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# **Transforming Judaism: An Affirming Theology and Praxis**

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## **Abstract**

*Transforming Judaism: An Affirming Theology and Praxis* is a Jewish trans theology. Building on the work started by Jewish feminists, this theology expands progressive Jewish thought to develop a foundational support for trans individuals. Included are developments of this trans theology (Chapters 1 and 3), a close reading and analysis of Mishnah Bikkurim 4 (Chapter 2), and an exploration of halakhah and ritual as it pertains to trans Jews (Chapter 4). Additionally, there are resources for trans Jews in the Appendix, including blessings, prayers, and a gender-neutral *Brit Ahavah* (modeled after Rachel Adler's *Brit Ahuvim*). While specifically written with trans Jews in mind, this project pertains to anyone who considers themselves an ally of and advocate for transgender individuals.

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## Introduction

This project is intended to be one part of a larger conversation that was started by Jewish feminists who reconceptualized what Judaism can be to those perceived as non-normative. Under patriarchy, women were seen as non-normative beings and bodies, situated beneath men in a hierarchy of gender. Rather than accepting their fate as inevitable and deserved, Jewish feminist theologians devised new pathways for women to experience an authentic and affirming Judaism.

Some Jewish feminist theologians such as Judith Plaskow determined that the foundation of Judaism was built on an unequal gender hierarchy that devalued and dehumanized women, and therefore we need to look to the future instead of setting our sights on the past.<sup>1</sup> However, other Jewish feminist theologians such as Rachel Adler have suggested that while we do not need to replicate the past, we should not sever our connection to the past in order to create an authentic future.<sup>2</sup> Adler calls this process of acknowledging the past while looking to the future a “reciprocal process,” writing that newcomers must learn the language, and established participants must learn to welcome people as they are.<sup>3</sup>

While these conversations initially were about women, the larger conversation covered how those deemed non-normative by society could fit into a normative structure. Women are the largest group of people who were outcasted by patriarchal society, so it is only natural that the conversation would start with them. As the conversation grew, it expanded to others who were outcast and declared to be non-normative. Just as modern Judaism must adapt to the needs of women, so too much it adapt to the needs of queer and

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<sup>1</sup> Judith Plaskow, *Standing Again at Sinai: Judaism from a Feminist Perspective* (New York: Harper & Row, 1990).

<sup>2</sup> See *Engendering Judaism: An Inclusive Theology and Ethics* (Boston: Beacon Press, 1998).

<sup>3</sup> Rachel Adler, “Queer Jews Talking Their Way In.” *European Judaism* 49, no. 2 (2016): 7.

trans people. Adler suggests two pathways to influence tradition: the first way “is to tell the tradition its own stories in a way it never understood them before” either with a new perspective or uncovering hidden truths;<sup>4</sup> the second way “is to tell stories the tradition does not know at all.”<sup>5</sup> Rather than viewing tradition as a static concept frozen in the past, Adler suggests that “a tradition is fluid if it is alive.”<sup>6</sup> This project aims to keep our tradition alive by adapting it to the needs and realities of trans individuals.

As Jewish feminist theologians started the conversation, Jewish trans theologians have added their voices to the discussion. Max Strassfeld has added academic insight, exploring tradition through textual and historical analysis.<sup>7</sup> Strassfeld specifically studies the *androgynos* in Rabbinic literature, and what insights we can gain from these ancient texts. Strassfeld links current conceptions with ancient texts in a process they call *transing*:

[T]ransing late antiquity grants us new perspectives on the gendered politics of historical narratives. As a part of transing the past, I brought together the rabbis, eighteenth-century historiography, and contemporary politics in a deliberately anachronistic way, in order to reframe gendered narratives about eunuchs and androgynes.<sup>8</sup>

This process of transing acknowledges the difference in how sex/gender was conceptualized in the past, but nonetheless links those conceptualizations to our current understandings. Since sex/gender were “embroiled social categories”<sup>9</sup> of the past, yet are often considered distinct and separate categories today, to “trans” traditional text is automatically anachronistic.<sup>10</sup> While this is true, I believe that any attempt to view ancient text through a

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<sup>4</sup> Adler, “Queer Jews Talking Their Way In,” 9.

<sup>5</sup> Ibid., 11.

<sup>6</sup> Ibid., 7.

<sup>7</sup> See Max Strassfeld, *Trans Talmud: Androgynes and Eunuchs in Rabbinic Literature* (Oakland: University of California Press, 2022).

<sup>8</sup> Ibid., 56.

<sup>9</sup> Ibid., 5.

<sup>10</sup> Ibid., 3.

modern lens is anachronistic; it is just as anachronistic for members of normative groups to read themselves in ancient texts. Differences of sex/gender do not apply to trans people alone. Therefore, trans people reading themselves in the text is as anachronistic as cis people reading themselves in the text. Any possible anachronism should be accepted as inevitable due to the differences in our society and culture across the board, regardless of normative or non-normative identity.

Joy Ladin is another voice in the conversation. Ladin has developed a trans theology that transcends gender, viewing all humans as capable of trans experiences:

[T]ransgender experience is human experience, and questions transgender people face are questions that we all face. Everyone, transgender or not, has to decide what parts of ourselves we will and will not live. ... Few people identify as transgender, but most people have trans experiences: experiences, however brief, of acting in ways that don't fit our usual gender roles. Unlike transgender identities, most trans experiences don't disrupt or challenge the gender binary distinction between male and female. People continue to be seen, and to see themselves, as male or female before, during, and after trans experiences that displace us from our assigned gender roles; we remain men or women, even if we feel like, or become, different *kinds* of men and women.<sup>11</sup>

According to Ladin, trans experience has less to do with trans identities or bodies and more to do with the ability each of us has to transcend society's expectations of us. As all people are capable of trans experiences, and since we are made in the image of God, this new understanding of humanity must therefore shape our understanding of God.<sup>12</sup> While Ladin does not believe the Torah portrays trans people, she believes that the Torah is full of trans experiences.<sup>13</sup> These trans experiences speak not just to trans people, but to the human condition in general.

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<sup>11</sup> Joy Ladin, *The Soul of the Stranger: Reading God and Torah from a Transgender Perspective* (Waltham, Massachusetts: Brandeis University Press, 2019) 7; 34.

<sup>12</sup> Ibid., 8.

<sup>13</sup> Ibid., 35.



While Strassfeld has focused on Rabbinic text and Ladin has focused on Torah, S. J. Crasnow has focused on the sociological aspect of trans Jewry today. Crasnow has written three articles which have influenced my own understandings of trans Judaism.<sup>14</sup>; “‘I Want to Look Transgender’: Anti-Assimilation, Gender Self-Determination, and Confronting White Supremacy in the Creation of a Just Judaism”; “‘Becoming Bodies’: Affect Theory, Transgender Jews, and the Rejection of the Coherent Subject.” Crasnow confronts the dangers of those deemed non-normative assimilating into normative society, while also questioning the “realness” of what is considered normative.

In trans Jews’ efforts to integrate into normative society, Crasnow proposes there are three main approaches: inclusion, reinterpretation, and transformation: “The inclusive approach entails a focus on attaining queer and trans inclusion in religious and spiritual communities; the reinterpetive approach is used by those who reinterpret normative practices and beliefs that may be deemed heterosexist or cissexist, making them unproblematic or even affirming; the transformative approach involves creating new traditions that honor queer and trans Jews.”<sup>15</sup> This project is less focused on inclusion or reinterpretation, instead focusing on transformation.

Additionally, this project adopts a theology of becoming, a theology which challenges the perspective of normative bodies and beings. As Crasnow writes:

I argue instead that the static subject does not exist, and that all bodies are “becoming” bodies. Unlike the narrow usage of “becoming” in dominant narratives about trans people that take normative static identity as the desired

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<sup>14</sup> S. J. Crasnow, “On Transition: Normative Judaism and Trans Innovation,” *Journal of Contemporary Religion* 32, no. 3 (2017): 403-415; “‘Becoming Bodies’: Affect Theory, Transgender Jews, and the Rejection of the Coherent Subject,” *Crosscurrents* 71, no. 1 (2021): 49-62; “‘I Want to Look Transgender’: Anti-Assimilation, Gender Self-Determination, and Confronting White Supremacy in the Creation of a Just Judaism.” *Journal of the American Academy of Religion* 88, no. 4 (2020): 1026–48.

<sup>15</sup> Crasnow, “On Transition,” 405.

point of arrival, I use “becoming” here in a broad sense. ... **While both trans and non-trans bodies are constantly in the process of “becoming,” often it is the trans body that is explicitly marked as the “becoming” body, while non-trans bodies—especially those that are white and non-disabled—are framed simply as “being,” as natural, normal, and static.** One of the central aims of trans theory is to challenge such normative and regulating conceptions.<sup>16</sup>

Therefore, there is no distinction where some people “are” and others “become”—all humans, by nature of being human, are in a constant state of becoming. In the process of becoming, we co-partner with God in the act of self-creation. Since individuals who are deemed non-normative have additional hurdles to overcome in the process of becoming, they are prime examples of the transformative power of this experience; however, the process of becoming is a universal experience that applies to all people.

This theology of becoming is therefore not interested in inclusion. It does not situate trans people as outsiders who must adapt to be accepted into normative society. Rather, it questions the foundation itself, challenging what is considered normative and traditional. The theology of becoming positions all people on the same level, without hierarchy: we are all in the process of becoming.

In transforming our theology, we must also transform how we live out our theology: we must transform the embodied experiences of communal practice and praxis. In looking to our past for guidance without replication, we can forge new pathways of living Jewishly which are both authentic and affirming. In forging new pathways, we create alternatives for non-normative individuals to live Jewishly without compromising who they are. For this purpose, halakhah and ritual are important components of this project.

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<sup>16</sup> Crasnow, “Becoming Bodies,” 49; 50.

As Ronit Irshai writes, when considering trans identity within Judaism, there is often a focus on Orthodoxy and halakhah. This may be because of Orthodoxy's foundation of gender essentialism; however, the Reform and progressive movements have also had to adapt.<sup>17</sup> The Reform Movement has always been ambivalent about halakhah, either ignoring it completely or modifying it to stay relevant.<sup>18</sup> Rather than ignoring it or modifying it, options which only serve to reinforce normative experiences and bodies, this project will consider how creating new halakhah could forge pathways otherwise unavailable to trans Jews. Included in this halakhah are rituals which are specific to the trans Jewish experience.

Following the chapters in this book are a few resources for trans Jews and trans Jewish experiences. Rather than attempting to create a comprehensive compilation, these resources are merely a taste of the possible pathways for trans Jews and their allies. Limited to my own writings or adaptations, it is my hope that these resources might inspire others in creating their own pathways linking their Jewish and trans identities.

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<sup>17</sup> Ronit Irshai, "The construction of gender in halakhic Responsa by the Reform movement: transgender people as a case study," *Journal of Modern Jewish Studies* 18 no. 2 (2019): 162.

<sup>18</sup> Irshai, "Construction of gender," 163.

## ***B'reishit: We Were Created to Create***

“When did it all start?”

The doctor peered at me from behind a clipboard. I sat sideways on the hospital bed, my legs swinging off the side, my dangling feet kicking the air. I rubbed my sweaty palms with my thumbs.

When *did* it all start?

“When I was younger,” I said.

“And it’s continued till now?” he asked. I nodded. “I see...” The doctor scribbled something on his notepad. I held my breath.

I was attempting to get a prescription for testosterone, as part of my gender transition. I searched for months for a doctor willing to prescribe hormones.

He handed me a script and my heart skipped. This was the beginning of something new.

In the beginning, God created heaven and earth.<sup>1</sup>

When I was younger, I learned that there was nothing before God created. Like the big bang, first there was nothing. But then, with intention, words, and action, God brought everything into being.

But in reading Genesis as an adult, I was surprised to find no evidence of “nothing.” And in looking for nothing, instead I found several things.

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<sup>1</sup> Genesis 1:1 “In the beginning God created the heaven and the earth.” (JPS 1917) I use the 1917 version here as this is the one I grew up with. Elsewhere in this piece, the newer JPS translation will be used.

Before God started creating, the earth was *tohu vavohu*, formless and chaotic,<sup>2</sup> with darkness on the surface of the abyss and a wind of God hovering over the waters.<sup>3</sup>

In the beginning there wasn't nothing. In fact, there were many things. There was earth, chaos, darkness, an abyss, wind, and water. There was *tohu vavohu*, a perplexing phrase which I translated as formless and chaotic. Medieval commentator Sforno interprets *tohu vavohu* as the raw materials of the universe in a state of constant shape-shifting.<sup>4</sup> This was the nature of the universe when God began creation: confusing and uncertain.

We have no story of where the darkness or the waters or the abyss come from. We don't know where the unformed earth came from, or why it was chaotic. Our beginning doesn't start with the beginning of *everything*. We start with the beginning of *creation*. In the beginning, God creates, and with each created thing, *ki tov*, God sees that it was good.

In my gender transition I had many beginnings.

Transitioning felt endless. Constantly cycling between coming into myself and coming out to others. When did it start? When would it end?

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<sup>2</sup> BDB definition for *tohu*: “formlessness, confusion, unreality, emptiness;” with “formless” as the primary definition for this verse; BDB definition for *bohu*: “emptiness, wasteness; always with *tohu*.” Jastrow definition for *tohu*: “waste, desolation; vanity, idleness;” Jastrow definition for *bohu*: “chaotic condition; always with *tohu*.” I decided to use the BDB definition for *tohu* and the Jastrow definition for *bohu*, formless and chaotic. In this I am also following Sforno's interpretation of this verse; see footnote 4.

<sup>3</sup> Genesis 1:2 “the earth being unformed and void, with darkness over the surface of the deep and a wind from God sweeping over the water—” (JPS 2006)

<sup>4</sup> Sforno in response to Genesis 1:2, “והארץ היתה תהו ובהו”, “this very center which was created at that time was composed of a mixture of raw materials (מחמר ראשון), known as *tohu*, and its original external appearance (מצורה ראשונה) is what is described as *bohu*... It is described as *tohu* to indicate that at that point it was merely something which had potential, the potential not yet having materialized... The appearance of this primordial raw material is described as *bohu*, any phenomenon that does not retain its appearance for any length of time, and is constantly changing form.”

In the beginning, in its unformed state, the earth was chaotic. There was darkness in the depths and wind on the waters.

What *is* the beginning? I started with the story of my doctor's visit to get testosterone. I didn't start with the story of sitting by myself sobbing in a movie theater, crushed by an unexpected wave of gender dysphoria, feeling like my image didn't match my true gender. The lonely, isolating feeling of crying in a crowd and no one notices. I didn't start with the story of my stomach churning after staring into the mirror and seeing someone else, having to pause and take another look. The unnerving feeling of unease at not recognizing my own reflection. In the beginning, in *my* unformed state, there was chaos; there was confusion; there was darkness.

But our story doesn't start with the beginning of chaos or darkness. We start with the beginning of creation.

There is an oft-cited parable in the midrash Tanna d'Vei Eliyahu. While it is not directly connected to B'reishit, it provides a teaching about creation:

There was a parent with two adult children, whom the parent loved greatly. The parent gave each child a bag of wheat and a bundle of flax. Later, the parent returned home. They saw that one child did nothing with the materials, preserving them as given, and the other created a beautiful bread baked from the flour that was covered in a cloth woven from the flax. Which child made their parent more proud? The one that took the raw materials and created something new.<sup>5</sup>

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<sup>5</sup> This parable appears in Tanna D'vei Eliyahu, Seder Eliyahu Zuta, Chapter 2. While the parable in the midrash is used to justify Mishnah (as creation upon the Torah), I use the parable for its simple message of the goodness of human creation and improvement of raw materials. In the body of the text I changed the language to be gender-neutral and to use a more relatable hierarchy of parent/child rather than king/servant. The original text: "A human king (lit: a king of flesh and blood) had two servants, and he loved them with a great love. And he gave to one a *kab* (a measure) of wheat and to the other *kab* of wheat. And he also gave to each one of them a bundle of flax. The wise one of them took the flax and wove a beautiful cloth, and took the wheat and made it into fine flour, and sifted it, and ground it, and kneaded it, and baked it, and set it on the table, and spread the beautiful cloth over

This parable is an allegory, where the parent represents God and the children represent all of humanity. In the parable, the raw materials are the flour and the flax, which are transformed by human creation. The raw materials are improved in their transformation, becoming both useful and beautiful. While some may think that we are to leave God's gifts of raw materials unchanged, this parable teaches us that God is proud of our creations. In essence, human creation is good.

This parable illustrates a larger teaching from our creation story. God took the *tohu vavohu*, the chaotic raw materials of the universe, and God created. And *ki tov*, it was good.

Combined with creation in Genesis, this parable's message is even stronger. In Genesis 1:27 we learn that humans are created *b'tzelem Elohim*, in the image of God.<sup>6</sup> But what does it mean to be made in the image of God? We know that our God is first and foremost a Creator – the first thing our God does is create. Because we are made in the image of God the Creator, we are godlike in our own ability to create.

Rabbi Joseph Soloveitchik, one of the foremost modern Jewish philosophers, writes that *b'tzelem Elohim* specifically refers to humanity's ability to create: "There is no doubt that the term 'image of God' ... refers to humanity's inner charismatic endowment as a

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it, and left it there until the king should come. And the fool of them did nothing. After some time the king came into his house, and said to them, to his two servants, 'My sons, bring to me what I gave you.' One of them brought out the bread of fine flour, on the table, with the beautiful cloth spread over it. And the other of them brought out the wheat in a pile and the bundle of flax upon it. Woe for that shame! Woe for that disgrace! Which one is more favored? You must admit it is the one who brought out the bread on the table with the beautiful cloth spread over it."

<sup>6</sup> Genesis 1:27 "And God created humankind in the divine image, creating it in the image of God—creating them male and female." (JPS 2006)

creative being. Humanity's likeness to God expresses itself in humanity's striving and ability to become a creator."<sup>7</sup>

But it is not enough to be *able* to create – to have the ability and refrain from creation is to deny the godliness within oneself. In order to fully embody the blessing of *b'tzelem Elohim*, one must take an active role in creation. Any creation brings us closer to God, but the best creation of all is the creation of *self*. Soloveitchik teaches that when a person creates themselves, they cease to be simply human; when a person creates themselves, they become a person of God, fulfilling God's will for them.<sup>8</sup>

Martin Buber, another eminent Jewish philosopher, also interpreted *b'tzelem Elohim* as humanity's ability to create themselves. He wrote, "the first covenant with the lump of clay which the Creator, kneading, and by the breath of God's mouth, imbues with God's own likeness so that it might unfold in a human's life and thus reveal that *not being but becoming is the human's task*."<sup>9</sup> According to Buber, God the Creator makes us *b'tzelem Elohim* so we can undertake the ultimate task not of being ourselves, but *becoming* ourselves. We become ourselves through self-creation.

We are not made to be passive, to take God's gifts and leave them unchanged. We are made to create like God has created. We are meant to create food, and shelter, and art, and

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<sup>7</sup> Joseph Soloveitchik, "The Lonely Man of Faith," *Tradition* 7 no. 2, (1965): 12. Edited for gender neutrality. Original quote: "There is no doubt that the term "image of God" in the first account refers to man's inner charismatic endowment as a creative being. Man's likeness to God expresses itself in man's striving and ability to become a creator."

<sup>8</sup> Joseph Soloveitchik, *Halakhic Man* (Philadelphia: Jewish Publication Society, 1984), 128. Edited for gender-neutrality. Original quote: "When a person creates himself, ceases to be a mere species ('man'), and becomes a man of God, then he has fulfilled that commandment which is implicit in the principle of providence."

<sup>9</sup> Martin Buber, *On Judaism* (New York: Schocken Books, 1996), 112-3. Edited for gender-neutrality. Emphasis mine.



justice, and love. Most of all, we are meant to create ourselves. This is what it means to be *b'tzelem Elohim*.

In the beginning, the earth was still *tohu vavohu*: unformed, clothed in chaos, dressed in darkness. The raw materials of the universe. Amidst the chaos, God shapes and forms and separates and *creates*. And *ki tov*, creation is good. But after God creates human beings, God looks upon this creation which includes humans and sees that it is *tov m'od*, very good.<sup>10</sup> To apply this to ourselves: when we create externally, *ki tov*, it is good, but when we create ourselves, *tov m'od*, it is very good. The best creation is the creation of self.

I've had many beginnings, many creation stories. The first poem I wrote, *tov m'od*. The first time I shaved my head, *tov m'od*. The first time I fell in love, *tov m'od*. The first time I looked in the mirror and saw myself, *tov m'od*.

But our self-creation is not confined to first times. Creation can happen every day. We emphasize the continuous nature of creation in our liturgy. In P'sukei D'zimrah, part of the daily morning prayers, Baruch She'amar begins with, "blessed is the one who *spoke* and the world was; blessed is the one who *makes* creation."<sup>11</sup> The creation of the world was a one-time event in the past, but creation itself is happening now in the present. As it says more clearly in Yotzeir Or, another daily morning prayer: *uvtuvo m'chadeish b'chol yom tamid ma'aseih v'reishit*, in God's goodness God renews the acts of creation every day.<sup>12</sup>

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<sup>10</sup> Genesis 1:31: "And God saw all that had been made, and found it very good. And there was evening and there was morning, the sixth day." (JPS 2006)

<sup>11</sup> ברוך שאמר והיה העולם, ברוך הוא. ברוך עושה בראשית; Koren siddur Lobel Edition pg. 63; Mishkan T'filah (CCAR press) pg. 50.

<sup>12</sup> ובטובו מחדש בכל יום תמיד מעשה בראשית; Koren siddur Lobel Edition pg. 91; Mishkan T'filah (CCAR Press) pg. 60.

Each day we are given the opportunity to start creation anew, and we can start with ourselves. Every piece of art we create, every apology we make, every book we read, every lesson we learn. Each time we grow we engage in self-creation. *Tov m'od*, create yourself and see the great goodness that can follow.

Within each of us is an entire world, perhaps *tohu vavohu*, chaotic and unfinished, confused and full of possibility.

Self-creation is not easy. The act of becoming takes time. To begin to fulfill my potential, I had to first acknowledge the darkness and the chaos. From within the *tohu vavohu* we can form, create, and grow goodness. As we continually mold ourselves, we get closer and closer to our fullest potential, our most authentic selves.

But unlike God, our work will not be finished in a week. The work may feel never-ending. There may be many beginnings. There most likely will be no end. Creation takes time and energy, but it is our destiny in this life: to take our raw materials, and shape and form and separate and *create*. Create something new like the children in the parable. Create something new like God. Create food and shelter and justice and love. Create a self that we can be proud of – a self that God can be proud of.

It is never too late to renew creation; each day is a new opportunity. Although the work will never be finished, may we each reach a day where we can look upon our created selves and see *tov m'od*, it is so very good.

## **The *Androgynos* in Early Rabbinic Literature: An Analysis of Mishnah Bikkurim 4 and Tosefta Bikkurim 2**

Throughout the Mishnah there are mentions of a person called the *androgynos*.<sup>1</sup> The *androgynos* is a social and legal category of people or animals that are unable to be classified as male or female, because they have aspects of both. The longest text written about the *androgynos* in the Mishnah is the chapter of Bikkurim 4, which is entirely about the *androgynos*.

Mishnah Bikkurim 4 is a chapter that perhaps has more questions about it than answers. It is in the tractate of Bikkurim, which outlines the laws of the offerings of the first produce, which is in the book of Zera'im, which outlines agricultural law in general. Zera'im has another section that does not seem to fit the book as a whole, the tractate of Berakhot, which is the very first tractate of the entire Mishnah. It could be argued that Berakhot is less of an introduction to Zera'im than it is an introduction to the Mishnah in general. Bikkurim, the last tractate of the book of Zera'im, might parallel Berakhot, at least in respect to its last chapter. Bikkurim 4, an outline of who the *androgynos* is and what laws *ze*<sup>2</sup> should follow, is in a tractate about first produce sacrifices, in a book about agricultural law.

There is the question of why this section is here in Bikkurim. There is another question, which is: Why is this chapter absent in many editions of the Mishnah? While

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<sup>1</sup> In Jastrow, 81, *androgynos* is merely defined as “hermaphrodite.” In Steinsaltz, 162, it is defined as, “Male and female. A person (or animal) with both male and female reproductive organs. The Sages debated whether such a person was to be given the status of a man or of a woman or was to be considered as a separate, intermediate category (see *Bikkurim*, chapter 4).” See Bibliography for full citations.

<sup>2</sup> I will use gender neutral pronouns for the *androgynos*, which are *ze*/*hir*/*hir*/*hirs*/*hirs*self, which parallel *they*/*them*/*their*/*theirs*/*themselves*. I use this gender-neutral pronoun as opposed to the singular *they* pronoun to more easily distinguish between the singular and the plural and to avoid ambiguity. See Kate Bornstein, *My Gender Workbook*. See footnote 26 in my translation, attached for more information, and see Bibliography for full citation.

looking for this content, I came across editions of the Mishnah that were written with only three chapters of Bikkurim and no mention of its absence. Blackman writes in his introduction to Bikkurim Chapter 4 in his edition of the Mishnah:

The Tractate contains four Chapters, but some editions omit the last one which, in fact, does not form part of the Mishnah at all but is an expanded adaption of Tosefta Bikkurim 2:3. There are actually four different versions of this fourth Chapter each varying in its text considerably from the others. The text here used is the one given in most Mishnayoth editions and some of the more important variant readings are indicated as alternatives in the Notes.<sup>3</sup>

Therefore, this Mishnaic text might not be Mishnaic in origin. On the other hand, Bikkurim 4 is part of the Kaufmann manuscript, which is regarded as the oldest and best complete manuscript of the Mishnah.

The Tosefta is a contemporary text to the Mishnah, and by many is seen as a supplemental text that adds and expands on Mishnaic texts. However, the relationship between the Mishnah and the Tosefta remain unclear, as at times they seem to be in direct conversation with each other, and at other times they seem to be unaware of each other's existence. So while scholarship believes that this chapter of Bikkurim originated in the Tosefta and was later brought to the Mishnah, there is still a lot that is not clear about how the Mishnah and the Tosefta interact with each other.<sup>4</sup>

While the texts are very similar to each other, Mishnah Bikkurim 4 is not an exact copy of the corresponding sections in Tosefta Bikkurim 2. There are some legal categorizations that are different from one another, and they differ in their introduction of the topic of the *androgynos*. I will return to the differences between the versions of this text in the Mishnah and the Tosefta, but for now I will continue with an analysis of the text itself.

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<sup>3</sup> Philip Blackman, *Mishnayoth. Volume I, Order Zeraim* (New York: The Judaica Press, 1965), 463.

<sup>4</sup> Max Strassfeld, *Trans Talmud: Androgynes and Eunuchs in Rabbinic Literature* (Oakland: University of California Press, 2022), 64.

The first time the Mishnah mentions the *androgynos* is earlier in the tractate, in Bikkurim 1:5, where *ze* is mentioned alongside the *tumtum*<sup>5</sup> as a member of society who brings *bikkurim* sacrifices, but makes no recitation on it. After that, there is no mention of the *androgynos* again until the chapter dedicated to *hir* at the end of the tractate. It would make sense for the Mishnah to delineate what is a *tumtum* or *androgynos* here, in a classic Mishnaic style of expounding on whatever point was made previously. One such example of this style of delineation can be seen in Chagigah 1:1, where the Mishnah lists a group of people who are not obligated to make pilgrimage to the Temple. The list includes *tumtum* and *androgynos*, along with other people, such as a minor. And the following sentence asks, “And who is a minor?” and explains what constitutes a minor. We might expect to see such an interruption of “And what is a *tumtum* or *androgynos*?” followed by an explanation of the identities, but none such appear. We cannot know why the text does not explain the *tumtum* and *androgynos*. One would assume that if “minor” warrants an explanation, when presumably most people would understand who a minor is, then certainly *tumtum* and *androgynos* deserve definition.

Instead of explaining what is meant by the *androgynos* when *ze* is first mentioned, the Mishnah waits until the end of the tractate. However, it sets up the introduction of the *androgynos* by offering the example of the *koy*,<sup>6</sup> an animal that the rabbis are unable to classify. Since it appears to be like domesticated animals in some ways, and like wild animals in others, the rabbis do not know which group to put it in.<sup>7</sup> In this text, the rabbis explain the legitimate confusion regarding the classification of the *koy* while also introducing

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<sup>5</sup> A person of indeterminate sex. See footnote 71 for more information.

<sup>6</sup> See Mishnah Bikkurim 2:8, or Tosefta Bikkurim 2:1

<sup>7</sup> Strassfeld calls the *koy* a “hybrid” animal, which mirrors the “hybrid” nature of the *androgynos*. *Trans Talmud*, 68.

the structure that Bikkurim Chapter 4 will ultimately follow as well. The structure and details are set up as such: The *koy* in ways is similar to a wild animal, in ways is similar to a domestic animal, in ways is similar to both, and in ways is similar to neither. Then, each following section goes into greater detail about each categorization in the order that they are mentioned; ie, the *koy* is similar to a wild animal because..., the *koy* is similar to a domestic animal because..., etc.

This section is at the end of Chapter 2 in the Mishnah, and has an entire chapter in between it and Chapter 4, where we meet the *androginos*. However, it begins Chapter 2 in the Tosefta, and is the introduction to the section with the *androginos*. This comparison between the *koy* and the *androginos* sets up the text structurally and thematically, first by introducing the precedent for the rabbis to be unable to halachically determine the status of something, and then by showing how such a case might be evaluated.

The text on the *androginos* begins the same as the text on the *koy*; it writes that the *androginos* is in some ways similar to men, is in some ways similar to women, is in some ways similar to both men and women, and is in some ways not similar to either men or women. This structure makes the most sense in the Tosefta version, as it directly follows the example of the *koy*. In the Tosefta, when the *androginos* is introduced, we are already expecting then the same structure, whereas in the Mishnah the material in between the two makes this section seem more random than in the Tosefta.

In both versions, the text continues to explain the ways the *androginos* is similar to men and women, and the ways that ze is different. As a reader being introduced to the concept of a person being a gender other than male or female, I would definitely expect to see an explanation of what an *androginos* person is. What makes a person *androginos*, how

is the condition diagnosed? How are we to know who is and who is not *androgynos*? In what ways are *tumtum* and *androgynos* similar or different from each other?

The text does not go into these questions or categorizations. The text is written as if it is assuming that the reader already knows *what* an *androgynos* is, but does not know *how* an *androgynos* follows the laws of society. Like in the beginning of the book of Zera'im with Berakhot, we are not told *what* the Shema is, only *how* one is to observe the law of reciting it. As a result, the text does not serve as a tool to diagnose who fits into the category of *androgynos*.

Therefore, the text lists the ways in which the *androgynos* can observe Jewish laws and customs. It first lists the laws for men that also apply to the *androgynos*, then it lists the laws for women that also apply to the *androgynos*, followed by laws that are for both men and women that apply to the *androgynos*, and lastly it concludes with laws for men and women that do not apply to the *androgynos*.

The laws it lists are primarily concerned with purity and social/legal status. With regard to purity, it notes that the *androgynos* can become impure in two ways: either through white fluid, like men, or through red fluid, like women. The reason why this is listed is because although a woman might have a white discharge, or a man might have a red discharge, these will not render them impure, because the discharge laws in the Bible are gender-specific. Therefore, only white discharges render men unclean, and only red discharge renders women unclean. Because of this, the rabbis are asking: for a person who is neither male nor female, which discharge would leave hir unclean? In the cases of purity for the *androgynos*, the rabbis rule in the most stringent way possible. Therefore, the *androgynos* is rendered impure through *either* white substance *or* red substance, while men and women

are only rendered unclean through one. These are listed separately (in the section for men, and in the section for women), along with the other stringencies, to emphasize that the case of *each* men and women applies to the *androgynos*, rather than the case for *both* men and women.

Other examples of laws of purity regarding the *androgynos* are: the exemption of liability of the *androgynos* from entering the temple while impure, as it is assumed they are in a constant state of impurity; the prohibition of becoming unclean for the sake of the dead (if a priest, as would be the duty of a male priest only); the prohibition of eating the holy sacrifices at the temple (like women); and the obligation of the mother to sit in a period of blood impurity after hir death, which is also a stringency which is mentioned in the section of laws for men, as well as the section of laws for women.

The mother's period of blood impurity is one of the sections that was different in the Tosefta's version and the Mishnah's version. In the Tosefta, this section is put in the third section, the section for ways that the *androgynos* is similar to men and women. It lists simply, "hir mother sits in blood impurity on hir account [after birth] like with men and like with women, and she brings for hir a sacrifice [after hir birth] like with [the birth of] men and like with [the birth of] women."<sup>8</sup> In the Mishnah, the part about the sacrifice offered after birth is listed in the section for men and women, as in the Tosefta, but the first part about the period of blood impurity is split up and put in the section for men and in the section for women.

If the Tosefta's version was written first and adopted for the Mishnah, then why did the Mishnaic redactors decide to separate this line in the Tosefta, and to repeat the first part in two sections? It could be that it was separated to emphasize that the period of blood

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<sup>8</sup> See my translation, Tosefta Bikkurim 2:5, attached.



impurity is *both* the period of women *plus* the period of men; ie, a mother is impure for 99 days<sup>9</sup> after giving birth to an *androgynos*. Or, it could be that the Mishnah reflects an earlier version than the one in our Tosefta, and our Tosefta version has simplified the Mishnah by putting these parts together.

Another stringency, a law which is mentioned in more than one section, is a law regarding the *androgynos*'s ability to be alone with other people. In this case, as with the other stringencies, when one gender has a prohibition on one thing, and one gender has a prohibition on another thing, the *androgynos* has a prohibition on *both*. Men are prohibited from being alone with women, and women are prohibited from being alone with men, and therefore the *androgynos* is prohibited from being alone with both men and women. It seems that the rabbis were afraid of the *androgynos* being in a position where ze may be mistaken for either male or female, and thus they cannot allow hir to do something that neither a man nor a woman would be able to do.

Despite this confusion about the status of the *androgynos*, it seems to have been understood that the *androgynos* should not be alone, as evidenced in hir ability to marry. Perhaps the basis for this comes from the story of creation, where God notices that Adam is alone, and remarks that it is not good for humans to be alone.<sup>10</sup> Or, it could be because of the practicality of it: if an *androgynos* cannot be alone with men or women, and ze cannot marry, then ze would be unable to participate in social life at all. Ze would be completely constrained to the house of hir parents, unable to leave without a chaperone. However, if ze can get married, then ze can be in the public sphere, provided that ze is with hir partner.

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<sup>9</sup> See footnotes 31 and 43 in my translations, attached. The period of blood impurity is 33 days for a male baby and 66 days for a female baby.

<sup>10</sup> See Genesis 2:18.

However, although it is understood that the *androgynos* being alone would produce more problems than solutions, it is still a halakhic question of what gender would an *androgynos* marry. The rabbis decide that the *androgynos* can take a wife, but cannot be taken as a wife. If I were a rabbi of the Mishnah considering how to deal with the *androgynos* in terms of marriage, I might consider the implications of the *androgynos* being an infertile person, and how might that factor into hir future partnership, especially given that a marriage could be broken up if it resulted in infertility.<sup>11</sup> As the commandment to be fruitful and multiply falls on the man and not the woman,<sup>12</sup> and many of these laws provided for the *androgynos* are based in Biblical law,<sup>13</sup> this could be the reasoning provided for explanation as to why an *androgynos* can marry a woman, but not a man. If ze marries a woman, and the commandment to be fruitful and multiply falls on the man, and neither of them is a man, then neither of them is transgressing the commandment by being unable to produce children with each other. However, if ze marries a man, and the commandment to be fruitful and multiply falls on the man, and the man knows that the *androgynos* is infertile, then the man knows that in ten years they will have to divorce so he can fulfill the commandment with someone else.

However, even though this ruling could be explained through the connection to fertility, there is no explanation given as to its reasoning, and it is more likely to be connected to the issue of homosexuality. If the *androgynos* is both a man and a woman, and there is a clear Biblical prohibition on homosexuality with regard to two men but no such Biblical prohibition on homosexuality with regard to two women, and the rabbis did not believe the answer was to isolate this person by not allowing hir to marry or be in the public

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<sup>11</sup> See Mishnah Yevamot 6:6; after a period of 10 years, a husband should divorce his wife, so he can remarry to attempt to fulfill the mitzvah of “be fruitful and multiply.”

<sup>12</sup> Ibid.; states that the mitzvah of “be fruitful and multiply” falls on the man, but not the woman.

<sup>13</sup> See footnotes of my translation attached for a list of Biblical references.

sphere, then the only solution left was to allow hir to marry women, as this was the less problematic option.

While the chapter seems primarily focused on the ways the *androgynos* can become impure and the activities or obligations they are disqualified or prohibited from, it also includes ways in which the *androgynos* has basic human rights. If an *androgynos* is like a man and a woman, then, as shown in the text, the legal issues arise when laws differ between men and women. Laws that apply to both men and women, such as the rights to receive an inheritance, to not be beaten or cursed, to not be killed, to not incur damages without compensation, all apply to the *androgynos* as well.

While the rabbis were strict with the *androgynos*, it was due to hir doubtful purity and hir questionable halakhic status. The rabbis, upon seeing someone who might fit into an “either/or” category in terms of a binary gender dichotomy, instead of choosing a gender for hir, put hir in a separate category altogether. This, in some ways, enforced extra laws on the *androgynos*, as ze had to follow all the laws of men *and* all the laws of women. However, as shown with this section including the ways that *androgynos* are subject to receive civil rights, the rabbis were not coming from a place of hatred toward this individual. Directly alongside the stringencies on the *androgynos* are ways that ze is protected, just like everyone else.

Are the rabbis predicting that a halakhic outcast might be subject to social stigma, and perhaps, consequentially, violence? Or might they be responding to such cases already present in society? Interestingly, at the end of this third section, which had introduced the civil rights of the *androgynos*, there is a statement of validation of the unique status of the *androgynos*, and perhaps a note of humor. “[And if someone] says, ‘I will become a Nazirite

if this is [both] a man and a woman!” Behold! he becomes a Nazirite.”<sup>14</sup> This concluding line of this segment seems to be saying, “If anyone wants to doubt the unique halakhic status of the *androgynos*, be warned: you may inadvertently commit yourself to a vow!” This line structurally and thematically mirrors the ending of the example of the *koy* in Mishnah Bikkurim 2:11. In both examples, it is used to validate the object in question’s inability to be halakhically categorized into a binary.

The chapter ends with the discussion of how the *androgynos* is not similar to men or women. The text has an understanding that if  $x$  is both  $y$  and  $z$ , then that means  $x = yz$ ,  $yz$  being something which is neither  $y$  nor  $z$ . While an *androgynos* has similarities to men, the fact that ze also has similarities to women makes it so ze cannot fit into the category of male, and vice versa. Therefore, ze ultimately cannot fit into either category. Because of that, there are exceptions and prohibitions related to the *androgynos*, especially related to hir doubtful state of purity (or assumed state of impurity, due to heavier restrictions), and hir inability to be categorized as male or female (and thus unable to be valuated or sold as a slave, because there would be no rubric with which to measure hir).

This last section also has the line about a doubting passerby taking a Nazirite vow, this time regarding the *androgynos*’s status as neither a man nor a woman. This connection to the previous section emphasizes that in the case of the *androgynos*, “both” is also “neither.” However, this section contains an extra comment, “Rabbi Yose says, “An *androgynos* is a being [unique] unto himself, and the sages cannot determine if ze is a man or a woman, but it is not so with a *tumtum*, [because] sometimes ze is a man, [and] sometimes ze is a woman.”<sup>15</sup> This statement serves two functions: it further validates the unique halakhic status of the

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<sup>14</sup> Mishnah Bikkurim 4:3, see my translation attached.

<sup>15</sup> Mishnah Bikkurim 4:4, see my translation attached.

*androgynos*, and it differentiates between the *androgynos* and the *tumtum*. According to Rabbi Yose, a *tumtum* is someone who, in actuality, *does* fit into the binary gender dichotomy, but his gender is somehow obscured, so it is not possible to determine for certain which category they fit in. However, they can still be assigned a gender: a *tumtum* might be declared to be a doubtful woman, or a doubtful man, while such a thing is impossible of the *androgynos*.

While there are many ways that someone might be born physiologically “in-between” genders, the rabbis seem to be making a distinction between either “female with doubtful genitalia” or “male with doubtful genitalia,” and “person with both male and female genitalia.” The rabbis distinguish between “parts missing” and “parts added,” the former being *tumtum* and the latter being *androgynos*, and they appear to be more concerned with the *androgynos*.

*Tumtum* and *androgynos* do not just apply to humans. Animals can be *tumtum* or *androgynos* as well, and they share exemptions and prohibitions alongside their human counterparts. In Bekhorot 6:12 the Mishnah says *tumtum* and *androgynos* animals are not fit to be used as sacrifices. The Mishnah lists all of the animals that are not fit to be slaughtered as a sacrifice, listing animals with all sorts of blemishes, disabilities, etc., and ends with *tumtum* and *androgynos*, after which Rabbi Yishmael says, “There is no greater blemish than this.”<sup>16</sup> Presumably, Rabbi Yishmael is talking about *androgynos*, as that was the last trait to be mentioned. The sages respond that it does not count as a first born (due to its blemish), and therefore it can be used for work.

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<sup>16</sup> Mishnah Bekhorot 6:12, see my translation attached.

In the 13 examples I found of the *androgynos* in the Mishnah outside of Bikkurim 4, five<sup>17</sup> of them discuss the *androgynos* in terms of prohibitions or exclusions, two<sup>18</sup> of them discuss the *androgynos* in terms of exemptions, three<sup>19</sup> of them discuss the *androgynos* in terms of inclusions and exclusions, two<sup>20</sup> of them discuss the *androgynos* in terms of laws that are neither inclusionary nor exclusionary, and only one<sup>21</sup> of them discusses the *androgynos* in terms of inclusions. However, the one case that discusses the *androgynos* in an inclusionary manner is not to be discounted: in Nazir 2:7, in discussing someone taking the Nazirite oath, an example is given on an oath taken on one's unborn child. If someone says, "I will become a Nazirite if I have a son," and that person has a daughter or *androgynos*, then that person does not become a Nazirite. But if someone says, "I will become a Nazirite if I have a child," then even if one's child is *androgynos*, that person will become a Nazirite. In this simple passage, couched in legality about the Nazirite's oath, the rabbis are declaring that an *androgynos* child is still a child.

The rabbis' primary concern was purity, and therefore their primary focus with regard to the *androgynos* were ways that his assumed lack of purity affected his legal status.

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<sup>17</sup> Yevamot 8:6, *androgynos* is prohibited from eating *t'rumah*, and passes it on to his wife; Bekhorot 6:12, an *androgynos* animal cannot be used for sacrifice; Parah 5:4, R. Yehuda says *androgynos* are unfit to sanctify; Parah 12:10, *androgynos* are unfit to sanctify; Temurah 2:3, *androgynos* cannot be sanctified nor sanctify others.

<sup>18</sup> Chagigah 1:1, *androgynos* is exempt from the obligation of seeing the Temple; Temurah 5:2, newborn *androgynos* animals are exempt from being dedicated as a sacrifice.

<sup>19</sup> Shabbat 19:3, the general opinion is that *androgynos* cannot be circumcised on Shabbat, but Rabbi Yehuda permits it; Bikkurim 1:5, *androgynos* bring the offerings, but do not make a recitation on them; Arakhin 1:1, *androgynos* are fit to evaluate others, but are not fit to be evaluated.

<sup>20</sup> Niddah 3:5, how long a mother sits for blood impurity if she miscarries an *androgynos*; Zavim 2:1, *androgynos* are considered to be impure in the ways of men and women, and thus have doubtful purity.

<sup>21</sup> Nazir 2:7, if a man says, "I will be a Nazirite when I have a son," then he has a daughter, a *tumtum*, or an *androgynos*, then he is not a Nazirite. If he says, "I will be a Nazirite when I have a child," and he has a daughter, a *tumtum*, or an *androgynos*, then he will become a Nazirite.

However, outside of the aspects of legality or purity, the texts can show a level of inclusion and acceptance that many would find to be progressive by today's standards.

In a conversation with Tamar Ross on gender and religion, Judith Plaskow argues that modern society has something we can learn from the rabbis of the Mishnah. She writes:

Human sexuality is a continuum, on which certain chromosomal, anatomical and gonadal configurations that we think of as the only ones represent the two ends. Yet the medical practice of classifying intersex children as male or female at birth and performing infant surgery to "correct" their unusual genitals suggests that, as a society, we would rather remake the human body in the image of our beliefs about gender than confront the multiplicity of human sexualities. Surely, the refusal to acknowledge intersexuality and the efforts to render it invisible illustrate the extent to which the process of labeling someone male or female is partly a social decision. I think it is interesting that the rabbis were ahead of contemporary Western culture in recognizing the existence of persons who challenged their binary system. While they struggled mightily to fit the *tumtum* and especially the *androgynus* into the framework of gender dualism, they were at least willing to think about the bodies of persons who threatened their gendered universe.<sup>22</sup>

According to Plaskow, the fact that the rabbis were willing to even name such deviant individuals is more progressive than our society's response to biological gender deviances, which responds by trying to erase them. Earlier in her statement, she writes, "Having created a segregated and hierarchical gender system, the rabbis were fascinated by the idea that there might be individuals whose bodies present different and ambiguous gender possibilities."<sup>23</sup> Whether they were fascinated or concerned is perhaps a matter of opinion, but I see the rabbis as practical people who saw a problem, and wanted to create a framework to fix such problems.

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<sup>22</sup> Judith Plaskow and Tamar Ross, "The View From Here: Gender Theory and Gendered Realities: An Exchange between Tamar Ross and Judith Plaskow," *Nashim: A Journal of Jewish Women's Studies & Gender Issues*, no. 13 (2007): 230.

<sup>23</sup> *Ibid.*, 212.

In various scholarship discussing the *androgynos*, the very last line attributed to Rabbi Yose is what is sure to be quoted. Judith Plaskow mentions it, as does Judith Rosen-Berry, who writes, “At the end of Mishnah Bikkurim Rabbi Yosi makes the radical statement that the אנדרוגינוס (*androgynos*) is actually בריה בפני עצמה הוא (he is a created being of her own). This Hebrew phrase blends male and female pronouns to express poetically the complexity of androgynos identity.”<sup>24</sup> This concluding statement by Rabbi Yose could be declaring the authority of the rabbis and their decision to render this individual as halakhically ambiguous, but regardless of motive behind its declaration, it serves as a strong validation of the naturalness of the *androgynos*. The Hebrew word used for “being” or “creature” is בריה, which comes from the root ב.ר.א, the root for creation. This act of creation is specifically biblical, and the use of this word connects the *androgynos* to the story of creation. By saying the *androgynos* is a unique creation, Rabbi Yose is declaring that the *androgynos* is also made in the image of God. With this connection to the act of creation, Rabbi Yose is comparing the *androgynos* to all of the many varied things that God has created, in, if not an expression of wonder, then certainly one of awe.

Whether this chapter on the *androgynos* originated in the Tosefta or had an earlier Mishnaic counterpart, the *androgynos* clearly posed problems that the rabbis were thinking about and trying to find solutions for. When faced with someone of ambiguous gender, instead of trying to erase, fix, or exile the *androgynos*, the rabbis instead find a way to fit him into their complex legal system. While this necessitated harsher stringencies put upon the *androgynos*, it could still be seen as an inclusionary practice, as it was an attempt to keep

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<sup>24</sup> Judith Rosen-Berry, “Revealing Hidden Aspects of Divinity in the ‘Queer’ Face: Towards a Jewish ‘Queer’ (Liberation) Theology,” *European Judaism: A Journal for the New Europe* 41, no. 2 (2008): 143-144.



these people as integrated members of society. Furthermore, this last statement by Rabbi Yose solidifies the *androgynos* as unique beings of God's creation, just like every living creature; therefore ze is not a mistake, but a being created according to God's will, and in God's image. While many would not want to institute a legal system which was harsher on members of society who were different, modern societies could still learn a lot when it comes to the ancient rabbis' acceptance of the naturalness present in variations in biological gender.

## TRANSLATIONS

### MISHNAH BIKKURIM 4

1. An *androgynos*<sup>25</sup> has in hir<sup>26</sup> ways similar to men, and has in hir ways similar to women, and has in hir ways similar to [both]<sup>27</sup> men and women, and has in hir ways that are not similar to [either] men or women.
2. How is [an *androgynos*] similar to men? Ze becomes unclean through white substance<sup>28</sup> like men;<sup>29</sup> ze dresses himself like men; ze marries, but may not be married,<sup>30</sup> like men; hir mother sits for blood purity on hir account [after birth],<sup>31</sup> like with men;<sup>32</sup> ze may not be alone with women, like men; ze is not supported<sup>33</sup> with the daughters, like men; ze does not round [the corners of their head], and ze does not mar [the corners of their beard],<sup>34</sup> and ze does not become impure for the sake of the dead,<sup>35</sup> like men; and ze has an obligation<sup>36</sup> for all of the commandments that are said in the Torah, like men.

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<sup>25</sup> In Jastrow, 81, *androgynos* is merely defined as “hermaphrodite.” In Steinsaltz 162, it is defined as, “Male and female. A person (or animal) with both male and female reproductive organs. The Sages debated whether such a person was to be given the status of a man or of a woman or was to be considered as a separate, intermediate category (see *Bikkurim*, chapter 4).” See Bibliography for full citations.

<sup>26</sup> In my translation, I use a gender-neutral pronoun for the *androgynos*. In the Hebrew, it uses the masculine הוּא, but the text is enumerating ways in which these people are unable to be categorized into a gender binary. As no gender-neutral pronoun existed in Hebrew, I do not believe the masculine הוּא can be translated into the English “he,” especially as English has developed gender-neutral alternatives. To convey that the rabbis did not intend this person to be classified as male, I will use the pronouns ze/hir/hir/hirs/hirself. I use these pronouns instead of the more commonly used singular they in order to avoid ambiguity and more easily distinguish between singular and plural. See Kate Bornstein, *My Gender Workbook*.

<sup>27</sup> Words in brackets are not represented in the Hebrew text used, but are implied based on context and my understanding of the text.

<sup>28</sup> semen; see Jastrow, 694.

<sup>29</sup> See Lev. 15:2;16.

<sup>30</sup> ie; the androgynos can marry a woman, but cannot marry a man.

<sup>31</sup> ie; she is unclean for 33 days instead of 66 after giving birth to an *androgynos*. See Blackman’s notes in his edition of Mishnah Zeraim, 484.

<sup>32</sup> See Lev. 12:4-5.

<sup>33</sup> See Jastrow, 387: “to be fed, sustained. Ex: Gittin 12b, מִן הַצִּדְקָה ‘must be supported from the public charity.’”

<sup>34</sup> See Lev. 19:27.

<sup>35</sup> See Lev. 21:1.

<sup>36</sup> See Jastrow, 454.

3. How is [an *androgynos*] similar to women? Ze becomes unclean through red substance<sup>37</sup> like women;<sup>38</sup> ze may not be alone with men, like women; ze is not obligated to levirate marriage,<sup>39</sup> like women;<sup>40</sup> ze does not receive inheritance<sup>41</sup> with the sons, like women; ze cannot eat the holy sacrifices of the temple, like women;<sup>42</sup> hir mother sits in blood impurity on hir account [after birth] like with women;<sup>43</sup> ze is exempt from giving testimony, like women; and if ze had unlawful intercourse, ze is disqualified from [eating] *t'rumah*,<sup>44</sup> like women.
4. How is [an *androgynos*] similar to [both] men and women? Guilty are those who strike<sup>45</sup> hir and curse<sup>46</sup> hir,<sup>47</sup> like men and women;<sup>48</sup> one who kills hir unwittingly<sup>49</sup> is exiled,<sup>50</sup> and [if with] evil intention<sup>51</sup> is put to death, like with men and women;<sup>52</sup> hir mother brings for hir a sacrifice [after their birth] like with [the birth of] men and women; ze eats the qualified<sup>53</sup> sacrifices, like men and like women;<sup>54</sup> ze inherits<sup>55</sup> in all the inheritances like men and like women.<sup>56</sup> [And if someone] says, "I will become a Nazirite if this is [both] a man and a woman!" Behold! he becomes a Nazirite.<sup>57</sup>

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<sup>37</sup> Menstruation. "Opposite לִוְיָן, white sticky substance"; "red (blood) discharge"; see Jastrow, 22.

<sup>38</sup> See Lev. 15:19.

<sup>39</sup> See Jastrow, 561.

<sup>40</sup> See Dt. 25:5-10.

<sup>41</sup> "Take their share" – See Jastrow, 474.

<sup>42</sup> See Lev. 6:11.

<sup>43</sup> ie; she is unclean for 66 days after giving birth instead of 33 days. Compare to the mishnah before it, which says the mother will be unclean for 33 days.

<sup>44</sup> The priest's share of the crop, see Jastrow, 1696.

<sup>45</sup> See Jastrow, 910.

<sup>46</sup> See Jastrow, 1377.

<sup>47</sup> See Ex. 21:15;17.

<sup>48</sup> This introduces ways in which laws applicable to both men and women are also applicable to an *androgynos*.

<sup>49</sup> See Jastrow, 152.

<sup>50</sup> See Jastrow, 247.

<sup>51</sup> See Jastrow, 391.

<sup>52</sup> See Ex. 21:12-14.

<sup>53</sup> See Jastrow, 204.

<sup>54</sup> ie; the sacrifices that both men and women are allowed to eat.

<sup>55</sup> See Jastrow, 894.

<sup>56</sup> In cases where a woman inherits, the *androgynos* also inherits; in cases where a man inherits, the *androgynos* also inherits.

<sup>57</sup> This last line is only in some editions of this text.

5. How is [an *androgynos*] not similar to men and women? People do not burn<sup>58</sup> *t'rumah* on account of the impurity of hir discharge,<sup>59</sup> and ze is not liable for the entering of the temple [while impure], [due to hir constant state of impurity, on account of hir discharge],<sup>60</sup> unlike men and women;<sup>61</sup> ze is unable to be subject to valuation,<sup>62</sup> unlike men and unlike women;<sup>63</sup> ze cannot be sold as a Hebrew slave, unlike men and unlike women; and if someone said, “I will become<sup>64</sup> a Nazirite if this is not a man and not a woman!” Behold! he becomes a Nazirite. Rabbi Yose says, “An *androgynos* is a being<sup>65</sup> [unique] unto himself,<sup>66</sup> and the sages cannot determine if ze is a man or a woman, but it is not so with a *tumtum*,<sup>67</sup> [because] sometimes ze<sup>68</sup> is a man, [and] sometimes ze<sup>69</sup> is a woman.<sup>70</sup>”

#### MISHNAH BEKHOROT 6:12

The following [animals] are not slaughtered on the altars, neither in the temple nor in the region: ... *tumtum*, and *androgynos*, not in the temple, and not in the region. Rabbi Yishmael

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<sup>58</sup> See Jastrow, 1632.

<sup>59</sup> Also *gonorrhœa, protracted menstruation*; see Jastrow, 390.

<sup>60</sup> These two statements are separated with a comma instead of a semi-colon as with the other examples, so we can see that they are linked in a more direct way than the others. Therefore, I have applied the case of the impurity of the discharge to both statements.

<sup>61</sup> Notice the first use of “unlike men and women,” which is absent from our first example, but will appear in all of the following examples.

<sup>62</sup> See Jastrow, 1118.

<sup>63</sup> See Lev. 27:2-4.

<sup>64</sup> See Jastrow, 367.

<sup>65</sup> See Jastrow, 193.

<sup>66</sup> The Hebrew here says *עצמה הוא*, which more explicitly illustrates the nonbinary nature of the *androgynos*, as the Hebrew uses both the feminine form in *עצמה* and the masculine form in *הוא*.

<sup>67</sup> See Jastrow, 524: *a person whose genitals are hidden, or undeveloped; one whose sex is unknown.*

<sup>68</sup> The *tumtum*.

<sup>69</sup> The Hebrew here is still *הוא*, which supports my translation of *הוא* to a gender-neutral, as it is not expected that the rabbis were intending to say “he is a woman.” The fact that the pronoun was not switched to *היא* at this point indicates that *הוא* was not meant to indicate maleness.

<sup>70</sup> Rabbi Yose is distinguishing the difference between an *androgynos* and a *tumtum*. A *tumtum* is seen as someone who is potentially male or female, but whose sex is unable to be determined. In Jastrow, 524 we see an example: “B. Bath. 126<sup>b</sup> שנקרע וכי' *tumtum* who was operated upon and was found to be a male.” Therefore, whereas a *tumtum* is seen as someone who is truly a male or a female whose gender cannot be determined, an *androgynos* is a separate category that is truly neither and also both.

says, “There is no greater blemish than this.”<sup>71</sup> The sages say, “It is not a first born, therefore it can be sheared<sup>72</sup> and worked.”

#### TOSEFTA BIKKURIM 2:1-6

1. A koy<sup>73</sup>— how is it similar to beasts? Its blood is required to be covered<sup>74</sup> like that of beasts. Rabbi Eliezer says, “People are liable upon [the prohibition of eating] its fat,<sup>75</sup> [which, if transgressed, requires] a conditional sacrifice.<sup>76</sup> How is it similar to beasts, and similar to cattle? If it is flayed, it remains connected, like beast or cattle. It follows the custom of [not eating] the sciatic nerve like beasts and cattle. If someone says, “I will be a Nazirite if this is [both] beast and cattle!” Rabbi Yose says, “A koy is a creature [unique] to itself, and the sages cannot decide upon it if [it is] beast, or if it is cattle.
2. An *androgynos* has in hir ways similar to men; ze has in hir ways that are similar to women; ze has in hir ways that are similar to men and women; and ze has in hir ways that are not similar to men and not similar to women.
3. The ways that ze is similar to men: ze becomes impure through white substance like men; ze marries but is not taken in marriage, like men; ze cannot be alone with women, like men; ze is not supported [by hir father’s estate] with the daughters, like men; ze does not become impure for the sake of the dead, like men; ze does not round [the corners of hir head] or mar [the corners of hir beard] like men; ze is obligated on all of the commandments and teachings in the Torah, like men.
4. The ways that ze is similar to women: Ze becomes impure through the red substance, like women; ze cannot be alone with men, like women; ze is not obligated to levirate marriage, like women; ze does not receive inheritance with the sons, like women; ze does not take part in the holy sacrifices, like women; ze is disqualified from [the requirement

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<sup>71</sup> Ostensibly meaning *androgynos*, because it was the last one to be listed.

<sup>72</sup> See Jastrow, 229.

<sup>73</sup> Probably a kind of bearded deer or antelope; the rabbis leave it undecided as to whether it is cattle *בְּהֵמָה* or beast *חַיָּה*; see Jastrow, 618-619.

<sup>74</sup> See Lev. 17:13: “And if any Israelite or any stranger who resides among them hunts down an animal or a bird that may be eaten, he shall pour out its blood and cover it with earth.”

<sup>75</sup> Defined in Jastrow, 464: “*that abdominal fat of cattle which it is forbidden to eat*”; see Lev. 3:17.

<sup>76</sup> See Mishnah Keritot 3:1 for an expansion on the prohibition of eating fat, and the details of the “conditional sacrifice,” the *אשם תלוי*.

of] testimony that is in the Torah, like women; if ze has unlawful intercourse, ze is disqualified from the priesthood, like women.

5. The ways that ze is similar to men and women: People are liable for damages incurred on hir; the one who kills hir willfully is killed, and [if] unintentionally is exiled to the refuge cities; hir mother sits in blood impurity on hir account [after birth] like with men and like with women,<sup>77</sup> and she brings for hir a sacrifice [after hir birth] like with [the birth of] men and like with [the birth of] women; ze inherits all of the inheritances like men and like women; ze eats the qualified sacrifices, like men and like women; and if someone said, “I will become a Nazirite if this is a man and a woman,” Behold! he becomes a Nazirite.
6. The ways that ze is not similar to men and not similar to women: People are not obligated on behalf of hir sin; people do not burn [an offering] on account of hir uncleanness; ze is unable to be subject to valuation, unlike men and unlike women; ze cannot be sold to be a Hebrew slave, unlike men and unlike women; if someone says, “I will become a Nazirite if this is not a man and [not] a woman,” Behold! he becomes a Nazirite. Rabbi Yose says, “An *androgynos* is a being [unique] until himself, and the sages cannot determine about hir, if ze is a man or if ze is a woman. But it is not the same with a *tumtum*, rather [in the case of the *tumtum*, it is] either a doubtful<sup>78</sup> man, or a doubtful woman.

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<sup>77</sup> Here the period of time the mother is in a state of impurity seems to be the time period for male babies plus the time period for female babies.

<sup>78</sup> See Jastrow, 1016.

**Reclaiming *B'tzelem Elohim*:  
A Foundational Trans Theology**

Do I contradict myself?  
Very well then I contradict myself,  
(I am large, I contain multitudes.)  
--Walt Whitman<sup>1</sup>

A number of years ago, I was walking somewhere when a brown Oldsmobile passed and a deep voice yelled, “Faggot!” I looked around. There was no one else on the sidewalk. Was I the faggot?

One would think my immediate reaction would be anger, but truthfully I wasn’t sure how I felt. On the one hand, it never felt good to have homophobic slurs shouted at you, something I had already experienced more than my fair share of. On the other hand, until this point I had exclusively been called “dyke”; this was ostensibly the first time a stranger gendered me as male.

While the borders between male and female felt so far away, the border between dyke and faggot felt permeable. Was I being punished for expressing femininity or masculinity? Did it matter?

In 2015 in California, there was no requirement for doctors or insurance to provide trans healthcare. After exhausting all other possibilities, I called Planned Parenthood and asked if they could help me get a script for hormones. The person on the other end laughed, a deep, genuine laugh, before saying (as if I should have known), “We don’t do that.” When I asked if they could refer me to someone who could, the only response I got was, “No.” I

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<sup>1</sup> Walt Whitman, “Song of Myself,” *Leaves of Grass* (New York: Penguin Books, 2005), 51.

couldn't find a way to get the medical care I needed. My friends all paid out of pocket, but I couldn't afford that.

Without hormones, I was struggling to be read as male. Chest-binding, men's clothing, and a guy's haircut wasn't cutting it. With feminism's fight for variation in gender expression, women have been given more and more opportunity to express masculine and butch gender expressions. This has given many women range to express their masculinity, but it also has had the unintended result of making it difficult (if not impossible) to distinguish between butch women and transmasculine people who have not taken hormones.

Nothing felt worse than going to the local queer club, looking as masculine as I could, only to be called a "stud" or a "butch." Before coming out as trans, I used to be high-femme. I figured if I had to be female, I may as well have fun with it. The next time I went to the club, I had a bound chest, men's clothing, men's haircut, and a full face of make-up. No one called me a stud or a butch. After all, what butch wears make-up? I had everyone thinking I was a cute young twink, up until I opened my mouth. How was it possible? The thing that gendered me male was some lipstick and mascara.

I moved to Minneapolis, partly for work, partly for Jewish community, and partly for trans healthcare. It was there I fully developed my trans Jewish identity. I joined a local synagogue that was known for being LGBTQ-friendly. The rabbi introduced himself and asked me, "What pronouns do you use?" My body went cold. I felt so seen, it was uncomfortable. It was as if a spotlight from the heavens shone down on me, and I was the only thing to be seen. I suddenly became very aware of my body and its position in space. "He/him or they/them," I told him, my voice sounding like someone else's in my mouth. He



asked me, had I read *Balancing on the Mechitza*? I told him I hadn't. He said he hadn't either, but it had recently been donated to the temple library, and I should check it out. And so I did.

I thought reading trans Jews tell their stories and experiences was empowering enough, until I got to Noach Dzmura's reading of Mishnah Bikkurim 4:

“[Concerning the hermaphrodite]: There are in him manners equivalent to men, there are in her manners equivalent to women, there are in hir manners equivalent to men and women, and there are in zir manners equivalent to neither men nor women.”<sup>2</sup>

A warm wave of excitement washed over me, my skin hot and itchy with energy. I felt myself expanding, as if my body could no longer contain my spirit. Was this gender euphoria? Seeing a nonbinary being in traditional text changed everything. Again, the heavens opened up and a spotlight shone on me; I felt utterly and helplessly seen, vulnerable in my visibility. But I was alone in my tiny studio apartment. Who was I being seen by? I looked up into the blinding white, seeing nothing.

It was the *androgynos* that called me to rabbinical school. While I understand why Dzmura used the term hermaphrodite, modern intersex communities find that term to be offensive.<sup>3</sup> In a literal translation, *androgynos* can translate to hermaphrodite: a being that is both male and female. But as Elliot Kukla explains in his rabbinic thesis on the subject of nonbinary genders in Judaism, translation is not just about translating words, but also about translating culture.<sup>4</sup> The term hermaphrodite in our culture comes with a history of

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<sup>2</sup> Noach Dzmura, “Intersexed Bodies in Mishnah: A Translation and an Activist’s Reading of Mishnah Androgynos,” *Balancing on the Mechitza* (Berkeley: North Atlantic Books, 2010), 163.

<sup>3</sup> “Is a person who is intersex a hermaphrodite?” FAQ, ISNA, <https://isna.org/faq/hermaphrodite/>.

<sup>4</sup> Elliot Kukla, “‘A Created Being of Its Own’: Gender Multiplicity in Jewish Antiquity” (thesis for rabbinic ordination, HUC-JIR, Los Angeles, 2006).

subjugation, stigmatization, and misinformation. It has been used to limit individuals' ability to identify outside the binary, and to coerce unnecessary surgeries on unconsenting infants to ensure their bodies more properly conform to binary and heterosexist standards.

Additionally, the rabbis had a much more complex view of the *androgynos* than just a being that is both male and female. After discussing how the *androgynos* is like men, like women, not like men, not like women, like men and women, and not like men or women, Rabbi Yose says, the *androgynos* is a being unique unto themselves.<sup>5</sup> Rather than drawing a category directly in between male and female and labeling that *androgynos*, the rabbis recognized that these gender variant beings needed to be allowed to be in their own distinct category.

The *androgynos* showed me how Judaism not only has a history of different genders, but a history of including those different genders. The *androgynos* gave me permission to be both unabashedly transgender and Jewish. It was the textual proof I needed to convince myself I could belong.

One of the first books I read to prepare myself for rabbinical school was *Engendering Judaism* by Rachel Adler. For most of my life, my primary identity has been “feminist.” Despite the existence of a few loud anti-trans feminists, feminist theory has been the foundation of trans theory. While I first came to feminism as a young girl horrified by the possibility of coat hanger abortions, I solidified my feminism as a genderqueer femme writing a book of poetry primarily about rape culture. Recognizing equality for women paves the way to recognize equality for individuals of all genders.

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<sup>5</sup> Mishnah Bikkurim 4:5; “אנדרוגינוס בריה בפני עצמה הוא” – with the “עצמה הוא” with *atzmah* in the feminine and *hu* in the masculine, it reads more literally like, “he is a being unique unto herself.” The Hebrew reflects the difficulty in gendering the *androgynos*.

Adler writes how the classical Reformers attempted to include women by “categorizing them as ‘honorary men,’” thus erasing their gender.<sup>6</sup> While some might consider this to be inclusive, “making women honorary men made them deviant men. It required viewing their differences from men as defects in their masculinity.”<sup>7</sup> Adler was talking about women, but again I felt seen. I knew what it felt like to be considered an honorary man. I was existing in a society that saw me as female, but decided that inclusion meant treating me as if I was the same as cis men. I did not have the words to express that being grouped with cis men was not honoring my identity; it was ignoring my uniqueness. As Adler writes, “An institution or enterprise is fully inclusive only if it includes people as the kind of people they really are.”<sup>8</sup> While communities felt they were including me by seeing me as a *man*, I wanted to be included by being seen as a *trans person*. I did not want my transness to be erased. I did not want to be an “honorary cis man.” Every time someone said my transness “didn’t matter” to them, I felt like a gigantic part of my identity was deemed insignificant.

At the end of the chapter, Adler writes, “difference itself needs to be redefined as *variation*, rather than *deviation*.”<sup>9</sup> When seeing difference as deviance from a baseline, that difference can never fully be respected or included. But once difference is allowed to exist in its own right, it can be seen and included in a way that recognizes and responds to its differences.

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<sup>6</sup> Rachel Adler, *Engendering Judaism: An Inclusive Theology and Ethics* (Boston: Beacon Press, 1998), 24.

<sup>7</sup> Adler, *Engendering Judaism*, 24.

<sup>8</sup> *Ibid.*, 25.

<sup>9</sup> *Ibid.*, 40.

Differences are difficult. The in-between is difficult. How do we categorize the uncategorizable? From a trans perspective, there's the constant questioning: how am I going to be perceived? Transfeminist theorist Julia Serano writes,

The taken-for-granted assumption that female and male were fixed and reliable states suddenly appeared to me to be the product of a mass hallucination, held together by the fact that so few people actually had the firsthand experience of transitioning—of seeing how such small differences in one's physical gender can result in such a large difference in the way one is perceived and treated by others. **Suddenly, I no longer felt like I was journeying from one gender to the other. I felt more like I was floating in a little dinghy that had been recently released from the dock I had been anchored to my whole life; and now I was being tossed about on an ocean of other people's perceptions of me.**<sup>10</sup>

Nothing better describes my first three years of hormone replacement therapy. I was never sure how to act. Should I alert everyone of pronouns and identity before meeting? Should I wait to respond until I'm inevitably misgendered? Should I ignore it? Every situation presented a new set of questions. Was it worth it if it's a stranger? Will they argue with me? Will they get violent? Being a kippah-wearing Jew only enhanced my gender anxieties. In my Hebrew class at the local university, I waited to see how I would be gendered. I had been on hormones for a year. When the professor introduced me, she used the Hebrew feminine form, and I did not correct her.

A year later, I legally changed my gender. I asked my professor to tell the class to use masculine language for me from now on. She agreed, but wanted me to know how difficult she would find it: "you just have such a feminine face," she lamented. She looked at me sadly, as if thinking to herself, *what a shame that this person will never be read as male*. I told her I understood, but I at least wanted to practice using the masculine for myself, as I was moving to Israel in four months. "Of course," she said, her eyebrows raised in sympathy.

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<sup>10</sup> Julia Serano, *Whipping Girl: A Transsexual Woman on Sexism and The Scapegoating of Femininity* (Berkeley: Seal Press, 2007), 219. Emphasis mine.

Six months later, walking down the street in Jerusalem, a young man passed me on the street. It was dark; the cobblestones shone in the cool moonlight. “*Shanah tovah, achi,*” he said to me. “Happy new year, my brother.”

After meeting the *androgynos* in *Balancing on the Mechitza*, I researched everything I could about trans Judaism. I read about the trans rabbis who paved the way, Elliot Kukla and Reuben Zellman. There were also Rabbis Emily Aviva Kapor-Mater, Leiah Lin Moser, Becky Silverstein, and Ari Lev Fornari. There were trans Jewish scholars, such as Joy Ladin and Yiscah Smith. I was not alone.

And yet, when trying to find my place within dominant Judaism, whether through joining synagogue services or reading responsa on trans issues, the attempts at inclusion felt like *them* trying to find ways to let *us* in. I felt separated and erased, like I was entering someone else’s home, something I had no ownership of. It took me years to realize why: while these communities have an *ideology* that preaches inclusion, they have a *theology* that excludes me and people like me. As much as their ideology insisted I be included, their theology made no room for me. I had no history within the tradition. Thus, the feeling remained the same: I was a deviant outsider being welcomed in, but only as an honorary member.

The support for transgender people in Judaism focused on universal values: love your neighbor as yourself, we are all made in the image of God, do not stand idly by, save a life. Although not everyone has even come to recognize trans people’s basic humanity, this inclusion through universalism is not enough. As Judith Plaskow suggested feminists reclaim the Torah as their own, we must now do the same thing with gender diversity outside the

cisgender binary.<sup>11</sup> Max Strassfeld, the first to write about “transing” religious studies from a Jewish perspective, suggests that to trans religion means to investigate the cisgendering of religion.<sup>12</sup> While asking how the text might assume or push cisgender norms can help shed some of these perspectives, I believe it always better to work in the affirmative: instead of asking what is cisgender about the text, I suggest we ask instead, what is trans about this text?

Strassfeld was inspired by Joy Ladin, who has created her own trans theology based off the concept of *b'tzelem Elohim*. She writes:

That question – what aspects of humanity reflect our kinship with our bodiless Creator? – is at the heart of what I now recognize as my personal version of trans theology, not because it is a question specific to transgender people, but because being transgender forced me to search for aspects of my own humanity that weren't dependent on my body or the meanings others gave it. To me, whether or not we are transgender, we engage in trans theology whenever we try to look past sex and gender, bodies and binaries, to understand what in humanity reflects the image of God.<sup>13</sup>

To Ladin, being connected to God in a way that is removed from gender is the foundation of a trans theology. In her response to Strassfeld's article, she shows how this trans theology can apply to any Biblical story. She relates Jonah's reluctance to accept his identity as a prophet to many trans people's reluctance to accept their true gender: “When we read the Book of Jonah through the lens of transgender experience, we are reminded that the crisis it dramatizes is one that many of us will face at one time or another: the crisis of realizing that either we live what makes us different or we cannot live at all.”<sup>14</sup> However, it is not enough

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<sup>11</sup> Judith Plaskow, *Standing Again at Sinai: Judaism from a Feminist Perspective* (New York: Harper Collins, 1991), 28.

<sup>12</sup> Max Strassfeld, “Transing Religious Studies,” *Journal of Feminist Studies in Religion* 34, no. 1 (Spring 2018): 44.

<sup>13</sup> Quoted in Strassfeld, “Transing,” 52.

<sup>14</sup> Joy Ladin, “In the Image of God, God Created Them: Toward Trans Theology,” *Journal of Feminist Studies in Religion* 34, no. 1 (Spring 2018): 56.

to reconsider the human perspective, but with a trans theology we must reconsider God as well:

But as Judith Plaskow and other feminist theologians have argued, expanding our definitions of humanity to be more gender inclusive, “demands a new understanding of God that reflects and supports [that] redefinition.” Just as feminist theologies grew out of the recognition that humanity includes women as well as men, the recognition that human beings are not only created male and female but other ways as well demands that we develop trans theologies, “new understandings of God that reflect and support” inclusion of transgender perspectives.<sup>15</sup>

Therefore, a trans theology, like a feminist theology, is twofold: it asks us to consider trans people and perspectives when reading texts, and it asks us to construct a new conception of God that includes those trans perspectives and people as reflections of *b'tzelem Elohim*.

Despite the documents on inclusion insisting that all Jews be accepted due to universal values, the category of “any other person” felt less like a home and more like a safety net added beneath a cracked foundation. I did not want to be like any other person, being caught by a wide net. I wanted a new foundation that let me stand on solid ground with everyone else.

It turns out, the foundation has always included those who defy categorization. The holes in the foundation are not structural, but developed from our own negligence. We don't need the net; we need to rebuild our original foundation to hold us once again.

The *androgynos* was our original foundation. In a midrash on creation, Rabbi Yirmiyah ben Elazar said that when God created the first human, God created the human as an *androgynos*, citing the verse “male and female God created them.” Rabbi Shmuel bar Nachman said that when God created the first human, God created the human with two faces,

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<sup>15</sup> Ibid.

one on each side; and when God made Eve, God split the first human down the middle, forming two backs. The other rabbis challenged him, “But it says God took one of Adam’s ribs?” Rabbi Shmuel responded, “*mitzalotav* doesn’t mean rib, it means one of his sides...”<sup>16</sup> From this traditional reading of the creation story, we see more to the verse “male and female God created them.”

The midrashists were picking up on the unusual grammar and syntax found in this verse. A verse packed full of possibilities, Genesis 1:27 reads: “God created the human in God’s image, in the image of God God created *him*; male and female God created *them*.” The verse begins with the creation of a singular being, *ha-adam*, goes on to describe the human as being made in the image of God, and ends with the human being referred to as “male and female” and in the plural. This verse reflects singularity and multiplicity at once. The human is male and female, singular and plural. And really, what is a better representation of God than the confusing combination of multiplicity within a singularity?

Medieval commentator Rashi notes the apparent contradiction between “male and female God created them” and the story of Eve being created from *mitzalotav*, the rib or side of *ha-adam* in Chapter 2. The question is, how are male and female created in the first chapter, if Eve is not created from Adam until the second chapter? He quotes from the midrash above, explaining that at first the human had two faces, but was split down the middle to become two people, one man and one woman. Rashi explains that God did create male and female in Chapter 1, but Chapter 2 describes the details of how that happened. This shows that the previously cited midrash was well-known and accepted enough to be quoted by Rashi, and that it was normative to believe in a multi-gendered being as the first human.

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<sup>16</sup> Bereishit Rabbah 8:1.



This new foundation of gender multiplicity also removes the issue of men being created before women by placing both binary genders secondary. The first human was *androgynos*, and from that came male and female. In Mishnah Sanhedrin it is said that one reason why God created humanity from a single person was so no one could truthfully say to anyone else, “my ancestor was greater than yours,” since we all originally came from the same ancestor.<sup>17</sup> With the foundation of *androgynos* as the first human, we can say we all came from the same gender as well. Male and female are two aspects of the one being that was the very first reflection of God.

The *androgynos* was also included in the Talmud and the Codes, the rabbinic writings of Jewish law. In these texts there is recognition that the *androgynos* poses a question that requires a response. If men are required to perform a mitzvah and women are not, how does the *androgynos* proceed? Each text and situation responds to the question differently, but what is similar is the dedication to find an answer that includes the *androgynos* in a way that recognizes their uniqueness. The Mishnah introduces the *androgynos*, the Talmud begins expansion on how the *androgynos* fits into the legal-social-ritual structure, and the Codes solidify the *androgynos* as a distinct individual included in distinct ways.

At no point does anyone in the Talmud, the commentaries, or any of the Codes bring up the possibility that the *androgynos* does not exist.<sup>18</sup> Reuben Zellman, the first openly trans student to be admitted to rabbinical school, wrote his rabbinical thesis on the *androgynos* and the *tumtum* in the Codes. Zellman analyzed each instance of the *androgynos* or *tumtum* in the Mishneh Torah, a law code by Maimonides, and the Shulchan Aruch, a law code by Joseph

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<sup>17</sup> Mishnah Sanhedrin 4:5.

<sup>18</sup> Kukla, “Being Of Its Own,” 37.

Caro. Zellman found that the Codes responded to the uniqueness of the *androgynos* by placing them in multiple gendered categories depending on context. These categories are: male, female, male-out-of-doubt, female-out-of-doubt, not-male, not-female, not-male-out-of-doubt, male-plus-female, male-plus-female (doubtful), own category, any person, neither, and cannot determine.<sup>19</sup>

In the Mishneh Torah, the *androgynos* is treated as a male or male-out-of-doubt 23% of the time, female or female-out-of-doubt 32%, and is not categorized as male or female 45% of the time (18% of which falling into the category of “own kind”).<sup>20</sup> Maimonides draws upon three traditions in deciding how to rule on the *androgynos*: combining existing laws for men and women to cover the *androgynos*’ situation; categorizing the *androgynos* as a separate gender with separate rules; and lastly, removing the *androgynos* altogether.<sup>21</sup> Caro has fewer gender categorizations and is more likely to treat *androgynos* as male or doubtfully male (39%) versus female or doubtfully female (28%), but just as likely to consider it its own category (18%).<sup>22</sup>

In recognizing the *androgynos* as a being with multiple gender possibilities, there are times that the Codes allow for the *androgynos* to choose whether to act like a man or a woman, thus giving the *androgynos* a distinct advantage. When it comes to partnership, both the Codes say that the *androgynos* should marry a woman, but if they were to marry a man, it would still be a valid marriage.<sup>23</sup> “The easiest solution for Jewish law, by far, would have been to prohibit these figures from marrying or having sex with anyone,” Zellman writes.

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<sup>19</sup> Reuben Isadore Zellman, “Inyanei ha-Mitzvot: The Tumtum and Androgynos in the Shulchan Aruch and Mishneh Torah” (thesis for rabbinic ordination, HUC-JIR, Los Angeles, 2010), 59-67.

<sup>20</sup> Zellman, “Tumtum and Androgynos,” 79.

<sup>21</sup> Ibid., 80.

<sup>22</sup> Ibid., 93.

<sup>23</sup> MT Hilchot Issurei Biah 22:11; SA Even HaEzer 22:12.

“The Codes and their predecessors prefer instead a risky and tangled solution that actually gives these figures more freedom to marry than anyone else.”<sup>24</sup> This is not a lens Zellman is applying to the text, but rather an analysis of the data: “In only 2% of the instances addressed, the problem of the androgynos is resolved by excluding him/her from participating in the activity in question.”<sup>25</sup> In fact, in less than 4% of the instances are there any potential disadvantages to being *androgynos* or *tumtum*.<sup>26</sup>

What I found most compelling was Zellman’s category of any person: “This inclusion is not due to being treated as one sex/gender or another; men and women in these situations are treated as the same. Rather, the *tumtum* and *androgynos* participate equally in the matter at hand by virtue of being human – treated as ‘any person’ would be.”<sup>27</sup> In Zellman’s analysis, “any person” accounted for 10% of the categorization of *androgynos* in the Mishneh Torah, and 4% in the Shulchan Aruch.<sup>28</sup> While there are certain circumstances where our obligation to any person would also include the *androgynos*, this breakdown of data from the Codes shows us that the codifiers understood the importance of addressing the uniqueness of the *androgynos* by responding to them uniquely. They did not respond to the *androgynos* by placing them in the “any person” category 100% of the time, as many of my contemporaries do today; they responded to the *androgynos* by honoring their differences whenever they could, and only applying the universal net when they had no other choice.

I think many trans allies are under the impression that to be an ally to trans people, they cannot “see” transness. For example, the colorblind version of trans inclusion has come

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<sup>24</sup> Zellman, “Tumtum and Androgynos,” 145.

<sup>25</sup> Ibid., 80.

<sup>26</sup> Zellman, “Tumtum and Androgynos,” 112.

<sup>27</sup> Ibid., 65.

<sup>28</sup> Ibid., 79, 93.

to say that trans men and cis men each belong in the same category of “men,” which ignores the very real social, physical, and experiential differences that often exist between the two groups. As a person who is read as male who would also like to give birth, I have a different set of needs than most people read as male. While it may feel uncomfortable for some to have me separated, to acknowledge my differences is to see my full humanity.

This is further complicated by the societal compulsion to fit into the gender binary. Binary trans people often find it easier to explain their gender to others, and generally find their genders are respected more if they conform to societal expectations of that gender. Many trans people may want to be seen as the same as their cis counterparts due to the belief that being treated the same as everyone else is an upgrade, but erasing our particularities does not make us more equal.

My trans theology reads transness into our textual history and tradition. My trans theology sees my transness as a reflection of God, and as a reflection of the first human. My trans theology declares that my transness does not have to be separate from my Judaism, that my transness has been within Judaism all along. The *androgynos* may have originally described a being who was born unable to be categorized, but regardless of how we come to genderqueerness, our inability to be categorized reflects the multiplicity of God.

As trans people, our identities are often more varied than the language we use to describe them. As Joy Ladin commented in a lecture, “trans” and “woman” and “Jewish” are not perfect descriptors of her identity, but they are the closest markers she has. As a diverse category among categories, different trans people will unsurprisingly have different needs, based on each individual’s situation and circumstance. My trans theology teaches that we should respond to special cases with special patience and attention. My trans theology

illustrates that no one is uplifted by being “the same as any other person;” we best practice the value of *b'tzelem Elohim* when we recognize every individual as בריה בפני עצמה הוא, a being unique unto themselves.

## **Embodied Practice: Halakhah and Ritual**

In our current society, heavily influenced by modernity and the Enlightenment, we have entered into an era of individual identity. Before the Modern Age, people were identified within their communities. Ethnicity, socio-economic class, nationality, and religion were all communal identities which individuals could neither change nor shed. The Enlightenment radically changed the concept of identity. Our modern idea of identity is non-static and self-created: many of us have the power and privilege to self-identify. While some identities are still considered static, such as race or ethnicity, many are more fluid today than ever before, including: religion, nationality, socio-economic class, profession, and now even gender.

With this shift in understanding identity also came a focus on identity as the most important aspect of an individual. This has particularly affected Judaism and Jewish identity. For most of Jewish history, to be Jewish meant to live Jewishly. There was little question of identity; the main questions were of how one lived one's life. While there has always been a conception of Jewish belief, any system of belief has been secondary to a system of behavior. Jews were externally identified as Jewish, and therefore relegated to living within Jewish communities. Within the community, religious leaders externally mandated a lifestyle which corresponded to religious doctrine. Individuals had no power to self-identify as anything other than Jewish, nor did they have any power to live a lifestyle that deviated from the customs of their Jewish community.

With the Enlightenment, Emancipation, and Modernity, Jews became free to leave their religious communities. Some abandoned their Jewish lifestyle as well as their Jewish identity, completely assimilating into their non-Jewish societies. Some left the community,

but retained a Jewish identity. Others remained within their communities and maintained their traditional lifestyles. It is this latter group that is often considered to be “normative” in the Jewish world. Many within the Jewish world or even outside the Jewish world believe that these normative Jewish communities (often Orthodox or ultra-Orthodox) have an authority on “living Jewishly.” As a result, many Jews outside of these normative Jewish communities resign their right to Jewish lifestyle, and content themselves with Jewish identity alone. Especially within the Progressive Jewish world, which has at times rejected Jewish ritual and praxis, the Jewish identity is upheld as the sole important factor in being Jewish.

While Jews today are granted the power and privilege to identify as Jewish without living Jewishly, this privilege should not become prescriptive. Too often Jews are denied entry to Jewish lifestyle and told that their Jewish identity should be enough. The Jews most often denied the opportunity to live out Judaism fit within a non-normative identity which is frequently not accepted in normative communities. These non-normative identities include any deviation from normative society’s perspective of the ideal: male, cisgender, heterosexual, able-bodied, and Orthodox. Jews who are female, nonbinary, trans, queer, disabled, or non-Orthodox are regularly excluded from living Jewishly due to the uncertainty of how it would be done. To deny these identities access to “doing” Judaism is to deny thousands of Jews access to large parts of their culture and tradition.

For Jews who are satisfied with Jewish identity alone, there is no need to reframe Jewish law, lifestyle, or ritual to be relevant and accessible to them. However, for those non-normative Jews who wish to have full access to living Jewishly, the question of halakhah and ritual must be addressed. Rather than eschewing ritual and halakhah when it does not include

non-normative bodies and identities, Jewish feminists and now trans Jews are finding new pathways to live Jewishly while affirming their trans bodies/identities.

In an effort to avoid privileging normative Judaism over what is deemed non-normative, this discussion will be framed with an expansive view of halakhah. In *Engendering Judaism*, Rabbi Rachel Adler defines halakhah “not as a closed system of obsolete and unjust rules, but as a way for communities of Jews to generate and embody their Jewish moral visions”.<sup>1</sup> Adler continues:

Halakhah comes from the root HLK<sup>h</sup>, to walk or to go. Halakhah is the act of going forward, of making one’s way. **A halakhah, a path-making, translates the stories and values of Judaism into ongoing action.** That makes it an integral component not merely of Orthodoxy, but of any kind of Judaism. ... The difficulty about proposing a halakhah to progressive Jews is their presumption that the term, its definition, and its practice belong to Orthodoxy. We urgently need to reclaim this term because it is the authentic Jewish language for articulating the system of obligations that constitute the content of the covenant. Halakhah belongs to liberal Jews no less than to Orthodox Jews because the stories of Judaism belong to us all. **A halakhah is a communal praxis grounded in Jewish stories.**<sup>2</sup>

Beyond just a legal system by which to live our lives, halakhah includes ritual and praxis which are pathways to living Jewishly. As we expand our understanding of *being*, i.e., the all-inclusive nature of *b’tzelem Elohim* (made in the image of God), we must also expand our understanding of *doing*, i.e., pathways of living Jewishly. Ritual and law must adapt to unfolding Jewish theologies to ensure that all Jews, not just normative Jews, have pathways which reflect and connect their own realities of living Jewishly.

As the author of this piece, I am unable to be without bias myself. My frame of reference is not only that of an expansive view of halakhah, but one that is specifically

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<sup>1</sup> Rachel Adler, *Engendering Judaism: An Inclusive Theology and Ethics* (Boston: Beacon Press, 1998), 21.

<sup>2</sup> Ibid., 21; 25. Emphasis my own.



situated within the Reform Movement. As a rabbi ordained from the Reform seminary in the United States, my perspective will be colored by my community's culture and worldview. However, in an attempt to present as many access points as possible, I will explore various movements' approaches to the question of halakhah and ritual as it relates specifically to trans people.

While there are many questions of how trans people might adapt normative Jewish behavior to reflect and affirm their identities and bodies, there are three questions that seem to dominate the conversation. The first question is regarding the status (social, halakhic) of a transgender person. Socially, how should a trans person and other members of their community interact with one another? Halakhically, what mitzvot might a trans person be obligated in? The halakhic question brings us to the next two questions which both center on the question of how to apply halakhah to non-normative genders and bodies.

The second question is regarding the commandment of *brit milah* (ritual circumcision) which is traditionally required of all males within the community. In the combined gender-sex model, where "male" meant both someone who lived as a man and someone whose body had a penis, it was unclear whether the commandment itself was required due to the body part, the gender role, or both. With a modern split model where gender and sex are separated, which recognizes men without penises and non-men with penises, the question becomes who exactly is obligated in the commandment of circumcision?

The third question is regarding both the permissibility of and potential requirement for gender-related surgery. This question is less relevant or pressing within the Reform Movement. Perhaps in part because the Reform Movement from its start has shied away from

language of permissibility and requirement, and perhaps in part because this question is only minimally connected to ritual life. But within Conservative and Orthodox communities, this question has dominated the discussion.

As these three questions often converge in various responsa, they will be explored together. Instead of separating them, the discussion surrounding these questions will be organized by Jewish movement/denomination. Following the various intra-movement discussions, I will present my own thinking, which is, again, influenced by my involvement and identification with the Reform Movement.

## **Orthodox**

As “orthodoxy” often covers what is considered normative and traditional, it can describe several different communities with different customs which each consider themselves normative and traditional. As there is no singular Orthodox Judaism, it would be impossible to attempt to cover Orthodox Judaism’s halachic approaches to transgender Jews. Even in single communities there likely exist a multitude of opinions. Included here are modern Orthodox *teshuvot* as well as earlier sources. While each Orthodox *teshuvah* is different, they all are preoccupied with the concern of transgressing Biblical or Rabbinic prohibitions.

The following is from a 19<sup>th</sup> century *teshuvah*<sup>3</sup> but has been quoted in several modern *teshuvot* from many denominations:<sup>4</sup>

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<sup>3</sup> Yosef et Achiv 3:5; 1896. <https://hebrewbooks.org/6877>.

<sup>4</sup> Within Orthodox movements: *Tzitz Eliezer* XXII, Eliezer Waldenberg, 1967; “Transgender: Halakhic and Hashkafic Perspectives,” Anthony Manning, 2016. Within Conservative Movement: “Status Of Transsexuals,” Mayer E. Rabinowitz, 2003; “Transgender Jews and Halakhah” Leonard A. Sharzer, 2017.

Rabbi Yosef Pelaggi received a question that posed an interesting predicament: if a man married a woman, and after a number of years she somehow became a man in all ways, does the husband need a *get* (Jewish divorce contract) to divorce her? Rabbi Pelaggi concludes that no *get* is necessary, since the marriage was between a man and a woman, and there are now two men. Since the divorce procedure requires the husband to say, ‘You, my wife,’ and since there is no woman there but a man, no *get* is necessary. While this seems to be only in regards to a situation of spontaneous natural sex change, Rabbi Pelaggi rules that this sex change halakhically changes that person’s gender, and they are no longer to be considered the gender they were thought to be at birth. This *teshuvah* is often used as precedent to accept a change in social and halakhic status *following* gender confirmation surgery (that is, it does not permit one to get gender confirmation surgery before the fact, *l’chatchila*, but it will accept its validity after the fact, *b’diavad*).

Rabbi Eliezer Waldenberg addresses a similar question in a 20<sup>th</sup> century *teshuvah*<sup>5</sup>, this time answering whether or not a *get* is required if a trans woman medically transitions after her marriage with a cis woman. He references two previous writings, *Trumat Hadeshen* and *Minhat Hinukh*. *Trumat Hadeshen* gives the example that Elijah’s wife did not need a *get* to remarry: as Elijah became an angel, and a marriage between a person and an angel was invalid, the marriage was annulled with no need for a *get*. The *Minhat Hinukh* expands upon *Trumat Hadeshen* to say that any marriage that would no longer be permitted becomes automatically annulled, even if it was legal at the time. While Waldenberg concludes that no *get* is necessary since two women cannot be married to each other, like the Pelaggi case this

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<sup>5</sup> *Tzitz Eliezer*, see X-XI; 1967.

ruling only applies after the fact. With extensive coverage of the prohibition on castration, Waldenberg rules against permitting gender confirmation surgeries before the fact.

Rabbi Anthony Manning uses the above sources to come to a different conclusion.<sup>6</sup> Despite beginning with an explanation of transgender identity and linking transgender experience with high suicide rates, Manning ultimately decides that the Orthodox consensus is that gender confirmation surgery is not permitted before the fact, and would not change one's halakhic gender after the fact.<sup>7</sup> Although at the time of writing Manning was certain of Orthodoxy's consensus, the tide may be turning.

Rabbi Dov Linzer, the President and Rosh Yeshiva of the Modern Orthodox rabbinical school Yeshivat Chovevei Torah, wrote a modern *teshuvah*<sup>8</sup> on the halakhic status of transgender people. In analyzing various traditional sources, and considering the separate but intertwined focuses on physical being versus social status, Linzer concludes that some halakhah is dependent on the body while some is dependent on the social position. For halakhah which primarily deals with the body, such as circumcision or niddah, Linzer recommends following what one was obligated to do prior to transition. For halakhah which is more external and social, such as gendered clothing and honors such as *aliyah l'torah*, Linzer recommends following the obligations that match one's own gender identity and presentation. While not ideal because it puts trans people in a position to out themselves, Linzer's *teshuvah* recognizes the distinction between physiology and gender in a way that might affirm trans peoples' unique realities.

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<sup>6</sup> Anthony Manning, "Transgender: Halakhic and Hashkafic Perspectives," 2016, 7.

<sup>7</sup> Manning, 7.

<sup>8</sup> "Gender and Sex: Does Halakha Recognize a Difference?" Dov Linzer, 2022.

<https://yct Torah.org/wp-content/uploads/2022/11/Gender-and-Sex-Does-Halakha-Recognize-a-Difference-Dov-Linzer.pdf>

While still situated within an Orthodox perspective and practice, Rabbi Mike Moskowitz has taken a more liberal approach in accepting and validating transgender people. Stemming from his own personal experience as a father of a transgender son,<sup>9</sup> Moskowitz asserts that it is in fact imperative for a trans person to transition and live as their authentic self.<sup>10</sup> While Moskowitz's understanding of the Biblical prohibition on crossdressing affirms the identities of binary trans people, it does not account for the existence and experience of nonbinary individuals. Nonetheless, Moskowitz is considered by many to be one of the leading voices of Orthodox trans allyship.

## Conservative

The Conservative Movement has published two *teshuvot* on transgender-specific halakhah, one in 2003 and one in 2017,<sup>11</sup> and one *teshuvah* regarding how to call a nonbinary person to Torah (*aliyah l'torah*).<sup>12</sup> At the time of the 2003 *teshuvah*, which was authored by Rabbi Mayer Rabinowitz, the Conservative Movement had not yet published a resolution that accepted or permitted homosexuality. In fact, in 1992 Rabinowitz wrote a *teshuvah* which

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<sup>9</sup> "Answering the Transgender Son," published under a pseudonym, <https://www.jta.org/2017/04/05/ny/answering-the-transgender-son>; "Reflections from an Orthodox Rabbi with a Trans Child," published under a pseudonym, <https://www.myjewishlearning.com/2016/11/07/reflections-from-an-orthodox-rabbi-with-a-trans-child/>

<sup>10</sup> "I'm a Boy and These are My Clothes," Mike Moskowitz, <https://www.jta.org/2018/02/26/ny/im-a-boy-and-these-are-my-clothes>

<sup>11</sup> "Status Of Transsexuals," Mayer E. Rabinowitz, Rabbinical Assembly, 2003. [https://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/20012004/rabinowitz\\_transsexuals.pdf](https://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/20012004/rabinowitz_transsexuals.pdf) "Transgender Jews and Halakhah," Leonard A. Sharzer, Rabbinical Assembly, 2017. <https://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/2011-2020/transgender-halakhah.pdf>

<sup>12</sup> "Calling non-binary people to Torah honors," Guy Austrian, Robert Scheinberg, and Deborah Silver, Rabbinical Assembly, 2022. [https://www.rabbinicalassembly.org/sites/default/files/2022-05/non-binary-torah-honors\\_0.pdf](https://www.rabbinicalassembly.org/sites/default/files/2022-05/non-binary-torah-honors_0.pdf)

asserts that homosexuality goes against Biblical law.<sup>13</sup> When a *teshuvah* to create a halakhah for gays and lesbians was passed three years later, Rabinowitz was one of the 12 rabbis who voted against it.<sup>14</sup> (Note: The Conservative Movement did not officially accept same-sex marriage until 2012.<sup>15</sup>) Rabinowitz's view of homosexuality undoubtedly affected his perspective on trans halakhah.

In the 2003 *teshuvah*, Rabinowitz argues that we need to adapt to changes in society. From his perspective, instituting boundaries on how to accept and incorporate transgender people into a normative Judaism was the best way to adapt. Believing that a normative society has been confronted with a need to adapt to include non-normative individuals, he dictates that in order for the normative society to reconsider its exclusivity, the trans individual must do everything possible to blend in. The trans individual is to be accepted so long as they make every effort to disguise their transness.

Rabbinowitz comes to a couple of conclusions. Firstly, that trans people must have "full" surgery in order to be considered the gender that they identify as. This gatekeeping of identity not only excludes those unable or uninterested in surgery, it also necessarily excludes nonbinary people. Second, if the trans individual was married prior to transition, their marriage will be annulled, as it would then be considered a homosexual union which at the time was prohibited by the Conservative Movement. Third, the trans individual must be

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<sup>13</sup> "On Homosexuality," Mayer Rabinowitz, Rabbinical Assembly, 1992.

[https://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/19912000/rabinowitz\\_homosexuality.pdf](https://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/19912000/rabinowitz_homosexuality.pdf)

<sup>14</sup> "Homosexuality, Human Dignity & Halakhah: A Combined Responsum for the Committee on Jewish Law and Standards" by Elliot Dorff, Daniel Nevins & Avram Reisner, 2006.

<sup>15</sup> "Rituals and Documents of Marriage and Divorce for Same-Sex Couples" by Elliot Dorff, Daniel Nevins, and Avram Reisner, Rabbinical Assembly, 2012.  
<https://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/2011-2020/same-sex-marriage-and-divorce-appendix.pdf>

legally recognized as their new gender if they would like to marry someone (again, for the prevention of same-sex marriage). Lastly, Rabinowitz writes that the trans person should take on a new name to represent this new identity.

Even with all the aforementioned limitations, this *teshuvah* by Rabinowitz was still groundbreaking in its acceptance and permissance of gender confirmation surgery as well as hormone treatment. However, the resolution passed in 2017 greatly expanded upon this acceptance. It not only was more permissive, but it changed the nature of the conversation with a new framing:

Most of the modern era responsa on the subject of transgender issues, from across the spectrum of Jewish thought, frame the question they address as follows: “What is the halakhic status of a person who has undergone sex reassignment surgery?” ... It goes without saying that all of these discussions take place in a cis-binary-hetero-normative universe of discourse. They do not account for the majority of trans men and significant number of trans women, who for a variety of reasons do not undergo GCS, specifically genital reconstruction; nor do they account for individuals with non-binary gender identities.<sup>16</sup>

As Sharzer is not approaching the subject on the validity of trans identity but on how trans people should follow halakhah, he has different questions and different conclusions than Rabinowitz. Sharzer asks of circumcision, and decides it is ultimately about body parts rather than gender. Therefore, when considering trans and nonbinary people who have and have not had bottom surgery, the only group Sharzer believes is required in either circumcision or *hatafat dam brit* (if already circumcised and converting) are people assigned male at birth with a natal penis.<sup>17</sup> People without a natal penis (either those with a vulva or those with a constructed penis) have no obligation in circumcision or *hatafat dam brit*.

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<sup>16</sup> Sharzer, 11-12.

<sup>17</sup> Ibid., 14-5.

In keeping with the perspective that the halakhah refers to the body rather than the gender, Sharzer also concludes that only people who menstruate need to practice *niddah*.<sup>18</sup> He notes the difficulty in the practicality of following this, as most *mikvaot* are gender-segregated with a public men's section. Therefore, transmasculine people who wish to immerse for *niddah* would either have to find a progressive mikvah, find a private mikvah, or arrange to use the mikvah privately in order to avoid uncomfortable and potentially unsafe situations.

With regard to preparation for burial, Sharzer concludes that in fact any person of any gender should be able to perform *taharah* on any person.<sup>19</sup> The gender-segregated nature of preparation for burial originates in the Mishnah. *Mishnah Semachot* states that men can only prepare the bodies of other men for burial, but women can prepare anyone. Likewise, a man can only treat men, but women can treat anyone.<sup>20</sup> This sentiment is echoed in the *Tur* and the *Shulchan Aruch*.<sup>21</sup> Commentators believe this is due to the possibility of impure thoughts from the man providing care.<sup>22</sup> Sharzer believes, just as we accept that a male doctor would provide care to women based on *kavod* (honor), so too should a person of any gender be able to provide honor and dignity to a deceased person of any gender, whether cis or trans.<sup>23</sup>

The final *teshuvah* from the Conservative Movement on transgender individuals is regarding how to call nonbinary individuals to Torah. This *teshuvah* covers the binary nature of the Hebrew language, as well as the importance of recognizing nonbinary people's genders as valid. Despite the fact that this *teshuvah* was written in 2022, four years after the

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<sup>18</sup> Ibid., 24-5.

<sup>19</sup> Ibid., 23-4.

<sup>20</sup> Mishnah Semachot 12:10

<sup>21</sup> Tur YD 352; Shulchan Aruch YD 352:2

<sup>22</sup> Darkhei Moshe YD 335; Shakh YD 352:2

<sup>23</sup> Sharzer, 24.



creation of the Nonbinary Hebrew Project, this *teshuvah* does not include nonbinary Hebrew as an option. In a footnote it notes that many nonbinary Jews prefer to either use mixed gender or the Nonbinary Hebrew Project, but it does not explore those options, concluding that “These experiments are quite recent and need time to develop through usage and revision, and this teshuvah limits itself to standard Hebrew grammar.”<sup>24</sup>

The suggestion the *teshuvah* recommends is to avoid gender in the Hebrew entirely, similar to the precedent set by Marcia Falk.<sup>25</sup> While Marcia Falk avoids Hebrew by using the first person singular and first person plural, this *teshuvah* de-genders the Hebrew by forcing an infinitive. Rather than using *ya ’amod* (he will stand) or *ta ’amod* (she will stand), which are gendered conjugated versions of calling someone to Torah, this *teshuvah* inserts the word *na*, a Biblical word which is often translated as “please.” By including *na*, the verb will then be used in the infinitive (*na la ’amod*), effectively de-gendering the call.

*Na la ’amod* as a gender-neutral option for *aliyah l’torah* has at least been around since 2017, when Austrian himself published a paper codifying it for his community at Fort Tryon Jewish Center<sup>26</sup>. The 2022 RA *teshuvah* draws heavily from this Fort Tryon Jewish Center resource, using the same recommended language in the same formulation.

## Reform

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<sup>24</sup> Austrian et al, 2.

<sup>25</sup> See *The Book of Blessings* by Marcia Falk, originally published 1996. Falk has several conventions to avoid gendered language, but primarily achieves this by using the first person singular and plural forms, such as with נִבְרַךְ (*n’varech*), “let us bless.”

<sup>26</sup> “A Torah Service liturgy for honorees of all genders” by Guy Austrian, March 2017.

<https://images.shulcloud.com/878/uploads/PDFs/All-Gender-Torah-Service-Liturgy---Fort-Tryon-Jewish-Center---Final.pdf>

As mentioned previously, the Reform Movement has had a complicated relationship with halakhah and *teshuvot*. While the CCAR does publish Reform responsa, clergy within the movement do not rely on these *teshuvot* to mandate their own practice. As a result, the *teshuvot* are not always an accurate indicator of the movement's ideologies or practices.

To date, there are three *teshuvot* published by the Reform Movement which speak to transgender issues: one from 1978 that allowed a rabbi to officiate a heterosexual marriage between a cis person and a trans person, thus validating the trans person's gender; one from 1990 that said a rabbi cannot deny someone conversion on the basis of their trans identity; and one from 2009 that affirmed trans women as women, but suggested they receive circumcision upon conversion whenever applicable.<sup>27</sup> In the 2009 *teshuvah* it was mentioned in a footnote that since 1893, the Reform Movement has maintained that the traditional conversion rites are not mandatory.<sup>28</sup> Therefore, the official Reform stance is that no trans woman would be *obligated* in circumcision, just as no cis man would be. However, this final *teshuvah* states that to persuade a trans woman in the mitzvah of circumcision is, in their perspective, to “practice the policy of inclusion,” as the movement is heading toward a readoption of ritual practices.

In terms of inclusion, perhaps the best response from the Reform Movement has been the CCAR resolution “The Rights of Transgender and Gender Non-Conforming Individuals,” submitted in 2015. This resolution supports trans people through the Jewish values of

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<sup>27</sup> “Transgender and an Existing Marriage,” CCAR Responsa Committee. <https://www.ccarnet.org/ccar-responsa/57762/>; “Conversion and Marriage after Transsexual Surgery,” CCAR Responsa Committee. <https://www.ccarnet.org/ccar-responsa/tfn-no-5750-8-191-196/>; “Circumcision of a Transgender Female,” CCAR Responsa Committee. <https://www.ccarnet.org/ccar-responsa/5769-6/>

<sup>28</sup> See *CCAR Yearbook* 3 (1893), p. 36, reprinted in *American Reform Responsa (ARR)*, no. 68, <http://data.ccarnet.org/cgi-bin/respdisp.pl?file=68&year=arr>.

*b'tzelem Elohim* (Genesis 1:27) and “do not stand idly while your neighbor bleeds” (Leviticus 19:16), universal values that apply to all humans.<sup>29</sup> This statement is powerfully made without qualifiers, with no mention of surgical or legal status.

However, I believe the Reform Movement has ultimately fallen short in these *teshuvot* and resolutions in same way the other movements have. Affirming that transgender people have the same basic human rights as everyone else does not validate transgender identity; rather, it merely states that we are human. The fact that trans people’s human rights have ever been called into question is a moral failing that ought not to be dignified with a rebuttal. To affirm trans people is not merely to affirm our personhood, but specifically to affirm our transness.

Outside of *teshuvot* and resolutions, the CCAR Press has published the first collection of Jewish liturgy for LGBTQ+ people and lifecycle moments called *Mishkan Ga'avah: Where Pride Dwells*.<sup>30</sup> Within this volume are several writings, rituals, and blessings for trans Jews. Included are blessings for transition, blessings for being trans, rituals for Trans Day of Remembrance, and rituals for transition milestones such as starting hormones or undergoing gender-confirming surgery.

## Other Perspectives

Much of the progress within the trans Jewish world has happened outside of denominational affiliation. One of the earliest sources is TransTorah,<sup>31</sup> a resource created by

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<sup>29</sup> “The Rights of Transgender and Gender Non-Conforming Individuals,” Submitted to the Central Conference of American Rabbis by the Rabbinic Members of the Commission on Social Action of Reform Judaism, March 16, 2015. <https://www.ccarnet.org/ccar-resolutions/rights-transgender-and-gender-non-conforming-indiv/>

<sup>30</sup> *Mishkan Ga'avah: Where Pride Dwells*, ed. Denise Eger. CCAR Press, 2020.

<sup>31</sup> [www.transtorah.org](http://www.transtorah.org)

Rabbi Elliot Kukla and Rabbi Reuben Zellman. A collection of essays, sermons, source sheets, poems, and rituals, TransTorah has been used by Jews across the world. Some of the rituals and blessings that originated on TransTorah have since been incorporated into Reform liturgy in the CCAR's clergy manual, *L'chol Z'man v'Eit*.<sup>32</sup>

Keshet is a nonprofit organization that is focused on LGBTQ equality in Jewish life. While providing DEI trainings and workshops, Keshet also compiles resources for LGBTQ Jews. Some of Keshet's resources that are specific to transgender Jews are "A Jewish Guide to Marking Transgender Day of Remembrance,"<sup>33</sup> a ritual guide, and "Toward a Gender-Inclusive Hevra Kadisha,"<sup>34</sup> a halakhic guide put together by the Hevra Kadisha of Greater Boston.

"Toward a Gender-Inclusive Hevra Kadisha" has within it practical guides for *chevra kadisha* (Jewish burial societies) as well as halakhah for how to best care for a trans Jew in death. The halakhah was written by Rabbi Emily Aviva Kapor-Mater, who is not affiliated with a particular movement and describes herself as innovative yet traditional.<sup>35</sup> Kapor-Mater concludes that trans men and women should be treated as cis men or women traditionally are: women can perform *taharah* for anyone (cis or trans, male, female, or nonbinary), but men should only perform *taharah* for men (cis or trans).<sup>36</sup> A nonbinary individual can perform

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<sup>32</sup> *L'chol Z'man v'Eit: For Sacred Moments*. CCAR Press, 2015. See "Gender Affirmation: Naming Ceremony" in the Community section, page 30. See also "Wedding: For a Couple That Would Like to Indicate Complex Genders" in the Marriage section, page 49. While not identical, both of these blessings are very similar the ones written by Rabbi Kukla on TransTorah.

<sup>33</sup> <https://www.keshetonline.org/wp-content/uploads/2019/04/TDOR-guide-2013-revised-2019.pdf>

<sup>34</sup> <https://www.keshetonline.org/wp-content/uploads/2020/03/Toward-a-Gender-Inclusive-Hevra-Kadisha-final-.pdf>

<sup>35</sup> "Toward a Gender-Inclusive Hevra Kadisha," 16.

<sup>36</sup> *Ibid.*, 17.

*taharah* for anyone. A nonbinary individual should receive *taharah* from another nonbinary person or a woman (cis or trans).

There is also SVARA, “a traditionally radical yeshiva” whose mission is “to empower queer and trans people to expand Torah and tradition through the spiritual practice of Talmud study.”<sup>37</sup> SVARA has an initiative called the Trans Halakha Project, which is created by trans Jews for trans Jews. The goals of the Trans Halakha Project are: “create euphoric and celebratory opportunities for trans Jews to learn and explore their personal relationship to halakha; curate existing and developing resources that have been created for trans Jews, by trans Jews; [and] develop new halakhic literature that addresses the needs and experiences of trans Jews authentically and without reservation.”<sup>38</sup> While halakhah is in the name of the initiative, it will not be limited to *teshuvot* alone. The project will also include what it calls “*minhag* and *ma’aseh*” (custom and practice), which will include prayers and blessings as well as unique rituals for trans-specific lifecycle moments.

Finally, there are LGBTQ+ synagogues which have been at the forefront of trans ritual. Synagogues like Sha’ar Zahav in San Francisco and Congregation Beit Simchat Torah in New York have their own *siddurim* which include trans blessings and prayers.<sup>39</sup> CBST has had two conferences specifically for trans Jews: the first Trans Jews Are Here Convening took place in person at CBST in 2019, and the second took place online in 2021.<sup>40</sup> The Trans Jews are Here Convening was the first of its kind. It bridged a trans-only space which

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<sup>37</sup> <https://svara.org/mission-vision/>

<sup>38</sup> <https://svara.org/trans-halakha-project/>

<sup>39</sup> See *Siddur Sha’ar Zahav*, second edition (2019), 19; 433. See CBST’s siddur *Siddur B’chol L’vav’cha*, (2008), 198.

<sup>40</sup> See <https://cbst.org/transjews> for more information.

included twenty-nine workshops/lectures by trans Jews for trans Jews, and an allyship track with three talks/trainings for cis individuals seeking learning and growth.

Perhaps unsurprisingly, most of the writings and publications outside of official denominations have been focused on blessings and rituals rather than strict halakhah. While there is currently a growing effort to create halakhah by and for trans people, this is a more recent endeavor. For much of the discourse on transgender identity within Judaism, the halakhic element has been an external element created by cis people to either permit or restrict transgender identities, bodies, and relationships. Uninterested in others' permission, many trans Jews avoided the conversation about halakhah completely to focus on ritual and practice. As more trans Jews are creating pathways in Jewish life and joining in the chain of tradition themselves, the genre of trans halakhah will continue to grow and expand.

### **My Thoughts**

As stated earlier, I understand that I am not without my own biases. I am firmly situated within the Reform Movement and its ideology.<sup>41</sup> I also have an expansive view of halakhah, which encompasses the various pathways Jews take to live Jewishly. I also have my own unique perspective as a transmasculine genderqueer person. I do not wish to present my views as any more valid than others' perspectives; rather, just another voice in the conversation.

For much of recorded history, gender in humans has been conflated and combined with the physical appearance of the human body. For that reason, when reviewing traditional texts, it is very difficult to separate the social aspects of gender with the physical aspects of

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<sup>41</sup> See Pittsburgh Platform, 1885.

the body. However, even with that conflation, the Torah does still differentiate between man and male, and woman and female (*ish* and *zachar*, *isha* and *nekevah*, respectively). While the texts (either Biblical or Rabbinic) still generally assume that men will be males and women will be females, they often will use the male/female language (*zachar* and *nekevah*) specifically when referring to the body.<sup>42</sup> In some way, I believe this can reinforce that there is a distinction between the physiology of the body and the sociology of gender.

During times in which non-normative genders<sup>43</sup> were not accepted in society, people of normative genders inextricably linked one's body with one's role in society. Briefly, perhaps only since Judith Butler's revolutionary book *Gender Trouble*,<sup>44</sup> European and Western societies have begun to conceptualize a distinction between the body and gender. It is beyond the scope of this paper to dive into the discourse surrounding "gender" and "sex," but it is relevant to point out that the definitions of both have changed throughout history.

Despite the difference between the physiology of the body and the social aspect of gender, I would never call myself a "female man." The way the language has evolved in our

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<sup>42</sup> For example, *zachar* is always used in referencing circumcision. See Gen. 17:10,12,14,23; Gen 34:15,22,24,25, and Ex. 12:48.

<sup>43</sup> I am choosing to say "non-normative genders" instead of trans in this instance, because I believe the label trans is a specifically Western conception of gender. There have been genders beyond man and woman for as long as we can tell, such as the *androgynos* in Rabbinic literature, and it is anachronistic to use "trans" to describe such people. However, trans and intersex people today can certainly relate to these ancient genders in that we all share the experience of being perceived as non-normative in our genders and/or bodies. Additionally, to a significant degree even cis women have been perceived as non-normative within patriarchal societies. It wasn't until the 19<sup>th</sup> century when European and Western societies adopted a binary sex model, discontinuing the "single sex" model developed by Greek physician Galen in the 2nd century. Under the single sex model, the male sex was the only "true" sex, with females representing an underdeveloped form, and intersex individuals somewhere in between.

<sup>44</sup> Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge, 1990). In this book and its sequel *Bodies that Matter: On the Discursive Limits of 'Sex'* (New York: Routledge, 1996), Butler asserts that gender is socially-constructed rather than innate, and that traditional conventions of gender are enforced to continue the patriarchal oppression of women, queer people, and trans people.

society, “male” and “female” have become adjectival versions of the nouns “man” and “woman” or “boy” and “girl.” I believe it would be counter-productive to attempt to change the way an entire society uses these words, and in practicality it would effectively misgender trans people. A center for female individuals would not be any more welcoming to me, a bearded masculine person, than a center for women.

And yet, the reality of my body is that I have a lot in common with most women. My body has the ability to menstruate and give birth. If I were to conceive and give birth, my physical experience would not be unlike that of millions of women who have conceived and given birth before me. However, my social experience would be vastly different, as society is not yet used to the concept of a pregnant man. With the understanding that physiology is real and affects our lived experiences, and that social roles are real and affect our lived experiences, one must take both into account when considering how an individual might create their own authentic pathways to live out those experiences in a Jewish manner.

It is my perspective that separating the bodily aspect of ritual from the gendered aspect of ritual affirms the distinction between the two. By considering circumcision a ritual for people with penises and niddah a ritual for people who menstruate, we could be validating that penises are not equivalent to men and menstruation is not equivalent to women. For me, this validates the reality of one’s body and bodily experiences without assigning a gender to the body or bodily experiences. The idea that I should ignore the functions of my body, including “unexpected” functions such as menstruation, only increases my discomfort. We know that transmasculine people can and do menstruate, and we do a disservice to them by ignoring that fact. I do not believe we should ignore the uniqueness of trans bodies, or consider trans people to be “honorary” cis people. Many trans people do not



have similar lived experiences to cis people, even if they are the same gender. Moreover, most trans people do not have similar bodily experiences as cis people, even if they are the same gender. To ignore our bodies' reality is to ignore an aspect of our personhood.

As it affirms me to acknowledge the reality of my body and bodily experiences, I agree that individuals should follow the halakhah that corresponds with their body and/or bodily experiences. This would include circumcision for those with penises with foreskins, *hatafat dam brit* for those with penises without foreskins,<sup>45</sup> and *niddah* for those who menstruate. However, as stated, I do not believe in halakhah as a binding obligation, but as a pathway. For many trans people, just as for many cis people, this may not be a pathway that they can traverse.

For that reason, I also understand and validate the fact that the gendered aspect of the rituals can either be incredibly affirming or incredibly invalidating, regardless of bodily reality or obligation. On which pathway an individual embarks should be a conversation with the individual and ultimately up to their (informed) discretion. The first consideration is dysphoria. Some trans people may use different language for their bodies than what others may expect. In this case, a trans man who has not undergone bottom surgery may refer to his anatomy as a penis; a trans woman who has not undergone bottom surgery may refer to her anatomy as a clitoris. In that case, they most likely would want pathways that correspond to their perception and identification of their anatomy, regardless of how it may appear to others. Some trans people feel disconnected from their bodies, either feeling dysphoric when interacting with their bodies or experiencing their own bodies as foreign to them.

Additionally, I would venture that most trans people feel uncomfortable when either grouped

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<sup>45</sup> I do not hold that this would only apply to natal penises, which I believe reinforces the ideology that natal penises are more real than those constructed surgically.

with people of a different gender or excluded from people of a similar gender based solely on their anatomy. I have seen this especially in the case of trans men who convert to Judaism. Even if told they are not obligated in *hatafat dam brit* due to not having a foreskin (either with or without surgery), many of them find the ritual to affirm their identity as a Jewish man. Regardless of obligation, this pathway brings them closer to Judaism, and it should be recognized as such.

This consideration and at times choice between one's body and one's gender should also apply to *taharah* for burial. While I believe a Jew of any gender should be able to perform *taharah* for someone of any gender, I understand that *kavod hameit* (respect for the dead) is a crucial component of burial rites. Part of the *taharah* process is to wash the entire body, including the genitals. I believe that the body therefore cannot be taken out of consideration when contemplating this ritual. Some people might feel uncomfortable with the idea of individuals with different genitals than them washing theirs, even if those individuals are of the same gender. Others, however, may feel more uncomfortable with the idea of people of a different gender engaging in this often gendered ritual. I propose that *taharah* be something that people consider proactively along with other burial plans. It should not be assumed that trans people would want a group of people of the same gender, even if they have different genitals. Likewise, it should not be assumed that trans people would want someone of a different gender, even if they have similar genitals. I would suggest a form for people of all genders and bodies to fill out to outline their wishes, indicating their preferences for the individuals who would perform *taharah* on them. Included in those forms should be options for mixed gender groups, including the option to have someone with similar genitals wash that particular part of the body. Along with the options come considerations of how

*chevra kadisha* will respond. Binary trans people could request people of their same gender, regardless of differences in bodies. Likewise, cis people could request people of a different gender, regardless of differences in bodies. To best provide *kavod hameit*, those choices should be honored, and *chevra kadisha* members should be trained to prepare a multitude of bodies and identities.

As we are told to “choose life,”<sup>46</sup> I believe ritual and mitzvot should only give us life and bring us closer to God and our people. Anything that might hinder an individual’s connection to God or Jewish community is not an authentic pathway for them. Likewise, anything that might bring an individual closer to God or Jewish community should be honored as the authentic pathway of that person. That said, I feel that many trans Jews today feel more enlivened and enriched by pathways which affirm their unique trans identity, rather than pathways which include them in obligations originally created by and for cis people. Therefore, I believe the most crucial aspect of halakhah for trans individuals is not focused on obligation, but rather affirmation.

When it comes to affirmation, many trans people have not been satisfied with the pathways created by and for cis individuals. As a result, trans Jews have been paving their own pathways, creating trans-affirming rituals which acknowledge and celebrate their unique identities, bodies, and bodily experiences. Some of these rituals have been noted above, as in the case of trans-specific blessings and prayers. In the next section, I will explore a little more what ritual can mean for trans Jews.

## **Ritual**

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<sup>46</sup> Deut. 30:19-20 – “I call heaven and earth to witness against you this day: I have put before you life and death, blessing and curse. Choose life—if you and your offspring would live” JPS, 2006.

In an article entitled “On Transition: Normative Judaism and Trans Innovation,” S. J. Crasnow explores the realm of ritual and its effect on trans Jews.<sup>47</sup> Crasnow writes:

While there are trans Jews who are satisfied to become assimilated within normative Jewish institutions and practice, others seek out inclusion that explicitly affirms trans identity. In order to obtain this affirmation, trans Jews reinterpret and innovate liturgy and ritual that avoid normativity and affirm transgender identity. One example of such a ritual, innovated by trans Jews, uses a mikveh (Jewish ritual bath) to mark gender transition. In this instance, the meaning of the ritual is altered so that it circumvents the normative elements of the ritual, instead transforming it so that it empowers trans identity. Innovated rituals marking gender transition demonstrate that religious innovation can be central in providing affirmation of trans identity within Judaism. through innovated ritual, liturgy, and hermeneutics, trans Jews imagine and create a Judaism that honors trans people. In this way trans Jews avoid assimilation into normative Judaism and demonstrate the possibility of trans affirmation within Judaism. ... Reclamation of the mikveh by trans Jews is powerful precisely because it allows them the opportunity for affirmation within the mainstream Jewish culture that seems to reject them.<sup>48</sup>

While most of the *teshuvot* written on trans people approach the topic from a perspective of assimilation, trans Jews have been creating their own pathways of affirmation. Assimilation is supported by the current dominant narrative of inclusion, which situates those within normative Judaism opening their communities and practices to those outside of normative Judaism. This inclusion is contingent on the non-normative person being willing and able to adapt to the already established normative culture and praxis, and thus assimilate in order to be accepted. The normative structure is not challenged or changed, but the non-normative individual is.

To merely consider how trans Jews can fit into already established pathways is to perpetuate an assimilationism that could strip us of our uniqueness while also denying Judaism additional pathways. As Crasnow states, “While assimilation risks foreclosing alternative possible Jewish futures in favor of maintaining the status quo, affirmation allows

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<sup>47</sup> S. J. Crasnow, “On Transition: Normative Judaism and Trans Innovation,” *Journal of Contemporary Religion* 32, no. 3 (2017): 403-415.

<sup>48</sup> *Ibid.*, 403; 407.

for a reimagining of Judaism that opens expansive possibilities for other Jewish futures.”<sup>49</sup>

For this reason, as important as it is to consider how trans Jews fit into already established pathways (assimilation), perhaps a better goal is to foster production of new pathways which meet trans Jews where they are and validate their uniqueness.

Mikvah is one of the pathways trans Jews have used to affirm their trans identity in a specifically Jewish way. Another pathway has been receiving a new Hebrew name. For myself, I used both in order to affirm my trans Jewish identity in a private and a public way. The mikvah was a private, personal ritual, with only my clergy and my witness. The process of washing and then immersing was immensely healing for me: “In this queer reading of mikveh, the ritual does not serve to cleanse the (queer/trans) body of its own essential impurities. Rather it has been reinterpreted as a method for healing or cleansing the queer/trans body from the toxicity of hetero- and cisnormativity.”<sup>50</sup> After coming out as trans, I spent years in a liminal space where I accepted others’ misperceptions of me. I could not help but blame myself for others’ inability to witness my truth. For me, the mikvah was a powerful symbol of washing away that shame. By affirming my trans truth, I was shedding the guilt I felt in correcting others who misidentified me. I was shedding the responsibility for their reactions to my reality.

After immersing in the mikvah, I had a Hebrew renaming ceremony in my synagogue community. Many of my community members never realized I was trans; they had assumed I was a butch lesbian. This was a way to come out to my whole community, tell them my truth, and honor my place as a trans person within the Jewish community. For many of my family members who struggled with changing pronouns for me, this ceremony in my synagogue

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<sup>49</sup> Crasnow, 413.

<sup>50</sup> Ibid., 408.

represented a turning point at which they could no longer excuse themselves for their mistakes. As I was now accepted by God and my community as my true self, the ceremony solidified my identity in a way that my words alone could not.

Trans Jews are also creating new pathways through Jewish observance of Trans Day of Remembrance (TDOR) and Trans Day of Visibility.<sup>51</sup> This is one major way in which trans Jews have begun to influence normative Jewish spaces. As we create pathways to link and intersect trans and Jewish identities, we also provide others opportunities to broaden their Jewish experiences and customs. Jewish TDOR vigils are becoming more common outside of queer and trans spaces. Using blessings by or for trans Jews, these vigils validate both the importance of observing TDOR and the Jewishness of this observance.

Halakhah is a pathway; it is an ever-evolving connection from our past to our present. In order for halakhah to be accessible and meaningful, it must meet us where we are and validate our unique realities. We should not change ourselves for the pathways; we should change the pathways for us. We should not only think of what we are obligated to do, but consider what is affirming and life-giving. If we cannot find a halakhah which can fulfill those functions, it is up to us to create it. Not only for ourselves, but for everyone who may benefit from it.

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<sup>51</sup> LGBTQ synagogues such as Beth Chayim Chadashim, Sha'ar Zahav, Kol Ami, and Congregation Beit Simchat Torah observe these days in their wider community. *Siddur Sha'ar Zahav* includes a "Transgender Celebration Shabbat" on page 433 and a prayer for Trans Day of Remembrance on page 442. CBST's *Siddur B'chol L'vav'cha* has a prayer for Trans Day of Remembrance on page 198. *Mishkan Ga'avah* includes Trans Day of Visibility on pages 100-3 and Trans Day of Remembrance on pages 161-6.

## **Appendix / Resources**

*Brit Ahavah*: Lovers' Covenant in Nonbinary Hebrew

Morning Blessing for Trans Jews

Transgender Day of Remembrance *Yizkor*

### Brit Ahavah: Lovers' Covenant in Nonbinary Hebrew

Translation	Transliteration	Hebrew
On (date), according to the Jewish calendar, in the city of (location), (Beloved) child of (parents) whose surname is ____ and (Beloved) child of (parents) whose surname is ____, confirm in the presence of witnesses a lovers' covenant between them and declare a partnership to establish a household among the people of Israel.	B'yom ____ livriat ha'olam l'minyan she'anu ba'(location) hashutafimot (Beloved) mibeit (parents) l'mishpachat (surname) V'(Beloved) mibeit (parents) l'mishpachat (surname) m'kimimot b'neiheimen lifnei eidimot brit ahavah u'makhrizimot al shutafut l'hakamat bayit b'yisrael.	ביום ____ בשבת (יום) ב (חודש) (שנה) לבריאת העולם למנין שאנו מונין (ב) עיר (שב) מדינה השתפיות (אהובה) מבית (הורים) למשפחת (שם) (אהובה) מבית (הורים) למשפחת (שם) מקימות ביניהמן לפני עדימות ברית אהבה ומכריזות על שותפות להקמת בית בישראל.
This agreement into (Beloved) child of (parents) and (Beloved) child of (parents) are entering is a holy covenant like the ancient covenants of our people, made in faithfulness and peace to stand forever.	Haskem zeh shebaimot vo (Beloved) mibeit (parents) v' (Beloved) mibeit (parents) brit k'dushah hi kivritot hak'domot shel ameinu ha'asu'ot b'emunah u'vashalom la'amod lanetzakh.	הסכם זה שבאימות בו (אהובה) מבית (הורים) (אהובה) מבית (הורים), ברית קדושה היא כבריתות הקדומות של עמינו, שנכרתו באמונה ובשלום לעמוד לנצח.
It is a covenant of protection and hope like the covenant between God and Noah and his descendants, saying: "When the rainbow is in the clouds, I will see it and remember the everlasting covenant between God and all living creatures, all flesh that is on earth. That," God said to Noah, "shall be the sign of the covenant that I have established between me and all flesh on the earth" (Gen. 9:16–17).	Brit sh'mirah v'tikvah hi kivrit bein Adonai v'noach v'tze'etza'av shenemar: "v'haytah hakeshet be'anan u'ritha lizkor brit olam bein Elohim u'vein kol nefesh khayah b'kol basar asher al ha'aretz. Va'yomer Elohim el Noakh zot ot ha'brit asher hakimoti beini u'vein kol basar asher al ha'aretz.	ברית שמירה ותקוה היא כברית בין יהוה ובין נוח וצאצאיו, שנאמר: והיתה הקשת בענן וראיתיה לזכר ברית עולם בין אלהים ובין כל נפש חיה בכל בשר אשר על הארץ. ויאמר אלהים אל נח זאת אות הברית אשר הקמתי ביני ובין כל בשר אשר על הארץ
It is a covenant of distinction, like the covenant God made with Israel, saying: "You shall be My people, and I shall be your God" (Jer. 30:22).	Brit s'gulah hi kab'rit bein Adonai v'yisrael shenemar: Vih'yitem li l'am v'anokhi eh'yeh lachem leilohim.	ברית סגולה היא כברית בין יהוה וישראל שנאמר: והייתם לי לעם ואנכי אהיה לכם לאלהים



It is a covenant of devotion, joining hearts like the covenant David and Jonathan made, as it said: "And Jonathan's soul was bound up with the David's soul. Jonathan made a covenant with David because he loved him as himself" (1 Sam. 18:1-3).	Brit y'didut hi hamkasheret l'avot kivrit shekartu David v'honatan shenem'rah: V'nefesh Y'honatan niksh'rah b'nefesh David. Vayichrot Y'honatan v'David brit b'a'havato oto k'nafsho.	ברית ידידות היא המקשרת לבבות כברית שכרתו דוד ויהונתן שנאמרה: ונפש יהונתן נקשרה בנפש דוד. ויכרת יהונתן ודוד ברית באהבתו אתו כנפשו
It is a covenant of mutual lovingkindness like the wedding covenant between God and Zion, as it is said: "I will bind myself to you forever. I will bind myself to you with righteousness and justice and lovingkindness and compassion. I will bind myself to you in faithfulness and you shall know God" (Hos. 2:21-22).	Brit shel khesed hadadi kivrit hanisu'in shel Adonai v'tzion shenemar: V'ei'rastikh li l'olam. V'ei'rastikh li b'tzedek uvmishpat uvkhesed uvrakhamim. V'ei'rastikh li be'emunah v'yada'at et Adonai.	ברית של חסד הדדי כברית הנישואין של יהוה וציון שנאמר: וארשתיך לי לעולם וארשתיך לי בצדק ובמשפט ובחסד וברחמים וארשתיך לי באמונה וידעת את יהוה
The following are the provisions of the covenant of love into which (beloved), child of (parents), and (beloved), child of (parents), enter:	L'halen t'na'eh brit ha'ahavah ba'imot (beloved) mibeit (parents) v'(beloved) mibeit (parents):	להלן תנאי ברית האהבה שבה באימות (אהובה) מבית (הורים) (ו) אהובה) מבית (הורים):
1. (Beloved) and (Beloved) declare that they choose each other as friends and lovers, as our rabbis teach: "Make yourself a partner. This teaches that a person should make themselves a partner, to eat with, to drink with, to read Torah with, to study text with, to sleep with, to confide all one's secrets, secrets of Torah and secrets of worldly things." (Avot D'Rabbi Natan 8)	(Beloved) v'(Beloved) makrizimot she'hemen bochrimot zet et zet k'chaverimot v'yedidimot k'mo sh'shanu raboteinu: kanet l'chavereh. K'tzar m'lamed she'yik'ne'ah adam chavereh l'atzmeh she' ya'ach'leh imah v'yishte'ah imah v'yik're'ah imah l'yish'ne'ah imah v'y'ash'neh imah v'yig'le'ah leh kol sitreheh, sitrei torah, v'sitrei derech eretz	א. (אהובה) (ו) אהובה) מכריזימות שהמן בוחרים זת את זת כחבריות וידידימות כמו ששנו רבתינו: קנת לך חברה כצר מלמד שיקנאה אדם חברה לעצמה שיאכלה עמה וישתאה עמה ויקראה עמה לישנאה עמה ויישנה עמה ויגלאה לה כל סתריה, סתרי תורה וסתרי דרך ארץ.
2. (Beloved) and (Beloved) sanctify themselves for each other and declare to not take another lover.	(Beloved) v'(Beloved) m'kadshimot et atzmehem zet l'zet umachrizimot lo lakachat oheveh achereh.	ב. (אהובה) (ו) אהובה) מקדשימות את עצמן זת לזת ומכריזימות לא לקחת אהובה אחרת.

3. (Beloved) and (Beloved) hereby assume all the rights and obligations that belong to close family: to care and provide for one another in sickness and in health, in hard times and good times. They assume all of these for each other, as well as for any children with which God may bless them.	(Beloved) v'(Beloved) m'kablimot aleihemen et kol hachovot v'haz'chuyot hashayachot l'mishpacha k'ruvah: l'tapel v'l'sapek zet l'zet bacholi uvab'riut, biz'manim kashim v'tovim. Hemen m'nichimot et kol eleh zet l'zet ul'banimot she'Adonai y'var'chey otemen.	ג. (אהובה) ו(אהובה) מקבלימות עליהמן את כל החובות והזכויות השייכות למשפחה קרובה: לטפל ולספק זה לזה בחולי ובבריאות, בזמנים קשים וטובים. המן מניחיות את כל אלה זה לזה ולבנימות שיהיה יברכה אותמן.
4. (Beloved) and (Beloved) commit themselves to creating a Jewish home for their family: to grow loving-kindness and justice in our home and the world, and to work together with the children toward the communal task of mending the world.	(Beloved) v'(Beloved) m'kablimot al atzmemen litzur bayit yehudi l'mishpachtaman: l'hagdil et hachosed v'et hatzedek b'veiteinu uba'olam l'la'avod yachad im hay'ladimot b'malachat hatzibbur shel tikun olam.	ד. (אהובה) ו(אהובה) מקבלימות על עצמן ליצור בית יהודי למשפחתמן: להגדיל את החסד ואת הצדק בביתנו ובעולם, ולעבוד יחד עם הילדימות במלאכת הצבור של תקון עולם
5. (Beloved) and (Beloved) pledge that one will help the other at the time of dying, by carrying out the last rational requests of the dying partner, protecting the other from embarrassment, indignity, or abandonment, and to remain one with the other tender, with blessing and faith until the end, fulfilling what has been written: "Set me as a seal upon your heart, like the seal upon your arm, for love is stronger than death." (Song of Songs 8:6)	(Beloved) v'(Beloved) mitchayavimot la'azor zet l'zet bishat mavet, b'kiyum hab'kashot haheginot ha'achronot shel hanotet lamut, lishmor et hanotet lamut m'bitul ishi'ut m'pgiat kavod, me'elbon, ul'hisha'er zet im zet bivricha uv'emunah ad hasof l'kayem et mah shekatuv: "Simni k'chotam al lib'cha k'chotam al z'ro'echa ki azah ch'mavet ahavah."	ה. (אהובה) ו(אהובה) מתחייבות לעזור זה לזה בשעת מוות, בקיום הבקשות ההגיוניות האחרונות של הנוטת למות, לשמור את הנוטת למות מבטול אישיות מפגיעת כבוד, מעלבון, ולהישאר זה עם זה בברכה ובאמונה עד הסוף, לקיים את מה שכתוב: שימני כחותם על לבך כחותם על זרועך, כי עזה כמות אהבה
To this covenant we affix our signatures:	Et habrit hazot anu chotmimot:	את הברית הזאת אנו חותמימות:

\*This *Brit Ahavah* is a modification of Rachel Adler's *Brit Ahuvim* in *Engendering Judaism*.

## Morning Blessing for Trans Jews

Blessed are you, Adonai our God, who has molded  
my soul from contradictions. From apparent  
opposites you have created me, and from within dichotomies  
I can see the plurality of your creation.

בְּרוּכָה אַתָּה יְהוָה אֱלֹהֵינוּ בּוֹרְאָה הָעוֹלָם שֶׁעָשְׂתָנִי טְרַנְס

*B'rucheh ateh Adonai eloheinu bore'ah ha'olam she'asteni trans*

Blessed are you, Adonai our God, creator of the world, who has made me trans.

\*In order to reflect God's expansiveness, this blessing was formulated using the Nonbinary Hebrew Project. Versions of this blessing were originally published in *Queer Voices: Poetry, Prose, and Pride* (St. Paul, MN: Minnesota Historical Society Press, 2019) and *Mishkan Ga'avah: Where Pride Dwells* (New York, NY: CCAR Press, 2020).

**A Transgender Day of Remembrance *Yizkor*:  
For Those Who Died Sanctifying Their Names**

God full of compassion, remember those whose souls were taken in transphobic violence. Those souls reflected the tremendous, multitudinous splendor of Your creations; they illustrated Your vastness through their ever-expanding variations of being *b'tzelem Elohim*, being made in Your image. Source of Mercy, provide them the true shelter and peace that they deserved in this world.

Those deaths were caused by hatred in our society. It is upon us to repair this brokenness in our world. May we have the strength to sanction justice, speedily and in our days.

For those who died by murder, we remember them. For those who died by suicide, we remember them. We remember their names, their true names, for those names will forever be a blessing.

Nurturing One, comfort all who are mourning. Grant them healing in their hardship.

וְנֹמָר : אָמֵן.

*V'nomar: amein.*

And let us say: Amen.

\*This prayer was originally published in *Mishkan Ga'avah: Where Pride Dwells* (New York, NY: CCAR Press, 2020).

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