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CONSTRUCTIONS OF SEX AND GENDER: ATTENDING TO ANDROGYNES AND *TUMTUMIM* THROUGH JEWISH SCRIPTURAL USE

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Abstract

Responding to the ethical and performative call of Judith Butler not to propagate the sex- and gender-related violence of the imbedded discourse that we study, this article inquires into the discursive strategies of Jewish scripture by analysing how it orchestrates certain norms of sex and gender and makes them serve the overall aim of securing cultural survival. Following this, it traces reflections on persons of ambiguous or indeterminate sex from rabbinic to modern Judaism so as to inquire into the rabbinic dependency on scripture when non-conforming individuals challenge its bipolar sex and gender system. Finally, the article considers if scripture, as suggested by Butler, can play a subversive role in how we attend to non-conforming others today. To do so, the author's distinction between hermeneutical and artifactual uses of scripture is presented to evaluate the extent to which modern Jews and non-Jews are able to influence their own representations of sex and gender and thus liberate themselves from the normativity implied by scriptural discourse.

American philosopher Judith Butler revolutionised feminism in 1990 with *Gender Trouble: Feminism and the Subversion of Identity*, in which she encouraged scholars, feminists or not, to recognise a responsibility not to propagate blindly the violence of the discourse that they study. She levelled a critique not only at essentialist feminism that laid claim to defining what a woman was, but also at all other academic enterprises that failed to recognise how scholarship has blindly contributed to propagating heterosexual culture and bipolar conceptions of sex and gender. The consequence of such blind propagation is the othering of around 10% of the population that do not conform to heterosexual culture,[1] not to speak of yet another 10% that deviate from the bipolar

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male–female stereotypes due to intersexual characteristics at the level of either genitalia, chromosomes, or hormones or due to transgender distinctiveness.[2]

While Judith Butler openly refers to her own homosexuality and the atypical sexual anatomy of her uncle as reasons for her wish to question the stability of gender as a category of analysis,[3] Butler rarely mentions her Reform Jewish background[4] and its impact on her theory of performativity and ethics of disidentification. In one instance, however, she addresses her own diasporic Jewishness and how it has affected her ideals about attending to the other:

> [T]he Jewish community, its history of persecution, its methods of expelling its own, its relation to violence, and the question of what of theology could remain after the Nazi death camps... [were questions] made possible against the background of a religious horizon, even if no theology could be built upon such inquiry... [Talmudic inquiries into the biblical text emphasised] that the text was precisely 'living' to the extent that it remained interpretable... The Bible was particularly important precisely because it gave rise to quandaries, to problems of interpretation and, hence, to communities of interpreters defined by their quarrelling and their differences... One could become very Jewish in the absence of God without precisely becoming secular... There is, as it were, mourning with others and living with others, and this question of the Other, a mandate to attend to the precariousness of life, and not just Jewish life.[5]

With these reflections, Butler considers Jewish history a reason for her to attend to the precariousness of life, no matter if this life belongs to someone in an in-group or out-group. One must abstain from defining oneself up against others. Identity should never be constructed or encouraged at the expense of others subjected to processes of othering. This is what Butler means by an ethics of disidentification. Another way to attend to the precariousness of life and subvert the violent norms embedded in cultural discourse would be to partake in rituals and other repetitive activities that constitute identity—thereby to influence this normativity from within.[6] This is what is meant by performativity.

To respond to Butler's ethical and performative call not to propagate the sex- and gender-related violence of the imbedded discourse that we study, I shall inquire into the discursive strategies of Jewish scripture by analysing how it orchestrates certain norms of sex and gender and makes them serve the overall aim of securing cultural survival. I shall continue my analysis by tracing reflections on persons of ambiguous or indeterminate sex from rabbinic to modern Judaism so as to inquire into the rabbinic dependency on scripture when non-conforming individuals challenge its bipolar sex and gender system.[7] Finally, I shall consider if scripture, as suggested by Butler, can play a subversive role in how we attend to non-conforming others today.

To do so, I shall present my distinction between hermeneutical and artifactual uses of scripture to evaluate the extent to which modern Jews and non-Jews are able to influence their own representations of sex and gender and thus liberate themselves from the normativity implied by scriptural discourse.

1. CONCEPTIONS ON SEX AND GENDER IN SCRIPTURAL DISCOURSE

The discourse of Jewish scripture rests on the fundamental claim that God wishes to establish Israel's identity as a holy nation. To promote the fulfilling of this wish, scripture presents procreation and land as its discursive objectives. Genesis 48:4 reads, 'I will make you fertile and numerous, making of you a community of peoples; and I will assign this land to your offspring to come for an everlasting possession'. Neglect of the scriptural commandments will endanger this promise, as specified in Deuteronomy 28:62-63: 'You shall be left a scant few, after having been as numerous as the stars in the skies, because you did not heed the command of the LORD, your God... you shall be torn from the land that you are about to enter and possess'. To achieve and uphold the objectives of procreation and land, the instalment of five norms of sex and gender as natural dispositions is of crucial importance.

The first norm prescribes bipolar conceptions of sex, ruling out anything existing between man and woman. Bipolar conceptions of sex and gender are to be found throughout the Hebrew Bible, but mention can be made here of Genesis 1:27 where God creates the human being as male and female. Male and female represent absolute opposites within the category of gender. Categorical subversion is prohibited: 'A woman must not put on man's apparel, nor shall a man wear woman's clothing; for whoever does these things is abhorrent to the LORD your God' (Deuteronomy 22:5). Scripture depicts deliberate cross-dressing as an offence against God, which renders bipolar conceptions of sex and gender a divinely authorised norm.

The second norm insists on a hierarchy within the binary sex and gender system, positioning male above female. When giving the Torah to the people of Israel in Exodus 19:15, God only directs his speech to the men of Israel, obliging and expecting them to be the ones to observe all the commandments.[8] God's privileging of male access to holiness (giving men more opportunities to cultivate their religious identity) enables and sanctions this hierarchal bipolarity.

The third norm, based on Genesis 1:27-28, declares heterosexuality the normative frame for sexual activity within Judaism. The commandment against homosexuality in Leviticus 18:22 is positioned in a scriptural chapter detailing different kinds of sexual conduct by which the offender will lose h/er nationhood and cause the land to be defiled. The anticipated outcome of

heterosexuality is defined in, for example, Genesis 28:2–4 as a matter of contributing to the next generation of the nation and its growth.

The fourth norm enjoins patrilocality as well as patriliny. These strategies of cultural organisation became dominant as soon as land became something to pass on from one generation to another.[9] In the Torah, land is part of the covenantal promise to Israel. Should Jewish men invest in this land, they had to feel certain that they could pass it on to their own seed.[10] Marriage is the institutional frame that symbolises and (to some extent) fulfils man's wish to feel certain about his paternity of children his wife bears. Accordingly, Numbers 5:11–31 encourages, even threatens, women to engage in marital intercourse only.

A fifth norm ties female reproductivity and possession to the territory of the man. This is evident from the laws of levirate marriage that prescribe that a woman whose husband has died 'shall not be married to a stranger, outside the family [of the husband]' (Deuteronomy 25:5). Instead, his brother shall marry the widow. Similarly, Numbers 27:8 imposes endogamic restrictions on daughters who inherit the possessions of their deceased father, when he had no sons. Numeri 36:8 states: 'Every daughter among the Israelite tribes who inherits a share must marry someone from a clan of her father's tribe, in order that every Israelite may keep his ancestral share.' In this way, women's reproductivity and other assets such as inheritance must remain, if not in the hands of the husband, then within the patrilineal territory and tribe.

With these norms, scriptural discourse orchestrates the intertwining of a hierarchical bipolarity of sex and gender, heterosexual marriage, patrilocality and patrilineal laws of inheritance, and religious identity. One was only allowed to deviate from these norms to the extent that one did not threaten the objectives of procreation and land—the two fundamentals for the survival of Israelite culture. When Tamar dressed and acted like a harlot in Genesis 38, and thus deviated from normative, female behaviour, she was praised as a heroine only because she corrected Judah's neglect of the analogous male norms intended to secure procreation within Israel. As such, deviation may be deviation from the norms, but never from the fundamental objectives of the overall discourse.

II. RABBINIC REFLECTIONS ON SEX AND GENDER: THE *ANDROGYNOS* AND THE *TUMTUM*

Even though the rabbis should not be considered the principal agents of Jewish culture until at least 600 CE, it is obvious, according to early rabbinic literature, that many rabbis felt a responsibility to safeguard the fundamental cultural objectives of procreation and land. The latter objective underwent a slight change, resulting from the expulsion of Jews from Jerusalem and the

de-Judaisation of Judea in 135 CE. Following these events, religious reflections on the cultural objective of land necessarily had to be transformed into an abstract notion of Jewish nationhood, defined primarily through the allegiance of Jews to the Torah and its imbedded normativity.[11]

Rabbinic rulings on normative matters related to sex and gender are practically countless, which is why I shall limit an analysis of such rulings in what follows to rabbinic reflections on persons of ambiguous or indeterminate sex, known as androgynes and *tumtumim*. Similarly, I shall restrict these rulings to those of the early rabbis. Notwithstanding the fact that Rabbinic Judaism underwent significant change between late Antiquity and the onset of the modern period, rabbinic reflections on androgynes and *tumtumim* remained unanimous through this entire period, which is why I shall consider early rabbinic positions representative.

The Mishnah, edited around 200 CE, is the first Jewish, religious text to mention persons of ambiguous sex. It designates a person with ambiguous genitalia, *androgynos*. *Androgynos* derives from Greek and combines 'andros' (male) and 'gynos' (female) to designate the medical phenomenon of intersexual identity that occurs in one out of a thousand births. Sperm cells are not found in androgynes, which probably relates to the fact that the testicles are frequently more displaced than the ovaries. Similarly, the more proper position of the ovaries may explain why most androgynes menstruate no matter if they are of a XY, XX or other chromosomal variation. A few XX-androgynes have given birth, but otherwise androgynes are considered infertile.[12]

Mishnah, Bikkurim 4 is the key site for halakhic reflections on the corporeal phenomenon of androgyny that challenges the scriptural norm of keeping male and female distinct. The definitional strategy of the anonymous majority of the rabbis in this tractate is to create four categories for the characteristics of the androgyne: 'like men', 'like women', 'like both', and 'like neither', but as will soon become apparent, the categorisation is contradictory.

The seminal flow of the androgyne is the starting point for creating the first category in which the androgyne is compared to a man. Socially, s/he must dress like a man and conform to male Israelite hairstyle. Like any other man, s/he should not be alone in the company of women. S/he is allowed to marry a woman. At parental death, the androgyne does not receive maintenance like h/er sisters do. Halakhically, the androgyne 'must perform all the commands of the Torah like men' (mBikkurim 4:2).

mBikkurim 4:3 establishes the second category by listing the similarities between women and the androgyne. It takes its point of departure in h/er menstrual flow. Legally, like any other woman, s/he cannot serve as a witness. Socially, like any other woman, s/he should not be alone in the company of men. At parental death, the androgyne does not inherit like h/er brothers do.

mBikkurim 4:4 establishes the third category by presenting the androgyne as similar to both men and women. It states h/er basic 'human right' to be included among those who are protected against ridicule and physical violence according to Exodus 21:14-17. At parental death, in case the androgyne is an only child, s/he will inherit everything like other only children, male or female.

mBikkurim 4:5 presents the fourth category where the androgyne is considered neither male nor female. While Jewish men and women will be punished for entering the Temple precinct in an unclean state, the androgyne cannot be punished, probably because s/he is not responsible for/unable to change h/er own state of uncleanness. Unlike Jewish men and women, a Jewish androgyne cannot be sold as a Hebrew slave, nor can h/er value be assessed in cases where vows of persons are made unto God. R. Jose sums up this category by stating that the androgyne is *sui generis*.

The discursive attempts of the rabbis to categorise the androgyne reveal that rather than pursuing the consequences of R. Jose's logical conclusion that the androgyne should be considered *sui generis*—i.e. an incarnate denial of sexual bipolarity—the rabbis choose to remain undecided.[13] This inability to draw a logical conclusion with respect to the status of the androgyne is anticipated in their inconsistent argumentation. According to the first category, the androgyne cannot socialise with a group of only women; yet, according to the second category, the androgyne cannot socialise with a group of only men. Logically, this puts the androgyne into the fourth category, in which the androgyne is excluded from all those social gender-specific activities that male and female individuals engage in.

Another inconsistent argument follows when the rabbis deal with the laws of inheritance. Unless the androgyne is an only child where s/he will inherit everything in case of parental death, s/he will, in case of siblings, neither receive maintenance like female children, nor will s/he inherit like male children. Once again, the androgyne ends up in the fourth category of neither/nor. Instead, s/he will be forced to make h/er own livelihood, which would have been an endurable fate had s/he been allowed to engage in a profession. However, most professions are based on sex-specific division of labour, and the rabbis, as mentioned above, have clearly stated that the androgyne is neither allowed to mingle with groups of only women, nor with groups of only men. In other words, these halakhic (i.e. legislative) reflections on the inheritance of androgynes clearly prevent h/er from establishing property and fortune.

The exclusion of the androgyne from social and economic enterprise is difficult to explain; unless one considers the possibility that this is a clear case of the rabbis defending scriptural normativity with respect to sex and gender because the androgyne threatens the greater cultural objectives of

procreation and land/nationhood. If the social and economic industry of the androgyne were accepted, h/er lack of fertility would still prevent h/er from passing it on to the children that s/he cannot beget. While siblings, nephews and nieces could inherit, inheritance would in any case become more difficult to control and would thus threaten the objective of keeping assets in fertile, Jewish male hands. This interpretation invokes two rulings. mBikkurim 1:5 rules that an androgyne can bring the *bikkurim*, i.e. the offering of the first fruit, but cannot recite the accompanying thanksgiving prayer of Deuteronomy 26:5–11 because, as Numeri 26 makes clear, androgynes—or women for that matter—were not among the recipients of the land that produces this fruit. Fertile land is intended for fertile men. The second ruling stems from the Babylonian Talmud from around 700: 'The hermaphrodite may marry [a wife] but may not be married [by a man]. R. Eliezer stated: [For copulation] with an hermaphrodite the penalty of stoning is incurred as [if he were] a male' (bYevamot 82b). This quotation expresses a concern for potential homosexuality due to the male aspects of the androgyne, but there is also—what I consider a greater concern—a concern for man's obligation to procreate. If an androgyne should marry a man, s/he would prevent this man from fulfilling the male commandment to procreate and thus from ensuring that Jewish assets remain within the Jewish nation. To overcome this threat against cultural survival, bShabbat 134b–135a rules that androgynes must be circumcised. Subsequent generations of rabbis took this ruling as a matter of course and stated halakhically that androgynes are male. Accordingly, the imposition of maleness onto the androgyne activates the law against homosexuality to prevent h/er from impeding the procreation of fertile men. With such conclusion, no arguments are produced in favour of R. Jose's logical conclusion that the androgyne is *sui generis*, most likely because they would contradict the bipolar sex and gender system promoted by scriptural discourse.

Midrash Rabbah, Genesis 8:1 concludes this discussion of the androgyne. It opens with Genesis 1:26: 'And God said: "Let us make man in our image, after our likeness" ', which leads R. Jeremiah to quote from Genesis 5:2: 'When the Holy One, blessed be He, created Adam, He created him an hermaphrodite, for it is said, "Male and female created He them and called their name Adam" '. Not only could one find legitimacy here for conceiving of the corporeal androgyne as an intended part of God's creation, the midrashic structure enables a reading in which God h/erself is portrayed as an androgyne in whose image the first human was made. According to this logic, the corporeal androgyne ought to be conceived as more exemplary than either the differentiated male or female. However, R. Samuel puts paid to this logic by quickly changing the subject of androgyny to that of a so-called *dupartzufin*, i.e. a double-faced, first human whom God splits in two. R. Samuel is reusing

Platonic imagery from *Symposium* (189d–e) to explain the mutual desire between man and woman by pointing to their common origin in the androgyne. R. Samuel's focus on the splitting of the *dupartzufin* leads the next rabbinical character to speak of sides on the human ribcage and the tabernacle. While R. Jeremiah's deviating viewpoint indicates a potential for subversion, the rabbinic discussion which follows lacks such subversive potential for creative interpretation.

The Mishnah is also the first Jewish, religious text to mention people of indeterminate sex. A person of indeterminate sex is designated *tumtum*, connoting h/er sealed genitalia. A membrane covers this person's external sex organs which can almost always be revealed as either male or female, if the membrane is torn. As long as the membrane is not torn, the *tumtum* is treated like the androgyne because they share the characteristic of genital deviation.[14]

If the *tumtum* is operated upon, thus making h/er sexual identity clear, the *tumtum* is considered definitely male or female: 'The sages could not decide about [the hermaphrodite] but this is not so with one of doubtful sex, for such a one is, at times, a man and at others, a woman' (mBikkurim 4:5). If the post-op *tumtum* is found to be male, bYevamot 71b–72a rules that he should be circumcised after a full period of seven days after his operation. Once operated, the *tumtum* can be legitimately betrothed according to h/er revealed sex. Nonetheless, out of fear over a revealed male's incapacity to procreate, he can neither engage in levirate marriage nor participate in the ceremony of *halizah*.[15]

In terms of the laws of inheritance, a *tumtum*, revealed or not, is heir in those cases where s/he is the only child.[16] A firstborn *tumtum*, revealed to be male, is neither to receive a double portion nor is he to count as a son in the first round of dividing the inherited estate among the brothers. However, once the primogeniture portion is taken aside (i.e. the double portion of the birthright), the remaining part of the inherited estate is divided anew and equally among all the brothers, including the *tumtum* who has been revealed as male. Owing (most probably) to fear that he may be infertile, he can neither receive, nor influence the size of the primogeniture portion, which corresponds to the scriptural objective of ensuring that land and other assets remain in fertile hands.

An aggadic passage in bYevamot 64a–b presents Abram and Sarai as *tumtumim*.

> R. Isaac stated: Why were our ancestors barren? Because the Holy One, blessed be He, longs to hear the prayer of the righteous.
> R. Isaac further stated: Why is the prayer of the righteous compared to a pitchfork? As a pitchfork turns the sheaves of grain from one position to another, so does the prayer of the righteous turn the dispensations of the

> Holy One, blessed be He, from the attribute of anger to the attribute of mercy.
> R. Ammi stated: Abraham and Sarah were originally of doubtful sex; for it is said, Look unto the rock whence you were hewn and to the hole of the pit whence you were digged, and this is followed by the text, Look unto Abraham your father, and unto Sarah that bore you.
> R. Nahman stated in the name of Rabbah b. Abbuha: Our mother Sarah was incapable of procreation; for it is said, And Sarai was barren; she had no child, she had not even a womb.

The pitchfork image creates a causal line of reasoning. It argues that Abram and Sarai's turn to righteousness and prayers provide God with a reason to alter their barrenness, their status as *tumtumim*. In other words, someone's 'imperfect' genitalia mirror h/er 'imperfect' morality and piety. Using recognised figures such as Abram and Sarai to exemplify the barren person of indeterminate sex does not prevent the Talmudic text from exerting violence by blaming the barren or the *tumtum* for h/er own 'imperfection'.

In bYevamot 83b, R. Ammi argues against the conception of the *tumtum* as infertile. He mentions a *tumtum* from Bairi who, once operated upon, begat seven children. R. Ammi uses this case to emphasise that some *tumtumim* may contribute to the reproduction of the people of Israel. However, R. Ammi is opposed by R. Judah who mistrusts the procreative power of the *tumtum*. R. Judah's opinion concludes the passage and so the same doubt which was seen in regard to the indeterminate sex of the *tumtum* is also extended to h/er fertility, thus preventing h/er from enjoying the rights of the fertile.

III. USE OF SCRIPTURAL DISCOURSE IN CONTEMPORARY JEWISH DENOMINATIONS

Within the period of Rabbinic Judaism that gradually emerged after the destruction of the Second Temple and lasted until the onset of modernity, the Torah was positioned as the central source of holiness, accessible through textual study and liturgical use. The distinction between written and oral Torah made possible the adaptability of the Torah to new contexts. Still, the Talmudic phrase, that 'a Torah verse should not lose its literal sense' (bShabbat 63a) ensured that despite very creative ways of using the Torah in rituals, *midrashim*, and homilies, the discourse of the Torah could not be ignored, mainly because templeless Jews considered scripture the only site left for divine revelation and address.

During the Enlightenment, historical criticism and an emphasis on individual reasoning convinced many Jews to develop new understandings of revelation with the consequence that the Torah was no longer considered holy,

but a human product reflecting the historical experiences of Jews in ancient times. Within this context, Reform Judaism emerged. It embraced a transformed notion of scripture and revelation by considering history along with human reasoning as a continuous process of divine revelation securing human truth.[17] Reform Judaism reduced the Torah to a historical record of such revelation enabling scriptural discourse to be discarded. Still, using scripture as a symbol of Jewish history was important to signal one's Jewish identity. This reformed conception of revelation has led to significant subversion of scriptural norms with respect to sex, gender, and sexuality.[18] Within Reform Judaism, women have been ordained as rabbis since 1972 and same sex marriage is approved.[19] Intersexed and transgender people are accepted within the community: 'In the Reform context which treats men and women as religious equals we convert X as a human being and not as either a male or a female.'[20] Today, there are even two transgender rabbis within Reform Judaism in the USA.[21]

Orthodox Judaism arose around 1800 as a countermovement to Reform Judaism. What distinguishes Orthodox Judaism is its insistence on the need to keep embracing scriptural discourse as divine revelation in a modern world and to enact its embedded normativity. While newly invented rituals allow for women's performativity,[22] norms endorsing the hierarchical bipolarity of sex and gender, heterosexual marriage, patrilocality and patrilineal laws of inheritance are not subverted. When it comes to androgynes and *tumtumim*, modern Orthodox Jews follow the rabbinic conclusion that the androgyne is halakhically male when they have to deal with newborns of intersexual identity. Outside Jewish Orthodox circles, so-called specialists encourage parents to authorise operations on their androgynous infant to transform them into a recognizable female, simply because it is easier.[23] Jewish Orthodox rabbis, however, recommend the more risky operation of transforming the androgyne into an identifiable male, owing to h/er halakhic maleness and to the more attractive prospect for a male who will be able to perform more *mitzvoth* than a woman. When it comes to accepting gender non-conforming people, Orthodox Judaism welcomes those who are susceptible to realising that they have 'violate[d] the Torah out of carnal desire'.[24]

Conservative Judaism (which emerged in the mid 19th-century as a denominational middle ground) acknowledges scripture as a human product inspired by human encounters with God in a certain period. Revelation is an ongoing process in nature and history that instantiates God's culturally conditioned attempt to communicate with humankind. Consequently, scriptural norms must be interpreted according to the cultural context and situation of a concrete Jewish community.[25] Given a modern context, contemporary women have equal access to rabbinical ordination and participation in synagogal rituals, while other scriptural norms concerning sex and gender still

dominate. Deviation from these norms would be a matter of negotiation: each individual community is left to accept or refuse such deviation.[26] Most Conservative communities accept transgender people, but only according to their post-surgical, sexual identity because this is what scriptural and rabbinical rulings sanction.[27] Thus, conservative dependency on scripture gives rise to its violent aspects to the extent that the intersexed person is denied self-representation, not to mention a right to insist on maintaining an ambiguous identity.

IV. BUTLERIAN REFLECTIONS ON SCRIPTURAL USE

In the opening quotation, Butler indirectly considered scriptural interpretation a site of subversion. Being engaged in research on the function of Jewish scripture, I cannot help but think that Butler's views on scripture need modifying. Accordingly, I shall summarise my distinction between hermeneutical and artifactual use of scripture to consider the kind of scriptural use that would allow for the realisation of Butler's ethics of disidentification as a non-confining way of attending to the other.[28]

At one end of the continuum, I operate with a hermeneutical use of scripture as a two-step process of analysing the text and considering scripture's proposed religious worldview. Following Paul Ricoeur, I conceive of hermeneutics as a matter of connecting

> two discourses, the discourse of the text and the discourse of the interpretation. This connection means that what has to be interpreted in a text is what it says and what it speaks about, i.e., the kind of world which it opens up or discloses; and the final act of 'appropriation' is less the projection of one's own prejudices into the text than the 'fusion of horizons'—to speak like Hans-Georg Gadamer—which occurs when the world of the reader and the world of the text merge into one another.[29]

Semantic autonomy characterises scripture just like any other speech event fixed in writing. While a certain amount of plurivocity invites various readings, some readings are more valid than others. 'The reconstruction of a text's architecture, therefore, takes the form of a circular process, in the sense that the presupposition of a certain kind of whole is implied in the recognition of the parts. And reciprocally, it is in construing the details that we construe the whole'.[30] This is the discourse of the text. Simultaneously, the reader is encouraged to consider whether the text's proposed worldview should be transposed into h/er own worldview. If so, hermeneutical use will imply a fusion of the horizon of the text and the horizon of the reader and as such transform the reader by demanding either conscious appropriation or conscious refusal.

At the other end of the continuum, 'artifactual' use of scripture describes the most common way in which various projections come to interfere with the general reception of scripture. This use prevails in rituals and other repetitive activities where scripture is handled as a physical object, irrespective of the textual content, and treated as a manipulable symbol. The concept 'artifactual use' enables analysis of how individuals, collectives and institutions project their needs, experiences, and hopes onto scripture.[31] The projected meanings are subsequently associated with (or subconsciously activated by) scripture's non-semantic and formal aspects, such as binding and embellishment, recitation and quotation, and other performative acts.

Hermeneutical and artefactual uses of scripture are not mutually exclusive. Being strategies at the extreme ends of a continuum, they appear to be activated in turn or simultaneously depending on the needs of the user. Hermeneutical use seems to offer itself as a means of consciously dealing with the discourse of scripture when crisis makes it relevant to employ such a key normative text as a reservoir of advice on how to situate oneself and remain within the boundaries of one's own religious tradition. Artefactual use, however, facilitates transitivity between the personal and cultural representations associated with scripture and prevailing normativity, progressive or traditional as it may be, without being bound to scriptural discourse.

V. CONCLUSION

I do agree with Butler that early rabbinic literature is unique in its tolerance toward differences in opinion. However, modern readers should neither fail to notice the rabbinic norm of letting the majority opinion prevail (bBerachot 9a) nor overlook the rabbinic premise for scriptural use that 'a Torah verse should not lose its literal sense' (bShabbat 63a)— that is, rabbinic interpretation should not ignore scriptural discourse. Similarly today, Orthodox and Conservative Jews rely on scriptural discourse and consult it when looking for advice on how to think and behave.

In considering the kind of scriptural use that would allow for the realisation of Butler's vision of non-confining ways of attending to the other, Butler must ignore scriptural discourse to make scriptural interpretation a site of subversion. Only by using scripture in an artifactual way, by selecting parts and details while ignoring the whole, in order to make these parts and details create transitivity between a non-conforming reader and scripture, can scripture serve as a living symbol of how one can attend precariously to others. This raises a dilemma: Butler's theory of performativity only works if the scriptural user agrees to an enlightened conception of scripture; otherwise, the violent implications of scriptural discourse will continue to pose a threat to non-conforming people. Such an enlightened framework, however, is limited

to progressive denominations within Judaism and Christianity such as Reform Judaism (Butler's background). In this way, Butler's vision of scriptural interpretation as a site of subversion ends up positing all unenlightened users of scripture as excluded others in the process of including gender non-conforming individuals—and this goes against her ethics of disidentification.[32] I do not see any alternative to Butler's suggestion, but a distinction between hermeneutical and artefactual use of scripture is necessary to realise the inclusive and exclusive consequences of the different kinds of scriptural use that follow from inaugurating scriptural interpretation as a site af subversion.

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[3] *Ibid.*, pp. xx–xxi.

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[6] Cf. Butler, *Gender Trouble*, p. 201.

[7] Biblical quotations are taken from *The Jewish Publication Society TaNaKh Translation* of 1985. Quotations from early rabbinic literature are taken from the Soncino translations in D. Kantrowitz (ed.) *Judaic Classics Library* (Brooklyn: Judaica Press, 1991-2001).

[8] mKiddushin 1:7 rules that women are exempted from most positive time-bound commandments.

[9] Cf. G. Vandermassen, *Who's Afraid of Charles Darwin? Debating Feminism and Evolutionary Theory* (Lanham: Rowman and Littlefield, 2005), pp. 184–189.

[10] Cf. Deuteronomy 22:13–21.

[11] Cf. M. Schleicher, 'The Many Faces of the Torah: Reception and Transformation of the Torah in Jewish Communities' in K. Nielsen (ed.), *Religion and Normativity. Receptions and Transformations of the Bible*, vol. ii (Aarhus: Aarhus University Press, 2009), pp. 141–158.

[12] Cf. A. Steinberg, *Encyclopedia of Jewish Medical Ethics* (Jerusalem: Feldheim Publishers, 2003), Vol. ii, p. 463.

[13] Sarra Lev has also noted this illogical majority position in 'Deconstructing the binary, or not?: The androgynous in Rabbinic literature', paper presented at the conference *Gender and Jewish Identity*, Bar Ilan University (3 June 2010).

[14] Cf. mParah 12:10; mBikkurim 1:5.

[15] Cf. bYevamot 81a; 83b. The ceremony of *halizah* allows a brother to a deceased childless man to abstain from his duty to marry the widowed sister-in-law. *Halizah* only makes sense if the surviving brother is able to procreate, since Deuteronomy 25:5–10 commands levirate marriage to enable the dead childless man an opportunity for offspring.

[16] Cf. bBaba Bathra 126b–127a; 140b. See bBaba Bathra 140b for Raba's alternative ruling.

[17] Cf. Pittsburgh Platform, § 2; Columbus Platform, § 4.

[18] See, for example, R. Adler, *Engendering Judaism: An Inclusive Theology and Ethics* (Philadelphia: Jewish Publication Society, 1998).

[19] Cf. 'NER-CCAR Passes Resolution in Support of Marriage Ruling; Opposes Efforts to Undermine Equality for Same-sex Couples', www.ccarnet.org (2004). Last accessed: 10 June 2011.

[20] Cf. 'Conversion and Marriage after Transsexual Surgery', www.ccarnet.org (1989). Last accessed: 10 June 2011.

[21] Cf. R. Spence, 'Transgender Jews now out of Closet, Seeking Communal Recognition', www.forward.com (2008). Last accessed: 10 June 2011.

[22] See, for example, T. Frankiel, *The Voice of Sarah: Feminine Spirituality and Traditional Judaism* (New York: Biblio Press, 1990), pp. 82-83.

[23] On the violent implications of any interfering with the body of gender non-conforming people, see S. Stone, 'The "Empire" Strikes Back: a Posttranssexual Manifesto', www.sterneck.net (1991). Last accessed: 24 February 2011. And C. Chase, 'Hermaphrodites with Attitude: Mapping the Emergence of Intersex Political Activism', in R.J. Corber and S. Valocci (eds.), *Queer Studies: An Interdisciplinary Reader* (Oxford: Blackwell, 1998), pp. 31-45.

[24] Cf. A. Shafran, 'What would Hillel say?', www.cross-currents.com (30 May 2008). Last accessed: 10 June 2011.

[25] Cf. R. Gordis, *Emet ve-Emunah: Statement of Principles of Conservative Judaism* (New York: Jewish Theological Seminary of America, 1988), 'Revelation'; 'Halakhah'.

[26] Cf. E. Dorff, 'Position Paper on Homosexuality and Sexual Ethics' in *'This Is My Beloved': A Rabbinic Letter on Intimate Relations* (New York: Rabbinical Assembly, 1996).

[27] Cf. M.E. Rabinowitz, 'Status of transsexuals', www.rabbinicalassembly.org (2003). Last accessed: 10 June 2011.

[28] Cf. M. Schleicher, 'Artifactual and Hermeneutical Use of Scripture in Jewish Tradition' in C.A. Evans and H.D. Zacharias (eds.), *Jewish and Christian Scripture as Artifact and Canon* (New York: T&T Clark, 2009), pp. 48–65.

[29] Paul Ricoeur, *The Rule of Metaphor: The Creation of Meaning in Language* (London: Routledge, 2003), pp. 377–8.

[30] Paul Ricoeur: *Interpretation Theory: Discourse and the Surplus of Meaning* (Fort Worth: The Texas Christian University Press, 1976), p. 77.

[31] On scripture as artefact, see B. Malley, *How the Bible Works: An Anthropological Study of Evangelical Biblicism* (Oxford: AltaMira Press, 2004).

[32] Cf. Saba Mahmood's critique of Butler in Mahmood, 'Agency, Performativity, and the Feminist Subject' in Armour and St. Ville, pp. 177–221.