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Becoming Gendered: Two Medieval Approaches to Intersex Gender Assignment

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Introduction

In medieval Europe, gender was typically assigned at birth and it was generally understood to be a fixed category that would not change within a person's lifetime.¹ However, then as now, gender did not always express itself into neat binary categories. As such, legal and social sex designation could take place at various stages in the lifecycle, even well past adolescence. In the medieval world, scholars relied on medical, theological and philosophical texts, and drew on Roman law. The methods for determining gender differ between Christian and Muslim contexts, and a comparison between their approaches to sex designation reveals the varied ways that gender was constructed and the social functions it served.

By considering how the gender of intersex people was reassigned, we can come to a better understanding of how sex and gender were constructed in this period. In this paper, I will examine how hermaphrodites were constituted via theological texts, through natural philosophy, and note the legal implications. A lot was at stake, as a person's gender was understood to determine their character, legal status, and the social roles they were expected to perform within society.

Defining terms: hermaphrodite, androgyne, and intersex

In medieval texts, people born with an indeterminate gender are more often called "hermaphrodites" or "androgyne."² However, since the early 1990s, the medical designation for what was once called "hermaphrodite" has more commonly come to be called "intersex." In this paper, these terms will be used interchangeably. In the later medieval era, "hermaphrodite" was

¹ Nico Mara-McKay is a fourth-year student at the University of Toronto completing a double major in History and Art History and a minor in the History of Religions. Nico's research interests are the medieval and early modern periods, with a focus on queer identities. This paper was originally written for Professor Mairi Cowan's fourth-year seminar on life cycles in medieval and early modern Europe. Her comments were immensely helpful in shaping this paper.

² It is worth noting that both of these terms are gendered as masculine in Latin. See Cary J. Nederman and Jacqui True, "The Third Sex: The Idea of the Hermaphrodite in Twelfth-Century Europe," *Journal of the History of Sexuality* vol 6, no. 4 (April 1996): 497-517, 509.

sometimes used to describe homosexual or "unnatural" sexual behaviour, but that is not the sense I will be exploring here.³ Rather, people who were born with physical attributes that posed a challenge to the gender binary that was assumed to be "natural" and, to a certain extent, God-given in both Christian and Muslim Europe.

Problematizing the history of sex and gender

Our notions of what it means to be a man, woman, or other genders is relational, and dependant historical context.⁴ In the past thirty years, the general distinction between sex and gender has suggested that "sex" has its roots in biology, while "gender" refers to the socio-cultural aspects of relationships between men, women, and other genders.⁵ However, this distinction is no longer held in queer theory, as it has become increasingly clear that biological distinction between or among the sexes is not neutral.⁶ That said, using "gender" as an analytical framework and as "a social category imposed on a sexed body" highlights its culturally constructed nature, so I will use the term "gender" throughout this paper.⁷

Gendering the medieval body

How sex and gender are constructed informs how historians have understood human bodies and the relationships between them. Some historians, like Thomas Laqueur, have posited a one-sex model derived from Aristotle that suggests that there are "many genders, but only one adaptable sex."⁸ That one sex was, of course, male, with woman being an inferior version of

³ John Boswell, *Christianity, Social Tolerance, and Homosexuality: Gay People in Western Europe from the Beginning of the Christian Era to the Fourteenth Century* (Chicago: University of Chicago Press, 1980), 68.

⁴ Joan W. Scott, "Gender: A Useful Category of Historical Analysis," *The American Historical Review* vol 91, no. 5 (December 1986): 1052-1075, 1065.

⁵ *Ibid.* 1053. However, the relational aspects of this approach remain valuable. In particular, the idea that gender designation can only be understood in relation to one another, whether how people are categorized, or in the social roles they play. See, for instance, Suzanne J. Kessler and Wendy McKenna, *Gender: An Ethnomethodological Approach* (Chicago: The University of Chicago Press, 1978) for more on how these designations are constructed.

⁶ See, for example, Anne Fausto-Sterling, *Sexing the Body: Gender Politics and the Construction of Sexuality* (New York: Basic Books, 2000).

⁷ *Ibid.*, 1056. That said, as Scott notes, "gender" has nonetheless become a catch-all term to refer to "the study of things related to women." Scott, *Gender*, 1057.

⁸ Thomas Laqueur, *Making Sex: Body and Gender from the Greeks to Freud* (Cambridge [MA]: Harvard University Press, 1990), 35.

man. Joan Cadden presents a more nuanced view, noting the additional influence of Galen and Hippocrates on medieval anatomy, and the complexities that emerged amongst various medieval natural philosophers.⁹ Cary J. Nederman and Jacqui True even suggest a trisex model bound within two culturally determined genders.¹⁰ However, "biological" sex did not have firm boundaries, and medieval people seemed less interested in categorizing women, men, and intersex people by their genitals, as much as by the roles they played within society.

Ideas about what is appropriate depends on what symbols are available and considered meaningful to a given culture. These can often "evoke multiple (and often contradictory) representations" on how they are played out on real bodies among real people.¹¹ In the middle ages, this appears particularly so with intersex people, as they do not fit the tidy binary categories assumed in Christian and Muslim Europe. In establishing a body as either male or female, a certain set of meanings and codes are imposed on the person that serve to "limit and contain their metaphoric possibilities,"¹² and this can occur at different periods in the life cycle.

In this paper, I will briefly explore what medieval people understood intersex people to be, and the strategies used to categorize them as either female or male in both Christian and Islamic contexts, as the comparisons between the two are illuminating, and reveal what was considered important to each in the social expression of gender. The impacts can be varied, and have bearing on the legal status of a person, and what activities they may partake in.

Hermaphrodites as natural

While intersex people in medieval Europe had to be categorized as either female or male, they were recognized as natural creatures. Writing in the twelfth century, the jurist Azo of

⁹ Joan Cadden, *Meanings of Sex Difference in the Middle Ages: Medicine, Science, and Culture* (Cambridge [MA]: Harvard University Press, 1998), 2-3.

¹⁰ Nederman and True, "Third Sex," 499.

¹¹ Scott, *Gender*, 1067.

¹² *Ibid.*

Bologna (d. 1250) says that "some [people] are male, others are female, others are hermaphrodites."¹³ Nonetheless, he declares that hermaphrodites must be "established as either male or female according to the prevalence of its sexual development,"¹⁴ for which no further details are granted. Azo's description of hermaphrodites as one type among others suggests its ordinariness, though there remains an insistence on two socially proscribed genders.¹⁵ The hierarchy and roles embodied within the designations man and woman remain ever present.

Hermaphrodites as portents

Writing in the seventh century, Isidore of Seville (c. 560-636) is a little more mystical with how the "androgynous" or "hermaphrodite" were categorized. Here, hermaphrodites were designated as portent -- "an unnatural being" that takes a "slight mutation,"¹⁶ and thus deviates from the norm assumed in a binary gender system. However, in his definition of portents, he notes that beings cannot be born "contrary to nature," as they are "created by a divine will."¹⁷ Therefore, if portents (or monsters) are called unnatural, it is because they are contrary to what humans know of nature. In some sense, they are also seen to predict future events. However, he does not suggest what the appearance of a hermaphrodite might portend, either for the intersex person, their parents, or their community.

Hermaphrodites under Roman and Christian law

According to *The Digest of Justinian: First Book*, intersex adults were permitted to participate in legal proceedings, according to "the sex which predominates in them."¹⁸ This Roman precedent had great influence on later Christian thought on the matter, and the ruling was

¹³ Azo, *Summa Institutionum*, as cited in Nederman and True, "Third Sex," 512.

¹⁴ *Ibid.*, 513.

¹⁵ Nederman and True, *Third Sex*, 510.

¹⁶ Isidore of Seville, *Etymologies*, edited and translated by Stephen A. Barney (Cambridge: Cambridge University Press, 2009), 244.

¹⁷ *Ibid.*, 243.

¹⁸ Ulpian, "On Sabinus 1," *The Digest of Justinian: First Book*, translated by Charles Henry Monro (Cambridge: The University Press, 1904), 25.

also affirmed by Gratian, writing in the mid-twelfth century.¹⁹ In 1160, a commentator wrote that "if [a hermaphrodite] prevail[s] more towards the masculine, they are to bear witness just as men."²⁰ However, Cary J. Nederman and Jacqui True were unable to unearth any court cases (civil or religious) where the validity of a witness was challenged on the grounds that they were a hermaphrodite, so it is unclear how often this particular issue might have come up in court.²¹

The English jurist Henry of Bracton (ca. 1210-1268) wrote a treatise that identified the legal rights of people, classing them into one of three groups: male, female, or hermaphrodite, with the latter again requiring further designation as either male or female, "according to the predominance of the sexual organs."²² A canon lawyer, Hugh of Pisa (d. 1210) suggested that these attributes could be physical, such as a beard, or social, such as preferring "manly" tasks and the company of men, and this would help determine a hermaphrodite's "true" sex.²³

Hermaphrodites: Choosing a gender in a Christian context

Within a Christian context, the primary fear that necessitated determining a "true" sex was to avoid the sin of sodomy at all costs.²⁴ Peter Cantor (d. 1197) argued that while the church recognized the existence of hermaphrodites, it required them to choose the organ and corresponding gender that most matched their (assumed heterosexual) desire.²⁵ However, he notes that "if [a hermaphrodite] should fail with one organ, the use of the other can never be permitted," and celibacy is recommended to avoid the "role inversion of sodomy, which is detested by God."²⁶ Thus, the determination of an intersex person's gender would seem to occur

¹⁹ Nederman and True, *Third Sex*, 513.

²⁰ *Summa Parisiensis*, as cited in Nederman and True, *Third Sex*, 514.

²¹ Nederman and True, *Third Sex*, 515.

²² Michelle M. Saur, *Gender in Medieval Culture* (London: Bloomsbury Academic, 2015), 96.

²³ *Ibid.*, 96.

²⁴ "Sodomy" encompassed a broad range of anxieties in the middle ages, including anal sex between same-sex or differently-sexed people (usually male), intercrural sex, oral sex, bestiality, masturbation, and any non-procreative sex.

²⁵ Peter Cantor, *On Sodomy*, 375-376.

²⁶ *Ibid.*, 376.

after puberty and into adulthood. However, once selected, they must stick to their chosen gender role, and cannot deviate from it. Yet, in practice things were not quite so simple.

An early fourteenth century Dominican chronicle describes a woman who lived with a man for ten years. As she could not have sex with him, they were separated by the "spiritual court." A surgeon later cut open her vagina, and "a penis and testacles came out." When she, now he, returned home, he married a woman, worked in manual labour, and had "proper and adequate sexual congress" with his new wife.²⁷ There seems to have been no concern about improper or "unnatural" sexual relations in this case. It is presented as if relating a misdiagnosis of gender at birth, as if "really," all along this person had been a man, despite having previously been socialized as female, and living and marrying as a (heterosexual) woman. After the surgery, heterosexuality was reinscribed onto the adult body, which was newly understood to be male. The chronicle took pains to describe the normalcy of "sexual congress" that occurred after this social reassignment. As far as the Dominicans were concerned, it was assumed that the "natural" order had reestablished itself.

Hermaphrodites in medieval Islamic jurisprudence

In medieval Islamic jurisprudence, the segregation of women and men had legal as well as social significance. Women and men were considered "opposites,"²⁸ and it was understood that humans, like other creatures, were created in pairs.²⁹ This left no room for an in between state. In cases where a child was born with an indeterminate sex, various tests were administered to definitively determine its gender, such as by *mabal* (literally, "the place of urination"), via a

²⁷ The *Annales Colmarienses Minores*, as cited in Miri Rubin, "The Person in the Form: Medieval Challenges to Bodily 'Order,'" in *Framing Medieval Bodies*, edited by Sarah Kay and Miri Rubin (Manchester: Manchester University Press, 1994), 101.

²⁸ Paula Sanders, "Gendering the Ungendered Body: Hermaphrodites in Medieval Islamic Law," *Women in Middle Eastern History: Shifting Boundaries in Sex and Gender*, edited by Nikki R. Keddie (New Haven: Yale University Press, 2008), 74.

²⁹ Sanders, *Gendering*, 76.

complex series of deductions.³⁰ The process for determining the "true" sex of the child was more rigorous and detailed than the ambiguities found in Christian medical and legal texts.

However, if the tests was inconclusive,³¹ then the distinction would not be made until the onset of puberty, and the appearance of signs (*'alamat*) indicating sexual maturity.³² Yet, the child could not be considered both female and male simultaneously.³³ Fortunately, children are "not considered sexual beings in Islam," therefore they are not a part of the socio-sexual adult world.³⁴ That said, this ambiguity was assumed to be temporary, and it was understood that the "true" sex would be revealed as the child matured.³⁵

Alas, puberty did not always resolve the question of the child's "true" gender. The legal term for this state was *khuntha mushkil* roughly translated as a "hermaphrodite who had passed the age at which puberty normally occurs without manifesting any of its signs."³⁶ It was extremely important that the juror determine the "correct" sex, as once a gender was assigned it was considered permanent.³⁷

The social implications for being intersex within a medieval Muslim community differed from those of a Christian context in other ways as well. For Muslims, the main areas of concern were its religious and legal implications. For example, the segregation of space in prayer was an important consideration. An intersex person whose final sex had not yet been determined would sit between the men's and women's sections to maintain the spatial hierarchy. They would sit in the last row of men, or the first row of women, threatening the status of neither.³⁸ In death, an intersex person would be buried with a portion of dirt between male and female bodies;

³⁰ *Ibid.*, 77-78.

³¹ Described as a state of *ishtibah*, "dubiousness," or *ishkal*, "ambiguity" (Sanders, *Gendering*, 78).

³² *Ibid.*, 78.

³³ *Ibid.*, 77.

³⁴ *Ibid.*, 78.

³⁵ *Ibid.*, 79.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*, 80-81.

inheritance portions would often be associated with female rights to ensure that they were not taking more than their fair share.³⁹ Similarly, we find that modesty, ritual ablutions in death, burial, how to dress for hajj, and what was permitted for intersex slaves -- every aspect of the social life -- had its corresponding code.⁴⁰ To err on the side of caution, intersex people "were usually gendered in the world of ritual as female."⁴¹ Rather than the threat of "unnatural" sex that concerned Christians, Muslims were more concerned with mitigating threats to the gendered aspects of the social order.

Conclusion

In medieval Europe, assigning a gender to an intersex person served a "legitimizing function," making certain behaviours and codes appear more legible.⁴² This could take place at various stages in the lifecycle depending on what physical attributes were present, or which "opposite" sex one preferred. However, within a Christian context, it was possible that the initial determinations were incorrect, and the intersex person could assume a new gender role, with minimal fuss. Whereas in a Muslim context, once assigned, a person's gender was considered fixed and unchangeable.

In adopting a binary gender assignment, intersex people became recognizable members of society that could be securely placed within the cultural hierarchy, and thus they took on an identity that was readily understood by their contemporaries.

³⁹ *Ibid.*, 81-84.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*, 88.

⁴² Scott, *Gender*, 1070.

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