans people in the study reported having been harassed at work or school the previous year. 40% of them reported receiving negative comments, while 25% had experienced direct threats of violence (Anderssen et al., 2021).

A significant amount, and a higher percentage than the cis people in the study, reported having mental health issues, as well as more loneliness and less satisfaction with life. Non-binary people seemed to report even worse mental health than binary trans people. Regarding suicidal behaviours, 30% of the non-binary people in the study reported having attempted suicide, which is more than twice the amount of the cis people surveyed (Anderssen et al, 2021).

The Nordic Council of Ministers (2021b) found the same in their study on LGBTI people in the Nordic countries. They found more mental health issues, more suicidal thoughts, and more suicide attempts among trans people. Trans people also stand out when it comes to harassment and abusive treatment, and the incidents are rarely reported to the police. According to the Nordic Council of Ministers (2021b), a lot of the problems that LGBTI people face seem to be related to minority stress. Being a minority means that you are at a greater risk of experiencing psychosocial stressors like discrimination, bullying, violence, etc. These stressors, or just the threat of them, can affect mental health and are often referred to as minority stress (Nordic Council of Ministers, 2021a).

In 2020, Bufdir published a report on LGBTIQ inclusion in Norway, where they found that trans people meet more negative attitudes than other LGBTIQ people, especially if they do not adhere to the gender binary (Bufdir, 2020a). Bufdir (2020a) suggests that attitudes towards LGBTIQ people have changed in parallel with important law changes like same-sex marriage, discrimination ban, and self-determined legal gender. LGBTIQ people have also become more visible in the media and in public conversation over the last decade. These things may have contributed to the more positive attitudes. However, LGBTIQ people still face discrimination – and trans people more so than cis people (Bufdir, 2020a).

Scandurra et al (2019) reviewed several studies on the health of non-binary people and found mixed reports. Some find that non-binary people have fewer health issues than binary trans people, while others find that they have more. A survey done by Burgwal et al (2019), and some of the studies

⁷ Being a cis person means that you identify with the sex you were assigned at birth. A cis woman was assigned female at birth and identifies as a woman, while a cis man was assigned male and identifies as a man (Bufdir, 2020)

reviewed by Scandurra et al (2019), showed that non-binary people have worse self-reported health than binary trans people. These studies found it to be largely linked to a lack of access to gender-affirming treatment.

Gender-affirming treatment is controlled by a state monopoly in Norway, and only people diagnosed with transsexualism get access to gender-affirming healthcare. One of the criteria to get the diagnose transsexualism is to identify with the opposite gender of the sex you were assigned at birth. This means that non-binary people are excluded from the diagnosis and, accordingly, also from treatment (Monro & Van der Ros, 2017; van der Ros, 2013).

2.4 International political landscape

A 2015 survey of 985 non-binary people from the UK showed that most of the participants felt that the lack of legal gender recognition negatively affected their social visibility, mental health, and self-esteem (Holzer, 2020). The fact that their legal gender does not match their gender identity impact non-binary people's daily life. For example, when filling out forms or documentation, they often have to choose to present themselves as male or female, because there are no other options available (Newman & Peel, 2022). Thus, many non-binary people have to use their birth-assigned gender in a lot of day-to-day affairs and bureaucratic settings, because most systems and social circles only recognize binary genders (Richards et al, 2016).

Several countries and regions around the world have introduced a nonbinary legal gender or have an X marker for certain purposes. This includes Argentina, Australia, Austria, Bangladesh, Canada, Denmark, France, Germany, India, Malta, Nepal, Netherlands, New Zealand, and Pakistan (Holzer, 2018; Thorsnes, 2018; Holzer, 2020; Quinan & Hunt, 2021; Cabrera, 2021). At the time of writing, the US has made X markers available on passports and is in the process of including it on other documents as well (Blinken, 2022).

In some of the jurisdictions, some sort of criteria needs to be filled before people can change their legal gender to X (Holzer, 2018; Quinan & Hunt, 2021). Austria, France, and Germany have limited the use of the X marker on passports and documentation exclusively to intersex people (Quinan & Hunt, 2021; Holzer, 2020; Thorsnes, 2018). This has been criticised for reflecting the biological determinist idea that biological sex determines gender. Instead, it has been suggested that a nonbinary legal gender should be based on self-determination (Holzer, 2020). In Nepal, all

transgender people are required to use the nonbinary gender marker if they want to change from their birth-assigned sex, including binary trans people (Quinan & Hunt, 2021). In Denmark, the X was created for trans people who “feel like they belong to the other gender”, and thus excludes non-binary and intersex people (Thorsnes, 2018).

There seems to be a confusion of sex and gender when it comes to the topic of gender markers. We call them “gender markers” but they are registered based on sex at birth. Some countries restrict changing legal gender to people who have undergone so-called “sex reassignment procedures”, which again links it to sex and your physical body. Other countries allow change of legal gender based on self-determination, which points to gender. The same lack of consensus is also true for nonbinary legal gender. Nonbinary legal genders are sometimes available to anyone who identifies as non-binary, and sometimes restricted to intersex people exclusively (Holzer, 2018). Malta allows for “undetermined” sex (X) to be listed on birth certificates, in addition to the X being available to anyone by self-determination, and thus the X is for both sex and gender in Malta (Quinan & Hunt, 2021). Based on these policies, there seems to be a lack of international agreement on what the marker on your birth certificate and identification documents actually represents; sex or gender.

Since 1996 there has been a technical possibility to have X as a gender marker on passports, based on regulations from the International Civil Aviation Organization (ICAO) about machine-readable travel documents (Quinan & Hunt, 2021). A UK study from 2022 found that 85.5% of the participants were in favour of some sort of reform of the UK legal gender system. Over half of the participants would have liked to abolish legal gender, but saw this as more of an impossible dream, not a realistic goal (Newman & Peel, 2022).

The United Arab Emirates has reportedly denied entry to individuals with X markers on their passports (Quinan & Hunt, 2021). Both the Canadian and the Australian governments warn that they cannot guarantee entry or transit by other countries’ border control authorities. Quinan & Hunt (2021) recommend that when implementing a nonbinary legal gender, you must take into account heightened border surveillance that targets gender non-normativity, and examine how it might impact freedom of movement. This is the reason Malta provides their citizens with the option of having two passports: one with X and one with M or F (Holzer, 2020; Quinan & Hunt, 2021).

There are no specific international treaties on the rights of LGBTQ+ people, and the Universal Declaration of Human Rights was based on a binary model of sex and gender, and without

mentioning sexuality. This means that it did not mention other genders than man and woman, and thus we can assume that they had a binary understanding of sex and gender (Waites, 2009). The most influential international document regarding LGBTQ+ people is the Yogyakarta Principles (YP), which were created in 2007 by a group of human rights experts appointed by the UN, as well as the updated Yogyakarta Principles +10 in 2017 (Holzer, 2020). The Yogyakarta Principles clarify states' human rights obligations regarding gender and sexuality (The Yogyakarta Principles, n.d.).

Principle 31 of YP+10 is the most relevant when it comes to gender identity. Principle 31 proposes four changes to the current public gender registration: the elimination of gender markers from identification documents (section I); the adoption of unconditional gender recognition laws (section II); the introduction of nonbinary legal gender categories (section III); and the abolition of the gender registration for personal status purposes (section IV) (Holzer, 2020, p. 102). These proposed changes correlate to the strategies for achieving recognition for non-binary people, and further discussion about this will take place in the chapter on theoretical framework.

The YP+10, and thus the UN, recommends reducing state control over gender registration, and acknowledging gender diversity within the areas that are still controlled by the state (The Yogyakarta Principles, n.d.). The EU's Council of Europe recommends that member states consider implementing a nonbinary gender option in identity documents (Richards et al, 2016). The Inter-American Court of Human Rights insists that "those who identify themselves with diverse gender identities must be recognized as such" (Holzer, 2018, p. 25).

When it comes to adding another gender marker, one alternative would be to introduce a nonbinary legal gender for concrete purposes, like passports and birth certificates. Another would be to make a nonbinary legal gender that is equal to man and woman for all practical and legal purposes⁸ (Thorsnes, 2018). In her report, Thorsnes (2018) argues that the latter would be the best option, because it would signify equality. If a nonbinary legal gender is only available for concrete documents, the civil registry, for example, would still be binary (Holzer, 2018). Holzer (2018) discusses that instead of using gender markers for identification purposes, an alternative could be to use biometric data like fingerprints or iris recognition.

⁸ When I discuss implementing a nonbinary legal gender, I refer to this version; a nonbinary legal gender that is equal to man and woman in all ways.

2.5 Political landscape in Norway

The Norwegian Parliament has previously voted against the implementation of a nonbinary legal gender, or against researching this subject, in 2016, 2017, 2019, and in the spring of 2021 (Mostad, 2021; Thorsnes, 2018). In November 2021, Anette Trettebergstuen – the Norwegian Minister of Culture and Equality, confirmed that the Government has started the process of conducting an Official Norwegian Report of a nonbinary legal gender. This will include examining the consequences and formalities regarding the implementation of a nonbinary legal gender (Bakke, 2021).

One issue that is often brought up in relation to a nonbinary gender marker, is the fact that the Norwegian national identity number has a digit that refers to the individual's legal gender. However, because of the way they are created, Norway will run out of national identity numbers at some point (Thorsnes, 2018). Consequently, the Norwegian Tax Administration has had to create a new system for national identity numbers, and in this new system, there are no digits indicating gender (Skatteetaten, n.d.). This means that if a nonbinary legal gender is implemented, there already exists a system to issue gender-neutral national identity numbers (Thorsnes, 2018). The new system is to be introduced in 2032 at the latest, according to the Norwegian Tax Administration (Skatteetaten, n.d.).

In her report, Thorsnes (2018) suggests adding a nonbinary legal gender in passports and identity documents, but suggests removing gender registration in other areas. Additionally, Thorsnes (2018) argues for a degendering of Norwegian laws to make them all gender neutral. Thorsnes (2018) argues that these recommendations would reflect the responsibility the state has in protecting its citizens from discrimination, which implies that the state is not currently doing this. In line with this, Arnesen (2016) argues in his master thesis that only one group in Norway has the right to have a gender marker that corresponds with their gender identity – namely binary people, while non-binary people are excluded from this right. Only certain gender identities are recognized through passports and IDs and Arnesen (2016) concludes that this is illegal differential treatment according to the Norwegian Discrimination Act.

There have been negative reactions to trans activism and the increased visibility of trans people all around the world, and one opposing response has been the claim that being trans has become a trend (e.g. Littman, 2018; Shrier, 2020). This claim has also come from organisations such as Transgender Trend and 4th Wave Now (see transgendertrend.com & 4thwavenow.com), and

celebrities like J.K. Rowling (2020). The claim that being trans is a trend has also shown up in debates about trans rights in Norway (see for example Haustveit, 2021; Brusset et al, 2019).

3 Theoretical framework

The theoretical framework of this thesis consists of several theoretical concepts that will be used to discuss the findings. These concepts will be presented in this section, starting with authenticity. Authenticity is a contested concept, and there is no room to delve deeply into these debates, but it is a useful concept to understand certain aspects of misgendering, and as such will be explained briefly. Then I move on to recognition. Recognition, and the lack of it, is an important concept for this thesis, and I will use the terms misrecognition, social invisibility, and erasure to demonstrate the consequences a lack of recognition can have. After this, we will look at two concepts that are related to the experience of being trans or non-binary: misgendering and institutional misgendering. In the fight for recognition, the two main strategies are gender pluralism and degendering, and the explanation of these approaches comes next. There is much debate about which strategy to use, and to further understand this we will look at Fraser's (1997) idea of affirmative and transformative remedies, as well as Brown's (2000) paradox of rights.

3.1 Authenticity

Authenticity is a concept that has been much discussed in philosophy (Bialystok, 2013) and I do not have the space to really delve into this discussion. I will briefly explain the way Taylor (1991) and Bialystok (2013) understand the concept, and this is what will be used in my discussion of the findings.

Authenticity is part of the broader discussion of what identity is and whether people have a "true self". The idea of a true self has been criticised as having an essentialist view of identity (Bialystok, 2013). Taylor (1991) thinks that while the critique of authenticity is justified, this does not mean that we need to abandon the concept itself. Identity is a difficult concept to define neatly. Bialystok (2013) discusses identity as something that is not essential or fixed, and not decided from an outside point of view. Taylor (1991) sees personal identity as dependent on dialogue with others, and thus also dependent on recognition from others.

Authenticity is linked to autonomous choices, and whether you are able to decide for yourself alone, without pressure from external forces (Bialystok, 2013; Taylor, 1991). Taylor (1991) calls this self-determining freedom. With this notion comes the belief that it is important to be true to yourself (Taylor, 1991). Taylor (1991) explains that authenticity builds on individualism, and the idea that each person has an original way of being human: “being true to myself means being true to my own originality, and that is something only I can articulate and discover” (p. 29). This means that you should be able to live your life your own way, and not have to imitate other people’s ways of living.

Connected to authenticity is the importance of recognition of identity, according to Taylor (1991). This can be understood to mean that in order to feel authentic, people need others to see them the way they see themselves. Authenticity in relation to personal identity is, according to Bialystok (2013), “a relation of the self to itself” (p. 124). Authenticity, then, is not just about other people, but also your internal status. You need to feel like you are being authentic, it does not matter if other people believe you are. Bialystok (2013) thus argues that whether a person feels authentic is a question of their relation to themselves, not to other people. This means that if authenticity is a sort of goal, then it is not something you owe someone else, but rather something you owe yourself, according to Bialystok (2013). However, as Taylor (1991) claims, your feelings of authenticity is dependent on whether other people see you the way you see yourself.

To connect these two theories, then, authenticity is something you want for yourself, not to prove anything to other people, but your feelings of authenticity are contingent on other people recognising your identity. This is how the concept of authenticity is understood and used in this thesis.

3.2 Recognition

Recognition is an important theoretical concept for this thesis. According to Taylor (1994), recognition and its importance arose along with the idea of individual identity at the end of the 1700s. With this came the understanding that everyone has an identity that is particular to them, and the ideal of authenticity – to be true to yourself and your own way of being. However, human life is dialogical, Taylor (1994) argues. This means that we understand ourselves through interactions and in dialogue with others. Your identity depends on your dialogical relations with others. If we are not recognized by others, or we are misrecognized, our identity suffers. Thus, recognition is important (Taylor, 1994). Taylor (1994) underlines the role public institutions have in recognition and argues

that equal recognition is necessary for a democratic society. Taylor notes that true recognition is not just respect we owe people, but that it is a “vital human need” (Taylor, 1994, p. 26).

As previously discussed, the idea that there are only male and female people is socially constructed (Monro, 2008). People with other gender identities (like non-binary, genderqueer, genderfluid, etc.) also have a right to be recognized – whether as citizens, parents, or subjects of the law. The European Commission recommends making sure that each person’s self-defined gender identity is legally recognized, and that states offer a gender-neutral marker in IDs (Quinan & Hunt, 2021). This is supported by – amongst others – the Yogyakarta Principles +10, the UN Independent Expert on Sexual Orientation and Gender Identity, the Office of the United Nations High Commissioner for Human Rights, and the Inter-American Court of Human Rights (Quinan & Hunt, 2021; Holzer, 2020; Holzer, 2018; OHCHR, 2021).

Juang (2006) argues that the importance of recognition can best be seen in the consequences of its absence. Some concepts that can help us understand these consequences are misrecognition, social invisibility, and erasure.

3.2.1 Misrecognition

Lack of recognition can be a form of oppression, but so can misrecognition, according to Taylor (1994). Misrecognition means that society projects a confining or demeaning picture of a group of people, which then can become part of the internalised identity of how this group see themselves. This is because our identity is created in dialogue with others. Recognition, the absence of recognition, or misrecognition is part of what shapes our identity. Misrecognition, as well as non-recognition, is harmful and can lead to self-hatred because of its confining and demeaning nature (Taylor, 1994). Misrecognition shows a lack of respect, according to Taylor (1994), because it is a form of oppression, and can lead to a reduced life for the affected persons.

Misrecognition includes, among other things, stigmatisation, physical assault, social exclusion, and harassment. Fraser (2003) states that this can only be remedied through recognition. Misrecognition can involve denying someone their distinctiveness – for example denying that non-binary is a valid identity. The remedy could be to explicitly recognize this distinctiveness – for example by implementing a gender marker for this group (Fraser, 2003).

3.2.2 Social invisibility

Recognition is necessary for a just society, according to Honneth (2004). A lack of recognition is equivalent to being made invisible, like you do not exist in a social sense. Honneth (2001) uses the concept of social invisibility to explain this. Social invisibility is a denial of recognition and means that society does not see the true person. Honneth (2001) explains this as a normal way of expressing social superiority; when the dominant group refuses to perceive those they dominate. A lack of recognition, or not being seen for who you are, can lead to mental health problems and low self-esteem (Holzer, 2018).

For non-binary people, social invisibility is especially apparent in the lack of a nonbinary legal gender. Most countries do not legally recognize the existence of other gender identities than man and woman (Holzer, 2018). Aboim (2020) agrees that a lack of recognition denies the social existence of the person. Braunschweig (2020) states that in the way gender is understood today, it is like non-binary people do not exist, and this leads to them not having full access to humanity. Monro (2005) argues that when men and women deny the existence of people of other genders, these people are “rendered socially non-existent” (p. 47). Monro (2005) sees this as part of what she calls erasure.

3.2.3 Erasure

Erasure is one form of oppression and exclusion, according to Monro (2005). This occurs when the majority denies the existence of people of other genders, making them socially non-existent. It also happens when language is explicitly gendered, and words and phrases exclude non-binary people. A third form of erasure of non-binary people occurs in the bureaucracy (Monro, 2005). On most official documents and forms, gender is required information and the alternatives are either male or female. This means that people who do not identify as men or women are forced to choose categorisation as either man or woman in order to have access to certain things, such as passports (Monro, 2005).

Access to social spaces can also be problematic, in that being in public spaces is linked with experiences of violence and abuse for people who are visibly different; visibly not conforming to the gender binary, or to stereotypical ideas about gender expression (Monro, 2005). Additionally, the healthcare system excludes and erases non-binary people by not giving them access to gender-affirming treatment (Monro, 2005; van der Ros, 2013). The erasure and social exclusion of trans and non-binary people is structural and cultural, Monro (2005) argues.

3.3 Misgendering

Misgendering is a form of stigma that trans people face. Examples of misgendering include using incorrect pronouns and gendered words, or being denied access to a gendered space. Misgendering can impact how trans people perceive themselves and their identity, and can cause anxiety, stress, depression, shame, and a sense of loneliness (McLemore, 2013; Kapusta, 2016). Humans have a psychological need to be understood by others; for others to see their real self. When your real self is not verified by others, it has negative effects on your mental health and can make you feel inauthentic (McLemore, 2013).

Misgendering is a form of microaggression (Sue, 2010; Kapusta, 2016). Microaggressions are “everyday verbal, nonverbal, and environmental slights, snubs, or insults, whether intentional or unintentional, that communicate hostile, derogatory, or negative messages to target persons based solely upon their marginalized group membership” (Sue, 2010, Chapter 1, para 1).

Microaggressions can seem harmless or inconsequential, but in reality, they affect the mental health of members of marginalised groups (Sue, 2010; Kapusta, 2016). This is because microaggressions are demeaning and communicate to the group that they are inferior to the majority, and can lead to exclusion and discriminatory treatment (Sue, 2010).

3.4 Institutional misgendering

Institutional misgendering is not a concept I could find in literature, but through my analysis, it evolved as a useful way to understand the misgendering that is done by the state by not offering a nonbinary legal gender. Let us first look at some similar existing concepts, such as institutional transphobia⁹, structural transphobia, and institutional oppression.

To explain the concept of institutional transphobia, Maughan et al (2022) point to the better-known concept of institutional racism: “institutional racism is subtle, embedded within organisational systems, values, policies, and practices and irreducible to the presence or absence of individual racists” (Conceptualising institutional transphobia section, para 2). This means that it does not necessarily happen through obvious racist behaviour, but rather through “systematic inequality

⁹ Transphobia is the irrational fear or hatred of trans people that is expressed through prejudice and/or discrimination (Kennedy, 2013; Bufdir, 2020).

created and reinforced through bureaucratic processes” (Maughan et al, 2022, Conceptualising institutional transphobia section, para 2).

Based on this, Maughan et al (2022) define institutional transphobia as structural discourses that reflect and ingrain cisnormativity¹⁰ in society. Institutional transphobia is not the actions of transphobic individuals or groups, but they are institutional and systemic “manifestations of inequality” (Maughan et al, 2022, Conceptualising institutional transphobia, para 3). Institutional transphobia is a concept that calls attention to the way marginalised genders can be “censured and disadvantaged in institutional contexts” (Maughan et al, 2022, Conceptualising institutional transphobia, para 4).

Hollinsaid et al (2021) use the concept “structural transphobia” to explain discriminatory state laws or policies that restrict the rights or wellbeing of transgender and non-binary people. Kapusta (2016) talks about an example of institutional oppression: if you are seen as a man in the eyes of the law and the state when you are not a man, then you are exposed to discrimination, and you may have limited access to goods and services. Kapusta (2016) uses binary trans women as the example here, but we can easily transfer this to non-binary people. If the state does not recognise your gender identity, then you are subject to what Iris Marion Young calls “institutional constraint on self-determination” (in Kapusta, 2016, p. 505).

The reason why I do not think that institutional or structural transphobia is sufficient to explain this phenomenon is that I find transphobia to be too unspecific, and it encompasses more than just misgendering. In this case, there is a specific focus on misgendering, and I think that should be reflected in the term. I chose institutional over structural to highlight the fact that institutions and the state are the ones doing the misgendering. ‘Structural’ can seem vague and make it difficult to understand who is responsible. Thus, I argue that institutional misgendering – built on these concepts – is more accurate for this thesis.

Institutional misgendering, then, is the systematic discrimination of non-binary people that happens when they do not have the option of choosing a gender category that matches their identity. This is reinforced in bureaucratic processes and happens when forms and documents force you to choose between man and woman or male and female in order to access specific services, or for example

¹⁰ The assumption that everyone is cis, and the discourse that privileges cis people over trans people (Lgbtq+ Primary Hub, n.d.)

respond to a survey. Most notably, it happens when the state forces you to choose one of two legal genders and therefore does not recognise your gender identity. This results in a misgendering by the institutions who enforce this binary system of gender. In this case, the state can be understood both as being made up of several institutions, as well as being an institution in itself. Institutional misgendering is a form of discrimination, and it causes non-binary people to have to compromise their gender identity in order to access certain goods, such as passports.

3.5 Strategies for recognition

When talking about gender diversity or non-binary rights, recognition is often the goal. A dilemma in this discussion is which strategy is better to accomplish recognition: degendering or gender pluralism (Monro, 2008; Aboim, 2020). Gender pluralism is the theory of sex and gender conceptualised as a spectrum, and the idea that society should reflect this pluralism. The other strategy is degendering, where the goal is to remove gender markers from official forms and documents. With the first strategy, the idea is to give non-binary people explicit recognition through a legal gender, while degendering wants to recognise non-binary people by removing the markers that are excluding them (Monro & Van Der Ros, 2017). The goal of this thesis is not to conclude which of these strategies are the right one. However, to understand the informants' experiences and reflections, it is helpful to know what the strategies include.

3.5.1 Gender pluralism

Gender pluralism involves challenging the gender binary and acknowledging gender and sex diversity. In gender pluralist theory, sex and gender are understood as spectrums, not as binaries or dichotomies (Monro, 2008). It follows that this gender pluralism should be reflected in forms and documents, and in general in bureaucracies. This is normally understood as adding another legal gender category that is equal to man and woman. In gender pluralist theory, there is nothing that implies that we should only add one more category, however (Monro, 2007). Maybe the “third category” campaign is related to the fact that X is the only other gender marker (than M and F) that is internationally recognized by the UN's International Civil Aviation Organization (ICAO), at this point. This means that if you want to create a gender marker other than X, other countries are not required to accept the travel documents (Holzer, 2018).

As previously mentioned, gender pluralism focuses on biological sex as a spectrum, in addition to gender as a spectrum. In that regard, it would be important to stop surgery on intersex infants to

make them fit into the binary. Instead, it would mean letting intersex bodies exist as they occur naturally, and not operate to make them fit into the norm (Monro, 2005).

Some countries have introduced X as a gender marker on IDs, but still keep binary genders in the civil registry. This means that they have not introduced a nonbinary legal gender for all legal purposes, but only for identification. Denmark, which is one of them, still has social security numbers that reflect a binary gender, even if you have X on your ID (Holzer, 2018). Some people are worried that countries will discriminate against people with X markers on passports, both on country borders and when applying for visas. Malta's solution is to let people have two passports – one with an X marker and one with a binary gender (Holzer, 2018; Holzer, 2020). There were several discussions of passport and border controls in the literature I read, which is the reason this is mentioned repeatedly. However, the problem with not having legal recognition is more extensive than this, and non-binary people meet scrutinization and discrimination whenever they interact with state institutions.

A critique of gender pluralism is that since the suggestion is usually to add only one more category, not several, it would group everyone who is not male or female and overlook the variety of their gender experiences (Holzer, 2020; Monro, 2007). However, who says we only have to add one category? (Monro, 2007). In an ideal world, recognition would mean that everyone was able to decide who they are and be recognized for their individual identity. Nevertheless, the world is not ideal, and categorical identities often produce norms that might hinder people's subjective understandings of who they are or exclude people who feel like they do not fit in with these norms (Aboim, 2020).

Holzer (2018) highlights the importance of a nonbinary legal gender category being freely accessible, and not forced on binary trans people. For example, in Bangladesh, trans people can only change their legal gender to hijra, not F or M. Nepal's third gender marker is also supposed to be used by all transgender people. This defines all trans people as non-binary, which is not the case, and contradicts the person's right to self-determination (Holzer, 2018). Some trans people are men, some are women, and some are outside of the binary, and everyone should be able to freely choose the category that fits best (Holzer, 2018).

3.5.2 Degendering

Degendering means moving beyond gender. In practice, this means removing gender markers from society as much as possible (Monro, 2005). Currently, it is a requirement for passports to include gender markers (F, M, or X) and this would have to be addressed for a total degendering. In the meantime, there are a lot of other ways that genders are indicated on IDs. In Germany, a person's first name should indicate the person's gender, according to regulations. In many Eastern European languages, last names may also differ depending on legal gender assignment (such as Witkowski for legal men, Witkowska for legal women). Social security numbers may also indicate a person's legal gender, with a digit referring to a binary gender, such as in Norway. Abolishing gender markers from IDs must be accompanied by allowing gender-neutral names and reducing gender for identification purposes in a more general manner, such as displaying it in social security numbers (Holzer, 2018; Holzer, 2020).

Degendering would also mean removing all questions about gender from official and commercial forms, unless they are relevant to the matter, for example regarding reproductive health. It would mean not dividing children into groups of boys and girls in school, and it would also include switching out unnecessarily gendered terms for gender-neutral ones (e.g. partner instead of husband/wife), especially in laws and official documents (Monro, 2005; Thorsnes, 2018).

A key factor in the degendering strategy is to ask what legal gender is used for. Why do we need gender categories at all? One argument for gender markers is that gender is used as an identification criterion (Holzer, 2018). However, a person's gender marker, gender identity, and gender expression do not necessarily "match" if we follow normative and binary logic. It is cisnormative to assume that they do, and it can create problems for many trans and intersex people, as well as gender-non-conforming cis people (Holzer, 2018). People should not have to depend on the disposition and preconceived notions of the person evaluating those documents. Instead, we could rely on the already existing biometric forms of identifications like facial recognition, fingerprints, and iris recognition, Holzer (2018) argues.

When it comes to gender information in health care, we need to remember that a person's gender does not necessarily reflect their sex and/or their physical body. This is relevant both for intersex people and trans people who have changed their legal gender but have not undergone any surgery, as well as non-binary people (Holzer, 2018). For example, trans men who have changed their legal

gender to male will not get an automatic notice to check for cervical cancer, as legal women do, even if they have a cervix and uterus (Kreftforeningen, n.d.).

The British Passport Office claims that gender information on passports is helpful when it comes to body searches in airports and making sure they are carried out by a person of the same gender. Once again there is the assumption that legal gender correlates with gender identity. Instead of relying on this information, another solution could be to ask; ask if they want to be body searched by a man or a woman. Furthermore, ask about a person's body at the doctor's office, and instead of depending on their legal gender, have the required information written down in their health journal. All in all, when it comes to degendering and removing gender markers, it is important to consider how and why gender is used for official purposes (Holzer, 2018).

One critique of degendering is that identity categories are important for cultural and political organisation. By degendering society, it might be difficult to address gender inequality (Monro, 2008; Holzer, 2018). If gender was erased, minority gender groups, and gender groups with less power (like cis women) would continue to be disadvantaged because the power of cis people, and the power of men, would remain unchallenged (Monro, 2008). Eliminating legal gender categories would not magically solve oppression that is based on the gender binary, like that of women and LGBTQ+ people. It could potentially reinforce those power structures, because these groups would be institutionally invisible (Holzer, 2020). This is what Wendy Brown (2000) calls the paradox of rights.

3.6 Paradox of rights

Brown's (2000) paradox of rights is the fact that rights that are too general can conceal subordination, while specific category-based rights can reproduce identities. Category- or identity-based rights can reduce the suffering of injustice, but they can also make boundaries between identities clearer and more distinct (Brown, 2000). Identity-based rights would be the same as legal recognition. One positive side of identity-specific rights is that they make groups institutionally visible (Holzer, 2020).

Identity-specific rights can offer protection, but they also sort us into boxes, which reproduces the classification and distinction of categories. Thus, they can make the categories more apparent, and we are classified as the specific identity when we exercise the rights connected to that identity

(Brown, 2000). Brown (2000) points out that identity-based rights can weaken oppression, but that they do not disrupt the system or the mechanisms behind it.

However, when rights become too general it can lead to a sort of difference-blindness (Brown, 2000). Difference-blindness, or in this case gender-blindness, is likely to enhance the privilege of the majority, and overlook the needs of subordinate groups (Taylor, 1994; Quinan & Oosthoek, 2021). Gender-blindness – when everyone is understood to be the same – may end up concealing the underlying gender hierarchies in society. This is because removing gender registration and gender markers do not necessarily remove the fundamental beliefs society has about gender (Quinan & Oosthoek, 2021).

Principle 31 of YP+10 also deals with this paradox (Holzer, 2020). On the one hand, they suggest decreasing the influence of the state on gender assignment and registrations. On the other hand, they want to use state recognition to give rights to non-binary people and create acceptance for gender diversity (Holzer, 2020).

3.7 Affirmative and transformative remedies

Gender pluralism and degendering as strategies for recognition can be linked to Fraser's (1997) concepts of affirmative and transformative remedies. The goal of these remedies, whether affirmative or transformative, is to correct inequality and injustice. Affirmative remedies work within the existing system, while transformative remedies want to reconstruct the system itself. In agreement with Brown (2000), Fraser (1997) argues that affirmative remedies attempt to improve inequality without disturbing the underlying framework, by valuing the differences between social groups. Transformative remedies want to improve inequality by restructuring the underlying framework that creates inequality in the first place (Fraser, 1997).

Fraser (1997) is in favour of transformative remedies. She highlights the fact that the affirmative remedies leave the structure that created the inequality intact. In this case, transformative remedies would mean transforming our understanding of gender, for example by degendering society. It would mean moving away from the binary gender system and the hierarchy of identities that follows. It would mean destabilising existing group identities and distinctions, and changing society's understanding of gender. Affirmative remedies would mean giving equal rights to non-

binary people while keeping the gender registration intact. It would be connected to the recognition of people outside of the binary system, by bringing in a legal category equal to the existing ones.

4 Method and methodology

In this chapter, I will explain and reflect on my methodical and methodological choices for this thesis. This is a qualitative thesis that examines how the lack of legal recognition impacts the social visibility of non-binary people, and what the implementation of a nonbinary legal gender might do for their experiences of recognition. This is explored through semi-structured interviews with 14 non-binary informants. Before looking at the choices surrounding qualitative research, I will explain the methodological premises that this thesis is based on.

Methodology is a term that encompasses the choice of approach and connecting the theoretical understanding to the research design (Andreassen et al, 2017). The methodological premises that direct this thesis are my stances on epistemology and ontology, as well as my positionality.

4.1 Epistemology

Different epistemologies are the answers to the question “what is regarded as acceptable knowledge in a discipline?” Epistemology includes what knowledge is, and how it is produced (Brinkmann, 2015). In the natural sciences, the answer is positivism, which means that acceptable knowledge is whatever you can *observe*. This used to be the case for the social sciences as well, but there is now an understanding that social science is different from the natural sciences and therefore requires a different approach. With interpretivism, the focus is instead on grasping the subjective nuances of a given topic. This means having an interpretive understanding of social action, and not focusing on external forces that have no meaning for those involved (Bryman, 2012).

Phenomenology is one of the inspirations for interpretivism and concerns how individuals make sense of the social world, and for example social phenomena. From a phenomenological standpoint, the researcher attempts to interpret people’s actions and their social world – from their point of view (Bryman, 2012).

Another interpretivist standpoint is symbolic interactionism. Symbolic interactionists, including one of its founders, George Herbert Mead, argues that our notion of self emerges through our understanding of how others see us. The focus here is on how the individual is always interpreting the symbolic meaning of their environment and others' actions, and this interpretation then influences their actions (Bryman, 2012).

With interpretivism, the researcher interprets others' interpretations, and then connects this to concepts and theories (Bryman, 2012). Interpretivism, including phenomenology and symbolic interactionism, is the epistemological foundation for this thesis. This may affect the thesis because my interpretations might differ from others. Maybe someone else would not see the same connections as I have, or they would interpret the informants' statements differently.

4.2 Ontology

The two central positions in ontology are objectivism and constructionism. What position you take determines whether you consider social entities as objective and external to social actors, or whether they should be viewed as social constructions that are produced by perceptions and actions. Your ontological assumptions will influence the way your research questions are formulated, and the way you execute your research (Bryman, 2012).

This thesis is based on constructionism. That means that I understand the meaning of ideas, values, and social processes as meaning that is created and understood by people themselves, not as objective facts. This is for example the case with my understanding of sex and gender. The meaning we create shapes our experiences and understandings, according to Loseke (2017). Constructionism does not see society and culture as something fixed or pre-given. Instead, social phenomena and their meanings are viewed as continually constructed by social actors. They are produced through social interaction and are constantly changing. Additionally, the categories that are used to understand the natural and social world are also seen as social products and as constructed in and through interaction (Bryman, 2012).

4.3 Positionality

The common view in social research these days is that a researcher cannot be completely objective. Personal characteristics of the researcher lead to different experiences and thus different ways of

understanding the world (Bryman, 2012; Loseke, 2017). A researcher's values can influence the choice of topic, the formulation of research questions, the choice of method, the analysis and interpretation of data, and the conclusions drawn from them. The researcher needs to recognize and acknowledge that research cannot be value-free but should work to not let it intrude on the research. In addition, they should be critical and self-reflective about their values, biases, and assumptions, and explain how this could have influenced their findings (Bryman, 2012; Loseke, 2017). I am aware that as a researcher, I make the decisions on what is included and omitted, and what gets attention or gets ignored (Ragin & Amoroso, 2019).

This topic is something I am passionate about and had a reasonable amount of knowledge of before I started researching. My premises of constructionism, and particularly the idea that gender is a social construct, is something I bring with me from studying sociology and gender studies. As a member of the LGBTQ+ community, I also feel solidarity with all groups and members of the queer community, and I have several friends who are non-binary. This has influenced my choice of topic, and my research questions. Especially the fact that I believe that something should be done for non-binary people's recognition. The findings might have been different if the study had been done by someone with negative attitudes towards trans and non-binary people, or even by someone who was indifferent.

4.4 Qualitative research

Initially I wanted to include LGBTQ+ people's experiences with conversion therapy, as well as the lack of legal recognition for non-binary people. The idea was to use these two instances as examples of Norway's failure to protect LGBTQ+ people through policies and laws. I was prepared to do interviews with two different groups of informants – LGBTQ+ people who have experienced conversion therapy and non-binary people. When looking for informants, I ended up only getting two responses from people who had experienced conversion therapy. This, and a reflection on how it would be difficult to have the space and time to really delve into both topics, lead me to the decision to only focus on non-binary people and their experiences with not having legal recognition. The information letter¹¹ given to the informants was written before this decision was made, and so it includes information of both topics.

¹¹ See appendix 9.1 Information letter and consent form

After reaching this conclusion, I started considering my research question. I was thinking of questions like “what does a lack of a nonbinary legal gender mean for the feeling of recognition?” and “what are non-binary people’s thoughts and feelings about a nonbinary legal gender?” When it comes to the debate surrounding a nonbinary legal gender, we mostly hear about the opinions of politicians and political organisations, but I wanted to know what individual non-binary people were thinking and how they feel about their lack of legal recognition. After all, they are the ones who are affected by this. I also wanted to understand the more complex feelings that this topic might bring forth, and most importantly, understand this topic from these individuals’ perspectives.

One of the goals of qualitative research is to give voice to people who are marginalised or have been ignored or misrepresented in society. To achieve this, many qualitative researchers want to explore a certain topic through the eyes of the group they are studying. In addition, qualitative research can be used to generate knowledge about a group and enhance their visibility in society (Bryman, 2015; Ragin & Amoroso, 2019). Qualitative interviews are about getting access to people’s experiences and reflections by talking to them directly. By interviewing, you can get detailed descriptions and see how things are interpreted by the people involved. Interviews can also help create an empathic understanding of the topic for the reader (Loseke, 2017; Skilbrei, 2019). These are all things I wanted to achieve with my research, and so qualitative research, and specifically interviews, was the right method for my thesis.

One weakness qualitative research has, is that the findings cannot be generalized, because of the smaller number of participants (Bryman, 2012). In this case, I cannot say that all non-binary people in Norway feel the same as my informants do. However, as Bryman (2012) points out, qualitative researchers often compare their findings to other theories and studies, and as such they can be understood as tentatively transferable to similar contexts.

4.4.1 Sampling

The empirical material in this thesis is based on 14 in-depth interviews. The informants were recruited through Facebook. I created a poster where I explained my research topic, and that I wanted to interview people who identify outside of the gender binary. I contacted several Norwegian LGBTQ+ organisations to ask if they could share it, which many of them did. I asked friends and acquaintances to pass it on, and I shared the poster in a Facebook group for non-binary people in Norway. The people who were interested then contacted me through e-mail.

I used purposive sampling, which means that I chose informants who have specific knowledge of the research topic. The participants were not chosen randomly, but because they have something to contribute (Bryman, 2015). The criteria for informants were that they identify outside of the gender binary, and that they live in Norway. I did not specify any age limits when I recruited informants, but all of my informants are adults.

I received 22 e-mails, with some wanting further information on the project, and some immediately saying they wanted to participate. I then started to organise and plan interviews. Some people did not respond, and I ended up with 14 people who confirmed that they were interested in being interviewed. The interviews were carried out in October and November of 2021. Eight of the interviews were done on Zoom, not because of the pandemic, but because the informants lived in other parts of the country. The six other informants, I met at either Deichman Library or one of the university campuses in Oslo.

The informants are between the ages of 21 and 47. Three of the informants are not originally from Norway and moved here as adults. Six of them use the term *non-binary* to explain their gender identity, five use *agender*, one of them uses *genderqueer*, one uses *trans masculine*, and one uses the broader term *queer*. Eight of them use they/them pronouns, two use she and they, one uses he and they, one uses he/him, and two are okay with all pronouns. For the ones who use more than one pronoun I have decided to just use they/them, which means that all but one informant will be referred to with these pronouns.

I have decided to remove any information about the informants' birth-assigned genders, as this is not the focus of this thesis. I did not ask about their assigned gender, but if it was mentioned by the informants in relevant quotations, it will be switched out with "[gender assigned at birth]". This is also the reason I have chosen gender-neutral pseudonyms for all of the informants, even if some of them had stereotypically gendered names.

4.4.2 Semi-structured interviews

The method I employed for this thesis was individual semi-structured in-depth interviews. In-depth interviews allow for thick and rich descriptions of experiences, understandings, and feelings (Loseke, 2017). When the interviews are semi-structured, you create an interview guide¹² with

¹² See appendix 9.2 for my interview guide

questions you want to ask, or topics to talk about, but you are also flexible and willing to respond to the direction the informant take the interview. This means being willing to depart from the interview guide and ask new questions that arise from what the interviewee is saying. By letting the participants talk somewhat freely, you get to see what topics are important to them (Bryman, 2015). When I had created the interview guide, I sent it to a friend who is non-binary, and a couple of friends who are part of the larger LGBTQ+ community, for feedback. I wanted to know about the word choices, as well as the order of the questions. I wanted the informants to feel safe to share, and started with broader questions, before getting into the more specific ones. I also thought it was important to ask about their own understanding of non-binary gender identity. After the first interview, I added a couple of questions to the interview guide, based on something the interviewee brought up.

I wanted to do individual interviews and not group interviews or focus groups, because you get a clearer sense of individual interpretations and reflections. Additionally, since this is a sensitive topic, doing individual interviews meant that it was easier to take care of the informants and guarantee their anonymity (Skilbrei, 2019).

There was some variation in how much the informants shared about the different themes. Some informants had long and detailed answers, while others were more difficult to engage. This is a potential weakness in my thesis, as the broader answers have been given more attention.

4.5 Data processing

I recorded all of the interviews, so that I could be present in the interviews and focus my attention on what the informants were saying. Recording the interviews also means that you can go back and examine the answers (Bryman, 2015). All my informants consented to be recorded. For most of the Zoom interviews, I got oral consent before the start of the interview, and for the in-person interviews, the consent was written. The recordings were done using Dictaphone, which directly stored them at the Service for Sensitive Data (TSD).

There were some challenges with this program which meant that I did not have access to my recordings for several weeks. As a consequence, I was not able to listen to, or start transcribing, any of the recordings until after I had completed all of the interviews. I think this is a potential weakness

in my thesis because once I started transcribing the first interviews, there were some topics I noticed that I would have liked to add to my interview guide for the remaining interviews.

4.5.1 Translation

12 of the 14 interviews were done in Norwegian, while the last two were done in English. This means that I had to translate the Norwegian ones into English in order to use them. I only translated the specific parts of the interviews that I used for quotes in the findings and discussion. Based on my coding document, I wrote short summaries in English of what the informants generally said about a topic, then translated the quotes I wanted to use. When translating, I had to make certain choices in what words to use. I tried to convey the meaning as I understood it. Sometimes, the structure of a sentence would have to be changed in order for it to make sense in English. Examples of the original interview answers and my translations will be provided in the appendix¹³. I have added words in brackets to clarify some sentences; when it was clear from the context what they meant, but they did not specify it in the particular sentence I chose to use as a quote.

4.6 Ethics

Research ethics' concern is the people studied and their privacy. The goal to create knowledge cannot be at the expense of individuals' integrity and well-being (Dalland, 2017). This study was reviewed and approved by the Norwegian centre for research data (NSD)¹⁴. I used NSD's template to create an information letter and consent form¹⁵. All participants must give free and informed consent. In other words, I needed to communicate information about the research procedure and its purposes, risks, and benefits. I also informed them that participation was voluntary, and that they could withdraw at any time, without giving a reason (Ragin & Amoroso, 2019).

Confidentiality means that private data that could reveal an informant's identity should not be disclosed (Kvale & Brinkmann, 2015). To protect the informants' anonymity, they have all been given pseudonyms. The transcriptions were also anonymized continuously by not writing down specific information, and instead using words that explained what they were talking about. I did not write down specific locations that were mentioned – like where they grew up or went to school.

¹³ See appendix 9.3 Translation of transcripts Norwegian-English

¹⁴ See appendix 9.4 for the approval from NSD

¹⁵ See appendix 9.1 for the information letter and consent form

Instead, I used brackets that said “[hometown]”, for example, or “[name]” instead of their actual name if they said it in the interview.

4.7 Thematic analysis

I used an abductive approach in my analysis. Abductive research alternates between empirical research and theory, and between inductive and deductive research. This means that you have assumptions about what you will find, but you’re not going to test these hypotheses. It can also mean reading literature and theory about themes that you uncover in the data (Skilbrei, 2019). I started out with some theoretical concepts; gender pluralism and degendering, for example, and then had to find more once I had coded the interviews, and again during my analysis.

I chose a thematic analysis for my thesis, which means to find and analyse patterns in the data (Braun & Clarke, 2006). Braun and Clarke (2006) describe six phases of thematic analysis, and that is the process I have used. The first step is to familiarise yourself with your data through transcribing, reading, and taking notes. I transcribed all of the interviews myself, and continuously anonymized them. I also decided to not include filler words like “um” and “eh” and I used ellipses to indicate longer pauses (Kvale & Brinkmann, 2015).

The second step of Braun and Clarke’s (2006) thematic analysis is to generate initial codes. For me, the process of coding the data was ongoing, and I did not wait to start coding until all of the interviews were transcribed. Codes serve to label and organise data and to help when you are thinking about the meaning of your data (Bryman, 2015). Most of the codes were based on topics from the interview guide, like the “definition” of their gender identity and what being non-binary means to them, or anything regarding “recognition”. Some codes were created based on other subjects that were similar in several of the interviews. Initially I had a lot of different codes, but as I started to review them, I combined some and removed others (Bryman, 2012).

The third step is to search for themes. This includes gathering all the data that is relevant for each theme (Braun & Clarke, 2006). When I had transcribed most of the interviews, I created a document where each code had a compilation of relevant sections from all interviews. All of the informants were given pseudonyms, and I used those to organise and to know who said what under each theme.

Step four is to review the themes you have located (Braun & Clarke, 2006). I went through the document and chose the themes that were best suited to answer my research question, as well as the patterns I found most interesting.

Braun and Clarke's (2006) fifth step is to define and name themes. You start to analyse the themes and define what they will include or not include. The themes I ended up with were:

1. Gender identity and experience, with a subcategory describing what the informants thought about the assumption that being trans or non-binary is a trend.
2. Misgendering, including a section about misgendering done by the state.
3. Nonbinary legal gender, which includes a discussion of recognition related to this, as well as potential negative consequences of implementing a nonbinary legal gender.
4. Degendering as an approach.
5. Degendering versus nonbinary legal gender, including preferences and the positive and negative sides of each strategy.

What Skilbrei (2019) calls text reduction concerns reducing and simplifying the material by making summaries and examining the most important and relevant parts of the data. You can make summaries of either one specific interview, or generally about a topic. Since I am doing a thematic analysis, I created summaries of the different themes I uncovered through coding the data, before moving on to the final step which is to write out the analysis and discussion (Braun & Clarke, 2006; Bryman, 2015).

5 Findings

Through coding, I discovered several interesting topics. I decided to divide the findings into five main parts based on these themes: gender identity and experience, misgendering, nonbinary legal gender, degendering, and degendering vs. nonbinary legal gender.

The first theme is introductory and explains which identity terms the informants prefer and how they define them. It also looks at their experience of falling outside of the gender binary, and their gender identity being perceived as a trend. Following this is misgendering, where the informants describe their experience with this, as well as how it makes them feel. In addition, I will look at how the lack of a nonbinary legal gender can feel like being misgendered by the state. After this;

recognition. Through the subcategories misrecognition, social invisibility, and erasure I look at whether the informants feel recognized by the state of Norway. Nonbinary legal gender then shows what the informants think about introducing another legal gender category, and what potential negative consequences could include. Degendering discusses the possibility of removing gender markers, and why the informants saw this as less realistic than implementing another legal category.

5.1 Gender identity and experience

When asked to define non-binary, and what that identity means for them personally, the informants agree that it means to be outside of the binary system. This means that they identify as something between or outside of man or woman. Some look at it as a more fluid identity, or an umbrella term that incorporates a lot of different identities. It can be a mix of man and woman, a little bit of one of them, or something completely different:

“I am somewhere outside of he and she. Actually, I don’t have many other words for it. I just know that there is a lot of both masculine and feminine in me” (Asra).

“For me non-binary is a gender identity that deviates from man and woman the way they are understood in society today. [...] there are lots of different reasons for why you feel like you deviate, or you feel a stronger connection to one over the other, or to several places” (Charlie).

Charlie uses the word deviate, while Jordan explains non-binary as something that “goes beyond our understanding of binary gender”. Jordan also notes that they see non-binary as having room for many different ways of experiencing and expressing gender.

Mika identifies as queer, stating that it relates to the academic understanding of queer, and that non-binary just does not encompass what queer does. But it is still about being outside of the binary, and not fitting into either man or woman.

Robin identifies as trans masculine. The trans part of the identity is important to him, because it means that he adjusted his body to fit better, but also because of the fluidity that comes with trans as a concept. He is aware that a lot of people see him as a man, as a trans man, or that he is sometimes read as a cis man. He highlights that he does not want to take part in the binary system, and that

there is a lot of toxic masculinity that follows with the category of man. However, he is on the masculine spectrum, and that is why trans *masculine* is the right term. For him, identifying as trans masculine instead of a trans man is sort of a rejection of the binary system.

Some of the informants identify as agender, or both non-binary and agender. With agender, the informants seem to focus more on the fact that they do not relate to gender at all, instead of not being able to relate to man or woman. They focus on a lack of connection to gender, or to the current idea of gender in society: “I don’t recognize myself in society’s idea of being a man or woman, and I don’t feel any connection to it. [...] I don’t have a gender identity, or I don’t have that connection to gender” (Riley). Noah sums it up shortly and concretely: “I don’t do gender”.

5.1.1 Is being non-binary a trend?

As mentioned in the chapter on background and literature review, there is a claim that being trans is a trend (e.g. Littman, 2018; Brusset et al, 2019; Shrier, 2020; Haustveit, 2021). This can also apply to being non-binary, as they are presumably included in the term ‘trans’ in this case. I asked the informants what they thought about this claim. All of them disagree with the assumption that being trans is a trend. The informants highlight access to information and more acceptance in society as reasons for why more people come out as trans.

“It’s been proven that far back in time there have been [...] other gender identities, than just the binary ones. [...] it’s just that a lot of people have been in the closet. And that many people haven’t known that it’s something you can identify as. There’s probably a lot of people who have [...] felt that they were trans but haven’t had the words for it” (Kass).

“Information reaches more people, and then, through exposure, it is more accepted to figure out who you are. The more you see something, the more you tolerate it” (Charlie).

The informants argue that when gender diversity is more accepted in society it is easier to explore your identity, and that people now have access to language that explains their feelings. Some of them say that they understand why people might perceive it as a trend, since there has been an increase in people coming out. However, they state that they think it is related to information reaching more people, and gender diversity being more visible and accepted in society. Mika says: “It’s actually something that is finally happening, that there is opportunity to just be yourself.”

Ivy questions why it would be a problem if it was a trend. They do not see why it would necessarily be a negative thing:

“Because if it results in more people finding the right identity for themselves, then that’s great. Even if they find out ‘no, I was cis all along’ or if they are actually trans, then that’s just positive. Because now they know.” (Ivy)

Noah, Skylar, and Asra point to different indigenous cultures that have and do recognize and celebrate different gender identities. Like Kass, Shay also points out that what we call non-binary people have always existed in different cultures.

Jordan thinks it can be harmful for trans people to constantly hear that their identities are just a trend. For them personally, it is an assumption they are scared people will believe in. However, they say that it does not take a lot of research to understand that it has existed for centuries. They say: “Actually, the understanding we have of gender now is much more new and ‘trendy’” (Jordan).

5.2 Misgendering

One common experience for the informants is misgendering. Misgendering can mean being referred to by incorrectly gendered labels or the wrong pronouns (Steine & Berteussen, 2021). Most of the informants find being misgendered very hurtful and frustrating, and like they are not being seen for who they are. Shay mentions that being misgendered is “a clear signal that they don’t respect you as a person. And don’t care about who you are”. This is a point that several of the informants make. Skylar puts it like this: “I get disappointed. That they don’t respect me, in a way”.

Some of the informants discuss how being misgendered leads to a very physical reaction, that it feels like being physically hurt every time it happens: “it’s very physical. A very physical reaction. Afterwards I’m very tired” (Jordan). Shay also finds it hurtful and points out that it can increase the feelings of dysphoria. If misgendering happens repeatedly, that is another thing that can make the experience worse. If it happens one time it is not that unsettling, but after every time it hurts more and more. Robin remembers a period of time when he was misgendered almost every day: “it really leaves a lot of scars on you”.

One point of conflict is that a lot of them are nervous about correcting people who use the wrong pronouns or gendered words. This is mainly because they do not want to be a bother to other people: “I feel like if I corrected them all the time I would come off as like annoying or something like that. So usually I don’t” (Phoenix). The informants find misgendering especially hurtful when the ones who misgender you are people who know about your gender identity and your pronouns. People who either do not make an effort to remember, or misgender you deliberately. The informants think it is okay if someone genuinely forgets, and then apologizes and works not to do it again.

Some of the informants are not as bothered by misgendering. They see it as an annoyance, or something minor. Mika says: “I don’t think it’s hurtful or difficult for me. I just feel like I have to teach people [what non-binary means]”. Noah thinks it can be an issue, but that “it’s a thing you get used to”. For these informants, the important part is how they see themselves, not how others see them:

“I feel like I’m at a stage in my life where I care very little about what other people think. So, the fact that some people think of me as [gender assigned at birth], that’s completely fine, because it doesn’t affect how I’m actually feeling” (Nyx).

5.2.1 Misgendered by the state

Misgendering is not only done by individual people that the informants know personally, or by random people on the street. It can also happen when documents say the wrong gender or name. Name-change is relatively easy to achieve in Norway. In theory, so is changing your legal gender. But since there are only two options, all your legal documents will have the wrong gender. This can be seen as being misgendered by the state institutions that issue these documents, such as the National Register or the police.

The informants have very different experiences of not having a legal gender that matches their gender identity. Mika says it “doesn’t hurt me or anything, I just get annoyed”, while Riley thinks it is “one of the things that hurt the most”. These two quotes are representative of the informants’ positions on a lack of state recognition. Either they find it very hurtful, or it does not bother them too much. The ones who are not too bothered still want state recognition, however.

There is a common idea among several of the informants that looking at legal documents with the wrong gender is similar to being misgendered. Shay explains the lack of a nonbinary legal gender as being “miskendered by the state”. Being misgendered, both by individuals and institutions, can make them feel like they are lying. Several of the informants talk about this, but explain it in different ways:

“I feel a bit like...like a fraud. Or like a joke” (Jordan).

“It feels like there’s a lie that’s spread about me. And I can’t say anything against it” (Atlas).

“I feel like an undercover agent. [...] It feels like I’m faking something” (Ivy).

“It feels inauthentic. [...] It hurts because I’m being forced to present as something I’m not” (Riley).

“It feels like lying every time you’re forced to choose a gender for things. Because there are often just two choices, and none of them match” (Shay).

These informants all connect misgendering to a lack of authenticity. Like other people only see this lie, this fake version of them, and not who they truly are. This also includes institutions. This was an unexpected metaphor, and an interesting pattern. The informants feel like not having their actual gender on legal documents is comparable to misgendering. It feels wrong partly because there is inaccurate information about them in official documents and databases “the same way I’d feel if there was something false in my medical journals” (Ivy).

Atlas feels that the fact that their legal gender cannot match who they are says something about the values of the society we live in. And that it shows that Norway is not as progressive and forward-thinking as society believes, when the state does not recognize other genders than men and women: “I can’t have legal documents that state that this is who I am”. In addition, having a legal acknowledgement would be official proof that this is something real, something serious. Jordan says:

“If it [an implementation of a nonbinary legal gender] had gone through then politicians would have talked about it. And people would have seen it happening, and [seen] that it had been taken seriously, and that others need to take it seriously” (Jordan).

5.3 Nonbinary legal gender

Most of the informants are positive about the idea of adding another legal gender. Kass says, “I think everything that includes more people is positive”. The informants feel that it is about time, and that there does not seem to be any good arguments from the state for why it cannot happen. Atlas points out that now that people can easily change their legal gender without any medical requirements¹⁶, it does not make sense why we cannot have a third legal gender as well:

“Especially now that we can easily change the legal gender ourselves. Then...we acknowledge that it [your gender] doesn’t need to correspond with sex, you don’t have to go through a medical transition in order to...in order to change [your] gender marker. And then...then I don’t understand why we don’t have a third legal gender category” (Atlas).

Riley feels like a lot of politicians are not willing to explicitly state if they are for or against:

“They just talk about it vaguely. It’s like ‘we accept everyone for who they are’, but it’s like they’re not willing to feel a little uncomfortable, or for other people to feel a little uncomfortable, to potentially save lives” (Riley).

The informants think that implementing a nonbinary legal gender could help a lot of people, because it would make the general population aware of non-binary people’s existence and make them understand that it is something to be taken seriously. Adding another legal gender could make it easier for both non-binary people and intersex people, in Shay’s opinion. Some of the informants wonder if a nonbinary legal gender could lead to more acceptance in society, as it would mean the state acknowledging the existence of non-binary people.

“It would certainly help to be officially backed by the state because then people would be like ‘ah yes so this is really something I should concern myself with, and learn something more about, because if the state thinks it’s important enough, then maybe it is important” (Phoenix).

¹⁶ After the law of self-determination from 2015

Skylar and Shay point out that it could be easier to be open about gender identity if there was a nonbinary legal category. Because, as Skylar puts it: “then we’d have a backup, like ‘hi, we exist’”. This seems to be a common idea, that the informants feel like having a nonbinary legal gender would be a proof of existence for non-binary people. Nyx highlights the fact that it would hopefully help in contact with the healthcare system, because in their experience, healthcare workers have not had any knowledge about non-binary gender identity.

“At this point, it [non-binary identity] doesn’t exist. It’s not a thing, they don’t know anything about it, there is no treatment if you need it. And if there was a third legal gender then they would have to recognize that it exists” (Nyx).

For Robin, it would be important to have passports and documents that represent his actual identity: “I don’t want to disappear into the binary”. Mika mentions how they would feel very proud if they could have nonbinary in their passport, while Charlie says they get emotional just thinking about it.

5.3.1 Recognition

The biggest reason the informants would like a nonbinary legal gender seems to be to get recognition and to feel like their gender identity is valid because it is recognized by the state. Skylar thinks it would be nice to have a legal gender “as proof that we exist”. Asra says that having a nonbinary legal gender would mean that they would feel legitimised in identifying as non-binary.

“We need the legal to be in place in order to be recognized. Everywhere in society, on all levels, you’re not recognized. So that needs to be in place, at least, to be able to feel like you’re a part of society” (Asra).

Some of them say that they do not care all that much what the state thinks about them, and that they do not personally need recognition from the state. However, some think it would be nice even if they do not necessarily feel like they need it, or they know that it would be important for other people.

“Personally I don’t care much about what the state thinks or doesn’t think. But I know there are non-binary people who are affected by it, and that means I care. So not for my own sake, but I see the importance” (Skylar).

“Ultimately the most important thing is that I recognize myself, but it helps to get support [from the state]” (Charlie).

Robin says he thinks adding a nonbinary legal gender is “a very good beginning to start changing the collective awareness around non-binary people”. Some of them also point to how a nonbinary legal gender could be “a message that we exist” (Asra), and “a message to the people, that like, this is how we are, and that in Norway we recognize that non-binary people exist” (Atlas). Asra and Atlas, and some of the others, highlight how recognition from the state could be a message to society, as well as a way to spread information about gender identity and help to normalise it. Kass focuses on how recognition would be a message to non-binary people: “just saying ‘yes, you exist’ and ‘yes, we see you’”.

Jordan mentions that they “need recognition from everyone, not just from the state”. Ivy also comments on how the rest of society will not automatically accept non-binary people, even if the state recognizes them. Recognition from the state will not necessarily affect everything else in society, and there could still be “problems with the medical, with misgendering” (Ivy), for example. Jordan is a bit more positive and thinks that having legal recognition would mean that you could get institutions to change, because it has been established legally. Jordan does wish it was not like that, though: “I think it is annoying that it matters. That it has to be on paper – that it has to be legal for people to take it seriously.”

Mika does not want to wait for recognition from the state: “I don’t want recognition from the state to be what controls social recognition. I want attitudes to change and for the state to be a part of that”. Jordan echoes this:

“The most important thing for me is that the culture changes. And that society changes its mindset. That there is an attitude change and a cultural change. Because that’s what I meet in daily life, and that most people meet often. [...] But then the legal [recognition] is also important. But what I’m afraid of is that we’ll do the legal without doing the social and the cultural” (Jordan).

5.3.2 Negative consequences

Some of the informants are worried that it might not be safe to travel if you have a nonbinary legal gender in your passport. Ivy says that “a lot of countries are extremely conservative regarding this, so it could be very unsafe”. Jordan also discusses this: “I’m worried about what kind of consequences it might have if I’m travelling”.

Shay thinks a nonbinary gender on passports would make it easier to feel safe when travelling, because it can be difficult as a trans person, if your legal gender does not match how the person inspecting your passport perceives you. However, several of the other informants discuss this as a potentially scary situation, where you become very visible if you have an X in your passport. Kass discusses it in a similar way to Shay. For them, being on hormones and often being read as a different gender than what their passport says, the current situation could be just as problematic as just having an X. Because the scrutinization will happen either way. At least with an X, there would not be a question of whether or not it is the correct passport.

Asra talks about the possibility of needing two different passports, one with the X, and one with a binary gender: “I’m considering whether I actually need two passports, if I’m gonna travel to countries that don’t recognize a third gender category. That it can actually...I can actually put myself in danger”. For Asra, it would not be too difficult, as they are a citizen of Norway and of their home country. For others, with just one citizenship, this could be a problem. The Norwegian government could consider the possibility of allowing citizens two passports, one nonbinary and one binary, the way Malta has.

Increased visibility is not necessarily just a good thing: “When you become more visible you might get...society might become more understanding towards us, but there can also be more negative backlash when people become aware that you exist” (Shay). This is echoed by Asra: “We are more vulnerable, because we become more visible” and Ivy: “I feel like we would become very visible, and then we’re dependent on people not being mean. And that’s not always the case, sadly”.

Related to increased visibility is the heightened risk of discrimination. This is something that a few of the informants are worried about.

“In a vacuum I’m all for it [adding a nonbinary legal gender]. It’s just that in reality I think it’s a little scary, because it’s a very vulnerable and stigmatised group. For example, we

don't have a register of religion linked to names in Norway, because that is something that could be abused". (Ivy)

One discussion in trans spaces have been whether a nonbinary legal gender would lead to more explicit discrimination. For example, people have mentioned the possibility of being targeted by the police if your ID states that you are non-binary (e.g. Girardi, 2021; Muth, 2018; Kravitz, 2022; SGTtree, 2018). When asked about this, the informants did not seem too worried.

"I have to admit that I have an impression that discrimination from the police is not a big problem in Norway. I'm not saying that it doesn't exist, because it definitely does, but I don't think it's a huge problem" (Nyx).

"I mean, discrimination from the police is a problem, like, period. I think that it is a problem that can surface, but...I don't feel like that's a reason to stop it [the introduction of a nonbinary legal gender]. Then we need better training of the police, actually. [...] It's a problem that... in the same way that everyone who is queer in some way is vulnerable to discrimination, based on papers or based on presentation, expression. And like...it can be a problem, but I don't think it's a reason to stop it" (Atlas).

Phoenix also points out the fact that if you face discrimination from the police based on your gender identity "then you have a problem with the police, not a problem with the gender [identity]". Mika agrees; "that [discrimination] is the problem, I'm not the problem".

Charlie thinks it is important to discuss what this category will include, and to be careful about how it is worded: "If the language is not correct, then a lot of people will feel excluded". This is related to, for example, how the expression "third gender category"¹⁷ leads to people assuming that being non-binary is a unified experience – a third gender – and not a lot of different gender experiences. "That's kind of how we like to do things. Creating a new box but making sure that box is also very distinct. That [new] box can stand next to, but not question, the other categories" (Jordan).

Some of them feel that "all the negative effects I can think of are pretty overpowered by the potential positive effects" (Nyx), or that it is a risk they are willing to take. However, these potential

¹⁷ In Norwegian: tredje juridisk kjønn

negative consequences are some of the reasons why people (e.g. Aboim, 2020; Holzer, 2018) are arguing for the removal of gender markers – degendering – as a way for non-binary people to receive recognition.

5.4 Degendering

Degendering did not seem to be a strategy a lot of the informants were very familiar with. Some of them had heard about it, but there did not appear to be the same level of knowledge as with the strategy of implementing a nonbinary legal gender. When I introduced the question about degendering I explained briefly what it entails, and the informants who had not already, reflected on it then. Some of them expressed a preference for degendering, mostly related to the increased visibility of a nonbinary legal gender:

“I would like to not have gender markers on official documents, and that kind of thing. A little bit because I’m worried that if I have it [nonbinary gender] on official documents, what it might lead to” (Riley).

Atlas says that for them, as an agender person, it would be very nice to not have gender markers: “immediately it sounds like a better idea, kind of”. This is echoed by Nyx: “I would rather not have any categories, so I think that’s a better solution”.

Several of the informants question why we have gender markers, and ask what they are actually used for: “What does it help if I know that you are legally a woman or a man?” (Phoenix). Ivy suggests having pronouns in legal documents instead of gender markers.

“The optimal [situation] for me would be to totally remove gender categories” (Ivy). This is related to the fact that they would feel very singled out if they had a nonbinary legal gender, and they do not feel like that would be completely safe at this point. Another reason why Ivy would like to remove gender markers is that “in a lot of situations it is completely irrelevant. It’s only relevant for my doctor, not anyone else.”

Atlas also argues that it would be better to have descriptions in your medical journal. Being a legal woman does not mean that you have a uterus, for example. That should be the information in your medical journal, not legal gender. Kass also talks about this: “I mean, those few times you actually

need to know someone's sex, you can find out somehow. If it's at the doctor's, then you can just ask and then they can explain it themselves".

Some of the other informants agree, and talk about how your physical body should be treated as your body, and not related to your legal gender. Because if you are a trans woman with a prostate, and are registered as a legal woman, you will not be called in to check for prostate cancer. In this way, the current system can be more damaging than helpful, according to Ivy.

Robin argues that degendering would be better, because if someone looks at your ID and sees your legal gender, no matter what it is, their own prejudices and stereotypes about gender will impact the way they see you: "if there are categories people can't help but see through those categories [...] but if you don't have a [legal] gender they just see you as a person. At least I hope so" (Robin). In this way, removing gender markers could benefit a lot of people, he thinks.

5.5 Degendering versus nonbinary legal gender

Some of the informants think that it would be more difficult to remove gender markers than to add a gender marker. One of the reasons for this could be that some people would see it as something being taken away from them. Kass says, "for many people, being a woman or a man is a very strong identity", which could lead to them opposing the removal of legal genders. Some of the informants point to how changing your legal gender to match your identity is likely very important for binary trans people, and degendering would take that away from them. In that way, they feel that it would be better to introduce a nonbinary gender category, and not remove gender markers.

Several of the informants see degendering as something that would be great in an ideal world, or as something that would be more difficult to implement, and thus less realistic:

Mika: "that would definitely be the ideal thing"

Interviewer: "do you think it's realistic?"

Mika: "absolutely not. [...] One can dream".

"It might be better to introduce a third gender category, normalise that. And...make it official. Where you later can remove it [gender markers] because it has stopped mattering as much. Wishful thinking" (Riley).

“I look at it [society without gender markers] as a utopia in a way. That it is an optimal situation that I hope we can reach” (Noah).

In addition, some of the informants feel like removing gender markers would not bring the same recognition as having a nonbinary category. And that they want or need that recognition.

“I feel that I need that validation that it is okay to be different. [...] By removing it [gender markers] you say that it doesn't matter. And that is good, and I hope that is where we end up. But in the society we live in now, with the norms and the ideas that a lot of people have...I need that they recognize it first” (Noah).

“I want to be visible, and be acknowledged and recognized. [...] I'm a little worried that we will disappear in the statistics and [...] we still have a dominating binary gender understanding that I think would make it more difficult to be visible” (Asra).

6 Discussion

This discussion is based on the themes from the findings, but with some additions. First, I will take a quick look at gender identity and experience, before looking at how misgendering and social exclusion are consequences of a lack of recognition. This is further discussed through the concepts of misrecognition, social invisibility, and erasure. Next, I look at institutionalised misgendering, before moving on to a discussion about the implementation of a nonbinary legal gender, and whether that would make the informants feel recognised. I will also discuss some of the potential negative consequences of adding another gender category. Then, I will discuss degendering, and how it could reduce the state's control over people's lives, before comparing degendering and gender pluralism as strategies for recognition. This includes which strategy the informants would prefer, as well as the conflict between wanting to be recognized and being worried about the risks of increased visibility.

6.1 Gender identity and experience

All of the informants agree that being non-binary means to identify as something other than man or woman – either a mix, something in-between, or something completely different. Some of them use

other words – like queer, trans masculine or agender – to describe their gender identity, but the common part is that they describe it as something outside of the binary system. Mika explains it as wanting to “categorise myself out of a very fixed framework”.

The informants all disagree that being trans is a trend, but are familiar with this type of argument in debates on trans issues. Some of them are worried that people will think this if they come out. It would be a sign that people do not take the identity seriously, and that people dismiss it as something they do just because it is popular. Disputing the assumption that being trans is a trend, the informants instead explain the increased number of people coming out with better access to information and more acceptance in society. Some of them highlight the fact that other cultures have, or have had, a diversity of gender identities.

Boddington (2016) found that their participants thought stigma and discrimination was a result of a lack of awareness and education on non-binary genders. This mirrors what my informants discuss. For example, Ivy mentions that people might forget to use the correct pronouns because they “don’t understand how important it is”. Nyx talks about the lack of gender-affirming treatment for non-binary people, and how this might be related to the fact that the healthcare system has very little knowledge of non-binary identities. Flatnes’ (2018) participants discussed how the lack of information had made it more difficult for them to figure out their own gender identity. Ivy agrees: “had I been aware of the terminology earlier, I probably would have figured it [their gender identity] out earlier”.

6.2 Lack of recognition

As discussed in the chapter on theory, misgendering can affect trans people’s view of themselves (McLemore, 2013). Misgendering is something all of the informants have experience with, though there is a difference in how upset it makes them. Misgendering is done both by individual people when they use the wrong pronouns or incorrectly gendered words, or by institutions when documents and forms do not have the option of more genders than man and woman. Once again there are opposing views among the informants on how hurtful this latter situation is. Several informants discuss how having legal documents with the wrong gender feels like lying. One of the informants also points out how a lack of a nonbinary legal gender feels like being misgendered by the state.

Juang (2006) argues that the importance of recognition can best be seen in the consequences of its absence. Non-recognition or misrecognition can inflict real harm and be a form of oppression. In addition, it can lead to the affected people living a reduced life with a lot of self-hatred (Taylor, 1994). Lack of official recognition of your identity can cause significant psychological and emotional harm (Braunschweig, 2020).

Flatnes' participants felt excluded and invisible in society (Flatnes, 2018). My informants agree with this. They do not feel seen by the general society. For some of the informants, or in some situations, they feel like they are not seen for who they are, and other times it feels like they are not seen at all. Misrecognition, social invisibility, and erasure are concepts that show us that this is not uncommon for marginalised groups. The concepts help us understand some of the consequences a lack of recognition can have on individuals and groups. Taylor's (1994) concept of misrecognition can be used to understand the first situation, while Honneth's (2001) concept of social invisibility can help us understand the second one. Monro's (2005) idea of erasure encompasses both of these situations.

6.2.1 Misrecognition

Misrecognition means having a demeaning or confining picture reflected back at you, according to Taylor (1994). One can argue that misgendering is a form of misrecognition. Misgendering is a type of microaggression that is derogatory and creates situations where other people perceive you incorrectly, which is then mirrored back to you (McLemore, 2013). McLemore (2013) claims that people have a psychological need to be understood by others, and for others to see their real self. When you do not get your real self verified by others, it has negative effects on your mental health (McLemore, 2013). Like Riley says: "It hurts because I'm being forced to present as something I'm not". Misrecognition is also a symbol of a lack of respect, according to Taylor (1994). Shay connects misgendering to this: "it's a clear signal that they don't respect you as a person".

Taylor (1994) argues that it is important for people to be true to themselves. Phoenix says misgendering feels especially bad if it is done by people who already know they are non-binary: "Because they do not see me as the way I want to be seen, I guess". Misrecognition is thus related to not being seen for who you are (Taylor, 1994). Several of the informants use metaphors about lying and dishonesty when they discuss misgendering. This will be discussed further under "institutional misgendering".

6.2.2 Social invisibility

As shown in the theory chapter, Honneth (2001) uses the term social invisibility to explain the way a lack of recognition is comparable to not existing in a social sense. He argues that not being recognized is like being made invisible by the dominant group in society (Honneth, 2001). Some of the informants talk about how the debate around a nonbinary legal gender is difficult for them, and that they often need to distance themselves from it. “It can be a bit much to constantly hear that people believe you don’t exist” (Riley). In line with this, Aboim (2020) argues that a lack of recognition means that people are denied social existence. Being recognized means being valued, protected, and having some access to public self-expression (Aboim, 2020).

Social invisibility is a denial of recognition, according to Honneth (2001). A UK survey showed that most of the participants felt that not being legally recognized negatively affected their mental health and self-esteem, as well as their social visibility (Holzer, 2020). A number of my informants discuss how not having a nonbinary legal gender makes them feel like they are not seen. They feel that not having that legal recognition is a message from the government that they do not exist. Nyx brings up the fact that not having the option for a legal gender that matches their gender identity is proof that they do not exist, in a way. Shay also mentions this: “You don’t exist legally the way you actually are”.

Braunschweig (2020) argues that in our society’s current way of looking at gender, intersex and non-binary people are not real, which is reflected by the experiences of my informants. The lack of recognition makes their identity a sort of impossibility, which leads to the feeling that they do not have full access to humanity (Braunschweig, 2020). Noah believes that only having two legal genders “stop[s] people from living full lives”.

6.2.3 Erasure

Monro (2005) uses the word erasure to explain this phenomenon. For Monro (2005), erasure is linked to exclusion through language, denial of existence, and not having a legal gender that matches your gender identity. This means that erasure is a term that includes both misrecognition and social invisibility. There is considerable overlap between these three terms, but they show that these are common phenomena, as there are several theories that try to explain them.

The findings of this research point to erasure happening in the case of non-binary people. Because their gender is not legally recognized, they feel like they are not being seen: “Feels like...that

people don't see you. [...] Plus, you're not recognized as a person in a way" (Shay). Butler (2004) also discusses this, and argues that without recognition, we are not seen as real people – we might not be seen as people at all. Shay also says that "it is sort of impossible to live as who you are and be respected as a human". Norms of recognition decide who are to be seen as recognizably human, and who are not, and this is a form of oppression, according to Butler (2004).

6.3 Institutional misgendering

As previously stated, misgendering is not only done by individuals, but also by institutions through documents and legal categories. For non-binary people, this means only having the option to be registered as either man or woman. Arnesen (2016) argues that a lack of a nonbinary legal gender means that only one group in society has the right to have a gender marker in passports and documents that correspond with their gender identity – namely binary people. Non-binary people are excluded from this right, and Arnesen (2016) concludes that this exclusion of a certain group is illegal differential treatment in Norway based on the Discrimination Act.

It was an interesting find when Shay described not having the option of a nonbinary legal gender as being "misgendered by the state". Not having their actual gender on official documents or as their legal gender feels similar to misgendering for several of the informants. This means that only being able to choose between male and female on official documents is a form of institutionalised misgendering, because: "you don't exist legally the way you are" (Shay). It is a clear sign that the government does not see them for who they are: "like I'm being referred to as something I'm not" (Ivy).

Misgendering is all about not having your gender identity acknowledged, and the lack of a nonbinary legal gender seems to be a similar experience. When it is done by the government and other institutions, we can call it institutional misgendering, similar to institutional racism or other forms of institutionalised oppression (Maughan et al, 2022; Kapusta, 2016).

Several of the informants mention that not having a legal gender that matches their gender identity feels like dishonesty or a kind of deception: "It feels like there's a lie that's spread about me" (Atlas). This can be connected to the notion of authenticity and being true to yourself that Taylor (1994) discusses. Riley specifically mentions that it feels "inauthentic". There is an ideal of authenticity, which leads to the importance of discovering and being true to your own particular

way of life (Taylor, 1994). Having the wrong information on official documents makes the informants feel like they are not allowed to be true to themselves. They do not have the option to live authentically: “I’m faced with a choice where there are two wrong answers” (Jordan).

6.4 Nonbinary legal gender

Implementing a nonbinary legal gender is something most of the informants are positive to. They feel like being recognized by the state would signify that their gender identity is valid. In addition, it could lead to increased information about gender identity, which then could bring more acceptance in society. Some of the informants are worried about the potential consequences of having a nonbinary legal gender. They are worried that it could be unsafe to travel, and that the increased visibility might bring negative backlash.

In the European context, there is a growing acknowledgement, according to Quinan and Hunt (2021), that binary gender registration is in conflict with the principles of self-determination and non-discrimination. Monro (2008) claims that the gender binary is incapable of understanding gender identity, and this is echoed by Asra: “two categories that do not correspond with people’s identities”.

Similar to what my informants feel about a nonbinary legal gender, Quinan & Oosthoek (2021) found that their participants associated the X marker with freedom and recognition, but that they were concerned with how it might be used or misused. Butler (in Holzer, 2020) argues that recognition is connected to social legitimacy and visibility, and that it can influence a person’s self-respect. Therefore it is understandable that people have a desire for their gender identity to be officially recognized.

“I think it [legal recognition] is important for a lot of people. For me personally there are a lot of other things that need to be in order [first]” (Charlie). Ivy also mentions how legal recognition will not necessarily fix other problems in society, and that it would be important to also look at those. Robin, and a few others, specifically point to trans-specific health care, and how non-binary people do not have access to gender-affirming treatment as one of these problems. Several of the informants specifically mention that it is not enough for the state to just implement a nonbinary legal gender without making other changes and improvements for non-binary people.

Jordan mentions that the most important thing for them is that society changes, because that is what impacts their day-to-day life the most. They are afraid that the government would implement a nonbinary legal gender without making efforts to change social and cultural issues that non-binary people experience. Like Skylar says: “People’s mindsets won’t change just because we get a [nonbinary] legal gender”. However, some of the informants think that it would be easier to change other parts of society if you already have the legal recognition.

6.4.1 Recognition

Holzer (2020) claims that gender markers can serve as a legitimisation of gender identities, as well as help to normalise gender diversity. In line with this, what my informants are most focused on is how recognition of a nonbinary legal gender could work as a sort of proof of their existence. Jordan says: “it’s recognition by actually saying, on paper, that you exist”. It would be a signal that non-binary people are real and valid. A number of the informants say they want an official, state-recognized sign that their gender identity is legitimate: “it’s about the state saying that your feelings are okay. Like, that your identity matters” (Noah).

It is not that non-binary people doubt their own genders and experiences, but other people might. Having that official recognition from the government would mean that the informants would feel more justified when talking about their gender identity: “it would be a little easier to be open about being non-binary then, because [...] more people would be aware of it and take it seriously” (Shay). Phoenix explains this as being “officially backed by the state”.

Holzer (2020) uses the term institutionally visible when talking about a nonbinary legal gender. As previously discussed, social invisibility is one negative consequence of non-recognition. By implementing a nonbinary legal gender, the state would legitimise gender diversity by making non-binary people institutionally visible (Holzer, 2020). This could be an important step on the way to reducing the feeling of social invisibility for non-binary people, which Skylar touches on: “To actually be able to feel that as a non-binary person I am also seen by the society”.

6.4.2 Does X reproduce the gender binary?

Like some of the informants discuss, implementing a nonbinary legal gender can lead to people believing that everyone who is non-binary has the same experience with gender; that non-binary is a

third gender. People frequently refer to it as a third legal gender or a third gender category¹⁸. However, “third gender” is a phrase that makes non-binary seem like a very fixed and rigid identity (Monro, 2005). It can end up becoming a box where you put all the people who do not belong in either F or M, which can lead to a strengthening and purification of the gender binary, instead of disrupting the system (Monro, 2005; Quinan & Hunt, 2021). This is a much-discussed theme in the literature, and therefore I decided to include this discussion, even though it was not something the informants focused on a lot.

Jordan did mention that they are afraid implementing one additional legal gender might lead to people thinking that “those who are a little different can be in that third box”. Aboim (2020) claims that a legal “third-gender” does not fully reflect the complexity and diversity of gender identity. Instead, it produces a sort of legal umbrella category that can misrepresent individuals’ gender experiences (Aboim, 2020). However, Monro (2007) argues that gender pluralism would not need to be just three genders or sexes. Gender and sex are both spectrums, and there is nothing in Monro’s gender pluralist theory that points to only three categories. As previously stated, the idea of a third category could be related to ICAO’s approved gender markers (F, M and X) for passports (Holzer, 2018).

Ashley (2021) also argues for a broader range of gender markers, as the “third sex/gender option” is not sufficient to cover the diversity of gender identities and bodies. Ashley (2021) suggests that the X can be othering, while a variety of gender markers would signify that it is about something more than just being different. Gender markers should reflect individual gender identities, which adding just one more will not sufficiently do. By adding an X marker, the gender binary would remain relatively stable, according to Ashley (2021). Jordan is also worried that adding another category “won’t make us actually examine cisnormativity or the two-gender system. But that we will just add it on as an extra”.

Davis (2017) argues that having a nonbinary legal gender reproduces the gender binary, as there is less room in the categories of man/woman for people who do not adhere to the traditional gender norms. Similarly, Nirta (2021) claims that gender markers have a goal of protecting and reproducing sameness through specific categories. That everyone should be women in the same way, or men in the same way, or non-binary in the same way. In addition to suggesting that the X

¹⁸ In Norwegian: “tredje juridisk kjønn” or “tredje kjønn”

marker does little to disrupt the gender binary, Davis (2017) believes that it creates an illusion of equality while still marginalizing non-binary people.

6.4.3 Misrecognition through gender markers

Aboim (2020) argues that recognizing gender minorities through gender markers leads to misrecognition. This is also a theme that emerged mostly from the literature. The identity recognition model, as Aboim (2020) calls it, often imposes a norm, instead of recognizing diversity. With every identity category there are certain stereotypes and norms that follow. Robin mentions this: “every existing category puts certain expectations there”. Thus, having gender identity categories can make it difficult to self-determine gender identity, because there are norms connected to how you should look and behave if you identify as a particular gender (Aboim, 2020).

Braunschweig (2020) agrees. When a marginalised group gets rights based on the specific identity category that is the reason for their exclusion, they might give new meanings to this category, but the process reproduces the social differences that they were trying to get rid of (Braunschweig, 2020). The risk with specific rights is that they are never given freely; they always exist within the discourse that created the need for the rights in the first place (Braunschweig, 2020). Ivy feels like adding another legal gender might exclude some people “because there are a lot of non-binary identities” and you cannot guarantee that one additional gender category would feel right for everyone. Aboim (2020) references Ken Plummer, who explained that society is dependent on categories for organisation, but at the same time, they “restrict our experiences and serve material forces of domination and control” (in Aboim, 2020, p. 234).

6.5 Degendering

Most of the informants were not as familiar with degendering as with a potential nonbinary legal gender. Braunschweig (2020) argues that the option of degendering has been generally overlooked. Some of the informants would prefer to remove gender markers, mostly because they are worried about the consequences of a distinct nonbinary gender marker. Several of them think degendering would be the optimal solution in a perfect world, but do not think it is realistic. Shay thinks removing gender markers would make things easier for a lot of people “because then people wouldn’t have to change their legal gender in the first place”.

The findings of this study show that a lot of the informants are in favour of removing gender markers, yet they did not see this as a realistic goal. This mirrors Newman & Peel's (2022) findings, where over half of the participants were in favour of abolishing legal gender but saw this as an impossible dream. Riley thinks that implementing a nonbinary legal gender would be much easier than abolishing gender categories, even though they personally would prefer to not have gender markers.

Braunschweig (2020) thinks that degendering is important because it will stop the government from assigning predetermined identities to people. Nyx agrees with this: "I'd rather just not be in a category". However, some of the informants think that degendering would be more difficult to achieve, because it can seem like there is something that is being taken away from binary people. Riley specifically mentions how some cis people likely would oppose the removal of gender markers more than the adding of another category. A couple of the informants, for example Charlie, suggest making gender markers optional in passports and identity documents. Ivy also thinks this would be a good idea, and proposes putting pronouns in legal documents instead of gender markers.

Robin talks about how it is difficult to do anything about the recognition status of non-binary people, because it does not benefit the general population. He believes that people are not that willing to fight for rights that do not affect them personally. Monro (2005) agrees and claims that structural inequality continues because the privileged group benefits from the current situation, and because they are ignorant of the experiences of the subordinated group. People internalise the hegemonies and discourses in society, which leads them to believe that their position is justified, Monro (2005) argues.

6.5.1 Reduce state control

Like Braunschweig (2020), some people advocate for degendering because they want to reduce the state's control over gender identity (Holzer, 2018). The X marker may seem positive, but we need to view it in relation to "heightened border surveillance that targets gender non-normativity" (Quinan & Hunt, 2021, para. 5). Gender markers, and especially the X, can be used as a tool for regulation and control, and eliminating gender markers can therefore positively impact the right to privacy (Quinan & Hunt, 2021; Quinan & Oosthoek, 2021; Holzer, 2020). Similarly, Aboim (2020) discusses how degendering would eliminate state interference on the private subject of gender experience.

My informants did not talk about state interference or state control, but several of them did question why we need legal genders in the first place. Phoenix asks: “What does it help if I know that you are legally a woman or a man?” Several of them question what legal genders are actually used for, and why this is the main category of identification we have, and not fingerprints or retina scans, for example. Some of them discuss how it would be prudent to critically examine why the government has a need for gender registration. Charlie says: “When doctors have said that there are so many ways to identify a person, I think it would be smart to examine what we actually use these categories for”.

If we abolish gender categories, the legal gender could no longer matter in regard to the gender of the person you marry, and it would be less likely that intersex children would be subjected to genital mutilations in order to make their bodies fit into norms for sex and bodies (Holzer, 2018; Braunschweig, 2020). This is another way that degendering would reduce state regulation of gender.

6.6 Degendering or gender pluralism?

Some of the informants discuss how they think it would be more difficult to remove gender markers, and that is why they prefer adding a nonbinary legal gender. Some focus on the importance of having the legal gender as a proof that your gender identity is legitimate and explain that they need the specific recognition that a nonbinary legal gender would provide. Others are worried about what the visibility of having a nonbinary legal gender would be, and think that removing gender markers would be safer.

When you look at the theory, gender pluralism and degendering are both discussed a lot, but with the informants, it seemed as though they were more familiar with the idea of adding another gender category. This raises the question of why degendering is not as widespread in non-binary/trans communities and activist spaces, which would be an interesting topic for future research.

As previously stated, countries are required to have a gender marker on passports, and maybe it follows that nationally, the only option is to add an X. There would have to be an international movement in order to remove gender markers from passports. However, as the Netherlands has done, countries can remove gender markers from other documents and registers, as well as make other efforts to degender society.

For example, language could be degendered, and we could stop using “male” and “female” on forms whenever sex and gender is not relevant to the subject (Monro, 2008). Laws, especially, could be changed to have a gender-neutral language and not use phrases like “he or she”. In addition, you could switch out mother and father with parent in family law (Thorsnes, 2018). If society was less concerned with gender, gender norms would not be as strict, which would lead to non-binary people facing less social exclusion, according to Monro (2008).

Like the informants discuss, legal gender cannot always be used to know what health services a person is in need of (Holzer, 2018). When the Norwegian Directorate of Health notifies citizens of sex-specific health screenings, like mammograms or for cervical cancer, it is sent to people based on their legal gender (Thorsnes, 2018). “That’s the problem. By saying woman, you include and exclude a lot more people than necessary” (Kass). This could be solved by sending these notifications to everyone, regardless of gender, or that your doctor has the responsibility of manually registering what information you need based on your body. Atlas argues that information about your body is what should be in your medical journal, not legal gender. Today, it is up to the individual to take this up with their doctor if they need information about healthcare that they will not get automatically based on their legal gender (Thorsnes, 2018).

A person’s gender marker does not necessarily reflect a person’s gender identity, or gender expression. Eliminating gender markers from IDs could relieve stress for trans and intersex persons who are scrutinized for having a gender expression or physical appearance that is perceived to not correspond with their gender marker (Holzer, 2018).

Kass discusses this with regards to the X marker as well. Kass states that having F/M in your documents means that you are supposed to look a certain way. If your gender expression differs from the norm, it can get uncomfortable. Thus, having an X marker could potentially remove those assumptions about what you should look like. However, if you are a cis man or woman who is gender non-conforming, and do not want to change your legal gender to X, you would still have this problem unless gender markers were removed (Holzer, 2018).

Ashley (2021) argues that there are “no good gender markers, because gender markers will always be tainted by their cisnormative past” (p. 44). This means that however many gender markers we introduce, binary thinking would still be the framework they exist within (Ashley, 2021). Asra,

however, talks about this in relation to degendering. They argue that if we remove gender markers, non-binary people will remain socially invisible, because “we still have a dominating binary gender understanding” (Asra).

6.6.1 Gender-blindness

Asra talks about how it would be easy for non-binary people to disappear if we completely remove gender markers. Society would still have a binary understanding of gender, just without the legal symbols for it. Thus, non-binary people will remain institutionally invisible (Holzer, 2020). Quinan & Oosthoek (2021) calls this gender-blindness¹⁹. This blindness “conceals rather than reduces gender inequalities” (Quinan & Oosthoek, 2021, p. 96). The X marker might then risk reproducing binary thinking, because, with gender-blindness, the existing hegemony will continue to dominate, as it will remain unchallenged (Monro, 2007; Aboim, 2020). However, it is not the categories themselves that create gender inequality, Monro (2008) argues, but the power structures they are related to.

Monro (2008) explains that identity categories can be necessary for cultural and political organisation. Mirroring what Asra says, if we abolish gender, the ideas and power behind the binary classification would remain unquestioned and unchallenged (Monro, 2008). Introducing a nonbinary legal gender can give non-binary people social legitimacy. Abolishing gender markers would presumably not do this, because non-binary people would be no more visible than they are in the current situation of binary systems (Holzer, 2018). Taylor (1994) also discusses a form of difference-blindness, and argues that this, in reality, leaves the power of the hegemonic culture unchallenged.

Some of the informants point to how degendering could be harmful for binary trans people as well. Being able to change your gender marker to the one that fits your gender identity can be affirming, whether you are binary or non-binary. Gender markers can be used as proof that your identity is legitimate (Braunscweig, 2020). Asra explains that sometimes when they come out, or talk about their gender identity, some people will not take it seriously: “People are gender-blind in a way. [People say]: ‘Everyone is allowed to be their genders, just be who you are, we are all humans’”. Instead of acknowledging individual gender identities, people put everyone into the category of human.

¹⁹ Similar to colour-blindness in relation to skin colour

Braunschweig (2020) agrees that gender markers can be affirming for binary trans people, but argues that it would work best for those who can pass as their legal gender. Additionally, Braunschweig (2020) claims, being exposed to gender classification, regulation and segregation constantly increases trans people's vulnerability to violence and marginalisation. Introducing another category to the existing binary system will not reduce the power of institutions to regulate vulnerable people based on gender expectations and norms. They will be legally recognized, but not free of official control and regulation, Braunschweig (2020) insists.

Furthermore, identity categories can be a tool to receive equal rights and abolishing legal gender could end up leading to non-binary people losing government protection. There is therefore a dilemma between the need to claim identities through legal recognition and "the desire for a world where the registration of sex/gender is no longer a determining factor" (Quinan & Oosthoek, 2021, p. 96). This divide showed up in the findings. Some of the informants want their identity to be specifically recognized through a nonbinary legal gender, while others wish that legal gender did not matter. Riley goes for a compromise: "It might be better to implement a [nonbinary legal gender], normalise it and...make it official. Where you later can remove it [gender markers] because it has stopped mattering as much. Wishful thinking."

6.6.2 Paradox of rights

Brown (2000) discusses this dilemma and calls it the paradox of rights. The paradox of rights is the fact that category-based rights can end up reproducing identity categories, while leaving rights too general can end up concealing subordination. Identity-specific rights can reduce the suffering of oppression and subordination, but they can also make the boundaries between identities clearer and more distinct. However, gender-blindness can end up enhancing the privilege of the majority and overlooking the needs of the subordinate groups (Brown, 2000).

When my informants discuss why they are cautious about a nonbinary legal gender, one of the most common worries is the vulnerability that follows with increased visibility. Similarly, a UK study also found that the people who were hesitant about implementing a nonbinary legal gender were concerned about their safety or facing discrimination (Newman & Peel, 2022). Some of the informants are worried that a nonbinary legal gender would make them very visible, and that this could be dangerous, while others want recognition precisely because they are afraid that

degendering would render them invisible. This is another paradox, related specifically to recognition and not rights in general.

Skylar puts it this way: “to remove everyone’s [gender markers], that’s a positive thing too, definitely, but then we still don’t have a proof that we exist”. On the opposite side is Riley, for example, who prefers degendering: “A little bit because I’m worried that if I have it [nonbinary gender] on official documents, what it might lead to”. This paradox of recognition thus revolves around the reflections of the informants, and especially the different positions they take regarding visibility and invisibility. Some of the informants are most worried about the negative consequences of being visible, while others are more afraid of being socially invisible. It is a dilemma between wanting to not be invisible and being worried about the vulnerability that visibility can bring, which Ashley (2021) views as a dilemma between safety and recognition.

6.6.3 Affirmative and transformative remedies

When we look at degendering versus gender pluralism, we can use Nancy Fraser’s (1997) concepts of affirmative and transformative remedies. This was not something the informants talked about, but the concepts show up in the literature as part of the broader discussion of recognition strategies. Additionally, these terms can be connected to what the informants discuss as advantages and disadvantages of both degendering and adding a nonbinary legal gender.

Affirmative remedies for injustice are solutions that work at correcting discriminatory outcomes in society without disturbing the underlying framework that generates them, like the implementation of a nonbinary gender. Transformative remedies are solutions that work at correcting inequitable outcomes through the restructuring of the underlying framework, such as degendering (Fraser, 1997).

Transformative remedies would, in this case, mean transforming our understanding of gender. It would mean moving away from the binary gender system and the hierarchy of identities that follows. It would mean disrupting the existing group identities and distinctions, and changing everyone’s understanding of gender (Fraser, 1997). This is related to the strategy of degendering. Affirmative remedies are connected to recognition and making all genders equal to man and woman. In Fraser’s (1997) understanding, affirmative remedies often end up enhancing the differences between groups, while transformative politics work to destabilise the differences. In

these circumstances, affirmative remedies would leave the structures that created the binary system intact, according to Fraser's (1997) theory.

Braunschweig (2020) argues that implementing a nonbinary legal gender would balance inequalities without disturbing the binary classification, while abolishing gender registration aims at questioning the categorisation and the hierarchical organisation of gender. In opposition to both Fraser (1997) and Braunschweig (2020), Monro (2008) argues that gender pluralism is interested particularly in challenging binary gender categories and the social institutions that endorse them.

Regarding recognition, affirmative remedies such as gender pluralism would bring active recognition through the implementation of a nonbinary legal gender, while transformative remedies such as degendering would bring recognition by removing the obstacle that was creating the inequality in the first place.

7 Conclusion

This thesis aimed to answer the research question “How does a lack of legal recognition impact the social visibility of non-binary people in Norway, and what would the implementation of a nonbinary legal gender do for their feelings of recognition?” through the analysis of 14 qualitative interviews.

To answer this, I have looked at non-binary people's thoughts and feelings about a potential implementation of a nonbinary legal gender. The existing literature has been mostly focused on discussing the strategies and practicalities of recognition, and not non-binary people's actual experiences and preferences. I have looked at concepts such as misgendering and institutional misgendering, recognition, social invisibility, gender pluralism, degendering, the paradox of rights, and affirmative and transformative remedies to explore what a lack of legal recognition feels like, and whether the informants feel that they need legal recognition in the form of a nonbinary legal gender.

Not having your gender identity legally recognised can be understood as a denial of rights such as freedom from discrimination, equal protection of the law, right to privacy and the right to health (Byrne, 2014; OHCHR, n.d.). Despite this, and despite claiming to fight for LGBT rights, Norway

does not have a nonbinary legal gender, and Norwegian non-binary people are thus excluded from having their gender identity recognised by the state.

One informant referred to a lack of legal recognition as being “misgendered by the state”, which led me to the concept of institutional misgendering. Misgendering can be done by individuals, or by institutions when documents and forms force people to choose between only two genders. Institutional misgendering means that the state and/or its institutions force you to choose between two legal genders, none of which are right for you. Several of the informants linked this to a feeling of dishonesty and lack of authenticity. Misgendering can thus be seen as a form of misrecognition and is connected to not being seen the way you want to be seen. This again is related to the ideal of authenticity (Taylor, 1994; Bialystok, 2013).

The informants felt like not having legal recognition meant that they were not seen by the government or by society at large. Honneth (2001) argues that not being recognized is tantamount to not existing in a social sense. This is what he calls social invisibility. Honneth’s (2001) concept of social invisibility is relevant because several of the informants feel like not having legal recognition is a message from the government that they do not exist. This was the main reason they would like to have a nonbinary legal gender; as a proof of their existence. Additionally, they thought having legal recognition would legitimise their gender identity, which could lead to more acceptance in society.

Some of the informants did not care what the state says about them, but thought it was more important that society in general changes and accepts non-binary people. However, there were some points made about how it could be easier to get acknowledgement from society if the state has already deemed it legitimate. Holzer (2020) calls this being institutionally visible, and legal recognition could be an important step towards reducing non-binary people’s feelings of social invisibility.

There was some concern about the potential negative consequences of implementing a nonbinary legal gender. Most of the informants were willing to risk the negative consequences in order to get legal recognition. Some of them highlighted the fact that they need specific recognition of their gender identity and did not feel like removing gender markers would bring that in the same way as adding a nonbinary legal gender. However, some of the informants would prefer to remove gender markers instead, because they were worried about the visibility that a nonbinary gender marker

would bring. Several of them thought degendering would be a great solution in theory but did not think it was realistic. They did, however, question why we have gender markers in the first place.

There is a paradox related to the debate of degendering versus gender pluralism. The paradox of rights (Brown, 2000) is explained as the risk that identity-specific rights will end up reproducing identity categories, while leaving rights too general can lead to oppression remaining concealed. This can be compared to Fraser's (1997) concepts of affirmative and transformative remedies. Affirmative remedies are connected to recognition, and may end up enhancing the differences between groups, while transformative remedies work at restructuring the underlying framework that creates inequality in the first place.

In this case, some informants are worried that non-binary people will continue to be invisible if gender markers are removed. This is because even though the markers excluding people are gone, the society will still have a binary understanding of gender, and non-binary people will remain institutionally invisible (Holzer, 2020). There is also a dilemma between wanting to be visible and being worried about the consequences that visibility can bring. Ashley (2021) calls this for a dilemma between safety and recognition, as you become very vulnerable if you stand out from the majority. Nonetheless, the fact that there is a debate around what is the best strategy is not an excuse to do nothing, as state inaction is a sign that the current situation is acceptable, maybe even desirable, according to Braunschweig (2020).

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9 Appendix

9.1 Information letter and consent form

The information letter was created before I realised that I would not be able to include the part about conversion therapy. Thus, there is information regarding this group that I ended up not interviewing.

Are you interested in taking part in the research project

A Qualitative Study of LGBTQ+ Rights in Norway?

This is an inquiry about participation in a research project where the main purpose is to explore people's experiences and feelings about being non-binary, and LGBTQ+ people's experiences with so called conversion therapy. In this letter we will give you information about the purpose of the project and what your participation will involve.

Purpose of the project

This is a master's thesis in Human Rights and Multiculturalism at the University of South-East Norway. The purpose of this thesis is to look at:

- Non-binary people's experiences and feelings of acceptance related to their gender identity
- Non-binary people's thoughts and feelings about a third juridical gender category
- LGBTQ+ people's experiences with conversion therapy/sexual orientation change efforts/counselling regarding sexual orientation and/or gender identity

I want to look at how Norway's lack of a ban on conversion therapy affects LGBTQ+ people. I also want to look at what non-binary people think and feel about introducing a third juridical gender category, and how the lack of this affects them.

Who is responsible for the research project?

The University of South-East Norway is the institution responsible for the project. I am doing a master's in Human Rights and Multiculturalism.

Why are you being asked to participate?

You are being asked to participate if you:

- Identify as lesbian, gay, bisexual, trans*, pansexual, non-binary, queer, agender, genderqueer, intersex, asexual, or other identities outside the norm of gender and sexuality
AND
- Have experiences with conversion therapy/sexual orientation change efforts

OR

- Identify as non-binary or other identities outside of the gender binary

What does participation involve for you?

The participation means being interviewed. The interview will last for about an hour, and the audio will be recorded and later transcribed. The recording will be stored on a safe server (TSD) and deleted when the project is over.

Participation is voluntary

Participation in the project is voluntary. If you chose to participate, you can withdraw your consent at any time without giving a reason. All information about you will then be made anonymous. There will be no negative consequences for you if you chose not to participate or later decide to withdraw.

Your personal privacy – how we will store and use your personal data

We will only use your personal data for the purpose(s) specified in this information letter. We will process your personal data confidentially and in accordance with data protection legislation (the General Data Protection Regulation and Personal Data Act).

The only ones with access to your personal data is Annine Amundsen (master student) and Feroz Mehmood Shah (supervisor). The data will be stored on a research server.

Participants will be given a pseudonym, and other identifying information will be anonymised. Participants will not be able to be recognized in the thesis.

What will happen to your personal data at the end of the research project?

Information will be anonymised consecutively, and audio recordings and identifying information will be deleted when the thesis is approved, which is scheduled for June 2022.

Your rights

So long as you can be identified in the collected data, you have the right to:

- access the personal data that is being processed about you
- request that your personal data is deleted
- request that incorrect personal data about you is corrected/rectified
- receive a copy of your personal data (data portability), and
- send a complaint to the Data Protection Officer or The Norwegian Data Protection Authority regarding the processing of your personal data

What gives us the right to process your personal data?

We will process your personal data based on your consent.

Based on an agreement with the University of South-East Norway, NSD – The Norwegian Centre for Research Data AS has assessed that the processing of personal data in this project is in accordance with data protection legislation.

Where can I find out more?

If you have questions about the project, or want to exercise your rights, contact:

- The University of South-East Norway via Feroz Mehmood Shah (Feroz.M.Shah@usn.no) or Annine Amundsen (amundsenannine@gmail.com)
- Our Data Protection Officer: personvernombud@usn.no eller Paal Are Solberg (Paal.A.Solberg@usn.no)
- NSD – The Norwegian Centre for Research Data AS, by email: (personvertjenester@nsd.no) or by telephone: +47 55 58 21 17.

Yours sincerely,

Feroz Mehmood Shah
(Supervisor)

Annine Amundsen
(student)

Consent form

I have received and understood information about the project *A Qualitative Study of LGBTQ+ Rights in Norway* and have been given the opportunity to ask questions. I give consent:

- to participate in an interview
- that the interview is recorded

I give consent for my personal data to be processed until the end date of the project

(Signed by participant, date)

9.2 Interview guide

Gender identity:

- How would you define your gender identity?
 - What pronouns do you use?
- How do you define non-binary?
- What does being non-binary mean for you personally?
- When did you start to realize that you didn't identify with the gender you were assigned at birth?
 - Can you tell me about how you decided that you were non-binary?
 - What has helped you understand your identity?
 - What role has your parents/family played when it comes to your gender?
- Can you remember when you first heard the term "non-binary"?
- Have you undergone any gender affirming treatment?
 - Did you change your name?

Society:

- How open are you about your gender identity?
- Can you tell me about any reactions you've had from friends and acquaintances?
- To what degree do you feel like people don't understand what it means to be non-binary?
- To what degree have you experienced any reactions from society in general?
- What do you think about the role gender plays in society?
 - What do you think about the claim that there is only two sexes?
 - What do you think about sex vs gender?
- Can you tell me about a time you were reminded that you're part of a gender minority?
- What do you think about the claim that being non-binary/trans is a trend?

Misgendering:

- What are your feelings about your assigned gender?

- ID, bodily, dysphoria
- How does it feel to be misgendered?
 - What do you think about gender neutral language?
- How does it feel when you have to misgender yourself? Gender specific toilets
- How does it feel to have a juridical gender that does not match your gender identity?
 - Passport, ID
 - How has it affected you?

Third gender category:

- What are your thoughts on a third gender category?
 - Would you change?
- How would a third gender category affect your daily life?
 - To what degree would it affect your openness around your gender identity?
- What does it say about Norway that we only have two gender categories?
- What do you think about the public debates surrounding gender?
 - Debates about third gender category
- Can you imagine any negative consequences of implementing a third gender category?
 - For example police discrimination
- What do you think about the alternatives to a third category?
 - Removing gender markers
 - What other policies could help?
- What do you think about the fact that the Norwegian id number has a number referring to assigned gender?
- Is it enough to introduce a third gender category?
- Third gender category is about recognition from the state. What would it take for you to feel recognized by society in general?

9.3 Translation of transcriptions Norwegian-English

Informant	Original transcription in Norwegian	Translated quote
Charlie	For meg er ikke-binær en kjønnsidentitet som viker ifra mann og kvinne, som de er forstått i samfunnet i dag, på en eller annen måte. Det er veldig forskjellige grunner til hvorfor man kjenner at man viker, eller at man føler tilhørighet til en plass over en annen, eller flere plasser	“For me non-binary is a gender identity that deviates from man and woman the way they are understood in society today. [...] there are lots of different reasons for why you feel like you deviate, or you feel a stronger connection to one over the other, or to several places”
Kass	Det er jo bevist langt bak i tid at det har vært...vært andre kjønnsidentiteter da, enn bare de binære. [...] det er bare det at veldig mange har vært i skapet da. Og det at mange ikke vet om at det er noe man kan identifisere seg med, at det er sikkert veldig mange som har...på en måte... følt seg som trans, men bare ikke har hatt ord på det da.	“It’s been proven that far back in time there have been [...] other gender identities, than just the binary ones. [...] it’s just that a lot of people have been in the closet. And that many people haven’t known that it’s something you can identify as. There’s probably a lot of people who have [...] felt that they were trans but haven’t had the words for it”
Ivy	Fordi hvis det ender med at flere ender opp med å finne riktig identitet for seg selv, så er jo det kjempefint. Enten om de finner ut at «nei, jeg var cis hele veien» eller om de faktisk var trans. Så er jo det bare positivt. For da vet de jo.	“Because if it results in more people finding the right identity for themselves, then that’s great. Even if they find out ‘no, I was cis all along’ or if they are actually trans, then that’s just positive. Because now they know.”
Atlas	Det føles litt som om det er en løgn som er spredd om meg. Som jeg liksom ikke kan si noe imot.	“It feels like there’s a lie that’s spread about me. And I can’t say anything against it”
Shay	Man føler jo at man lyver litt hver gang man blir tvunget til å trykke	“It feels like lying every time you’re forced to choose a gender for things.

	hva slags kjønn man er på ting. For det er jo ofte bare to valg, og ingen av dem matcher.	Because there are often just two choices, and none of them match”
Nyx	For nå så finnes det jo ikke. Det er liksom ikke en greie, det vet de ingenting om, det finnes ikke noe behandling hvis man skulle ha behov for det. Og hvis det da fantes et tredje juridisk kjønn så måtte de jo nesten anerkjent at da finnes dem jo.	“At this point, it [non-binary identity] doesn’t exist. It’s not a thing, they don’t know anything about it, there is no treatment if you need it. And if there was a third legal gender then they would have to recognize that it exists”
Mika	Å kategorisere meg selv ut av veldig satte rammer	“categorise myself out of a very fixed framework”
Jordan	Det viktigste for meg er at kulturen endrer seg. Og at samfunnet endrer holdning. At det er en holdningsendring og kulturendring. For det er det som jeg møter mest i hverdagen, og som de fleste møter med mest. Det sosiale og kulturelle ved det. Men så er jo det juridiske også viktig. Men det jeg er redd for er at vi gjør det juridiske uten å gjøre det sosiale og kulturelle.	“The most important thing for me is that the culture changes. And that society changes its mindset. That there is an attitude change and a cultural change. Because that’s what I meet in daily life, and that most people meet often. [...] But then the legal [recognition] is also important. But what I’m afraid of is that we’ll do the legal without doing the social and the cultural”
Riley	Det er nok bedre å gjennom å innføre en tredje kjønnskategori, normalisere det. Og...gjøre det offisielt. Hvor man da senere kan fjerne det, fordi det har sluttet å bety like mye. Ønsketanke.	“It might be better to introduce a third gender category, normalise that. And...make it official. Where you later can remove it [gender markers] because it has stopped mattering as much. Wishful thinking”
Noah	Jeg kjenner at jeg har et behov for den valideringen på at det er greit å være noe annet. [...] For det med å fjerne så sier man at det ikke har noe å si. Og det er vel så bra, og jeg	“I feel that I need that validation that it is okay to be different. [...] By removing it [gender markers] you say that it doesn’t matter. And that is good, and I hope that is where we end up. But in the society we

	håper det er dit vi ender opp, men i det samfunnet vi er nå, med de normene og tankegangene til veldig mange...så trenger jeg at de anerkjenner det først	live in now, with the norms and the ideas that a lot of people have...I need that they recognize it first”
Skylar	Å kunne faktisk føle at jeg som ikke-binær også blir sett av det store samfunnet.	“To actually be able to feel that as a non-binary person I am also seen by the society”.
Asra	Folk er på en måte kjønnsblinde. Alle skal få lov å være sine kjønn, bare vær den du er, vi er alle mennesker.	“People are gender-blind in a way. [People say]: ‘Everyone is allowed to be their genders, just be who you are, we are all humans’”

9.4 Approval from NSD

17.05.2022, 23:07

Meldeskjema for behandling av personopplysninger

NSD NORSK SENTER FOR FORSKNINGSDATA

Assessment

Reference number

594355

Project title

Masteroppgave i menneskerettigheter og flerkulturalitet

Data controller (institution responsible for the project)

Universitetet i Sørøst-Norge / Fakultet for humaniora, idrett- og utdanningsvitenskap / Institutt for kultur, religion og samfunnsfag

Project leader (academic employee/supervisor or PhD candidate)

Feroz Mehmood Shah, Feroz.M.Shah@usn.no

Type of project

Student project, Master's thesis

Contact information, student

Annine Amundsen, amundsenannine@gmail.com

Project period

01.05.2021 - 15.05.2022

Assessment (1)

19.11.2021 - Assessed

Det er vår vurdering at behandlingen vil være i samsvar med personvernlovgivningen, så fremt den gjennomføres i tråd med det som er dokumentert i meldeskjemaet den 19.11.2021 med vedlegg, samt i meldingsdialogen mellom innmelder og NSD. Behandlingen kan starte.

TYPE OPPLYSNINGER OG VARIGHET

Prosjektet vil behandle alminnelige personopplysninger, særlige kategorier av personopplysninger om helse og seksuelle forhold eller orientering frem til 15.05.2022.

LOVLIG GRUNNLAG

Prosjektet vil innhente samtykke fra de registrerte til behandlingen av personopplysninger. Vår vurdering er at prosjektet legger opp til et samtykke i samsvar med kravene i art. 4 nr. 11 og 7, ved at det er en frivillig, spesifikk, informert og utvetydig bekreftelse, som kan dokumenteres, og som den registrerte kan trekke tilbake.

For alminnelige personopplysninger vil lovlig grunnlag for behandlingen være den registrertes samtykke, jf. personvernforordningen art. 6 nr. 1 a.

<https://meldeskjema.nsd.no/vurdering/610d1f5c-38fa-45c3-9567-7e1994f122ca>

1/2

For særlige kategorier av personopplysninger vil lovlig grunnlag for behandlingen være den registrertes uttrykkelige samtykke, jf. personvernforordningen art. 9 nr. 2 bokstav a, jf. personopplysningsloven § 10, jf. § 9 (2).

PERSONVERNPRINSIPPER

NSD vurderer at den planlagte behandlingen av personopplysninger vil følge prinsippene i personvernforordningen:

- om lovlighet, rettferdighet og åpenhet (art. 5.1 a), ved at de registrerte får tilfredsstillende informasjon om og samtykker til behandlingen
- formålsbegrensning (art. 5.1 b), ved at personopplysninger samles inn for spesifikke, uttrykkelig angitte og berettigede formål, og ikke viderebehandles til nye uforenlige formål
- dataminimering (art. 5.1 c), ved at det kun behandles opplysninger som er adekvate, relevante og nødvendige for formålet med prosjektet
- lagringsbegrensning (art. 5.1 e), ved at personopplysningene ikke lagres lengre enn nødvendig for å oppfylle formålet.

DE REGISTRERTES RETTIGHETER

NSD vurderer at informasjonen om behandlingen som de registrerte vil motta oppfyller lovens krav til form og innhold, jf. art. 12.1 og art. 13.

Så lenge de registrerte kan identifiseres i datamaterialet vil de ha følgende rettigheter: innsyn (art. 15), retting (art. 16), sletting (art. 17), begrensning (art. 18) og dataportabilitet (art. 20).

Vi minner om at hvis en registrert tar kontakt om sine rettigheter, har behandlingsansvarlig institusjon plikt til å svare innen en måned.

FØLG DIN INSTITUSJONS RETNINGSLINJER

NSD legger til grunn at behandlingen oppfyller kravene i personvernforordningen om riktighet (art. 5.1 d), integritet og konfidensialitet (art. 5.1. f) og sikkerhet (art. 32)

For å forsikre dere om at kravene oppfylles, må prosjektansvarlig følge interne retningslinjer/rådføre dere med behandlingsansvarlig institusjon.

MELD VESENTLIGE ENDRINGER

Dersom det skjer vesentlige endringer i behandlingen av personopplysninger, kan det være nødvendig å melde dette til NSD ved å oppdatere meldeskjemaet. Før du melder inn en endring, oppfordrer vi deg til å lese om hvilken type endringer det er nødvendig å melde:

<https://www.nsd.no/personverntjenester/fylle-ut-meldeskjema-for-personopplysninger/melde-endringer-i-meldeskjema>

Du må vente på svar fra NSD før endringen gjennomføres.

OPPFØLGING AV PROSJEKTET

NSD vil følge opp ved planlagt avslutning for å avklare om behandlingen av personopplysningene er avsluttet.

Kontaktperson hos NSD: Tore A. K. Fjeldsbø
Lykke til med prosjektet!