

'A Created Being of Its Own':  
Gender Multiplicity in Jewish Antiquity

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## **Introduction: A Created Being of Its Own**

Rabbi Yose says: 'An *androgynos* is a created being of its own.'  
- Tosefta Bikkurim 2:7

### **How I Met The Tumtum**

The first time I met the tumtum I was twenty years old and studying in an ultra-orthodox yeshiva in Jerusalem. I was new to religious Judaism, but I was falling in love with classical texts fast and hard. I was captivated by the mysterious square Hebrew letters, and the rabbis' strangely beautiful convoluted logic. In a class on the Mishna, the earliest layer of Jewish oral tradition, I found a startling text buried in a sheaf of handouts. I learned that if someone vows to become a *Nazir* (a person who abstains from wine products and hair cutting for at least thirty days) if and only if a son is born to him, and a son is subsequently born, then his vow holds. However, if the baby turns out to be a daughter, a tumtum or an androgynos, he is not bound by this vow (M. Nazir 2:7). As soon as I read this text I called over my teacher and excitedly asked her: "Who is this tumtum?" "Oh," she answered, "The tumtum is a mythical beast that is neither male nor female – kind of like a unicorn – that our Sages invented in order to explore the limits of the law." Even though I knew next to nothing about Jewish texts and traditions, I had a feeling that my learned teacher might be wrong. As someone who lived, and lives, in a lesbian, gay, bisexual and transgender (LGBT) community situated on the borders of binary genders and sexualities, I instantly recognized my own face in the tumtum's form.

It has now been over a decade since I first met the tumtum. Inter-sexuality and inter-textuality have woven together over the past eleven years to create my adult queer Jewish identity. Squat Hebrew letters are no longer mysterious to me; in fact they are my intimate friends, my constant companions. And yet, in a sense, not much has changed since that first encounter. I am still captivated by the oddly graceful logic of Jewish antiquity. I still recognize the tumtum whenever we meet inside the text and I am surrounded by voices that deny the tumtum's reality.

The rabbis of the Tannaitic period, situated in the first two centuries of the common era, identify at least four possibilities for sex assignment at birth: the "zakhar" (usually translated as male), the "nekevah" (usually translated as female), the "tumtum" and the "androgynos." They also have two other categories for forms of gender non-conformity that appear at puberty or later, the saris and the aylonit. Despite the fact that the tumtum and the androgynos appear frequently in classical rabbinic texts<sup>1</sup>, there is almost nothing written on them. All the major modern translators and commentators of the Mishna including Jacob Neusner, Herbert Danby and Chanoch Albeck gloss over the tumtum and the androgynos in their translations and virtually ignore the tumtum and the androgynos in their comments<sup>2</sup> even when specifically addressing issues of Tannaitic gender<sup>3</sup>

The invisibility of the tumtum and the androgynos is connected to the fact that Tannaitic texts are read through a contemporary lens: the understanding of gender and genitals as inherently binary. In this model the tumtum and androgynos *must* be mythical beasts or statistical aberrations. Most of us 21<sup>st</sup> century people were raised fairly certain of our status as either a boy or a girl, a distinction that was based in tangible facts about our bodies. Even if we were aware of the occasional individual that was hard to identify

as either male or female, or if we personally experienced difficulty fitting into one of these two categories, we rarely questioned the objective nature of the distinction itself. Like many people of my generation I was partially raised by *Free to Be... You and Me*. From the various skits and articles in this educational film I learned that girls can be firefighters, boys can play with dolls, men can cry and princesses don't need to be rescued. In other words, that the modern North American roles and behaviors we associate with the sex that we were assigned at birth are subjective, culturally construed and oppressive. However, *Free to Be... You and Me*, opens with a scene where a girl baby and a boy baby peek into their diapers to discover what they "really" are. The message was clear: the gendered roles we play are decided by society, but the sex of our body is decided by nature.

In recent years theorists such as Michel Foucault and Judith Butler have pointed to the shifting nature of sex, as well as gender, across lines of history and geography. This view is encapsulated by Judith Butler's famous claim that sex is a "copy without an original."<sup>4</sup> Butler and other contemporary feminists have suggested that the borders around sex have been drawn and redrawn in various times and places to meet a variety of social and cultural needs. This view posits that the sexing of our bodies, as much as the gendering of our roles, is culturally and historically construed. This contemporary feminist position is where I situate myself and it is the approach that I will be using to read Tannaitic texts. I do not mean to deny that there are sexual characteristics that unite and divide bodies in every epoch, but I believe that it is impossible to say anything about sex difference that does not also encode messages about gender relations and power. In this work I have chosen to collapse the distinction between the words "sex" and "gender" and I will be using them interchangeably.

The presence of gender multiplicity in Tannaitic texts raises a number of questions for the modern reader: What criteria did the rabbis use to demarcate sexes and what do these boundaries tell us about the social geography of the antique Jewish world? How does a legal system that is highly contingent upon sex differences deal with exceptional gender and genitals? And finally, what messages about the relationship between gender and power are communicated by Tannaitic texts? These questions are crucial to understanding the relationship between sexual identity and personhood in the antique world and within the textual foundations of Jewish tradition. They are also significant in addressing some of the fundamental questions asked by contemporary gender theorists.

The presence of an alternate system of gender in Tannaitic texts underscores the shifting nature of sexual embodiment in *all* places and times. Are sexual identities ever stable throughout history? Can modern English terms like "male" or "female" be used to accurately discuss sexes that were embodied miles away and thousands of years ago? In other words, are the individuals we are taught to regard as men and women in the Mishna equivalent to today's sexual identities in a meaningful way? If not, it is far more difficult than most of us have supposed to make sweeping statements about the dominance of "men", the subjugation of "women" or the compulsory nature of heterosexuality in classical Jewish life and law.

Confronting the limits of translation is central to this work. Names for genders and sexual identities cannot be translated between cultures and periods without also importing an entire set of preconceptions. For example, in modern English the words "male" and "female" are inextricably connected to a binary understanding of gender and genitals. In this work, I will try to minimize my use of anachronistic terms by striving to



keep all terms for genders, sexual identities and (sub) cultures in their original language whenever this is possible. In reference to Hellenistic Antiquity and Early Modernity I will use the words of those periods such as "hermaphrodite" and "androgyne" to refer to exceptionally gendered individuals. When discussing Tannaitic and Talmudic texts I will leave all terms for gender in their transliterated Hebrew forms. Although this method is stylistically awkward, I believe that it is the only way to address the difficulties of translation and highlight the shifting nature of sexual embodiment.

In reference to contemporary people and cultures it is my goal to use the language that individuals and communities have developed to articulate their own identities. The term "queer" refers to a political and cultural identity that encompasses gay, lesbian, bisexual and transgender (LGBT) individuals who choose to see themselves outside of mainstream definitions of normative sexuality. The term "trans" indicates transgender and transsexual people, as well as political and cultural expression that challenge the boundaries of binary gender. Although the specificity of individual experiences should not be effaced, I feel that the term "trans" without the suffixes "gender" or "sex" signals a much needed shift away from genitals in the construction of identity and I will use it whenever possible in this work. "Gender queer," identifies a wide spectrum of gender non-conforming individuals including (but not limited to): trans men and women, individuals who identify as neither male nor female, as both male and female or who inhabit an alternate gender identity. The words "intersex" and "intersexuality," refer to contemporary people whose bodies are considered exceptionally gendered within the modern medical model, many of whom have been subject to medical interventions to reshape their gender and/or genitals.

## The Questioned Body

A hermaphroditic body raises doubts not just about the particular body in question, but about all bodies. The questioned body forces us to ask what exactly it is – if anything – that makes the rest of us unquestionable. -Alice Domurat Dreger, *Hermaphrodites and the Medical Invention of Sex*

What leads us to identify a body as male, female or something else?

There are certainly clusters of physically measurable signs and characteristics, but what counts as incontrovertible evidence keeps changing to meet shifting legal, cultural and social needs. The International Olympic Committee checks female athletes to make sure there are no men pretending to be women.

However, the criteria they use for defining a “real” woman keeps changing and being challenged by the ambiguity of real cases. At first they thought that a genital exam would do the trick, but quickly learned the limits of this method.

Chromosomal testing revealed that some athletes have an XY chromosome, but develop along “feminine” pathways as their bodies lack the receptors to respond to the testosterone their bodies produce. Hormonal testing shows that most of us contain a confusing cocktail of hormones and it is extremely difficult to legislate a standard for an authentically female body.<sup>5</sup>

In her book, *Hermaphrodites and the Medical Invention of Sex*, Alice Domurat Dreger traces the interest of physicians in hermaphrodites from the 18<sup>th</sup> through the 20<sup>th</sup> centuries in England, North America and Western Europe.

When we look at hermaphrodites, we are forced to realize how variable even 'normal' sexual traits are. Indeed, we start to wonder how and why we label some traits and some people male, female or hermaphroditic. We see that boundaries are drawn for many reasons, and could be – and have been – drawn in many different ways, and that these boundaries have as many complex effects as they do causes. (Dreger, 5)

Boundaries around "normal" sexes have been drawn and redrawn throughout history, but there have always been exceptional bodies that fall outside these borders. Individuals whose gender is difficult to identify within cultural categories for sex difference are contested social terrain. They possess the questioned bodies that raise doubts about society's ability to identify and, ultimately, contain any body.

In the early modern period, the hermaphrodite, defined by various factors such as genitals, hips, breasts and facial hair, as well as demeanor, preferences and affect, was the questioned body. In the late 20<sup>th</sup> century, questionable bodies became increasingly rigidly defined as individuals with exceptional genitals. Physicians indicate that somewhere between 1 in 1,000 and 1 in 2,000 babies is born with sexual traits that cannot be easily classified as male or female.<sup>6</sup> Current medical practice indicates that physicians should quickly "normalize" these infants' gender through invasive and largely secretive medical procedures. Since 1993 a growing political movement galvanized by the pioneering work of Cheryl Chase and the *Intersex Society of North America* (ISNA), has protested against these hasty interventions.<sup>7</sup> ISNA advocates raising intersex children as either male or female without the use of intrusive and damaging medical procedures.

Today intersex people possess the questioned bodies that expose the difficulties of policing the boundaries around *all* bodies. But who were the questioned bodies of Jewish Antiquity? According to some modern feminist scholars like Judith Plaskow<sup>8</sup>, as well as contemporary orthodox legal authorities like Rav Eliezer Waldenberg<sup>9</sup>, the tumtum and the androgynos are equivalent to the modern concept of intersexuality. For feminists like Plaskow, this leads to excitement about the potential of the tumtum and the androgynos to undermine the sexual dichotomy of Judaism. On the other hand, orthodox thinkers tend to examine the tumtum and androgynos in order to legislate and control intersexuality

within the boundaries of traditional halacha. The goals of these two models are in conflict with each other: one looks to the tumtum and androgynos in order to challenge dichotomous sex, while the other seeks support in stabilizing it. However, what they have in common is a basic understanding that even though there are four options for assigning sex to an infant body in Tannaitic texts, "normal" gender and genitals were essentially binary in early Jewish law. In this framework the tumtum and the androgynos represent problematic forms of embodiment positioned *between* the stable categories of male and female. What this view implies is that the categories male and female have been constant throughout history, even if the characteristics of these categories are shifting.

Virtually all translators and commentators of antique texts read them with the presumption of finding a binary understanding of gender and a dimorphic approach to genitals. However, as Thomas Laqueur points out in his book *Making Sex: Body and Gender from the Greeks to Freud*, the modern understanding that there are two distinct and opposite sexes is relatively new. According to Laqueur until Modernity in European cultures sexual difference was understood within a single gender model (Laqueur, 11). The Greek contemporaries of the Tannaitic rabbis, such as the influential 2<sup>nd</sup> century CE physician Galen, developed a comprehensive theory of sex difference which visioned "women" as anatomically identical to "men." In this model women simply lack the inner heat that would allow them to fully develop into the mature, normative male human form. Hence women were not viewed as an "opposite" sex, but simply inverted men. Women were the questioned bodies of Greek antiquity, positioned further away from metaphysical perfection than their male counterparts.

This view of sexual embodiment in antiquity matches the way modern feminists have read Jewish texts from the same period. A number of contemporary scholars such

as Charlotte Fonrobert, Miriam Peskowitz and Cynthia Baker have claimed that in rabbinic texts there is actually only one normative body: the mature, free Jewish male.<sup>10</sup> This view is reflected in the fact that men alone are consistently the normative subjects of halacha and extended the full rights and obligations of Mishnaic personhood. The female body in rabbinic texts is frequently described with exotic and richly metaphoric terms to signify Otherness such as a house, fig or fruit. The contemporary feminist Charlotte Fonrobert summarizes: "The fact is that the body of 'adam [literally the human being] can be human as such or male specifically, in relation to which the female body inevitably occupies a position of difference."<sup>11</sup>

Judith Romney Wegner, in her book *Chattel or Person?: The Status of Women in the Mishnah*, argues that only men are treated as full persons in the Mishna. "Personhood," writes Wegner, "means the legal status defined by the complex of an individual's powers, rights and duties in society. An entity possessing no powers, rights or duties, is no person at all but merely an object or *chattel*" (Wegner, 10). Women, claims Wegner, occupy a shifting place in the mishna: sometimes they are treated as persons and sometimes as chattel. They are analogous to other interstitial forms of embodiment in Tannaitic texts such as the *koi*, an animal that is neither wholly domesticated nor wild. To translate Wegner into our own framework, in her analysis, *women* possess the questioned bodies of the Mishna. The implications of this perspective for contextualizing the tumtum and androgynos are enormous, but never drawn out by Wegner. If the category of "woman" is problematic and unstable for the rabbis, then the tumtum and androgynos are not positioned between two normative forms of sexual embodiment (equivalent to today's categories male and female), but part of a far more complex continuum of gender and power.

In Tannaitic texts, bodies are not questioned or questionable in regards to their conformity to a binary model of sex, but solely in reference to the adult, free, Jewish, unblemished phallus-owning zakhar. The tumtum and the androgynos, as well as the nekevah (usually understood as female), slaves and minors, are *all* questioned bodies in the mishnah. This model is certainly hierarchical, however it also offers us a resource in destabilizing the idea that viewing the body through the prism of dimorphic gender and genitals is an objective fact of nature.

Binary categories for the human experience grew in popularity in the 18<sup>th</sup> and 19<sup>th</sup> centuries, as a way to regulate and control society. The Victorian science of difference discovered “evidence” of dichotomous physiological differences between men and women; working and owning classes; white people and people of color. This evidence was used to justify and reinforce fundamental social and economic hierarchies at a time when these power structures were under siege by various emancipation movements.<sup>12</sup> From this perspective, dichotomous thinking is a *cause*, and not just an *effect*, of subjugation. Underlying this work is the belief that compressing behaviors, instincts, passions and proclivities or genitals, chromosomes and hormones, into a male-female binary is limiting and ultimately serves the goals of gender based violence and oppression. A continuum approach to human sexuality, even if it is still based in hierarchy, is more able to encompass “intrusions” of individuality into the firmness of social categories.

In Part One, I will briefly examine the building of an increasingly rigid sexual binary from Ancient Greece to the 21<sup>st</sup> century United States. This section will highlight the way individuals with exceptional genders and genitals have become more and more invisible as a boundary around two opposite sexes has been erected and policed by

cultural authority figures. In this section, I will also touch on the voices of scholars and activists from beyond the binary who have been dismantling this division in recent years.

In Part Two, I will turn to Jewish Antiquity and specifically address texts that deal with the tumtum and the androgynos and propose a framework for reading these texts that lead to a sexual continuum, as opposed to dichotomous sex difference.

Tannaitic texts are terse and I am not suggesting that this is the only authentic way to read these texts. Modern people usually read the texts of Jewish antiquity with uncritical anachronism. This anachronism inscribes a contemporary vision of inherently dimorphic gender and genitals on to antiquity. I am asking that we, as modern readers, experiment with “swapping” our *a priori* assumptions and look for examples of non-binary sexual embodiment within the textual foundations of rabbinic Jewish tradition.

I believe that 21<sup>st</sup> century gender liberation must begin by destabilizing the idea that binary sexes are an essential fact of nature. The tumtum and the androgynos are an important resource in that task. Many individuals who find themselves on the boundaries of 21<sup>st</sup> century gender are seeking alternative models of “home”: home within a gender, a body and an identity. The tumtum and the androgynos offer us tools to build these innovative homes that are still authentically rooted in history and tradition. This anchor to another time, place and community can provide strength and stability for the construction of radically new identities.

## **Part One:**

# **A Brief History of Exceptional Gender and Genitals**

The deployment of sexuality... established this notion of sex. -Michel Foucault, *The History of Sexuality*

### **i. The Disappearing Hermaphrodite**

Routh objected: "Even supposing there were no uterus, the mere fact was no argument against its being a woman." This might simply be a case of a woman deprived of that organ. Routh was unconvinced. Barnes offered the additional evidence for manhood that two or three years earlier there had appeared a moustache and beard, but Routh protested that "this had absolutely no weight. Many Jewesses had quite a large quantity of both beard and moustache." Beards and moustaches, like missing uteri, were not unheard of in women. In Routh's eyes these were not sure signs of sex. - *Dr. Charles Henry Routh, founding member of the British Gynecological Society arguing about the "true" sex of a hermaphroditic patient, 1888*

"The constancy of sex must be admitted, but so also must the variability of gender" (Oakley, 16). This claim was uttered by Anne Oakley in 1972 and summarized the wedge that was being driven between "sex" and "gender" in the late 20<sup>th</sup> century. Socially constructed, historically construed and culturally informed "variable gender" lay on one side of the divide, while biologically based and scientifically determined "consistent sex" lay on the other. This distinction between sex and gender would have been meaningless in antiquity. The Tannaitic rabbis, as well as their Greek contemporaries, viewed the sexing of our bodies and the gendering of our social roles as a seamless whole. Furthermore, they openly acknowledged the troubling limitless variability of both gender and genitals. The exceptional bodies that richly populate the Mishna and the Tosefta, as well as the Hellenistic antique world, have almost vanished in



modernity. This is not because sex is any less variable in the 21<sup>st</sup> Century United States than it was in 1<sup>st</sup> century Palestine, but because cultural authority figures such as doctors, scientists and scholars have increasingly found ways to make individuals that don't conform to binary sex assignment disappear.

Michel Foucault argues that in modernity human sexual embodiment changed.<sup>13</sup> Until that point sex difference was generally seen through the prism of a single normative sex. Galen, a 2<sup>nd</sup> century CE Greek physician, held that women were simply men who lacked an essential form of inner heat. This coolness led women to be less perfectly formed than males. Hence, organs that reached their full external development in the male remained "inverted" in the female.<sup>14</sup> Thomas Laqueur argues that Galen's single-gender view of the human body dominated European thinking until the 18<sup>th</sup> Century:

Language marks this view of sexual difference. For two millennia the ovary, an organ that by the early 19<sup>th</sup> century had become a synecdoche for woman, had not even a name of its own... Nor is there any technical term in Latin or Greek, or in the European vernaculars until around 1700, for vagina as the tube or sheath into which its opposite, the penis, fits and through which the infant is born" (Laqueur, 5).

This single gendered view of sexual embodiment persisted in colloquial speech even after it had begun to be replaced by the modern science of binary sex assignment. A 19<sup>th</sup> century doggerel verse betrays traces of this sentiment when it rhymes: "Though they of different sexes be/Yet on the whole they are the same as we/For those that have the strictest searchers been/Find women are but men turned outside in."<sup>15</sup>

A single-gendered view of human sexuality persisted through medieval period. Maleness represented the pinnacle of human perfection with femaleness as its nadir. This framework is certainly misogynistic and hierarchical, however it allowed for the open, if begrudging, social acknowledgment of sexual individuality. As Anne Fausto-Sterling has described in her book, *Sexing the Body: Gender Politics and the Construction of*

*Sexuality*, throughout medieval and early modern Europe, determining the sex of a body rested on the authority of religious institutions, thus differing religious concerns led to divergent approaches to gender variance. Referring to a number of case studies of hermaphrodites in the early modern period, Fausto-Sterling writes: "The Italians seemed relatively nonplussed by the blurring of gender borders, the French rigidly regulated it, while the English, although finding it distasteful, worried more about class transgressions" (Fausto-Sterling, 35). What all these approaches have in common is their recognition of gender and genital diversity, regardless of their responses to it.

Only in early modernity did a dichotomous approach to human sexuality begin to emerge. At the same time the authority for demarcating sex difference began to shift away from religious and legal authority figures, towards doctors and scientists. A binary approach to sexing the body was linked to a more general shift in society towards scientifically justified dichotomies. As Fausto-Sterling writes of the 19<sup>th</sup> century science of difference:

Scientists and medical men insisted that the bodies of males and females, of whites and people of color, Jews and Gentiles, and middle-class and laboring men differed deeply. In an era that argued politically for individual rights on the basis of human equality, scientists defined some bodies as better and more deserving of rights than others. If this seems paradoxical, from another point of view it makes good sense. Political theories that declared that 'all men are created equal' threatened to do more than provide political justification for colonies to overthrow monarchies and establish independent republics. They threatened to undermine the logic behind fundamental social and economic institutions such as marriage, slavery, or the limiting of the right to vote to white men with property. Not surprisingly, then, the science of physical difference was often invoked to invalidate claims for social and political emancipation (35).

It makes sense that as modern views of equality began to threaten traditional sources of power, physicians turned to the newly authoritative field of science in order to reinforce male dominance. In early modernity the female body stopped being an inferior

form of male embodiment and increasingly was understood as the *opposite* sex. This view made the presence of individuals with exceptional gender more troubling than they had ever been before.

Dreger argues that early modern medical men turned to the study of hermaphrodites, in order to help solve the larger social problem of clearly defining men and women. Victorian physicians tried to contain the individuality that hermaphroditic bodies represented by struggling to classify them as either "truly" male or female. In the drive to divine the authentic sex of patients in the 19<sup>th</sup> century, physicians used various forms of evidence to read bodies including: genitals, hips and breasts, beards and mustaches, affect and demeanor. As one doctor writes: "lacking evident organs, one takes into account all the general signs offered by the subject like the hair, beard, breasts, the development of hips, the voice, the instincts, etc." <sup>16</sup> The sex of a fifteen-year-old "boy" with swollen breasts was doubtful, in part because he "was very unwilling to be exposed, and behaved [modestly] just like a girl."<sup>17</sup>

In 1843 in the United States the sex of Levi Suydam was hotly contested in order to determine his eligibility to vote. Despite his phallus and testicles, evidence was brought for his femininity: he menstruated regularly through a vaginal opening and he had a "fondness for gay colors, for pieces of calico, comparing and placing them together and an aversion for bodily labor."<sup>18</sup> In the ethos of the time menstruation and a fondness for calico were equally valid forms of objective evidence in the pursuit of a "true" sex assignment.

In the late 19<sup>th</sup> Century, a period Dreger has dubbed "The Age of the Gonads," the theories of a German physician Theodore Albrecht Klebs began to dominate the field. Klebs argued that genital variance was no longer sufficient evidence of "true

hermaphroditism.” He restricted the term to someone with both ovarian and testicular tissue. The result of this reasoning: “was that significantly fewer people counted as both male and female” (Dreger, 146). Fausto-Sterling writes: “Medical science was working its magic: hermaphrodites were beginning to disappear” (Fausto-Sterling, 38).

At the turn of the 20<sup>th</sup> century the British physicians George F. Blacker and William P. Lawrence examined earlier cases of true hermaphroditism and found that only three out of twenty-eight cases complied with their new more stringent standards.

“People of mixed sex all but disappeared, not because they had become rarer, but because Scientific methods classified them out of existence” (Fausto-Sterling, 39).

## ii. (Re) Constructing Gender and Genitals in the 20<sup>th</sup> Century

Genital ambiguity is corrected not because it is threatening to an infant's health, but because it is threatening to an infant's culture. - Suzanne J. Kessler

The contemporary anxiety around exceptional gender and genitals is often discussed through a real life parable. In 1965 eight-month old identical twin boys, Bruce and Brian Reimer, were taken to their local hospital in a small Canadian town for a circumcision. During Bruce's circumcision the electric cauterizing needle short-circuited, irrevocably damaging his penis. The distraught parents took Bruce to numerous doctors, but they soon learned that their child would never have a penis that would be functional for heterosexual penetration. When the child was 17 months old the family made a trip to Johns Hopkins University Medical Center and the center's brand new gender identity clinic was promptly mobilized. An expert team of sex researchers, surgeons and psychologists decided that sex reassignment was the best option for the injured child. She was renamed "Brenda" and the team of experts began a lengthy process of invasive surgeries, hormonal interventions and psychological evaluations that would last well into her puberty. The team at Johns Hopkins counseled the parents to erase their child's past as a boy and rigidly enforce her feminine identity.

Dr. John Money was the lead researcher that followed Brenda's case. Money was a sex researcher who hypothesized that while binary sexes were an objective fact of nature, gender identity remained flexible at birth. According to Money after the first 18 to 24 months of life gender becomes "fixed" in our natures through social and cultural conditioning.<sup>19</sup> Throughout the 1970s Money claimed that the treatment of Brenda Reimer was an unequivocal success, proving his theory that the gender identity is flexible

in the first few years of life. In Money's reports the twin was fully "feminized." She had previously been the dominant twin but after sex reassignment she transitioned into being submissive. She began to play with dolls and put bows in her hair. In his 1975 book, *Sexual Signatures*, Money argues that this singular case offers "Dramatic proof that the gender identity option is open at birth for normal infants" (Money, 98).

In the late 1970s numerous women's studies journals heralded Reimer's story as a resounding feminist victory.<sup>20</sup> A Time Magazine article from 1973 writes: "This dramatic case... provides strong support for a major contention of women's liberationists: that conventional patterns of masculine and feminine behavior can be altered."<sup>21</sup> Money's findings were congruent with the work of Anne Oakley and other feminists who were in the process of defining a dichotomy between organically determined sex and socially constructed gender. The sex/gender divide was advocated by feminists like Gayle Rubin in her 1975 *The Traffic in Women*, who were trying to divorce male dominance from biological destiny. At the same time French feminists, such as Luce Irigaray, were mapping the distinction between sex and gender from a psychoanalytical perspective.<sup>22</sup> The division between sex and gender was a useful tool against patriarchy, as it provided a historical, as opposed to essentialist, explanation for the subjugation of women. However, the problem with this distinction is that if "sex" is visioned as consistent throughout history, then "gender" no matter how culturally constructed it is, has still been built upon a solid foundation of dual biological sexes. In this model the inherently binary nature of bodies and their roles remains unchallenged, even if the characteristics of that binary are historically fluid.

In the late 1970s, at the same time as Brenda Reimer's case was being heralded in the media as proof of the resounding victory of nurture over nature, Brenda herself had

faded out of the public eye and John Money claimed to have "lost track" of his star patient. This changed in 1980 when a BBC special was planned based around her story to highlight the gender theories of Money. The team of BBC psychologists that interviewed 15-year-old Brenda found that her sex reassignment was less of a resounding success than Money had led the public to believe.<sup>23</sup> According to the BBC Brenda was depressed, uncomfortable with her body and her gender, and deeply confused about her identity. Money refused to comment on these findings and pulled out of the BBC special.

What is interesting to me about this story is not the information it conveys (or fails to convey) about the formation of gender identity. The data of a solitary case can be read to yield many conflicting conclusions. I am more interested in the way it took on mythic proportions in popular culture. I remember learning Reimer's story in 1992 in a 12<sup>th</sup> grade Sociology class, long after the reality of her situation had been uncovered. However, the BBC's findings were entirely left out of the account I was taught and only Money's testimony was used. In my progressive, downtown High School Reimer's private experience had been transformed into a modern parable for adolescents to irrevocably separate the social "fictions" of our developing gender roles from the objective "facts" of our dichotomously sexed bodies. This view helped to explain why the adolescent girls in the class were facing a narrower range of career options. As well as, why we were more vulnerable to violence than their male counterparts. It posited that this unfairness was purely an accident of culture that can and should be addressed. A goal many of the feminists in the class, myself included, whole-heartedly endorsed. However, the parable also covertly taught us that Reimer could not possibly have grown into normal male maturity without a penis capable of heterosexual penetration. In other words, it freed us to explore a broader range of gender roles and social functions, at the

same time as limiting the scope of acceptable routes towards maturity for our developing bodies and sexualities.

Suzanne J. Kessler in her book, *Lessons from the Intersexed*, asks why feminists, herself included in an earlier work<sup>24</sup>, were so quick to embrace Money's understanding of gender. As she points out Money's reading of Brenda Reimer's story encodes a number of conservative assumptions:

1) Genitals are naturally dimorphic; there is nothing socially constructed about the two categories. 2) Those genitals that blur the dimorphism belonging to the occasional intersexed person [by birth or by accident] can be and should be successfully altered by surgery. 3) Gender is necessarily dichotomous (even if socially constructed) because genitals are naturally dimorphic. 4) Dimorphic genitals are the essential markers of dichotomous gender. 5) Physicians and psychologists have legitimate authority to define the relationship between gender and genitals" (Kessler 1998, 7).

Kessler's critique highlights the fact that while Money questions the origins of gender identity, his theories support the maintenance of a traditional binary sex system, as well as the authority of physicians to police that binary.

In the media surrounding Brenda's story there was a glaring absence of a key question: why should damage to a single organ lead to an entire shift in the twin's identity when there is a rich global history of men without penises to draw upon? Eunuchs played a key role in the development of the Roman and Chinese empires and the formation of early Islam. *Hijras* are key to Hinduism, while *Castrati* were a part of Christian Europe.<sup>25</sup> Within the world of the Mishna two types of men without penises known as "*Sarisim*" were recognized. A saris can either be born without a penis, or, like Reimer, lose all or part of his phallus later in life. In all of these cultures and eras, penis-less men were (to varying degrees) degraded, humiliated and subjugated, however there was a social category that acknowledged their existence. The maleness of these men was not seriously questioned by the absence of a phallus; the category of male was broader and more



elastic than that. Money's assumption that after his injury baby Reimer could no longer mature into an acceptable male, suggests a narrower view of sex than that held by most societies in most times and places. It is certainly more constricting than the view held by the Rabbis of the Mishna.

As an adult, Reimer opted to reassign his sex back to male and became known as David. John Copalinto describes the details of his story in the book *As Nature Made Him*.<sup>26</sup> The socio-cultural experiment that Reimer was an unwitting pawn within ended tragically. On May 4, 2004, at the age of 38, David Reimer committed suicide. Money's theories of gender, which guided his treatment of Reimer, continue to be the *sole* theory that governs the care of intersex individuals. Reimer's story, as well as the contemporary approach to intersexuality, highlights the tension between the infinite variability of real people's bodies and experiences and the social desire to preserve clearly demarcated categories for the human experience.

Throughout antique and medieval times exceptionally gendered people were treated with varying degrees of humiliations and subjugation, but it was only in the 20<sup>th</sup> century that cultural authority figures began to find a way to make individuality almost disappear from the social landscape. By 1965, the year when David Reimer was injured, modern science had sufficiently "advanced" to not just classify the majority of exceptional sexed individuals out of existence, but to begin to medically suppress the very existence of genital variety. When a child is born with exceptional genitals medical professionals discourage time and consideration in deciding on a radical course of "treatment." Parents are routinely told two half-truths: that gender ambiguity is extremely rare and that the "true" sex of their child can and will be scientifically determined. They are encouraged not to reveal this problem to friends or family

members lest any gender confusion is communicated to their developing child. It is only since 1993, due to the activism of Cheryl Chase and the *Intersex Society of North America (ISNA)*<sup>27</sup> that these rapid, radical and largely secret medical interventions have begun to be challenged. They are still the normative practice of nearly every modern medical practitioner.

Unlike in the 19<sup>th</sup> Century "Age of the Gonads," when reproductive capabilities dominated sex assignment, the primary marker used to determine sex nowadays is the presence or absence of an "adequate" penis. In the medical literature "adequate" is defined by its potential for heterosexual success. Money states, "The primary deficit [of not having a sufficient penis] – and destroyer of morale – lies in being unable to satisfy the [heterosexual] partner."<sup>28</sup> Another team of clinicians states that the most "serious" mistake in gender assignment is to create an individual unable to engage in heterosexual sex. This concern trumps other factors such as the health and well being of the infant or the psychological or physical pain involved in invasive medical procedures. A penis capable of penetration is linked to status and "respect" in the medical literature on intersexuality. One urologist says of an intersex adolescent who was assigned female gender at birth, but was showing male pubertal signs and wanted to be a boy: "He was 'ill-equipped', yet we made a very respectable male out of him. He now owns a huge construction business – those big cranes that put stuff on buildings."<sup>29</sup>

The transition from the 19<sup>th</sup> century focus on gonads to the contemporary emphasis on the phallus, highlights the way cultural needs govern the ways in which we interpret the evidence of the body. In 19<sup>th</sup> Century Western Europe and North America women's reproductive capacity was seen as their essential socio-economic function. In the 20<sup>th</sup> Century the economics of sex began to shift. Male dominance and compulsory

heterosexuality were being questioned by growing gender liberation movements. Highlighting the significance of a penis capable of penetration helped to re-inscribe the "naturalness" of heterosexuality in the post-Stonewall late 20<sup>th</sup> century and reinforced male dominance. Kessler writes: "The equation of gender with genitals could only have emerged in an age when medical science can create genitals that appear to be normal and to function adequately and an emphasis on the good phallus above all else could only have emerged in a culture that has rigid aesthetic and performance criteria for what constitutes maleness" (Kessler 1998, 26).

The evidence used to assign sex to the body also varied significantly between the 18<sup>th</sup> and 19<sup>th</sup> centuries and today. While complex factors were considered in early modernity including hips, facial hair, breasts, modesty, a fondness for bright colors *and* genitals, by the 1970s genitals alone constituted the yardstick of sex assignment. This increasingly narrow view of sex is illustrated by the radical decision of Money and his colleagues to reassign Reimer's gender simply because of a damaged penis. The modern image of gender as socially constructed versus genitals that are biologically absolute, addresses the undeniably growing plasticity of gender roles while bolstering the stability of the physical body. The modern dichotomy between biological sex and socially construed gender helped to redraw manageable and defensible boundaries around maleness in an era when male supremacy and heterosexual dominance was increasingly under siege.

Despite my critique of a division between sex and gender it must be said that "gender" as women's liberation concept, offers some subjugated people, such as gender-conforming women, lesbians and gay men, greater social mobility and advances their bid for equal rights. However, the dichotomy between sex and gender does not serve intersex

and trans people or anyone else whose body or sexual identity is developing along non-binary pathways. Defending the consistency of sex and the variability of gender led the feminist thinker Janice Raymond to label trans expression as a part of a "patriarchal empire" intent on colonizing the female body and overthrowing feminism in 1979.<sup>30</sup> The much more contemporary thinker Bernice Hausman stated in 1997 that "transsexuals are the dupes of gender" (Hausman, 140). According to this logic, gender roles are wholly independent of bodies, thus trans individuals who struggle to present their bodies in a way that reflects their internal sense of self are victims of a form of socially-induced pathology. The problem with this line of thinking is that it pathologizes those who seek agency over both their gender *and* its (re) presentation.

Over the past few decades we have paid the price for the broadening of male and female gender roles, with the narrowing of the range of possibilities for the body. In 1973 the DSM (Diagnostic and Statistical Manual) II of the American Psychiatric Association removed homosexuality from its list of abnormal pathologies. A few years later in 1980 it inserted in its place in the DSM III, "GID" (Gender Identity Disorder), the psychological moniker for trans expression.<sup>31</sup>

Exceptional bodies were viewed with varying degrees of tolerance at different points during human history, but it is only the contemporary world that has managed to make exceptionally gendered people virtually disappear. Money and his colleagues at had abstract theories of gender, which, to this day, are played out on real bodies. This has created a rigid dichotomy between the sexes. The firmness of this boundary could never have existed in an era when medicine was not capable of (re) constructing gender and genitals and endowed with the authority to do so.

### iii. Post-Binary Agitators

In order to understand transgender expression and see and respect people as they really are, we have to break down our gender conditioning. We have to get used to (and excited about) bearded ladies and dudes with cunts. Short boys with 'dessert hands' and big-boned gals with deep voices. We have to trash the lists. This is exciting because when we validate other people and create space for their own unique gender, we do the same for ourselves. - Micah Bazant, *Tintum: A Trans Jew Zine*

In recent years feminist thinkers have begun to collapse the distinction between biologically absolute sex and culturally construed gender. Judith Butler in her influential 1990 book, *Gender Trouble: Feminism and the Subversion of Identity*, discusses the problematic nature of this distinction.

And what is "sex" anyway? Is it natural, anatomical, chromosomal or hormonal, and how is the feminist critic to assess the scientific discourses which purport to establish such "facts" for us? Does sex have a history? Does each sex have a different history, or histories? Is there a history of how the duality of sex was established, a genealogy that might expose the binary options as a variable construction? Are the ostensible facts of sex discursively produced by various scientific discourses in the service of other social and political interests? If the immutable character of sex is contested, perhaps this construct called "sex" is as culturally constructed as gender; indeed, perhaps it was always already gender, with the consequence that the distinction between sex and gender turns out to be no distinction at all (Butler 1990, 10).

From this perspective the gendering of both our bodies and our social roles is grounded within cultural production. This position was only fully developed in the past decades, by feminists like Butler, Eve Sedgwick and Monique Witting. However, it is prefigured by the claim of Simone De Beauvoir that: "One is not born a woman, but rather becomes one."<sup>32</sup>

The lens that I use to read Tannitic texts has been formed by contemporary feminism. The thinking and narratives of trans activists such as Leslie Feinberg, Kate Bornstien and Riki Anne Wilchins fuel my search for resources to destabilize modern

dichotomous approaches to gender. My life as an activist in feminist, queer and trans communities also informs this work. I believe that the goals of feminism and trans liberation are congruent and that individuals of all genders benefit when we begin to dismantle binary sex assignment. As trans activist Pat Califia says:

Who would you be, if you had never been punished for gender inappropriate behavior? What would it be like to walk down the street, go to work or attend a party and take it for granted that the gender of the people you met would not be the first thing you ascertained about them? What if we all helped each other to manifest our most beautiful, sexy, intelligent, creative, and adventurous inner selves, instead of cooperating to suppress them? (Califia, 3)

Contemporary gender theorists and activists have made it clear that human bodies and sexual expressions are limitlessly varied and compressing them into a male-female binary is limiting and ultimately serves the goals of gender based violence and oppression. And yet we still must struggle to find a language to articulate the persistent hatred of the non-masculine male. I want to be clear that I am not suggesting that we are anywhere near a "post-feminist" era. In my reading, the male and female body binary is as much a socially constructed edifice as the dichotomy between masculine and feminine roles. However, the sex you are assigned at birth will severely impact the range of freedoms that you will be able to enjoy for the rest of your life. "If three decades of feminist theorizing about gender has thoroughly dislodged the notion that anatomy is destiny, that gender is natural, and that male and female are the only options," asks the contemporary queer theorist Judith Halberstam, "why do we still operate in a world that assumes that people who are not male are female, and people who are not female are male (and even that people who are not male are not people!)" (Halberstam, 20)

The less than two centimeters of body tissue that lies between a medically "acceptable" clitoris and a passable penis will still consign you to a life of earning less on

the dollar, a 1 in 3 possibility of being sexually abused and a very rational fear of walking home alone at night. One of the paradoxes of 21<sup>st</sup> Century feminism is that we must work towards uplifting degraded categories of human experience like “female”, “feminine” and “women” at the same time as working to defeat them.<sup>33</sup>

Trans activist Kate Bornstein visions gender oppression as a pyramid as opposed to a binary. With white, Christian, United States born, “masculine”, assigned male at birth heterosexuals at the top, and the rest of humanity sorted nearer or further from the bottom according to varying degrees of gender, race, religious and economic privilege.<sup>34</sup>

What's more the further removed we are from the qualities expressed by the top of the pyramid, the less and less our gender is perceived as *real*. For example, if our genitals are in any way anomalous to the prescribed genitals of our gender, that obviously makes us unreal men or women, right? (Bornstein, 45)

I think that Bornstein's image of a gender and power pyramid is useful and it will also shed light on the concept of “normal” gender in Tannaitic texts.

## Part Two:

### Sexual Embodiment in Jewish Antiquity

Truths about human sexuality created by scholars in general and by biologists in particular are one component of political, social and moral struggles about our cultures and economies. At the same time, components of our political, social, and moral struggles become, quite literally, embodied, incorporated into our very physiological being. - Anne Fausto-Sterling, *Sexing the Body: Gender Politics and the Construction of Sexuality*

#### i. Who Are the Tumtum and the Androgynos?

If one said: 'I will be a Nazir if a "ben" [child/son] is born to me,' and a son is born to him – this one is a Nazir! [But if] a daughter, a tumtum or an androgynos is born to him – he is not a Nazir. If he said 'When I see that a descendant is born to me [I will be a Nazir]!' even if a daughter, a tumtum or an androgynos is born to him – he is a Nazir! - **Mishna Nazir 2:7**

Every culture in every epoch has sexed the human body, but the criteria used to demarcate genders have varied enormously depending on social and cultural needs. The mishna that opens this section displays a very different model of sexual embodiment than the current model. A Nazir is a person who vows for a minimum of thirty days to refrain from drinking wine or grape juice, cutting his hair or becoming ritually impure. This mishna is primarily concerned with preserving the integrity of Nazirite vows. Along the way, however, it reveals significant facts about the gendered geography of the Tannaitic world.

In our mishna a man says: "I will become a Nazir if a ben is born to me." The text goes on to interrogate the ambiguity of this statement. The Hebrew word "ben" is a noun, which can either indicate a son specifically or more generally refer to a child. The plural



form of this noun is used frequently in the bible to refer to the Hebrew people as "benei Israel", the children of Israel, giving the word an all-gender resonance. However, this broad meaning is often contested in favor of a more gender specific reading in rabbinic texts.<sup>35</sup> In this case, the unknown rabbi of our mishna understands the word narrowly to refer only to a son and he goes on to spell out explicitly what is being excluded by this reading: a daughter, a tumtum or an androgynos. The implication here is radical: this mishna *assumes* that the word "ben" read non-specifically to indicate a child, speaks of an infant that could be assigned at least four different genders at birth: ben, bat, tumtum or androgynos. This terse text from Jewish antiquity does more to undermine the idea that binary sex assignment is based in ahistorical "facts" of human physiology, than much more verbose post-modern gender theorists achieve in entire tomes!

In Tannaitic texts, the earliest layers of Jewish oral tradition, there are at least four options for sex assignment at birth: "zakhar" (referred to as a ben, a son, in our mishna), "nekevah" (referred to as a bat, a daughter, in our mishna), androgynos and tumtum. Additionally, there are two further possible gender identifications during sexual maturity, the "saris" and the "aylonit." Unlike the tumtum and the androgynos, the saris and the aylonit do not seem to be legally distinct genders but fall within the categories of zakhar and nekevah respectively. They are used to designate forms of gender non-conformity that appear later in life. In the Tosefta the "aylonit" is defined as a nekevah who fails to produce two pubic hairs by the age of twenty, who never develops breasts, who finds heterosexual penetration painful, who does not have an abdominal curve (the meaning of this stipulation is unclear), and who has a deep voice. (T. Yevamot 10:7)

The "born saris" (as distinguished from a saris who is formed later in life through castration) is a zakhar who likewise fails to produce two pubic hairs by the age of twenty,

who has soft, smooth skin and no beard, whose urine does not froth, ferment, or form an arc, whose body does not steam when he bathes in the winter and whose voice is high. (T. Yevamot 10:6). The aylonit and the saris are genders that are assigned at sexual maturity in order to determine the legal status of individuals who are presumed to be sterile. The existence of the aylonit and saris implies that not only were there more gender options in Jewish antiquity, but also room for variation *within* genders.

The tumtum and androgynos, the twin foci of this work, are never as well described as the saris and aylonit in Tannaitic literature and we must puzzle through the elliptical sources in order to attempt to translate these genders into modern terms. In this section I will be reading Tannaitic texts through the lens of the previous section. The view that holds that sex is historically construed and those social dilemmas become fully enmeshed within our physiologies. This model does not deny the fact that there are differences in sexual embodiment noted by almost every epoch, but simply that it is impossible to say anything about sex that does not encode messages about gender and power. The assignment of a sex to a body by social authorities, such as rabbis or doctors, might reveal more about a given society's cultural agenda than the specificities of the body at hand or the well-being of the individual.

The existence of at least four options for sexing the body in Tannaitic texts raises a number of questions about both the causes and the effects of sex assignment in Jewish antiquity. How did the rabbis of the Mishna and the Tosefta define the distinctions between sexes? How did the system for sex assignment in Jewish antiquity function as a whole and what ramifications did it have on gender and power relations? Do the existence of the tumtum and androgynos question a binary approach to sex or simply provide a venue for dealing with anomalous individuals? In other words, can they be

used as a resource in the ongoing project of 21<sup>st</sup> century gender liberation both within and without Judaism?

In order to begin to answer these questions, we must struggle to understand what the Tannaitic rabbis meant when they identified an individual as a zakhar, a nekevah, a tumtum or an androgynos. In a discussion of circumcision on Shabbat we read: "one circumcises the infant at the place from which it can be recognized, if he is a zakhar or a nekevah" (T. Shabbat 15:9). This statement from the Tosefta implies that external genitalia are the primary marker of sexual identity. However, in tension to this text there is a mishna which demarcates the distinction between an "ish" (usually translated as man) and an "isha" (usually translated as a woman).

What is the difference between an ish and an isha? An ish goes around with unbound hair and torn garments, but an isha does not go around with unbound hair and torn garments. An ish imposes Nazirite vows on his son, and an isha does not impose Nazirite vows on her son. The ish sells his daughter, but the isha does not sell her daughter. An ish arranges for the betrothal of his daughter, the isha does not arrange for the betrothal of her daughter. An ish [who incurs capital punishment] is stoned naked; an isha is not stoned naked. An ish is hanged, and an isha is not hanged. An ish can be sold [to make restitution] for having stolen something, but an isha cannot be sold [to make restitution] for having stolen something (M. Sotah 3:8).

This list of legal, social and cultural distinctions defines sex entirely in reference to cultural norms and fails to even reference physical embodiment. Hence, it is unclear what criteria the Tannaitic rabbis used to assign sex to individuals.

The Mishna and the Tosefta fail to explain what exactly is meant by the categories "zakhar", "nekevah", "ish" and "isha." In light of the fact that there are other options for sex assignment these texts also do not answer the question of whether or not these sex differences are being invoked as binary opposite sexes, equivalent to today's men and women, or as ends of a gender continuum.

We must piece together the meaning of Tannaitic terms through clues and traces. "Zakhar," is derived from the word for the sharp, pointed edge of a tool or reed (M. Keilyim 8:3; T. Baba Metzia 7:12). This root is used to refer to a phallus (B.T. Betzah 31b) in Talmudic literature. The word "Nekevah" is taken from the biblical term for a crevice or hole (Ezekiel 28:13; 2 Kings 18:21; Isaiah 36:6) and it is used in the Babylonian Talmud to refer to a vaginal opening (B.T. Yevamot 83b).

"Androgynos" is derived from the Greek word for a sexually exceptional individual, based on a hybrid of two Greek terms for gender ("andros" and "gyna"). In Greek texts produced concurrently to Tannaitic material the "androgynē" is a term that usually indicates gender non-conforming males. For example, Polemo (died 145 CE) says that: "You may recognize the *androgynos* by his provocatively melting glance and by the rapid movement of his intensely staring eyes... He minces his hands with his palms turned upward. He has a shifting gaze, and his voice is thin, weepy, shrill and drawling."<sup>36</sup> The androgynos is understood by the Babylonian Talmud as someone who leans towards the zakhar in rights and obligations (for example, he marries rather than being taken in marriage). In the Talmud he has both a phallus and a vaginal opening (B.T. Yevamot 83b). Tumtum is a word of unclear Hebrew origins, but it is understood by the Babylonian Talmud as referring to person with hidden or concealed genitals (B.T. Baba Batra 126b).

These physical descriptions are derived from the Bible and the Talmud because terse Tannaitic texts offer no explanations. Talmudic texts are often conflated with Tannaitic literature on this subject.<sup>37</sup> However, there is little evidence to suggest that there was a clear oral tradition guiding the rabbis of the Talmuds in their understandings of Tannaitic genders. Due to the shifting nature of sexual embodiment, it seems unlikely

that sex assignment was constant throughout the 500 years that separate Tannaitic rabbis from the redaction of the Talmuds.

The challenges of translating genders between languages and epochs are ontological and not just linguistic. It has been suggested that the central act of textual interpretation is one of translation. I think that this is especially true for sacred text. Sacred text, by definition, continues to be relevant to subsequent generations of readers who must first translate it into their own cultural frameworks. The German Jewish philosopher Franz Rosenzweig argued that the essential work of the mind is translation: "Only when a thing has been translated does it become truly vocal, no longer to be done away with. Only in the Septuagint has revelation come to be at home in the world, and so long as Homer did not speak Latin he was not a fact." <sup>38</sup>

When the rabbis of the Babylonian Talmud translated Tannaitic genders into the language of the Talmud, they made the tumtum and androgynos real to the members of a study house in 5<sup>th</sup> Century Babylon or Palestine. To borrow Fausto-Sterling's language, the political, moral and social struggles of the Amoraic rabbis became embodied in the flesh of the tumtum and androgynos. These were a different set of struggles than the ones of the Tannaitic rabbis living in the 1<sup>st</sup> and 2<sup>nd</sup> century. Likewise, when I translate Tannaitic genders into modern English forms such as "male", "female" or "intersex," I am translating more than just language. I am incorporating them within the contemporary English-speaking world's model for binary sexual embodiment, which is inextricably bound up with our own political, social, and moral struggle.

Non-Hebrew speakers who are not familiar with Tannaitic texts frequently ask me about my research into the genders of Jewish antiquity and I find it almost impossible to explain who the tumtum and androgynos are in comprehensible English without re-

inscribing the idea that gender and genitals are naturally dual. I implicitly (and unintentionally) convey this message if I refer to the tumtum and androgynos as genders *between* male and female, *neither* male *nor* female, *both* male and female, androgynous, hermaphroditic or intersexual. All these verbal formulations in colloquial English use binary sexes as the reference point for all other genders. In other words, as soon as I translate "tumtum" and "androgynos" into English they become part of a binary system of sex assignment.

To illustrate the difficulties inherent in translating words for genders between cultures and historical periods consider the Hebrew word "zakhar." This term implies a phallus, which has led most (if not all) translators of the Mishna to believe that the English term "male" is an accurate rendering. However, as we saw in the previous section, the definition of an individual who has a phallus has varied widely throughout history. Even within a single time and place the definition of a phallus varies widely between subcultures. In her research into intersexuality, Suzanne Kessler found that contemporary physicians consider an "acceptable" newborn clitoris to range between between .2 and .9 centimeters, while an "acceptable" infant phallus must be between 2.25 and 4.5 centimeters.<sup>39</sup> The distance between these ranges is referred to by Fausto-Sterling as "Phallic Netherland" (Kessler 2002, 100).

Kessler found in a study of 127 US college students that the average student estimated that a newborn clitoris length could be between .9 and 1.9 centimeters, while a phallus would range between 2.1 and 3.6 centimeter. These ranges lie much closer together than the model advocated by medical authorities. Furthermore, 35% of students allowed for some overlap between newborn clitoral and penis lengths. The implication of this study is that "average" people tend to have looser and more flexible definitions for

genital conformity than most doctors. Thus even within our own time and place, different individuals describe who has a phallus and who doesn't differently, and a given infant might be understood as intersex to a 21<sup>st</sup> century physician and male to a contemporaneous college student.

If there is so much variance in defining a phallus within a single historical moment it is hard to imagine what the Tannaitic rabbis have in mind when they are referring to a "zakhar," or most literally, a person who is associated with a pointed piece of phallic anatomy. Certainly the estimation of phallus sizes described by the later Amoraic rabbis is in no way comparable to today's standards. In a Talmudic discussion the claim is made that various rabbis have phallus sizes ranging from three to nine "kavim," a unit of volume roughly equivalent to 24 eggs (B. T. Baba Metzia 84a).<sup>40</sup> It is easy to discount these claims as simply apocryphal. However, as Thomas Laqueur has pointed out, in premodern texts bodies do strange, and to the modern reader, impossible things.

There are numerous accounts of men who were said to lactate and pictures of the boy Jesus with breasts. Girls could turn into boys, and men who associated too extensively with women could lose the hardness and definitions of their more perfect bodies and regress into effeminacy. Culture, in short, suffused and changed the body that to the modern sensibility seems so closed, autarchic and outside the realm of meaning (Laqueur, 7).

In the Talmud we learn the story of a husband whose wife died. He could not afford a wet nurse so a miracle was performed for him: he grew breasts and began to lactate (B. Talmud Shabbat 53b). In short, understandings of the range of possibilities for the body have shifted through time. Our bodies are laden with cultural meanings and it is hard to know how or why the Tannaitic rabbis identified certain individuals as phallus-owners (zakhar) or crevice-owners (nekevah).

## ii. Frameworks for Reading Tannaitic Genders

All are obligated for the reading of the Scroll of Esther [on Purim]: Priests, Levites, converts, freed slaves, disqualified priests, bastards, a born saris, a saris by human action, those with damaged testicles those lacking testicles – all of them are obligated. And all of them have the power to fulfill the obligation of the community [if they read the Scroll of Esther to the community as a whole]. A tumtum and an androgynos are obligated [to read the Scroll of Esther]. But they do not have the power to fulfill the obligation for the community as a whole. The androgynos has the power to fulfill the obligation for his own kind [another androgynos] and does not have the power for one who is not his own kind. A tumtum does not have the power to fulfill the obligation for others, whether they are of his own kind or not of his own kind. The isha, slaves and minors are exempt. Thus they do not have the power to fulfill the obligation of the community. - **Tosefta Megillah 2:7**

To begin to understand the significance of the tumtum and androgynos in Jewish antiquity we need to get beyond attempts at a literal translation and explore them contextually to see what role they seem to be playing within Tannaitic society.<sup>41</sup> I would like to propose that there are at least three possible frameworks for conceptualizing the role of the tumtum and androgynos within the Tannaitic sexing of the body. 1) The tumtum and the androgynos are merely theoretical constructs and zakhar and nekevah are the only “real” Tannaitic genders. This view is often offered as a “common-sense” approach by conservative thinkers forced to confront the tumtum and the androgynos within the text. 2) Tannaitic sexual embodiment was essentially binary, however the tumtum and androgynos are analogous to today's concept of intersex people and their frequent referencing indicates an open acknowledgment of gender multiplicity in Jewish Antiquity. This is the position of both contemporary orthodox legal decision makers and some modern feminists. 3) There is an entirely different model for sexing the body in



Jewish Antiquity that is not binary signaled by the existence of at least four categories for sexual difference. As far as I know I am the first person to suggest this reading.

### **Framework One: The Tumtum and Androgynos as Mythical Beasts**

The first framework holds that the tumtum and androgynos are merely a theoretical construct designed to test the limits of a binary sex system that is virtually identical to our own. In this view zakhar and nekevah are the only “true” genders, and the androgynos and tumtum are fantastical creations designed to test the limits of that distinction. The first time I encountered the tumtum and androgynos I was studying in an ultra-orthodox yeshiva. I was told that they were mythical beasts used as a metaphor for embodying outlandish possibilities. Since that time I have heard the tumtum and the androgynos referred to as fantastical or theoretical in quite a few other settings, usually by individuals that are either ultra-orthodox or unaware of how often these genders appear in classical texts.

In a forthcoming article on Tannaitic genders, Fonrobert asks why the rabbis talked so much about the tumtum and the androgynos.

What effect does foregrounding the category of the hermaphrodite have for the rabbinic legal thinking about gender as a whole?... Are they constructs, even more, born from fantasy? Are they aberrations? (Fonrobert 2006, 5).

The possibility that the tumtum and androgynos are fantastical aberrations is popular enough in the 21<sup>st</sup> century that Fonrobert feels the need to advance it as a viable possibility even though it conflicts with her own reading. However, this possibility was not seriously raised by the Talmuds, by the medieval codifiers of Jewish law, or by the major classical commentators. Maimonides in the Mishnah Torah, his 12<sup>th</sup> century code

of Jewish law, explicitly deals with the tumtum, the androgynos, the saris and the aylonit taking for granted that they are real people facing real legal dilemmas (Hilchot Ishut 2).

Positioning the tumtum and androgynos as abstract formulations in Tannaitic texts is difficult to justify for a number of reasons. First of all, the tumtum and androgynos appear extremely frequently throughout Tannaitic texts. Even a casual reader of rabbinic texts will be forced to confront their omnipresence. They are not just mentioned during discussions of the limits around sex difference, but also as a part of much more prosaic discussions of the mundane details of Jewish life and law such as circumcision, animal sacrifice, vows, marriage and inheritance. Nearly 1 in 1,000 infants doesn't conform well to modern century gender dualism. This fact suggests that in the non-medically managed world of Jewish antiquity, the rabbis who were formulating a highly gendered system of rights and obligations, would *have* to deal with exceptional gender and genitals. As Fonrobert points out: "in rabbinic legal thinking it hardly ever does not matter whether one is a man or a woman" (Fonrobert 2006, 1).

Viewing the tumtum and androgynos as fictional figures profoundly impacts our reading of Jewish texts and has ongoing implications for the modern period. This model preserves the image of binary sex assignment as based in biological facts that exist independent of history and perpetuates the social effacement of gender non-conforming individuals. The position that the androgynos and the tumtum are purely theoretical is mostly credible to a very modern audience living in an age where cultural authority figures can, and do, make exceptional genders nearly invisible to society as a whole.

## Framework Two: The Tumtum and the Androgynos as Questioned Bodies

The second possible conceptual framework for visioning the role of the tumtum and androgynos in Jewish antiquity is to see them as roughly equivalent to the contemporary category of intersex individuals. The modern feminist Judith Plaskow articulates this view:

Given the fundamental place of the gender binary in rabbinic thought and legislation, it is both surprising and understandable that the rabbis were fascinated by "exceptions" that might potentially disrupt the dichotomized gender system.... The rabbis discussed two other categories of persons, however, whose bodies presented different and more ambiguous gender possibilities. The *tumtum* and *androgynos* (hermaphrodite), who today we would label 'intersexed' persons (Plaskow, 2).

Plaskow is excited about the tumtum and the androgynos because of their potential as border-dwelling interstitial figures to destabilize the modern sexual dichotomy.

Thinkers seeking to reinforce, as opposed to deconstruct, the modern gender binary, also suggest that the tumtum and the androgynos were questionable figures. Alon Levkovitz, in an article on gender transitioning in the CCAR journal, suggests that Jewish tradition favors bodies that are clearly male or female as opposed to doubtful in their status. According to Levkovitz trans and intersex individuals are halachically permitted to have surgery in order to fit more fully into one of two sexes, even though this process maybe problematic from the perspective of classical law.<sup>42</sup>

This framework creates a fairly direct equivalence between the tumtum and androgynos of antiquity and modern intersexuality. Contemporary orthodox legal thinkers, such as Rabbi Alfred Cohen, also use this approach. Cohen examines texts on the tumtum and androgynos in order to decide the implications of the medical management of intersex infants. In a responsum in the *Journal of Halacha and*

*Contemporary Medicine*, Cohen outlines the potential ramifications of intersex surgery in Jewish law based on an examination of the status of the tumtum and androgynos.<sup>43</sup>

It is interesting to me that two Jewish thinkers as ideologically diverse as the liberal feminist Plaskow and the ultra-orthodox Cohen, seem to place Tannaitic genders within the same basic conceptual framework. The overlap between ultra-orthodox views of the tumtum and androgynos and the feminist goal of destabilizing gender is played out in this responsum. There is quite a bit more room for gender flexibility in Rabbi Cohen's position than we might expect coming from the orthodox Jewish world. Cohen draws heavily on the work of Rav Eliezer Waldenberg, author of *Tzitz Eliezer*, a highly influential halachic authority who advocated for a change in Jewish legal status following sex reassignment surgery in cases where this surgery is deemed absolutely "necessary."

Rabbi Alfred Cohen is conservative in his recommendations for the care of intersex people and suggests careful consideration before undertaking radical medical interventions. Interestingly he shares some of the positions of the Intersex Society of North America which advocates for cautious decision making, consulting with a variety of "experts" and considering the overall well-being of an individual before medical interventions are used to (re) shape exceptionally gendered infants. Rabbi Cohen concludes his article with these words of caution:

With the birth of a child who deviates from the norm, there is an immediate rush to seek the best advice available. Our purpose in this article has been to bring to the awareness of the public the reality that medical advice must be pursued in tandem with careful religious guidance. A child's spiritual welfare, no less than the physical one, deserves and requires input from the finest sources, the most learned and knowledgeable rabbis, so that indeed the child will have the best opportunities to fulfill whatever destinies the Almighty has determined.<sup>44</sup>

Rabbi Cohen is grounded in a traditional world view where binary sex difference features predominantly. However, equivalence between the tumtum and the androgynos

and intersexuality, at least to some extent, undermines the stability of dichotomous genders. As George Canguilhem noted, "it is not paradoxical to say that the abnormal, while logically second, is existentially first" (Canguilhem, 243). Phrased another way this is the statement by Dreger that opened and framed this work: "The questioned body forces us to ask what exactly it is – if anything – that makes the rest of us unquestionable" (Dreger, 6). If the tumtum and the androgynos are the questioned bodies of Tannaitic literature than they, at least covertly, question the Jewish legal system's ability to contain gender within the categories of "male" and "female." It is this possibility that leads the contemporary Jewish feminist scholars Judith Plaskow and Charlotte Fonrobert to investigate the tumtum and androgynos in an attempt to question the ontological firmness of the categories male and female. Fonrobert asks:

Does the androgynos inhabit a stable "sexual identity" as a third possibility, next to men and women, or as the exception to the rule, or does the very presence of 'neither-nor' or 'both this and that' category in the legal system suggest a hint of instability in the legislative effort of stabilizing sexual identities? (Fonrobert 2006, 6).

This second framework for reading the tumtum and androgynos in Tannaitic texts, offers a way to undermine the stability of dichotomous gender through the acknowledged presence of anomalous embodiment. However, it still firmly positions male and female as the primary, "normal" categories for the human experience throughout history and across cultures.

### **Framework Three: The Tumtum and the Androgynos as Created Beings of Their Own**

My own reading of the tumtum and androgynos is the third possibility. I suggest that the tumtum and androgynos are not interstitial others in an essentially binary sex

system, but signal that there was a non-binary approach to sex assignment in Jewish antiquity. Our opening mishna (Nazir 2:7) indicates that the Tannaitic rabbis believed that a newborn might be identified as one of four, and not two, genders at birth. One possible ramification of this statement is that there were four "normal" forms of sexual embodiment in Jewish antiquity and only bodies that lay outside of this quadrant posed particular challenges to rabbinic morphology. However in certain texts, such as Mishna Sotah 3:8 that defines the differences between an ish and an isha, two sexes do function in opposition to each other.

These texts might seem to indicate binary sex assignment. However, I believe that the categories "ish" and "isha," as well as "zakhar" and "nekevah" can also be read as indicating ends of a sexual continuum. Tannaitic texts are terse and can be read in a number of different ways to fit different ideologies. I am not suggesting that my non-binary reading represents a definitive decoding of the Mishna and the Tosefta. However, texts from Jewish antiquity are usually read with an uncritical anachronism that assumes that sexual identities are stable across millennium and simple translations like "male" and "female" are adequate. I am simply suggesting that we challenge this presumption and open ourselves to other, non-binary, readings of the text that are at once more radical and less anachronistic.

In the Mishna whenever birth sex assignment is crucial to fulfillment of the law the tumtum and the androgynos tend to appear. In Mishna Yevamot we learn that an androgynos marries (is the one to legally "acquire" a spouse) and is not taken in marriage (8:6). In Baba Batra we learn inheritance laws as they pertain to a child who is a zakhar, a nekevah, a tumtum or an androgynos (9:2). In reference to ritual impurity that can be conveyed either through menstrual blood or semen, the emissions of four types of bodies

are all seriously considered (M. Niddah 3:5; Zavim 2:1). Descriptions of animal sacrifice also examine all four options for the sex of animals being offered at the temple (Temurah 3:1, 5:2). All of these texts incorporate the tumtum and androgynos into the sexual geography of Jewish antiquity, not just as they pertain to sex difference, and suggest a legal system that is more than binary.

The Tosefta, a compendium of Tannaitic material, which was redacted shortly after the Mishna, is much more detailed in its discussions of the social status of the tumtum and androgynos. In the Tosefta, the tumtum and androgynos are not usually invoked as a part of discussions that center on the zakhar and the nekevah, but appear as a part of lists of problematic figures. In Tosefta Arakhim the valuation of a long list of exceptional individuals is discussed in regards to indentured servitude including: the deaf-mute, the mentally incompetent, the minor, the gentile, slaves, those with missing limbs or who are afflicted by sores, the tumtum, the androgynos *and* the isha (T Arakhim 1:1-2). In Tosefta Terumot, the priestly tumtum and androgynos appear as a part of a list of exceptional priests (T. Terumot 10:18). These lists support a view of the tumtum and the androgynos as one of many forms of problematic embodiment in a gender and power continuum.

In Tosefta Megillah we read: "*All* are obligated for reading the scroll of Esther." (T Megillah 2:7). However, the "*all*" of this Tosefta is soon revealed to refer to the "*normal*" subject of halacha: the Jewish, unblemished, phallus-owning, mature and free zakhar. The Tosefta goes on to state that problematic forms of the zakhar such as bastards, the saris and those with a damaged or missing phallus, are still obligated to read from the Scroll of Esther. They also have the power to fulfill the obligation of the community by reading it out loud.

The laws surrounding the reading of the Scroll of Esther are more complicated in regards to individuals who are positioned farther away from the normative zakhar. The tumtum and the androgynos are still obligated to hear the Scroll of Esther, but not empowered to fulfill the obligation of reading for the community. The androgynos, who is generally situated closer to the zakhar than the tumtum, has the power to fulfill the obligation of reading for another androgynos. However, the androgynos cannot discharge the obligation of the higher status zakhar. The tumtum who is generally positioned between the androgynos and the nekevah, cannot even fulfill the obligation for another tumtum. However, the tumtum is still obligated to read the Scroll of Esther for herself. The nekevah, slaves and minors are entirely exempt from this mitzvah and not obligated to read the Scroll of Esther at all. Thus they are also not empowered to fulfill the communal obligation.

A virtually identical gender and power continuum is invoked in the Tosefta's discussion of sounding the shofar on Rosh Hashana. All types of zakhar are obligated to sound the shofar and can discharge this duty for the community. Both the androgynos and the tumtum are also obligated to sound the shofar for themselves, but only the androgynos can sound it for others. While the nekevah, slaves and minors are once again wholly exempt. (T. Rosh HaShana 2:5) In regards to reciting grace after meals we learn that:

The androgynos can fulfill the obligation of his own kind [another androgynos] but cannot exempt any other kind [i.e. any variety of zakhar]. A tumtum can exempt neither its own kind nor any other kind [but is still obligated to recite the blessing]. One who is half a slave and half free can exempt neither his own kind nor any other kind [but is still personally obligated]. The isha, slaves and minors are wholly exempt (T. Berachot 5:15-16).

These passages from the Tosefta are all about gender and power struggles. They do not fit well within a 21<sup>st</sup> century binary framework for sexing the body. The terms



“all” and “any” are used in these texts to refer solely to the zakhar. In this framework, the isha/nekevah (usually translated as woman), the slave and the minor are the most distanced from the “normal” body and hence from power, while the tumtum and the androgynos, like the half-slave, are closer to the subjective center of halacha and power due to their proximity to the zakhar.

The one place in the Tosefta where the tumtum and androgynos appear to be situated *between* ish and isha is Tosefta Bikkurim 2 (which appears as Mishna Bikkurim 4 in some later manuscripts of the Mishna).<sup>45</sup> This chapter of the Tosefta contains a detailed description of the status of the androgynos. It begins with this halacha:

An androgynos is in some ways legally equivalent to the ish and in some ways legally equivalent to the isha, and in some ways legally equivalent to both the ish and the isha, and in some ways legally equivalent to neither the ish nor the isha” (T. Bikkurim 2:3)

The rabbis go on to list the ways in which the androgynos is similar to each of these categories. Like an ish: the androgynos conveys impurity with penile discharge, dresses like an ish, marries but is not taken in marriage, cannot be left alone with an isha, may not transgress the laws that pertain to facial hair and priestly impurity and is liable for all the commandments uttered in the Torah. The androgynos is legally equivalent to the isha in regards to: menstrual blood, inheritance law, Levirate marriage, eating Temple offerings and, like the isha, the androgynos is unable to testify as a legal witness. All of these stipulations imply that the androgynos is higher on the gender and power continuum than the isha/nekevah, but lower than the ish/zakher.

The structure of this Tosefta, in that it compares the androgynos to both the ish and the isha, might seem to support the vision of the androgynos as an interstitial

figure in a binary sex system. However, this text can be read equally well within a continuum view of human sexuality where ish and isha are posited at opposite ends of a spectrum of gender and power and not as exclusive options. This reading makes contextual sense with the other texts of the Tosefta we just examined. Furthermore, the positioning of the androgynos *between* ish and isha is questioned by a minority reading at the end of this chapter of Tosefta.

Rabbi Yose says: an androgynos is a created being of its own, but the Sages could not rule if he is a man or a woman. But this is not true of the tumtum who is either a doubtful ish or a doubtful isha (T. Bikkurim 2: 7).

In this halacha the Sages (i.e. the majority position), try to fit the androgynos between the categories of ish and isha and view the tumtum as a doubtful category. However, a minority opinion is preserved. Rabbi Yose maintains the individuality and ontological distinctness of the androgynos and insists on the limits of the dichotomy between ish and isha.

I believe that a compelling way to read Tannitic texts is to approach them through the lens of a system of sexual embodiment that posits only one stable gender: the zakhar/ish. The zakhar represents the body qua body in rabbinic texts and he is the subject of most halacha. A closer examination of the mishna from Nazir that opened this section (2:7) reveals that the zakhar is the *only* option for “normal” sexual embodiment that is offered by this text. “Ben,” the general word for a human child, is understood to refer only to a son. All other options for offspring including a tumtum, an androgynos *or* a daughter are forms of exceptional embodiment not subject to normative halacha. Furthermore, the *subject* of this mishna, the individual who is taking a Nazirite vow, can be presumed to be a zakhar because of the grammatical

structure of the mishna. Furthermore, we learn in chapter four of Tractate Nazir that there are more specific laws that apply to the vows of other genders.

Mishna Nazir 2:7 is certainly not unique in positioning the zakhar as the only unquestioned body in Jewish antiquity. Charlotte Fonrobert examines a famous text from the Tosefta that maps the human body in regards to ritual impurity (T. Ahilot 1:7) to argue that the normative rabbinic body is male: "The term '*adam* [human being] here suggests the male body, and I would argue assumes '*adam* to be male'" (Fonrobert 2006, 13). In other words, *all* non-zakhar genders including the tumtum, the androgynos and the nekevah are problematic interstitial forms of sexual embodiment in the Mishna and Tosefta. They are *all* the questioned bodies of antiquity. As we saw in part one, this view would place the rabbis in step with their Greek contemporaries, such as Galen, who visioned sexual embodiment through a single-gendered view of the world.

Using this third and final framework for reading Tannaitic texts has profound impacts on our understanding of Jewish tradition. In many ways it more firmly entrenches the dominance of the "male" or, less anachronistically speaking, the normative rabbinic body that is the phallus-owning subject of halacha. However, this model also undermines the modern dichotomy between male and female. It disturbs the view that two opposite sexes are natural categorizations of the human experience. If the Tannaitic system of sex assignment is not binary, then the terms zakhar and nekevah are not really translatable as "male" and "female" in any meaningful way. This position is radical as it forces us to revision our whole approach to rabbinic tradition. It provides contemporary feminists authentic grounds to question what

exactly the oldest layer of Jewish law says about "male" dominance, the second-class status of "women" and compulsory heterosexuality.

### iii. The Questioned Bodies of Jewish Antiquity

The rabbis spoke in a parable considering the isha: [She is like] an unripe fig, a ripening fig, and a fully ripe fig. 'An unripe fig' – while she is yet a child [under twelve years and one day]. 'A ripening fig' – this refers to the days of her pubescence [from the age of twelve to twelve and a half years and one day]. In the case of both these children, her father has the right to the work of her hands and to her labor and the power to annul her vows. "A fully ripe fig" – after she has become mature [at twelve and one half], her father no longer has dominion over her. - **Mishna Niddah 5:7**

In the 21<sup>st</sup> century "normal" sexual embodiment is defined by conformity within one of two sexes. In my reading of the Mishna and the Tosefta, "normal" unproblematic embodiment is only held by the zakhar. Hence, unlike today, sexual "abnormality" is defined in reference to one point, the zakhar, and not *between* two sexes. In this view, the tumtum, the androgynos, the nekevah and *all* other genders are the questioned bodies of the Mishna. All non-zakhar genders inhabit socially problematic forms of embodiment that must be addressed with specific legislation, sorted and, ultimately, contained.

This view is congruent with the work of the contemporary scholar Judith Romney Wegner's analysis of the role of women in the Mishna. Wegner writes: "the Mishnah treats the male as the norm and the female, by definition, as the anomaly, a deviation from norm" (Wegner, 5). According to Wegner women occupy a position of difference in the Mishna, not full persons and rarely to subject (as opposed to the object) of halacha. However, the rabbis acknowledge that women, like men, are human beings. In Wegner's analysis this ambiguity leads the Tannaitic rabbis to treat women as persons in certain contexts, and property or "chattel," or property, in others. For example, Tractate Kiddushin opens with the procedure for acquiring wives, slaves, cattle, land and other forms of property. In this context, women are viewed wholly as

chattel (M. Kiddushin 1). On the other hand, in regards to criminal law (M. Baba Batra) women are subject to the same protections and penalties as male persons.

Wegner argues that in this sense women are like the *koi*, an animal that is neither wholly domesticated nor wild. Throughout rabbinic literature the *koi* remains a contested being: sometimes considered a beast, sometimes cattle, and sometimes an entity unto itself. To translate this into our framework the *koi* represents a questioned body: a troublesome anomaly that is difficult to contain within social categories. It might be tempting to read the androgynos as wholly equivalent to the *koi* as the androgynos is discussed in the same chapter of Tosefta in Bikkurim 2. However, in Wegner's analysis the *koi* is not analogous to the androgynos, but to women:

To the Mishna's framers, then, woman presents an anomaly, a 'legal hybrid' that defies logical classification. She is "like" a man, hence a person, in some ways, and "not like" a man, hence a nonperson, in others. As with the *koi*, the sages, unwilling to recognize an intermediate category, choose to split the woman into her "chattel" and "person" components, depending on context, and treat her accordingly (Wegner, 8).

Wegner never turns to the *tumtum* and androgynos, but her reading of the *isha* is helpful in understanding Tannaitic gender in general. The *isha* represents a questioned body in antiquity, hence she is more equivalent to today's category of "intersex person" than "woman."

In the framework that I am suggesting for reading Tannaitic texts, the *ish* and the *isha* still function in opposition to each other, but as ends of a continuum as opposed to within a sexual dichotomy. The *ish* represents the pinnacle of embodiment and the *isha* represents the lowest edge of the gender and power continuum. The *tumtum* and the androgynos fall somewhere in the middle. In some ways this model is reminiscent of Bornstein's image of a gender and power pyramid. A pyramid view of gender still

positions one type of embodiment at the top, but in the lower echelons of this pyramid there is more room for individuality than within a binary system. This opening towards multiplicity is suggested by the greater numbers of Tannaitic birth genders and the room for variation within genders.

There are certainly points of difference and sameness that unite and divide bodies throughout history, but I believe that it is impossible to say anything about these morphological differences without also talking about gender and power. I am not suggesting that 1<sup>st</sup> century rabbis had a more authentic reading of sex difference than 21<sup>st</sup> century physicians, but simply that the evidence of human bodies can be used to formulate a system that features one gender, four genders, binary genders or something else entirely. As Laqueur points out, 19<sup>th</sup> century advances in medicine offered evidence about the common origin of all sexes in an embryo without sexual differences. These forms of evidence could have supported a pre-modern single sexed approach to sexual embodiment. However, this evidence was not highlighted as a new, dual view of human sexuality was taking center stage. "Sex in both the one-sex and the two-sex worlds – is situational," says Laqueur, "it is explicable only within the context of battles over gender and power" (Laqueur, 11).

Most modern readers approach Tannaitic texts expecting to find a binary sex system. This expectation is easily reinforced by translations and commentaries that do not see the anachronism inherent in superimposing a 21<sup>st</sup> century model for dimorphic sex assignment onto an antique text. If we read the text without a bias towards sexual dimorphism it can lend itself to a number of different interpretations, including a continuum model for conceptualizing sex difference. I believe that this approach is well

grounded in the texts. Furthermore, it allows for more room for individuality and advances the goals of 21<sup>st</sup> century gender liberation.



## Conclusion

### **'This Must be the Place': On Travel and Home**

**'Get yourself out from your native land, from your ancestor's house to the land that I will show you.' - Genesis 12:1**

**Strange to be exiled from your own sex to borders that will never be home. - Leslie Feinberg, *Stone Butch Blues***

**Home is where I want to be, but I guess I'm already there. - Talking Heads, *This Must Be the Place***

Borders surround us. There are boundaries around our nations, our properties, our genders, our identities and our bodies. These demarcations define the limits of our day-to-day freedom of movement and the sphere of our activities. And yet these borders are often invisible to us when we are nestled within a safe home. It is only through travel or enforced migration that we confront the borders that demarcate our world. In this work I have tried to "travel" through history and geography to meet the tumtum. Time traveling to 1<sup>st</sup> Century Palestine can make otherwise invisible borders visible. It reveals that the boundaries around sexual identities have been drawn and redrawn differently in various times and places. It also makes apparent that these divisions often have more to do with the social enforcement of power than the specificities of real bodies or the well being of individuals.

The shifting borders around sexes have generally been defined and defended by powerful authority figures: religious leaders, legal experts, doctors, psychiatrists and scientists. However, in demonstrating the mutability of these demarcations, I have tried to show that they can also be shifted by other forms of power: by women, queers, gender

queers, trans people, intersex individuals and everyone else who doesn't benefit from the contemporary model of binary sex assignment joining together to demand space in the social universe for infinitely diverse sexual identities and embodiments. These shifts are already beginning to happen as various gender liberation movements grow in both strength and numbers.

The presence of the tumtum and androgynos in Tannaitic texts indicate an approach to sex difference that is significantly different from the modern dichotomy between men and women. In the Mishna and the Tosefta "normal" sex is defined in relationship to the Jewish, free, mature zakhar, while other forms of embodiment such as non-Jews, slaves, minors, the nekevah, the tumtum and the androgynos are positioned in various locations within the lower echelons of the gender and power continuum. Although this view still promotes hierarchical relations between sexes, it does not conform well to the modern understanding of inherently binary gender and genitals. Tannaitic texts reveal the culturally construed nature of *all* systems for demarcating the boundaries around the sexed body. In other words, time traveling to meet the tumtum offers us resources for traversing the stringently policed borders of binary sex assignment in our own era.

Narratives of gender non-conforming experience often use celebratory language for travel and migration to discuss gender transitioning or more fully realizing the self.<sup>46</sup> But it is important to remember that travel is always dangerous. All borders are risky places guarded by authority figures that wield both social and physical power. The boundary between male and female sexes is one of the most fiercely defended borders in modern society. Traveling is certainly a broadening experience for those with the economic and social resources to enjoy it safely. However, most marginalized people

only cross borders if they have to: if their home has become dangerous, inappropriate or unstable.

Jay Prosser in his book, *Second Skins: The Body Narratives of Transsexuality*, frames transsexual narratives as searches for home. Prosser contrasts transsexual body narratives and their search for location, with queer and transgender narratives, which he characterizes as all about cherishing borderlands as spaces full of "freedom and mobility for the subject" (Prosser, 499). I disagree with Prosser's rigid distinction between transsexuals and other gender queers, as well as his commitment to finding home within the fabricated categories of "man" and "woman." However, I think that he helps to articulate the longing for stability and location that many gender non-conformists experience.

That there is no place *like* home – home is where we long to belong; there is no place better than home – conveys the value of realness and belonging. As Odysseus's journey classically illustrates, the point of every narrative is, after all, to return home. (And if every narrative is driven by home, what would a narrative be without one?)... The positions of man and woman are indeed not free of fabrication, are never given facts. But for some, acknowledgment of this fictional investment makes desire for their locations no less powerful.<sup>47</sup>

The queer theorist Judith Halberstam responds to Prosser by pointing out that home within a male or female gender is not a realistic or even desirable destination for many people. There are many transsexuals who never "pass" as their chosen gender because they lack the financial resources for the surgeries that they want or simply because their bodies will never conform well to cultural ideals of masculinity or femininity. There are also many butch women, effeminate men and others who seek to build a home in the gender they were assigned at birth, but who are often thrust out of that home by being consistently mistaken for another gender. "Some bodies are never at

home," writes Halberstam, "some bodies cannot simply cross from A to B; some bodies live with the inherent instability of identity" (Halberstam, 164).

I agree with Halberstam's claim that many people will never feel at home within one of two genders and may never desire to. Prosser's claim that "the positions of man and woman" are fabricated and yet longed for destinations certainly reflects the experience of some trans individuals, but that doesn't make non-binary gender activists "gender tourists." However, I do believe that there is truth to Prosser's claim that we tend to make sense out of our lives through narrative and narratives begin and end at home. Home in this sense serves as a synecdoche for belonging. Although many individuals lack physical houses, or live in domiciles that are violent or unstable, "home" as an ideal is the one place in the universe where we are completely in control of our (re) presentation. It is the inner sanctuary that anchors us as we explore the outer world. Home is both our starting and our ending place.

I think that most people, in one sense or another, are seeking a sense of home, but that this search might lead to unexpected locations. The search for a home to return to is reflected in the words of Robin, an intersex person, when she tells the story of seeking solid information on intersexuality to ground and contextualize her experience: "It's almost like I've come full circle, like I know myself now. I think it has a lot to do with finding out everything about [intersexuality]; what is really me. I've come a long way."<sup>48</sup> Halberstam's statement that "some bodies cannot simply cross from A to B" to find home is true. But why can't we build a sense of home in C, D, E, or Z? The alternative to finding a home within one of two binary genders is not necessarily the "inherent instability of identity" that Halberstam suggests.

I think that we need to find new and infinitely diverse locations for home: homes built on the edges, crevices, creases or fault-lines of 21<sup>st</sup> century binary sexes, as well as homes that are in constant process, shifting, mutable and flexible enough to encompass infinite individuality. These border dwelling locations become stable homes when we find resources to anchor them to other times, places and experiences.

In Judaism crossing borders and coming home are closely connected experiences. Jewish collective memory is filled with stories of wandering and diaspora. But at the core of these journeys is a narrative trajectory that turns towards home. Jews may be experts at traveling, but we are also knowledgeable about finding and making unusual homes. Constantly migrating Jews have been forced to nest in locations that are more than geographic. Rabbinic texts have provided a shared language for contextualizing Jewish experiences in radically different times and places and offered a stable, yet ever evolving, location for the Jewish self. It is within the text that the Jew truly belongs.

It is the search for home that led me to travel inside the Mishna to meet the tumtum eleven years ago. It is this same search that propels me back into the text to visit the tumtum over and over again. The tumtum and the androgynos are fully rooted in a classical tradition. Thus they offer anyone who can't or won't conform to 21<sup>st</sup> century binary gender assignment a sense of belonging within a rich and deep history. Tannaitic gender multiplicity provides modern feminists, queers, trans people and gender deviants a solid connection to another time, space and community. The tumtum and the androgynos are a resource not just for *destabilizing* modern dichotomous sexes, but also for *stabilizing* wholly new and surprising constructions of sexual identity. I believe that gender multiplicity in the texts of Jewish antiquity do not just offer the reader *more* options for finding a home within a gender. These texts indicate an opening towards

*infinite* locations for belonging that are still authentically connected to our histories and communities. The capacity of the text to embrace individuality is hinted at in the Tosefta when Rabbi Yose claims that the androgynos is “a created being of its own.” Each and every body is a “created being of its own” and deserves a home of its own.

## Appendix 1

### A Blessing for Gender Transitioning

This blessing may be recited before any moment in the transitioning process:

ברוך אתה יי אלוהינו מלך העולם המעביר לעוברים

*Baruch Ata Adonai Eloheinu Melech Ha'Olam Ha'Mavir L'Ovrin*

Blessed are You, Eternal One, our God Ruler of Time and Space, the Transforming One to those that transform/transition/cross over

Afterwards recite:

ברוך אתה יי אלוהינו מלך העולם שעשני בצלמו

*Baruch Ata Adonai Eloheinu Melech Ha'Olam sh'asani b'tzelmo*

Blessed are You, Eternal One, our God Ruler of Time and Space who has made me in God's image

For special events taking place for the first time or for the first time in this season add:

ברוך אתה יי אלוהינו מלך העולם שהחינו וקימנו והגיענו לזמן הזה

*Baruch Ata Adonai Eloheinu Melech Ha'Olam Sh'hechianu, v'kimanu,  
v'higiyanu, la'zman hazeh*

Blessed are You, Eternal One, our God Ruler of Time and Space who has kept us alive and sustained us and helped us to arrive at this moment

\* \* \*

Jewish tradition teaches us that we should be saying a hundred blessings a day to mark all the moments of *kedusha*, holiness, that infuse our lives. There are blessings to recite before eating and drinking, performing religious commandments, witnessing rainbows, oceans, thunder or lightning, seeing old friends, tasting new fruits and arriving

at a new season. And yet many of the most important moments in the lives of transgender, intersex and gender queer Jews are not honored within our tradition.

Jewish sacred texts such as the Mishna, the Talmud, midrash and classical legal codes acknowledge the diversity of gender identities in our communities, however mainstream Jewish religious tradition has effaced the experiences of trans, intersex and gender queer Jews. This blessing signals the holiness present in the moments of transitioning that transform Jewish lives and affirms the place of these moments within Jewish sacred tradition.

This blessing takes the same form and grammatical structure as classical blessings that mark wondrous occasions. "The Transforming One" as a name for God appears in the traditional blessings of gratitude that are recited each morning. The Hebrew verb root of this word, *avar*, has multiple layers of meaning within Judaism. Most literally it means to physically cross over, however it also implies spiritual transformation in High Holiday prayers. It lies at the root of the word *Ivrim*, Hebrew people. We are the *Ivrim*, the crossing over people, because we physically crossed over the Jordan River to escape from slavery and oppression and spiritually transformed ourselves. At the basis of our national sacred memory lies this moment of physical and spiritual transition. In Modern Hebrew this same verb root is used to form the word, *ma'avar*, which means to transition genders.

The second blessing is also taken from morning liturgy. It is based on the book of Genesis, which teaches that male and female bodies were equally created in God's image. The Midrash, classical Jewish exegesis, adds that the *Adam HaRishon*, the first human being formed in God's likeness, was an *androgynos*, an intersex person. Hence our tradition teaches that *all* bodies and genders are created in God's image whether we identify as men, women, intersex or something else. When we take physical or spiritual steps to more honestly manifest our gender identities we are fulfilling the foundational



*mitzvah*, religious commandment, to be partnered with God in completing the work of creation.

The final blessing is classically recited each time we reach a new event or season. Saying it at moments of transition celebrates God's nurturing and sustaining presence in allowing us to reach this moment of self-transformation. However, this blessing is in the first person plural and also marks our collective transition as a people as we begin to transform our tradition in order to honor and celebrate the lives of trans intersex and gender queer Jews.

## **Appendix 2**

### **Class Plan on the Tumtum and the Androgynos:** (For Congregations and Jewish Community Groups)

#### **Set Induction:**

- Do you think you know what gender most people you meet are?
- If so, how quickly do you make that assessment? What kind of clues do you use?
- What is your reaction if you discover that your first assumption was wrong? How do you feel if someone makes an incorrect assumption about your gender or the gender of someone close to you? Do you correct them? If so, how?

#### **Text Studies**

##### **I. Who are the Androgynos and the tumtum?**

Text study on Mishna Bikkurim

##### **II. What is the status of the Androgynos and Tumtum in Judaism?**

Text study on Yevamot 64a

#### **Conclusions**

- Can you use these texts to help formulate your own understanding of how you “read” the gender of the people around you?
- What about how you present your own gender to your community and the world?

## **Text Study on Mishna Bikkurim 4 [abridged text]**

### **Mishna 1**

An *Androgynos* is in some respects legally equivalent to men, and in some respects legally equivalent to women, in some respects legally equivalent to men and women, and in some respects legally equivalent to neither men nor women.

### **Mishna 2**

How is he legally equivalent to men? He conveys impurity with white [penile discharge] like men, he dresses like men, he marries but is not taken in marriage like men... he is not financially supported like the daughters... and he is responsible for all the commandments uttered in the Torah like men.

### **Mishna 3**

How is he legally equivalent to women? He conveys impurity with red [menstrual blood] like women, he cannot be left alone with men like women... he does not inherit with the sons like women, he does not eat of the really Holy Holy Things [of the Temple, if he is a Priest] and he is not fit to give testimony like women...

### **Mishna 4**

How is he legally equivalent to men and women? One is liable for hitting him and cursing him as it is with men and women. The one who kills him by accident is exiled and the one who [kills him] intentionally is executed as it is with men and women...

### **Mishna 5**

How is he legally equivalent to neither men nor women? Unlike men and women, he is not sold as a Hebrew slave, because unlike men and women, he cannot be valued...

Rabbi Yose says: an androgynos is a created being of its own. The Sages could not

decide if he is a man or a woman. But this is not true of a *tumtum*, who is sometimes a man and sometimes a woman.

#### **Questions on Mishna Bikkurim 4**

- In what ways is the androgynos legally equivalent to a man? In what ways is he legally equivalent to a woman? Equivalent to neither men nor women? Equivalent to both men and women? Try to make a list.
- Based on this text, who do you think had higher status in classical Judaism the androgynos or the woman?
- What system do the rabbis seem to be using for assigning sex to a body? In what ways is it similar or different from today's approach?

### **Text Study on Babylonian Talmud, Yevamot 64a-64b**

Rabbi Ami stated: Abraham and Sarah were originally "*tumtumim*." For it is said "Look unto the rock whence you were hewn and to the hole of the pit whence you were dug" and this is followed by the text: "look unto Abraham your father and unto Sarah that bore you" (Isaiah).

#### **Questions**

- Do you understand how these biblical verses are being used to justify this interpretation?
- What status does this text give to gender non-conforming individuals?

## Appendix 3

### Mishna Bikkurim 4: Translation and Notes

א אנדרוגינוס יש בו דרכים שוה לאנשים, ויש בו דרכים שוה לנשים, ויש בו דרכים שוה לאנשים ונשים ויש בו דרכים אינו שוה לאנשים ונשים:

#### Mishna 1

An *Androgynos* is in some ways legally equivalent to an ish, and in some ways legally equivalent to an isha, and in some ways legally equivalent to both an ish and an isha, and in some ways legally equivalent to neither an ish nor an isha.

ב כיצד שוה לאנשים, מטמא בלכּוּן באנשים, ומתעטף, באנשים, ונושא אבל לא נשא, באנשים, ואמו יושבת עליו בדם טהר, באנשים, ואינו מתוחד עם הנשים, באנשים, ואינו גזון עם הבנות, באנשים, ועובר על כל תקוף וכל תשחית וכל תטמא למתים, באנשים, ותיב בכל המצות האמורות בתורה, באנשים:

#### Mishna 2

How is he legally equivalent to an ish? He conveys impurity with white [penile discharge] like men, he dresses like men, he marries but is not taken in marriage like men<sup>1</sup>, his mother sits out the clean blood days on his account like with an ish<sup>2</sup>, he cannot

<sup>1</sup> In other words, he is the active party who betrothes and not the one who is betrothed in marriage (like an isha). This supports the notion that the androgynos is "more male" and hence higher status than the isha.

<sup>2</sup> When a woman bears a male child she is impure for seven days and then sits out an additional 33 days. (Leviticus 12:2-5)

be left alone with an isha like an ish, he is not supported along with the daughters like an ish<sup>3</sup>, and he may not transgress [the laws of] “you shall not round” and “you shall not mar [the corners of your bread]” and [if he is a Priest] “you shall not defile yourself for the dead”<sup>4</sup>; and he is liable for all the commandments uttered in the Torah like an ish.<sup>5</sup>

ג כיצד שוה לנשים, מטמא באדם, בנשים. ואינו מתרחק עם האנשים.  
 בנשים. ואינו זקוק ליבום, בנשים. ואינו חולק עם הבנים, בנשים. ואין אוכל  
 בקדשי המקדש, בנשים. ואמו יושבת עליו בדם טמא, בנשים. ופסול מן  
 העדות, בנשים. ואם נבעל בעברה נפסל מן התרומה, בנשים:

### Mishna 3

How is he legally equivalent to an isha? He conveys impurity with red [menstrual blood] like an isha, he cannot be left alone with an ish like an isha, he is not obligated by Levirate marriage<sup>6</sup>, he does not inherit with the sons like women,<sup>7</sup> he does not eat of the

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<sup>3</sup> If a man dies with sufficient property the sons inherit and the daughters receive maintenance. If he has insufficient property, the daughters still receive their maintenance (presumably, as the most financially vulnerable party), but the sons “go begging” (Babylonian Talmud Bava Batra 9a). The androgynos goes begging like the sons. In my analysis, this communicates that he is perceived as less financially vulnerable than the daughters as he can operate as “more male” in the business world.

<sup>4</sup> Compare to Mishnah Kiddushin 1:7, which lists the prohibition to cut either the forelocks or the beard and the prohibition against Priestly males being rendered impure by the dead, as exceptions to the general rule that both the ish and the isha are obligated by all negative prohibitions, regardless of whether they are dependent on time or not.

<sup>5</sup> In other words, including positive time-bound commandments! This, in conjunction with all the other rights and privileges outlined in this mishna, implies that while the androgynos has a lower halachic status than the ish, he is not as low as the nekevah.

<sup>6</sup>See Deut 25:5-10

<sup>7</sup> If there is sufficient property he is maintained with the daughters, but does not inherit with the sons.

really Holy Holy Things [of the Temple, if he is a Priest]<sup>8</sup> like an isha, his mother sits out the unclean blood days on his account like an isha<sup>9</sup> and he is not fit to give testimony like an isha,<sup>10</sup> and if [he is a Priest, and if he is] subjected to prohibited sexual intercourse, he is unfit to eat 'trumah' offerings like an isha.

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<sup>8</sup> In public cultic matters that are officially reserved for an unblemished Priestly zakhr, such as the eating of sin-offerings, guilt-offerings and meal-offerings which are only eaten by male priests within Temple property, the androgynos is "not male enough." Even though, as we have seen in the previous mishnayot, in relations with the isha that involve family and financial matters he is treated like a zakhr.

<sup>9</sup> After giving birth to a female, a woman is impure for fourteen days, and then sits out an additional sixty-six days (Leviticus 12:2-5).

<sup>10</sup> According to Maimonides the androgynos is ineligible to give testimony because he "might be a woman." If the androgynos, who clearly has a phallus, might be a "woman" than, Rambam's category of "woman" is more complex than we might have thought.



ד כיצד שוה לאנשים ונשים, תיבים על מכתו ומללתו, באנשים ונשים.  
והחורגו שוגג גולת ומזיד נהרג, באנשים ונשים. ואמו מביאה עליו קרבן,  
באנשים ונשים. ואוכל בקדשי הנבול, באנשים ונשים. ונוחל לכל הנחלות,  
באנשים ונשים:

#### Mishna 4

How is he legally equivalent to an ish and an isha? One is liable for hitting him and cursing him as it is with men or women. The one who kills him by accident is exiled and the one who [kills him] intentionally is executed as it is with an ish or an isha, his mother brings a sacrifice [to the Temple] on his account as it is with an ish and an isha, and [if he is a priest] he eats holy things [that can be eaten outside] the border [of the Temple] like an ish and an isha, and he inherits all the inheritances like an ish and an isha..<sup>11</sup>

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<sup>11</sup> This mishna teaches that where ever the isha is not denied status of personhood: such as, punishment for murder, inheritance in the absence of male heirs, etc., neither is the androgynos.

ח ביצד אינו שוה לא לאנשים ולא לנשים, אין שורפין תרומה על טמאת  
 ויבתו, ואין תיבין עליו על ביאת מקדש, לא באנשים ולא בנשים. ואין נמכר  
 בעבד עברי, לא באנשים ולא בנשים. ואינו נערה לא באנשים ולא בנשים,  
 ואם אמר, הריני נזיר שוה לא איש ולא אשה, נזיר. רבי יוסי אומר,  
 אנדרוגינוס בריה בפני עצמה הוא, ולא יכלו חכמים לתקריע עליו אם הוא  
 איש או אשה. אבל טומטום אינו כן, פעמים שהוא איש, פעמים שהוא  
 אשה:

#### Mishna 5

How is he not legally equivalent to an ish or an isha? They do not burn Trumah  
 because of the impurity of his penile discharge and he is not liable on account of  
 entering the Temple [after observing either a penile or menstrual discharge] unlike an  
 ish or an isha, he is not sold as a Hebrew slave because unlike anish or an isha he  
 cannot be valued, unlike an ish or an isha,<sup>12</sup> if one says: "Can I be a Nazir, while this  
 one is neither a man nor a woman?" He is a Nazir. Rabbi Yose says: an androgynos  
 is a crated being of its own, but the Sages could not rule if he is an ish or an isha.<sup>13</sup>  
 But this is not true of a tumtum, who is sometimes an ish and sometimes an isha.<sup>14</sup>

<sup>12</sup> The labor of the androgynos is a doubtful quantity under the laws of valuation of indentured servitude that are stipulated in Lev. 27 and therefore cannot be sold or valued (see Mishna Arkhim 1:1).

<sup>13</sup> The conclusion of this Mishna departs for the first time from the format used in describing the koi, an animal that is neither wholly wild nor domesticated, that is described earlier in Bikkurim. The koi's legal status is safely contained in Mishna 2:9-11 by contrast and comparison to two well-defined categories: beast and cattle. However, after following this same pattern in regards to the androgynos, the Sages are compelled to further clarify his status and are unable to come to a resolution.

<sup>14</sup> In the Tosefta this line reads "But this is not true of a tumtum who is either a doubtful man or a doubtful female." I think this notion of doubtful gender requires more research.

## NOTES:

- <sup>1</sup>The tumtum appears 17 times in the Mishna; 23 times in the Tosefta; 119 times in the Babylonian Talmud; 22 times in the Jerusalem Talmud and hundreds of times in midrash, commentaries and halacha. The androgynos appears 21 times in the Mishna; 19 times in the Tosefta 109 times in the Babylonina Talmud and countless times in midrash and halacha.
- <sup>2</sup>Jacob Neusner translates the androgynos as a person "bearing the traits of both sexes" and the tumtum as a person "bearing unclear sex traits." These definitions are clearly derived from the Talmud's understanding of the tumtum and androgynos, however Neusner never discusses the problematic anachronism implied by importing these definitions into a much earlier Tannaitic text. Neusner's commentary to the Mishna is the most complete modern commentary, but it never discusses the significance of the tumtum and androgynos. See Jacob Neusner *The Mishna: A New Translation* (New Haven and London: Yale University Press, 1988 and *A History of the Mishnaic Law of Agriculture-Purities* (Leiden: E.J. Brill, 1980.) See also Hanoch Albeck, *The Mishna with Commentary* (Tel Aviv: Dvir Publishing House, 1988); Herbert Danby, *The Mishna* (London: Oxford University Press, 1933)
- <sup>3</sup>Neusner has written extensively on both Tannaitic gender and taxonomies without seriously considering the significance of the tumtum and androgynos. See Jacob Neusner, *Androgynous Judaism: Masculine and Feminine in the Dual Torah* (Macon, Georgia: Mercer University Press, 1993) and *Rabbinic Categories: Construction and Comparison* (Leiden: E.J. Brill, 2005)
- <sup>4</sup>This position is most clearly associated with Foucault and Butler, but has come to frame much of the contemporary discourse surrounding gender. See Michel Foucault *The History of Sexuality*, trans Robert Hurley (New York: Vintage Books, 1985); Judith Butler *Gender Trouble: Feminism and the Subversion of Identity* (New York and London: Routledge, 1990)
- <sup>5</sup>See Denise Grady "Sex Test." *Discover* (June 1992): 78-82. For a fuller critique of the Olympic sex testing process see Anne Fausto-Sterling, *Sexing the Body: Gender Politics and the Construction of Sexuality* (New York: Basic Books, 2000): 1-5, 113.
- <sup>6</sup>Current medical guidelines consider a clitoris of .9 centimeters or less "acceptable", while a penis can range between 2.25 and 4.5 centimeters. Those whose genitals fall in the gray area between these ranges are usually subject to intrusive medical interventions. For a fuller discussion of genital measurement guidelines see Suzanne Kessler, *Lessons from the Intersexed*, (New Brunswick, New Jersey and London: Rutgers University Press, 2002): 43
- <sup>7</sup>Since 1993 The Intersex Society of North America has been working to raise the profile of the long-term impacts of enforced genital surgeries and subterfuge in the care of intersex infants. "The Intersex Society of North America (ISNA) is devoted to systemic change to end shame, secrecy, and unwanted genital surgeries for people born with an anatomy that someone decided is not standard for male or female." For more information [www.isna.org](http://www.isna.org).
- <sup>8</sup>See Judith Plaskow, "Dismantling the Gender Binary Within Judaism: The Challenge of Transgender to Compulsory Heterosexuality" (forthcoming)
- <sup>9</sup>Rav Eliezer Waldenberg offers a much quoted halachic ruling on sex reassignment surgery for intersex individuals in *Tzitz Eliezer*, 10:25-26
- <sup>10</sup>For a discussion of the female body as the Other of rabbinic texts see Charlotte Fonrobert, "The Woman as House: Conceptions of Women's Corporeality in Talmudic Literature," in her book *Menstrual Purity: Rabbinic and Christian Reconstructions of Biblical Gender* (Stanford: Stanford University Press, 2000); Cynthia Baker, *Rebuilding the House of Israel: Architectures of Gender in Jewish Antiquity* (Stanford: Stanford University Press, 2002); Miriam B. Peskowitz, *Spinning Fantasies: Rabbis, Gender and History* (Berkeley, Los Angeles and London: University of California Press, 1997)
- <sup>11</sup>Charlotte Fonrobert discusses the tumtum and androgynos within the rabbinic discourse of the gendered body in "Regulating the Human Body: Rabbinic Legal Discourse and the Making of Jewish Gender" (forthcoming, 2006)
- <sup>12</sup>For a fuller discussion of the 19<sup>th</sup> century science of difference and the enforcement of social power see Fausto-Sterling: 30-45
- <sup>13</sup>This position, which is followed by Laqueur and others, is most fully associated with the work of Foucault. See Foucault 1985

- <sup>14</sup>See Galen, *De semine*, 2.1, in *Opera omnia*, ed. William Teffler (Philadelphia: Westminster Press, 1955)
- <sup>15</sup>Cited in Laqueur, Thomas., *Making Sex: Body and Gender from the Greeks to Freud* (Cambridge: Harvard University Press, 1992): 6
- <sup>16</sup>For this case study and other studies of early modern and modern hermaphrodites see Alice Domurat Dreger, *Hermaphrodites and the Medical Invention of Sex*, (Cambridge: Harvard University Press, 1998): p. 88
- <sup>17</sup>Cited in *ibid.*: 90
- <sup>18</sup>As discussed by Fausto-Sterling: 30
- <sup>19</sup>For a version of Money's theories of gender geared toward a popular audience see John Money and Patricia Tucker, *Sexual Signatures: On Being a Man or a Woman* (Boston: Little Brown and Co., 1975)
- <sup>20</sup>Feminist affirmations of Money's version of Reimer's story include C. Travis and C. Offir, *The Longest War: Sex Difference in Perspective*, (New York: Harcourt and Janovich, 1977); S. Weitz, *Sex Roles: Biological, Psychological and Social Foundations* (New York and London: Oxford University Press, 1977)
- <sup>21</sup>*Time Magazine*, Jan 8, 1973
- <sup>22</sup>Examples of the feminist use of the distinction between sex and gender to dismantle patriarchy include Gayle Rubin, "The Traffic in Women: Notes on the 'Political Economy' of Sex." In *Toward an Anthropology of Women*, ed Rayna R. Reiter, 157-210, (New York: Monthly Review Press, 1975) and Luce Irigaray, *The Sex Which Is Not One*, trans. Catherine Porter with Carolyn Burke, (Ithaca: Cornell University Press, 1985)
- <sup>23</sup>For a full critique of Money's representation of Reimer's story see Milton Diamond, "Sexual Identity, Monozygotic Twins Reared in Discordant Sex Roles and a BBC Follow-up", *Archives of Sexual Behavior* (vol. II: 2, 1982). Diamond is a sexologist who believes that both sex and gender are hard-wired in anatomy and critiques Money's flexible view of gender. Even though he is pitted against Money in the nature vs. nurture gender wars, these two heterosexual male researchers share some key views about the inherently dimorphic nature of genitals, even though they disagree about gender. They also agree that the ultimate goal of sex reassignment is to produce heterosexual, gender conforming individuals, they just disagree about whether or not Reimer was a successful example of this goal.
- <sup>24</sup>See Kessler, Suzanne J. and Wendy McKenna, *Gender an Ethnomethodological Approach* (Chicago: University of Chicago Press, 1985)
- <sup>25</sup>The social visibility of eunuchs and other men without penises existed in multiple other cultures. For a fuller discussion see Scholtz, Piotr O., *Eunuchs and Castrati: A Cultural History* (Princeton: Markus Wiener Publishers, 1999)
- <sup>26</sup>Reimer's story (up to the late 1990s) is told by John Copalinto in *As Nature Made Him: The Boy Who Was Raised as a Girl* (New York: Harper Collins, 2000)
- <sup>27</sup>For more on the care of intersex individuals and the political resistance to enforced surgeries see Cheryl Chase "Corrective Surgery Unnecessary: Reply to 'Is It a Boy or a Girl?'," *Johns Hopkins Magazine* 46:1 (Feb. 1994): 6-7
- <sup>28</sup>Cited in Kessler, 1998: 26
- <sup>29</sup>Cited in *ibid.*: 28
- <sup>30</sup>The most (in)famous example of feminist rage towards trans expression is Janice G. Raymond, *The Transsexual Empire: The Making of the She-Male* (New York: Teachers College Press, 1994). Raymond was responded to by Sandy Stone in "The 'Empire' Strikes Back: A Posttranssexual Manifesto" in *Body Guards: The Cultural Politics of Gender Ambiguity*, ed. Julia Epstein and Kristina Straub (New York: Routledge Books, 1993): 280-304. The debate between Raymond and Stone encapsulates the tension between second-wave feminists and gender queers in the late 1980s and 1990s. I believe that the persistent subjugation of all varieties of the non-masculine heterosexual male, indicates that an alliance between women and gender non-conforming people of all sorts makes political sense in the 21<sup>st</sup> Century. Despite a few noticeable hold-outs, like the annual Michigan Women's Festival, increasingly the women-only safe spaces that 1970s and 1980s feminists fought to create in order to provide a much needed sanctuary from a male dominated world and male violence, are being transformed into "women and trans" spaces.
- <sup>31</sup>For information on the DSM IV and "Gender Identity Disorder" as well as the movement to stop viewing trans expression as pathological see [www.transgender.org](http://www.transgender.org).
- <sup>32</sup>Cited in Butler 1990: 1
- <sup>33</sup>For an early example of this position see Witting, Monique "One is Not Born a Woman", *Feminist Issues* 1 / 2 (Winter, 1981)

- <sup>34</sup>The image of a gender and power pyramid is described in depth in Kate Bornstein, *My Gender Workbook: How to become a real man, a real woman, the real you or something else entirely*, (New York and London: Routledge), 1998
- <sup>35</sup>For an in depth rabbinic argument about whether or not "ben" should be read as gender specific or not see B. Talmud Kiddushin 29a. What is interesting about this discussion is that the rabbis seem to read the word "ben" as gender-neutral when it fits the needs of normative practice in their times and as male when that is what is needed in order for a given text to harmonize with normative practice. In other words, the conclusion as to whether "ben" is going to be read as all gender or male only seems to be a foregone conclusion of the rabbis and the texts are merely arranged to fit within the agenda of established practice.
- <sup>36</sup>The subject of Greek models for sexual embodiment that were produced concurrently to Tannaitic texts deserves more attention and in a longer work I would like to return to this issue. See Maud Gleason, *Making Men: Sophists and Self-Presentation in Ancient Rome* (Princeton, N.J.: Princeton University Press, 1998): 56.
- <sup>37</sup>In an important forthcoming article Judith Plaskow discusses the significance of the tumtum and the androgynos for 21<sup>st</sup> century gender liberation, however she fails to distinguish between Tannaitic and Amoraic texts. See *Dismantling the Gender Binary Within Judaism: The Challenge of Transgender to Compulsory Heterosexuality* (forthcoming).
- <sup>38</sup>Nahum Glatzer, ed., *Franz Rosenzweig: His Life and Thought* (New York: Schocken Books, 1961): 62-63
- <sup>39</sup>See Kessler 2002: 100
- <sup>40</sup>The significance of the phallus in rabbinic Judaism has been best explicated by Daniel Boyarin. See Daniel Boyarin, "(Re)Producing Men: Constructing the Rabbinic Male Body" in *Carnal Israel: Reading Sex in Talmudic Culture*, (Berkeley, Los Angeles and Oxford: University of California Press, 1993): 197-226
- <sup>41</sup>It is a valid question (but beyond the scope of this work) to wonder to what extent the rabbis were representative of their cultural world, in certain cases the Mishna and Tosefta seem to be descriptive of their society and in others prescriptive and quite distanced from reality.
- <sup>42</sup>Levkovitz's position promotes a highly dichotomous view of Jewish law and tradition. His article also uses language that is degrading and disrespectful to the trans community. He uses a number of verbal formulations that trans activists and advocates have universally rejected. Levkovitz uses the "wrong" pronouns that refer to the birth assignment as opposed to the chosen gender of trans individuals; he uses the expression "a transgender" as opposed to "a transgender person"; "sex change" as opposed to "sex reassignment" surgery; and "process" as opposed to "transition." Levkovitz clearly did not consult with any trans individuals or their allies in the composition of this work. It is worth asking why a liberal publication produced by Reform Judaism which is ostensibly welcoming to lesbian, gay, bisexual and transgender (LGBT) individuals published an article that was framed in this way. See Alon Levkovitz, "A Halachic Approach to Transgender" *CCAR Journal* (Fall 2005): 84-93.
- <sup>43</sup>See Alfred Cohen, "Tumtum and Androgynos", *Journal of Halacha & Contemporary Society XXXVIII* (Fall 1999)
- <sup>44</sup>Ibid: published electronically, <http://www.daat.ac.il>
- <sup>45</sup>See Appendix 3 for a complete translation and notes to Mishna Bikkurim 4.
- <sup>46</sup>For a fuller discussion on the relationship between gender transitioning and travel narratives, as well as the problematic use of colonial language for travel and tourism in gender narratives see Judith Halberstam "Transgender Butch: Butch/FTM Border Wars and the Masculine Continuum" in *Female Masculinity* (Durham: Duke University Press, 1998), 141-173
- <sup>47</sup>Prosser, Jay, *Second Skins: The Body Narratives of Transsexuality* (New York: Columbia University Press, 1998): 205
- <sup>48</sup>Preves, Sharon E., *Intersex and Identity: The Contested Self* (New Jersey: Rutgers University Press, 2005): 87

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