

## II. DOSSIÊ

### SEX AND GENDER AND SEX

*Stephanie Lynn Budin*<sup>1</sup>

#### ABSTRACT

This article challenges some of the prevailing notions pertaining to non-binary sex and fluid gender in modern academia. Beginning with a look at the history of the sex vs. gender debate, it turns to the study of genetics to determine how binary sex is, overturning many current beliefs about the biological bases of multiple sexes. It then considers four case studies of so-called fluid gender in world history—Mesopotamian women as men, Albanian *virgjinëshë*, and Indian devadāsīs and *sādhini*—which show that these apparently “male women” never lose their feminine gender in spite of provisional male prerogatives. In all cases, it is their sexuality that ties them to their gender. The article ends with a consideration of how unreflective adoption of non-binary sex and fluid gender undermines the goals of feminism.

#### KEYWORDS

Feminism; genetics; gender; *virgjinëshë*; devadāsī.

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<sup>1</sup> Stephanie Lynn Budin is an ancient historian who focuses on gender, religion, sexuality, and iconography in ancient Greece and the Near East. Her published works include *Women in Antiquity: Real Women Across the Ancient World* (Routledge 2016), *Artemis* (Routledge, 2015), *Images of Woman and Child from the Bronze Age* (Cambridge University Press, 2011), *The Myth of Sacred Prostitution in Antiquity* (Cambridge University Press, 2008), and *The Origin of Aphrodite* (CDL Press, 2003), as well as numerous articles on ancient religion, gender, and iconography. She has lectured throughout North America, Europe, the Near East, and Japan.

## *1. Introduction*

We have gone insane about sex and gender. By “we” I mean academes and researchers in the Humanities and Social Sciences. The problem is that we have so totally embraced third wave feminist and queer theory notions of non-binary sex, fluid gender, and non-material bodies in the name of political expediency that we have forsaken science, data, and reality. In the various fields of ancient studies (Assyriology, Biblical Studies, Classics, Archaeology, *inter alia*) specifically there is considerable interest in “ungendering” the ancient world—eschewing “modern,” “Western” notions of binary sex and gender so as to come to a better understanding and proof of theories that “biological” sex is merely conscripted gender, which itself is a construct, a performance, really. The ancient world was populated not by “men” and “women,” but inscribed bodies (however defined, if defined at all) of at least five or more sexes who performed any of a host of gender roles.<sup>2</sup> To suggest otherwise is to confess one’s naïveté, or worse, one’s “phobias” (homophobia, transphobia, etc.).

This essay is a small attempt to correct some of this. After a consideration of where the study of sex and gender currently stands in the academy, I consider two topics of obsession/taboo in feminist/gender/queer studies: the binary nature of biological sex and what it actually means for gender to be “fluid.” For this latter point, I look at four examples—one ancient, three modern—of females who become social males in their societies. As the evidence for all of these indicates, the fluidity of their gender has no effect on the constancy of their biological sex. This fact is highlighted by the next topic to which I turn: the role of sexuality in the expression of gender and sex. Not heterosexuality or homosexuality; just sexuality at all, full stop. It turns out that women (they do exist!) are far more constrained by sexuality in their gender constructions than men, and not necessarily in terms of reproduction. Sex makes gender constant.

Finally, I turn to a consideration of the aims of second wave feminism. As will be noted below, the effort to do away with the scientific, biological “fact” of (binary) sex emerged from a desire to remove biological essentialism from the arsenal that could be

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<sup>2</sup> To offer just a brief handful of examples ranging in discipline from prehistoric archaeology to Assyriology, Egyptology, Cypriot studies, Near Eastern archaeology, Aegean prehistory, and Classics: Knapp & Meskell (1997); Hitchcock (2000); Bahrani (2001); Asher-Greve (2002 and 2018); Ribeiro (2002); McCaffrey (2002); Bolger (2003); Talalay (2005); Lyons (2007); Dowson (2008); Bailey (2013); Dujnic Bulger & Joyce (2013); Marshall (2013); Cifarelli (2017); Helle (2018).

used against women in their struggle for equal rights. But in so doing, the theorists have functionally denied the existence of women (and, for that matter, men). This will not help women (or men). Denial of a problem does not make it go away.

## 2. *Where Are We and How the Hell Did We Get Here?*

The distinction between biological sex and social/cultural gender goes back at least to the 1950s. Many would argue that Simone de Beauvoir's statement "On ne naît pas femme: on le devient/One is not born a woman: one becomes one" (De Beauvoir, 1989, p. 267) was the original articulation of this notion in feminist studies (Zsolnay, 2018, p. 464; Masterson, Sorkin Rabinowitz, Robson, & Llewellyn-Jones, 2015, p. 3; *inter alia*). However, as Toril Moi has argued, this statement refers not to the oppressive imposition of gender attributes typically assumed, but is a reference to de Beauvoir's existentialist philosophy, whereby one *achieves* one's self-identity. It is technically positive (Moi 1999, p. IV).

Perhaps more in line with the modern dichotomy of sex/gender was an article published by John Money, Joan Hampson, and John Hampson in 1957, "Imprinting and the Establishment of Gender Role," wherein the psychologist (Money) and two physicians studied the effects of early and disrupted gender identity on hermaphroditic humans, thus on individuals whose biological sexual identity could be seen as socially malleable. As they discovered:

On the one hand, it is evident that gender role and orientation is not determined in some automatic, innate, or instinctive fashion by physical, bodily agents, like chromosomes, gonadal structures, or hormones. On the other hand, it is also evident that the sex of assignment and rearing does not automatically and mechanistically determine the gender role and orientation... Rather, it appears that a person's gender role and orientation becomes established, beginning at a very early age, as that person becomes acquainted with and deciphers a continuous multiplicity of

signs that point in the direction of his being a boy, or her being a girl. (Money et al., 1957, pp. 334–335)

This basic dichotomy lasted well into the 1970s and the rise of second wave feminism. As discussed by Ann Oakley in her 1972 book *Sex, Gender, and Society*:

‘Sex’ is a word that refers to the biological differences between male and female: the visible difference in genitalia, the related difference in procreative function.

‘Gender’ however is a matter of culture: it refers to the social classification into ‘masculine’ and ‘feminine.’ (Oakley, 1972, p. 16)

Gayle Rubin offered a similar definition in her seminal work “The Traffic in Women: Notes on the ‘Political Economy’ of Sex” first published in 1975: “As a preliminary definition, a ‘sex/gender system’ is the set of arrangements by which a society transforms biological sexuality into products of human activity, and in which these transformed sexual needs are satisfied.” (Rubin, 1990, p. 34)<sup>3</sup> Basically, *sex* pertained to the biological, the body, while *gender* pertained to the social and psychological (e.g. “I know I’m a girl so I act like a girl.”).

Problems began to manifest in the 1990s. At one level, we simply got sloppy. People in all disciplines, inside the academy or not, started to use *sex* and *gender* interchangeably. Thus, as noted by Walker & Cook in 1998:

The term *gender* began to be commonly used in the biomedical literature in the early 1970s by researchers interested in the relationship between a person’s sex as indicated by his or her karyotype and the person’s social identity... However, much of the recent popularity of the term *gender* appears to reflect a lack of understanding of the significance of the sex/gender distinction. With increasing frequency, *gender*

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<sup>3</sup> See more recently Walker & Cook (1998, p. 255): “*Sex* refers to the anatomical or chromosomal categories of male and female. *Gender* refers to socially constructed roles that are related to sex distinctions.”

is being used to refer to an animal's biological identity (in other words, its sex).

(Walker & Cook, 1998, p. 256)

They go on to provide data on the “slippage” of these terms in the biomedical data from 1966–1997. Whereas from 1966–1974 only 3.39% of articles use *sex* and *gender* as synonyms, by 1990–1996 the percentage increased to 56.6 (Walker & Cook, 1998, p. 259). Nowadays one hears about how doctors “assign a child's sex/gender at birth.” (Asher-Greve, 2018, pp. 19 and 26)<sup>4</sup> Not only does the doctor NOT assign a sex (which happened *in utero*), she cannot possibly assign a *gender* as she has no way of knowing how the child will develop in terms of personality and personal relationships, the core foundations of *gender*.

By the 1990s two additional factors came to complicate the sex/gender dichotomy. One was the addition of sexual orientation, such that it became a determining factor in the establishment of one's gender. Thus, “[o]verlaid on that set of binaries was taken, by the dominant culture, to be that of sexual orientation (when it was discussed at all) based on the sex (or is that the gender?) of the desired person.” (Masterson et al., 2015, p. 3). Basically, the sex:biology/gender:culture axis became a grid trying to incorporate differences for hetero- and homosexuality. Needless to say, with so many inputs, binary forms appeared unsatisfactory.

A second complicating factor was a misunderstanding of the medical community's research on sexual dimorphism. Studies pertaining to how different, say, male and female brains or hormones are (in humans or otherwise), or male vs. female psychology, or how sexually dimorphic ancient philosophers such as Aristotle believed males and females to be, were translated by theorists into attestations that sex itself was not binary at the chromosomal or genital level. Because both males and females, say, contain testosterone, have two legs (normally), and can display aggression, they cannot be seen as separate categories (in spite of the gametes they produce).<sup>5</sup>

By the time third wave feminism was hitting its stride third wave feminists were arguing for the complete collapse of the sex/gender dichotomy, with gender taking the

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<sup>4</sup> Money et al. (1957), *do* refer to such sex/gender assignments, but they are discussing hermaphrodites in the 1950s, when such biology was deemed “correctable.” It is hardly the norm.

<sup>5</sup> See especially Asher-Greve (2018) on this.

lead. That is to say: Independent, biological, physical sex did not really exist, it was merely a projection of gender. Much of the argument for this originally came from Judith Butler. In her 1990 publication *Gender Trouble* she argued that:

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. ... As a result, gender is not to culture as sex is to nature; gender is also the discursive/cultural means by which “sexed nature” or “a natural sex” is produced and established as “prediscursive,” prior to culture, a politically neutral surface *on which* culture acts... Indeed, sex, by definition will be shown to have been gender all along. (Butler, 1990, pp. 9–11)

Her follow up in her 1993 book *Bodies that Matter*:

If gender is the social construction of sex, and if there is no access to this “sex” except by means of its construction, then it appears not only that sex is absorbed by gender, but that “sex” becomes something like a fiction, perhaps a fantasy, retroactively installed at a prelinguistic site to which there is no direct access. (Butler, 1993, p. 5)

Butler was quickly followed by other third wave feminists, such as Moira Gatens and Elizabeth Grosz. Per Gatens:

Significantly, the sexed body can no longer be conceived as the unproblematic biological and factual base upon which gender is inscribed, but must in itself be recognized as constructed by discourses and practices that take the body both as their target and as their vehicle of expression. Power is not then reducible to what is imposed, from above, on naturally differentiated male and female bodies, but is

also constitutive of those bodies, in so far as they are constituted as male and female.

(Gatens, 1996, p. 70)

And according to Grosz:

These differences may or may not be biological or universal. But whether biological or cultural, they are ineradicable.... It is in any case not clear how one can eliminate the effects of (social) gender to see the contributions of (biological) sex. The body cannot be understood as a neutral screen, a biological *tabula rasa* onto which masculine or feminine could be indifferently projected. (Grosz, 1994, p. 18)

Such notions entered the realm of archaeology in 1991 with the publication of Jarl Nordbladh and Tim Yate's article "This Perfect Body, this Virgin Text: Between Sex and Gender in Archaeology". Here they argued:

Archaeologists writing about gender have assumed sex is an unquestionable, biological fact, the background to history, the synchrony against which the diachrony is played out. The position sex-gender would thus be equivalent to that of nature-culture. But *biology is also a social and cultural construct*, and demonstrates that the binary framework of the categories male-female is itself not originary. More categories than two do exist... and may be the subject of cultural elaboration. In medicine this third category — strongly hidden in our own society — is called the class of abnormalities, into which are collected all those who do not directly fit the ideal sex stereotypes... Modern medical science has developed several complicated methods for the determination of sex. Nevertheless, none of these gives a 100% division into separate classes. Several exceptions to the binary structure of sex have been noted. (Nordbladh & Yates, 1991, p. 224, my emphasis)

The division between sex and gender is, therefore, no longer guaranteed by some external reality, a penis or a vagina: it is itself the abstraction of a cultural system brought about within an historical mode of the reality principle, determined by a third term that allows them to divide and separate, while at the same time binding these differences to those ‘external’ discourses that are built up around them... The notion of ‘males’ and ‘females’ outside of the symbolic system presupposes homogeneous subjects, ‘ideal’ types that are anti-historical and indeed need entertain no relationship to history. (Nordbladh & Yates, 1991, pp. 233–234)

Bringing the argument into the medical, Ann Fausto-Sterling argued that, “Our bodies are too complex to provide clear-cut answers about sexual difference. The more we look for a simple physical basis for ‘sex,’ the more it becomes clear that ‘sex’ is not a pure physical category” (Fausto-Sterling, 2000, p. 4).

By the time Anne Minas Belmont was writing her 1993 work *Gender Basics: Feminist Perspectives on Women and Men* she could actually complain (with bizarrely little understanding of past usages), “Thus the word ‘sex’ is coming to be restricted to biological, or genetic male/female differences, leaving its *official synonym*, ‘gender,’ free to drift toward meaning those differences that have social causes” (Minas Belmont, 1993, p. 4, my emphasis). Likewise, in her 1996 article “Fleshing Gender/Sexing the Body: Refiguring the Sex/Gender Distinction,” Nancy Tuana cried, “Over a decade ago I argued that the distinction between sex and gender was pernicious and advocated that feminists refuse its polarization” (Tuana, 1996, p. 54). It was only a matter of time before the collapse entered the realm of ancient studies. In her 2005 article “The Gendered Sea: Iconography, Gender, and Mediterranean Prehistory” Laura Talalay argued that, “While these reductive definitions allow archaeologists to parse their research into tidy categories — sex is biologically determined, gender is socially constructed — the sex:gender paradigm is, in fact, no longer well supported” (Talalay, 2005, p. 131).

Why was (and is) there so much vitriol against the notion of biological sex as manifest in the physical body? Two reasons: a change in the notion of “physical body” and the matter of political expediency. Concerning the former, theorists specifically started to argue that the physical body, the complex organism through which you, I, and



all life forms experience life, does not actually exist. For them, the body became some kind of inscribed space that received social projections. As noted by Fausto-Sterling, “feminist theorists view the body not as essence, but as a bare scaffolding on which discourse and performance build a completely acculturated being” (Fausto-Sterling, 2000, p. 6). For Tuana:

[W]e also need to attend more carefully to the fact that in talking about male bodies or female bodies we refer neither to a biological entity nor to meaning, nor even to a combination of the two. We refer to a material-semiotic matrix, an *intra-active* process that will be mischaracterized as long as we attempt to understand it through the false dichotomy of sex/gender or through the related binarisms of biology/culture, essential/constructed. (Tuana, 1996, p. 57)

Likewise for A. Bernard Knapp and Lynn Meskell writing in 1997, “An embodied body represents, and is, a lived experience where the interplay of irreducible natural, social, cultural and psychical phenomena are brought to fruition through each individual’s resolution of external structures, embodied experience, and choice” (Knapp & Meskell, 1997, p. 186). And likewise, “The body has become the site of mapped and inscribed social relations, specifically regarding displays and negotiations of power as well as gender dynamics” (Knapp & Meskell, 1997, p. 184).

It also turned out that bodies were politically inexpedient for the aims of feminism.<sup>6</sup> If any difference could be quantified between men and women, then this difference could be summoned to justify the subordination of women. Again to quote Tuana, “In continuing to make a dichotomy between nature/nurture, gene/environment, matter/language, feminist theorists fail to realize the radical potential of their position. *We reify the dichotomy that will be used against us.*” (Tuana, 1996, p. 62, emphases in original) Likewise Fausto-Sterling, who criticized second wave feminists for acknowledging biological differences, “[i]n ceding the territory of physical sex, feminists left themselves open to renewed attack on the grounds of biological difference” (Fausto-

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<sup>6</sup> What Klinge called “early feminist disgust of biology because of the abuse made of biology to legitimize social gender roles.” (Asher-Greve, 2018, p. 22)

Sterling, 2000, p. 4). Slightly less overt but just as political is Yvonne Marshall's take on the relationship between personhood and the body:

It is a truism to say we employ our bodies in the process of becoming persons. But as feminists have been at pains to establish, this does not mean there is any necessary or direct relationship linking a particular kind of body or body part with a particular form of person or personhood. (Marshall, 2013, pp. 204–205)

And so the biological, the physical, was drummed out of the academy by third wave feminists on the grounds that it worked against their agenda.<sup>7</sup> Physical *sex* was subsumed by social *gender* so that we might claim that any physical, sexual difference between men and women was merely a social construction created by a patriarchy falsely to justify the oppression of women.

When this was not enough we decided to get rid of the categories of “man” and “woman” altogether.

### 3. (Non-)Binary Sex

One of the hottest trends in current feminisms, queer theory, gender studies, and trendy hipsterdom generally is the strict denial of binary sex (remarkably not to be confused with fluid gender: See the next section of this essay). The human species is not populated by females (girls, women) and males (boys, men). Rather there is a range, a continuum of sexes.

The idea seems to have gotten its start in 1993, when Fausto-Sterling published the article “The Five Sexes: Why Male and Female Are Not Enough” in *The Sciences*. Here she wrote about no fewer than three categories of humans who were not standard XX females or XY males, but varieties of intersex. Thus, the “herm” (a true hermaphrodite with one testis and one ovary), the “merm” (with a testis and some aspects of the female

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<sup>7</sup> This actually was not a problem for second wave feminists. As noted by Michelle Zimbalist Rosaldo and Louise Lamphere in their “Introduction” to *Woman, Culture, and Society*, “Surely no one would question that the sexes differ in biological constitution... But observation of physical differences itself tells us little about the social world we live in; for humans, biology becomes important largely as it is interpreted by the norms and expectations of human culture and society.” (p. 4)

genitalia), and the “ferm” (with ovaries and some aspects of male genitalia) (Fausto-Sterling, 1993, p. 21). These, together with “true” males and females, would account for her five sexes. But perhaps even these were not enough,

For biologically speaking, there are many gradations running from female to male; and depending on how one calls the shots, one can argue that along that spectrum lie at least five sexes—and perhaps even more... Indeed, I would argue further that sex is a vast, infinitely malleable continuum that defies the constraints of even five categories. (Fausto-Sterling, 1993, p. 21)

Although statistics were rather difficult to come by—this not being the sort of information one put on a job application, say—Fausto-Sterling quoted John Money of Johns Hopkins University, a specialist in congenital organ defects (see above), that intersexed individuals may constitute up to 4% of lives births (Fausto-Sterling, 1993, p. 21). Four people out of every one hundred you know is probably neither male nor female.

The academy went wild. Speaking for feminists Tuana declared, “Calling us back to the ‘facts’ of biology, Fausto-Sterling reminds us of intersexuality. She calls attention to the fact that intersexuals may constitute as many as 4 percent of births, yet their existence has been incredibly well erased by current medical practices and completely denied by Western legal systems” (Tuana, 1996, p. 64). All new approaches emerged to unscribe sex and gender from ancient depictions of humans. For Talalay:

What is clear from recent scholarship is that we can no longer think of these early images in simple sexual terms — figures may depict males, females, perhaps some kind of “third gender” hybrids, intentionally ambiguous representations, or even images that moved in and out of traditional sexual categories. Early Mediterranean taxonomies appear to have embraced multiple or ambiguous genders, a kind of

general messiness that rubs against the grain of Western discourse. (Talalay, 2005, p. 146)<sup>8</sup>

For Douglas Bailey:

However, in light of what is now *uncontroversial* anthropological, sociological, and other social science research, the assumption that concepts such as male and female were static across time and space is unsupportable. Our error.... has been to oversimplify the ways in which people thought about identity and indeed about what it meant to be human... Their [figurines] use rests on the acceptance of a third assumption: that there was something that was conceived of as “female” and another thing understood as “male” in the European Neolithic. This assumption is also false. Having recognized that the majority of figurines have neither male nor female body parts, but are asexual, sexless, of perhaps most accurately “corporeal,” it is less easy to accept that there were clear and stable Neolithic concepts of male and female. (Bailey, 2013, p. 248, my emphasis )

Archaeology merged with genetics merged with feminist theory to create whole new understandings of human biology:

From such a standpoint, an individual’s sex would not have to conform to a predetermined definition or result in specific behaviours; instead sex and sexuality are positioned upon a spectrum unbounded by prediscursive categories... Taking the argument into the realms of the cellular, it has been argued that not even the usual genetic markers of sex are still accepted as indicating a clear biological distinction between the sexes. More and more evidence is summoned which shows that there are variations on the commonly accepted XX = female/XY = male

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<sup>8</sup> See also Asher-Greve (2002, p.12); McCaffrey (2002, *passim*); Talalay (2000, p. 9).

paradigm, including XX males and XY females, and individuals with XXY, XXXY, and XXXXY who display male or hermaphroditic attributes.... Given this evidence, it is impossible to make a binary classification on the basis of the Y chromosome, since it cannot always explain an individual's set of sexual organs... Individuals cannot be divided simply into binary groupings, because there are *so many variations* on this theme. (Knapp & Meskell, 1997, pp. 186–187, my emphasis.)

Well, actually: No. In a follow-up article written with colleagues in 2000, the authors began with a confession that in her 1993 article “Fausto-Sterling cited a figure attributed to John Money that the frequency of intersexuality might be as high as 4% of live births, but Money responded that he never made such a claim” (Blackless et al., 2000, p. 151). So, the figure is groundless.<sup>9</sup> Blackless et al. then intended to rectify the lack of statistics pertaining to the number of intersexed individuals in said article, where they came to the conclusion that intersexed individuals account for 1.728% of live births (2000, p. 159). So, rather than 4 friends out of 100 being intersex, between one and two are. Fausto-Sterling supported this claim in her book-length study published the same year—*Sexing the Body*.

Again, the academy fell in love, and with it popular culture. In her review of the book psychologist Celia Moore claimed “Most people believe that there are only two sex categories... Yet 17 out of every 1,000 people fail to meet our assumption that everyone is either male or female. This is the approximate incidence of intersexuals: Individuals with XY chromosomes and female anatomy, XX chromosomes and male anatomy, or anatomy that is half male and half female” (Moore, 2000, p. 554).

Well, actually: No. The problem is that in the book and their article Fausto-Sterling et al. brought together a host of categories of genetic irregularities pertaining to sex chromosomes and their expression on/in the human body, only a tiny sub-category of which actually lead to a state of intersexuality (see below). Once these non-intersex-

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<sup>9</sup> It doesn't help that in her 2000 book *Sexing the Body*, Fausto-Sterling herself said of her 1993 article, “I'd intended to be provocative, but I had also been writing tongue in cheek, and so was surprised by the extent of the controversy the article unleashed.” (Fausto-Sterling, 2000, p. 78)

leading irregularities were removed from the statistics, the percentage of intersex live births dropped to 0.018 (Sax, 2002, p. 174).

### What's Actually Happening in There?

Humans reproduce sexually, meaning that the gametes of two separate organisms must combine to form a new member of the species. The cells formed via meiosis that combine to form a new human are *sperm*, which contain 23 chromosomes (22 autosomes plus an X or Y chromosome) with minimal cytoplasm; and *eggs*, which contain 23 chromosomes (22 autosomes plus an X chromosome) and enough cytoplasm to sustain the new human until it can receive nutrients and gasses from the mother via the umbilical cord. The sperm penetrates the egg to fertilize it, meaning that the two sets of 23 chromosomes join to form a new human with the standard 43 chromosomes, assuming everything goes right (which is not always the case, as we shall see). Sperm is produced by males, who have X and Y chromosomes; eggs are produced by females, who have only X chromosomes. At the level of gametes, humans are quite binary.

It is first and foremost the X and Y chromosomes that code for whether a human will be female or male, although the genes on other chromosomes are also necessary for creating the full sexual phenotype (bodily expression). Furthermore, the genes on the X chromosome perform several functions other than just sex expression, including the formation of red blood cells and the regulation of blood clotting, regulation of copper levels in the body, and proper kidney, muscle and nerve functions. Basically, a human cannot exist without at least one X chromosome (Rodden Robinson, 2010, p. 69). By contrast, the tiny Y chromosome hardly has any genes at all, more than 95% of which code for the formation of male phenotype (WHO, 2014).<sup>10</sup>

After fertilization, the human embryo begins in an *indifferent stage*, when the sex is not yet phenotypically expressed. In the fourth week of development the embryo develops a “genital ridge” near the kidneys; in the seventh week this becomes the “bipotential gonad”, which can form either testes or ovaries. If the embryo contains at least one X chromosome and no Y, two genes work together to form ovaries: the DAX1 gene on the X chromosome and WNT4 on chromosome 1. The ovaries then produce

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<sup>10</sup> As my husband jokingly put it in computer terms, Y is not code; Y is a patch.

estrogen which turns on other genes to form the female phenotype. If a Y chromosome is present, its gene called Sex-determining Region Y (aka: SRY)—also called testis-determining factor (TDF)—turns the bipotential gonad into testes in the 10<sup>th</sup> week of pregnancy. These produce testosterone, which induce the formation of a male phenotype (WHO, 2014; Rodden Robinson, 2010, pp. 69–71). So, generally speaking, the combination of two X chromosomes (one from the mother, one from the father) yields a phenotypic female. The combination of X and Y (X from mom, Y from dad) yields a male.

Two additional data are necessary to know. First, as noted above, the human body cannot develop without an X chromosome. In the absence of a Y chromosome (and sometimes in the presence of one—see below) the human body will develop as female (Wiener, 1999, n.p.). There is no such thing as a sex-neutral human; it is a genetic impossibility. Second, a gene on the X chromosome called X Inactive-Specific Transcript (or XIST for short) turns off all but one X chromosome in every cell that has more than one. So, in an XX female for example, only the genes from one of those Xs actually manifest, while the genes on the other X remain dormant (Rodden Robinson, 2010, pp. 74–75). Pay attention: This is important.

Theoretically, then, sex should easily be binary: Two types of humans produce two types of gametes that produce two types of humans. However, variations do occur, variations that have lead some biologists and many theorists and scholars of antiquity and otherwise to argue that sex is not so much binary as on a continuum. It is these variations that induced Blackless et al. to argue that the number of intersex humans (those both male and female, rather than either) constitutes up to 2% of live births (down from Fausto-Sterling's original 4%).<sup>11</sup> These are the variations of XXY and XXXY noted by Knapp and Meskell *inter alia* that indicate that the world is not populated by XX females and XY males.

Such genetic variations do, of course, exist. **However, the vast majority do not affect the phenotypic sex of the individual in whom they appear.** Most people with many of these variations *do not even know that they have them.* Let us consider some of these so-called “sex-benders” to see how they do or do not create a continuum of sexes.

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<sup>11</sup> Several genetic disorders induce spontaneous abortion due to unviability of the embryo/fetus, so their numbers are not considered in such statistics.

### Sex Chromosomal Irregularities with Minimal Phenotype Effects

These disorders show continuity between genotype and phenotype. In other words, Y makes males; otherwise you get females.

The most mild of these genetic disorders are called aneuploidy, meaning that too few or too many chromosomes exist. Humans are diploids (chromosomes pair, such as the XX in females), so having only one is a monosomy, having three or more is polysomy. These account for approximately half of all chromosomal anomalies in humans with a total frequency of 1 in 400 live births (WHO, 2014). In terms of sex, the only viable monosomy is Turner's syndrome, whereby a person has only one X chromosome with no pairing (X0). According to the World Health Organization, this occurs in some 1:3000 live births, and those with the disorder are born phenotypically female (WHO, 2014; Rodden Robinson, 2010, pp. 76–77; Sax, 2002, p. 176). These females tend to be shorter than their genetic make-up would otherwise suggest, and they may be subject to certain heart and kidney problems (Rodden Robinson, 2010, p. 77). They are also infertile insofar as they cannot produce viable eggs. However, with egg-donors and in vitro-fertilization, they can sustain pregnancy and give birth to viable offspring (Sax, 2002, p. 176).<sup>12</sup> As noted in a study published in *The Lancet*, “A consistent feature documented in Turner's syndrome is the unambiguous identification with the female sex” (Sax, 2002, p. 176). Nothing here is on a continuum.

On the polysomy side is Klinefelter syndrome, where males have one extra X chromosome (XXY) (WHO, 2014; Rodden Robinson, 2010, p. 76; Sax, 2002, p. 176).<sup>13</sup> This irregularity appears in c. 1:600 live births (WHO, 2014). Other than slightly smaller testes than whatever counts as normal in puberty, the only other manifestation of Klinefelter syndrome is an increased rate of infertility. Otherwise, men with Klinefelter have normal secondary sexual characteristics and normal sexual function. Most cases go undetected unless a cause for infertility is sought (Sax, 2002, p. 176). Other polysomy sex irregularities are XXX females, XYY males, and males with XXXY or even XXXXY.

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<sup>12</sup> Personal anecdote: A family friend married a woman with Turner's Syndrome and they did, in fact, get an egg donor, have *in vitro*, and the wife had a full pregnancy and parturition. If you were to suggest to either of them that the wife was not “really a woman” her 6'2", 300-pound husband would end you in a cold second.

<sup>13</sup> Keep in mind that XIST deactivates the extra X.



XXX (1:1000) (Rodden Robinson, 2010, p. 76) females tend to be taller and slimmer than average for their populations<sup>14</sup>, and may show some mental retardation. Otherwise, their phenotype expresses as female, and they are fertile (Sax, 2002, p. 176) XYY males (1:1000) (WHO, 2014) are phenotypically male and, again, may show some signs of mental retardation. Otherwise, they tend to be taller than average, experience earlier puberty, have regular fertility, and are typically only diagnosed in searches for causes of behavioral problems (Sax, 2002, p. 176). As for cases of XXXY and XXXXY (as well as the previously mentioned XXX and XXY), recall that XIST turns off all but one of these extra X chromosomes. Provided the person reacts to testosterone, the phenotype is male.

An additional, and rare, disorder that affects males is *Persistent Mullerian Duct Syndrome*, where a mutation of either the anti-Mullerian hormone (AMH) or its receptor fails to repress the formation of the Mullerian organs (oviducts, uterus, upper vagina). These organs get in the way internally, stopping the testes from descending completely, a condition called cryptorchidism. (Wiener, 1999, n.p.). These XY individuals have normal external male genitalia, and thus present as normal male phenotype in spite of the internal irregularities.

### Sex Chromosomal Irregularities Affecting Phenotype

Here, phenotype is altered from genotype. XY leads to female phenotype, and, far more rarely, XX leads to male sex attributes. The most drastic bifurcation of genotype from phenotype is *Complete Androgen Insensitivity Syndrome* (CAIS, 0.076:1000) (Blackless et al., 2000, p. 153), an X-recessive disorder whereby the SRY gene translocates onto the X chromosome, causing XY individuals to develop as females (Wiener, 1999, n.p.). Here, XY individuals do not respond to testosterone or other androgens *in utero* but do respond to estrogens, and thus develop as females. At birth, they display a vagina and clitoris typical of XX females; at puberty they develop breasts (WHO, 2014). It is usually only at puberty, if at all, that the condition is discovered when the individual does not menstruate (Sax, 2002, p. 175; Blackless et al., 2000, pp. 153–154). More recently, the condition is discovered in athletes during regulatory testing (Fausto-Sterling, 2000, pp. 1–3). In the absence of genetic testing, these individuals

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<sup>14</sup> Which is why I tend to think of it as the supermodel configuration.

simply appear as typical females who neither menstruate nor reproduce. Individuals with CAIS self-identify as female (WHO, 2014, with citations).

The flip side of CAIS is *Congenital Adrenal Hyperplasia* (CAH, 0.0813) (Blackless et al., 2000, p. 156), an autosomal recessive condition that affects both males and females. People with CAH lack an enzyme that the adrenal glands need for proper hormone generation and wind up over-producing androgens such as testosterone (WHO, 2014; Sax, 2002, p. 175).<sup>15</sup> Males with the condition may experience premature puberty with few other symptoms. The disorder is more severe in females. For early onset female CAH—also called adrenogenital syndrome (AGS, 1:5000) (WHO, 2014)—a cortisol deficiency combined with a compensatory increase in adrenocortical hormone (ACTH) *in utero* causes the female fetus's genitalia to malform, presenting as neither completely male nor female—thus, a kind of hermaphrodite (Wiener, 1999, n.p.). However, CAH/AGS also brings with it a host of health problems based on an inability properly to regulate the body's sodium levels. Infants with AGS develop dehydration, diarrhea, vomiting, and lack of appetite amongst other health issues (Wiener, 1999, n.p.).<sup>16</sup> In antiquity, we might understand that such individuals had a high perinatal death rate, removing them from the general population and construction of sex/gender identity. Nevertheless, CAH is the leading cause of sexual ambiguity in humans (Wiener, 1999, n.p.).

Far, far milder in effect is Late Onset Congenital Adrenal Hyperplasia (LOCAH). With LOCAH the enzyme disorder does not manifest until late childhood through early adulthood, and thus does not affect the formation of sexual attributes (primary or secondary). Males with the condition probably have no idea that they do, as the main symptom in males is thinning scalp hair, otherwise known as male-pattern baldness, and even that only affects 50% of men with LOCAH. Generally, the lack of symptoms causes their condition to go undiagnosed (Sax, 2002, p. 176). The average age of presentation in females is 24 years, and if symptoms present they are minimal menstruations, hirsutism, acne, and decreased fertility, assuming that they show any symptoms at all.<sup>17</sup> It is the last symptom that causes most female sufferers to be diagnosed. One final possible attribute of LOCAH is cliteromegaly (a large clitoris). A study of 220 women with LOCAH

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<sup>15</sup> U.S. Department of Health & Human Services website: "Congenital adrenal hyperplasia".

<sup>16</sup> U.S. Department of Health & Human Services website: "Congenital adrenal hyperplasia".

<sup>17</sup> U.S. Department of Health & Human Services website: "Congenital adrenal hyperplasia".

reported that 10% had a mild form of cliteromegaly, with no examples of moderate or severe forms (so, no, you're not going to mistake that clitoris for a penis) (Sax, 2002, p. 176, with citations). LOCAH is **not** an intersexing/hermaphroditizing condition. Nevertheless, this one disorder constitutes 1.5 of the 1.728% of live birth intersexuals documented by Blackless et al. (2000, p. 159). Do the math.

True hermaphroditism is marked by the possession of one ovary and one testis. According to John Wiener:

There is a great diversity of phenotypes and karyotypes among true hermaphrodites. The majority are 46, XX and phenotypically female, but the prevalence of these findings may have geographical differences. The phenotype is the result of interplay between hormonal products from both ovarian and testicular tissue. Testicular tissue is invariably present by definition, but the genetic signal for testicular development varies. Some cases have a Y chromosome in all cells whereas others have mosaicism<sup>18</sup> with the Y chromosome present in gonadal tissue only. SRY may be present in the absence of the Y chromosome via translocation or may be absent altogether. The presence of ovarian tissue in true hermaphrodites possessing the Y chromosome or SRY suggests that some gene products must be capable of blocking SRY from switching on testicular development in some gonads. (Wiener, 1999, n.p.)

Because such individuals are “corrected” at birth (usually to female, per the above), it is difficult in modern times to determine how the phenotype will be expressed at puberty and into adulthood (although see Money et al., 1957, on this). The number of such individuals is also extremely low. According to Blackless et al., there are no published statistics of individuals born with both testicular and ovarian tissue (Blackless et al., 2000,

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<sup>18</sup> “Mosaicism” has nothing to do with tesserae. It is a genetic condition in which a single body contains cells with different genetic codes, typically the result of developmental aneuploidy. Sex chromosome mosaics are the most common in humans, whereby some cells of the body contain X0, others XXX or XXY.” (Rodden Robinson, 2010, p. 232)

p. 157).<sup>19</sup> Nevertheless, they suggest that true hermaphrodites constitute 0.0117 per 1000 live births worldwide, with strong geographic concentrations, such as southern Brazil and southern Africa (Blackless et al., 2000, p. 159; Wiener, 1999, n.p.). Hermaphroditism tends to run in families (Blackless et al., 2000, p. 159).

An additional matter should be kept in mind. Epigenetic developments are relevant here, whereby the environment influences how genes express. A simple example is the way that smoking can drastically increase one's potential for lung cancer regardless of one's genetic code. The modern environment is toxic, with people now commonly eating factory farmed meats loaded with artificial hormones and prophylactic antibiotics, both of which have an effect on the human body. Air is filled with particulates, water as well, with a recent severe increase in plastic. Certain prescription drugs can also affect the development of fetuses, leading to sex-affected disorders (e.g. exposing pregnant women to the drug finasteride can impair sexual development in the male fetus) (Wiener, 1999, n.p.). It is possible, then, that the rate of sex-affecting and intersexing conditions was lower in the ancient world than it is today, making it even less likely that the ancients saw a continuum of sexes.

Most important, "past people did not see each other as genes but as bodies in the world..."(Sofaer, 2013, p. 230). With the inability to check out each other's genotypes, ancient people based their assessments of sex identity on phenotype, just like we do most of the time today (I find I tend to be called "Ms." before anyone has asked me about my chromosomes). The vast majority of conditions discussed by Fausto-Sterling and Blackless et al. have **no** effect on an individual's phenotype. People with CAIS present as female. The single most common "intersex" condition is LOCAH, which rarely presents with any symptoms at all. Classic CAH (not late onset) can masculinize a female and render the genitalia ambiguous, but it comes with a host of other ailments that, in antiquity, would have probably killed most infants with the disorder. Even with diagnosis and treatment, the syndrome still only affects 0.077 people out of 1000 (Blackless et al., 2000, p. 159). Because of the importance of the X chromosome for human development, female is the default sex of humans in general and individuals with most sex-oriented genetic disorders in particular, such that neutral is not a possibility, and hermaphroditic odd. True hermaphrodites, possessing both male and female reproductive organs,

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<sup>19</sup> See also WHO (2014), with additional references.

constitute at best 0.0012% of live births, worldwide, concentrated in areas that were/are not Egypt, Mesopotamia, and the Mediterranean. Thus, to quote Leonard Sax, “The available data support the conclusion that human sexuality is a dichotomy, not a continuum. More than 99.98% of humans are either male or female.” (Sax, 2002, p. 177).

Human genetic sex is basically binary; human phenotype is sexually dimorphic. So much is evident in the osteological remains used by physical anthropologists to sex ancient peoples from archaeological sites, thus providing the raw data for both biological sex **and** social gender. As noted by Joanna Sofaer:

Humans are sexually dimorphic (show differences in form between males and females). The extent of sexual dimorphism varies between populations but allows for assessment of sex on the basis of morphological characteristics of the skeleton, in particular the pelvis and skull. These are generally considered the most reliable areas for sex determination, the former reflecting functional differences between men and women related to childbirth. (Sofaer, 2013, p. 228)

#### 4. *Fluid-Gender*

While the facts of human reproduction render the human body sexually binary and phenotypically dimorphic (egg-producer or sperm-producer, as is the case with all vertebrates), gender, the social construct, can be quite fluid. But it must be recalled that there are **two** aspects to gender: the personal performance and the socially mandated. Any individual is free to perform his/her gender to his/her heart’s content, be it crying at the movies or asking for directions<sup>20</sup> or wondering if tonight’s date will end in sex.

However, it has recently been recognized that this “performance of self” is heavily influenced by *intersectionality*. Intersectionality is a term originally coined in 1989 by

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<sup>20</sup> Personal anecdote: When I was attending the second Gender and Methodology in the ANE Workshop in Helsinki in 2014, I and a group of panelists got lost on the way to the university the first day. I asked a local for directions, and we arrived in fine form. At lunch, I mentioned this to a male colleague, joking how it was a good thing that I’m female and can ask for directions! He replied that, of course, he could never do such a thing.

Kimberlé Crenshaw of Columbia University to refer to the intersection of sex, gender, race, and class when understanding members of any given society. How any individual male or female behaves will only partly be determined by sex or gender and will also be affected by race, affluence, ethnicity, residence, religion, and education. A middle-class, white, urban, liberal, atheist, heterosexual, female vegan with a Ph.D. in the humanities will probably “perform” more like a middle-class, black, urban, liberal, agnostic, homosexual, male vegetarian with a Master’s degree than either will with a lower-class, black, suburban, conservative Christian, high-school educated woman with a bucket of fried chicken in the car to feed her kids. Gender itself will only get you so far.

It is **far** more difficult to escape any given *society’s* ideas of what is appropriate for a male or a female. No female politician can escape being judged on the height of her heels or whether she wears a skirt (what length?) or a pantsuit (is she trying to deny her femininity?). Writing on being a teenager in the USA in the 1960s, newspaper columnist Dave Barry recalls:

In my late teens, I started to wear my hair longer—nothing extreme, pretty much the look favored by Moe of the Three Stooges—and when I was out in public, you’d have thought I was having unprotected sex with a llama right there on the sidewalk. People would laugh at me, or give me dirty looks and call me a hippie, or ask each other in a loud, self-amused voice—I can’t tell you how many times I heard this hilarious question—“Is that a boy or a girl?” (Har! Good one!) Middle-aged guys in trucks would slow down next to me, roll down their windows, and scream “FAGGOT!” (Barry, 1998, p. 115)

In December of 1993, Nebraska (USA), the transgender Brandon Teena (formerly Teena Brandon) was gang raped and later murdered by locals who did not accept his adoption of male identity—a story dramatized in the movie *Boys Don’t Cry*.

Gender fluidity is thus constrained by society. In what follows I consider three examples of apparently fluid gender, where biological females adopt masculine gender.<sup>21</sup>

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<sup>21</sup> There are, of course, plenty examples of males adopting female gender, too. These examples just happen to be in my own area of research.

One example comes from the ancient Near East, the other two from modern Albania and India. As the evidence at least for the latter two shows, gender remains constrained by sex, and most especially by *sex* (by which I mean eroticism).

### MUNUS ù NITAH

Below are presented eight examples of legal gender-bending from the Hurro-Mesopotamian cultural orbit (for a complete list of such documents, see Yamada 2014 and 2016). The oldest one (an outlier) comes from Karum Kaneš, ancient Kültepe, Turkey, an Old Assyrian trading colony; the other seven come from the cities of Emar (Tell Meskene, northern Syria) and Nuzi (Yorghana Tepe and Kirkurk, Kurdistan) and date to the late Bronze Age. Seven are last wills and testaments of the *pater familias*, and one is a record of adoption. Each presents an example of females being given male gender/status, either by having a wife or daughter declared to be “father and mother,” “female and male,” or having a daughter adopted as a son.

### Karum Kaniš, 20<sup>th</sup> century

Kt o/k 196c, last will and testament of Agua (Michel, 2000, pp. 2–3, trans. Michel, my translation from the French):

Agua’s testament is thus: “The house in Aššur is that of my wife. Concerning the silver, she will share it with my children. Concerning the silver, her portion of the inheritance, **she is father and mother** (*abat ù ummat*). The house and the silver, her inheritance, and also all that she owns will then belong to Šu-Belum. The house in Aššur belongs to Šu-Belum. My sons will reimburse my creditors, and whatever silver remains, Ab-šalim will begin with 1/3 a mina of gold, 1 mina of silver, and a servant.

Emar, c. 13<sup>th</sup> century

RA 71/1: Last will and testament of Zikri-Dagan, son of Ibni-Dagan:

From this day Zikri-Dagan, son of Ibni-Dagan, in good health has gathered his brothers. He spoke thus:

**I have here established my daughter Unara as a woman and a man (*Unara DUMU.MUNUS-ia ana MUNUS ù NITAḤ aškunši*).** May she invoke my gods and my ancestors. May my three sons—Adda the eldest, Dagan-Bali, and Ba’l-limi—support their mother Unara.<sup>22</sup> Whoever among my three sons does not support their mother, he will have no right to his part of the inheritance.

While their mother lives the inheritance will not be claimed. Whoever claims his inheritance will have no right to the inheritance: May he pay seventy shekels of silver, the wife’s *terḥatu*, and may he go where he will.

When their mother dies, then my three sons will acquire my house, fields, all my property, all my goods, and may they share the house that belongs to both as brothers.... (Justel, 2008, p. 264, my translation from the Spanish)<sup>23</sup>

HANE/M 2 57, Last will and testament of Iddi-ma:

From this day Iddi-ma, son of Zu-Ašdi, has gathered his brothers, has set the fate of his household and of his daughter the *qadištu*.

“Baliya, **my daughter, the *qadištu*, is father and mother of my household** (*DUMU.MUNUS-ia <NU>.GIG a-bu ù um-mu ša É-ia ši-it*). I have given to my

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<sup>22</sup> Either Zikri-Dagan has formally made Unara the guardian of the three boys, thus their “mother”, or Zikri-Dagan is actually their grandfather, but is treating them like sons.

<sup>23</sup> See also Ben-Barak (1988, p. 94).



daughter Baliya, the *qadištu*, these objects: a bed and its covers, a bronze vessel of 400 (shekels') weight, a shekel of silver, an *asallu* vessel of 300 (shekels') weight, a three-year-old cow. And I declare that Baliya will give these goods to her daughter Ete; Ete's brothers will not make a claim (against her) concerning these goods.... While Baliya lives, they will have no rights to the inheritance." (Justel, 2014, pp. 129–130, my translation from the Spanish)

Emar 6 31, last will and testament of Ḫaya, son of Ipqi-Dagan:

[Bef]ore Šaḫurunuwa, son of Šarri-Kušuḫ, king of Ka[rkemi]š, Ḫaya, son of Ipqi-Dagan, has created this contract regarding his household. **He has established his daughter Dada, the *ḫarīmtu*, as father and mother (*ana abbūti u ummūti*) of the household.**

(So speaks Ḫaya): "I have bestowed upon my daughter <sup>f</sup>Dada a bed with its sheets, ... and a bronze headboard that covered the top (of the bed); these objects as well as two slaves, Au-milki and Ašti-...

**I have adopted as sons my two daughters Dagan-niwari and Abi-qiri (DUMU.MUNUS-*ia* GAL *ana* DUMU.NITA-*ia* *etepuššunu*).** I have given Dagan-niwari as wife to Alal-abu. If [Dagan-niwari does not bear offspring], Alal-abu shall take another wife.

May my daughters honor **their father and mother Dada**. If anyone of my daughters decides not to honor **Dada, their father and mother**, [she will not have the right] to her portion of the inheritance. May she take her clothing from the chair and go wherever she wishes. If they honor their father and mother, when (Dada)

di[es] my two daughters will acquire my property and divide up the household and all my possessions equally. (Justel, 2014, p. 131, my translation from the Spanish)

HCCT-E 37, Last will and testament of Muzzazu, son of Šumanu:

From this day, Muzzazu, son of Šamanu, willingly has fixed the destiny of his house. He speaks thus:

**My wife ẖepate is father and mother of my household. I have established my daughter Al-ḥati as woman and man** (*Al-ḥati DUMU.MUNUS-ia ana MUNUS ù NITAḥ aškunši*). May she invoke my gods and my ancestors. I have bequeathed all my goods, all that I have to my daughter Al-ḥati.

If my wife ẖepate leaves the house for that of another (man), may she leave her clothes on the stool and go where she will.

If my daughter Al-ḥati dies with no offspring, then may her husband Aḥu-yaqaru take another wife; the sons that she bears—before and after—will be my sons. And if Al-ḥati and Aḥu-yaqaru die without progeny, then Al-ummi and Patil will inherit. (Justel, 2014, pp. 131–132, with citations, my translation from the Spanish)<sup>24</sup>

TBR 74, adoption contract of Ba'al-wapi, son of Abbanu:

Thus has said Ba'al-Wapi, son of Abbanu, son of Ella:

“I have adopted Tae, son of Ili-Da, [as] my son, and **made my eldest daughter Šamaš-la'i my son** (*DUMU.MUNUS-ia GAL ana DUMU.NITA-ia etepušši*), and given her to him [as] wife. As long as his father Ba'al-wapi and his mother Aštar-kimi

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<sup>24</sup> See also Ben-Barak (1988, p. 93) for additional text.

live, Tae shall honor us. If he honors us, whenever we die... [Šamaš-la'i] has no progeny; all [the children] she bears shall share my goods and property among themselves. Concerning Šamaš-la'i: The gods belong to the main household.

....

As long as his wife Šamaš-la'i lives, Tae shall not take [another] wife; if he does, this document shall prevail. And if Šamaš-la'i dies, may Tae take whomever of my remaining daughters. (Justel, 2014a, p. 70)

Nuzi, c. 13<sup>th</sup> century

IM 6818, last will and testament of Unap-tae, son of Taya:

Testament of Unap-Tae, son of Taya. I have established a testament in favor of my daughter Šilwaturi. Thus Unap-tae:

**I have adopted my daughter Šilwaturi as a son/into sonship (DUMU-SAL-ia mî Šilwaturi ana mārūti DÛ<sup>uš</sup>).** All my fields, my houses, all my earning, my acquisitions, my slaves... my inheritance, all in Alsa and the cities of Anzukalli, Unzuri, Takurrampe, or in Matiḥa... to Šilwaturi, **my daughter whom I have made as a son**, I have given. (Lion, 2009, p. 10; Ben-Barak, 1988, pp. 91–92; Paradise, 1980, p. 189)<sup>25</sup>

YBC 5142, last will and testament of Pui-tae, son of Wullu:

[Will of Pui-tae s]on of W[ullu]. He made a will in favor of Watilla (f.), of ... (f.), of Uriš-elli (f.), and in favor of Ašte (f.), daughter of ... Thus declared Pui-tae:

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<sup>25</sup> See also Justel (2014, pp. 132–133) for additional clauses of the will.

These [my] **three d[ughters] I have given the status of sons (3 [DUMU.MUNUS.MEŠ-ia] ana mārūti epēšu)**. All my fields, buildings, miscellaneous property, I have given to these my daughters.

.....

Thus further declared Pui-tae:

If Ašte dies, then whoever among my daughters is holding fields, my buildings, and is remaining in my house, shall serve the gods and my spirits.... (Paradise, 1987, pp. 203–204)

As noted by Masamichi Yamada, the designation “father and mother” is generally used when the *pater familias* designates his wife (occasionally daughter, as was the case with Dada) as the head of household upon his death. The “woman and man” clause, by contrast, appears when the father makes a daughter his primary heir (Yamada, 2016, p. 136), and “*ana mārūti epēšu*” appears when the father designates one or more daughters as heirs. In this final usage, one can argue that the daughters are given a new gender, as they made to be “sons.” In the other instances, the woman involved now has both genders: She is either “female **and** male” or “father **and** mother.” It is likely that the daughters-turned-sons were similar, and were understood to be both daughters and sons simultaneously.

In **all** cases, the gender adjustment is enacted by a male authority figure—a (dying) father or husband. The purpose of the adjustment appears to be twofold: to allow wives and daughters to enjoy the inheritance rights of males, and to permit women to take over the ancestral cult. In RA 71/1 and HANE/M 2 57 it is stated at the outset that the testator has brought the matter before his brothers. By endowing a daughter with male gender, the father keeps the paternal uncles from claiming the paternal estate from her. In RA 71/1 Zikri-Dagan also pushes three sons behind his daughter Unara, who may be the mother of the boys. In this way, the estate neither falls back to the uncles nor skips Unara. The desire for a female inheritor appears whether there are potential male inheritors or not. Thus, Unara as noted above; as well as the wife of Agua, who inherits before her sons;

and Šamaš-la'i, who inherits along with her adopted brother-*cum*-husband Tae. In other cases, it appears that the testator is dying with no male heirs and thus makes some, as is clearly the case with Dada the *ḥarīmtu*, who is father and mother to her younger sisters, who are made sons. A similar dynamic appears with the daughters of Pui-tae. Ašte seems to be the oldest of three sisters-turned-sons; when she dies, another of the sisters will take over the family property and the ancestral cult. Šilwaturi appears to be an only child.

Four documents make it clear that the daughter will take over the ancestral cult, a privilege/responsibility normally accorded to the oldest son: RA 71/1, where Zikri-Dagan has Unara invoke his gods and ancestor; HCCT-E 37, where Muzzazu has his daughter Al-ḥati do the same; TBR 74, where it appears that Ba'al-wapi places his daughter Šilwaturi in charge of the household cult; and YBC 5147, where Pui-tae declares that whichever daughter should succeed Ašte will also “serve the gods and my spirits...” The gender adjustment, then, gives the females under consideration legal, economic, and religious rights recognizable within the community.

This apparent fluidity of gender, though, has no impact upon the women's sex. With two exceptions, Baliya the *qadištu* and Dada the *ḥarīmtu*, it is written into several wills that the daughters-turned-sons will marry and have children. A *qadištu* is a cult functionary who is not supposed to reproduce sexually, but who may adopt a child, and it is possible that Ete is Baliya's adopted daughter, whose own children are in line for the family inheritance. It is unknown why Dada is a *ḥarīmtu*, a women with neither father nor husband. Her *ḥarīmtu* status may come from the fact that the father in question is dying (thus a will) and that there appears to be no intention to marry her off. By contrast, Ḥaya clearly states that his daughter (and son) Dagan-niwari is already betrothed, and it is possible that the youngest sister is also expected to marry. Otherwise, Al-ḥati is already married per the will, and Šamaš-la'i is actively engaged to her adopted brother in the contract.

As is typical for widows (“fathers” and otherwise), the wills complicate their ability to remarry (and thus potentially remove property from the paternal line). Even though Muzzazu has made Ḥepate father and mother of the household, he leaves his inheritance to their daughter while proclaiming, “If my wife Ḥepate leaves the house for that of another (man), may she leave her clothes on the stool and go where she will.” The wife of Agua is also father and mother of the household, but control over the property is still handed over to Šu-Belum and, after, their sons. Male gender does not give wives any

individual right to their husbands' property, and the inheritance tends to be regulated to the third generation, to the potential sons of the sonly daughters (who, again, are expected to marry and have children).

It is ultimately impossible to know how the women involved experienced or performed this adjustment to their gender. The ability to care for the family cult would have probably given a sense of agency denied to “normal” women, as would, to some extent, the economic rights acquired and responsibility over (younger) siblings. But their female sex is never disputed—the women have occupations and designations reserved exclusively for women (*qadištu*, *harīmtu*), and they are expected to marry and become mothers. And there is no evidence whatsoever that such women are expected to take on any other aspects of masculine gender (e.g. dress, masculine name, a female wife).

#### *Virgjinëshë*—The Sworn Virgins of Albania

Documented ethnographically since the 19<sup>th</sup> century, but probably dating back into the 15<sup>th</sup>, are the so-called “sworn virgins” of Albania and immediately surrounding Balkan regions. These *virgjinëshë* are women who adopt masculine gender and live their lives as males, thus becoming social men. This adoption of masculine gender includes dressing in male clothing (including the modern donning of sunglasses); (usually) adopting a male name (Young, 2000, p. 62); acquiring masculine body language, postures, and behaviors (Young, 2000, p. 98); engaging in male labor such as ploughing, chopping wood, scything, harvesting, watering and maintaining irrigation systems, and protecting animals and property (as opposed to female work, which includes cooking, handicrafts, and all heavy lifting and carrying); serving as a host to guests—talking to visitors and drinking and smoking with them; as well as defending family honor, even to the death in one of the bloodfeuds for which the region is (in)famous (Young, 2000, pp. 32 and 57). “Furthermore as part of their masculinized attitudes, ‘sworn virgins’ would feel dishonoured by speaking about their feelings and emotions; it would damage their reputations as honourable men.” (Young, 2000, p. 58) Equally critical for the social gender switch is the vow (*besa*) (Young, 2000, p. 42) of virginity/chastity which the women must make in the presence of twelve (male) village elders of the dominant religion (Muslim, Eastern Orthodox, Roman Catholic) (Dickemann, 1997, p. 200), an action which biological males, obviously, are not required to make to be considered men.

### Terminology

There is a considerable variety of titles given to this gender-bending category partially due to the variety of languages used in the region and partially to the various ways these women are understood. According to René Grémaux:

By virtue of their vow to lead a virginal life, such persons were referred to as *zavjetovana djevojka*, in the local Slavic vernacular, and as *vajzë e betuar*, in the Albanian counterpart, both meaning “sworn virgin.” More often, however, these individuals are designated *tobelija* (“person bound by a vow”) or *virgjinëshë* (“female committed to virginity”)... [o]ther nouns, such as the South Slavic *muskobanja* (“manlike woman”), stress overt masculinity. (Grémaux, 1994, p. 244)

For Mildred Dickemann, these women are: in Albanian *verginisha* (virgin or unmarried woman); Montenegrin *harambasha* (woman-man); Southern Serbian *muskobane* (manly woman), *tobelije* or *tobelije* (from Turkish, one who forswears betrothal), *ostajnica* (one who stays [in the paternal household]), *zena covjek* (woman-man) (Dickemann, 1997, p. 200). In all instances, certain consistent aspects of lifestyle are emphasized. All of these women swear a *besa* never to marry or to engage in sexual intercourse—thus, perpetual virgins. The *besa* taken leads to terms such as *tobelija/tobelije*, while their adoption of masculine dress, behavior, and gender in general renders such terms as *muskobanja/muskobane* and *zena covjek*. The fact that this unmarried female remains in the paternal estate rather than engaging in patrilocal marriage is the explanation for *ostajnica*.

It should be noted, though, that such terminology is an etic usage: The sworn virgins do not use it of themselves. As Antonia Young observed in the midst of her fieldwork in northern Albania in the late 20<sup>th</sup> century, “Despite the use by writers of various terms for ‘sworn virgins’, I never met one who applied any of the terms to themselves, preferring their self-perceptions simply to be prestigious men. However, most would not deny their transition from having been female” (Young, 2000, p. 62).

### History

The earliest attestation of these sworn virgins appears in the *Kanuni i Lekë Dukagjinit* (*Laws of Lek Dukagjini*—14<sup>th</sup> century) (Young, 2000, p. 2), the main body of north Albanian oral law that was collected and codified in the early twentieth century by the Franciscan friar Shtjefën Gjecovi (d. 1929). Article 42 of this corpus claims that a young man is free to reject his family's choice of bride, immediately followed by a clause that forbids a girl, under penalty of death, from abandoning her proposed betrothed. However, with her parents' approval, she has the option of avoiding the marriage by swearing to remain unwed in perpetuity. "Becoming a 'sworn virgin' was therefore the only respectable option for a girl who refused to get married, and the only way of avoiding a subsequent blood-feud between the families concerned" (Grémaux, 1992, p. 368).

More data on the sworn virgins comes from the 15<sup>th</sup>-century *Kanun* of Skanderberg (Young, 2000, p. 2). Here it is stated that the *virgjinëshë* should sit in the place of honor typically reserved for the head of household, both beside the hearth and at the *sofra* (low table on which meals are served to those sitting on the floor). The Skanderberg *Kanun* also allows for a woman to take the *besa* purely by choice, although it strongly advises that she get the permission of her parents and relatives, as these are the individuals who will be shamed if she later changes her mind and revokes her vow (Young, 2000, pp. 42 and 56).

### Rationale

There are various reasons why a female would choose to forego matrimony, motherhood, sexuality, and femininity in this ethnic context. In addition to the desire to get out of an undesirable marriage, it is very often the case that the family in question finds itself without a male heir, either because sons were not born to the family or all sons have died. This provokes a considerable crisis in the household, as noted by Grémaux, "In everyday life, parents who failed to produce a son suffered a loss of status or downright ostracism." (Grémaux, 1994, p. 268)<sup>26</sup> In such an instance, the family may, with or even without the consent of the female involved, make the *besa* on behalf of the female dedicated, and thus change her social gender to male (Young, 2000, pp. 4 and 15).

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<sup>26</sup> See also Young (2000, p. 57).



If the girl is very young when the *besa* is made on her behalf, she will be raised as a boy, never experiencing female gender at all.

In between these extremes are cases where a family with at least one male heir loses him to death in war, bloodfued, or illness. In such cases parents might call upon a daughter to make the vow on their behalf, and thus provide a surrogate “male” line through which to pass the paternal estate. The situation becomes even more dire when the *pater familias* has died with no male heir but a surviving widow. As sonless widows have no right to remain in the husband’s house(hold), they must either return to their natal family or remarry quickly, both actions bringing a considerable loss of status to the woman involved (Dickemann, 1997, pp. 98–99). In such a case a daughter becoming a son safeguards the status and security of the mother. Furthermore, a female who has violently lost brothers might become a man in order to avenge the victim and thus the family (Young, 2000, p. 61).

There are more personal reasons why a female might chose to become a sworn virgin. The flip side of getting out of a bad marriage without being murdered is the potential of staying with one’s natal family in one’s own home. Both Grémaux and Dickemann mention the sworn virgin Stana Cerovic who took the vow in order to remain by her father’s side. As she herself declared, “When I grew up I told my father that I would be his son. I took an oath never to marry or to abandon his house as long as I live” (Dickemann, 1997, p. 199; Grémaux, 1994, p. 261). Virgins without brothers have the opportunity to become heads of household, giving them life-time possession of the family property and home (Young, 2000, pp. 42–43). They also have greater freedom in choosing (non-sexual) life partners, and thus might remain side-by-side with siblings—and have a say in the marriage of sisters!—or make connections with “blood sisters” with whom they are free to live (Dickemann, 1997, p. 199). And, ultimately, the extremely patriarchal nature of Albanian society renders life for women rather hellish (from an American perspective, at least). To become socially male allows for many freedoms and privileges. As noted by Young, “In fact the taking of a male role by women in these specifically defined situations in their own country is not only acceptable and highly commendable, but is a choice of a better life — often actively made by these women themselves” (Young, 2000, p. 7).

In the end, then, there are generally recognized to be two main types of sworn virgins: Those who make the choice for themselves after having experienced at least part

of their lives as females, and those who were dedicated to maleness from birth, known as the *vajze e betuar* (Young, 2000, pp. 60–61; Grémaux, 1994, p. 244).

According to the rules of the *vajze e betuar*, a daughter will be brought up in preparation to become the household head. In this role she will be permitted eventually to inherit the home and property which, according to customary law is not permissible in any other circumstances for a woman. (Young, 2000, pp. 60–61)

The tradition of the sworn virgin is not yet in decline. When doing his field work in Albania in the 1980s Grémaux knew of some 120 sworn virgins over the course of the previous century, and Young records that the tradition is spreading into urban areas as Albania slowly modernizes (Grémaux, 1994, p. 242).

### *Socially Male*

Members of the sworn virgins' communities are basically willing to accept their masculine identities—that they are recognized as men. It is not merely that the *virgjinëshë* are granted special honors within the household and perform “male” labor. They are accepted in various categories of all-male communities, including, notably, the military. Thus one of the earliest attested sworn virgins was an individual named Mikas Milicev Karadzic, first noted in 1885 in the Montenegrin village of Zabljak by a Serbian doctor who was examining the 22-year old soldier in the national army. Originally a girl named Milica, her father, a celebrated hero, died in battle when she was a child. Milica's mother dressed her as a boy and raised her as male, and thus began her life as a sworn virgin (Grémaux, 1994, pp. 246–247). While Mikas's presence stunned the doctor, her fellow soldiers were perfectly aware of her biological sex.

In the local community Mikas was addressed by females with terms such as *djever* (“husband's brother”), *svekar* (“father-in-law”) and *kum* (“godfather” or “elderly man”). In official documents, Mikas was registered as a male, which enabled her to vote in parliamentary elections at a time when female suffrage did not yet exist. When she died in 1934, Mikas was laid out in male garb and buried as a man in the Zabljak churchyard with the full approval of the Orthodox priest (Grémaux, 1994, pp. 150 and 153).

Not long after, the virgin Tonē Bikaj (d. 1971 at the age of 70) joined the nationalist guerilla movement where she commanded an all-male resistance fighters' unit. This Tonē was the oldest of five children—three girls who lived, two boys who died. When nine years old she decided to become a boy, promising never to marry, cutting her hair, and adopting male clothing—only keeping her feminine name. She received weapons from her father at age 15, and her extended family and tribe universally accepted her as a male (Grémaux, 1994, pp. 253-254). It thus came as a surprise and considerable disappointment that when captured by the enemy she was treated as a woman during her year-long period of incarceration.

More recently, an urban sworn virgin named Medi interviewed by Young trained to be a police officer in the capital city of Tirana, following in the footsteps of her father (and in complete contradistinction from any female previously). Like other sworn virgins, “She walked, with her hands in her pockets along in the streets (also unheard of for young women in such a tradition-oriented town) and frequented cafes to smoke and drink with men” (Young, 2000, p. 88).

Remarkably, sworn virgins are permitted to fulfill religious functions as males, including, as was the case in Emar and Nuzi, of maintaining the family cult of ancestors. In Albania having sons “is essential for life after death, since he is the one who will take care of your soul; and it is always the son who carries on with the life of your household; he also inherits the property, goes to war, defends you, and also avenges you.” One anthropologists cited by Young, “spoke of a man who believed there was no way to be allowed entry into Heaven without a son, essential for life after death in order to take care of the deceased’s soul.” Nevertheless, these religious obligations of a son could be fulfilled by a sworn virgin in the absence of male offspring (Young, 2000, pp. 15 and 30, with citations).

There is some debate as to the extent to which sworn virgins could, in fact, take on a man’s obligations in the event of a family bloodfeud. Unlike females, the sworn virgin took up arms and was expected to engage in violence. As such, she could be treated socially as a man, and kill and be killed (Young, 2000, p. 138). However, Grémaux counters that:

Unlike ordinary females, who were unarmed, the female who became a social male could be completely armed and actively take part in feuds, raids and the like. Yet intentionally killing or wounding such a person while in full awareness of the fact that she was a female by nature was considered shameful and unworthy of a genuine hero... I have the impression that in general these social males retained the immunity conferred by their female sex or their former gender. This allowed them to kill males without having to fear being killed in retaliation. (Grémaux, 1994, p. 278)<sup>27</sup>

### Ambiguity

And so comes the matter of gender ambiguity: Sworn virgins are not 100% accepted as males. For example, Grémaux reports of that soldier Mikas that:

All my informants stressed Mikas's striking masculinity in spirit, appearance and behavior, as well as his fierce insistence on being treated and respected as a genuine male... Mikas is said to have always used the male gender when talking about himself.

However:

Talking about Mikas, my informants alternately used "he" and "she," as was also observed by Gusic when Mikas was still alive. In his presence, however, nobody would have had the insolence to call him a woman, although everyone in Jezera knew that he was a biological female... (Grémaux, 1994, p. 251)

When the military commander Tonē died she was buried in masculine fashion. However, in keeping with a masculine funeral several male relatives and friends wanted

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<sup>27</sup> See also Young (2000, p. 99).

to perform the *vajtim* in Tonē's honor—a traditional, impromptu lament sung in verse. They were forbidden from doing so by the priest, as it was not the custom of Tonē's tribe for biological females to be publically lamented by males (Grémaux, 1994, p. 256).

Sometimes the problem is a matter of genuine male ego, as was the case for Stana Cerovic. At a shooting competition where Stana was a supposedly passive observer, she lost her patience with all the male competitors who apparently couldn't hit the broad side of a barn from the inside. Grabbing a rifle she entered the ranks and hit the target with her first shot. Ever since she has been denied a hunting license, even though she joins the men in their hunting parties. Remarking on this ongoing rejection she asserted, "most of all I detest being a female... nature is mistaken" (Grémaux, 1994, pp. 260-261). As Young commented on the gender dynamics:

There is a double standard here: if there is dishonor associated with a socially accepted "male" beating an actual male at a male sport this would imply that there is in fact some hierarchial value system being imposed in which men still occupy a slightly higher position than "sworn virgins", giving further evidence for these men-women as occupying an undefined middle ground, a third gender. (Young, 2000, p. 119)

We may perhaps see a similar dynamic in the case of an unusually buxom sworn virgin named Linita, interviewed by Young. During the communist regime she was arrested as a political prisoner and thrown into the men's prison where she endured extreme physical abuse, including having her teeth kicked in (Young, 2000, p. 90).

In the realm of economics the masculine prerogatives of sworn virgins could be more imagined than real. Unlike normal women, virgins could inherit real estate. But as was the case with our adopted sons above:

Such a social male enjoyed usufruct of the paternal property until his dying day, a right shared by marriageable females until their wedding and by returning widows and divorcées... The *tobelija* was expected to safeguard the property until his final hour, as it was to be handed down to the legal male heirs, preferably agnatic

relatives. This means that a social male was *merely inheriting without being entitled to act as testator*, as neither alienating real estate during one's lifetime nor bequeathing it at will was allowed. (Grémaux, 1994, p. 278, my emphasis )

Sometimes gender ambiguity was simply a matter of female biology exerting itself. When the virgin Xhema entered the hospital to be treated for breast cancer, the personnel asked her which ward she would prefer—men's or women's. She chose the women's ward (Young, 2000, p. 89, n. 18).

### Virginité

The importance of on-going chastity cannot be emphasized enough. The *virgjinëshës'* entire claim to male status and identity comes not so much from their clothing or hair styles or mannerisms, but,

The assumption of masculine identity by a female generally required swearing to *lifelong celibacy* before a group of lineage elders. Violation of this oath, or later pregnancy of the "virgin", was said to be punished by stoning or being burned alive, though there are no recorded cases of such punishments in my sources. (Dickemann, 1997, p. 198, my emphasis)

It is for this reason that the *besa* is supposed to be taken by the young, either by parents at the birth of a *vajze e betuar* or a girl before marriage—the female must be a *virgo intacta* for the oath to be legitimate. Grémaux records only one exception: a Muslim Albanian named Badë who took the *besa* after the death of her husband (Grémaux, 1994, p. 276). Apparently widow can equal virgin.

This oath of perpetual virginity is the *sine-qua-non* of the virgin's masculine identity. This can be understood in three not mutually exclusive ways. A female is never so female as when engaging in reproductive sexuality, including intercourse and parturition. It is difficult to deny female biology and anatomy when one gives birth or lactates. Furthermore, the act of sex in Albania, like everything else it seems, is sexually

hierarchical, with the man literally and figurative on top. It is exceptionally difficult to accept a social male as an equal if she has already degraded herself as the object of another man's sexual advances.

Finally, and most importantly (as we shall see), biological males of the society will *not* relinquish control of the female sexual body. Feminine women are subjected to male sexual control through patriarchal marriage or economic exploitation via prostitution. This fact does not change for sworn virgins: Their acquisition of male gender and its prerogatives comes at the price of their chastity. They cannot be both "male" and sexually liberated. These social males are still women physically/sexually controlled by biological males.

### Fluid Gender?

For this reason especially one must ask to what extent the *virginéshē* represent any kind of third gender. Horváth has contended that western scholars have inflicted a binary discourse onto these individuals, thus masking their fluid identity, "[B]y describing men-women as 'women', they disciplined them into the binary Western gender discourse, their descriptions inconsistent with the native definition of those individuals' role" (Horváth 2009, p. 4).

No one else seems to agree. Grémaux makes a few extremely pertinent observations on this account:

[T]here are several indicators that their gendered role and identity were not altogether clear to others. The nouns... that comembers of the communities used in referring to them are of feminine grammatical gender. Nevertheless, in addressing these persons, especially those who vehemently insisted on being male, any allusion to femininity was usually omitted out of reverence or fear.

Furthermore:

Sometimes we also hear a "social man" declare self-assuredly, "I am a maiden with a man's heart in my chest." The combination of both genders is also apparent in a

term of reference such as *momak djevojka* (“boy-girls”) and in nicknames like *muska Nevena* (“male Nevena,” Nevena being a female name). Significantly, no recourse was made to the neuter gender in referring to these persons. Instead of the available Slavic personal pronoun *ono* (“it”), local folks commonly alternated between *on* (“he”) and *ona* (“she”) in referring to them, thus expressing the power of the binary gender concept. (Grémaux, 1994, p. 277)

Rather than any third gender, Albanian sworn virgins are well known to be biological females who enjoy, in exchange for their femininity and sexuality, social masculine gender and semi-male prerogatives. I say “semi” because they clearly do not enjoy all the prerogatives of masculinity, including a sex life and progeny, full economic autonomy, and rites offered to the male dead. ***No one ever forgets that they are women***, even if they hide their sex well enough that some members of their communities might not realize that they are female at all. Nevertheless, should they keep their vow of chastity, they are viewed and, for the most part, treated as honored men in their society. “Moreover,” says Young, “proscribing the ‘sworn virgins’ to a ‘third gender’, calling them transsexuals, transgendered or even cross-dressers are all concepts to which many Albanians, not least the ‘virgins’ themselves would certainly not subscribe” (Young, 2000, p. 124). In other words, if we see a third gender or even fourth gender in the *virgjinëshë*, it is something that we are inflicting on them, rather than accepting them on their own terms. “*That is, sworn virgins are socially men, not treated as some intermediate or third sex or gender*” (Dickemann, 1997, p. 201, emphasis in original).

### *Devadāsīs*

One category of females rarely discussed in terms of gender fluidity are the devadāsīs of southern India. The term “devadāsī” is actually a neologism, an umbrella term which encompasses a plethora of technical terms used since the Medieval period to refer to a category of female cult functionaries who marry a deity and perform specific functions in his/her cult and temple. (Vijaisri, 2004, p. 1)<sup>28</sup> Priyadarshini Vijaisri groups

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<sup>28</sup> On the history of terminology and the epigraphic evidence see Orr (2000).



modern (19<sup>th</sup>–21<sup>st</sup> centuries) devadāsīs into three basic categories: the *Matangi*, the least well-understood and least studied, who appear to have had shamanistic aspects to their religious role; the *Sani/Sule* (“classic” devadāsīs), the upper-class, well-educated, originally affluent cult functionaries who were trained in traditional music and dance and who enacted a host of specific tasks in the urban temples, often associated with the performing arts; and the *Jogatis*, the lower-class, rural devadāsīs who sang and played simple musical instruments as part of their religious functions (Vijaisri, 2004, pp. 94–96). As Vijaisri noted of these last:

They were also expected to perform menial services in and around the temple, like cleaning the premises. One of the crucial functions they performed was “dharma prachara” or preaching religious ideas, by singing songs and dancing on certain occasions. Musical instruments associated with them were the *chaudiki* and the *tambura*. (Vijaisri, 2004, p. 96)

For the sake of simplicity here, I shall focus on the latter two categories, calling the former *sule*<sup>29</sup> and the latter *jogati*. “Devadāsī” applies to both. In all cases, the devadāsīs perform specified functions on the behalf of the deity, ranging (for the *sule*) from dancing and singing to entertain the god and his consort in the temple to pantomiming the rites performed by priests in the inner sanctum so pilgrims could see the actions; dancing and/or making music during public religious festivals; purifying the godhead and/or the temple/sanctuary; serving as witnesses to acts of religious devotion (*bhakti*); to seeking donations for the deity, especially among the *jogatis*.

The girls who become devadāsīs are understood to be married to the deity whom they serve. In the case of the *sule*, this is usually either Vishnu or Shiva (by various local names), with the devadāsī herself embodying the presence of the consort goddess. For the *jogatis*, they are married to the goddess Yellamma—a manifestation of Lakshmi, a goddess of auspiciousness. The fact that no one seems to discuss gender-bending in the

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<sup>29</sup> It is generally claimed that the word “*sule*” means “prostitute,” a part of the discourse that intends to argue that all devadāsīs are prostitutes. However, this definition emerged during a period when, in European languages, **all** technical terms pertaining to women who were not chaste mothers and wives and daughters were translated as “prostitute,” including the Mesopotamian *naditu* (a nun), the Greek *hierodulos* (a resident of sacred rather than royal land), and the Japanese *geisha* (artist). On this tendency, see Budin (forthcoming).

context of women married to a goddess is beyond me... The fact that the devadāsīs marry spouses who are immortal, and thus cannot die, means that the women themselves can never be widows, an exceptionally inauspicious status in Hindu culture. For this reason they have received the title *Nityasumāṅgalī*—“ever auspicious woman” (Kersenboom, 2002). Typically, the girl who would become a devadāsī was the daughter—natural-born or adopted—of a devadāsī, and her dedication took place in pre-pubescence. As the rite occurred for a *sule*:

The girl was married to the idol and the priest as the representative of the presiding deity tied the *tali* [marriage beads, something like a western wedding ring]. Later the girl was instructed in the art of dance and music. When the girl attained puberty, the formal ceremony of nuptial rites were performed and auspicious wedding songs celebrating the sexual union were sung before the “couple.” (Vijaisri, 2004, p. 90)<sup>30</sup>

The dedication of a *jogati* is roughly similar, but with the role of priest replaced by that of another devadāsī:

Dedication, like a Hindu marriage, is achieved through the tying of a necklace. In lieu of a groom, devadasis carry the goddess as a *murti* [idol] in a basket. The beads tied are distinctive red and white glass, worn only by those dedicated and taken off only in the rare case that they need to be purified from death pollution. The natal family typically bears the expense of the dedication, which is generally conducted by an elder devadasi acting in her priestly capacity. (Ramberg, 2014, p. 144)

After dedication the devadāsī is free to engage in a sexual relationship with the man of her choosing. This is typically an affluent man of a higher caste—a so-called *zaminder*, who, in the case of the *sule* class, may have helped to defray the costs of her dedication ritual. The devadāsī might accept a “husband”/lover/patron with whom she maintained a long-term relationship (most *jogatis* interviewed by Lucinda Ramberg had no more than two in a lifetime, usually only one) (Ramberg, 2014, p. 29), or she might have a “trial”

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<sup>30</sup> For a far more extensive discussion of the rites, see Kersenboom (2002).

relationship and be kept as a mistress for a designated period of time before actually choosing a life-partner (Kersenboom, 2002, p. 189). Often this male life-partner supports his devadāsī mistress, providing some percentage of her income. It was from these relationships that devadāsīs had children, including the daughters who would follow their devadāsī tradition (and sons who traditionally became professional musicians). If a patron is not a good provider, the devadāsī will leave him and find a better one (Ramberg, 2014, p. 167).

While *sule* and *jogati* might be distinguished by class, education, and location (urban vs. rural), they are not technically divided by caste, as any caste technically has the right to dedicate daughters to a deity as a devadāsī. As noted by Saskia Kersenboom:

One of the most basic errors is the reference to a devadasi and to her family as members of the “devadasi caste.” According to the devadasi informants themselves, there exists a *devadāsī vṛtti* (devadasi life) or a *devadāsī muṛai* (devadasi order, propriety, hereditary professional right), but not a *devadāsī jāti* (devadasi caste). (Kersenboom, 2002, p. 179)<sup>31</sup>

Nevertheless, in modern times *jogatis* tend to be members of the Dalit, or out-caste communities.

When it comes to gender-bending, it is interesting to note that in the late 19<sup>th</sup> and 20<sup>th</sup> centuries it was assumed that families dedicated daughters because they had no male sons and thus wanted to give their daughters son status (which should sound rather familiar by now) (Ramberg, 2014, p. 196; Vijaisri, 2004, pp. 198 and 231). “The main object of dedicating a girl was construed as a need to perpetuate the family line in the absence of a male heir. And that she enjoyed certain privileges such as inheriting the property and performing the funeral rites which in a strict sense were the exclusive privilege of the male” (Vijaisri, 2004, p. 231). However, the “sonification” of devadāsī daughters could even take place in families where a male heir was present—a result of the greater status wielded by women in the *devadāsī muṛai*. Thus Ramberg:

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<sup>31</sup> See also Marglin (1985, p. 83).

[E]ven in families with male children designated as sons—in which the patriline is secure—daughters are given to the devi. Sometimes... they become head of the household instead of their male brothers by virtue of their ability to better earn and sustain the kin network—that is, to successfully fulfill the obligations of sons... Another way in which the status of devadasis as sons is marked is in their right to inherit land. (Ramberg, 2014, p. 196)

When a devadasi dies, the devadasis dress her like a bride with all the signs of a married woman. Her body is carried to the cremation ground by the sons (*puamāne*) of the whole group... It is the eldest daughter who must do the actions (*kriyā*), the most important of which is to bring the fire from the kitchen of the temple... and put it on the corpse's face (*mukhāgni*)... But, of course, it is only among the devadasis that the daughter performs the funeral rites; for everyone else these must be performed by the eldest son. (Marglin, 1985, pp. 82–83)<sup>32</sup>

Furthermore, the masculine identity of devadāsīs was not limited to their status as “sons”: They could also take on the status of “father.” As one jogati named Margawwa interviewed by Ramberg put it, it was she who fed and cared single-handedly for her children, and thus she was her children's father (Ramberg, 2014, p. 200). A woman who worked for years with urban jogatis in Sangli, Maharashtra—Meena Sesho—exclaimed in an interview with Ramberg:

I had not realized the extent to which they are a man in the family. If I could have the status my brother has in my family, I would choose it in a minute. To think, all the years I have been with them and I didn't even realize this. It is not just that they are *like* the man, they *are* the man. (Ramberg, 2014, p. 197, emphases in original)

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<sup>32</sup> See also Nair (1994, p. 3159).

This gender-bending of daughters does not come about because of a lack of male heirs, as many devadāsīs have brothers. Rather, while they do not qualify as a caste per se (see above), the profession of devadāsī—both *sule* and *jogati*—does run in families, where the daughters become devadāsīs and the sons musicians. The prerogatives of sonship devolve onto daughters because the profession of devadāsī is seen as the dominant one in this category—they make more money, and have more prestige, than their menfolk. In a greater context, the devadāsī community is essentially matrilineal and matrifocal, much like the Japanese geisha, and for the same reason. As noted above, devadāsīs marry a deity, not a human male. They do, however, engage in long-term relationships with human males, and children do emerge from these relationships. These children, not born in official wedlock, are not recognized as members of their fathers' families, but are instead deemed members of their maternal natal family. In short, family identity runs through the maternal line rather than the paternal. And just as daughters are underappreciated in strictly patriarchal/patrilineal families, so too are sons amongst the devadāsīs.

It seems as though male filiation is minimized almost to the point of non-existence, both for the men and for the women. The tradition of the group is perpetuated through women, a son is... of secondary importance. He was useful in that he could produce daughters. (Marglin, 1985, p. 82)

Even those women who did not become devadasis enjoyed a considerably higher status than other categories of women under Hindu law in that their daughters inherited equal shares with the sons. In the cases of devadasis, however, “the children belong to the mothers, and the girls born or affiliated inherit her property, the male members only entitled to maintenance.” (Nair, 1994, p. 3161)

### Persecution

Starting in the late 19<sup>th</sup> century and extending through 1947 (and even later) there was a concerted effort to drive the devadāsīs out of existence. Quite simply, the dominant

Hindu castes wanted to remove any construction of femaleness that did not conform to the image of the chaste, obedient, controlled wife (Vijaisri, 2004, *passim*; Nair, 1994, *passim*). The devadāsīs—who worked “outside the home,” were educated, artists, property-owning, sexually active outside of marriage—were the absolute antithesis of the patriarchal ideal. Two discourses competed to dislodge the devadāsīs from their professions. One was an attempt to argue that there was no orthodox justification for temple dancers in Hinduism. This line of argument proved difficult when religious experts brought forth highly regarded texts affirming the history and required temple duties of the devadāsīs:

The “agamiks” entrusted with the task masterfully demonstrated, through citation from a genre of texts dealing with temple rituals, “Shaiva”, “Pancharatra”, “Vykhanaśāgamaśāstras”, that devadāsīs did indeed have specific services to render in the temple. From the moment they woke up, bathed and put on fresh clothes and adorned themselves with flowers, they spent the day participating in temple rituals which included waking up the deity with song and dance rituals, lighting the lamps in the evenings, and performing prescribed musical and dance oblations at set times. In addition, the agamiks said, the scriptures required them to perform a series of special rituals on specific days throughout the year. (Nair, 1994, pp. 3162–3163)<sup>33</sup>

The more successful attack was to accuse the devadāsīs of being prostitutes, an attack most successfully led by the so-called reformer Methulakshmi Reddy in the early 20<sup>th</sup> century. This argument was groundless—no devadāsī accepted money for sex—and opponents ranging from English colonial officers through the devadāsīs themselves countered the accusation vigorously. But the prostitution accusers had three powerful groups supporting them: Those striving for the “purity” of Indian women (such as Reddy and Mohandas Gandhi (!)), those who wished to claim their dance form (*sadir*) and hand it over to “proper” Brahmin girls to perform (*Bharata Natyam*), and the males of the devadāsī families who wanted to reclaim their masculinity (and property) from their sisters. In the end, the smear campaign championed by Reddy was successful: In 1947

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<sup>33</sup> For an excruciatingly detailed account of these rites and rituals, see Kersenboom (2002, §§ II–III).

“The Madras Devadāsīs (Prevention of Dedication) Act” was published, making it illegal to marry girls to a deity and thus render them devadāsīs. Additional acts were passed throughout the country where the custom was relevant through the 1980s. The *sule-class* of devadāsī was annihilated; the much poorer *jogati* class continues to function under the radar.<sup>34</sup> Worldwide the devadāsīs are understood to be prostitutes, occasionally sacred prostitutes, and even so-called anthropologists propagate the stereotype. Thus Nicolas Bradford claimed in his 1983 article “Transgenderism and the Cult of Yellamma: Heat, Sex, and Sickness in South Indian Ritual” published in the *Journal of Anthropological Research*, “In fact, the initiated devadasi cannot normally refuse right of sexual access to men, especially to the Yellamma temple priests” (Bradford, 1983, p. 315). Remarkably, no other anthropologist studying these women, especially Lucinda Ramberg, have made any similar observations. Nevertheless, and tragically, many former devadāsīs deprived of their inherited profession but not offered means to education or occupational rehabilitation have, in urban contexts, been driven to work in brothels. But this is an exception, and many of the *jogati* class continue to live their normal lives. But:

In discourses of social reform, they are framed as prostitutes regardless of the actual circumstances of their sexual activity and sources of livelihood—the two usual arbiters of women’s status in this area... [A]lthough many *jogatis* work or have worked in brothels, many others spend their entire lives residing in their natal villages, where they may take a patron—usually an otherwise properly married man—with whom they have long-term if not lifelong exclusive sexual relations. Still others are single and celibate. Means of *jogati* livelihood vary across the span of life and come from among a variety of sources, including gifts from patrons, ritual prestations, vegetable marketing, and agricultural labor.

Reformers familiar with local custom admitted knowledge of this range of sexual practices and economic means to me in interviews. This variation, however, did not

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<sup>34</sup> See Ramberg (2014), Vijaisri (2004), and Nair (1994) for full documentation and historiography of this process.

prevent them from equating the devadasi system with prostitution. (Ramberg, 2014, p. 156)

### *Third Gender?*

In none of these cases is the masculine gender of the women in question free from the constraints of biological sex. The *virginéshē* are one of the most commonly cited examples of “third gender” in the modern scholarship (e.g. Justel 2016, p. 93; Knapp & Meskell, 1997, p. 186), and yet the data provided by anthropologists such as Grémaux and Young indicate that these women (often referred to with feminine grammatical forms when not directly in their presence) are constrained in their performance of masculinity in a way never expected from actual males. Furthermore, nothing in their behavior, dress, mannerisms is anything but the standard fare of men; there is nothing “third” about their gender performance. They are women acting as men. It is really quite binary.

This is even more so for the female sons and fathers of Emar and Nuzi, who have their names preceded by the feminine name marker (a cuneiform symbol of the female genitalia) (really), and the documents in which their masculinity is established also tend to refer to their eventual marriages to men and their production of offspring. The “legal fiction” (Justel, 2016, p. 91) of their masculine gender is *pro forma*, a means of regulating property. We have no evidence that they changed their behavior in any way to fulfill their new masculine identity. There is no evidence of any “third” gender.

If the women of Nuzi and Albania are female somewhat in spite of themselves, the devadāsīs are condemned by their sex. Functioning as matrilineal, economically advantaged, sexually active “career” women in a staunchly patriarchal system, the elements of their lives that granted them the most freedoms, the greatest contrasts with proper Indian wives, led to their reputation as whores and the annihilation of their way of life. There is no benefit of gender fluidity here, a reconsideration of binary sex. These women were persecuted by their own kind for being insufficiently feminine women (“feminine” here = “what men want”).

For all these reasons I must disagree with Knapp and Meskell when they suggest that, “this plethora of new studies [pertaining to gender-benders like the sworn virgins]



relates to an opening up of the field, with studies from all sides challenging the assumptive structure of sexual dimorphism and the hegemony of the scientific paradigm” (Knapp & Meskell, 1997, p. 186).

### 5. *Sex and Feminism*

The south Indian devadāsī can be interestingly contrasted with another group of female gender-benders residing in the northern Indian district of Himachal Pradesh, the so called *sādhini*, a feminine form of the masculine *sādhu* = “ascetic” (Phillimore, 1991, p. 332). These women comprised primarily of the Gaddi and Seok castes are quite similar in all respects to the *virginéshē*. While still virgins (*kanyā* or *kūmarī*) they have the opportunity to make a vow of permanent celibacy (for which reason they are occasionally likened to ascetics). The vow is utterly informal. The outward sign of their vow of celibacy is the cutting of their hair and the adoption of clothing that is essentially masculine in style (Phillimore, 1991, p. 332). In fact, her most distinctive outward features are her male dress and masculinized appearance (Phillimore, 2001, p. 37).

According to Peter Phillimore, who knew of some 19 *sādhini* during his anthropological fieldwork in the 1980s (Phillimore, 1991, p. 334), the *sādhin*'s

new identity offers her the liberty to act “like a man” in a variety of contexts. For instance, a *sādhin* may choose to sit with male kinsmen or neighbors if she wishes to smoke (either a hookah or cigarettes) during an interlude in a wedding or to pass time a few minutes in the course of everyday routines. Equally, she may undertake tasks usually considered as being for men alone, such as plowing or sowing crops. (Phillimore, 2001, p. 31)

Again like the *virginéshē* (and devadāsī) she remains in her natal household where she shares her inheritance equally with her brothers. As her father's heir, the *sādhin* has the right to perform the son's role at his death, making necessary offerings (*śraddha*) for the well-being of his spirit and its proper entry into the realm of the ancestors. As Phillimore

notes, though, “Because the *sadhin* has no children herself, however, this spiritual benefit last no more than the one generation” (Phillimore, 2001, p. 33).

Unlike the *virgjinéshē*, in spite of her masculine appearance, occupations, and interaction with males in the community, the *sādhu* is **never** considered to be anything other than biologically female and feminine gender in her society. She retains her feminine personal name, suffixed with the term “Devi”. Feminine grammatical terms are consistently used when speaking of/to her, as are female kinship terms. And unlike the *virgjinéshē*, while engaging in male tasks and labor, the *sādhi* might also partake of female labor as well (Phillimore, 2001, p. 32).<sup>35</sup>

Four points to keep in mind:

- 1) The notion of gender, and especially concepts such as “third” gender can be remarkably mutable from culture to culture. The “mannish women” of the Balkans who cause pronoun ambiguity and get political rights and careers denied to women live in a very different gendered reality than the *sādhini*, who are like them in every possible way from a gender and biological perspective;
- 2) This does not change the fact that in both cases the women involved are still, ultimately, seen as women. The biological reality does not change;
- 3) Neither group (or, for that matter, the *devadāsīs*) see *themselves* as any kind of alternative gender. They are women performing (for the most part) as men. Both sex and gender are still binary, just acted out in unusual fashion;
- 4) “For the most part” because the women involved are still utterly, completely, and totally constrained in their sexuality, in a way that men are not.

This is the crux of it. In **NO** instance are females permitted control over their own sexuality. Clauses pertaining to the marriage of daughters-as-sons in Mesopotamia continue to give even dead fathers control over their daughters’ sex lives. The *virgjinéshē*, the “sworn virgins,” are *literally* those who make a vow of chastity (for which, in exchange, they get to act like men). For refusing to allow men to control their sexuality, the *devadāsīs* are branded as whores, denied education and occupation, and outlawed. Even Phillimore notes that a core component of the *sādin*’s gender “freedom” is the handing over control of her sexuality:

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<sup>35</sup> This reminds me of the Woody Allen joke that bisexuals get twice as many opportunities to date as straight people. *Sādhini* get twice as many chores.

The sadhin's celibacy needs to be seen therefore as the cornerstone of the wider social (public) regulation of her sexuality, the only way to accommodate her unattachment through marriage, and the key to permitting her social visibility. The social control of a sadhin's sexuality is subtly reinforced in ways which proclaim her status to be not simply nonsexual (in the sense that she refrains from sexuality) but asexual (in the sense that the possibility of a sexual persona is categorically denied). (Phillimore, 2001, p. 38)

50 years into the Women's Movement and women are still second-class citizens throughout the world, and much of women's (and girls') oppression comes from the desire to control their sexuality, their reproductive capabilities, their bodies, and their minds. Women in the United States are still fighting for the right to safe abortions, women in Japan had to wait 40 years for access to low-dose birth control pills, according to the World Health Organization and UNICEF some 200 million girls and women alive today—primarily in Africa—have been subjected to female genital mutilation<sup>36</sup>, and the Nobel Laureate Malala Yousafzai of Pakistan was shot in the head when she was 14 years old for standing up for girls' right to education. Throughout world history women who have not been submissive to patriarchal structures and heterosexual monogamy have been declared prostitutes—the Mesopotamian *ḥarimātu*, Greek *hetairai*, Renaissance Italian *cortigiane*, the devadāsīs, the Algerian “women without men” (Jansen, 1987), the Japanese geisha. (Budin, Forthcoming, *passim*)

It was once the task of feminism to address these problems. But we became distracted with the third wave. Instead of seeking an end to forced child marriages, we thought we might solve our problems by claiming that the focus, the object of the problems did not exist. Sexual binarism does not exist; thus, there is no such thing as a man or a woman.<sup>37</sup> There are merely power dynamics. Once the world realizes this, all sex- and gender-based problems will magically disappear. This is, I believe, the ultimate

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<sup>36</sup><https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation>;  
[https://www.unicef.org/media/files/FGMC\\_2016\\_brochure\\_final\\_UNICEF\\_SPREAD.pdf](https://www.unicef.org/media/files/FGMC_2016_brochure_final_UNICEF_SPREAD.pdf)

<sup>37</sup> Personal anecdote: A few years ago the soon to be ex-wife of a friend decided to get into gender studies. She quickly came to two obvious, irrefutable conclusions: 1) There is no such thing as binary sex or gender and all such categories are fluid and dynamic; 2) Men are assholes. She never saw the contradiction.

expression of first-world privilege. While we fight for our inalienable right to have people refer to us as “they/them/their” and to have multi-gender toilets, our suffragette foremothers were beaten in the streets while demonstrating for the right to vote, women in under the Taliban in Afghanistan had their *right to life* handed over to their husbands, and for women on the Indian subcontinent having acid thrown onto their faces is still a “family matter”.

The study of women and gender and men (let’s never fool ourselves into believing that men are normal) in history, including ancient history, has never been so important. It is critical that we understand the origins of sexism, misogyny, and heteronormativity, as well as different ways of seeing and constructing gender identity. But we must go into such study with clear minds. We cannot keep imposing third and fourth genders and sexes onto antiquity. We cannot force the ancients to manifest the gender identities and dynamics that we then want to “recreate” for ourselves. We make casual references to X chromosomes and Balkan virgins to substantiate our own idealized versions of a sexless, genderless reality, without really considering either the science or the subjectivities involved. The purpose of Theory is to force us out of comfortable modes of thinking, of believing that how we see the world is how everyone experiences it. Theory makes us question, confront, and reconsider our perception of truth and reality, telling us not to believe everything we think. This is good. But when it turns on itself, when it causes us to **force** others into our current modes of thinking (wishing), then it is time to stop and reconsider.

So here’s a radical idea. How about instead of dicking around deciding what our pronouns are going to be and how many genders we think they should have had in ancient Nubia and whether they were hegemonic or not, we concentrate our efforts on getting girls around the globe educated, safely, and giving women control over their own bodies, even when they want to have sex, on their own terms, for fun? Let us learn from ancient precedents and alternative ways of being without trying to force our own agendas. The scholarship on sex and gender needs to clear its head.

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## SEXO E GÊNERO E SEXO

*Stephanie Lynn Budin*

### RESUMO

Este artigo desafia algumas das noções vigentes referentes ao sexo não-binário e sexo fluido na academia moderna. Começando com um olhar sobre a história do debate sexo *versus* gênero, se volta aos estudos da genética para determinar como o sexo binário é definido, derrubando muitas crenças atuais sobre as bases biológicas de múltiplos sexos. Em seguida, considera-se quatro estudos de caso do chamado *gênero fluido* na história mundial - mulheres da Mesopotâmia como homens, *virginéshē* albanesa e *devadāsīs* e *sādhini* indianas - que mostram que essas "mulheres masculinas" nunca perdem seu gênero feminino, apesar das prerrogativas masculinas provisórias. Em todos os casos, é a sua sexualidade que os vincula ao seu gênero. O artigo termina com uma consideração de como a adoção irrefletida de sexo não binário e gênero fluido compromete os objetivos do feminismo.

### PALAVRAS-CHAVE

Feminismo; genética; gênero; *virginéshē*; *devadāsī*.