

Seminal Omissions: Giving *Tumtum* v'*Androgynos* Their Due

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Introduction

Post-talmudic Jewish commentaries and current scholarly discourse commonly distinguish between the rabbinic terms *tumtum* and *androgynos* as if they are always and everywhere distinct, clearly differentiated embodiments.¹ These

- 1 David Margalit, "Tumtum v'Androgynos", *Korot* 6 (1975): 777-781 [Hebrew]. Alfred Cohen "Tumtum and Androgynous" *Journal of Halacha and Contemporary Society* 38 (1999): 62-85; note that Cohen writes, "Probably, both terms are often employed to describe a far more common occurrence, a person born with ambiguous genitalia" (62). Charlotte Fonrobert, "Semiotics of the Sexed Body in Early Halakhic Discourse," in *How Should Rabbinic Literature Be Read in the Modern World?*, (ed.) Matthew Kraus (Piscataway, NJ: Georgias Press, 2006), 79-105; Fonrobert, "Regulating the Human Body: Rabbinic Legal Discourse and the Making of Jewish Gender," in *The Cambridge Companion to the Talmud and Rabbinic Literature*, (ed.) Charlotte Fonrobert and Martin S. Jaffee (New York: Cambridge University Press, 2007), 270-294; Fonrobert, "Gender Duality and Its Subversions in Rabbinic Law," in *Gender in Judaism and Islam: Common Lives, Uncommon Heritage*, (ed.) Firoozeh Kashani-Sabet and Beth Wenger (New York: NYU Press, 2014), 106-126; Marianne Schleicher, "Constructions of Sex and Gender: Attending to Androgynes and Tumtumim Through Jewish Scriptural Use," *Literature and Theology* 25:4 (2011): 422-435; Sarra Lev, "They Treat Him As a Man and See Him As a Woman: The Tannaitic Understanding of the Congenital Eunuch," *Jewish Studies Quarterly* 17:3 (2010): 213-243; Lev, "A Creation Sui Generis: The Evolution of a Concept," in *From Scrolls to Traditions: A Festschrift Honoring Lawrence H. Schiffman*, (eds.) Stuart S. Miller, Steven Fine, Naomi Grunhaus, and Alex P. Jassen, (Koninklijke Brill: Leiden, 2021), 325-249; Moshe Lavee, "Either Jews or Gentiles, Men or Women: The Talmudic Move from Legal to Essentialist Polarization of Identities" *Jewish Studies Quarterly* 25:4 (2018): 345-367; Moshe Lavee and Tali Artman Partock, "Four Sexes, Two Genders: The Rabbinic Move from Legal to Essentialist Polarisation of Identities", *The Legal Status of Intersex Persons*, (eds.) Jens M. Scherpe, Anatol Dutta and Tobias Helms (Interstentia, 2018), 165-180; Gwynn Kessler, "Rabbinic Gender: Beyond Male and Female", *A Companion to Late Antique Jews and Judaism: Third Century BCE to Seventh*

readings, derived from a small subset of classical rabbinic sources, typically define *androgynos* (a Greek loan word), as one who is both “man” and “woman”, presumably meaning one who has a penis and a vagina. *Tumtum* is defined as one who has ambiguous or underdeveloped genitalia,² and now often defined as one who is either a man or a woman, meaning one who has either a penis or a vagina.³ However, the clear majority of tannaitic sources (and even many traditions in the Babylonian Talmud), make no definite, consistent distinctions.

In addition, contemporary scholarship, growing out of some traditional post-talmudic commentaries and centering t. Bik. 2:3-7, has often framed discussions of *tumtum* and *androgynos* with the rabbinic concepts of “uncertainty” or “doubt” (*safek* or *safeka*) and “unique creation” (*briah*).⁴ In the context of discussions about *tumtum* and *androgynos*, *safek* typically connotes that there is an uncertainty about whether they are classified as male or female; *briah* connotes

Century CE, (eds.) Naomi Koltun-Fromm and Gwynn Kessler (Hoboken, NJ: John Wiley & Sons, Ltd., 2020), 353-370; Moshe Halbertal, *The Birth of Doubt: Confronting Uncertainty in Early Rabbinic Literature* (Society of Biblical Literature: Brown Judaic Studies, 2020), 184-303; Max Strassfeld, “Translating the Human: The Androgynos in Tosefta Bikurim,” *Transgender Studies Quarterly* 3:3-4 (2016): 587-604; Max Strassfeld, *Trans Talmud: Androgynes and Eunuchs in Rabbinic Literature* (Oakland: University of California Press, 2022).

- 2 This definition bases the meaning of *tumtum* on the Aramaic root meaning covered over or undifferentiated (t.m or t.m.m.). This etymology, however, is lacking in the tannaitic through talmudic sources themselves, and seems to begin around the 10th or 11th century CE (e.g.: ha-Arukh s.v.: t.m.; Rashbam, b. Baba Batra 140b, s.v. v'*tumtum*). I discuss this below.
- 3 This understanding emerges from the *tumtum sh'nikra* (torn *tumtum*), discussed below. For definitions of *tumtum* based on the meaning of *tumtum sh'nikra*, see Avraham Steinberg, “Ambiguous Genitalia (Tumtum)” in *Encyclopedia of Jewish Medical Ethics* (New York: Feldheim 2003), 50-51. And see Judith Plaskow, “Dismantling the Gender Binary within Judaism: The Challenge of Transgender to Compulsory Heterosexuality” in *Balancing on the Mechitza: Transgender in Jewish Community*, ed Noach Dzmura (Berkeley, CA: North Atlantic Books 2010), 196. See also Fonrobert (2006: 94).
- 4 Reasons that I consider m. Bik. 4:1-5 to be a later addition to the Mishnah are detailed below (note 76). On “doubt” and *androgynos* see especially Halbertal (2020: 185-203); on *androgynos* and *briah* see especially Lev (2021). For some of the post-talmudic commentaries and their different interpretations in the context of contemporary halakhic questions, see Alfred Cohen “Tumtum and Androgynous”, *Journal of Halacha and Contemporary Society* 38 (1999): 62-85.

the potential that they are classified as (similar to) both male and female or unique as such.⁵ Furthermore, much contemporary scholarship, which has focused more on “the *androginos*”,⁶ has coalesced around the insistence of a rigid binary construction of gender that both undergirds and constrains rabbinic halakhah.⁷ As a consequence, according to these readings, “the *androginos*”, to the extent that they can be assimilated to men and women, is included in halakhah as “like men” or “like women”. Otherwise, they are excluded from halakhah and rendered unable to “participate in rabbinic Judaism”.⁸

In this article, I argue that the phrase *tumtum v'androginos* enters rabbinic sources as a third gender category in order to address a lack in biblical sources, which only recognize the categories male or man and female or woman.⁹ This novel halakhic gender category is adjacent to, but excluded from, the categories male, female, man, and woman. During a lengthy process of transmission and interpretation, which I set forth over this article’s unfolding, the category *tumtum v'androginos* eventually develops and solidifies into two distinct categories, “*tumtum*” and “*androginos*”. And, during this extended process and based on minimal textual evidence as well as the presumptive tannaitic provenance of t. Bikkurim 2:3-7, interpreters begin to read *tumtum* and *androginos* as legible

- 5 Or *briah* suggests that they are outside the categories man or male and woman or female insofar as they are both comparable to man and woman in differing ways. These connotations are explored in more depth below.
- 6 At some point in the medieval period (ca. 11th and 12th centuries), we begin to see a further development as some authors use *ha-tumtum* and *ha-androginos*; these grammatical constructs are unattested to in almost extant tannaitic and talmudic sources. See, e.g.: Rashbam, b. Baba Batra 140b, s.v. *hare zeh yitol*: “*ha-tumtum*” and cf. Rashbam b. Baba Batra 127a, where “*v'ha-tumtum*” is used twice; Rambam, *Mishneh Torah*, Forbidden Intercourse 22:11: “*ha-androginos*” and “*ha-tumtum*”. The exception is m. Bik. 1:5 (ms. Kaufmann), which I address in footnotes below.
- 7 For scholarly focus on the *androginos*, see, e.g.: Fonrobert (2006: 93; 96; 100; 103-104 and 2007: 271-273; 289). See also Strassfeld (2016: 594-598) and Lev (2021: 326-327).
- 8 Strassfeld (2016: 597). See also Fonrobert (2006; 2007; 2013).
- 9 Throughout this article, when *tumtum v'androginos* appears in the sources being cited, I leave the phrase *tumtum v'androginos* untranslated, replicating the language of the majority of the texts themselves. Although perhaps initially awkward, I believe this to be a productive strategy to disrupt the traditional and consensus readings that approach these sources as if *tumtum* and *androginos* are always and everywhere static embodiments distinguishable from each other.

within a binary male-female framing aided by the importation of the concepts *safek* and *briah*. Subsequently, all mentions of *tumtum v'androginos* are usually read as if they conform to this interpretation, and much scholarly attention on *tumtum v'androginos* has been guided by a singular focus on “the *androginos*”. Paradoxically, this obscures the fact that the phrase *tumtum v'androginos* entered tannaitic sources to provide a halakhic category for gendered embodiment(s) outside of, and as a corrective to, the Bible’s binary construction of gender.

By examining t. Bik. 2:3-7 in its larger rabbinic context and focusing on the consistent appearance of *tumtum v'androginos* across rabbinic sources, various manuscripts, and genizah fragments, I show that the use of *safek* and *briah* is absent in (other) extant tannaitic sources. Rather, *tumtum v'androginos* emerges as a category that is—without doubt—outside the categories of man, woman, male, and female. Furthermore, despite their exclusion from these categories, rabbinic discourse consistently incorporates *tumtum v'androginos* as nonbinary gendered halakhic subjects—halakhic subjects occupying a different place than those of man and woman. My conclusions suggest that rabbinic discourse about *tumtum v'androginos* challenges a rigid binary gender construction of halakhah.¹⁰ I argue that through *tumtum v'androginos*, rabbinic discourse and halakhah both expand to include gendered bodies beyond male and female.

This article proceeds to survey extant tannaitic midrashic sources, mishnaic sources, and related talmudic sources, focused on two distinct, but interrelated arguments. First, the category *tumtum v'androginos* develops over time into two more clearly distinct categories, *tumtum* and *androginos*. Second, in the majority of tannaitic and even in many talmudic sources, *tumtum v'androginos* is not a category that is constructed as *safek* (either man or woman), or *briah* (both man and woman or a unique gender), but is instead better understood as neither man nor woman—outside the very categories and semantic fields included in the scriptural references of the words man (*ish*), male (*zakhar*), woman (*ishah*), and female (*nekevah*). Both claims establish that reading all rabbinic sources in light of t. Bik. 2:3-7 and its use of *safek* and *briah* flattens our sources, occluding diachronic development, disagreement, and ambiguity among the sources themselves. Further, the centrality of t. Bik. 2:3-7 keeps us from tracking with

10 It does not challenge the systemic placement of able-bodied, free, adult (Israelite) men with full cognitive abilities at the top of a gendered hierarchy.

more precision when such development occurs and theorizing possible reasons for such change over time—work I undertake to begin in the pages that follow.

My point is not that the consensus readings I have presented in summary form above about *tumtum* and *androginos* through the concepts *safek* and *briah* have arisen out of nowhere or are completely unfounded—they are not—but neither are they comprehensive or inevitable. They are reasonable conclusions derived from a small subset of extant sources, and that small subset of sources informed the commentaries, etymologies, and dictionaries of medieval authors when they undertook to define terms and extract fixed meanings that would be applied more or less uniformly across varied textual traditions.¹¹ My interests lie

11 Explicit etymologies for both *tumtum* and *androginos* first appear in post-talmudic sources. *Androginos* is clearly a Greek loan word, but the etymology of *tumtum* is more opaque. The eleventh century *ha-Arukh*, compiled by Nathan ben Jehiel of Rome (1035-1106) appears to provide the earliest extant explicit link between *tumtum* and *atum*, connoting sealed or undifferentiated, in the entry on t.m. (טז). The *Arukh*, citing b. Hag. 4a, states, “*tumtum*: one who has neither the male form nor the female form, like one closed off or undifferentiated”. See also m. Hallah 3:1. The description of *tumtum* as *atum* also appears in Rashbam’s (1085-1158) commentary on b. Bab. Batra 140b. Rashbam writes, “*atum*—neither a penis nor vagina are discernible in him (בר). I have found no explicit connection between *atum* and *tumtum* within rabbinic sources themselves; there is no rabbinic text that asserts that the *tumtum* is a person whose genitalia are “*atum*”. The word *atum* does appear beginning in tannaitic sources, and it refers to a variety of stopped up, closed, sealed, or undifferentiated things, e.g.: blocked tomb (m. Ohalot 7:1); flattened idol (Mekhilta of R. Ishmael, Yitro Bahodesh 6); closed heart (b. Baba Batra 12b); blocked lung (b. Hullin 47b); altar filled with dirt (b. Zevahim 61b). Most pertinent here might be the use of *atum* or *atumah* to refer to a number of undifferentiated body parts from a miscarried fetus, all of which render the birth “invalid” insofar as they do not result in the complete observance of birth impurity. Thus, if one miscarries an undifferentiated hand, leg, or body (t. Nid. 4:7) or a fetus with an undifferentiated (*atum* or *atumah*) thigh, umbilicus, anus (נקובתו Cf. M. Pes. 7:1), or skull, these do not constitute valid births (y. Nid. 50d; cf t. Nid. 4:7 and y. Nid. 50d for differing opinions about the extent to which undifferentiated body parts impact birth impurities. See also b. Niddah 18a, 24a, and 28a for “*guf atum*”). Given the increasing number of body parts that are referred to as “*atum*”-undifferentiated, it strikes me as a bit odd that rabbinic sources do not at any point mention that the *tumtum* is one whose genitalia are “*atum*”. Of course one could assert that such a link is embedded in the term *tumtum* itself. However, given that a fetus with a variety of undifferentiated body parts is consistently deemed an “invalid” birth—but a

in the cracks and crevices left by such artifices of uniformity—especially since it is built upon a minority of exceptional sources usually recorded as dissenting opinions and because it obscures gaps and tensions among the sources as well as possible, or even inevitable, development of the meanings of *tumtum v'androginos* over time.

Focusing on the consistent use of the phrase *tumtum v'androginos* throughout extant tannaitic sources, rather than the exceptional sources, allows us to see the category of *tumtum v'androginos* as—by definition—excluded from the categories of man, male, woman, and female. It also offers us the opportunity to expand upon the potential meanings of both the phrase *tumtum v'androginos*,¹²

tumtum (miscarried or delivered at term) is never deemed an “invalid” birth—it seems at least ironic if not implausible simply to gloss *tumtum* as “*atum*”. Perhaps it was the very association between *atum* and invalid births that caused the rabbinic sources not to use the term explicitly about the *tumtum*’s genitalia. Or perhaps, even though at some point sources congeal around the idea of the term *tumtum* connoting “undifferentiated,” this was not originally self-evident—or accurate—despite the seeming obviousness of connecting *tumtum* and *atum*. Some medieval commentators use the language of “hidden” or “covered” to define *tumtum*. Although these statements are usually made in passages about *tumtum sh'nikra*, they have been conflated with sources about *tumtum* more generally. The language of “hidden” or “covered” is not explicitly found in rabbinic sources themselves, but in Rashi (b. Hag. 4a) and Rashbam (b. Baba Bat. 126b), where both use the language of “hidden”. Tosafot (b. Yev. 83a and b. Bekh. 41b) use the language of “covered”. Again these comments are about specific categories of *tumtum*—either “torn” or with testicles that are outside their body (the latter of which does not appear in tannaitic sources, whereas *tumtum sh'nikra* appears once, in m. Yev. 8:6). In its entry on “*tumtum*,” the *Encyclopedia Talmudit* includes a definition by Israel Lipschitz (1782-1860): “*Tumtum*: the skin covers (מכוסה) their genitalia and closes them (מטומטם), there is only a type of perforation so that they may urinate” (Tiferet Yisrael on m. Yev. 8:6, commenting on *tumtum sh'nikra*). Thus the *Encyclopedia* conflates *tumtum* and *tumtum sh'nikra*, allowing the latter term to define the former. See also Maimonides *Mishneh Torah*, Ishut 2:25, cited in the *Encyclopedia Talmudit* as well. Describing *tumtum* as one whose genitalia are “hidden” or “covered” are reasonable interpretations stemming from *tumtum sh'nikra* or *tumtum* whose testicles are visible, but I am resisting interpreting *tumtum v'androginos*, as it appears in almost all tannaitic midrashic and mishnaic sources, by this exceptional (sub)category of *tumtum sh'nikra*.

- 12 For example, might *tumtum v'androginos* be an example of a rabbinic merism that conveys a broad category of gendered embodiments outside of man or male and

and its constituent parts, *tumtum*¹³ and *androginos*,¹⁴ in ways previously foreclosed by interpretive positions that fix their meanings across the corpus.

woman or female. Might it be a hendiadys, where either *tumtum* or *androginos* are being used to modify the other? Might *tumtum* be an attempt to render an equivalent to *androginos* in Aramaic? Or perhaps, *tumtum v'androginos* enters as a phrase where both terms are Greek loanwords. See Midrash Tehillim 1:5 and the use of *tumtum* there. I thank Prof. Burton Visotzky, for many conversations over the past years about the possible Greekness of *tumtum*, and indeed for his initial reference to Samuel Krauss' entry on "*avtumtum*". Samuel Krauss, *Griechische und Lateinische Lehnwörter im Talmud, Midrasch, und Targum*, mit Bemerkungen von I. Löw (Berlin, 1898–1899). See also Musaphia's additions to the Arukh, s.v. *avtumtum*. On the shifting receptions of Krauss' dictionary, including strong initial critiques, see Krivoruchko (2012). On reading *zakhar* and *nekevah* as a merism see Margaret Moers Wenig, "Male and Female God Created Them" in *Torah Queeries: Weekly Commentaries on the Hebrew Bible*, (eds.) Gregg Drinkwater et al. New York: New York University Press, 2009.

- 13 See, for example: m. Yev. 8:6, which suggests that a *tumtum sh'nikra* who is found to be male is like a *saris*; t. Yev. 11:1 suggests *tumtum* might be torn and found to be a *saris hamah*; b. Yev. 72a suggests *tumtum* might mean either one who is definitely not circumcised, possibly not circumcised, or has testicles outside (Abaye) and uncircumcised (Rava); t. Par. 5:7 considers *tumtum safek arel*; b. Hag. 4a considers *tumtum* also as one whose testicles are visible; b. Yev. 83b and b. Bekh. 42b suggest *tumtum* might be torn and found to be female. See also b. Bekh. 41b–42b, where *tumtum* is debated. It seems to me that the differences of opinion regarding *tumtum* are symptomatic of confusion about the meaning of the term, especially from traditions attributed to amoraim, suggesting that they do not know what the tannaitic sources meant by *tumtum (v'androginos)*. Therefore, I do not think reading all tannaitic sources according to these proposed, varied, meanings, grants us access to precisely what the word *tumtum* (or the phrase *tumtum v'androginos*) meant here.
- 14 While it is clear that *androginos* is a Greek loan word, the use of the term in Greco-Roman sources is not confined to a person who has a penis and a vagina. I suggest that since it is a minority of tannaitic traditions that explicitly mention the genitalia of *androginos*, we should not foreclose on its broader meanings in rabbinic sources. In *Greek in Jewish Palestine*, Lieberman writes, "Words cannot be treated singly; they can be understood only in a context, within the frame of the surrounding world. Almost every loan-word reflects a certain phase of the contact between Jew and Gentile. The word has to be defined within a given cultural setting". He also writes, "Almost every foreign word and phrase have their 'raisin d'etre in Rabbinic

Since I do not attempt, nor do I desire, a uniformity of meaning concerning *tumtum* and *androgynos*, in fact I am suggesting both multivocality and development over time, various readings that emerge as the terms are used will be noted throughout the article. However, I do suggest that the tannaitic midrashic and mishnaic sources consistently and uniformly demonstrate that the phrase *tumtum v'androgynos* functions as a novel, rabbinic, halakhic category—and subjectivity—that is excluded from the categories man or male and woman or female but incorporated into the rabbinic body, and bodies, of Israel.

I first present some general remarks about the function and meaning of *tumtum v'androgynos* in rabbinic traditions, and then I offer a rather robust treatment of tannaitic (halakhic) midrashic sources including some observations about the grammar of *tumtum v'androgynos*. This is followed by a treatment of mishnaic sources. As part of my examination of mishnaic sources, I revisit the use of *vadai* in tannaitic and talmudic traditions about *tumtum v'androgynos*. I then provide a contextualized reading of t. Bik. 2:3-7 (and related talmudic sources) and address that toseftan passage's uniqueness and innovativeness, in part based on its use of *briah* and *safek ish* or *safek ishah*, locating it in its time and place in ways heretofore unexplored. Ultimately, this article posits a post-tannaitic (and possibly post-talmudic) dating of t. Bik. 2:3-7 as we now have it; further, it offers an alternative historicization of the development of *tumtum v'androgynos* as well as a novel understanding of rabbinic constructions of gender and nonbinary gendered embodiments in halakhic traditions.

The Function and Meaning of *Tumtum v'androgynos*

The phrase *tumtum v'androgynos* enters rabbinic sources in the tannaitic period. Although it lacks biblical precedent both linguistically and conceptually, *tumtum v'androgynos* first appears, with notable frequency, across the tannaitic corpus: in the extant midrashic compilations, the Mishnah, and the Tosefta.¹⁵

literature. We shall try to demonstrate that all the Greek phrases in Rabbinic literature are quotations” (1994 reprint: 6).

- 15 Although “the androgyne” appears in second temple sources, to my knowledge, the phrase *tumtum v'androgynos* is uniquely rabbinic. On the androgyne in late antiquity see, e.g.: Wayne Meeks, “The Image of the Androgyne: Some Uses of a Symbol in Earliest Christianity”, *History of Religions* 13:3 (1974): 165-208; David Aaron, “Imagery of the Divine and the Human: On the Mythology of Genesis Rabbah 8:1”, *The Journal of Jewish Thought and Philosophy* 5 (1995): 1-62; Susan Niditch,

The appearance and presence of *tumtum v'androginos* as a seemingly self-evident category in and across these sources, coupled with a degree of normalization that centuries of post-talmudic commentaries about *tumtum* and *androginos* have bequeathed to it, often allows its innovativeness to remain muted and some of the work it accomplishes to be obscured or at least taken for granted. But the very entry, incorporation, and integration of *tumtum v'androginos* in tannaitic sources is significant insofar as it registers a sharp distinction between biblical and rabbinic constructions of gender.¹⁶ *Tumtum v'androginos* supplements gendered embodiments recorded in the Hebrew Bible, which are confined to the binaries of man and woman or male and female.¹⁷ Through *tumtum v'androginos*, rabbinic sources reveal the partial nature of biblical bodies and begin their redress. Through *tumtum v'androginos*, rabbinic

- “Cosmic Adam: Man as Mediator in Rabbinic Literature”, *Journal of Jewish Studies* 35:2 (1984): 195-206; Daniel Boyarin, “Gender” in *Critical Terms for Religious Studies*, (ed.) Mark C Taylor. Chicago: University of Chicago Press (1998): 117-136.
- 16 See Gwynn Kessler, “‘They Are Israel’: Nonbinary Gender Then and Now” in *Reforming Judaism: Moments of Disruption in Jewish Thought*, (eds.) Stanley M. Davids and Leah Hochman, New York: CCAR Press (2023) and Kessler, “Rabbinic Gender: Beyond Male and Female” in *A Companion to Late Ancient Jews and Judaism: Third Century BCE to Seventh Century CE*, (eds.) Naomi Koltun-Fromm and Gwynn Kessler, Hoboken, NJ: Wiley Blackwell (2020).
- 17 See Marc Brettler, “Happy is the man who fills his quiver with them (Ps. 127:5): Constructions of Masculinities in the Psalms”, in *Being a Man: Negotiating Ancient Constructs of Masculinity*, (ed.) Ilona Zsolnay (London and New York: Routledge, 2016), 198-199. Brettler writes, “The post-biblical origin of these words, especially the Greek origin of androgynous, buttresses the notion that although such people existed, they were ignored by biblical authors”. See also Amy Kalmanofsky, *Gender-Play in the Hebrew Bible: The Ways the Bible Challenges its Gender Norms* (London and New York: Routledge, 2016). I note the importance of biblical scholarship over the past decades that has successfully used queer and trans theories to challenge, subvert, and supplement binary biblical constructions of gender in multifaceted ways. See, for example: *Take Back the Word: A Queer Reading of the Bible*, (eds.) Robert Goss and Mona West (Cleveland, Ohio: Pilgrim Press, 2000); Ken Stone, *Queer Commentary and the Hebrew Bible* (London: Sheffield Academic Press, 2001); Deryn Guest, Robert Goss, et al., *Queer Bible Commentary* (London: SCI Press, 2006); Ken Stone and Theresa Hornsby, *Bible Trouble: Queer Reading at the Boundaries of Biblical Scholarship* (Atlanta: SBL Press, 2011); Rhiannon Graybill, *Are We Not Men?: Unstable Masculinity in the Hebrew Prophets* (Oxford: Oxford University Press, 2016).

sources expand the contours of the bodies of Israel and reconfigure, and expand, the collective body of Israel and its commandments.

In contrast to other Ancient Near Eastern sources, which more readily appear to acknowledge bodies that at least challenge the boundaries of what we would call a binary constructions of gender, one of the significant ways the Hebrew Bible differentiates bodies is through an apparently rigid binary comprised of bodies designated as male (*zakhar*) or female (*nekevah*) and man (*ish*) or woman (*ishah*).¹⁸ Through repeated, though disproportionate, mentions of men and women, husbands and wives, sons and daughters, etc., biblical sources not only reflect, but actively construct gender within a patriarchal male-female binary frame.

Extending well beyond biblical myths about male and female created simultaneously (Gen. 1) and woman fashioned from man (Gen. 2), the Hebrew Bible presents bodies as either male or female based on physiological characteristics. For example, Lev. 12 assigns a newborn infant's gender based on genitalia, and it then prescribes different periods of birth impurity if a woman gives birth to a male child or female child. The text represents the possibilities as exclusively either male or female. Likewise, Leviticus 15 delineates different periods of impurity that result from genital discharges for men and women, again representing men and women as exhaustive gender embodiments.

Tumtum v'androginos fills this breach. As an additional category, it addresses the Hebrew Bible's utter lack of acknowledgement of bodies that are outside the

18 For the use of man or male and woman or female in the Hebrew Bible, see Brettler (2016). Note that the terms male and man and female and woman are used for human and nonhuman animals in biblical sources, e.g.: Gen. 1:27; 2:23; Gen. 7:2-3, 9, 16). For nonbinary gendered bodies in Ancient Near Eastern sources, and their varied treatment in scholarly sources see, e.g: Uri Gabbay, "The Akkadian Word of 'Third Gender': The Kalu (*gala*) Once Again", *Proceedings of the 51st Rencontre Assyriologique Internationale at the Oriental Institute of the University of Chicago, July 18-22, 2005*, (ed.) Robert D Diggs, (2008); Ilan Peled, *Masculinities and Third Gender: The Origins and Nature of an Institutionalized Gender and Otherness in the Ancient Near East*, (Munster: Ugarit-Verlag, 2016); Saana Svard and Maretti Nissinen, "(Re)constructing the Image of the Assinnu", in *Studying Gender in the Ancient Near East*, (eds.) Saana Svard and Agnes Garcia-Ventura, (University Park: Eisenbrauns, 2018), 373–411; and Sophus Helle, "Only in Dress? Methodological Concerns Regarding Non-Binary Gender," *Gender and Methodology in the Ancient Near East: Approaches from Assyriology and Beyond*, (eds.) Stephanie Lynn Budin, Megan Cifarelli, et al., (Barcelona: Edicions De La Univesitat de Barcelona, 2018), 41–53.

categories male or man and female or woman and provides a category that is defined by this very exclusion. Throughout tannaitic midrashic and mishnaic sources, *tumtum v'androginos* functions as an additional bodily category, alongside and adjacent to man and woman or male and female—but always excluded from those categories. Tannaitic midrashic sources unequivocally assert that every time scripture uses the words *ish*, *zakhar*, *ishah*, or *nekevah*, *tumtum v'androginos* is not included in these words. Mishnaic sources likewise establish *tumtum v'androginos* as a category outside these categories. In these sources, *tumtum v'androginos*, whatever differences eventually arise between *tumtum* and *androginos*, is defined as, and by, being not male or female and not man and woman. Furthermore, those classified as *tumtum v'androginos* are neither assimilable nor reducible to a binary gender frame; they remain, by definition, always and ever outside the categories and semantic frames of male, man, female, and woman. Finally, despite being categorically excluded from and unassimilable to male or man and female or woman, those bodies categorized as *tumtum v'androginos* are included in halakhic discourse as people who are neither male nor female—and yet considered obligated to perform most mitzvot that are discussed. As Rashi, about a thousand years after the category *tumtum v'androginos* enters rabbinic sources, proclaims: “They are Israel” (b. Arak. 4a).¹⁹

Where and when *tumtum v'androginos* is treated as, and then becomes, *tumtum* and *androginos*, is a process, not entirely linear nor straightforward, upon which this article aims to shed some light. In order to do that, however, I suggest that we first recognize that *tumtum v'androginos* enters rabbinic sources as a novel rabbinic category which means not man or male and not woman or female—what we might call a nonbinary gender category. The category *tumtum v'androginos* functions both to expand the binary biblical construction of gender and to incorporate *tumtum v'androginos* into the body of Israel as halakhic subjects alongside, yet distinct from, male and female halakhic subjects.

***Tumtum v'androginos* in Tannaitic Midrashim**

Extant tannaitic midrashic sources do not differentiate between *tumtum* and *androginos*. They uniformly use the phrase *tumtum v'androginos*, and neither

19 I must note, however, that Rashi understands them as *tumtum* and *androginos*, as he writes, “both of these are Israel”.

tumtum nor *androginos* appear outside this phrase.²⁰ Furthermore, tannaitic midrashic sources do not use the terms increasingly associated with *tumtum v'androginos* in some later sources: *safek* (uncertainty or doubt) and *briah b'fnei atzmo* (a unique being). As we will see below, the Mishnah also lacks any mention of *safek* and *briah* in its statements. Finally, tannaitic midrashic sources never ask whether *tumtum v'androginos* are male or female, or whether they should be categorized as man or male or woman or female. As will become clear from the sources set forth, the assumption of each text—even its underlying logic—is that *tumtum v'androginos* is by definition not male or man and not woman or female, and cannot be subsumed under these categories.

I am not suggesting that the tannaitic midrashic sources predate mishnaic ones. Rather, I am beginning with tannaitic midrashic sources, often neglected, in order to highlight the dominant occurrence of *tumtum v'androginos* in both mishnaic and midrashic sources relative to a minority of mishnaic traditions that distinguish between *tumtum* and *androginos*. The robustness of the survey of midrashic sources seeks both to demonstrate the consistency of the extant sources

20 The potential exception, Sifra, Tazria 1 (Weiss 58c; Finkelstein, *Commentar zu Leviticus*, [ed.] H. Weiss [Vienna: Schlossberg], 1862 and those from MS Assemani 66 according to *Sifra or Torat Kohanim* [Hence TK], [ed.] Louis Finkelstein. [New York: JTS, 1956, 244], is likely interpolated from m. Shab. 19:3. On the Sifra's frequent use of the Mishnah and Tosefta see Bockmuehl (1996: 262-263). See also Halakhot Pesukot (British Museum, Genizah fragment Or.10,129), which reads, “[circumcision of] *tumtum v'androginos* does not suspend (singular verb) shabbat [restrictions]. Manuscript variants from *Halakhot Pesukot* as well as from Samuel bar Hofni's *Sefer Ha-Mitzvot* and *Halakhot Gedolot* set forth by Danzig (1999) lead me to determine that there is strong evidence that the Sifra would have read “*tumtum v'androginos*”, and that therefore even this one potential exception is due to later interpolations. For further discussion and parallels see Neil Danzig, *Introduction to Halakhot Pesuqot with A Supplement to Halakhot Pesuqot* (New York: JTS, 1999), 575-576. It also seems likely to me, based on genizah fragments of *Halakhot Pesukot* and Hofni's *Sefer Ha-Mitzvot*, that R. Yehudah's minority opinion, not recorded in those works but appearing in extant Sifra manuscripts, is a later interpolation. See below for further discussion. I note also that the term “*tumtum sh'nikra*”, a “torn” *tumtum*, is unattested in extant tannaitic midrashic sources. Hoffman includes a text that mentions *tumtum sh'nikra* (Midrash Tannaim on Deut. 21:18), but I believe the source is more accurately located in b. Bab. Bat. 126b (see note 139 below). See *Midrash Tannaim zum Deuteronomium*. Edited by David Zvi Hoffman. Berlin, 1908, 130.

and to suggest an alternative to reading rabbinic constructions of gender as always confined to a male-female binary construction. What tannaitic midrashic sources about *tumtum v'androginos* demonstrate is that while many rabbinic sources operate along a male-female gender binary, a number of sources—in both tannaitic midrashim and the Mishnah—challenge this binary by adding an additional gender category: *tumtum v'androginos*, a category which by definition is excluded from those of male, man, female, and woman.

Above, I mentioned Lev. 12:2-5, which delineates varying lengths of birth impurities dependent on whether a woman gives birth to a male or female infant. The biblical text presents gender as binary, clearly assignable, and finite. But the Sifra, a tannaitic midrashic compilation on the book of Leviticus, acknowledges bodies beyond, meaning outside of, either male or female. Lev. 12:2 states, When a woman brings forth seed and gives birth to a male (*zakhar*), then she shall be impure seven days. This is followed by Lev. 12:5, And when she gives birth to a female (*nekevah*), then she shall be impure for two weeks. In the Sifra, interpreting the mention of the word “female” in Lev. 12:5, the text states:

And when she gives birth to a female. [From the word] female I only know female. From where in scripture do I know to include *tumtum v'androginos* [in the biblical commandments upon a woman to observe periods of birth impurities and then bring a sacrifice upon their birth]? Scripture states, And when a woman gives birth (תלד-*teled*). This matter [of birth impurities] depends only on birth (*teled*) [not on the gender of the infant].²¹

The Sifra text establishes several notable elements. First, of course, is the expansion of biblical gender categories from a male-female binary to a categorization of male, female, and *tumtum v'androginos*. Second, it establishes that *tumtum v'androginos* are distinct from “female”, mentioned in Lev. 12:5, as well as “male” mentioned in Lev. 12:2. *Tumtum v'androginos* is not subsumed under “male” or “female”, and indeed, they are categorically excluded from the scriptural words male and female in this text. As the text states, “from the word female I only know female” or, perhaps, “from the word female I know female

21 Sifra, Tazria 3 (TK, 245 corresponds to Weiss 58d). Cf. b. Nid. 40a. The word *teled* in this text is possibly read as redundant, since Lev. 12:2 mentions “וילדה-*v'yalda*”. Additionally, *teled*, “she gives birth” neither specifies nor concerns the gender of the offspring.

only”. Likewise, we may surmise, “from the word male I only know male” or, “from the word male I know male only”. Whichever valence, the inclusion of *tumtum v’androginos* requires a different word in scripture precisely because *tumtum v’androginos* is a category defined by being not “male” and not “female” and excluded from those very scriptural words and categorizations.

The Sifra’s use of the word “*teled*” (she gives birth) further establishes that *tumtum v’androginos* is outside binary biblical gendered embodiments because there would be no need to offer a separate word if they were included in them. Furthermore, the word *teled* simultaneously demonstrates that *tumtum v’androginos* are included as nonbinary gendered bodies; they need not be either male or female to be incorporated into Israel.²² Finally, by employing the biblical word *teled* as the mechanism through which *tumtum v’androginos* infants are incorporated into Israel, this midrash both accomplishes and reveals its sleight of hand—it locates *tumtum v’androginos* in scripture. The Hebrew Bible, according to midrashic interpretations, neither intentionally ignores nor lacks knowledge of nonbinary gendered bodies—it only appears to lack them. Through this midrash, and this is common to all tannaitic midrashim, *tumtum v’androginos* are established as part of Israel from its—and their—beginnings.

Sifre Numbers (Naso 1) also excludes *tumtum v’androginos* from the scriptural words male and female. Interpreting Num. 5:3, “From male to female you shall take out (תשלחו-*t’shalekhu*), outside the camp shall you take them (תשלחום-*t’shalkhum*)”. The text states: “From male to female—I know only male and female. From where in scripture do I know *tumtum v’androginos* [should be removed from the camp]? Scripture states you shall take them (*t’shalkhum*)”.²³

22 Technically speaking, the commandments are prescribed for the one who gave birth; it is her actions that are required. However, the birth of *tumtum v’androginos* infants, whose births are never considered “invalid” (as other “births” are), seems to me to indicate that there is a mutually constituting relationship being formed through the observance of birth impurities, and that the observance of such commandments is a mechanism that marks an infant’s entry into Israel in ways similar to circumcision. Since most of the traditions about *tumtum v’androginos* are about commandments they would be obligated to perform (and a couple of exemptions), I do not feel that it is appropriate to discount their participation here.

23 H.S. Horowitz, *Siphre D’Be Rab*, Jerusalem: Wahrmann Books 1966 [Reprint 1992]. (1992: 3).

Note that this Sifre Numbers text does not take the opportunity to include *tumtum v'androginos* based on the potentially expansive “from male to female”, which might open up space for suggesting a sort of rabbinic gender continuum, placing *tumtum v'androginos* somewhere in relation along an axis of similarity to maleness and femaleness.²⁴ Rather, the text’s exclusion is categorical. The text does not operate on an assumption of potential similarities or overlap; *tumtum v'androginos* occupies a wholly other category. *Tumtum v'androginos* is included, however, because of the apparent scriptural redundancy in the verse’s mention of being taken out of the camp twice. *Tumtum v'androginos* must be removed from the camp when they are impure or have a skin affliction not because they are “like” male or female, but because they are Israel.

The above examples have excluded *tumtum v'androginos* from the scriptural words male and female; other tannaitic midrashic sources exclude *tumtum v'androginos* from the words sons and daughters.²⁵ And, several extant tannaitic

24 Such exegesis would not be expected in Sifre Numbers, attributed to the school of R. Ishmael. See Azzan Yadin, *Scripture as Logos: Rabbi Ishmael and the Origins of Midrash* (Philadelphia: University of Pennsylvania Press, 2004). See also Azzan Yadin-Israel, *Scripture and Tradition: Rabbi Akiva and the Triumph of Midrash* (Philadelphia: University of Pennsylvania Press, 2015).

25 See Mekhilta of R. Ishmael Mishpatim, 2: “If she has born him sons or daughters” (Ex. 21:4). I know only sons and daughters. From where in scripture do I know this about *tumtum v'androginos* [that they too belong to the slave’s master]? Scripture states “the wife and her children”. In each case, [whatever their gender]”. H.S. Horovitz and I.A. Rabin. *Mekhilta D’Rabbi Ismael*, Jerusalem: Wahrman Books 1970 [Reprint 1997]. Passage quoted from (1997:250). Here, *tumtum v'androginos* is excluded from the scriptural words “sons” and “daughters” but included in the word וילדה *viladeyha* “her children”. I note that the plural of “her children” is used in this verse, but this does not mean that *tumtum v'androginos* means “*tumtum*” and “*androginos*” — two children. See Sifre Numbers, Naso 2, where “*hanefesh hahu*”, “that person,” is singular, and read to include *tumtum v'androginos* (Horovitz 1992: 5). Cf. Mekhilta of R. Ishmael, Mishpatim, 11, which also excludes *tumtum v'androginos* from the words “son” and “daughter”. The use of “complete son and daughter” (*ben* or *bat gamur*, according to mss. Oxford and Munich) strikes me as redundant there, since *tumtum v'androginos* are always excluded from male and female categories. I have found no other uses of *ben* and *bat gamur* in rabbinic sources. In the parallel in Lekach Tov (Ex. 21:31), the text reads: “From where is even *tumtum v'androginos* included? Scripture states the word ‘or’ twice to included even *tumtum v'androginos*” (Buber, 1960). I note that this text uses “even” (אפילו *afilu*),

midrashic sources about *tumtum v'androginos* also demonstrate that *tumtum v'androginos* is a category excluded from the scriptural mentions “man or woman”. Furthermore, the above examples appeal to another, presumably superfluous, biblical word or phrase in close proximity to the verse being interpreted in order to incorporate *tumtum v'androginos* and include them in the halakhic issue being discussed.²⁶ However, midrashic texts also appeal to the scriptural use of “or” in sentences that mention “man or woman” to include *tumtum v'androginos*.²⁷ For example, Lev. 13:29 states “If a man or a woman has a disease on the head or the beard”. The Sifra states, “[Had scripture said] man and woman I would know only man and woman. From where do I know to include *tumtum v'androginos*? Scripture states man or woman (Sifra, Tazria 5).²⁸ Similarly, interpreting Lev. 20:27, If a man or woman who is a medium or a wizard: “[Had scripture said] man and woman I would know only man and woman. From where in scripture do I know to include *tumtum v'androginos*? Scripture states or woman”.²⁹ Since across tannaitic midrashic sources, *tumtum*

unattested in most earlier sources about *tumtum v'androginos* (though cf. m. Naz. 2:7). On an increase in “dehumanizing” readings of the category “*androginos*,” in later sources, see Lev (2021). See also Sifre Deut. 215, which excludes *tumtum v'androginos* from the category of first-born son. I discuss firstborns further below. See also b. Nid. 40a, for another tradition, which I have not found in extant tannaitic sources, that excludes *tumtum v'androginos* from the words son and daughter but includes them based on the prefix “*l*” in לבן-*l'ven* and לבת-*l'vat* in Lev. 12:6.

- 26 See also Sifre Numbers, Naso 2 (Horovitz 1992: 5): “If that person be found guilty” (Num. 5:6). Why does scripture mention “if that person”? Since scripture states “*man or woman*”, I know only man or woman. From where in scripture do I know [that if *tumtum v'androginos* commit a trespass they too are obligated to confess and make restitution]? Scripture states “and if that person is guilty” (Horovitz 1992:5).
- 27 See Yadin-Israel (2015) for a critique of reading such interpretations in the Sifra as substantive midrash. Although the examples above use scriptural words that are not gender exclusive (her children, that person, send them out, etc), I do not think their gender inclusivity is the primary motivation. It could certainly play a part, but I think the use of “or” as a scriptural link upon which to incorporate *tumtum v'androginos* indicates a rabbinic propensity to use any scriptural opening as a vehicle through which to reread scripture as to include *tumtum v'androginos*.
- 28 Cited from Vatican 66; (Weiss 65b).
- 29 Sifra, Kedoshim 9 (Weiss 93d). Vatican 66 reads “and woman” (ואשה) though this does not conform to our biblical text. Weiss has “or woman”. However, the text is

v'androginos is a category defined by its exclusion from the categories—and scriptural words—man or male and woman or female—these texts are not suggesting that we read “or” in a way that assimilates *tumtum v'androginos* to either man or woman or both man and woman.³⁰ The word “or” comes to teach those outside the categories man and woman are included in these proscriptions.

Another subset of tannaitic midrashic sources inquires about the exclusiveness of the biblical use of man (*ish*) or the phrase “every man” (*ish ish*). I bring one representative example of each, beginning with the biblical use of man (*ish*). The Mekhilta of R. Ishmael interprets Ex. 12:4, And if the household is too small for the lamb, let him and his neighbor next to his house take it according to the number of souls; according to each man’s eating shall you make your count for the lamb. The Mekhilta states, “According to the number of souls (*nefashot*). Why is this stated? Because scripture states “man” I know only man. From where in scripture do I know woman and *tumtum v'androginos*?” Scripture states, according to the number of souls (Mekhilta of R. Ishmael Bo 4).³¹ Here the midrash includes *tumtum v'androginos* and woman as participants in eating the paschal sacrifice, obligating them to partake of this mitzvah. Simultaneously, the text makes clear that “man” is an exclusive term. *Tumtum v'androginos*, and woman, are defined as not man, as the biblical use of man (*ish*) means only man. However, “woman” does not include *tumtum v'androginos* because *tumtum*

not equating *tumtum v'androginos* with women since as we’ve seen throughout, *tumtum v'androginos* is outside the category, and scriptural word, woman.

- 30 Because I understand the midrashim to operate as excluding *tumtum v'androginos* from the very words man, woman, male, and female, I think the operative word for the midrash is simply “or”. I do not think that the inclusion of *tumtum v'androginos* through “or”, be it recorded as “man or woman” (Sifra, Tazria 5) or “or woman” (Sifra, Kedoshim 9) is making a statement that *tumtum v'androginos* are to be categorized as “either” man or woman or “both” man and woman. The biblical word “or” operates not to place *tumtum v'androginos* in relation to male and female, but to provide a scriptural basis outside these terms, as we’ve seen with “*teled*”, “*viladeyha*” and “*t’shalkhum*” above. See also Lavee (2018: 350 n. 14).
- 31 Horovitz (1997: 12). I’ve cited according to ms. Oxford and editio princeps. Horovitz choice to present the text as “woman, *tumtum*, *androginos*” seems odd. The “vav” before *tumtum* as well as the one before *androginos* appears in most of the textual witnesses he cites. And, on the same page in a different midrashic interpretation, he does not alter “*tumtum v'androginos* and female”, I discuss the potential grammatical relevance below.

v'androginos are neither man nor woman. The categories “woman” and “*tumtum v'androginos*” are distinct halakhic subjects, both needing to be mentioned when the text delineates the category “man”.

Turning to an example of the scriptural doubling of *ish*, rendered as “every man”, we see again that this phrase is interpreted as man only. Mekhilta of R. Ishmael interprets Ex. 20:12, “Honor your father and your mother that your days be long in the land which God gives you”. Mekhilta of R. Ishmael Bahodesh, 8 states:

“Honor your father [and your mother]”. Since scripture states, “For every man (*ish ish*) who curses his father and” (Lev. 20:9), I know only man. From where in scripture do I know *tumtum v'androginos*? Scripture states, “Honor your father and your mother” (Ex. 20:12) —in any case (*m'kol makom*).³²

This midrash juxtaposes Ex. 20:12 and Lev. 20:9, both of which address honoring one’s parents. The implicit question the midrash addresses is why does scripture contain both verses. The answer is that based on Lev. 20:9, one might think that this commandment is only addressed to men. But Ex. 20:12 establishes that it is incumbent on women and *tumtum v'androginos*. Although the subject of the command is grammatically addressed in the second person singular masculine form, since that verse does not explicitly state “*ish*”, it comes to include woman and *tumtum v'androginos*.³³ The verses, then, do not communicate the same message, which would suggest redundancy in scripture. The apparent redundancy is eliminated by expanding the commandment to honor one’s parents to include woman and *tumtum v'androginos*.³⁴ The continuation of this Mekhilta passage

32 Horovitz (1997: 231). I have translated according to ms. Oxford. Ms. Munich reads, “From where in scripture do I know woman and *tumtum v'androginos*”.

33 See also Mekhilta of R. Ishmael Mishpatim 5, which juxtaposes Ex. 21:17 and Lev. 20:9 similarly, and Mekhilta of R. Ishmael Mishpatim, 14, which juxtaposes Ex. 22:5, which does not mention “*ish*” and Ex. 22:4, which does contain the word “*ish*”. Cf. Sifra, Kedoshim 10 on Lev. 20:9. Ms. Vatican 66 (Finkelstein 1956: 376) is to be preferred over Weiss (91d), which in my opinion has been altered according to b. Sanh. 66a and 85b.

34 Strictly speaking, the redundancy would have been mitigated just by including women from the second verse. It remains unclear to me why some tannaitic midrashic sources stay within a binary male-female biblical frame while others extend beyond it. In other words, I do not have an answer for why *tumtum v'androginos* is sometimes incorporated by the rabbis, but not always. See Michael Chernick, “*Ish* as man and

proceeds to obligate *tumtum v'androginos* to keep God's sabbaths (Lev. 19:3).³⁵ According to this passage, then, *tumtum v'androginos*, while outside the categories of man and woman, are obligated, as *tumtum v'androginos*, to observe the sabbath and honor their parents—just as men and women are obligated. This text, as all others from tannaitic midrashic sources, incorporate bodies categorized as *tumtum v'androginos* into the collective body of Israel. Rabbinic constructions of gender, and halakhah, are not constrained by binary gender; they expand to encompass bodies outside of binary gender.

In all of the examples I've set forth, what emerges is clear indication that *tumtum v'androginos* is a category that is not man or male and not woman or female, and yet included, as such, in Israel and its commandments. There is no effort to assimilate *tumtum v'androginos* to either man or woman. And, there is no indication, beyond a rather literal, limited reading of the word "*androginos*" (man-

adult in Halakhic midrashim". *Jewish Quarterly Review* 73:3: (1983: 254-280). And see Chana Safrai and Avital Hochstein, *Nashim ba-huz- nashim be-fenim: Mekhoman shel nashim ba-midrash*. Tel Aviv: Miskal-Yedi'ot Ahronoth (2008), for further discussion about women's inclusion in tannaitic sources.

35 The passage reads:

R. Judah b. Bateira says, scripture states, "You shall fear each man his mother and his father and My sabbaths you shall keep" (Lev. 19:3). Just as there is no distinction concerning sabbath observance between man, woman (and) *tumtum v'androginos*, so too there is no distinction concerning fearing one's parents between man, woman (and) *tumtum v'androginos*" (Mekhilta of R. Ishmael, Bahodesh 8). Horovitz (1997: 231). I have provided a reading based on various textual witnesses, augmenting Horovitz's eclectic text. Editio princeps has "and *tumtum v'androginos*". To my knowledge, this is the only appearance of *bein ish l'ishah* in extant tannaitic midrashic sources. The phrase appears without mention of *tumtum v'androginos* in m. Sotah 3:8 (cited on b. Sotah 23a) and t. Yev. 10:6 (cited on b. Yev. 80b). In those contexts the phrase means "between (a) man and (a) woman". I am suggesting that here, the prefix "l'" carries over, and the comparison is between man, woman, and *tumtum v'androginos*. Since Lev. 19:3 mentions "*ish*", the midrash comes to include woman and *tumtum v'androginos*. This statement attributed to R. Judah b. Beteira builds on a previous opinion attributed to R. Ishmael, which is building off of the prior use of Ex. 20:12 and its lack of the use of man or woman. See also Lev. 19:30, which I believe is implied in this midrash, since it uses the word "fear" and is not gender specific, "You shall keep my sabbaths, and fear my sanctuary, I am God".

woman) that they are both male and female or “possibly” (*safek*) one or the other.³⁶ Finally, there is no indication that *tumtum v'androginos*, or even simply *androginos* (which does not exist apart from *tumtum v'* in tannaitic midrashic sources) are “more” male than female or “default to the category of male or man. In all tannaitic midrashic sources, *tumtum v'androginos* are, instead, categorically other—excluded from the scriptural categories and words male and female (but simultaneously included in being Israel). Such a reading is supported by the sources already presented, and they are further indicated by those to which I now turn.

The sources presented above operate along the lines of inclusion, or better, expansion (*l'rabot*): From where do I know that scripture expands to include *tumtum v'androginos*—even as it does not consider them man or woman? And, from where do I know that the body of Israel expands to incorporate *tumtum v'androginos*? The sources to which I now turn, in contrast, operate along the lines of exclusion: the scriptural words—“male” and “female”—come to exclude *tumtum v'androginos*. I hasten to add, and will return to this below, that being excluded (or exempted) from a particular commandment does not mean exclusion from halakhah tout court. (Nor, for that matter, does inclusion in some and even most commandments indicate a lack of patriarchy and androcentrism evident across rabbinic sources).

The tannaitic midrashic understanding of *tumtum v'androginos* as outside the categories of male and female emerges quite explicitly from *tumtum v'androginos* traditions about animals. The Sifra notes that Lev. 1:3 specifies that a burnt offering from the herd must be male and that Lev. 1:10 again specifies that a burnt offering from the flock must be male. This apparent redundancy leads to the interpretation that the first mention of “male” excludes female animals, and the later mention of the same word “male” comes to exclude *tumtum v'androginos* animals. Sifra (Nedava 3) states: “Male (*zakhar*): Scripture only says this to exclude *tumtum v'androginos*”.³⁷ Similarly, though without the

36 The Greek word androgynous, as well as that of “hermaphrodite,” have a broader set of meanings in contemporaneous non-rabbinic texts than those confined to physiological diversity. When commentators and scholars assume a narrow, genitalia only, definition of *androginos* in rabbinic traditions based on a minority of the sources, they foreclose on the possibility of such broader meanings also operating in rabbinic traditions.

37 Weiss (1862: 5b-c). Ms.Vatican 66 does not have this section of Sifra, but I have consulted Vatican EBR 31, which confirms this reading.

textual irritant of repetition, Mekhilta of R. Ishmael (Bo, 4) interprets the mention of “male” in Ex. 12:5: “male—to exclude *tumtum v'androginos* and female”.³⁸ In other words, the scriptural word male (*zakhar*) means male and male only—not *tumtum v'androginos* and not female.

Sifra (Nedava 6) interprets Lev. 1:14, “And if the burnt offering for his offering to God is from the fowl”. As part of its broader consideration of the verse, the text states, “R. Eliezer says, ‘Every place scripture states [the words] male and female, *tumtum v'androginos* are rendered unfit; “the fowl”, of which scripture does not say [the words] male and female, *tumtum v'androginos* are not rendered unfit”.³⁹

Both of these traditions confirm, as all other tannaitic midrashic sources have, that the category of *tumtum v'androginos* means not male and not female and the scriptural words “male” and “female” (and “man” and “woman”) mean only male and only female. For animal sacrifices, where the Torah specifies male or female, *tumtum v'androginos* cannot be offered because they are not male and not female. For bird offerings, according to the statement attributed to R. Eliezer, since scripture does not specify “male” and “female”, *tumtum v'androginos* birds are not deemed unfit.⁴⁰ That is to say they are kosher—fit offerings.

Sifra (Nedava, 18) further corroborates that *tumtum v'androginos* are excluded from the scriptural words “male” and “female”. The passage interprets

38 Horovitz (1997: 12).

39 Weiss (1862: 8b) and Finkelstein (1956: 31). This statement attributed to R. Eliezer might be a minority opinion. Both Sifra, Nedava 3 and 18, state, “If a burnt offering, which may be brought from fowl, may not be brought from *tumtum v'androginos*, peace-offerings, which may not be brought from fowl, how much more so they are not to be brought from *tumtum v'androginos*”. Thus perhaps the anonymous, and eventual majority opinion, might be that *tumtum v'androginos* are excluded from fowl offerings as well. Alternatively, in both Sifra, Nedava 3 and 18, this statement is comparing the categories of burnt offerings and peace offerings from animals (from cattle and flock), and not interested in the details about those brought from fowl. Note also that in both Sifra, Nedava 3 and 18, the attempts to arrive at the exclusion of *tumtum v'androginos* by categorical comparisons (is it not logical?) among different sacrifices fails, and what succeeds is the exclusion based on the use, or lack, of the scriptural words “male” or “male” and “female”.

40 The midrash draws attention to Torah’s use of “male” (Lev. 1:3; 1:10), “male” or “female” (Lev. 3:1 and 3:6) and likely “female” (Lev. 4:28, 4:32, and 5:6) in order to contrast it with Lev. 1:14 being commented upon here.

Lev. 3:6, and its mention of “male or female” peace offerings:⁴¹ “Male or female (Lev. 3:6). Male, read literally (*zakhar vadai*), and female, read literally (*nekevah vadai*[*t*])”.⁴² This line frames the passage, appearing both at the beginning here and reiterated at the end, after multiple comparisons based on logical juxtapositions have repeatedly failed.⁴³ Moreover, the line offers a succinct, explicit, statement that sums up the consistent readings of all tannaitic midrashic passages: when the words male or female (or man or woman) appear in scripture,

- 41 Weiss 14c. The preceding passage explicitly juxtaposes an apparent redundancy in Lev. 3:1 and 3:6 regarding the biblical mention of peace offerings from the herd (3:1) and from the flock (3:6). In Lev. 3:1 and 3:6, each verse mentions the words male and female, though with different language. Lev. 3:1 states “*im zakhar im nekevah*” and Lev. 3:6 states “*zakhar o nekevah*”. I do not know if this passage is also concerned about the apparent redundancy concerning the mention of the words male and female in both verses or this is a localized interpretation just on Lev. 3:6, but I focus here on a more localized reading. I do not believe the apparent redundancy yields any practical difference.
- 42 See Michael Sokoloff, *A Dictionary of Jewish Palestinian Aramaic of the Byzantine Period* (1992: 169) s.v. וודיי: “in reality (i.e. understand the word literally)”. Sokoloff designates this as MH for Mishnaic Hebrew. See below, in the section devoted to *Vadai*. I have translated *vadai* in keeping with how the word consistently appears in Sifra ms. Vatican 66, here and elsewhere. (*Vadait* appears with the “*taf*” at the end in only one of the two uses.) I have, however, removed the Hebrew letter “*hay*”, which appears intermittently and inconsistently in mss. Vatican 66 and EBR 31. Lev. 3:6 does not use definite articles before male or female. In the parallel statement in Sifra, Behuqotai 3, which comments on Lev. 27:3—which does use “*ha-zakhar*”, the letter “*hay*” does not appear according to ms. Vatican EBR 31. Unfortunately, there is no extant ms. Vatican 66 on this part of the Sifra with which to compare. However, cf. m. Arakh. 1:1 (ms. Kaufmann), which does not read “*ha-zakhar*” (discussed below). See also b. Arakh. 4b, b. Shab. 136b, and b. Nid. 28b. And see Rashi on b. Shab. 136b (s.v. הזכר) and on b. Arakh. 5b (s.v. מטתבר יהודה דר' וטעמיה). Rashi interprets b. Arakh. 4b and b. Shab. 136b according to b. Nid. 28b. In my opinion, according to tannaitic midrashic sources, the scriptural words male, man, female, and woman themselves exclude *tumtum v'androginos*; there is no need to base the interpretation on the additional “*hay*”. B. Nid. 28b is the only source that explicitly differentiates because of the scriptural mention of “the male” and “and if female”.
- 43 Cf. Sifra, Nedava 3. These two passages have much in common. Sifra, Nedava 3, however, in extant textual witnesses, does not contain the use of *zakhar vadai* and *nekevah vadai*. Manuscripts and texts vary on the use and spelling of ודאי or ודיי or וודיי; I standardize as *vadai* in my discussion of texts.

they should be read literally and exclusively; those words mean male or man only and female or woman only—not *tumtum v'androginos*. In other words, the passage indicates that the words *zakhar* and *nekevah* are to be read literally, as biblical quotations, and those words always mean only male and only female and thus exclude *tumtum v'androginos*.

The common translation of this statement as “certain” or “definite” male or man or “certain” or “definite” female or woman, to which I return below, is a traditional interpretation based on the use of *safek* (uncertainty or doubt) in other—though quite few and what I consider to be later—sources. *Safek* never appears in tannaitic midrashic (or mishnaic) sources about *tumtum v'androginos*. The reason *safek* does not appear in tannaitic midrashic sources is that, according to extant tannaitic midrashic (and mishnaic) sources, *tumtum v'androginos* is not a category that means possibly male or man or possibly female or woman. To the contrary, *tumtum v'androginos* means categorically and thus certainly not male or man and not female or woman.

Sifra, Behuqotai 3, uses *zakhar vadai* and *nekevah vadai* in the same way. Here, commenting on Lev. 27:3-4, which mentions *ha-zakhar* and *v'im nekevah* in the context of fixed biblical monetary valuations that Israelite men are commanded to donate to the Temple, the text states:

Zakhar and not *tumtum v'androginos*. One might think that [*tumtum v'androginos*] is not included in the general category *ish*, but is included in the general category *ishah*. [No.] Scripture states “and if female” (*v'im nekevah*). “Male”, read literally and “female”, read literally—not *tumtum v'androginos*.⁴⁴

This text doubles down, crystallizing that which is already apparent from all tannaitic midrashic sources. *Tumtum v'androginos* is not male, and not included in the category man, and nor are they female and included in the category woman. As outside the categories male or man and female or woman, *tumtum v'androginos* remains outside of the biblically prescribed fixed monetary donations to the Temple commanded of Israel.

However, tannaitic sources expand the laws of *arakhin* in a number of ways.⁴⁵ Although *tumtum v'androginos* remains, somewhat curiously, excluded

44 Sifra, Behuqotai 3, ms. Vatican EBR 31; corresponds to Weiss (112c-d).

45 See Kanarek (2016). See also Balberg (2013: 172-181).

from the biblically stipulated fixed amounts in terms of being evaluated by others (*ne'erakhin*), tannaitic sources include them in the commandments to evaluate men and women for their fixed amounts (*ma'arakhin*), to evaluate men, women and other *tumtum v'androginos* people for their market value (*nodrim*), and to be evaluated by others for their own market value (*nidarim*).⁴⁶

Sifra, Behuqotai 3, right before excluding *tumtum v'androginos* from being evaluated according to the biblically fixed *erekh* amount, includes *tumtum v'androginos* in *damim*, vows to donate the amount of someone's worth according to market value. The text includes *tumtum v'androginos* by interpreting the biblical word *v'hayah* as potentially redundant.⁴⁷ And, earlier in the same passage, the text affirms the inclusion of *tumtum v'androginos* in the act of evaluating others based on the phrase *b'nai Yisrael* (Lev. 27:2). At issue at the outset of the Sifra's treatment of Lev. 27 is that Lev. 27:2 uses both the words "children of Israel" and "man". As the text explains, one biblical word expands (*מרבה*) and another limits (*ממעט*).⁴⁸ This is usually translated, not incorrectly, as "includes" and "excludes", respectively. But such a translation, here at least, covers over too much. It conceals the fact that rather literally, *b'nai Yisrael* is being expanded, while *ish* is limited. "Israel" expands to incorporate *tumtum*

- 46 Cf. m. Arakh. 1:1, discussed below. See also t. Arakh. 1:1. I say curiously because since the word *nefashot* was used to include *tumtum v'androginos* (and woman) in partaking of the paschal sacrifice (Mekhilta of R. Ishmael Bo 4), they could have been included here as well since the same word appears in Lev. 27:3. I also note that *nefashot* is used to include others, namely those who are afflicted with boils and deemed repulsive (*מנוול*) in *erekh* vows, though excluded from *damim* under the assumption that they have little or no market value. Perhaps *tumtum v'androginos* are not included among this list precisely because *tumtum v'androginos* is not a category deemed repulsive or afflicted. *Nefashot* is also used to include women. The inclusion of women using the word *nefashot* but not *tumtum v'androginos* with the same word, again demonstrates that the category *tumtum v'androginos* is outside the category woman.
- 47 Mss. Vatican EBR 31, London, Oxford, and Parma read "*v'haya*". Bavli Arakhin 4b interprets "*v'hayah erkhekha*" to include *tumtum v'androginos*. It is unclear whether to understand the tannaitic textual witnesses as suggesting *v'hayah* itself is redundant or this is shorthand for *v'hayah erkhekha*.
- 48 The intricacies of the debate attributed to R. Meir and R. Yehudah are not treated here. Their debate is about where non-Jews fit in the *erekh* vows—not where *tumtum v'androginos* does, though *tumtum v'androginos* is brought as support for R. Yehudah's opinion. Cf. t. Arakh. 1:1 and b. Arakh. 5b.

v'androginos; “man” does not. Finally, the passage makes it clear yet again that not only is *tumtum v'androginos* not male or man, but nor is *tumtum v'androginos* female or woman. This was explicitly stated in the section of the passage cited above, but it is implicit insofar as *tumtum v'androginos* occupies its own position in relation to the four vows in the rabbinic rewriting of *erekh* vows. Men and women are obligated in all four of the vows, whereas *tumtum v'androginos* only three. *Tumtum v'androginos* is a category set apart, lacking one of these vows (being evaluated by others), thereby again marking *tumtum v'androginos* as not male or man and not female or woman. As not male or man and not female or woman, *tumtum v'androginos* is in its own halakhic category. When, and because, *b'nai Israel* expands beyond binary gendered embodiments, halakhah expands beyond binary gender bodies as well.

Thus far, we've seen rabbinic exegesis of scripture mobilized to incorporate *tumtum v'androginos* as Israel, and in so doing, accommodating (and creating) a halakhic subject that exists outside the categories male or man and female or woman. There are, however, two obligations from which *tumtum v'androginos* is excluded. This is not because halakhah cannot extend beyond a rigid male-female binary construction of gender; as we have seen above, especially clearly in Sifra, Behuqotai 3, it does. Rather, it is because of patriarchal assumptions undergirding halakhah; *tumtum v'androginos* is a category that is defined as not male or man, and as not men, *tumtum v'androginos* is excluded from some commandments.

The first commandment that excludes (or exempts) *tumtum v'androginos* is that of appearing before God at the Temple three times a year. In the Hebrew Bible, Israelite men are commanded to appear before God during the three pilgrimage festivals. It repeats this command three times: Three times in the year all your males shall appear before the Lord God (Ex. 23:17, cf. Ex. 34:32 and Deut. 16:16). Each verse uses the phrase “all your males” (כל זכורך), and these are the only three uses of *z'khurkha* in the Bible. The Mekhilta of R. Ishmael, Mishpatim 20 interprets this phrase, atomizing it to teach, “Your males - to exclude the women; All your males - to exclude *tumtum v'androginos*”.⁴⁹ Soon

49 I have translated according to Horovitz (1997: 333). Although there are many textual variants, this reading makes the most sense to me. My agreement with his eclectic use of sources, I hasten to add, is not based on its similarity to a parallel text on b. Hag. 4a, but its consistency with extant tannaitic midrashic sources. For a different reading, see Samuel I. Feigin, “HAGGARIM: ‘The Castrated One’”. *HUCA* 21 (1948: 355-364). Cf. m. Hag. 1:1, and y. Hag. 1:1;76b, y. Shab. 19:3;17b; and y.

after, the text states, “From here they say, All are obligated in appearing (before God) except a *heresh*, *shoteh*, *v’katan*, and *tumtum v’androginos*, [and] the lame man, the blind man, the sick man, and the elderly man”.⁵⁰

Again, the Mekhilta text sets *tumtum v’androginos* outside the category “male”. It also places *tumtum v’androginos* outside the category “women”, since it uses a different part of the phrase “all your males” to exclude women and *tumtum v’androginos*. It is not that halakhah excludes *tumtum v’androginos* because halakhah is confined to a male-female binary. In fact, *tumtum v’androginos* is not excluded from halakhic discourse here, but included at the very moment that the text excludes them from participating in this particular mitzvah. The inclusion in halakhic discourse is evident insofar as the scriptural use of the word “*zakhurkha* and *zakhar*” prompts (or compels) the rabbinic question about those who are not men and not women. It is furthered by the fact that *tumtum v’androginos* is excluded as *tumtum v’androginos*—as precisely not man and not woman. Beyond dividing bodies between men and women here, halakhic discourse adds another category defined as categorically outside of man and woman.⁵¹ And, halakhic discourse here excludes them from a particular mitzvah, in contrast to most other mitzvot, wherein *tumtum v’androginos* is included as a category outside, but alongside the categories male and female.

The second text that excludes *tumtum v’androginos* concerns the partitioning and inheritance of the land of Israel. Here again, *tumtum v’androginos* is excluded because they are outside the category (and word)

Yev. 8:1;9a. And see Sifre Dev. 143, which does not mention *tumtum v’androginos*. I do not think interpreting “all your males” as fully male is operating here regarding *tumtum v’androginos*, though that reading will develop in subsequent talmudic passages. In tannaitic midrashim, *tumtum v’androginos* is excluded from maleness and femaleness categorically, not from “full maleness” and “full femaleness”.

50 Translated so as to replicate the oddities in the original(s). On the relationship between Mekhilta of R. Ishmael passages and the Mishnah that use *mikan amru*, see Yadin-Israel (2015: 74-78).

51 We should also note that the exclusions in the latter part of the text demonstrate both that halakhah operates beyond a singular male construct (differentiated by age, physical and cognitive abilities, and health or lack thereof), and that one’s status as Israel is not undermined by exclusion from the performance of one commandment. Presumably, the differentiations among men in the text do not lead one to think elderly and sick men are not men and not included in Israel.

“man”, and the land of Israel is only divided among Israelite men.⁵² This passage appears twice in Sifre Numbers, since Numbers 18:20 and Numbers 26:53 might appear to be in tension. The former states, “And God spoke to Aaron, You shall have no inheritance in their land, neither shall you have any part among them; I am your part and your inheritance among the people of Israel”. The latter verse states, “To these the land shall be divided for an inheritance according to the number of names”. I cite from Sifre Numbers 132, on Num. 26:53:

To these the land shall be divided (Num. 26:53). This makes it sound as if all are included:

Cohanim, Levites, and Israelites, (and) strangers, (and) women, and slaves, (and) *tumtum v'androginos* are included. And God spoke to Aaron, You shall have no inheritance in their land (Num. 18:20). [This verse] excluded Cohanim. [But the Levites shall do the service of the Tent of Meeting...] among the children of Israel they have no inheritance (Num. 18:23). [This verse] excluded Levites. According to the names of the tribes of their fathers they shall inherit (Num. 26:55). [This verse] excluded strangers and slaves. To each man according to those that were numbered (Num. 26:44). [This verse] excluded women and *tumtum v'androginos*.⁵³

Again, *tumtum v'androginos* is excluded, along with, but outside the category women because both categories are not men. However, excluding *tumtum v'androginos* (and women) is not tantamount to saying these groups are excluded from Israel; one would not assert that this text excludes priests and Levites from the collective body of Israel. It does, however, maintain that only Israelite men are the inheritors of the land and counted among those to whom the land was partitioned according to the Bible.

One final text reiterates that *tumtum v'androginos* is not included in Israelite inheritance of the land. Sifre Deuteronomy, 301, commenting on Deut. 26:10, “I have brought the first fruits of the land, which You, God, have given me”, states: “From here they say, the *apotropos*, and the slave, and the messenger, and the woman, and *tumtum v'androginos* bring first fruits, but they do not recite”.⁵⁴ As

52 Though see Numbers 27.

53 Sifre Numbers, Pinhas 132 (Kahana 2015: 439). Cf. Sifre Numbers, Korah 119.

54 I have translated according to mss. Berlin and Vatican 32. Mss. Oxford and London do not have the prefix “*hay*” for each category. All extant textual witness for this

seen in the previous text from Sifre Numbers, *tumtum v'androginos* cannot claim to have inherited the land, since it was partitioned among Israelite men. Here however, *tumtum v'androginos* is obligated to observe the commandment to bring first fruits. This obligation to bring first fruits reiterates the fact that *tumtum v'androginos* remain part of Israel—even when excluded from specific mitzvot. Halakhic subjectivity, for any gendered embodiment, is itself not a static, unified, positionality. When halakhic midrashic sources summon *tumtum v'androginos*, a category defined by being not male, man, female, or woman, whether or not those sources obligate *tumtum v'androginos* to the particular mitzvot discussed (and remember that they almost always do) halakhah has already been expanded beyond a male-female binary framework. Whether “included” or “excluded” in a particular halakhic obligation, *tumtum v'androginos* occupies a halakhic subjectivity as *tumtum v'androginos*, which across all tannaitic midrashic sources means not man and not woman and categorically excluded from each.

Summary of Tannaitic Midrashic Sources

The catalyst for halakhic inquiry and discussion of *tumtum v'androginos* is always the scriptural mention of the words male, man, male and female, or male or female (or sons and daughters).⁵⁵ All tannaitic midrashic sources define

passage that I have seen lack the definite article (*ha*) when it comes to *tumtum v'androginos*. Cf. m. Bik. 1:5. It is possible that mss. Berlin and Vatican 32 were altered to conform to the mishnaic parallel, but my sense is that it is a more plausible reading that maintains the grammatical uniqueness of *tumtum v'androginos* (discussed below). Rabbinic sources never use “*ha-tumtum*” or “*ha-androginos*”. This occurs in post-talmudic writings. I note that m. Bik. 1:5 in Ms. Kaufmann does have “*ha-tumtum v'ha-androginos*”, but this is a departure from how the mishnah is cited in y. Bik. as well as in Maimonides’ commentary to the Mishnah ad loc, even though Maimonides in other places use “*ha-tumtum*” and “*ha-androginos*”. Finkelstein (*Sifre on Deuteronomy*, New York: JTS, 1993 [reprint], 320) notes that the order of the printed version of m. Bik. 1:5 differs. He also renders “*ishah, v'tumtum v'androginos*”, preferring the manuscripts that do not have “*ha-ishah*”. However, my sense is that the better reading is to maintain *ha-ishah*, since it is parallel with other categories listed here—except *tumtum v'androginos*—and it appears relatively frequently in extant tannaitic midrashic sources.

55 If a verse says *ish*, or *zakhar*, or *ish* and *ishah*, or *zakhar* and *nekevah*, this is an opening for asking about, and more often than not including, *tumtum v'androginos*. Sifra, Chova 10:5 (Weiss 24b), commenting on Lev. 5:6 is the only example I have found that occurs because of the biblical mention of *nekevah*.

tumtum v'androginos as not male or man and not female or woman. *Tumtum v'androginos* is a category that is set apart and excluded from every scriptural mention of *zakhir*, *ish*, *nekevah*, and *ishah* (as well as sons and daughters). This very exclusion necessitates a halakhic subjectivity that is outside maleness and femaleness. This is consistent in every case, but it is perhaps easiest to see in the case of temple donations, or vowings, where *tumtum v'androginos* occupies a unique halakhic subjectivity different than that of men and women.

When *tumtum v'androginos* is included in commandments, which they are in a clear majority of sources, it is as a category that is distinct from and outside that of man and woman, necessitating a scriptural word that is other than male, man, female, or woman for their inclusion (e.g. תלד, וילדיה, תשלחום, או). Their inclusion also necessitates that halakhah expands to accommodate nonbinary gendered embodiments. Above, we have seen that the births of *tumtum v'androginos* infants matter—requiring that periods of birth impurities would be adhered to and subsequent temple sacrifices would be brought. We have also seen *tumtum v'androginos* commanded to honor their parents, observe the sabbath, partake in the Passover sacrifice, make restitution after committing a sin, bring first fruits, and make vows promising to aid in the monetary upkeep of the Temple. *Tumtum v'androginos* are obligated while being categorized as not men and not women—yet simultaneously as part of the collective body of Israel.⁵⁶

When *tumtum v'androginos* is excluded, in just two cases (appearing before God and land inheritance), it is because it is a category that is distinct from and outside that of man or male, and for whatever reason, rabbinic sources do not mobilize another word for their inclusion. In these cases, their exclusion is not unique but they are accompanied by others also excluded—even Priests and Levites in the case of land inheritance. Here still, exclusion from a particular commandment does not mean exclusion from the collective body of Israel. (Priests and Levites, barring an offense that would warrant *karet*, are not excluded from the community even though they are not commanded to appear before God at the temple three times a year). And again, it does not mean *tumtum v'androginos* is a category excluded from halakhic discourse because they are not male or man and not female or woman. Halakhic discourse includes *tumtum v'androginos* as halakhic subjects who are not male or man and not female or woman even as it excludes them from particular mitzvot.

56 Recall as well that *tumtum v'androginos* birds are fit for sacrifices.

While all tannaitic midrashic sources treat *tumtum v'androginos* as a category distinct from, and outside of, male, man, female, and woman, no tannaitic midrashic sources make any distinctions between “*tumtum*” and “*androginos*”. The language of *safek* (uncertainty) is never used, nor is the language of *briah b'fnei atzmo*. I have chosen not to import that framing into my readings of tannaitic midrashic sources in order to see what emerges from the sources themselves. What emerges from tannaitic midrashic sources is that *tumtum v'androginos* is a category that is, with the utmost certainty, not male or man and not female or woman.

Since there are no distinctions between *tumtum* and *androginos* in tannaitic midrashic sources, I have resisted the consensus reading of *tumtum v'androginos* as *tumtum* and *androginos*, connoting two clearly distinguished gendered embodiments. Without starting from the perspective that *tumtum v'androginos* is always already *tumtum* and *androginos*—clearly distinguished gendered embodiments—the sources can be read in ways that delineate three gender categories, not four: male, female, and *tumtum v'androginos*, the latter functioning as a broad category for people who are identified as part of Israel but not identified as male or female.⁵⁷ Some structural characteristics and grammatical uniqueness have encouraged me to pause to take seriously such a possibility, which I address in the next section.

The Grammar of *Tumtum v'Androginos* in Tannaitic Midrashic Sources

Throughout extant tannaitic midrashic sources, the dyad *tumtum v'androginos* always appears together and in that order.⁵⁸ *Tumtum v'androginos* never appears in the plural form, either both terms or one of the two.⁵⁹ In addition, there is never a definite article attached to the phrase or the individual components. These linguistic and grammatical peculiarities have suggested to me that while *tumtum v'androginos* shares some elements with other rabbinic groupings (women and slaves, women, slaves, and minors, and *heresh, shoteh, v'katan*), the dyad has its

57 I note that the categories man and woman are not themselves unified and are often differentiated (sick man, elderly man, male convert; pregnant woman, widow, divorced woman, etc).

58 On the one potential exception about circumcision in Sifra, Tazria 1, see note 20 above. And see below.

59 The one occurrence of either term in the plural in the entirety of extant classical rabbinic sources is of *tumtumin*” in b. Yev. 64a-b. I discuss this passage elsewhere.

own uniqueness. I return to this below, after presenting some examples from tannaitic midrashic sources that exemplify its consistent, and to my mind universal, appearance as *tumtum v'androginos*.

The mention of *tumtum v'androginos*, when placed alongside other categories, always appears as “*v'tumtum v'androginos*”, distinguishing it as a whole, from what comes before. So, for instance, “to include woman and *tumtum v'androginos*”⁶⁰ or “to exclude women and *tumtum v'androginos*”.⁶¹ Often this has been translated as “to include woman, (and) *tumtum*, and *androginos*” or “to exclude women, (and) *tumtum*, and *androginos*”, but this presumes that *tumtum v'androginos* are distinguished.

Above, I cited Mekhilta of R. Ishmael (Bahodesh, 8) according to textual witnesses that state “From where in scripture do I know woman? From where in scripture do I know *tumtum v'androginos*?” It would have been odd if not inconceivable, I suggest, for the text to have read: ‘From where in scripture do I know woman? From where in scripture do I know *tumtum*? From where in scripture do I know *androginos*?’ *Tumtum* and *androginos* simply do not exist as *tumtum* and *androginos*, as separate embodiments, in tannaitic midrashic sources.⁶² *Tumtum v'androginos* does exist, always, as distinct from the category woman. Similarly, although I cited Sifre Numbers 132 above, which excluded women and *tumtum v'androginos* from the word “man” in Num. 26:4, here I note that its parallel in Sifre Numbers 119 reads “To each man according to his number. This excludes *tumtum v'androginos*”.⁶³ Although women and *tumtum v'androginos* are often excluded from “men or male” together, we see that “women” can be dropped, but *tumtum v'androginos* is never separated.

In Mekhilta of R. Ishmael (Mishpatim, 20), also cited above, *tumtum v'androginos* again appears together, set off from “the women”.⁶⁴ The text reads,

60 See, for example, Mekhilta of R. Ishmael, Bo 4, cited above.

61 See, for example, Sifre Numbers, Pinhas 132, and Sifre Deut. 301, both cited above.

62 Below, I discuss some genizah fragments from early halakhic works that attest to different versions of a baraita from b. Shab. 134b that is paralleled in Sifra, Tazria 1. While some of these fragments will separate *tumtum* and *androginos*, others maintain *tumtum v'androginos*; I prefer the latter reading since it is consistent with all other extant tannaitic midrashic sources.

63 Cited according to mss. Oxford and Berlin.

64 Again, I am following mss. Munich and Oxford with Horovitz’s emendation. I think the appearance of *ha-gerim* (הגרִים) is a later interpolation as what seems to be a

“Your males (Ex. 23:17) - to exclude the women (להוציא את הנשים). All your males — to exclude *tumtum v'androginos* (ואנדרוגינוס)”. There is no attempt to separate *tumtum v'androginos*—it is its own category, or it least it functions as a category that is outside men and women without any distinctions provided between *tumtum* and *androginos*.⁶⁵

In addition, taking a closer look at the grammar of the Mekhilta of R. Ishmael Mishpatim 20 passage just cited, I here note the use of the plural grammatical form and the definite article for “the women” but not for “*tumtum v'androginos*”. This is consistent across all rabbinic sources (not just tannaitic midrashic ones).⁶⁶ For example, in Sifre Numbers 119 and 132 we read: כהנים לויים (גרים) נשים ועבדים, and in Sifre Deut. 301 we read: האפטרופוס והשליח והעבד והאשה, and in Sifre Deut. 301 we read: וטומטום ואנדרוגינוס.⁶⁷ Despite numerous textual variants, what remains constant is that (*v'*)*tumtum v'androginos* never takes a definite article or a plural form. While post-talmudic commentators and scholars have consistently framed discussions about *tumtum* and *androginos* by its gendered “uniqueness” (*briah b'fnei atzmo*), the structural and grammatical uniqueness of the language of *tumtum v'androginos*

composite text takes shape over time. The consistency with which *tumtum v'androginos* appears in tannaitic sources as outside of, but along with, women (and women and men), helps support Horowitz’s decision to bracket *ha-gerim*. For a reading that considers the genizah fragment where היגרין appears instead of הגרים, see Feigin (1948).

65 This lack of distinction between *tumtum* and *androginos* in tannaitic sources is what will require some Bavli sources to deliberate, and in my opinion to manufacture such differences—and even then in ways that confirm awareness that *tumtum v'androginos* are not distinguished in tannaitic midrashic sources. We should not continue to read such distinctions across tannaitic sources. See especially b. Hag. 4a and b. Bekh. 41b-42b.

66 Again, the potential exception is b. Yev. 64a-b.

67 Sifre Numbers 132 is cited from Kahana (2015: 439), though I’ve added the “*vav*” before *tumtum* as reflected in some manuscripts. Sifre Deut. 301 cited from ms. Berlin. Note that neither the lack of a definite article or plural form can be justified by the use of Greek, as mss. variants testify to the consistent use of *ha-apotropos* and some render האפטרופין (ms. London) הפיטרופין (ms. Oxford), and האפטרופין (ms. Vatican 32), attempting to form a plural with the Greek loanword. Moreover, if *tumtum v'androginos* were so etymologically and linguistically split at the root as commonly thought, the former being an Aramaic word and the latter a Greek loanword, one would reasonably expect some record of *ha-tumtum* or *tumtumin*. Again, I discuss the one potential use of “*tumtumin*” in b. Yev. 84a-b in another context.

has not been sufficiently recognized. By drawing upon and drawing out the structural and grammatical uniqueness of *tumtum v'androginos* as it appears so consistently as *tumtum v'androginos*, we can historicize and better understand the use of *briah b'fnei atzmo* and *safek* when and where it arises; likewise, by drawing attention to the preponderance of sources in tannaitic midrashim, the Mishnah, and the Bavli that use *tumtum v'androginos* in what appears to me to be a standard formulaic way, we are in a better position to evaluate the minority of sources where the categories appear separated (see below).

Finally, the linguistic and grammatical peculiarities set out above have led me to hesitate to locate *tumtum v'androginos* squarely among other formulaic rabbinic groupings such as “women and slaves”, “women, slaves, and minors”, or *heresh, shoteh, v'katan*.⁶⁸ In these other examples, each of the words appears outside of such groupings in tannaitic sources, the words also appear in plural and singular forms in tannaitic sources, they each appear with a definite article in tannaitic sources, and the words *katan*, *heresh*, and *shoteh* appear in both grammatically feminine and masculine forms (*ketanah, hereshet, shotah*).⁶⁹ And, “women”, “slaves”, “minors”, and “*heresh*” are all Hebrew words that appear in the Hebrew Bible, which again makes *tumtum v'androginos* distinct.

Furthermore, *tumtum v'androginos* is itself unique within the rabbinic corpus insofar as it ostensibly joins two terms thought to originate from different language groups, Semitic for *tumtum* and Greek for *androginos*.⁷⁰ Granting some

68 See Margalit, “Tumtum”. Margalit asserts that *tumtum* and *androginos* are always different embodiments, even though they are often presented together and halakhah is the same for both in most cases. He compares *tumtum v'androginos* to *heresh, shoteh, v'katan* (1975: 780).

69 See, for example, Sifra, Chova 10:5 (Weiss, 24b). See also, for example, m. Nid. 2:1.

70 Lev. R. 27:1 interprets the place name “Cartegenia” as a city (*karta*) of women (*gyne*). Visotzky points to the bilingual pun being used here, writing, “The rabbis may be translating *karta* as Aramaic for city and *gyna* as Greek for woman” (2003: 103). See Burton Visotzky *Golden Bells and Pomegranates: Studies in Midrash Leviticus Rabbah*. Tübingen: Mohr Siebeck. Cf. b. Tamid 32a, where the tradition appears without the specified name “Cartegenia”. This blending of Greek and Aramaic in a midrashic pun about a place name differs significantly, however, from the use of an Aramaic word and Greek word in a combined term as we see in *tumtum v'androginos*. See Benjamin Musaphia, who suggests a Greek etymology for *tumtum* in his additions to the Arukh’s entry on *tam*: “That which they call *tumtum* in Greek they call *atimotus*, meaning one who is not cut”. Musaphia cites Targum

obvious similarities, then, between *tumtum v'androginos* and even *heresh*, *shoteh*, *v'katan*, there are some significant differences that make *tumtum v'androginos* grammatically and linguistically unique. Finally, *tumtum v'androginos* also appears conceptually novel; it serves as a mechanism through which to address, and rectify, the (apparent) biblical lack of the incorporation of genders outside the categories male and female, whereas the terms for and concepts of women, slaves, minors, and deafness have biblical precedents.

Given the consistent grammatical peculiarities, namely the lack of a definite article and lack of plural form, coupled with the fact that *tumtum v'androginos* is never distinguished nor separated, or for that matter defined or described, and the lack of use of *safek* and *briah*, I have resisted reading the tannaitic midrashic sources as if *tumtum v'androginos* always and everywhere is *tumtum* and *androginos*. I should add that one of the mechanisms that will be used (and then developed) to distinguish between *tumtum v'androginos* and define *tumtum* in some later sources—*tumtum sh'nikra* (“torn” *tumtum*)—is unattested in extant tannaitic midrashic sources, though it does appear as an individual opinion in one mishnaic source.⁷¹ I suggest that the phrase “*tumtum v'androginos*” functions as a collective singular nominal category. As every tannaitic midrashic tradition asserts: it is a category that is outside of, but appears along with, the categories man or male and woman or female. That *tumtum v'androginos*, and thus *tumtum* and *androginos*, remain outside the categories man, male, woman, and female but within the category of Israel as not male and not female, is also, in my opinion, evident in mishnaic sources, to which I now turn.

Mishnaic Sources

Consensus readings of *tumtum* and *androginos* emerge from traditional and scholarly interpretations that give primacy to a minority of mishnaic sources, read

Yonatan on Judges 3:22 as the basis for this understanding. Note that t. Nid. 4:7 and y. Nid. 50d, which is commenting on m. Nid. 3:1 contrast *atum-ah* (differentiated) with *חתוכה-חתוך* (uncut-undifferentiated). For a refutation of Musaphia’s etymology, see Hanoah Kahut, *Aruch HaShalem* Vol. 4, s.v. “t.m”. (1926: 39).

71 See note 20 above. Mishnah Yev. 8:6 is the only extant tannaitic source that mentions *tumtum sh'nikra*, though compare t. Yev. 11:1. There is also only one mention of *tumtum sh'nikra* in the Yerushalmi (y. Hag. 1:1;76a). My research beyond the scope of this article suggests that the Yerushalmi avoids discussion of the category of *tumtum* in general.

in concert with some other select sources (discussed below), which are then read as the key to understanding all mentions of *tumtum v'androginos* in tannaitic and post-tannaitic sources. This is a legitimate, traditional interpretive choice, but one I do not undertake here. Instead, I've chosen to give primacy to the majority of sources that mention *tumtum v'androginos* across extant tannaitic midrashic, mishnaic, and even Bavli sources, and I therefore suggest an alternative reconstruction of the function and meanings of *tumtum v'androginos* and *tumtum* and *androginos* traditions as they develop over time. I presented tannaitic midrashic sources first not because I think they are chronologically prior, but because they are usually not given primacy, and because I seek to establish overall consistency across the majority of sources extant from tannaitic midrashic and mishnaic traditions. The fact that the Bavli also includes many traditions that maintain the use of *tumtum v'androginos*, neither treating *tumtum* and *androginos* separately nor making much sense if one reads *tumtum v'androginos* according to the distinctions made in the minority traditions, and more tellingly, presents the distinctions that have become so central especially regarding “*safek*” and “*briah*” only infrequently, inconsistently, and usually as part of the anonymous layer of the text, have all suggested to me the value of revisiting traditions about *tumtum v'androginos* and traditions that mention *tumtum* and *androginos*.

I am not the first to point out the difficulties between extant sources where *tumtum v'androginos* appears and those where *tumtum* and *androginos* appear distinguished; in fact the Bavli itself reckons with apparently conflicting traditions (e.g.: b. Shab. 136b; b. Yev. 83b; b. Bekh. 41b-42a). Scholars in the 20th century also recognized differences between traditions where *tumtum v'androginos* appears and those where *tumtum* and *androginos* appear distinguished. David Margalit, writing in 1975, notes the common usage of *tumtum v'androginos* “as if they are one and the same” and sets out to differentiate them based on the minority traditions.⁷² Avraham Steinberg writes, “At times, they are referred to together only because of customary or routine linguistic usage”.⁷³

72 Margalit (1975).

73 Steinberg, “Ambiguous Genitalia (*Tumtum*)”, *Encyclopedia of Jewish Medical Ethics*: 50, notes, citing b. Bekh. 42a, “The Talmud sometimes says ‘exclude *tumtum* from here’, meaning its law differs from that of a hermaphrodite” (53). However, the Talmud says this only on b. Bekh. 41b-42a as part of a passage that is trying to establish their difference while noting the consistent tannaitic use of *tumtum v'androginos* without distinction.

Furthermore, whereas Margalit and Steinberg are largely working to solidify definitions of and distinctions between *tumtum* and *androginos* that apply across the rabbinic corpus, I neither assume nor expect that there is universal agreement across all sources; (though I do stress that *tumtum v'androginos* occupy a category(s) outside of man, male, woman, and female). Rabbinic sources are often defined by debate, disagreement, and canonized dissent. Attending closely to passages that use *tumtum v'androginos* and those that use *tumtum* or *androginos* contributes to a better understanding of their meanings overall and offers a more nuanced understanding of the sources as a whole; it allows us to offer different ways to account for the diversity of extant textual evidence and propose new insights rather than foreclose their possibility from the start. Finally, it allows for, and necessitates, that we be open to the possibility that traditions about *tumtum v'androginos* exhibit what appears to be not only synchronic divergence but also diachronic development. In my opinion, the meanings of *tumtum v'androginos* develop over time in ways that we do not see if we assume that the categories were always already two distinct categories; in other words, it behooves us to read for *tumtum v'androginos* not just *tumtum* and *androginos*.

In my presentation of mishnaic sources that follows, I begin with mishnaic passages that use *tumtum v'androginos* in order to highlight the similarity, continuity, and contiguity among extant tannaitic halakhic sources. After presenting some examples of the mishnaic passages that use *tumtum v'androginos* without distinguishing between them, I examine mishnaic passages that distinguish them, offering close textual analysis informed by philology and the use of manuscript variants and genizah fragments of early post-talmudic halakhic works. I think that the textual evidence borne out of such examination urges caution against reading *tumtum v'androginos* always as already *tumtum* and *androginos*, two separate, clearly demarcated categories. While that remains a valid reading, it seems to me to be an oversimplification of the sources that is contributing to the reification of “*tumtum*” and “*androginos*” that emerges in sources that are exceptional, not normative. The work presented in what follows, and throughout this article, not only considers that approach, but also, in its resistance to accepting it as the only approach, provides insights into the wheres and whens *tumtum* and *androginos* as clearly distinguished categories becomes the dominant interpretive approach.

***Tumtum v'androginos* in Mishnaic Sources**

Tumtum v'androginos appears ten times in our Mishnah, and as in tannaitic midrashic sources, the phrase is presented as if it is self-evident.⁷⁴ One mishnaic source provides much of the impetus for defining *androginos* as a person who has both a penis and a vagina, and that same source, by its lone mention of *tumtum sh'nikra* provides the impetus for later interpretations of *tumtum* (m. Yev 8:6).⁷⁵ Finally, and equally worthy of emphasis, the Mishnah never uses the terms *safek* and *briah b'fnei atzmo* concerning *tumtum v'androginos*, or *tumtum* or *androginos*. (Although some Mishnah manuscripts include a parallel to t. Bik. 2:3-7 as a fourth chapter in m. Bik., extant Yerushalmi manuscripts lack any record of a fourth chapter of Bikkurim, and neither the Yerushalmi nor the Bavli integrate a parallel to t. Bik. 2:3-7 as recorded in extant Tosefta manuscripts).⁷⁶

We saw above that the Sifra supplemented Lev. 12's binary gender categories by discussing infants born who were *tumtum v'androginos*, not male or female. Mishnah Nazir 2:7 provides a complementary teaching:

[If a man says] Behold, I am a nazir when there will be a son to me, and a son is born to him, behold he is a nazir. [If] a daughter [is born to him] or *tumtum v'androginos*, he is not a nazir. If he said [I will be a nazir] when I see that I have a child (*valad*), even if a daughter or *tumtum v'androginos* is born to him, behold he is a nazir.⁷⁷

74 See: m. Bik. 1:5; m. Hag. 1:1; m. Naz. 2:7; m. Arak. 1:1, m. Para. 12:10; m. Nid. 3:5; m. Zav. 2:1; m. Bekh. 6:12; m. Tem. 2:3; m. Tem. 5:2.

75 The wisdom of relying upon meanings derived from one source to delineate a definition across all sources across time is a question which must be asked rather than assumed. In extant tannaitic sources *tumtum sh'nikra* appears only in m. Yev. 8:6; a parallel tradition in t. Yev. 11:1 uses שמא יקרע. Both sources are presented as minority opinions.

76 Mishnah Bikkurim, according to genizah fragment, Cambridge T-S E2.21, also lacks a fourth chapter. I would expect some kind of parallel tradition in the Yerushalmi of t. Bik. 2:2-7, either in tractate Bikkurim or other places, if it were a mishnaic passage. Bavli Yev. 83a introduces R. Yose's statement that *androginos* is *briah b'fnei atzmo* as a baraita (a statement outside of the Mishnah), but only one line is quoted, not a full parallel to t. Bik. 2:3-7. Moreover, as this article details below, the language of t. Bik. 2:3-7 and its parallel in some manuscripts of m. Bik. 4, runs counter to tannaitic (and in many cases talmudic) traditions about *tumtum v'androginos*, *tumtum*, and *androginos*.

77 Read according to ms. Kaufmann and Cambridge T-S E 91 (genizah fragment). The difference is that both of those texts read ואתה ואתה ואתה ואתה. In contrast, m. Naz.

As in tannaitic midrashic sources cited above, which read the words *teled* (she gave birth) and *viladeyha* (her children) as locating the inclusion of nonbinary gendered infants in the category of “child or offspring”, this mishnah uses the word *valad*, which is not gender specific. Again, *tumtum v’androginos* is outside the categories male (son) and female (daughter). The text raises no concern or judgment about *tumtum v’androginos* offspring; in contrast, it treats their births as a natural occurrence. The concern, rather, is that the man making the vow uses correct, precise language in obligating himself to be a nazir. And, as with the Sifra text, *tumtum v’androginos* sits simultaneously alongside and yet outside of son and daughter, as an additional gender category.

Mishnah Bik. 1:5, m. Hag. 1:1, and m. Arakh. 1:1 record close parallels to tannaitic midrashic sources discussed above. *Tumtum v’androginos* appears in each of these mishnaic texts as a category without any distinctions between *tumtum* and *androginos*. For example, m. Arakh. 1:1 states:

All [Israel] evaluate and are evaluated, make vows and are vowed upon: Cohanim, Levi'im, and Yisraelim, women and slaves. And⁷⁸ *tumtum v’androginos* make vows [to donate a monetary amount to the Temple] and may be the object of [such] vows and evaluate [others for their *erekh* (fixed value)], but may not be evaluated [for their *erekh* (fixed value)] because none are evaluated except *zakhar vadai* and *nekevah vadai*.⁷⁹

2:7 ms. Parma and printed editions, and talmudic mss., read *בת טומטום ואנדרוגינוס*, and thus are rendered: a daughter, *tumtum*, or *androginos*. Note that y. Naz. 2:7;52a does not offer any distinction between *tumtum* and *androginos* when it briefly comments (*בת לא כלום טומטום ואנדרוגינוס צריכה*); b. Naz. 13a offers even less explicitly—though both Yerushalmi and Bavli comments, however brief, make it clear that *tumtum v’androginos* is outside the category of male or son.

- 78 Both ms. Kaufmann and Parma read “*v’tumtum v’androginos*”, but talmudic mss. consistently read “*tumtum v’androginos*”.
- 79 Rendered according to ms. Kaufmann (וודאי); ms. Parma has *vadait* after female. See my note 42 above on translation of *vadai*. The passage is usually translated as: “Because only a definite male and a definite female are evaluated”. See Halbertal (2020: 193). See also Fonrobert (2014: 115), who translates “certainly male or certainly female”. Again, since mishnaic sources do not use the language of *safek* about *tumtum v’androginos*, I do not import it here. I return to this below in the section on “*Vadai*”.

Tumtum v'androginos is a category that is excluded from the categories male and female and outside those categories. This difference is reflected in the unique halakhic subjectivity for *tumtum v'androginos* concerning Temple donations, which differs from those set for men and women (Lev. 27). Likewise, in m. Bik. 1:5, as in its tannaitic midrashic parallel, the category *tumtum v'androginos* is obligated to bring first fruits, though prohibited from saying the accompanying formula “that you God have given me”. While in m. Hag. 1:1, *tumtum v'androginos*, again presented as a category that does not distinguish between *tumtum* and *androginos*, is excluded from the commandment to appear before the Temple three times a year. In each case, whether included with some modification (m. Arak. 1:1; m. Bik. 1:5) or excluded entirely (m. Hag. 1:1), *tumtum v'androginos* is a category that is outside that of man and woman.

Similarly, in most mishnaic sources, as with all tannaitic midrashic ones, *tumtum v'androginos* always appears in that order, without any distinctions. The phrase is also always set off from other categories. For example, turning to mishnaic traditions that do not have parallels in extant halakhic midrashim, m. Par. 12:10 reads, “All are fit to sprinkle [the purifying waters] except for *tumtum v'androginos*, the woman, and a male minor who does not have knowledge”.⁸⁰ Mishnah Zavim 2:1 likewise separates *tumtum v'androginos* from other categories and then rules about *tumtum v'androginos* without distinguishing between *tumtum* and *androginos*:

All become impure through zivah. Even the converts, even the slaves, whether they have been freed or whether they have not been freed, *heresh*, *shoteh*, *v'katan*, *saris adam*, *saris hamah*. *Tumtum v'androginos* — they place upon them (עליהן) the stringencies of the man and the stringencies of the woman. They become impure through blood as a woman [becomes impure through blood] and through white as a man [becomes impure through white discharge], but their impurity (וטומאתן) is *safek*.⁸¹

80 Cf. m. Parah 5:4 (discussed below). See also t. Par. 5:7, and see b. Yoma 43a, where there is an attempt to harmonize the differences among these sources but only insofar as they pertain to woman’s exclusion. Cf. b. Arak. 3a, where, again, the concern is about the woman’s exclusion.

81 I have translated according to genizah fragment T-S E2 95. Mss. Kaufmann 50, Parma 2596, Parma 3173, have *v' tumtum v'androginos*. In either case, *tumtum*

In my reading, here too *tumtum v'androginos* functions grammatically as a collective singular nominal category. The text need not be read as *tumtum* and *androginos*, even though the plural *aleihen* (“them”) is used. Rather, the text means *tumtum v'androginos* people, or people who comprise the category *tumtum v'androginos*.⁸²

Reading *tumtum v'androginos* as a collective nominal category is supported by, and helps us make sense of, the grammatical peculiarities I discussed above. To bring one example, m. Bik. 1:5 and its parallel in Sifre Deut. 301: האפוטרופוס והעבד והשליח והאשה וטומטום ואנדרוגינוס מביאין ולא קורין. This could be rendered either, “the guardian, and the slave, and the messenger and the woman and [a person in the category] *tumtum v'androginos* bring first fruits but do not recite”, or, “guardians, slaves, messengers, women, and *tumtum v'androginos* [people] bring first fruits but do not recite”. In both cases, the grammatical uniqueness of *tumtum v'androginos* (no definite article, no plural) is laid bare.

Manuscript variants highlight such uniqueness. For example, mss. Parma and Kaufmann of the Mishnah and the citation of the mishnah in y. Bik. renders *ha-apotropos*, which similar to *androginos* is a Greek loan word, in an Hebraicized, plural form: האפיטרופין-האפיטרופים. This begs the question why would these versions not render “*androginos*” in a plural form. In addition, only ms. Kaufmann of the Mishnah, in contrast to all extant textual witnesses to this source and its Sifre Deut. parallel, reads: והטומטום והאנדרוגינוס. This seems to me to be evidence of scribal textual emendation, since *tumtum v'androginos*, as well as *tumtum* and *androginos* never appear in extant rabbinic sources—Talmuds included—with a definite article.⁸³ In my opinion, the Kaufmann manuscript might be trying to emend the text based on an interpretation of *tumtum v'androginos* as *tumtum* and *androginos* that crystallizes over time and is based

v'androginos is distinguished from all others on the list. Note that *tumtum v'androginos* are not *safek* regarding their maleness or femaleness; their impurity is *safek*. Cf. m. Nid. 4:1. Cf. t. Zav. 2:1, which discusses *tumtum v'androginos* in their own category, and does not mention slaves, *heresh*, *shoteh v'katan*, *saris adam*, or *saris hamah*.

82 In neither m. Zav. 2:1 nor t. Zav. 2:1 is there any distinction between the genital discharges of “*tumtum*” and “*androginos*”. This raises certain challenges that are more easily solved by reading *tumtum v'androginos* as one category. Alternative readings are possible, but in my opinion less likely, as I detail in another context.

83 See note 6 above.

on prioritizing texts that are exceptions insofar as they distinguish *tumtum* and *androginos*.

Before turning to those exceptional sources, I offer one more example from the Mishnah and related tannaitic midrashic sources that support reading *tumtum v'androginos* as a phrase that functions as a single, [and in this case, singular nominal] category. Mishnah Bekhorot 6:12 discusses blemishes of first born animals that are not severe enough to render the animal permitted for slaughter and consumption outside the Temple but are severe enough that the animal would not be able to be offered as a sacrifice. A relatively lengthy list ends with the tanna kamma's inclusion of *tumtum v'androginos* in this category: "and *tumtum v'androginos*—[all these] can neither be [offered as a sacrifice] in the Temple nor [eaten as unsanctified meat] in the provinces (i.e., outside the Temple)". The text continues:

Rabbi Ishmael says, "there is no blemish greater than this". But the sages say this is not a first-born animal, but it may be sheared and worked".

רבי ישמעאל אומר, אין מום גדול מזה. וחכמים אומרים, אינו בכור, אלא נגזז ונעבד.

Typically this passage is rendered according to its later exploration in b. Bekh. 41b-42b.⁸⁴ Accordingly, R. Ishmael is thought to be referring to a first born *androginos* animal alone, despite the fact that the mishnaic text does not state that.⁸⁵ But this reading is not obvious—as the energy the Bavli sugya expends to manufacture and support it verifies. A better reading, in my opinion, is that R. Ishmael, differing from the tanna kamma, considers *tumtum v'androginos*—not *androginos* alone—to be a severe blemish. The sages, again differing from the tanna kamma, categorically exclude *tumtum v'androginos*—not *androginos* alone—from the category of firstborn (and its sanctified status).⁸⁶

84 B. Bekh. 41b-42b integrates t. Bekh. 4:16 into its discussion.

85 Contrast t. Bekh. 4:16.

86 On the lack of sanctity of *tumtum v'androginos*, cf. m. Tem. 2:3 and 5:2; t. Bekh. 4:16; t. Tem. 1:5. However, see b. Tem. 11a, 17a, and 24b-25a, where Rabban Shimeon ben Gamliel's opinion is understood as a minority opinion, and the majority opinion is that *tumtum v'androginos* animals are born with their mother's sanctity, had she been sanctified when pregnant with them. In all these passages, *tumtum v'androginos* are not distinguished. Cf. b. Bekh. 57a, which tries to square m. Bekh. 9:4 and t. Bekh. 7:7.

Extant tannaitic midrashic sources support such a reading. Above, I cited part of Sifra, Nedava 3, where it excludes “*tumtum v’androginos*” from burnt offerings because scripture says “male” (Lev. 1:3 and 1:10) The longer passage from which that teaching is drawn, however, first tried to determine if one could have come to this exclusion via logical reasoning (והלא דין הוא). In that context, the text moves through different types of sacrifices, burnt offerings, peace offerings, and sin offerings, at which point the text tries to reason from the exclusion of *tumtum v’androginos* from firstborn offerings but rejects this as well because regarding a firstborn, “all species of males are kasher, but not *tumtum v’androginos*”.⁸⁷

For my purposes here, what is important is that in the discussion of a firstborn animal, Sifra, Nedava 3, does not distinguish between *tumtum* and *androginos*, but maintains *tumtum v’androginos* is excluded. Similarly, in the context of human firstborns, Sifre Deut. 215 excludes *tumtum v’androginos* not *androginos* from the category firstborn son.⁸⁸

When read in the larger context of tannaitic midrashic sources, which even when discussing firstborns (=males) use the language of *tumtum v’androginos*, there is little reason to read R. Ishmael’s comment in m. Bekh. 6:12 as referring solely to *androginos*. Such an interpretation results from interpretive positions that assume that *tumtum v’androginos* already means *tumtum* and *androginos*. As I have shown, this reading is not self-evident from tannaitic midrashic sources themselves—nor from the majority of mishnaic texts. It depends on reading into m. Bekh. 6:12 understandings of *tumtum* and *androginos* from other sources (and etymologies offered in post-talmudic commentaries). I turn now to the minority of mishnaic sources that have contributed to the consensus readings of *androginos* distinct from *tumtum*.

87 I have relied on ms. EBR 31, as this section is missing from ms. Vatican 66. All other mss. that were available to me concur with this reading (mss. London, Oxford, Parma). I also note the grammatical uniqueness throughout insofar as when the passage states males (זכרים) and females (נקבות) it uses the plural, but *tumtum v’androginos* always appear as *tumtum v’androginos*.

88 The passage atomizes Deut. 21:15, and in most extant manuscripts *tumtum v’androginos* comments directly on “ויהיה הבן”. However, it is clear that the point is that *tumtum v’androginos*, as with daughters directly above, is excluded because the concern is firstborns (=sons). Ms. London reads: והיה הבכור ולא טומטום ואנדרוגינוס: Compare b. Bab. Bat. 126b, where, in a post-tannaitic teaching, *tumtum sh’nikra* is excluded from the category of firstborn son, even if found to be male.

Androginos and Tumtum in Mishnaic Sources

In this section I set forth three of the mishnaic sources that have, to varying degrees, helped to naturalize reading *tumtum v'androginos* across rabbinic sources as referring to two distinct gendered embodiments: *tumtum* and *androginos*. There are five such sources, themselves presenting variations on, or departures from, the use of *tumtum v'androginos* in tannaitic midrashic and mishnaic sources. Here I focus on m. Par. 5:4, m. Shab. 19:3, and m. Yev. 8:6; the remaining two (m. Nid. 3:5 and m. Bab. Bat. 9:2) will be discussed in a later section, embedded in my discussion of t. Bik. 2:3-7.

Mishnah Parah 5:4

I begin with m. Parah 5:4, which excludes *androginos*, with no mention of *tumtum*, from preparing the mixture of water and ashes sprinkled for purification from corpse impurity as part of the *parah adumah* ceremony (Deut. 19). The text reads, “All are fit to prepare the mixture, except for *heresh*, *shoteh*, *v'katan*. R. Yehudah renders a minor fit, but renders a woman and *androginos* (באשה ובאנדרוגינוס) unfit”.⁸⁹ In contrast to sources set forth thus far, where *tumtum v'androginos* are paired, this mishnaic text pairs woman and *androginos*. This is a unique occurrence; even across rabbinic sources this mishnah and its citations in the Bavli are the only places it appears. Furthermore, m. Par. 5:4 stands in some tension with m. Parah 12:10: All are fit to sprinkle [the purifying waters] except for *tumtum v'androginos*, the woman, and a male minor who does not have knowledge”.

There are some obvious incongruities between m. Par. 12:10 and 5:4. Whereas m. Par. 12:10 excludes *tumtum v'androginos*, and the woman, from the mitzvah of sprinkling the purifying waters in the *parah adumah* ceremony, m. Par. 5:4 offers an individual, minority opinion attributed to R. Yehudah that renders woman and *androginos* unfit to prepare those waters.⁹⁰ When both

89 I discuss t. Parah 5:7 below. Again, cf. b. Yoma 43a and b. Arak. 3a, both of which are only concerned about women’s exclusion. B. Yev. 72b cites a baraita (parallel t. Par. 5:7), and curiously does not cite m. Par. 12:10 or m. Par. 5:4. It therefore does not mention *ishah v'androginos*.

90 Discussion on b. Yom. 43a explores some of these questions, but is focused on the woman’s exclusion, not on *tumtum v'androginos* or *androginos*. Note that b. Yoma 43a cites a different version of m. Parah 12:10, referring to a minor who has knowledge as opposed to a minor who does not. B. Arakh. 3a also discusses m. Par. 5:4 and 12:10, without concern about *tumtum v'androginos* or *androginos*, but

sources are read together, we are left to wonder whether the tanna kamma of m. Par. 5:4 permits *tumtum v'androginos* and the woman to prepare the mixture, since only *heresh, shoteh, v'katan* are singled out as excluded.⁹¹ Likewise, we are left with no understanding of why *tumtum v'androginos* are excluded from sprinkling the waters (m. Par. 12:10) but fit to prepare those very waters (tanna kamma m. Par. 5:4). We are also left to wonder why R. Yehudah might only exclude *androginos* and woman, but not *tumtum*. Would R. Yehudah and the tanna kamma of m. Par. 5:4 both permit *tumtum* to prepare the purifying waters but not perform the sprinkling of them—and again why?⁹²

focused on the woman and minor. The discussion on b. Arakh. 3a then includes one who is uncircumcised (*arel*) as fit for sprinkling. The importance of the move to discuss the uncircumcised is that it brings in b. Yev. 72b, which discusses *tumtum* and *arel*, but the link between *arel* and *tumtum* is not made, to my knowledge, in tannaitic midrashic or mishnaic sources. The link between *tumtum* and uncircumcised appears in t. Par. 5:7, and that baraita is cited on b. Yev. 72b but not b. Yoma 43a or b. Arakh. 3a. See Tosafot on b. Yoma 43a, s.v. הכל כשרין להוות חוץ מטומטום ואנדרוגינוס for comments.

- 91 According to t. Par. 5:7, *tumtum* is unfit to prepare the purifying waters, but it is unclear whether this is an individual opinion attributed to R. Ishmael or an anonymous statement. Also in t. Par. 5:7, *androginos* is deemed fit to prepare the purifying waters according to what seems to be an anonymous statement but deemed unfit according to an opinion attributed to R. Yehudah since *androginos* is “*safek ishah*” and woman is unfit. The relationship between m. Par. 5:4 and 12:10 and t. Par. 5:7 deserves further concentrated attention, but in my opinion, I think most toseftan sources about *tumtum v'androginos* as well as those where *tumtum* and *androginos* are distinguished are later than most mishnaic sources on the same topic. It seems to me that t. Par. 5:7 is trying to address some of the questions that arise when m. Par. 5:4 and 12:10 are brought together. Part of the work of this article is to show differences between some toseftan sources when compared with and contextualized among other extant tannaitic sources. One of those differences is the introduction of the use of *safek* concerning gender in t. Par. 5:7—but here it is connected to *androginos*, not *tumtum*. Another difference, not pursued here, is the Tosefta’s use of the language “their kind” (מיניו) used to differentiate between *tumtum* and *androginos* that is elsewhere unattested in tannaitic sources, but appears once in b. Rosh Hash. 29a. See t. Ber. 5:15; t. Rosh Hash. 2:5; t. Meg. 2:7 (Lieberman).
- 92 This is not a complete listing of questions that a comparison between m. Par. 5:4 and 12:10 could elicit. For example, if we import typical distinctions which have led some contemporary scholars to read the category of *androginos* as defaulting to male, one would expect the pairing in m. Par. 5:4 to be woman and *tumtum*. On

Since the Mishnah as a whole offers scant evidence to differentiate *tumtum* and *androginos*, we do not know on what basis R. Yehudah might distinguish them—without reading other sources into his statement. Perhaps the opinion attributed to R. Yehudah voices a minority opinion insofar as he distinguishes between *tumtum* and *androginos*, whereas others do not. Or, perhaps, at some point, *tumtum v'androginos* appeared in the statement attributed to R. Yehudah in m. Par. 12:10, and *tumtum* was, at some point during transmission of our sources “erased”.⁹³ While introducing these questions might seem a stretch, I believe it becomes more tenable through a close examination of the other unique pairing of *androginos* in the Mishnah: *safek v'androginos* in m. Shab. 19:3. This passage again presents a dissenting opinion, also attributed to R. Yehudah.

androginos “defaulting to male”, see Joshua Levinson, “Cultural Androgyny in Rabbinic Literature”, in *From Athens to Jerusalem: Medicine in Hellenized Jewish Lore and in Early Christian Literature* (Rotterdam: Erasmus Publishing, 2000), 127. If one considers this in the context of the majority of tannaitic midrashic and mishnaic sources, of course, one would expect “*v'tumtum v'androginos*” or “woman, *v'tumtum v'androginos*”. Since most interpreters assume *tumtum v'androginos* means *tumtum* and *androginos*, we have failed to consider the use of “*ishah v'androginos*” in m. Par. 5:4 and “*safek v'androginos*” in m. Shab. 19:3 (discussed below) as exceptional.

93 See b. Bekh. 42a. The statement “erase the *tumtum*” has been taken out of context and used more broadly to explain the “incorrect” appearance of *tumtum v'androginos* in statements that do not easily corroborate accepted definitions of “*tumtum*” and “*androginos*”. See Avraham Steinberg, *Ambiguous Genitalia (Tumtum)*, 53. As far as I can determine, the statement “erase the *tumtum*” appears only in b. Bekh. 41b-42a. There, it is used seven times in an attempt to separate *tumtum v'androginos* in an effort to read m. Bekh. 6:12 as if it treats *tumtum v'androginos* there as “*tumtum*” and “*androginos*” (cf. t. Bekh. 4:16). Six times the statement is discarded, but the seventh attempt succeeds. Whereas the first six attempts cite baraitot that have extant tannaitic parallels, the seventh attempt, which succeeds, seems to be based on a baraita for which there is no extant tannaitic parallel. That baraita seems to be a conflation of m. Tem. 2:3 and m. Bekh. 9:4, which each list types of animals; while there is overlap between the categories of animals listed, they are different lists. In its context, “erase the *tumtum*” here in b. Bekh. 41b-42a is a strategic mechanism through which to explore the relationship between *tumtum* and *androginos* and *tumtum v'androginos* at a localized, textual moment that is aware of the discrepancies between tannaitic and (some) stammitic statements about *tumtum v'androginos*.

Mishnah Shabbat 19:3

Mishnah Shabbat 19:3, as we have it, reads: “*Safek v’androginos*—they do not desecrate the *shabbat* on their behalf (עליו).⁹⁴ But R. Yehudah permits in the case of *androginos*”. The larger context of the *mishnah* is the obligation to perform circumcision even on *shabbat*. In normative cases (healthy infants assigned male without other mitigating factors), one is obligated to circumcise their son on *shabbat* if the eighth day from birth falls on *shabbat*. This *mishnah* rules differently if the infant is “*safek v’androginos*”.

Sifra, Tazria 1, contains a parallel as part of its interpretation of Lev. 12:3, “And on the eighth day he shall circumcise the flesh of his foreskin”. Though note that this tradition does not use *safek v’androginos*. The text, as we have it, reads:

“His foreskin (*orlato*)” — *orlato vadai* suspends the *shabbat*, the *safek* does not suspend *shabbat*. “His foreskin” — *orlato vadai* suspends the *shabbat*, *androginos* does not suspend the *shabbat*. R. Yehudah says, they suspend *shabbat* on behalf of *androginos* and they are liable for *karet* on their (עליו) behalf.⁹⁵

In his Introduction to *Halakhot Pesuqot*, Neil Danzig presents genizah fragments that are similar to the tradition extant in Sifra, Tazria 1, which also appears in b. Shab. 134b-135a. One of the genizah fragments he reconstructs reads:

Our rabbis taught: the flesh of his foreskin shall be circumcised. “His foreskin” — *orlato vadai* suspends the *shabbat* and *tumtum* does not

94 Genizah fragment T-S E2 44 (Cambridge) has עליהן.

95 See below on *vadai*. There I suggest that *vadai* indicates that the word *orlato* (Lev. 12:3) should be read literally, as a quote from the scriptural verse. This text, which appears as a baraita on b. Shab. 134b-135a with some slight differences, continues: “His foreskin” — *orlato vadai* suspends the *shabbat*, one born at twilight does not suspend the *shabbat*. “His foreskin” — *orlato vadai* suspends the *shabbat*, one born circumcised does not suspend *shabbat*. The inclusion here in Sifra, Tazria 1, and on b. Shab. 135a, of one born at twilight is odd when connected to *orlato*. Bavli Shabbat 136a seems to suggest that “*safek*” in m. Shab. 19:3 means one about whom it is doubtful whether they are born after eight months of gestation, and thus non-viable. This also is not connected to *orlato*. Cf. t. Shab. 15:5.

suspend shabbat. “His foreskin” — *orlato vadai* suspends the shabbat and *androginos* does not suspend the shabbat.⁹⁶

Whereas extant manuscripts of Sifra, Tazria 1, do not mention *tumtum*, and extant manuscripts of m. Shab. 19:3 attest to *safek v'androginos*, the textual witnesses from genizah fragments of *Halakhot Pesukot* seem to present earlier, alternative readings. At least five of these fragments attest to the mention of *tumtum*, and at least one, *tumtum v'androginos*—as we will now see.⁹⁷

Danzig notes that it is interesting that *tumtum* and *androginos* are separated into two statements in the transcribed fragment and likewise in other fragments. Indeed, given the predominance of *tumtum v'androginos* across tannaitic midrashic and mishnaic sources, it is noteworthy when *tumtum* and *androginos* appear separated—unless one is reading from the minority of the sources.⁹⁸ Danzig also points out that fragment Or. 10,129.26 of *Halakhot Pesuqot* reads: *ולא טומטום ואנדרוגינוס דוחה את השבת*; [Circumcising] *tumtum v'androginos* does not override shabbat. Danzig further notes a genizah fragment from Samuel ben Hofni's *Sefer Hamitzvot* (10-11th CE) that reads, “his foreskin’ overrides the shabbat but *tumtum v'androginos* does not override the shabbat”.⁹⁹ Danzig disagrees with Moshe Zucker, who, in his published fragments of this passage,

96 Danzig (1999: 575) transcribing ms. Antonin 876 and T-S F8 124. I have omitted the part of the text that Danzig adds in brackets before *v'lo tumtum*: *ולא הספק דוחה את השבת, ערלתו ודאי דוחה את השבת*. Danzig adds this according to another genizah fragment of *Halakhot Pesuqot*, OR 10,129.26, b. Shab., and *Halakhot Gedolot*; he attributes it to a scribal omission (1999: 575 n. 210). However, he points out that the same line is missing in another fragment of *Halakhot Pesuqot*, OR 12,299.

97 Antonin 846; T-S F8.124; T-S Ar. 50.122; Or. 12,299.6; and Or. 10,129.26. See also *Halakhot Gedolot* Berlin printed edition, and Jerusalem printed edition, and Ms. Milan, which Danzig notes read: *ולא טומטום ואנדרוגינוס דוחין את השבת* (1999: 575, n. 210).

98 Again, the prevailing way to treat sources that read *tumtum v'androginos* in contexts that seem at odds with later understandings has been to dismiss the appearance of *tumtum v'androginos* as “routine or customary”. I am, in contrast, drawing attention to the scantness of this minority view; it is the minority that needs explanation, or at least acknowledgment as the minority.

99 Danzig (1999: 576 n. 210). See Zucker (1975: 188 and 191): *ודאי דוחה את השבת ולא ספק דוחה את השבת ערלתו ודאי דוחה את השבת ולא טומטום ואנדרוגינוס דוחה את השבת*. See Moshe Zucker, “Ha-Makhloqet bein ha-Qaraim v'ha-Rabbaneyim be-I'nyan A'se doheh lo Ta'aseh”, *Dine Israel* 6 (1975): 181-194.

reads *tumtum* as a scribal error.¹⁰⁰ Instead, Danzig concludes, “And so certainly it was before Rav Shmuel ben Hofni in the Talmud, and likewise it was in versions of the Talmud that were in the ‘Halakhot,’ even though it isn’t [in versions of the Talmud] before us” (1999: 576).

Danzig’s assertion that the baraita appears with *tumtum v’androginos* in genizah fragments of early post-talmudic halakhic works is further buttressed by Ms. Oxford 366 of the Bavli. In this manuscript, m. Shab. 19:3 uniquely reads, “*Safek tumtum v’androginos* — they do not desecrate the sabbath on their (sing. fem.) behalf (עליה). R. Yehudah permits in the case of *androginos*”.

Following Danzig, we know that there were earlier versions of the Talmud that maintained a reading of *tumtum v’androginos* when commenting on m. Shab. 19:3, even though that is not the reading in the Talmuds before us. We also have the Ms. Oxford 366 variant, which includes *tumtum v’androginos*. While many interpreters would suggest that *tumtum v’androginos* only appears in those versions because of routine or customary usage, I think there are other possible explanations. I suggest, due to the predominance of *tumtum v’androginos* in tannaitic midrashic and mishnaic sources, when we see “*ishah v’androginos*” or “*safek v’androginos*” we have reason to investigate these sources, to see if there exist variants, and that those variants might supply some trace of development over time.

In the case of *safek v’androginos*, textual evidence exists to support this claim; we have genizah fragments of an early halakhic work that suggest *tumtum v’androginos* appeared in a baraita brought to discuss that mishnah, and we have a talmudic manuscript witness that attests to “*safek tumtum v’androginos*”—another unique phrase. Given these textual witnesses, in my opinion a possible version of the *tanna kamma* in m. Shab. 19:3 would have been, “They do not desecrate the shabbat on account of *tumtum v’androginos*”. At some point, perhaps once a connection between *tumtum* and *safek* becomes more readily accepted, *tumtum* is replaced with “*safek*”, and we arrive at the unique pairing of “*safek v’androginos*”. But in tannaitic midrashic and mishnaic sources, *safek* is not used for *tumtum v’androginos*, and it should not be assumed across our sources (see below).

100 Danzig reads the inclusion of *tumtum* in the sources to refer to a *tumtum sh’nikra* (1999: 575, n. 210).

This leaves us with R. Yehudah's individual, dissenting opinion that permits circumcision of an *androginos* infant on shabbat, which does not seem to appear in either *Halakhot Pesuqot* or Hofni's *Sefer Hamitzvot*.¹⁰¹ We are left with a number of possibilities, but no certainties. Perhaps R. Yehudah represents the voice of a minority (or individual) opinion that understands *tumtum* and *androginos* as two distinctly embodied gender categories, but this does not mean this minority opinion is representative across all sources or that it should be the key to reading *tumtum v'androginos* across all sources.¹⁰² Or perhaps, there exist textual witnesses yet to be discovered where R. Yehudah permits circumcision in the case of "*tumtum v'androginos*" on shabbat, and, to circle back to the dissenting opinion attributed to R. Yehudah in m. Par. 5:4, prohibits the preparation of the purifying waters for parah adumah by (woman and) *tumtum v'androginos*.

However we account for the textual variation, it remains the case that "*ishah v'androginos*" and "*safek v'androginos*" are unique pairings. They do not appear elsewhere in the Mishnah, in tannaitic midrashim, the Tosefta, or the Yerushalmi; they are only present when these specific mishnayot are cited in the Bavli, and even then, they are recorded as a minority, dissenting, opinion. Their uniqueness, however, has been obscured by interpretations that understand *tumtum v'androginos* to be always clearly distinguished and that make connections between *androginos* and women and *androginos* and *safek* seem obvious—despite the fact that tannaitic midrashic and mishnaic sources consistently

101 It does appear in the Yerushalmi (y. Shab. 19:3;17b; y. Hag. 1:1;76b; y. Yev. 8:1;9a) and b. Shab. 134b-136a). According to Rambam, an *androginos* infant is circumcised on the eighth day (Milah 1:7) but not if the eighth day is shabbat (Milah 1:11).

102 Note that the dissenting opinions attributed to R. Yehudah themselves lack some consistency. He permits circumcision on shabbat for an *androginos* infant, but renders them unfit to prepare the purifying waters. Note that y. Shab. 19:3; 17b will suggest a discrepancy between R. Yehudah about permitting circumcision of an *androginos* infant on shabbat and excluding *tumtum v'androginos* from appearing at the Temple during the festivals (cf. y. Hag. 1:1;76b and y. Yev. 8:1;9a). See also b. Shab. 136b, where the talmud follows up R. Yehudah's statement with baraitot where even R. Yehudah excludes *androginos* from the category of male. Thus the talmud concludes that even though an *androginos* infant, according to R. Yehudah and he alone, is circumcised on shabbat, even R. Yehudah does not maintain that *androginos* is male. See Tosafot on b. Shab. 136b (s.v. *d'tanya*). I discuss b. Shab. 136b below.

maintain that *tumtum v'androginos* is not a category of “*safek* man or woman” or a category that is “like men or women”. Rather, it is a category that is outside the categories of man and woman.

Interlude: *Vadai* Beyond Doubt

Neither extant mishnaic nor tannaitic midrashic sources record any tradition that indicates *tumtum v'androginos*, or *tumtum* or *androginos*, is *safek* man or male or woman or female.¹⁰³ In fact, the only explicit mentions of *safek* (uncertainty, doubt) in relation to the gender(s) of *tumtum* or *androginos* in a tannaitic compilation is in the Tosefta.¹⁰⁴ For reasons I lay out at some length below, I think at least one of those statements (t. Bik. 2:7) is post-tannaitic.¹⁰⁵ (In any case, they are only two sources, which I do not think should determine how all of the other sources must be read).

I hasten to add that this is not because I disregard or eschew accepted chronologies of rabbinic compilations; nor do I think such chronologies are unimportant. To the contrary, I am invested in textual criticism because it helps us better historicize rabbinic sources. Paying close attention to peculiarities of grammar, customary or routine usage of language and unique deviations from it, and tracking such differences across documents are the tools with which we can more readily recognize the complexity of rabbinic concepts as they develop over time and participate in the ongoing discussion of how these compilations and their traditions relate to each other—in myriad ways. I do pay close attention to tannaitic midrashic sources and their traditions about *tumtum v'androginos*, often neglected, not because I believe they are prior to the Mishnah or Tosefta, but because I think they are, in general, complementary and contemporaneous to

103 Arguably, m. Shab. 19:3 and its unique use of *safek v'androginos*, could be read to support a distinction, as well as some sort of relationship, between these categories.

104 Tosefta Bik. 2:3-7 and t. Par. 5:7 are discussed below. Note that according to m. Zav. 2:1, it is not the gender of *tumtum v'androginos* that is *safek* but whether or not they are ritually impure.

105 Lavee raises questions about the other toseftan passage (t. Par. 5:7). He writes, “It seems that the Yerushalmi was not familiar with the Tosefta [Bik. 2:3-7], and one may consider the possibility that in this case [t. Par. 5:7] a Babylonian baraita found its way into the Tosefta” (2018: 352).

mishnaic and toseftan traditions.¹⁰⁶ And, concerning sources about *tumtum v'androginos* specifically, mishnaic and tannaitic midrashic sources exhibit such remarkable consistency that this should not be dismissed or ignored: *tumtum v'androginos* is a halakhic category excluded from the halakhic categories of man, woman, male, and female.¹⁰⁷ It is the exceptional toseftan sources and the overall minority of traditions even in the Bavli about *tumtum v'androginos* (or *tumtum* and [or] *androginos*) that incorporate the concept of *safek*—or are thought to do so—that deserve, and require, explanation.

Again, for reasons set forth below, I think the exceptional toseftan source found in t. Bik. 2:7 is better historicized as a post-tannaitic interpolation than evidence of tannaitic disagreement. Rabbinic compilations, all rabbinic compilations, accrue and reflect variations and changes over time. Danzig demonstrated this through genizah fragments from *Halakhot Pesukot* and *Sefer Hamitzvot*, concluding that authors of the earliest post-talmudic halakhic works had before them versions of what we have come to know as b. Shab. 134b that were different. Obviously, what is set forth throughout this article is my own way of making sense of the sources—both their variations and consistencies. Textual criticism allows us to uncover multiplicities of the textual record(s) and posit numerous possible histories. Throughout this article I am offering a potential history borne out of textual criticism that differs from traditional, consensus interpretations, but one that I believe accounts for the lack of *safek* across mishnaic and tannaitic midrashic (and most toseftan and talmudic) sources about *tumtum v'androginos*. Although the perspectives diverge, they also complement

106 See Azzan Yadin-Israel, “The Halakhic Midrashim and the Canonicity of the Mishnah” in *What is the Mishnah: The State of the Question* (Cambridge: Harvard University Press 2023) for an excellent overview of the relationship between tannaitic midrashim and the Mishnah. See also Christine Hayes, “Intertextuality and Tannaic Literature: A History” and Alyssa M. Gray “Intertextuality and Amoraic Literature” in *The Literature of the Sages: A Re-Visioning* (Leiden: Brill 2022). See also Menahem Kahana, “The Halakhic Midrashim”, in Safrai S., et al. (eds.), *Literature of the Sages*, part 2 (Assen: Royal Van Gorcum and Fortress Press), 2006: 3-106; Daniel Boyarin “On the Status of the Tannaitic Midrashim,” in *JAOS* 1992, Vol. 112:3; and David Weiss Halivni, *Midrash, Mishnah, and Gemara: The Jewish Predilection for Justified Law* (Cambridge: Harvard University Press, 1986).

107 In my opinion this holds true overall for toseftan sources as well. Other differences between mishnaic and tannaitic midrashic sources and some toseftan sources are noted in the footnotes below.

each other; one reads the minority sources as the key to understanding the majority of sources, the other reads the majority of extant sources to revisit understandings of minority sources.

Although there is no mention of *safek* in extant mishnaic or tannaitic midrashic traditions about *tumtum v'androginos*,¹⁰⁸ one mishnaic source (m. Arakh. 1:1) uses *vadai*, which is often, even normatively in the Mishnah, understood as the opposite of *safek*.¹⁰⁹ I have chosen not to read *vadai* here in that way in part because of the absence of any explicit mention of *safek* in the context of *tumtum v'androginos* (or *tumtum* or *androginos*) in mishnaic sources and because, as I have argued repeatedly, I think both tannaitic midrashic and mishnaic sources establish instead that *tumtum v'androginos* is excluded from the categories man or male and woman or female. It is excluded from those categories because it is a category that means not male and not female, not because it is a category that is possibly male (“*safek zakhar*”) or possibly female (“*safek nekevah*”)¹¹⁰ or because it is a category that anticipates or requires further categorizations of “definite” male or “definite” female.¹¹¹ In other words, I see a

108 See above for my understanding of *safek v'androginos*. Recall that neither Yerushalmi nor Bavli elucidations of m. Shab. 19:3 suggest reading *safek* there as *safek ish* or *ishah*.

109 Fonrobert (2014: 115) notes the uniqueness of the phrase that she translates as “certainly male or certainly female” in m. Arakh. 1:1. Note that the parallel extant in t. Arakh. 1:1 does not record this statement, but as discussed above, the extant Sifra parallel does.

110 See next note. “*Safek zakhar*” and “*safek nekevah*” do not appear in rabbinic sources about *tumtum v'androginos* (or *tumtum* or *androginos*). This suggests to me that there is some linguistic difficulty, or oddity, in reading traditions about *tumtum v'androginos* (or *tumtum* or *androginos*) that use *safek* and those that use *vadai* as naturally juxtaposed as they have often been read. In other words, traditions about *tumtum* or *androginos* that use *safek* use the words *ish* or *ishah*, while those that use *vadai* use *zakhar* and *nekevah*.

111 Note that rabbinic sources that use *safek ish* or *safek ishah* about *tumtum* (t. Bik. 2:7) or *safek ishah* about *androginos* (t. Par. 5:7; b. Yev. 72b) or *safek ishah* about *tumtum* (b. Yev. 72a), use the words man (*ish*) or woman (*ishah*). In contrast, rabbinic sources about *tumtum v'androginos* that use *vadai* use male (*zakhar*) and female (*nekevah*). This is partially accounted for by the fact that *zakhar vadai* and *nekevah vadai*[t] are interpreting biblical verses that use the words *zakhar* and *nekevah*, but it does not account for why there aren't any traditions that read biblical verses that use *ish* or *ish* and *isha* similarly. Finally, note that b. Hag. 4a, b. Bekh.

contradiction between this lone source, when interpreted as the opposite of *safek*, with all other mishnaic and tannaitic midrashic sources. Furthermore, I do not think this is best explained as a counter-tradition, which exists in tension with a dominant approach, because there is another way *vadai* is used in tannaitic sources—both midrashic and mishnaic (as well as toseftan).

Above, in my discussion of two passages from the Sifra, I noted that Michael Sokoloff, designating *vadai* as Mishnaic Hebrew, writes that *vadai* means “understand the word literally”. Benjamin Bacher, in his *Erkhei Midrash*, had previously written, “In tannaitic midrashim the word indicates the literal meaning of the written word”.¹¹² I would add that the “written word” here is often a word from scripture—as Bacher’s examples make clear. Although Bacher specifically locates this use of *vadai* in tannaitic midrashim, it is also used in this way in mishnaic and toseftan sources, tannaitic and amoraic midrashic sources, and as we will see, in passages in the Bavli about *tumtum v'androginos* that mention *zakhar vadai* and *nekevah vadait*.¹¹³ Thus, while it is true that *vadai* is often used as “the opposite of *safek*” in the Mishnah, this is not always the case.

41b-42b, and b. Bekh. 57a simply use ספיקא (Aramaic), not ספק (Hebrew), and neither *ish* or *ishah* nor *zakhar* or *nekevah* appear explicitly in these traditions connected to *tumtum* or *androginos*.

112 See Wilhelm Bacher, *Erkhei Midrash*, translated by A.Z. Rabinovitz, Volume 1:34. Bacher also writes that the meaning of ודאי is the same as כמשמעו. Unfortunately, Bacher cites m. Arakh. 1:1 as an example of his second entry on *vadai*, where he defines it as “the opposite of *safek*”. I am suggesting this is an example of his first definition for reasons set forth in what follows.

113 See, for example: m. Pes. 9:2, citing Num. 9:10; t. Sot. 4:4, citing Num. 11:31 (Lieberman, 170 Vienna); t. Sot. 7:22, citing Deut. 20:8 (Lieberman, 201). Note that the parallel in m. Sot. 8:5 uses כמשמעו (varied forms according to different textual witnesses), as does Sifre Devarim 197; y. Sot. 8:9;22b uses כשמעו. See also t. Shab. 1:13 and t. Shab 6:8. The use of *vadai* in this manner persists in Palestinian amoraic midrashim. See, for example, Lev. Rab. 12:1; 12:5; 20:10; 34:8. Mishnah Pesahim 9:2 states: What is “דרך רחוקה” [Num. 9:10]? From Modi'im and beyond, and the same in all directions. These are the words of R. Akiva. R. Eliezer says, from the threshold of the courtyard and beyond. R. Yoseh says, Therefore there is a dot over the letter *heh* [in רחוקה] to say not because it means far away literally [לא מפני שרחוקה] but from the threshold of the courtyard and beyond. That m. Pes. 9:2 is interpreting scripture is evident from the citation of Num. 9:10 in m. Pes. 9:1. I think m. Ker. 2:5, citing the word “*shifha*” in Lev. 19:20 is also indicating that *shifha* should be read literally, along the lines of “the word *shifha* is written”, or “as

In my understanding, m. Arakh. 1:1 presents an example in the Mishnah where *vadai* does not mean the opposite of *safek*. I read the text as follows:

All [Israel] evaluate and are evaluated, make vows and are vowed upon: Cohanim Levi'im, and Yisraelim, women and slaves. And¹¹⁴ *tumtum v'androginos* make vows [to donate a monetary amount to the Temple] and may be the object of [such] vows and evaluate [others for their *erekh* (= fixed value)], but may not be evaluated [for their *erekh* (= fixed value)] because no one is evaluated except “male”—[read] literally, and “female”—[read] literally”.¹¹⁵

The teaching embedded here is not that *tumtum v'androginos* is a category excluded from “definite” male and “definite” female, but it is a category that is excluded from the very scriptural words “male” and “female”. It is a category excluded entirely from the categories of male and female. A clearer rendering might be, “No one is evaluated except ‘male’ as scripture literally states and ‘female’ as scripture literally states”. Here “literally” means exclusively—to exclude those who are not male or female. This mishnah teaches that *tumtum v'androginos* is excluded from the specific, fixed, amount stipulated, because scripture says male (or the male) and female, and *tumtum v'androginos* is not a category that is male or female. As a category that is not male and not female, in m. Arakh. 1:1 as in Sifra, Behuqotai 3, cited above, *tumtum v'androginos* occupies a different halakhic subjectivity than men and women regarding monetary vows to the temple.¹¹⁶

scripture states ‘*shifha*’”, though I recognize that others will understand this to mean “full” *shifha* in contrast to “half slave” and “half free”.

114 Both mss., Kaufmann and Parma read “*v'tumtum v'androginos*”, but talmudic mss. consistently read “*tumtum v'androginos*”.

115 I have cited from ms. Kaufmann. ms. Parma has “*ha-zakhar*” instead of “*zakhar*” and *vadait* instead of *vadai* after female. Note that it also lacks the “no” before “are evaluated”—most assuredly a scribal error. The passage is usually translated as: “Because only a definite male and a definite female are evaluated”. See Halbertal (2020: 193). See also Fonrobert (2014: 115), who translates “certainly male or certainly female”.

116 See Jane Kanarek (2016) for the rabbinic development of these vows. The only place where the Bavli excludes *tumtum v'androginos* from *erekh* vows explicitly because of the “*hay*” in הזכר and “*v'im*” in ואם נקבה is in the citation of the Sifra, Behuqotai

A number of factors have contributed to my understanding of this mishnah as I've rendered it. First, *tumtum v'androginos* is never referred to as “*safek* male or *safek* female” in tannaitic compilations—even in the Tosefta (see below). Second, it runs counter to the consistent classification of *tumtum v'androginos* across mishnaic and tannaitic midrashic sources, which excludes *tumtum v'androginos* from the categories man, male, woman, and female and from the scriptural words *ish*, *zakhar*, *ishah*, and *nekevah* (as well as *ben* and *bat*). Furthermore, we have extant tannaitic parallels to the use of *vadai zakhar* and *vadai[t] nekevah* in the Sifra on the same topic of *erekh* vows, where it is clear that *vadai* is used to connote “literally” in the sense of “scripture literally says” because the verses upon which these statements depend have the words “*zakhar*” or “*zakhar*” and “*nekevah*” in them.

Given the similarities with the Sifra passages (Sifra, Behuqotai 3, as well as Sifra, Nedava 18, discussed above), and the consistency between *tumtum v'androginos* traditions in the Mishnah and tannaitic midrashic compilations on the whole,¹¹⁷ I do not think *safek* should be presumed here. This need not mean, though it might, that the Sifra traditions are prior to m. Arakh. 1:1.¹¹⁸ It means that they are contemporaneous, and that the mishnaic statement presumes that the words *zakhar vadai* and *nekevah vadai[t]* would be recognized as indicating scriptural citations.

Alternatively, even if we assert the Mishnah's primacy, it could still be understood as citing scripture when it says “*zakhar vadai*” and “*nekevah vadai*”, since *vadai* means read the word as it is written, literally and exclusively.¹¹⁹ Those who were teaching, reciting, or compiling the Mishnah know the text of Lev. 27:3-4, that the passage provides the biblical origins of *erekh* vows, and that it explicitly writes “male” and “female”. The Sifra, as a document that contains some of the earliest interpretations of the Mishnah, makes that connection clear

3, baraita on b. Nid. 28b. In the other Bavli parallels (b. Shab. 136b; b. Arakh. 4b; b. Bekh. 42a) such exactitude is not made explicit.

117 The difference being that some mishnaic sources treat *tumtum* and *androginos* separately, though I have sought to explain those variations and highlight their infrequency and uniqueness when placed in the context of all extant sources.

118 See Halbertal, who discussing m. Arakh. 1:1 writes, “This law is based on the expounding of the verse in Leviticus ‘A male’—not a *tumtum* or *androginos*...” (2020: 193).

119 Again, see m. Pes. 9:2 and m. Ker. 2:5 noted above.

by citing the relevant verses and placing it in the corresponding places in its exegetical format. But in any case, there is no need to read either text with the imposition of *safek*. Scripture, in Lev. 27:3-4 states “male” and “female”.

The final reason I have chosen not to understand *vadai* here as the opposite of *safek* is because I think that the relevant Bavli passages support and maintain the use of *vadai* meaning “read the scriptural word literally”.¹²⁰ In fact, all but one of the passages I have located where the Bavli mentions *zakhar vadai* and *nekevah vadai*[t], are presented as *baraitot* and have parallels in extant tannaitic midrashic sources about *tumtum v'androginos*, specifically from Sifra, Behuqotai 3, and Sifra, Nedava 18.¹²¹ Recall Bacher places the use of *vadai* with this meaning precisely in this subset of sources. When the Bavli presents parallels to these traditions as *baraitot*, it seems both plausible and likely to me that the meaning of *vadai* ascribed to tannaitic midrashic sources carries over and is maintained in the Bavli.¹²² In these Bavli passages, *vadai* draws attention to the

- 120 See b. Shab. 136b; b. Arakh. 4b; b. Bekh. 42a; b. Bekh. 57a; b. Nid. 28a-b; and b. Nid. 40a. Note that in b. Bekh. 42a the baraita about *erekh* vows is cited without “*zakhar vadai*” and “*nekevah vadai*” but they appear in the text that follows which cites Lev. 3:1. In only two of the passages is there any mention of *safek*, but in both cases (b. Bekh. 57a and b. Bekh. 41b-42a) this is in the gemara’s framing, not in the baraitot being cited.
- 121 The exception is b. Nid. 40a, for which I have not found an extant tannaitic parallel that uses *vadai* (though cf. Sifra, Tazria 2). The mobilization of *zakhar vadai* and *nekevah vadai* in b. Bekh. 57a emerges from the talmud’s reasoning as it brings together disparate tannaitic sources, including: m. Bekh. 9:4; t. Bekh. 7:7, and Sifra, Nedava 3 and 18. Here scriptural verses of support are alluded to (e.g.: Lev. 1:1, 1:10, 3:1 and 3:6) but not quoted directly. The Sifra, Tazria 2, parallel to b. Nid. 40a does not use *vadai*, but uses “scripture says”. See also the baraita on b. Shab. 134b (discussed above) and its parallel in Sifra, Tazria 1, which both mention *orlato vadai*. I think *vadai* here as well is pointing out that scripture literally states “*orlato*” (Lev. 12:3).
- 122 I think this is accurate at the compositional level. Whether or not the Bavli intends for its readers to also mobilize *vadai* as the opposite of *safek* I cannot yet ascertain. Certainly, later readers of the Bavli are themselves mobilizing *safek* and *vadai* as operative here. I noted the linguistic discrepancy between the use of *ish* and *ishah* in sources that use *safek* and *zakhar* or *nekevah* in those that use *vadai*. How, or if, this different language impacts our opinions about the connections between *vadai* and *safek* will be determined differently according to different readers. See Zvi Septimus, “Trigger Words and Simultexts: The Experience of Reading the Bavli”, in *Wisdom of Bat Sheva* (KTAV Publishing House) 2009: 163-186. On the

fact that the words *zakhar* and *nekevah* appear in the scriptural verse cited and that these words are read literally—to the exclusion of *tumtum v'androginos*.

In the Bavli's discussion (b. Arakh. 4b) of m. Arakh. 1:1, it records a baraita parallel to a tradition in Sifra, Behuqotai 3:

“The male” (Lev. 27:3). Male and not *tumtum v'androginos*. Could it be that they are not included in *erekh ish* but they are included in *erekh ishah*? Scripture states, “Then your valuation shall be *ha-zakhar...v'im nekevah*” (Lev. 27:3-4). “*Zakhar*” *vadai* and “*nekevah*” *vadait*. Not *tumtum v'androginos*.

In the reading I am proposing here, *vadai* comes to stress the fact that male (*zakhar*) and female (*nekevah*) are written in scripture. The Bavli brings this tannaitic source, paralleled in the Sifra, that stresses the fact that scripture states “male” and “female”, that these words should be read literally, and that these words exclude *tumtum v'androginos*. All this comes as part of its elucidations of m. Arakh. 1:1. One may read into this passage that *vadai* is the opposite of *safek*, but the passage makes perfect sense when read according to what *vadai* means in its tannaitic halakhic midrashic usage. By providing a baraita that explicitly cites Lev. 27:3-4 and its midrashic interpretation, it seems to me that the Bavli is presenting how m. Arakh. 1:1 was, and should be, read. There is no need to distinguish the category male from “definite” male and female from “definite” female. *Tumtum v'androginos*, as a category, is always excluded from the biblical words, and the halakhic categories, male and female.

Likewise in a parallel Bavli passage on b. Shab. 136b, *vadai* also means literally male and literally female excluding *tumtum v'androginos*, who are not male and not female. The Bavli brings a shortened version of the same tradition about *erekh* vows, introduced as a baraita. Interpreting the statement attributed to R. Yehudah in the mishnah that permits circumcision of an *androginos* infant on shabbat, the passage goes on to qualify R. Yehudah's position:

Rabbi Yehudah permits. Rav Shizvi said in the name of R. Hisda, R. Yehudah does not always categorize *androginos* [as] *zakhar*.¹²³ For if

composition of the Bavli, see Monika Amsler, *The Babylonian Talmud and Late Antique Book Culture* (Cambridge: Cambridge University Press) 2023.

123 See b. Shab. 137a, which explains the difference between circumcision of an *androginos* being permitted according to R. Yehudah, even though he does not

you say this, they would be evaluated for the fixed *erekh* amount. From where do we know that they are not evaluated? As it is taught [in a baraita]: Scripture states “*ha-zakhar*” “and if female”. *Zakhar* [as it] is written [in scripture] and *nekevah* [as it] is written [in scripture]. This excludes *tumtum v'androginos*.¹²⁴

This translation, although different from traditional and standard translations, takes seriously the Bavli's own setting of part of this passage as a baraita. Since the Bavli is citing a tradition of which there is an extant parallel in tannaitic halakhic midrashim, in my opinion the use of *vadai* maintains this meaning of “read the scriptural word literally”. Again, this is constant for all the Bavli passages that use *zakhar vadai* and *nekevah vadait*. The Bavli cites the biblical proof-text, and this suggests that scripture is the basis for its use of *vadai* and *vadait* and the context within which *vadai* and *vadait* should be understood.

For my purposes, to bring it back to my reading of m. Shab. 19:3 above and to anticipate my reading of m. Yev. 8:6 directly below, it is important to note that it is the talmud, not the baraita, that suggests the individual opinion attributed to R. Yehudah considers an *androginos* male for the purposes of circumcision on shabbat (and only for that purpose). The statement לא לכל אמר רבי יהודה אנדרוגינוס is attributed to a third generation Babylonian amora, R. Hisda, via a fourth generation Babylonian amora, R. Shizvi. However, no extant source from the Mishnah or tannaitic midrashim maintains that an *androginos* is male; the evidence from these sources maintains again and again, that (*tumtum v'androginos*) is a category that means not male and not female.¹²⁵

Remaining within its tannaitic context (and according to the majority opinion upheld in b. Shab. 136b), there is ample reason to suggest that *androginos*

consider *androginos* as male in any other halakhic matter. Cf. y. Shab. 19:3;17b; y. Hag. 1:1;76b; y. Yev. 8:1;9a.

124 I have translated according to my proposed reading. Note that whereas the talmudic statement mentions only *androginos*, it brings a baraita that mentions *tumtum v'androginos*. This is consistent in Bavli sources, and I think it represents a chronological difference between post-tannaitic and tannaitic sources. See also b. Yev. 83b, b. Bekh. 41b-42b, and b. Hag. 4a. Note that b. 83b does not use *vadai* or *vadait*, but it cites another baraita, also extant in tannaitic midrashic sources that states, “Rabbi Eliezer says: Every place that states [in scripture] male and female *tumtum v'androginos* is excluded”. Cf. Sifra, Nedava 6 (cited above).

125 This largely holds true for sources in the Tosefta, discussed below.

is not male, even though their penis should be circumcised—according to the individual opinion attributed to R. Yehudah—even on shabbat.¹²⁶ Reading m. Shab. 19:3 without the Bavli's elaboration of the statement attributed to R. Yehudah, and in light of the majority of mishnaic and tannaitic sources, which is the interpretive position undertaken throughout this article, suggests that all agree their penis does not mean they are male; their penis, however, has to be circumcised. The dispute is not about any distinction between “maleness” and “definite maleness”. The dispute is about when circumcision should occur, on shabbat if it corresponds to the eighth day after their birth or not. According to the tannaitic sources, it is clear that (*tumtum v'*)*androginos* is not male; they are excluded from the category of “male”, not “definite male”. Or in language from the baraita oft repeated in these passages: הזכר ולא טומטום ואנדרוגינוס.¹²⁷ The biblical word *zakhar* excludes *tumtum v'androginos*; the category male itself excludes *tumtum* and *androginos*, as m. Yev. 8:6, again read in light of the majority of tannaitic sources, also suggests.

Mishnah Yevamot 8:6

The last text I discuss in this section, m. Yev. 8:6, has been central to many contemporary attempts to understand *tumtum* and *androginos*:¹²⁸

126 See t. Par. 5:7, where a statement attributed to R. Yehudah teaches that he deems *androginos* unfit to sanctify the waters of the *parah adumah* because *androginos* is *safek ishah*.

127 The fuller baraita is emphatic. It first excludes *tumtum v'androginos* from “the male” and then it asks, might it be that *tumtum v'androginos* is not included in *erekh ish* but is included in *erekh ishah*, and then it reiterates scripture says “the male” and “and if female”. *Tumtum v'androginos*, in this passage, repeated multiple times in the Bavli excludes *tumtum v'androginos* from the scriptural words man and male and woman and female. In a break with all tannaitic rabbinic sources (and I believe all talmudic ones as well), b. Yev. 83b, in a statement attributed to the amora Rava, will read a biblical mention of *zakhar* as meaning *androginos*: “Rava says, Bar Hamedurei explained it to me: And with a male you shall not lie the lyings of a woman (Lev. 18:22). Which male-*zakhar* has two lyings? You must say this is *androginos*” [ואי אומר זה אנדרוגינוס — הוי אומר זה אנדרוגינוס]. Contrast y. Yev. 8:6;9d: את שיש לו שני משכבות כאשה — ואי זה זה? זה אנדרוגינוס.

128 See especially, David Margalit, “*Tumtum v'androginos*,” *Korot* 6 (1975): 777-781. See also Michael Satlow, “‘They Abused Him Like a Woman’: Homoeroticism, Gender Blurring, and the Rabbis in Late Antiquity” *Journal of the History of*

A *saris hamah* priest who married a *bat yisrael* enables her to eat *terumah*. R. Yoseh and R. Shimeon say: an *androgynos* priest who married a *bat yisrael* enables her to eat *terumah*. R. Yehudah says: a *tumtum* who is torn (*tumtum sh'nikra*) and found male does not perform *halitzah*, because they are similar to a *saris* (כסריס). *Androgynos* marries (נישא) but is not married (נישא).¹²⁹ R. Elazar says: *androgynos*: they sentence one who penetrates them to stoning, similar to a male (כזכר).¹³⁰

There are numerous aspects of this passage that are exceptional, only some of which will be mentioned here. First, this is the only tannaitic source that uses the phrase *tumtum sh'nikra* (“torn *tumtum*”).¹³¹ Second, this is the only mishnaic source that explicitly invokes comparisons between *tumtum sh'nikra*, *saris*, *androgynos*, and *zakhar*, and it is one of only two wherein *tumtum* and *androgynos* is mentioned along with *saris*.¹³² The far more typical, or standard, context for invocations of *tumtum v'androgynos* situates them in relation to the categories of man or male and woman or female. And, as we have seen, all other mishnaic and

Sexuality 5:1 (1994): 17-18; Levinson (2000: 126-127); Fonrobert (2006: 100-101 and 2007: 281-282); Strassfeld (2022: 157-165).

129 נישא is grammatically masc. sing. Contrast m. Ket. 11:6.

130 Ms. Kaufmann Yev. 8:7. I have maintained R. Elazar, according to both mss. Kaufmann and Parma (8:6). Cf. t. Yev. 2:6, 10:2, 11:1, and t. Ter. 10:18. The last statement is difficult to render well in English: רבי אלעזר אומר: אנדרוגינוס היבין עליי סקילה כזכר.

131 Tosefta Yev. 11:1, though it contains a similar tradition, worries that a *tumtum* might be “torn” and found to be a *saris hamah*: שמא יקרע ונמצא סריס חמה. This differs from m. Yev. 8:6, which depicts a *tumtum* being torn and found to be male but treated as a *saris*. See b. Yev. 72a and b. Bekh. 42b.

132 Mishnah Zav. 2:1 is the only other mishnaic text that mentions *saris hamah* and *saris adam* adjacent to *tumtum v'androgynos*, but this source delineates a clear difference between *tumtum v'androgynos* and *saris* insofar as the former is classed along with other men while *tumtum v'androgynos* remain outside the category of men. The expansive lists found in t. Ber. 5:15, t. Rosh Hash. 2:5, and t. Meg. 2:7 are unique to the Tosefta, but even there *tumtum v'androgynos* are always set apart from the other categories listed. Parallels to t. Yev. 2:6 and t. Yev. 11:2, which connect *androgynos* to *saris hamah*, are, to my knowledge, lacking in the Mishnah and absent in the Talmuds. The Tosefta contains other passages with similar lists than those in t. Ber., Rosh Hash., and Meg., cited above that do not mention *tumtum v'androgynos* (e.g.: t. Men. 10:13 and 17). See Lev (2010: 239-240). It would be interesting to explore further what differences a comparison among such varying lists might mean.

tannaitic midrashic sources are clear that *tumtum v'androginos*, and *androginos*, are excluded from the category male (*zakhar*).¹³³ Finally, this is the only text where *tumtum* (*sh'nikra*) and *androginos* appear in the same text, but in separate statements.¹³⁴ Previously, we have seen the unique occurrences of *ishah v'androginos* (m. Par. 5:4) and *safek v'androginos* (m. Shab. 19:3); here the passage presents two separate, attributed statements, the first about an *androginos* priest followed by one about a *tumtum sh'nikra*, before the text returns to mention “*androginos* marries but is not married”.¹³⁵

Here, I do not endeavor to advance a particular reading of this passage.¹³⁶ Rather, I focus on the very fact of its uniqueness and the disproportionate service to which it has been put—along with t. Bik. 2:3-7—in framing the discourse about *androginos*, and even *tumtum v'androginos*. From this text, it is deduced that *androginos* is a category that is always defined by having a penis and vagina¹³⁷—

- 133 Even the opinion attributed to R. Yehudah in m. Shab. 19:3 permits, but does not obligate, an *androginos* infant to be circumcised on shabbat. Contrast b. Shab. 135a: “R. Yehudah says: *androginos* infant overrides the shabbat and is punished with *karet*”. Cf. Sifra, Tazria 1, “*Androginos* does not override the shabbat as R. Yehudah (שרי יהודה) says, ‘*androginos*—they override the shabbat on their account and they are obligated to *karet* on their account’” (Finkelstein, 1956: 244).
- 134 M. Nid. 3:5 first states “One who miscarries *tumtum v'androginos* sits out her days of impurities for a male and female”. The text continues to pair *tumtum* and male and *androginos* and male, *tumtum* and female and *androginos* and female, but the halakhic stipulation is the same for *tumtum* and *androginos*; the difference depends on the gender of the male or female twin fetus.
- 135 Tosafot read the anonymous statement “*androginos* marries but is not married” as attributed to R. Yoseh and R. Shimon (b. Yev. 82b s.v. tenan *androginos*). It seems possible to me that m. Yev. 8:6, as we have it, contains a gloss attributed to R. Yehudah about *tumtum sh'nikra*. It might be that at some earlier or alternative point in textual transmission (oral or written), m. Yev. 8:6 treats only *androginos*. Both the Yerushalmi and Bavli do comment on R. Yehudah’s statement, but the Yerushalmi text has many difficulties, and many commentators assume the gemara is referring to *androginos* (y. Yev. 8:6;9d).
- 136 See, again: Margalit (1975); Satlow (1994: 17-18 and 1995); Levinson (2000: 126-127); and Fonrobert (2006: 100-101 and 2007: 281-282); Strassfeld (2022: 157-165).
- 137 This is, of course, also deduced from the Greek term “*androginos*” (man-woman) itself. However, the term *androginos* in Greek and Roman writings is not reduced to, and often extends beyond, genitalia. See Fonrobert (2006: 102-104 and 2007: 204-209), who distinguishes between the term’s broader scope in Greco-Roman sources and its narrowed one in rabbinic sources. On the broader semantic meanings

although no genitalia of the *androgynos* are explicitly mentioned here.¹³⁸ And from this one tannaitic mention of *tumtum sh'nikra*,¹³⁹ the category *tumtum* itself has come to be defined as comprised of those who have their genitalia covered over in such a way that something can be torn and their genitals—either penis or vagina—discerned.¹⁴⁰

of *androgynos* in Greek sources, see also Julia Doroszewska “Between the Monstrous and the Divine: Hermaphrodites in Phlegon of Tralles’ *Mirabilia*”, in *Acta Antiqua Scientiarum Hungaricae*, 53 (2013), 379-392. And see Julia Doroszewska, “...and She Became a Man’: Sexual Metamorphosis in Phlegon of Tralles’ *Mirabilia*”, in *Prace Filologiczne Literaturoznawstwo*, 2 (2013), 223-241.

- 138 Obviously, t. Yev. 10:2 addresses this lack, but insisting that toseftan tradition predates m. Yev. 8:6 is hard to establish. In other words, I am not sure why we would assume that we should infer the meaning of this mishnaic statement from the toseftan one instead of understand the toseftan statement as one attempt to interpret the mishnaic one. Note the discrepancy between extant versions of t. Yev. 10:2: במה דברים אמורים? בזמן שבא עליו דרך הזכרות, לא בא עליו דרך הזכרות פטור and b. Yev. 83b: במה דברים אמורים? בזכרות שלו, אבל בנקבות שלו פטור. Contrast also y. Yev. 8:6;9d. Neither the Yerushalmi nor Bavli seem to contain the precise statement attributed to R. Elazar in t. Yev. 10:2.
- 139 *Tumtum sh'nikra* appears infrequently in the Bavli as well, but in ways that support reading *tumtum* sometimes as referring to one with genitalia who are covered. But the Bavli will also define *tumtum* in other ways (see next note). Therefore, I do not think this one tannaitic text should determine the way *tumtum* is defined in all tannaitic texts or across all rabbinic sources. Bavli Yev. 81a and b. Bekh. 42b mention *tumtum sh'nikra* as citations of R. Yehudah’s statement in m. Yev. 8:6; b. Yev. 83b discusses m. Yev. 8:6’s mention of *tumtum sh'nikra* but the exact phrase does not appear. Bavli Baba Batra 126b-127a is a unique sugya that begins with a statement about *tumtum sh'nikra* and then strings together a unit about “*tumtum sh'nikra*”. Many of the passages it cites have parallels in tannaitic sources that are about *tumtum v'androgynos*, not *tumtum sh'nikra*, as the gemara itself acknowledges toward the end of the passage (127a). As noted above (n. 20), I do not think that relevant parts of this passage originate in Midrash Tannaim, though Hoffman incorporates it into his text. See Bar-Asher Siegal and Shmidman, “Reconstruction of the Mekhilta Deuteronomy Using Philological and Computational Tools”, in *Journal of Ancient Judaism*, 9 (2018): 22-23, especially. Finally, there is one brief mention of *tumtum sh'nikra* on b. Yev. 71b and one on y. Hag. 1:1; 76a; neither of these have parallels that I have found in extant sources.
- 140 One is left to wonder why one’s genitalia could not be revealed to include both a penis and a vagina or some combination or alternatives. Note the Bavli contains (or invents) at least two categories of *tumtum*: one whose genitalia are revealed as male (and

Even if we grant that the toseftan parallel (t. Yev. 10:2) and the talmudic passages (both Yerushalmi and Bavli), all of which more or less, and in ways that differ from each other, encourage defining *androginos* as a person with a penis and a vagina, we need not understand that as applicable to, and definitive for, all mentions of *tumtum v'androginos*, or even *androginos*, across tannaitic sources.¹⁴¹ Mishnah Yev. 8:6 marks the statement about an *androginos* priest as a minority opinion and the one about *tumtum sh'nikra* as an individual one. Likewise, the final statement about sexual relations with an *androginos* person is marked as an individual opinion.¹⁴² But the interpretive history seems to treat these passages as determinative or at least of disproportionate value. I suggest, instead, we see these minority opinions and the exceptional texts where they emerge as points of departure along a path, neither linear or straightforward, of transforming *tumtum v'androginos* into *tumtum* and *androginos*.¹⁴³

My point is not that these traditional definitions of *tumtum* and *androginos* are unfounded, but rather that they are not inevitable. They certainly become more tenable as the post-tannaitic, and in many cases post-talmudic, interpretive

perhaps female) and one whose testicles are visible. See b. Yev. 83b; b. Bekh. 42b; b. Baba Batra 126b-127a for the former, and b. Hag. 4a; b. Yev. 72a for the latter.

- 141 Note that m. Nid. 3:5 is not easily read as maintaining that *androginos* has a penis and a vagina and can be distinguished from *tumtum* on that account. That passage first mentions *tumtum v'androginos*, and then separates them, but there is no halakhic or gender distinction between *tumtum* and *androginos*—only their twins. See y. Nid. 3:5;51a and b. Nid. 28b, the latter of which registers some surprise at the mishnah. Similarly, m. Zav. 2:1 and t. Zav. 2:1, both of which use the phrase *tumtum v'androginos*, confound expected differences between *tumtum* and *androginos* based on genitalia.
- 142 The Bavli reads the line “*Androginos* marries but is not married” as the anonymous opinion of the tanna kamma (b. Yev. 82b). Yerushalmi Yev. 9:6;9d does not comment on this line, though some commentators understand the Yerushalmi’s discussion of “*kidesh*” in reference to this statement in the mishnah about *androginos*. Though see t. Yev. 11:1. In another context, I have examined all extant passages about *tumtum v'androginos* and *androginos* in the Yerushalmi; they indicate that the Yerushalmi has a tendency to focus on *androginos* and ignore *tumtum*.
- 143 In my opinion, this process continues in the Bavli and solidifies when certain Bavli passages are treated as definitive (e.g. b. Hag. 4a) and others are read through that statement. Again, b. Bekh. 42a-b, the Talmud’s longest, explicit, effort to treat precisely this issue—the relationship between *tumtum* and *androginos*, is revealing in the effort it expends and it is less than certain conclusion.

record proceeds—so much so that when we encounter m. Yev. 8:6 (or t. Bik. 2:3-7) we do not question the appearance of *androginos* and *tumtum* instead of *tumtum v'androginos*.

I do ask, what have such fixed definitions—writ large and cast over the entirety of other tannaitic midrashic and mishnaic sources—themselves covered over? What happens when we consider, as I believe the evidence suggests, that *tumtum v'androginos* enters the rabbinic corpus (and the collective body of rabbinic Israel) as *tumtum v'androginos*—those “simply” outside of the categories of male and female? Or, if we don't grant that *tumtum v'androginos* enters as such, we at least must acknowledge that *tumtum v'androginos*, without any distinctions and defined as outside the categories man, male, woman, and female is far more predominant in rabbinic sources, especially tannaitic midrashic and mishnaic ones. This predominance suggests to me that we should bring the dominant perspective to bear on m. Yev. 8:6—and not the other way around. In doing so, we again may recognize that even in the context of a mishnaic discussion of valid marriages,¹⁴⁴ as in the one about circumcision on shabbat, (*tumtum* and) *androginos* means not male—even with a penis—and not female.¹⁴⁵

Summary of *Tumtum v'Androginos* in Mishnaic Sources

As the above survey demonstrates, the majority of mishnaic sources use the term *tumtum v'androginos* without distinguishing between *tumtum* and *androginos*. I have suggested that *tumtum v'androginos* functions in these mishnaic sources in the same way it does in tannaitic midrashic sources: denoting a category of people

144 I note that it does default to male grammatical gender. In terms of literary structure, I note that m. Yev. 8:6 revolves around men in subject positions (as most rabbinic literature does), but I do not think that means we have to read *tumtum* or *androginos* as (default) male. Doing so requires that we abandon almost all other tannaitic midrashic and mishnaic texts, where (*tumtum v'androginos*) is not male.

145 Even the statement attributed to R. Yehudah about *tumtum sh'nikra* struggles insofar as a *tumtum sh'nikra* who is found to be male is equated and compared with a *saris*. But his minority opinion is a minority opinion. According to the majority (anonymous) opinions given in t. Yev. 10:2 and 11:1 a *tumtum cohen* enables their wife to eat *terumah* though they themselves cannot eat *terumah*, and a *tumtum* is permitted to marry and to be married, and to perform *halitzah* (if there are no brothers). Bringing together mishnaic, toseftan, and talmudic passages about *tumtum* and *androginos* on eating *terumah*, valid marriage, and *yibum* and *halitzah* further demonstrates diverse opinions instead of consistency.

who are outside of the categories of male, man, female, and woman. There are some exceptional mishnaic sources that do, however, appear to treat *androginos* without *tumtum*, and there is one source that seems to differentiate them genitally at least implicitly (m. Yev. 8:6). The certainty of some of these exceptional cases, however, might be challenged when genizah fragments and other manuscripts are considered (m. Shab. 19:3).¹⁴⁶ Furthermore, I have suggested that those exceptions (often marked as individual, minority opinions in the texts) are still better understood by maintaining a consistent reading of (*tumtum v'*)*androginos* as not male and not female.

Looking at the mishnaic sources that mention *tumtum v'androginos* in the aggregate, we see that, as not man or male, *tumtum v'androginos* is not commanded to appear before God at the temple three times a year during pilgrimage festivals (m. Hag. 1:1), not commanded to recite the blessing over first fruits at the temple (m. Bik. 1:5), and not fit to sprinkle the purifying waters for the *parah adumah* ceremony (m. Par. 12:10); they become impure through the genital discharge of blood (m. Zav. 2:1), they are not included in the word “son-ben” (m. Naz. 2:7), and they are not counted as first-born sons (m. Bekh. 6:12). And, according to genizah fragments, as not male, their circumcision is not permitted on *shabbat*. As not female, *tumtum v'androginos* is not included in the word “daughter-bat” (m. Naz. 2:7) and not included in the word “woman-*ha-ishah*” (m. Bik. 1:5; m. Par. 5:4) or the category “women-*nashim*” (m. Hag. 1:1). As not male and not female, their mother must observe the period of birth impurities for both a male and female birth (m. Nid. 3:5),¹⁴⁷ and *tumtum v'androginos* themselves are not obligated to contribute all four types of temple donations as men and women are (m. Arakh. 1:1).¹⁴⁸

146 Mishnah Bab. Bat. 9:2 appears to treat *tumtum* without *androginos*, but see ms. Kaufmann for a scribal addition rendering *tumtum v'androginos* in the latter part of the mishnah.

147 Whether this amount of time is reckoned as in the Yerushalmi, as a combination of birth impurity of a female birth (14 days) plus the remaining period for purifying blood for a male birth (26 days) for a total of forty days (y. Nid. 3:5;51a). Or whether this is more simply that according to the Mishnah she observes the requisite forty days for a male birth and then eighty days for a female birth. Note that this text is concerned with a woman who miscarries *tumtum v'androginos*, but talmudic sources transfer this to valid and viable births.

148 And, as not male and not female, *tumtum v'androginos* animals cannot be sacrificed or serve as substitute consecrated animals (m. Tem. 2:3 and 5:2).

However, as Israel, by which I mean a category of people included in the collective body of Israel as neither men nor women, *tumtum v'androginos* are obligated to bring first fruits to the temple (m. Bik. 1:5), have their penis circumcised but not on shabbat (m. Shab. 19: 3 and genizah fragments), contribute three of the four types of monetary donations to the temple (m. Arakh. 1:1). They obligate their mothers to bring a sacrifice for their births (m. Nid. 3:5), and they are fit to prepare the purifying waters for the *parah adumah* (m. Par. 5:4 *tanna kamma*). Presumably, *tumtum v'androginos* would be obligated to and excluded from a host of other commandments that constitute Israel—as all members of Israel likewise are. The fact that *tumtum v'androginos*, although excluded from the categories male, man, female, and woman are obligated to perform some mitzvot and not obligated to perform others, demonstrates that *tumtum v'androginos* are included in halakhic discourse as unique subjects occupying their own unique subjectivities—distinct from those occupied by men and women—but exceedingly rarely distinct from each other.

Sources from tannaitic midrashim and the Mishnah concur that *tumtum v'androginos*, and in rare cases *androginos* and *tumtum* on their own, are excluded from the categories of man, male, woman, and female and yet obligated in (and rarely excluded from) mitzvot. The language of *safek ish* or *ishah* and *briah b'fnei atzmo* never appears. And yet, in post-talmudic commentaries beginning in the medieval period and continuing unto scholarship today, the discourse has often solidified in such a way as to be about *tumtum* and *androginos* as *safek* or *briah*. Given this discrepancy between what the majority of tannaitic sources say and how they have come to be read and understood, in the following section I offer an alternative, contextualized reading of t. Bik. 2:3-7, (re)locating in its broader rabbinic context.

Tosefta Bikkurim 2:3-7: Giving *Tumtum v'androginos* Their Due

Towards the end of t. Bik. 2:7, a statement attributed to R. Yoseh declares that *androginos* is a unique, or *sui generis*, creation (*briah b'fnei atzmo*).¹⁴⁹ My focus

149 Strassfeld renders “unique creation” (2022:77-81); Lev renders “*sui generis* creation” (2021); Fonrobert renders “creature in its own right” (2007). See Lev (2021) for analysis of this phrase in rabbinic sources and later commentaries. Strassfeld notes that *briah l'atzmo* is very rare in tannaitic sources, pointing out that it appears only here and in t. Kil. 1:9 (2022: 86). Cf. Sifre Dev. 100, for a partial parallel that does not mention *briah l'atzmo*. The use of *briah l'atzmo* or *briah b'fnei*

in this section, however, is the uniqueness of t. Bik. 2:3-7 as a whole when placed in its larger literary rabbinic context.

Tosefta Bik. 2:3-7 introduces language absent from all other extant tannaitic compilations. Not only is the mention of *briah* unique to this purportedly tannaitic source, but so too the use of *safek* that comes directly after it. A fuller excerpt of the end of the toseftan passage reads: R. Yoseh says, “*Androginos* is a unique creation, and the sages could not determine about them (עליה)¹⁵⁰ whether they are man or they are woman. But *tumtum* is not such. Rather, *safek* man or *safek* woman” (t. Bik. 2:7).¹⁵¹

Even within the Tosefta, *safek* only appears in one other passage about *tumtum* and *androginos*. Tosefta Parah 5:7 states that *tumtum* is *safek arel*

atzmo also varies. Although according to the Vienna manuscript (ca. 14th century CE) the phrase used is *briah l'atzmo*, ms. Erfurt, and all other texts from the Bavli and post-talmudic commentators that I have seen use *briah b'fnei atzmo* (*atzma*). This same statement appears attributed to R. Yoseh in the context of a similar discussion about a *koy* (t. Bik. 2:2). In m. Bik. 2:8, a parallel about the *koy* appears without R. Yoseh's statement. Neither passage about the *koy* (t. Bik. 2:2; m. Bik. 2:8) mentions *safek*, though see t. Yom Tov 1:5.

- 150 I have chosen to use the third person pronoun here so as not to default to presumptive maleness or fixed gender. Manuscripts diverge concerning the use of he and she in the latter part of this statement, and thus again I have decided to use “they”. Note that the version of this passage cited in *Halakhot Pesukot* and *Halakhot Gedolot* 28:5 (ca. 9th century CE) uses *zakhar hu* or *nekevah hu*. Note that according to the baraita on b. Yev. 83b, which consists only of the statement attributed to R. Yoseh about *androginos*, also uses *zakhar* (male) and *nekevah* (female) instead of *ish* and *ishah*.
- 151 *Safek ish or safek ishah* (אם ספק איש או ספק אשה) is likewise a unique utterance. Although *safek* and *briah b'fnei atzmo* both appear in talmudic passages—about *tumtum*, *androginos*, and *tumtum v'androginos*—the precise phrase “*safek ish safek ishah*” (ספק איש ספק אשה) only appears once in the Bavli. See b. Hull. 84b-85a. Rashi interprets the statement to refer to *tumtum*, but this is not explicitly stated in the text. See Tal Ilan, *Massekhet Hullin: A Feminist Commentary on the Babylonian Talmud* (2017: 385-390) for an alternative reading of the passage. Cf. y. Beitzah 1:2;60b, which does not use the phrase “*safek ish safek ishah*” and explicitly discusses *androginos* and *shofar*, not *tumtum*. I find Ilan's reading convincing. Without assuming that the toseftan statement that “*tumtum is safek ish or safek ishah*” is a definitive, normative statement in tannaitic and talmudic sources—it occurs in only these two places—one need not import it into this reading. See also t. Rosh Hash. 2:5, discussed more in footnotes below.

(possibly an uncircumcised person)”,¹⁵² and in a minority opinion attributed to R. Yehudah, that same passage states that *androginos* is *safek ishah* (possibly a woman). This passage contains no mention of *briah*, and the uses of *safek* in t. Bik. 2:7 and t. Par. 5:7 about *tumtum* and *androginos* appear inconsistent.¹⁵³ Such inconsistency itself suggests caution against any rigid determinations about *tumtum* and *androginos* along the lines of *safek* or *briah*. All the more so given that the language of both is absent in tannaitic midrashic and mishnaic sources.¹⁵⁴

Another unique aspect of t. Bik. 2 is its framing of *androginos* as “in some ways similar to men, in some ways similar to women, in some ways similar to both men and women, and in some ways not similar to both men and women” (2:3).¹⁵⁵ This stands in tension with the consistent, and in my opinion, unanimous approach of all (other) tannaitic sources, which insist that (*tumtum v’*) *androginos*

152 Cited from Zuckerman (1881: 635). It is unclear whether this is an individual opinion attributed to R. Ishmael or an anonymous (majority) opinion.

153 Lavee suggests that t. Par. 5:7 might be a Babylonian baraita that “found its way into the Tosefta” (2018: 352 n. 17). See b. Yev. 72a and 72b.

154 The use of the terms in the Bavli urge further caution. Only b. Hag. 4a distinguishes between a *tumtum* (with their testicles visible) as *safek* and *androginos* as *briah*; the *stam* is interpreting m. Hag. 1:1, by way of a baraita (cf. Mekhilta of R. Ishmael, Mishpatim 20) which does not use *safek* or *briah*. B. Yev. 99b-100a states “*tumtum* and *androginos* are *briah b’fnei atzmah*”. Some manuscripts of b. Ber. 57a state both that *tumtum v’androginos* are *safeka hu* according to the *tanna kamma* and then possibly *tumtum v’androginos* are *briah hee*, according to R. Shimeon ben Yehudah. Printed editions have “*safekah hu*” in both lines. I think it is possible that *safeka hu* is the correct reading, and the text was amended according to Rashi’s comment ad. loc. In either case however, for my purposes what is most significant is that whichever explanation that the *stam* provides (neither *safeka* or *briah* appear in the baraita), it is the same for *tumtum v’androginos* in either case; according to the *stam*, the *tanna kamma* thinks *tumtum v’androginos* is *safekah hu* and R. Shimeon ben Yehudah thinks *tumtum v’androginos* is *briah*. Bavli Bekhorot 41a-42b is concerned precisely with the issue of how to distinguish *tumtum v’androginos* as *tumtum* and *androginos*, though this distinction is not apparent from m. Bekh. 6:12; b. Bekh. 42b presents different opinions about *tumtum* as *briah* and as *safeka*. To my knowledge, this *sugya* in Bekhorot does not explicitly use the word *briah* concerning *androginos*.

155 I note the consistency of *androginos* used as a singular nominal category and men and women used throughout in the plural. The exception is t. Bik. 2:6, “Others are obligated for damages to “him” whether man or woman”. But compare different versions (e.g.: t. Bik. 2:6 ms. Erfurt and m. Bik. ms. Parma) and see below.

is not man or male and not woman or female. Even when the Bavli momentarily entertains the maleness of *androginos* (b. Shab. 136b-137a; b. Yev. 83b-84a), it immediately retreats by citing baraitot also extant in tannaitic sources that clearly assert that *tumtum v'androginos* is outside the categories of male and female.¹⁵⁶

Of course, one might maintain that an assertion that *androginos* is “like” and “unlike” men or women, or that they are halakhically comparable in some ways, is not at odds with them being not male and not female. However, the language of categorical comparison and equivalencies in this toseftan passage should at least be recognized as a departure from all (other) extant tannaitic sources that deny these precise categorical juxtapositions and equivalencies about *tumtum v'androginos*—and yet, include (or rarely exclude) *tumtum v'androginos* in mitzvot as not male and not female. There is a decidedly different valence between exclusion from the very categories of man or male and woman or female—based in the exclusion from the scriptural words *ish*, *zakhar*, *ishah*, *nekevah*—and the drawing of similarities and halakhic equivalencies between these same categories.

Beyond the aforementioned unique aspects of t. Bik. 2:3-7, namely the use of new language (*safek* and *briah*) and the framing as comparable to, rather than outside of, the categories men and women, the most striking aspect of this passage is the apparent erasure of *tumtum*.¹⁵⁷ But this is already, I submit, the wrong way

156 Most of these baraitot are paralleled in tannaitic midrashim and mishnaic sources. Only the first baraita on b. Yev. 83b is more closely paralleled in t. Zev. 7:22 but cf. m. Zev. 9:3. The first baraita cited on b. Shab. 136b-137a has a parallel in Sifra, Behuqotai 3 (cf. in m. Arakh. 1:1, t. Arakh. 1:1). The second tannaitic source is drawn from m. Par. 5:4. I note that the sources brought to support that (*tumtum v'*) *androginos* are not male in b. Shab. are about human *tumtum v'androginos*, and those brought in b. Yev. are about *tumtum v'androginos* animals. In both cases, the Bavli passages, which are discussing *androginos* alone, bring tannaitic sources that use *tumtum v'androginos*. The exceptional interpretation of *zakhar* as *androginos* on b. Yev. 83b attributed to Rava also appears before the tannaitic sources are brought to challenge the maleness of *androginos* (see n. 128 above).

157 There are other difficulties with the passage such as its conflicting, multiple versions that seem to indicate a long, complicated process of creation, transmission, and growth culminating in a composite text, or really multiple texts all of composite natures. In addition, since this passage seems so comprehensive, and it has thus shaped most readings of *tumtum v'androginos* as distinct categories so completely, inconsistencies and disagreements in the talmuds about precisely these clear

to articulate this particular uniqueness of the passage. Rather, what is unique about this passage is the difference, when read in light of all tannaitic midrashic sources and almost all mishnaic ones, between the consistent use of *tumtum v'androginos* there and the use of *androginos* alone here.¹⁵⁸ And that difference runs deep, permeating the text throughout, beyond its beginning framing and its ending with new language.

As other scholars have noted, t. Bik. 2:3-7 offers a list of traditions about *androginos*, many individual parts of which have parallels scattered among tannaitic sources.¹⁵⁹ What has been left under-acknowledged, however, is the fact that the sources of which this list is comprised, and many of the individual statements throughout are primarily composed of, or at least have parallels with,

distinctions—*androginos* as *briah b'fnei etzmah* and *tumtum* as *safek ish or safek ishah*—have been obscured. Saul Lieberman's line by line commentary in *Tosefta Kifshutah* uncovers much of the vastness of possibilities lying beneath the surface text, but the complexities remain obscured because it is less accessible to many readers and most people start by locating this passage in a tannaitic context.

- 158 Due to limitations of space, I discuss toseftan sources outside t. Bik. 2 in footnotes. In general, the Tosefta contains passages that differentiate between *tumtum* and *androginos* in ways that set it apart from other tannaitic compilations, while also maintaining a numerical majority of places where *tumtum v'androginos* is undifferentiated. I note that some of toseftan texts mention *tumtum v'androginos* and then make distinctions between them (t. Ber. 5:14-16; t. Rosh Hash. 2:5; t. Meg. 2:7). Except for t. Rosh Hash. 2:5, the passages are unparalleled in talmudic sources. It seems to me that at least some of them might be later glosses. The passages in the Bavli that treat either *tumtum* alone or *androginos* alone stem from the exceptional mishnah or baraita that are being discussed which appears to distinguish *tumtum v'androginos*. For *tumtum*: b. Yev. 72a and 83b; b. Bab. Bat. 140b. For *androginos*: b. Shab. 134b-136; b. Yev. 81a-84a. A unique *sugya* primarily about *tumtum sh'nikra*, which does not originate with a tannaitic mention of *tumtum* (but anticipates one in the following chapter) is found in b. Bab. Bat. 126b-127a. However, in the Mishnah, Tosefta, and Bavli, most passages treat *tumtum v'androginos* without distinctions. Again, b. Bekh. 41b-42b is the Bavli's extended discussion about the relationship between *tumtum v'androginos* and *tumtum* and *androginos* (see especially b. Bekh. 41b-42a).
- 159 Fonrobert (2006; 2007; 2014); Strassfeld (2022: 63); Elizabeth Shanks Alexander, *Gender and Timebound Commandments in Judaism*. Cambridge: Cambridge University Press (2013): 43-63

individual sources for which we have rather robust extant evidence testifying to *tumtum v'androginos*—not *androginos*.¹⁶⁰

For example, beginning with t. Bik. 2:4, which lists similarities between *androginos* and men, we read, “They become impure through white genital discharge similar to men”. But m. Zav. 2:1 states that *tumtum v'androginos* become impure through white genital discharge. Similarly with the complementary statement about the similarities between *androginos* and women in t. Bik. 2:5, which states, “They became impure through red similar to women”. Again, according to m. Zav. 2:1 it is *tumtum v'androginos* who become impure through blood.¹⁶¹ Continuing in this vein for a moment, t. Bik. 2:6 lists one of the ways *androginos* is similar to both men and women as “Their mother sits out her days of purifying blood as with [the births of] men and women and then brings a birth sacrifice to the temple as with [the births] of men and women”. In Sifra, Tazria, a similar tradition is offered about *tumtum v'androginos*.¹⁶² And similarly, t. Bik. 2:7, in the context of ways in which *androginos* differs from both men and women, states “Others are not liable on account of their impurity,¹⁶³ and they do not burn *terumah* on account of their impurity”. In m. Zav. 2:1 and t. Zav. 2:1, similar statements are made about *tumtum v'androginos*. Likewise, the statement that directly follows in t. Bik. 2:7, which differentiates *androginos* from both men and women in terms of fixed monetary donations to the temple, appears in

160 Again, the standard way to account for this discrepancy is to read such tannaitic textual witnesses as scribal error or scribal habit. My argument runs counter to this assertion; the exception(s) are what need to be explained, not assumed and then projected onto the majority of textual witnesses.

161 Cf. t. Zav. 2:1 and see Fonrobert (2014: 116-117) on some of peculiarities of the language used in t. Bik. 2:4-5 and t. Zav. 2:1.

162 See discussion of Sifra, Tazria 1, above. See also m. Nid. 3:5, but note that the passage there refers to miscarried *tumtum v'androginos* fetuses. Yerushalmi Nid. 3:5;51a applies m. Nid. 3:5 to the birth of infants: “From this you say, ‘whether she gives birth to a male and female or female and male, she sits out her days of impurity for a female’. The Bavli does not contain the same teaching, though commentators seem to interpret b. Nid. 28a in light of the Yerushalmi. And note that b. Nid. 28a then immediately turns to a discussion of *tumtum v'androginos*. See also b. Nid. 40a, where a parallel to Sifra, Tazria 1, is cited as a baraita, which also uses *tumtum v'androginos*—not *androginos* alone.

163 Following Lieberman’s emendation (843).

reference to *tumtum v'androginos* in Sifra, Behuqotai 3, m. Arakh. 1:1, and t. Arakh. 1:1 (discussed above).¹⁶⁴

There are other examples from t. Bik. 2:3-7 that have parallels about *tumtum v'androginos*, not *androginos* alone, in extant tannaitic sources. In t. Bik. 2:6, in the context of listing ways in which *androginos* is similar to both men and women, the text states “And [*androginos*] partakes of sanctified foods outside the temple, similar to men and women”. According to t. Ter. 10:18, *tumtum* and *androginos*,¹⁶⁵ among others, are not given *terumah* at the threshing floor but are given it at their house—outside the temple.¹⁶⁶

Tosefta Bik. 2:6 also includes a statement about damages *androginos* suffer. According to the Vienna manuscript, the text reads “Others are liable for damages to them (נזקין), whether man or woman. The one who kills them intentionally is killed, [one who kills them] in error is exiled to the cities of refuge”. Based on this statement, others have noted that this grants *androginos* basic human rights but positions them as victim; their humanness is confined to injury, suffering, or victimhood—even posthumously.¹⁶⁷ Lieberman, however, points out that other versions of this passage attest to the broader category of damages (הנזיקין), and he cites sources from tannaitic midrashim, all of which pertain to *tumtum*

164 I note that b. Arakh. 3a cites m. Par. 5:4 with its mention of woman and *androginos*, but it does not comment. When discussing *arakhim* and *damim* vows, b. Arakh. 2a-4b treats *tumtum v'androginos* without any distinctions.

165 The text reads *tumtum v'androginos*, but since the passage begins with “There are ten categories of people who do not partake [in *terumah*] *b'beit ha-gearanot*” this passage counts *tumtum* and *androginos* separately.

166 Tosefta Ter. 10:18 stands in tension with t. Yev. 10:2. See also b. Yev. 99b-100a. Note that according to this text, and not its post-talmudic commentators, the only exempted categories from eating sanctified food items at home are the impure priest and the priest who marries a woman unfit for him. Rashi, on b. Yev. 99b, will add the uncircumcised priest to the exclusion (see m. Yev. 8:1), but the Bavli itself does not (see also Rambam, *Mishneh Torah*, Terumot 12:22). Further, Rashi does not add *tumtum v'androginos* among those excluded from eating but who would give a portion to their wives and slaves, although later commentators do. For an account of some increases in negative attitudes about *androginos* in post-talmudic commentators, see Lev (2021).

167 See, for example, Fonrobert (2014: 115) and Strassfeld (2016: 595-596 and 2022: 73-76).

v'androginos.¹⁶⁸ Those passages include *tumtum v'androginos* in the prohibitions of cursing and striking their parents as well as including *tumtum v'androginos* in payment of damages due from a goring ox. Indeed, other versions of t. Bik. 2:3-7 from genizah fragments and early halakhic words read “Others are liable for striking “him” and cursing “him”. Finally, Lieberman cites genizah fragments and other versions that attest to “They are liable for damages, whether [*androginos* is] injured or whether [*androginos*] injures [others]”.¹⁶⁹

For my purposes here, the primary import is that the sources cited by Lieberman from extant tannaitic midrashic compilations are concerned about damages regarding *tumtum v'androginos*, never *androginos* alone. And as I've suggested above, those sources are not only about merely granting the humanity, or minimal human rights, of *tumtum v'androginos*, but about the inclusion of *tumtum v'androginos* in the collective body of Israel. Furthermore, it is worth pausing to acknowledge differing versions of what we have come to treat as more or less a uniform text, or even a text of “two recensions”. And in so doing we realize that historicizing this passage is complicated. Minimally, t. Bik. 2:3-7 has accrued additional, and perhaps lost some, elements over time, leaving me to question just how reliable this text is as a tannaitic text or whether this passage is best located in a tannaitic context.

As we have seen, t. Bik. 2:3-7 does not just gather together statements about *androginos* attested to in (other) tannaitic sources. It alters those sources from being about *tumtum v'androginos* to being about *androginos* alone. Further, it adds to that list elements unattested in tannaitic—and talmudic—sources.

For example, from t. Bik. 2:4, which lists ways in which *androginos* is similar to men, we lack extant tannaitic and talmudic parallels concerning (*tumtum v'*) *androginos*: not being alone with women, not receiving sustenance with daughters in the case of a father's death (though see below), not “wrapping and reciting”.¹⁷⁰ not becoming impure through contact with a

168 E.g.: Mekhilta of R. Ishmael, Bahodesh 8; Mekhilta of R. Ishmael, Mishpatim 5 and 14; Sifra, Kedoshim 9 and 10. Cf. b. Sanh. 66a and 85b.

169 See Lieberman *Tosefta Kifshutah* (1992: 842); see *Halakhot Pesukot* (Versailles 1886: 115-116) and *Halakhot Gedolot*, Yev. 28:5.

170 Hebrew: ראיין בעטף ומספר כאנשים. This is usually rendered something along the lines of “an *androginos* person does not clothe themselves the clothing of a woman and they do not cut their hair in the hairstyle of women, like men [do not do]. See Lieberman t. Bik. 2:4 (1992: 290). See also Lieberman *Tosefta Kifshutah* (1992:

corpse,¹⁷¹ and not rounding the corners of the face or shaving the beard.¹⁷² The final statement in t. Bik. 2:4, that *androginos* “is obligated in all commandments stated in the Torah”, is also unattested in extant tannaitic and talmudic sources about *androginos*; in fact it is contradicted by extant sources.¹⁷³

While the statement that *androginos* “is obligated in all commandments stated in the Torah” is itself unattested in tannaitic or talmudic sources, some tannaitic traditions that we have encountered have bearing on the content. This statement is often read as maintaining that *androginos* is obligated to all the commandments in the Torah including positive, time-bound commandments—“like men”. But according to tannaitic and talmudic sources, many of which have been cited above, this is not accurate. Even if this statement is only about positive, or positive time-bound, commandments, recall that *tumtum v’androginos* is not

838-839). Among his notes Lieberman cites t. Sot. 2:9, where the same phrase appears in the context of the differences between men and women (cf. m. Sot. 3:8). See b. Sot. 23b and comments of Rashash ad loc. In fact, not only does this phrase about “wrapping and reciting” appear in t. Sot. 2:9, but t. Sot. 2:9 also mentions that men, unlike women, are obligated in all positive time bound commandments, cannot transgress rounding the corners of their head and marring the corners of their beard, and are, if priests, prohibited from contracting corpse impurity—all of which appear in t. Bik. 2:4. It stands to reason that whatever *ne’etaf u-mesaper* means there, and it is much debated, it means the same here, and it is clear that in t. Sot. 2:9 the phrase does not mean to prohibit the dressing of a man as women dress. Note that *Halakhot Pesukot* reads נעטף ואינו מספר (1886: 115; 1951:155) and understands at least the wrapping in the context of commandments related to mourning. Finally, it seems clear that the current versions of t. Bik. 2:4-7 draw from other lists about differences between men and women (m. Sot. 3:8; m. Kid. 1:7, and t. Sot. 2:9), lists which do not mention *tumtum v’androginos* or *androginos*. For a discussion and comparison of these lists, see Alexander (2013: 43-63).

171 The subject here is an *androginos* priest, because male priests are prohibited from being in contact with most corpses. Recall, however, that according to Sifre Numbers, Naso 1, includes *tumtum v’androginos* in the commandment to be removed from the camp for corpse impurity.

172 Again, cf. t. Sot. 2:9, m. Kid. 1:7.

173 Cf. m. Nid. 6:11, where the same phrase is used for a girl and boy once reaching what was considered physical maturity. See also Lieberman (1992: 839), who registers some surprise at the placement of this statement in t. Bik. 2:4 as opposed to 2:6 and points out things the *tanna* seems to have neglected to consider.

obligated to appear at the temple three times during pilgrimage festivals (Mekhilta, Mishpatim 20; m. Hag. 1:1), and *tumtum v'androginos*, although obligated in three of the four vows about donations to the temple, is not obligated as men are; their obligation is different (Sifra, Behuqotai 3; m. Arakh. 1:1). Likewise, *tumtum v'androginos* is unfit to sprinkle the purifying waters in the *parah adumah* ceremony (m. Par. 12:10). Even one of the rare mishnaic sources that we have about *androginos* alone, the minority opinion attributed to R. Yehudah that deems an *androginos* unfit to prepare the mixture for the purification (m. Par. 5:4), contradicts the assertion that *androginos* is obligated in all commandments similar to men in t. Bik. 2:4.

Furthermore, even in passages unique to the Tosefta where the language of “their own kind” is used, *tumtum v'androginos*—not *androginos* alone—is obligated in the positive time-bound commandments of *megillah* (t. Meg. 2:7), *birkat hamazon* (t. Ber. 5:14), and *shofar* (t. Rosh Hash. 2:5).¹⁷⁴ And, in those contexts, it is explicitly stated that the obligation upon *tumtum v'androginos* is different than that upon men—since men can fulfill the obligation on behalf of all others and neither *tumtum* nor *androginos* can.¹⁷⁵ Finally, given that the vast majority of extant tannaitic sources on *tumtum v'androginos*, it is difficult to justify a meaningful distinction between “*tumtum*” and “*androginos*” based on differing halakhic obligations.¹⁷⁶

174 Both the Yerushalmi and the Bavli cite a baraita similar to t. Rosh Hash. 2:5 about *shofar* (see below). See y. Beitzah 1:2;60b; b. Rosh Hash. 29a and b. Hullin 84b-95a. On *birkat ha-mazon* and *androginos*, see also y. Yev. 8:6;9d, discussed briefly below. However, t. Ber. 5:14-16 and t. Meg. 2:7 do not appear in extant talmudic sources.

175 The texts then distinguish between *tumtum*, who cannot fulfill the obligation for others in the category *tumtum* and *androginos*, who can fulfill the obligation for other *androginos* people. Except for the parallel about *shofar* cited on b. Rosh Hash. 29a and y. Beitzah 1:2;60b, I have not found these traditions about *megillah* and *birkat ha-mazon* in other extant rabbinic sources. If these toseftan passages, and their distinction between “of their kinds” is tannaitic, it does not become widely used in later sources. For my purposes in this article, all three passages (t. Rosh Hash. 2:5; Meg. 2:7; Ber. 5:14-17) locate *tumtum v'androginos* outside the categories of man, male, woman, and female—they are different “kinds” (קָרָן).

176 Again, mishnaic and toseftan sources about eating *terumah* seem contradictory (t. Ter. 10:18; t. Yev. 10:2; m. Yev. 8:6). Sources about marriage, *kiddushin*, and *yibum* are also hard to make consistent (m. Yev. 8:6; t. Yev. 11:1; t. Yev. 11:2; t. Yev. 2:6); note that according to t. Yev. 2:6 and 11:2 *androginos* is not obligated for *yibum* and

Tosefta Bik. 2:5-7 contains other statements unattested in tannaitic or talmudic sources as well. Tosefta Bik. 2:5 lists the “ways in which *androginos* is similar to women”. But outside of this passage, there is no mention of *androginos* as prohibited from being alone with men,¹⁷⁷ no mention of *androginos* and *zikhah* (a boundedness to perform levirate marriage),¹⁷⁸ no mention of *androginos* and inheritance (though see below), and no mention of *androginos* being unfit for giving testimony. The last statement in this section is also unparalleled in extant tannaitic texts: If *androginos* is penetrated by a [man] in a transgressive sex act, they are unfit for the priesthood.¹⁷⁹

halitzah but according to t. Yev. 11:1 *tumtum* is (if there are no other brothers)—at least according to the anonymous opinion. M. Yev. 8:6 only considers the question of *tumtum sh'nikra* and *halitzah*, but t. Yev. 11:1 considers *tumtum* and *yibum* and *halitzah*. Note also that the Bavli does not consider the question about *androginos* and *yibum* and *halitzah*. The exclusion of *androginos* alone from circumcision if the eighth day falls on shabbat and no mention of *tumtum* in that context depends on the assumption that distinct meanings of *tumtum* (non-discernible genitalia) and *androginos* (penis and vagina) that are not consistently made across rabbinic sources are assumed. As discussed above, genizah fragments of early halakhic works that mention *tumtum* in the context of circumcision should at least afford us reason to pause. Even in Bavli sources that distinguish between *tumtum* and *androginos*, differences in halakhic obligations are not maintained. See b. Hag. 4a (discussed below). It also seems to me that b. Yev. 72a-b, which discusses *tumtum*, *terumah*, and marriage, and b. Yev. and 83b-84a, which also briefly discusses *tumtum sh'nikra* but are more focused on *androginos*, *terumah*, and marriage, largely lean similarly insofar as they challenge tannaitic teachings that seem to recognize these marriages as valid.

177 According to Rambam, *Mishneh Torah*, Issurei Bi'ah 22:11, men are permitted to be alone with the *androginos* and with the *tumtum*.

178 According to t. Yev. 2:6 and 11:2, *androginos* is not obligated in *yibum* or *halitzah*. It is worth noting that neither of these toseftan passages are paralleled in the Bavli (or Yerushalmi). Talmudic sources do not mention anything about *androginos* when discussing *yibum*, *halitzah*, or *zikhah*. And, m. Yev. 8:6, though it mentions *tumtum sh'nikra* and *halitzah*, says nothing about *androginos* and *halitzah*. The phrase *saris hamah v'androginos* appears unique to t. Yev. 2:6 and 11:2. Finally, I note that the Napoli printed edition of m. Bik. that Lieberman presents alongside t. Bik. 2 states that *androginos* is bound to perform (*zokek*) levirate marriage similar to men, which contradicts t. Yev. 2:6 Yev. 11:2.

179 This line is difficult. Cf. y. Yev. 8:6;9d, where a similar statement is made by an amora. See also Lieberman (841-842). And see Rambam *Mishneh Torah*, *Terumah* 7:16. There is some dispute about whether this only applies when an *androginos* is

In addition, I note that the statements about taking a nazirite vow by declaring “Behold I am a nazir if this person is a man and a woman, this vow is valid” (2:6), and “Behold I am a nazir if this person is not a man and woman” (2:7), are part of a larger passage found elsewhere in the Tosefta (t. Naz. 3:19), but unattested in other extant tannaitic and talmudic sources. Finally, the statement that *androginos* “is not sold as a Hebrew slave” (2:7) is also unattested outside this passage in rabbinic sources.¹⁸⁰

So far, I have examined most of t. Bik. 2:3-7 and drawn attention to how constituent parts of the list are unattested not only in extant tannaitic sources, but also in talmudic ones.¹⁸¹ Furthermore, out of all of the statements that have parallels in extant tannaitic sources, only one mentions *androginos* alone: “*androginos* marries but is not married” (t. Bik. 2:4; m. Yev. 8:6). All of the other passages with tannaitic parallels are about *tumtum v'androginos*. Thus, a close reading of this purportedly tannaitic source about *androginos*, one which at the end, moreover, defines *androginos* as *briah* in contrast to *tumtum* as *safek ish or safek ishah*, is riddled with contradictions and selective readings when placed in its larger rabbinic literary context.¹⁸² We see this even more clearly in its statements about *androginos* and inheritance, to which I now turn.

penetrated vaginally, but if they are penetrated anally, they are not disqualified from the priesthood (eating *terumah* themselves) because “a male cannot disqualify another male” (y. Yev. 8:6:9d). I wonder if this line is fruitfully placed in conversation with t. Yev. 11:2 in the context of levirate marriage. Finally, note the uniqueness of the language in t. Bik. 2:6 (and y. Yev. 8:6:9d) with its use of *niv'al*, which is different than the language of “lyings” (משכבי) and stoning (סקילה) used in b. Yev. 83b-84a as well as m. Yev. 8:6 and t. Yev. 10:2.

- 180 Reasons given for this vary. Given its placement in the part of the passage that is concerned with ways *androginos* is not similar to men and women, it seems possible that part of the reason for the exclusion of *androginos* is based in the specific use of the words *ben* “son” (Ex. 21:5 possibly reading *banai* as *bani* or otherwise defaulting to presumptions of male children being primary) and *banot* “daughters” (Ex. 21:9, cf. Ex. 21:7). Note, however, that while extant tannaitic sources have traditions that do exclude *tumtum v'androginos* from the categories of sons and daughters, this particular interpretation does not appear (see above). Compare t. Sot. 2:9 and m. Sot. 3:8 on men and women being sold as slaves.
- 181 The exception is the statements about nazirite vows, which have a parallel as part of a longer passage in t. Naz. 3:19 (but not, that I have seen, in the talmuds).
- 182 These contradictions run deeper than what I still consider a contradictory position at the surface level reading of t. Bik. 2:3-7: how is it that *androginos*, being

Statements interspersed throughout t. Bik. 2:4-6 maintain that regarding inheritance, *androginos* is not given sustenance with daughters (2:4); they do not receive a portion of inheritance with their brothers (2:5); and they inherit all the inheritance like men and women inherit [if they have no brothers] (2:6). But nowhere in extant tannaitic or talmudic sources is such a statement about *androginos* and inheritance to be found. Instead, m. Baba Batra 9:2 states:

[If a man dies] and leaves sons, daughters, and *tumtum*, when the property [to be divided for inheritance] is great, the males push a *tumtum* sibling to the females. When the property is limited, the females push a *tumtum* sibling to the males...and if there is none but a *tumtum* sibling they inherit all.¹⁸³

Tosefta Bik. 2:3-7, which isolates *androginos* from *tumtum* (*v'androginos*) and ends with an attempt at a clear distinction between how each is treated, is haunted by *tumtum* (*v'androginos*) throughout. So much so that here, in *halakhot* about inheritance, it takes the sole tannaitic tradition where *tumtum* is mentioned without *androginos* anywhere in proximity and transmits it about *androginos*! Or, perhaps, at some point, m. Baba Batra 9:2 reads, like almost all other tannaitic sources: “If a man dies and leaves sons, daughters, and *tumtum v'androginos*...and if there are none but *tumtum v'androginos*, *tumtum v'androginos* inherits all”.¹⁸⁴

simultaneously similar to men, women, both, and neither, already—by definition—not a unique creation, and not a category with a unique halakhic subjectivity?

- 183 In y. Yev. 8:6;9d, there is a passage that posits “hidden” teachings that R. Elazar ben Shamuah did not think R. Yehudah ha-Nasi was worthy of receiving about *androginos* and inheritance (*yores*), testifying, burning their *minhah* offering, and the invitation to grace after meals. Whether R. Elazar revealed his answers is disputed by commentators. However, the language of t. Bik. 2:3-7 is clearly modeled on m. Baba Batra 9:2, so I focus on that passage; m. Baba Bat. 9:2 is explicit about inheritance among daughters, inheritance among sons, and inheritance in the case of no other brothers. Cf. b. Yev. 84a for a parallel about R. Elazar’s students and Rabbi, but there the specific teachings withheld from Rabbi are not mentioned. See Strassfeld (2022: 105-114).
- 184 Halbertal similarly writes about m. Bab. Bat. 9:2, “The mishnah mentions only a *tumtum*, but this law, it stands to reason, was stated with respect to an *androginos* as well” (2020: 190, n. 25). I note that ms. Parma of m. Baba Bat. 9:3 adds “*v'androginos*” in the second part of the passage: ילדה טומטום: ואנדרוגינוס: אינו נוטל

Due to the differences between t. Bik. 2:3-7 and almost all other tannaitic midrashic and mishnaic sources I have discussed here, I suggest that t. Bik. 2:3-7 is a unique creation. From its beginning to its end, it has created something new and used the language of *briah* and *safek* in a particular way. Whereas almost all tannaitic midrashic and mishnaic sources attest to the predominance of *tumtum v'androginos*, and extant tannaitic midrashic and mishnaic sources about *tumtum* and *androginos* lack any mention of *safek* and *briah*, t. Bik. 2:3-7 begins and ends with them as distinct: *androginos* (as *briah*) and *tumtum* (as *safek*). However, t. Bik. 2:3-7 is not creation from nothing. It works with, and reshapes, tannaitic sources. But I do not think that it is best contextualized as a tannaitic source—at least in its current form and possibly even at all.

Tannaitic midrashic and mishnaic sources about *tumtum v'androginos* (or *tumtum* and *androginos*) do not use the terms *briah* and *safek*. This alone invites questions about the provenance of t. Bik. 2:3-7. Add to that the fact that most of the extant sources common to t. Bik. 2:3-7 and tannaitic compilations are about *tumtum v'androginos*—not *androginos*—again should raise questions. Further, that all of the statements without tannaitic parallels are unattested in (extant) talmudic sources invites yet more questions. And finally, the fact that this passage tries to assimilate *androginos* in relation to the categories of men and women, whereas all other tannaitic traditions insist that (*tumtum v'*) *androginos* are categorically outside the categories of man, male, woman, and female, should further suggest caution. But there has been a particular lack of caution in turning to t. Bik. 2:3-7 as the central passage from which to begin inquiries into rabbinic sources about (*tumtum v'*) *androginos*. And the centrality of this text, and its purported tannaitic provenance, has obscured the fact that it accurately (more or less) has but one tradition with which it is closely aligned in the Babylonian Talmud.

The only talmudic source about *tumtum v'androginos* that uses *safek* and *briah* in ways similar to the last lines of t. Bik. 2:7 is b. Hag. 4a.¹⁸⁵ Bavli Hag. 4a

וּאִם אִי כָּל מָה שֶׁתִּלְדֵּ אֲשֶׁתִּי יִטּוֹל הָרִי זֶה יִטּוֹל וְאִם אֵין שָׁם יוֹרֵשׁ אֵלָא הוּא יוֹרֵשׁ אֶת הַכֹּל. In my opinion, this is likely an alteration made, ironically enough, on the basis of t. Bik. or other post-talmudic writings, though I remain open to the possibility of genizah fragments that might prove otherwise and record *tumtum v'androginos* as part of m. Bab. Bat. 9:2's opening statement as well.

185 Note that b. Yev. 83a only shares R. Yoseh's statement (t. Bik. 2:7): "R. Yoseh says *androginos* is *briah b'fnei atzmo*, and the sages could not determine whether they are a man or they are a woman". And, to be more exact, what R. Yoseh says in b.

comments on m. Hag. 1:1, which excludes *tumtum v'androginos*, among others, from the obligation to appear at the temple three times a year during pilgrimage festivals. The gemara cites the following baraita: “Male — this excludes the [Israelite] women. Your males — this excludes [Israelite] *tumtum v'androginos*. All your males — this includes [Israelite] minors”.¹⁸⁶ When the talmud returns to interpret the part of the baraita about *tumtum v'androginos*, the *stam* intervenes. In other words, in both the baraita and in m. Hag. 1:1, *tumtum v'androginos* appears without any distinctions and the words (and concepts) *briah* and *safek* are not present. But at a later stage in the transmission of the tannaitic sources, they are reread in this way:

The Master said *Your males* to exclude *tumtum v'androginos*. Granted in the case of *androginos* [this exclusion] is needed [in scripture]. Lest you might think to say that since [*androginos*] has a male side,¹⁸⁷ they would be obligated [to appear before God at the temple]. From this we learn that [*androginos*] is *briah b'fnei atzmo hu*. Rather *tumtum safeka hu*. Who needs scripture to exclude *safeka*? Abaye said: when their testicles are [discernible] outside [their body].

For my purposes here, the importance of this text is first in its uniqueness in the context of *tumtum v'androginos* even in the Bavli.¹⁸⁸ No other talmudic text about

Yev. 83a is, “*androginos* is *briah b'fnei atzmo*, and the sages could not determine whether they are *male* or whether they are *female*”. Nothing else from t. Bik. 2:3-7 appears there. When b. Yev. 82b states “*androginos* marries but is not married”, it is citing m. Yev. 8:6, possibly reading it as a continuation of R. Yoseh and R. Shimon’s prior statement in the same mishnah (Tosafot, ad loc.).

186 This baraita differs from Mekhilta of R. Ishmael, Mishpatim, 20, and variations there, discussed above. See also Sifre Dev. 143.

187 Hebrew: צד זכרות. *Mekom zakhrut* is used in b. Shab. 108a and b. Bekh. 42b, which seems to be a clearer reference to genitalia or genital areas, but *tsad zakhrut* only appears here (cf. y. Yev. 8:6;9d).

188 B. Hag. 4a is unique in its application of *briah* and *safeka* to *tumtum* and *androginos*. However, close parallels appear in other contexts in the Bavli, e.g.: *koy* (b. Yoma 74b; b. Keritot 21a); *hapalgas* (b. Men. 91b and b. Hul. 23b); the age of birds fit for sacrifice (b. Hul. 22b). All of these examples, b. Hag. 4a included, appear in the anonymous layer of the talmud (*stam*). It seems to be a trope or formalized construct that is applied in some varied contexts, but not inherently originating from or confined to *tumtum* and *androginos*.

tumtum and *androginos* uses *safeka* and *briah* in this manner—though almost all of them are often interpreted as if they do.¹⁸⁹ Second, it rather starkly displays the disjuncture between the category of *tumtum v'androginos* in tannaitic sources, apparent in both m. Hag. 1:1 and the baraita, and the *stam*'s work to read both sources as if *androginos* and *tumtum* were distinguished.¹⁹⁰ While the presumption that t. Bik. 2:3-7 predates and thus undergirds such a reading is reasonable, even expected, I no longer feel confident that such is the case.¹⁹¹ Instead, I am suggesting that both b. Hag. 4a and t. Bik. 2:3-7 are part of a process and evidence along the way whereby *tumtum v'androginos* begin to solidify as *tumtum* and *androginos*.

Again, my claim is not that either b. Hag. 4a or t. Bik. 2:3-7 are created out of nothing. However, they both represent only a minority of available sources—the exceptions to all others. My point is that reading them, or any single or subset of traditions in isolation, as well as reading all other sources through their unique framings, has led to partial understandings of *tumtum v'androginos*—and halakhic constructions of gender—that are, while not arbitrary, also not inevitable.

189 I note that b. Hag. 4a uses *safeka hu*, not *safek ish* or *ishah*. B. Yev. 72a posits *tumtum* as *safek ishah*. Again, b. Bekh. 41a-43a explicitly tries to figure out the relationship between *tumtum* and *androginos*, and it too works with a tannaitic source that treats them as one (m. Bekh. 6:12). However, it is acutely aware that tannaitic sources consistently use *tumtum v'androginos* (41b-42a). And in that *sugya*, both *briah* and *safeka* are used in reference to *tumtum*. See also b. Yev. 99b-100a, where *tumtum v'androginos* is considered *briah* and b. Bekh. 57a, which considered *tumtum v'androginos* as either *safeka hu* or, according to Rashi, possibly *briah*. The simplicity with which b. Hag. 4a and t. Bik. 2:7 distinguish *tumtum* and *androginos* along the lines of the former being *safek* or *safeka* and the latter being *briah* is unique.

190 With the (possible) exception of R. Yoseh's statement that *androginos* is a unique creation and the sages could not determine whether they are male or they are female, the use of *briah* in the context of *tumtum* and *androginos* seems to me to appear only in anonymous portions of the Bavli. I think this is accurate for *safeka* as well. The difference between the tannaitic use of *tumtum v'androginos* and post-tannaitic statements in the gemara that separate them is also notable in b. Shab. 136b-137a, b. Yev. 83b, and b. Bekh. 41b-42a.

191 I note that t. Bik. 2:3-7 does not include any statements about *androginos* being excluded from appearing at the Temple, and it seems to contradict m. Hag. 1:1 insofar as it states that *androginos* is obligated in all the commandments in the Torah as men are (t. Bik. 2:4).

Conclusion: Reading Forward

This article has set forth an alternative understanding of the rabbinic category of *tumtum v'androginos*. This novel understanding supplements long-accepted traditional interpretations of *tumtum v'androginos* as always meaning two clearly demarcated, distinct nonbinary gendered embodiments. *Tumtum*, in these traditional readings, emerges as a person with indeterminate genitalia, in a sort of inverse mirroring of *androginos* with their overdetermined, “excess” genitalia. It isn't that those readings are without warrant and merit, even accurate for some small subset of rabbinic sources. But approaching the rabbinic corpus through that singular perspective flattens rabbinic sources across different time periods and occludes development, inconsistency, and disagreement across the corpora. It also overlooks the consistent grammatical uniqueness of the standardized, combined term, *tumtum v'androginos*, with its lack of definite article and plural form. This grammatical uniqueness, I suggest, embeds a degree of indeterminacy and fluidity in the use of the term —sometimes taking a plural verb or pronoun, sometimes a singular. This has led me to posit that *tumtum v'androginos* functions, most clearly in tannaitic midrashic sources but also in most mishnaic and many talmudic sources, as a collective term for a third gender category: man or male, woman or female, *tumtum v'androginos*. Or, in the context of animals: male, female, *tumtum v'androginos*.

I have offered an alternative understanding of the rabbinic category of *tumtum v'androginos* and how it manifests over time and across different documents. I have both shifted the focus and broadened the scope of sources called upon, and altered the standard of vision from *tumtum* and *androginos* to “*tumtum v'androginos*”. Instead of starting with minority voices that posit distinctions between *tumtum* and *androginos*, and reading all sources through them, and rather than accepting medieval etymologies and reading them back into all earlier sources, I chose, to the extent possible, to “read forward”.

Most importantly, tannaitic midrashic sources make it clear that *tumtum v'androginos* is a category excluded from the categories of man, male, woman, and female and categorically excluded from the scriptural words *ish*, *zakhar*, *ishah*, *nekevah*, *ben*, and *bat*. Mishnaic sources concur. *Tumtum v'androginos* does not fit into the categories of son or daughter (e.g. m. Naz. 2:7), or the categories of male or female miscarriages (m. Nid. 3:5), or the categories of men or women (e.g. m. Arakh. 1:1), and all the more so the category man (e.g.: m.

Hag. 1:1; m. Bik. 1:5, m. Zav. 2:1).¹⁹² The fact that *tumtum v'androginos* are always considered not male and not female, outside those very categories, allows for the possibility, and even the probability, that likewise in m. Yev. 8:6 and m. Shab. 19:3, (*tumtum v'*) *androginos* remains not male (and not female). But even if they are presumed or considered male here, why assume that is the case across the rabbinic corpus—in contrast to what other tannaitic sources consistently maintain? And, why continue even to read m. Yev. 8:6 as indicating that *androginos* is presumed to be male? Similarly, why assume the maleness of an *androginos* infant with a penis (m. Shab. 19:3)—when every other source insists that (*tumtum v'*) *androginos* means not male (and not female)?¹⁹³

Part of the answer is that passages in the Bavli offer these readings (b. Shab. 136b-137a and b. Yev. 83b-84a). But even in those places, unique also in the Bavli's treatment of *tumtum v'androginos* in the aggregate and cited in the name of individual rabbis as minority opinions, the talmud quickly retreats, challenging the categorization of *androginos* as male by citing baraitot with parallels in tannaitic sources that again present *tumtum v'androginos* as outside the category male (and female).

Another part of the answer stems from the centrality t. Bik. 2:3-7 has come to occupy in discussions of the rabbinic category(s) of *tumtum* and *androginos*. From a decontextualized reading of this passage, we might come to the conclusion that

192 Toseftan passages also consistently exclude *tumtum v'androginos* from the categories of man, male, woman, and female. This holds true for t. Bik. 2:3-7, for while it is unique in its explicitly halakhic equivalencies between *androginos* and men, women, both, and neither, this does not mean that *androginos* is the same as any.

193 Here I draw from queer and trans theories and perspectives that have worked for decades to complicate and disrupt assumptions that sex and gender must be tied to particular genitalia. See, for example, Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity*, New York: Routledge, 1990 and Susan Stryker, “(De)Subjugated Knowledges: An Introduction to Transgender Studies”, in *The Transgender Studies Reader*, edited by Stephen Wittle and Susan Stryker, New York and London: Routledge, 2006. And see Max Strassfeld, *Trans Talmud* (2022) and Rafael Rachel Neis, *When a Human Gives Birth to a Raven: Rabbis and Reproduction of Species*, University of California Press, 2023. Neis' monograph was published after this article had been completed. See also Kessler, ““They are Israel”” (2023) and Kessler, “Queer and Trans Torah”, in *Handbook of Queer and Transgender Studies in Religion*. Edited by Melissa M. Wilcox. Palgrave Macmillan, Forthcoming 2025.

there are four clearly distinct gendered embodiments in rabbinic sources—and always have been. In contrast, from a reading that situates this passage within the larger context of rabbinic sources, we might see that t. Bik. 2:3-7 reframes tannaitic traditions about *tumtum v'androginos*, and at best it consistently omits *tumtum* and in one case more actively effaces them (m. Bab. 9:2).

From a decontextualized reading of t. Bik. 2:3-7, we might also conclude that *tumtum v'androginos* offers another binary of sorts, between *androginos* and their “excess” of genitalia and *tumtum* with their “lack” of (discernible) genitalia. From a contextualized reading, we see that across all tannaitic midrashic sources and drawing also from additional manuscript evidence, we see that *tumtum v'androginos* are not that easily distinguished—even in the case of circumcision. And, in the Mishnah, we also see that in most *halakhot* that we might imagine such genital distinctions to matter (genital emissions; birth impurities) they do not. Further, when a distinction is made between *tumtum* and *androginos* (m. Yev. 8:6; m. Par. 5:4) it appears as a minority opinion (attributed to R. Yehudah).¹⁹⁴

From a decontextualized reading of t. Bik. 2:3-7, we might conclude that classifying *androginos* as *briah* and *tumtum* as *safek* is the dominant way to understand, and differentiate, *tumtum* and *androginos*. But as we have seen, the use of that language is absent in tannaitic midrashic sources and mishnaic ones, as well as exceptional even among other toseftan sources and Bavli traditions.¹⁹⁵

194 m. Bab. Bat. 9:2 remains exceptional in its mention of only *tumtum* by the *tanna kamma*. This suggests to me that we should take seriously the possibility that at some point *tumtum v'androginos* appeared in that context. There are three passages where the Bavli focuses on *tumtum* not *tumtum v'androginos* (b. Yev. 72a-b, b. Bab. Bat. 126b-127a, and b. Bab. Bat. 140b-141a). Here I point out that the Bavli's treatment of *tumtum* often leads to a qualification of *tumtum* who is “torn” or has visible testicles outside their body (as we've seen in b. Hag. 4a above; cf. b. Yev. 83b, b. Bab. Bat. 126b-127a, and b. Bekh. 42b). The generally accepted definition of *tumtum*, one whose body is torn so their genitalia become visible is thus in large part based on interpretations the Bavli provides that are absent in tannaitic midrashic sources, and dependent on a minority opinion of R. Yehudah in m. Yev. 8:6. In other words, they provide evidence about how some Bavli passages understand specific types of *tumtum*. In b. Bab. Bat. 140b-141a, *tumtum*, who is consistently just *tumtum*, remains outside the categories male (sons) and female (daughters).

195 It does seem far more dominant in medieval talmudic commentators. Thus their understandings of *tumtum* and *androginos* and *safek* and *briah* have impacted the

Finally, from a decontextualized reading of t. Bik. 2:3-7, we might conclude that in order to be counted as Israel, to be a body in Israel, one must be classified or assimilable as either male or female (as if these categories themselves are unified and stable). Again, a contextualized reading demonstrates that *tumtum v'androginos*—as a category that means not male or man and not female or woman—is obligated to many, and sometimes excluded from, specific mitzvot, as all other bodies incorporated into the collective body of rabbinic Israel are.

I hope to have offered compelling reasons to reconsider and supplement traditional, consensus readings of *tumtum* and *androginos* that have accrued and solidified over time. Such readings appear to me constrained by what we often refer to as binary constructions of gender, which are often presumed by, and indeed present in, many rabbinic sources. However, a reconsideration of the rabbinic record suggests that the category *tumtum v'androginos* consistently challenges the belief that rabbinic constructions of gender are always limited to binary constructions of gender as only male or female. *Tumtum v'androginos* occupies a halakhic subjectivity that is neither male nor female, and remains outside of, but adjacent to, both of those categories. *Tumtum v'androginos*, even when they are excluded from specific commandments, are part of halakhic discourse.

Based on linguistic and substantive differences between t. Bik. 2:3-7 and all other tannaitic sources, as well as its near absence from talmudic sources, I no longer consider this passage, as we have it, as either tannaitic or representative of the understanding(s) of *tumtum v'androginos* in tannaitic or talmudic sources.¹⁹⁶

ways in which talmudic, and tannaitic, sources have been read. While Tosafot seem to appeal to *safek* and *briah*, further research needs to be done on how those categories are used there about *tumtum v'androginos*, *tumtum*, and *androginos*. They do not appear consistently to insist that *tumtum* is *safek* and *androginos* is *briah*. (It seems many consider *androginos safek* as well.) The only clear citations of t. Bik. 2:3-7 I have found in preliminary searches are on b. Yev. 83a (s.v. בריה באמר רב נחמן אמר רב טומטום ואנדרוגינוס) and b. Nid. 28a (s.v. בפני עצמה); both only cite part of the last section (t. Bik. 2:7).

196 Lieberman's notes on this passage are full of variants from numerous sources. Presenting the different versions and variants in a narrative format would be a welcome contribution as research about t. Bik. 2:3-7 proceeds. Outside of Toseftan manuscripts, the earliest work that I have found to cite a parallel (or parallels) is in *Halakhot Pesukot* and it also appears in *Halakhot Gedolot*. I note the similarity of language and framing between t. Bik. 2:3 and Tractate Kutim 1:1; see Lavee (2018)

It omits too much, and, in my opinion adds too much that remains unattested in those sources. It looks like a programmatic, retrospective attempt at summation, expansion, and domestication of some disparate sources, that at some point made it into “the Tosefta”.¹⁹⁷

Tumtum v'androginos enters the rabbinic corpus, and the collective body of Israel, to expand the Torah's own apparent binary gender limits. Perhaps the most important lesson from rabbinic sources about *tumtum v'androginos*, including t. Bik. 2:3-7, is that *tumtum v'androginos* is a category open to varied readings and significant change over time. In that way, they provide an invitation to continue to expand our understandings of rabbinic constructions of gender, as rabbinic categories expanded biblical ones.

for further comparison. In my opinion, such similarity further suggests a non-tannaitic dating for t. Bik. 2:3-7.

- 197 Obviously this is neither a statement about the dating of toseftan passages on the whole nor a general statement about the relationship between the Mishnah and the Tosefta. For an overview with bibliography on the topic, see Paul Mandel, “The Tosefta”, in *The Cambridge History of Judaism*, Volume 4: The Late Roman-Rabbinic Period, edited by Steven Katz (Cambridge: Cambridge University Press 2006). See also *Introducing Tosefta: Textual, Intratextual and Intertextual Studies*, edited by Harry Fox and Tirzah Meacham (New Jersey: KTAV Publishing House 1999); Robert Brody, *Mishnah and Tosefta Studies* (Jerusalem: Magnes Press 2014); *Tosefta Studies: Manuscripts, Traditions, and Topics*, edited by Lutz Doering and Daniel Schumann (Zurich: Lit Verlag 2021); Christine Hayes “Intertextuality and Tannaic Literature” (2022); and Alyssa M. Gray “Intertextuality and Amoraic Literature (2022).