

# Theology, Science, and Sexual Diversity

## Judith Butler and Rabbinical Judaism

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*Yiftach Fehige*

Bernhard Grümme and Gunda Werner asked for contributions to their edited volume that look at the work of Judith Butler in relation to theology. In what follows, I enthusiastically accept their invitation. It provides me with the unique opportunity to argue that Rabbinic Judaism has every reason to welcome the kind of pluralism regarding human sexuality that, in past work, I have demonstrated Butler to promote.<sup>1</sup> Pluralism regarding human sexuality means the affirmation of sexual diversity for various kinds of benefits—scientific, moral, theological, political, etc. Such a pluralism is committed to three basic principles:

“First, nature/nurture is indivisible. Second, organisms—human and otherwise—are active processes, moving targets, from fertilization until death. Third, no single academic or clinical discipline provides us with the true or best way to understand human sexuality.”<sup>2</sup>

Butler’s theory of human sexuality satisfies all three principles. In what follows I will zoom in mainly on the third principle.

To that effect, I will first define sexual diversity as a theological topic at the interface of science and religion. This point of entry into the discussion primarily reflects my own interests. Interests, however, are often guided by convictions about the necessary priorities of contemporary theological discourse. It seems indisputable that the sciences exercise a largely uncontested cultural authority today, and this is of enormous consequences for religion.<sup>3</sup> The sciences also come into focus insofar as scientific facts are often cited to challenge Butler’s critique of a “heterosexual ontology” of bodies. I will largely focus on transgender identities in

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1 See Fehige, Yiftach: *Die Geschlechtererosion des Semantischen Realismus. Eine Logisch-Semantische Untersuchung zum Begriff des Biologischen Geschlechts*, Paderborn: 2006.

2 Fausto-Sterling, Anne: *Sexing the Body: Gender Politics and the Construction of Sexuality*, New York: 2000, p. 235.

3 See Scruton, Roger: *The Soul of the World*, Princeton: 2014, p. 55-75.

my discussion here, and therefore it is important to consider Butler's contention that the

"real" and the 'sexually factic' are phantasmatic constructions—illusions of substance—that bodies are compelled to approximate but never can [...] this failure to become 'real' and to embody 'the natural' is, [I] would argue, a constitutive failure of all gender enactments for the very reason that these ontological locales are fundamentally uninhabitable."<sup>4</sup>

Nature and Culture are abstractions of a more primordial reality of human existence, I take Butler to argue, and each expresses the other in a qualified sense—a very romantic idea.<sup>5</sup> When I look at Butler's work in a second step, I will provide reasons in support of her view that the "sexually factic" is "uninhabitable." I will transition into a discussion of her work on sexual diversity by considering the most intriguing debate over reforms to the UK *Gender Recognition Act* of 2004 (GRA). The GRA was among the most pioneering legal frameworks to guide gender transitions. Even so, problems remained and in 2018 the UK government entered public consultation about its resolution proposals. The nature of the debate that ensued likely surprised many, and not only government officials. In comparison, and considering the extent of physical and verbal assaults that occurred in that debate, the Brexit negotiations look like a walk in the park, as they say.<sup>6</sup> I will argue that Butler's position against a "matrix" of "compulsory heterosexuality" and in favor of sexual diversity is committed to scientific pluralism. This will raise the important question as to the compatibility of scientific pluralism and theology. Considering Butler's Jewish origins,<sup>7</sup> I will relate to the tradition of Rabbinic Judaism, and to that effect draw on the work of Menachem Fisch to make a case for a pluralist theology of human sexuality.

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4 Butler, Judith: *Gender Trouble: Feminism and the Subversion of Identity*, New York: 1999, p. 186.

5 See Fehige, Yiftach: »Poems of Productive Imagination. Thought Experiments, Christianity, and Science in Novalis«, in: *Neue Zeitschrift für Systematische Theologie und Religionsphilosophie* (2013), p. 54-83.

6 See Baggs, Michael: »Gender Recognition Act: Why We Want Identity Rules Changed«, in: BBC News, October, 17, 2018. <https://www.bbc.com/news/newsbeat-45838021> [06.04.2020].

7 See Aloni, Udi: »Judith Butler: As a Jew, I Was Taught It Was Ethically Imperative to Speak Up«, in: Haaretz, February 24, 2010. <https://www.haaretz.com/1.5052023> [12.02.2020].

## 1. Sexual Diversity in Theological Perspective

Theology “struggles with the contested and different definitions of gender, sex, and sexuality.”<sup>8</sup> Advocates of—what I label for reasons of convenience—traditional theologies are less inclined to engage seriously with the results of “sexual diversity studies”<sup>9</sup> (SDS). This comes as little surprise if one knows a little bit about the history of each, and yet, both have something in common and that should be reason enough for mutual engagement. Both are questioned in their academic credibility today: only ideology—no substance!<sup>10</sup> Moreover, the “fact is that we must find a way to talk [...] about sexual and gender diversity as a shared human reality and not merely a product of individual choices or cultural construction.”<sup>11</sup> And, theology is at risk of becoming irrelevant in this respect. Even in the most Christian of all so-called “first-world” nations sexual standards and activities have changed at a breathtaking pace since World War II:

“In a remarkable short period of time, views of normal and abnormal sexual practices underwent a revolutionary transformation: Sex shifted from a tabooed to an omnipresent topic. Cultural norms no longer confined approved sexual activity to married partners but came to accept a far wider variety of practices, identities, and objects of desires. Indeed, not to be having sex might be one of the last sources of sexual shame.”<sup>12</sup>

There is much work to be done, and theology has every reason to engage with SDS, including Butler, unless it rests content with a position of cultural insignificance.

Every theory of human sexuality must answer the following three questions<sup>13</sup>:

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8 Jung, Patricia B./Vigen Aana M.: »Introduction«, in: Patricia B. Jung, Patricia B/Aana M. Vigen (Hg), God, Science, Sex, Gender: An Interdisciplinary Approach to Christian Ethics, Urbana: 2010, p. 1-19, hier p. 5.

9 Sexual Diversity Studies is the exploration, analysis, and challenge of the ways in which sexuality is shaped in diverse contexts and the diverse impacts those contexts in turn have on people's lives. My university is home to the Mark S. Bonham Centre for Sexual Diversity Studies: <http://sds.utoronto.ca>. See, for example Congregation for Catholic Education: »'Male and Female He Created Them.' Towards a Path of Dialogue on the Question of Gender Theory in Education«, Vatican City: 2019.

10 See Evans, Jennifer: »Are Gender Studies Under Assault Globally?«, in: Social Science Space: January 10, 2019. <https://www.socialsciencespace.com/2019/01/are-gender-studies-under-assault-globally/>; Kubitz, Heinz-Werner: »Ist Theologie eine Wissenschaft? Lehre unter Denkmalschutz«, in: Der Tagesspiegel, April 4, 2015. <https://www.tagesspiegel.de/wissen/ist-theologie-eine-wissenschaft-lehre-unter-denkmalschutz/11588538.html>

11 P. B. Jung/A. M. Vigen: 2010, p. 9.

12 Horwitz, Alan V.: What's Normal: Reconciling Biology & Culture, Oxford: 2016, p. 169.

13 See for a defense of that explanatory threshold: Roughgarden, Joan: The Genial Gene. Deconstructing Darwinian Selfishness, Berkeley: 2009.

- (1) Why sexual reproduction?
- (2) Why sexual dimorphism?
- (3) Why sexual diversity?

These are meaningful questions because neither sexual reproduction, sexual dimorphism, nor sexual diversity are self-evident in their existence. Sexual reproduction (procreation by means of recombination of hereditary material) raises questions because in nature we also find asexual reproduction (by means of budding, fragmentation). Why are there two kinds of reproduction in nature? Similarly, the phenomenon of “hermaphroditism” (production of eggs and sperm by a single body) motivates inquiries into the nature of sexual dimorphism (a single body produces exclusively either eggs or sperm). Which came first, and how to relate both? And, insofar as reproduction is to be essential to sexuality, variety in sexual behavior requires an explanation. Only certain kinds of hetero-sexual behavior are procreative.

Traditional theologies provide the following answers to questions (1), (2), and (3)<sup>14</sup>:

- (A) Sexual reproduction is a blessing and means participation in the creative work of God.
- (B) Sexual dimorphism symbolizes complementarity in procreativity.
- (C) Sexual diversity is the result of natural or moral deviation.

In the encounter with Darwinian evolutionary theory, these answers were only deprived of their supernatural character, but not challenged any further than that<sup>15</sup>:

- (A') Sexual reproduction is a mechanism of evolution.
- (B') Sexual dimorphism is a universal template in nature and a function of efficient gamete allocation.
- (C') Sexual diversity is a natural deviation.

The dichotomy of facts and values allowed the delegation of moral and political questions concerning sexual diversity to other disciplines,<sup>16</sup> as the “scientific com-

<sup>14</sup> See for a defense of such a traditional theology in the idiom of analytic philosophy: Swinburne, Richard: *Revelation. From Metaphor to Analogy*, Oxford: <sup>2</sup>2007, p. 298-317 and pp. 361-363.

<sup>15</sup> See for a defense of this view: Roughgarden, Joan: *Evolution's Rainbow. Diversity, Gender, and Sexuality in Nature and People*, Berkeley: <sup>2</sup>2009.

<sup>16</sup> See for a succinct characterization, and a historical and philosophical critique of the fact/value dichotomy: Putnam, Hilary: *The Collapse of the Fact/Value Dichotomy and Other Essays*, Cambridge MA: 2002.

munity was best understood as distinct from the surrounding society.”<sup>17</sup> The sciences were claimed to discover only the facts. Matters of value are for philosophers and policy makers to address, and they form a radically different set of issues. And, given the relegation of theology to the non-scientific realm exclusively, insofar as theology has any meaningful contribution to make to discussions about human sexuality in modern societies, it must be in the moral and political arena. Accordingly, a very common response, as a concession to calls for greater LGBTQ equity from the standpoint of traditional theologies, is to employ the ethical principle of toleration in order to uphold (A), (B), and (C):

(T) If not the result of individual moral failure, sexual diversity reflects genetic defects or brain dysfunctionalities. Like every other sick person, the sexually deviant has a right not to be discriminated on grounds of a naturally occurring pathology.<sup>18</sup>

But how are we to relate (A), (B), and (C) and (A'), (B'), and (C')? If theology is interested in relating meaningfully to what the sciences have to say—and not just blindly follow them—it will have to exercise a more critical role in receiving scientific claims.<sup>19</sup> And, advocates of traditional theologies do know how to be extremely critical when the sciences are not supportive of their positions. A most prominent, and in the present context very instructive, example is Alvin Plantinga's objection to Darwinian evolutionary theory insofar as it is meant to be of *absolute* explanatory scope.<sup>20</sup> He is happy to concede that the theory may serve us well to understand much of the animate world. But when it comes to human nature, the theory runs into trouble, according to Plantinga. In other words, Plantinga argues that the nature of humanity reveals the explanatory limits of the theory. Whatever the merits of (A), (B), and (C) may be, if Plantinga is right, they won't be sufficient to answer (1), (2), and (3). What he basically argues is that we are confronted with a paralyzing conflict of two cognitive values, namely the values of explanatory power and truth. Behavior that is conducive to success as defined by Darwinian evolutionary theory does not require *true* beliefs—maybe not even *beliefs* altogether! It really does not matter if a tiger or a lion is in front of you, what matters is that you run in response to triggers which you instinctively perceive as dangerous. If that is true, then—Plantinga contends—the probability is very low that the beliefs that human minds produce are true. And, if that is true, then we have no reason to believe that

17 Douglas, Heather: *Science, Policy, and the Value-Free Ideal*, Pittsburgh: 2009, p. 60.

18 See for a detailed reconstruction and critique of that line of reasoning: Fehige, Yiftach: »The Role of the Imagination in Transsexual Crossing«, in: Gerhard Schreiber (Ed.): *Transsexuality in Theology and Neuroscience*, Berlin/New York: 2016, pp. 577-595.

19 See for detailed defense of this contention: Fehige, Yiftach: »Transsexuality: Reconciling Christianity and Science«, in: *Toronto Journal of Theology* (2011), p. 51-71.

20 See Plantinga, Alvin: *Where the Conflict Really Lies. Science, Religion, & Naturalism*, New York: 2012.

Darwinian theory itself is true, because it is assumed here that a theory is a set of beliefs deemed to be true. Since we believe that the theory is probably true, we have reason to look for alternative explanations, argues Plantinga, in order to understand why our minds are capable of such great discoveries as Darwin's theory of evolution by natural selection. According to Plantinga, theism offers an explanation, and in the absence of naturalism, such an explanation is a serious contender for the best explanation. A benevolent, rational God created the human mind by means of Darwinian evolution, Plantinga contends, and that is why the human mind can discover deep truths about itself and the world. The choice before us, Plantinga claims is either universal explanatory scope or truth. If we choose truth, then we have reason to limit the explanatory scope of Darwinism.

Plantinga's critique of Darwinism impressed even some deeply committed atheists, such as Thomas Nagel.<sup>21</sup> This remarkable alliance is understandable because both are committed to a monolithic metaphysics. There is one truth, and diversity in explanations and theories ought to be overcome. This metaphysical commitment is accompanied by an epistemological confidence in our abilities to select competing explanations and theories in a methodologically controlled way for the sake of a single unified account of everything there is. Such a position is called "scientific monism" when it is assumed with respect to the scientific domain, and when assumed for the sake of an integration of science and religion I label it "theological monism."<sup>22</sup>

Insofar as traditional theologies are committed to theological monism, their position on sexual diversity, is therefore "diversity-avoidant" in two respects. Firstly, sexual diversity is tolerated on grounds of ethical considerations but not accepted as part of God's creation. Secondly, theology and the sciences are integrated such that their explanations and theories for the same phenomenon are arranged as being complementary. Considering Plantinga's theistic Darwinism in light of (1), (2), (3), and (A), (B), (C), as well as (A'), (B'), (C'), the following position emerges:

(T') Sexual diversity is not part of God's creation and may be tolerated only on grounds of ethical considerations.

(T') engages with the sciences. It argues for integration. Furthermore, it rightly overcomes the fact/value dichotomy, and highlights an important way in which

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<sup>21</sup> See Fehige, Yiftach: »Moving Further Beyond Secularism. A 'Lutheran' Reading of the Cosmology of Thomas Nagel«, in: Neue Zeitschrift für Systematische Theologie und Religionsphilosophie (2018), p. 229-254.

<sup>22</sup> See Fehige, Yiftach: »The Opposite of Rationality is Rationality: On Science, Religion, and Pluralism«, in: Gerhard Schreiber (Ed.): Interesse am Anderen, Berlin/Boston: 2019, pp. 557-579.

facts and values are entangled to a significant degree.<sup>23</sup> These characteristics could be viewed as strengths of (T'). Plantinga's theistic Darwinism has merits in these respects. It is important to note, however, that (T') leads to numerous incoherent claims once spelled out in more theological detail.<sup>24</sup> More important in the present context, however, is that (T') limits the scope of its value-considerations to cognitive values. But there is another value judgment on the path to (T'). The argument is that there is a conflict in the relevant set of *cognitive* values and thus theistic Darwinism is argued to become a viable option. This is the value-judgment that is made explicit. What is not made explicit is the judgment *against diversity as a value!* Sexual diversity is not to be part of nature. This means in the perspective of theistic Darwinism that sexual diversity is not to be part of God's creation. But, why not to widen the scope of value considerations? There is certainly theological warrant to do so. For example, in discussions about transgender identities, Gen. 1:26-28 is often "taken as a strong endorsement of sexual dimorphism, if not a normative heterosexuality."<sup>25</sup> But things are a bit more complicated here—as it is so often the case. Even "if the introduction of sexual distinction is related here to procreation as its necessary presupposition, this does not of itself mean that Gen. 1:26-28 thereby limits the ends of human sexuality [...] solely to procreation."<sup>26</sup> Such a reading misunderstands entirely the linguistic situation of Gen. 1:27:

"While the 'image of God' asserts the resemblance of humanity to God and warrants humanity's special status in the created order, the addition of the 'male and female He created them' looks forward to the command and blessing to 'fill the earth,' asserting humanity's placement among the creatures of the earth."<sup>27</sup>

In doing so, the stated sexual dimorphism is simply assumed, and not given any theological weight in and of itself. The sexual dimorphism that the text assumes has its roots in the characteristic Israelite extended family under harsh agricultural conditions, which necessitated a large supply of labor. I doubt theology is interested in arguing for the revival of ancient Israelite society in response to contemporary calls for greater LGBTQ equity.

23 See Larry Laudan: *Science and Values: The Aims of Science and Their Role in Scientific Debate*, Berkeley: 1984.

24 See for a defense of this view: Fehige, Yiftach: »Towards a Theology of Sexual Diversity: A Tightrope Walk between Christianity and Science«, in: *Zygon. Journal of Religion and Science* (2013), pp. 35-59.

25 Di Vito, Robert: »'In God's Image' and 'Male and Female': How a Little Punctuation Might Have Helped«, in: P. B. Jung/A. M. Vigen: 2010, pp. 167-183, p. 175.

26 Di Vito: 2010, p. 175-176.

27 *Ibid.*, p. 174.

## 2. The UK's GRA and Butler on Diversity

On July 3, 2018, the UK Government Equities Office released its proposal to implement revisions to the GRA of 2004 and thereby initiated a process of public consultation.<sup>28</sup> The *Reform of the Gender Recognition Act – Government Consultation*<sup>29</sup> that was presented to parliament by the Minister for Women and Equalities states as the goal of the proposed reform the following: "The Government wants to make the legal recognition process less intrusive and bureaucratic for trans people." (p. 11) The goal was not to revisit one of the most remarkable stipulations of the GRA of 2004, which can be found in section 9(1) of the act: "

Where a full gender recognition certificate is issued to a person, the person's gender becomes for all purposes the acquired sex (so that, if the acquired gender is the male gender, the person's sex becomes that of a man and, if it is the female gender, the person's sex becomes that of a woman)."<sup>30</sup>

Gender determines sex, according to GRA. The reforms that were proposed to GRA concerned exclusively the process of obtaining a *Gender Recognition Certificate* (GRC). The process is deemed to be too costly and unnecessarily medicalized, among other things. And, yet, discussions about procedural matters turned quickly into a debate about the *ontology* that guides the GRA. In a way this was foreseeable because the law continues to operate with a binary model of human sexuality in its characterization of the relationship between sex and gender.<sup>31</sup> This permitted discussions about the relationship between biological facts and social realities considering imagined scenarios where "male-body" women enter space reserved for "female-body" women. Some of those opposing the reforms used the opportunity afforded by such discussions to argue for limitations to the toleration in the recognition of transgender identities. Among those were also some who objected "strongly on religious grounds."<sup>32</sup>

What is remarkable is the unintended alliance that emerged between the Rosh Beis Din of the Federation of Synagogues in the UK, Rabbi Dayan Yisroel Yaakov Lichtenstein, and some feminist critics of the proposed reforms. In targeting the GRA ontology, some feminists found themselves siding with Lichtenstein, arguing

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28 <https://www.gov.uk/government/consultations/reform-of-the-gender-recognition-act-2004> [06.04.2020].

29 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/721725/G-RA-Consultation-document.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721725/G-RA-Consultation-document.pdf) [06.04.2020].

30 <http://www.legislation.gov.uk/ukpga/2004/7/section/9> [06.04.2020].

31 See Sharpe, Andrew: »A Critique of the Gender Recognition Act of 2004«, in: Bioethical Inquiry (2007), pp. 33-42.

32 <https://www.gires.org.uk/the-gender-recognition-act-discussion-july-2019/> [06.04.2020].

that transgender women are not women.<sup>33</sup> “Some people believe apparently that transwomen can be biologically female because they take hormones. And, that’s not true. And, it doesn’t matter how much Judith Butler you read, that is not going to become true.”<sup>34</sup> This is a reading of Butler more common among feminist philosophers than one would expect to find given the principle of charitable interpretation. Butler’s work is challenging because of her prose and the eclecticism it exhibits. It does require a great deal of analytic work. But it is nevertheless difficult to follow a reading of her work such that Butler is taken to suggest that biological femaleness is defined by a certain level of hormones in a human body. What is true is that Butler calls such definitions into question, and for reasons that will lead us to a skeptical position regarding (T').<sup>35</sup>

Butler’s notion of intelligible gender is central here. With that, she endorses the view that science not only produces information, “but it also produces meanings. Indeed, as even some conventional philosophers of science realize, the results of scientific research *are* information only if they have meaning for us: an undecipherable string of numbers of nonsense syllables is not yet information.”<sup>36</sup> In my reading, Butler presents gender as a cluster concept—a concept that is defined by several concepts. Each of those concepts is indispensable to retain the intelligibility of “gender,” and none of them is more foundational than the other concepts. She identifies four concepts: biological sex, social expression of sex, sexual practice, and sexual desire.<sup>37</sup> Following Foucault, she is interested in the power relations that drive established notions of gender, and she is interested in understanding what exclusions they create. And, like Foucault she rejects the idea of a sovereign subject—one that transcends those power relations—to bring about change for the sake of inclusion. “For Foucault, [...] prohibitions are invariably and inadvertently productive in the sense that ‘the subject’ who is supposed to be founded and produced in and through those prohibitions does not have access to a sexuality that

33 Lichtenstein’s position: “I can state categorically that Jewish law does not recognise any change in sex of male to female or female to male under any circumstances.” (Jacobs, Ellie: »Could Transgender Rights infringe upon Religious Rights?«, in: Jewish Chronicle, October 11, 2018. <https://www.thejc.com/news/news-features/transgender-rights-clash-with-religious-rights-1.470798>

34 See »A Woman’s Place is Turning the Tide (Kathleen Stock, Brighton, 16th July 2018)«, Accessed April 6, 2020, Minutes 10:30-10:42. [https://www.youtube.com/watch?v=bg4\\_E6Y4POc](https://www.youtube.com/watch?v=bg4_E6Y4POc) Accessed April 6, 2020, Minutes 10:30-10:42.

35 I am basing the reading of Butler that I am presenting here on four of her books: *Gender Trouble*, New York: 1999; *Bodies That Matter: On the Discursive Limits of ‘Sex’*, New York: 1993; *The Psychic Life of Power: Theories in Subjection*, Stanford: 1997a; *Excitable Speech: A Politics of the Performative*, New York: 1997b.

36 Harding, Sandra: *Whose Science? Whose Knowledge? Thinking from Women’s Lives*, Ithaca: 1992.

37 See J. Butler: 1999, p. 23.

is in some sense ‘outside,’ ‘before,’ or ‘after’ power itself.”<sup>38</sup> Exclusion and inclusion always go hand in hand. Individuals assume a position not by an intentional act but following a grid that gives meaning to their embodied sexual desires and practices in specific social settings.

Following Derrida, Butler conceives of social change as a function of the instability that is inherent in the reiteration of the unstable signification processes that accompany any such positioning. As a consequence, sexual diversity is not the result of an assertion that would reflect the inner core of true sexual identities in intentional deviation of established norms. It is the instability inherent in the “iterability that governs the possibility of social transformations.”<sup>39</sup> Iterability’s government reaches the inner realm of the “formation of the subject,” a formation that is not merely a mechanistic appropriation of norms, nor is it a voluntaristic appropriation.<sup>40</sup>

The central point of Foucault’s notion of power is that power “doesn’t only weigh on us a force that says no; it also traverses and produces things, it induces pleasure, forms of knowledge, produces discourses.”<sup>41</sup> Butler’s critique of the “heterosexual matrix” is primarily genealogical in that she does not reference “a subject that is either transcendental in relation to the field of events or runs in its empty sameness throughout the course of history.”<sup>42</sup> She is less interested in history than Foucault. Instead her focus is on the linguistic character of human existence and its substantializing effects, especially insofar as the materiality of embodiment is concerned: “To return to matter requires that we return to matter as a *sign*, which in its redoublings and contradictions enacts an inchoate drama of sexual difference.”<sup>43</sup>

Such a position is not committed to idealism or social constructivism. Its ontological commitment can be captured in terms of a cognitive pragmatism: “There are ‘external facts’, and we can say **what they are**. What we **cannot** say—because it makes no sense—is what the facts are **independent of all conceptual choices**.”<sup>44</sup> In consequence, the “replication of heterosexual constructs in non-heterosexual frames brings into relief the utterly constructed status of the so-called heterosexual original. Thus, gay is to straight *not* as copy to original, but, rather, as copy to copy.”<sup>45</sup> Similarly revealing is the sociological phenomenon of the firm assertion of sexual dimorphism in the “trans-sexual” crossing from perceived incorrect to assumed

<sup>38</sup> Ibid., p. 39.

<sup>39</sup> J. Butler: 1997b, p. 147.

<sup>40</sup> J. Butler: 1997a, p. 119.

<sup>41</sup> Chomsky, Noam/Foucault, Michel: The Chomsky-Foucault Debate on Human Nature, New York: 2006, p. 153.

<sup>42</sup> N. Chomsky/M. Foucault: 2006, p. 150.

<sup>43</sup> J. Butler: 1993, p. 49.

<sup>44</sup> Putnam, Hilary: The Many Faces of Realism, LaSalle: 1987, p. 33 (emphasis in the original).

<sup>45</sup> J. Butler: 1999, p. 41.

correct embodiment of sexual identity.<sup>46</sup> Butler has therefore a point in maintaining “a non-causal and non-reductive connection between sexuality and gender [...], as it seems crucial to retain a theoretical apparatus that will account for how sexuality is regulated through the policing and the shaming of gender norms.”<sup>47</sup>

Considering Butler’s critique of a dominant ontological matrix of compulsory heterosexuality, (T') becomes questionable in both its naturalization of sexual dimorphism and its moralization of sexual diversity. The heteronormative integration of science and theology in theistic Darwinism is rendered meaningless if it is true “that the language of biology participates in other kinds of languages and reproduces [a] cultural sedimentation in the objects it purports to discover and neutrally describe.” The cultural sedimentation consists of the “assumptions regarding the relative status of men and women and the binary relation of gender itself [...].”<sup>48</sup> Those assumptions have come into critical focus with respect to Darwin’s theory of sex selection, and beyond.<sup>49</sup>

Science is a social institution.<sup>50</sup> The diversity of social factors impacting the sciences partly explains diversity within the sciences. In effect, employing Butler’s critique against (T') leads us to diversity of two different kinds: a material kind that concerns sexual diversity and a formal kind that is about diversity within the sciences that inquire into the nature of human sexuality. And this raises important questions about (T'). For example, actual explanatory practice appears very diverse, and that diversity can be explained in terms of the diversity of the interests and values that guide explanatory practice in science.<sup>51</sup> And, if that diversity is indeed irreducible then diversity in scientific explanatory practice seems impossible to overcome. Pluralists about diversity argue that such diversity is a good thing—it is beneficial for various reasons.<sup>52</sup> *I read Butler as a pluralist in this sense.* I take her work to acknowledge an inescapable double relativity of all our knowledge.<sup>53</sup> It is relative to interests and values in its *production*. And, it is relative to interests and values in its *application*.

46 Vgl. Hirschauer, Stefan: *Die soziale Konstruktion der Transsexualität. Über die Medizin und den Geschlechtswechsel*, Frankfurt a. M.: <sup>5</sup>2015.

47 J. Butler: 1993, p. 238.

48 J. Butler: 1999, p. 139.

49 See Richards, Eveleen: *Darwin and the Making of Sexual Selection*, Chicago: 2017.

50 See Longino, Helen: *Science as Social Knowledge. Values and Objectivity in Scientific Inquiry*, Princeton: 1990.

51 See Fox-Keller, Evelyn: *Making Sense of Life. Explaining Biological Development with Models, Metaphors, and Machines*, Cambridge MA: 2002.

52 See Chang, Hasok: *Is Water H<sub>2</sub>O? Evidence, Realism, and Pluralism*, Boston: 2012.

53 See Ruphy, Stéphanie: *Scientific Pluralism Reconsidered. A New Approach to the (Dis)Unity of Science*, Pittsburgh: 2016, p. 78.

An excellent case in point are evolutionary explanations for sexual reproduction.<sup>54</sup> About twenty accounts exist today as to why sexual reproduction evolved in addition to asexual reproduction. Not even one has commanded wide assent in the scientific community.<sup>55</sup> And, very good reasons can be offered to make sense of that situation. One compelling way to look at it is that there are diverse interests and values to be considered that drive the descriptions and models of the various relevant aspects—ranging from population genetics<sup>56</sup> to biochemical mechanisms involved in cell division in the production of gametes.<sup>57</sup> Each of those aspects are indispensable when accounting for the evolution of sex in its entirety.<sup>58</sup> Unification in terms of scientific monism can only be achieved by means of a significant degree of abstraction from those values and interests. But it is exactly those values and interests that imbue the accounts of the various individual aspects with explanatory power in the first place. Many of the existing accounts are indispensable because they touch on highly relevant aspects to be considered in order to make sense of the evolution of sexual reproduction in its full reality. What follows is a significant synchronic diversity of scientific explanations regarding one and the same natural phenomenon, namely the evolution of sexual reproduction.<sup>59</sup> Moreover, there are models available to account for evolution of sexual reproduction such that sexual diversity becomes an integral part of nature.<sup>60</sup>

There is good reason, obviously, to render sexual binarism and scientific monism dubitable. Insofar as theological monism depends on scientific monism it becomes untenable in its formal position. And so is the situation with respect to (T') insofar as it depends on theological monism. Moreover, questions arise as to the sexual binarism that (T') declares to be factually true. The “sexually factic” is “uninhabitable,” and serious conceptual alternatives are possible. This leaves the question as to what to make of the emerging pluralism from a religious point of view, such as that of Rabbinic Judaism.

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54 See Fehr, Carla: »Explanations of the Evolution of Sex: A Plurality of Local Mechanisms«, in: Stephen Kellert et al. (Ed.), *Scientific Pluralism*, Minnesota: 2006, pp. 167-189.

55 See Ruse, Michael: 2012. *The Philosophy of Human Evolution*, Cambridge: 2012, p. 186.

56 See J. Roughgarden: 2009.

57 Bernstein, Harry/Bernstein, Carol/Michod Richard E.: »Meiosis as an Evolutionary Adaptation for DNA Repair«, in: IntechOpen, November 7, 2011. <https://www.intechopen.com/books/dna-repair/meiosis-as-an-evolutionary-adaptation-for-dna-repair>

58 See Longino, Helen E.: *Studying Human Behaviour. How Scientists Investigate Aggression & Sexuality*, Chicago: 2013.

59 Meirmans, Stephanie/Strand, Roger: »Why are there so many theories for sex, and what do we do with them?«, in: *Journal of Heredity* (2010), pp. 3-12.

60 See J. Roughgarden: 2009.

### 3. Eilu v'Eilu

“JQY” stands for *Jewish Queer Youth* and it is the name of “a nonprofit organization supporting and empowering LGBTQ youth in the Jewish community.” It states as its “philosophy”:

“Eilu v'Eilu literally translated means both ‘these and those.’ The origin story of this phrase is symbolic of a fundamental Jewish value: the notion that conflicting ideas can simultaneously be true. We learn that Hillel and Shamai (two of the most notorious debaters in the history of the Talmud) disagreed on a legal statute, and fiercely argued over their opinions—each of which they held as deeply true. Just then, a booming voice came forth and proclaimed, ‘both these and those are the living words of God.’ (Eruvin 13b) Both ideas, though seemingly in conflict, were true at the same time. Eilu v'Eilu. Eilu v'Eilu affirms both Jewish and queer values.”<sup>61</sup>

There is considerable diversity indeed that characterizes the “*Bavli*” (the Babylonian Talmud). But does it support pluralism? To be clear about my terminology, diversity means difference that results in variety that is of significance. Pluralism means the affirmation of such diversity for reasons of benefit of various kinds (cognitive, political, moral, social, etc.). Is there reason to think that such pluralism has merits from the Talmudic point of view? According to Menachem Fisch, the answer is in the positive.<sup>62</sup>

While Fisch mistakenly assumes that the Talmud is the only “formative canon” that is “self-consciously dialogical,”<sup>63</sup> he is correct that “the *Bavli* resembles [...] a series of protocols of an extremely keen and diverse set of *disputes* regarding the good and the true, debates that are hardly ever decided even with respect to the details of ritual law—*Halacha*.<sup>64</sup> But Fisch wonders about the theological meaning of this and his attention goes to the passage of *Eruvin* to which JQY alludes in the statement of its philosophy. It tells us of a “Heavenly Pluralism”, because by divine intervention, the *Bavli* reports, God establishes both the “House of Shammai” and the “House of Hillel” as legitimate approaches to *Halacha*, although each leads to positions that are obviously incompatible with those reached by means of the other.

61 <https://www.jqyouth.org/our-philosophy/> [15.03.2020].

62 See Fisch, Menachem: »Deciding by Argument versus Proving by Miracle: The Myth-History of Talmudic Judaism's Coming of Age«, in: *Toronto Journal of Theology* (2017), pp. 103-127.

63 The Christian Bible is no less self-consciously dialogical, in my view. Vgl. Zenger, Erich: »Der Pentateuch als Tora und Kanon«, in: Erich Zenger (Ed.): *Die Tora als Kanon fuer Juden und Christen*, Freiburg: 1996, pp. 5-34. Significant in this respect is the phenomenon of intra-biblical critique: Vgl. Buttig, Klara: *Die Buchstaben werden sich noch wundern. Innerbiblische Kritik als Wegweisung feministischer Hermeneutik*, Berlin: 1994.

64 M. Fisch 2017, p. 104.

Even more confusing is that final divine approval is given to the “House of Hillel”! Here the text in Fisch’s translation:

“R. Abba stated in the name of Samuel: For three years the House of Shammai and that of Hillel disputed one another, the former claiming ‘Halacha follows us’ and the latter contending, ‘Halacha follows us.’ Then a heavenly voice issued forth announcing, ‘these and these are the words of the living God, yet Halacha is in accord with the House of Hillel’.”<sup>65</sup>

This seems utterly absurd. If God wanted to side with the “House of Hillel,” why lend credibility to the “House of Shammai”? The halachic positions of both houses are said to be the words of the living God! And yet, “Halacha” is to be “in accord with the House of Hillel.” How to make sense of this? Fisch argues that we must look at this passage as a “second-order” statement—a “meta-Halachic” principle is expressed here. The passage does not refer to Hillel’s “first-order Halachic conclusions, but to their *method of deliberating and deciding them*.”<sup>66</sup> What is the role then of the “House of Shammai” in all of this? Fisch argues that it is the Shammaites firm commitment to their positions that finds divine support. Hillelite halachic deliberation is shallow if it only entertains alternative positions by dialogical or dialectical method. It requires the committed Other. But why the need of the Other to begin with? Fisch claims that this is so because of our inability to exercise normative self-criticism. It needs the Other from within, as it were. And, this requires openness for such Otherness. The Hillelite approach displays such openness. It is the Hillelites balancing of firm commitment to their position, on the one hand, and openness to critique, on the other hand, that the Bavli endorses, argues Fisch. Hillelites are capable of “changing their minds,” unlike the Shammaites:

“The Hillelites are favoured [...] because, unlike, the Shammaites, they were the true pluralists. [...] To side with the Hillelites, against the Shammaites, is to realize, contrary to the latter, the real limitations of self-criticism, especially normative self-criticism, and to recognize the need, therefore, for the kind of potentially transformative challenge, only a real and keen opponent can provide [...].”<sup>67</sup>

But is God instrumentalizing the Shammaites? Why would the Bavli say that their rulings are “the words of the living God”? Fisch argues that an instrumentalist reading of the divine endorsement of the Shammaites misses the nature of the “Heavenly Pluralism.” Halachic diversity must be substantial: “Halachic diversity of opinion is not enough...the Shammaites represent the ultimate rabbinic oppo-

65 Ibid., p. 105.

66 Ibid., p. 106, emphasis in the original.

67 Ibid., pp. 107-108.

sition imaginable.”<sup>68</sup> What matters is not diversity of rulings, but diversity of halachic existence. This concludes Fisch’s characterization of the “horizontal axis” of the “Heavenly Pluralism” he sees the Talmud to advance.

As for the “vertical axis,” Fisch is eager to point out that the Hillelites openness extends beyond the intrareligious realm of Judaism: “The issue is in this sense not epistemic. It is not a question of *getting* the Good Word right, but of seriously asking whether the Good Word *is* right. This is a different dispute entirely [...] It is a dispute about Judaism’s very norms of religious disposition—or, if you wish, a dispute of religiosity itself.”<sup>69</sup> In the words of Fisch from a different place:

“When wary of the quality of their *understanding* of God’s Word, true adherents of revealed religion take the moral perfection of both the Word and its author for granted. God is not *found* to be all-good but is *presupposed* necessarily to be so [...] Judaism’s formative canon [...] is sorely divided [,however,] on the very question of the moral perfection, not only of God, but of all of Judaism’s sources of religious authority, and is hence sorely divided on the very notion of religiosity itself.”<sup>70</sup>

Fisch himself sides with the position that sees God’s moral imperfection and rejects the notion that religiosity is essentially submission to God and the sources of religious authority. Such a generalized Hillelism brings the dramatic theological dimension of the “Heavenly Pluralism” to the fore:

“[...] one’s religious world outlook, and very self-identity are vitally enriched and strengthened by maximal exposure to the criticism of one’s significant others, [...] the only way to achieve a genuinely reflective grip one one’s religious normative framework is by prudently exposing oneself to the external critical eyes of those committed otherwise.”<sup>71</sup>

What the Shammaites are for Judaism, the non-Jews are for the religious commitment in general, at least from a Jewish point of view: committed critics from within.

The pluralist theology that ultimately emerges from Fisch’s reading of the Talmud’s diversity has merits: “It is an affirmation of the reality of a truth communicated by God combined with a humble admission that we may not be in possession of all of it.”<sup>72</sup> An absolute religious truth about human sexuality seems as implausible as a value-free realm of objective facts of nature.

68 Ibid., pp. 108.

69 Ibid., p. 110, emphasis in the original.

70 Fisch, Menachem: »Science, Religion, and Rationality. A Neo-Hegelian Approach«, in: *Toronto Journal of Theology* (2013), pp. 319–336, pp. 327–328.

71 M. Fisch: 2017, p. 113.

72 Kogan, Michael S.: *Opening the Covenant: A Jewish Theology of Christianity*, Oxford: 2008.

#### 4. Conclusion

Butler's theory of sexual diversity challenges (T'), and not only from a material perspective. She argues for more than irreducible sexual diversity. We also find a challenge to the idea that diversity of views about human sexuality is not necessarily a matter of ignorance. From the point of view of Rabbinic Judaism, there are good reasons to think that her challenge provides a great opportunity—the opportunity to reaffirm Judaism's intimate relationship with diversity. Butler is right in urging theology "that there has to be a cultural movement that overcomes hatred and paranoia and that actually draws on questions of cohabitation. Living in mixity and in diversity, accepting your neighbor, finding modes of living together."<sup>73</sup> Toleration of sexual diversity along the lines of (T') is not enough.

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73 Aloni, Butler: 2010. <https://www.haaretz.com/1.505203> [23.03.2020].