



Medieval canon law on hermaphrodites

As some readers of this blog know, I've been a canon law historian long before I began to think about hermaphrodites or intersex in history. On the whole, (medieval) canon law is largely silent on hermaphrodites. In particular, the extensive canon law on marriage for centuries was apparently not concerned with questions of doubtful or double sex. The only occurrence of the topic in the Decretum Gratiani (compiled ca. 1140) is a quotation from Roman law on witnesses for last wills; from this, later canonists inferred that the ordination of hermaphrodites, while not legal, was in some cases valid. Huguccio's comment on the legal status of hermaphrodites for centuries was quoted in cases of 'doubtful sex', in particular in marriage cases.

Sources: 1. Decretum magistri Gratiani, ed. Emil Friedberg (Leipzig, 1879), here at col. 540; 2. The Summa Parisiensis on the Decretum Gratiani, ed. Terence P. McLaughlin, Toronto 1952, here at 126; 3. Huguccio as quoted from the manuscripts by Ida Raming, *Priesteramt der Frau – Geschenk Gottes für eine erneuerte Kirche* (Münster, 2002), 105 n. 159; 4. Decretum D. Gratiani, [...] una cum glosis [...], Lyon 1559, 520.

Translation: Christof Rolker.

Literature: Maaike van der Lugt, 'Sex difference in medieval theology and canon law: a tribute to Joan Cadden', *Medieval feminist forum*, 46 (2010), 101–21 [[academia.edu](https://www.academia.edu)]; Christof Rolker, 'The two laws and the three sexes: ambiguous bodies in canon law and Roman law (12th to 16th centuries)', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, kanonistische Abteilung*, 100 (2014), 178–222 [[academia.edu](https://www.academia.edu)].

1. Decretum Gratiani, C. 4, q. 2 et 3, c. 3 § 22

“Hermafroditus an ad testamentum adhiberi possit, qualitas sexus incalescentis ostendit.”

“Whether an hermaphrodite may witness a testament, depends on which sex prevails.”

2. Summa Parisiensis 2.4, q. 2/3 s.v. hermaphroditus

“Hermaphroditus: In terra enim calida plures nascuntur utriusque generis qui, si magis adjungant viris, tamquam viri dabunt testimonium. Hermes interpres, i.e. mercurius, frodis spuma, i.e. venus. Inde hermaphroditus qui ex his natus utriusque formam gerit.”

“Hermaphrodite: In hot regions, many are
5 born double-sexed; of they are closer to
men, they give testimony like men. *Hermes*
is translated Mercury, *frodis* foam, that is,
Venus. Thus, *hermaphroditus*, the one
born from the two [Mercury and Venus]
10 acts in both forms.”



3a. Huguccio, C. 27, q. 1, c. 23 ad v. ordinari

“Quid si est ermafroditus? Distinguitur circa ordinem recipiendum sicut circa testimonium faciendum in testamento, ut III. q. III. Item ermafroditus (c. 3 § 22). Si ergo magis calet in feminam quam in virum, non recipit ordinem, si se contra [sic], recipere potest, set non debet ordinari propter deformitatem et menstruositatem [sic], arg. di. XXXVI. Illiteratos (c. 1), et di. XLVIII. c. ult.¹ Quid si equaliter calet in utrumque? Non recipit ordinem.”

15 “What, if the [candidate for ordination] is a hermaphrodite? For ordinations, the same distinction is made as for giving testimony (for which see [Gratian’s *Decretum* at] C. 4, q. 3, c. 3 § 22). Thus, if [the hermaphrodite] is more female than male, he is not to be ordained; in the opposite case, he is able to receive holy orders, but not allowed to be ordained because of deformity and monstrosity (see [Gratian’s *Decretum* at] D. 36, c. 1 and D. 49, last canon). What if he/she equally tends to both sexes? Then he/she does not receive holy orders.”

3b. Huguccio, C. 4 q. 2 et 3 c. 3 § 22 ad v. sexus incalescentis

“Si quidem habet barbam et semper vult exercere virilia et non feminea et semper vult conversare cum viris et non cum feminis, signum est, quod virilis sexus in eo prevalet et tunc potest esse testis, ubi mulier non admittitur, scil. in testamento et in ultimis voluntatibus, tunc etiam ordinari potest. Si vero caret barba et semper vult esse cum feminis et exercere feminea opera, indicium est, quod feminius sexus in eo prevalet, et tunc non admittitur ad testimonium, ubi femina non admittitur, scil. in testamento, set nec tunc ordinari potest, quia femina ordinem non recipit.”

25 “If [a hermaphrodite] has a beard, prefers doing manly tasks to doing females ones, and always prefers to keep company with men, not women, this is a sign that the male sex prevails in him and that he thus can
30 give testimony in cases where women are excluded, i.e. in witnessing testaments and last wills, and therefore can be ordained. If, however, [the hermaphrodite] lacks a beard, always wants to be with women and
35 to do female tasks, this is a sign that the female sex prevails in her, that she is not allowed to witness, where women are excluded, i.e. in witnessing testaments, and therefore cannot be ordained, because
40 woman does not receive holy orders.”

[The Latin text contains some errors only partly corrected by the writer. In the text above the errors are emended drawing on other manuscripts; for more details, see Rolker 2014]

¹ In D. 36, c. 1 and D. 49, c. 2 the *Decretum* Gratiani treats the impediment of deformity [deformitas], but not 'monstrosity'.



4. *Hostiensis, Summa aurea*

“Quid si utriusque membri officio uti potest, secundum quid de facto fuit in villa mea, scilicet Secusiae? Respondeo: eligat cui se dicat, secundum quid episcopus Tauriensis diocesanus noster de ipso fecit et iuret quod de caetero alio non utetur, quia nec fungi debet duplici officio, maxime tam diverso.”

45 “It is asked whether a hermaphrodite, that is, someone having the sexual organs of man and woman, can be witness for a testament? [...] What if there is perfect equality [of the sexes]? Can s/he never be ordained? May s/he marry a man or a woman, and if s/he first contracts marriage with a man, can s/he contract marriage with a woman after his death? Certainly, in all 50 these matters the sex which prevails has to be respected. (Johannes Teutonicus.) On monsters, one can ask monstrous questions.”