O Brave New World: Gender Fluidity, Transition, and Judaism

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 The title of this morning’s presentation serves as an acknowledgement that the world most of us grew up in has changed and continues to change rapidly. One of those changes is our understanding of sexuality and gender. In the past forty years we have gone from living in a country in which homosexuality was a cause for firing public school teachers and, in which in many jurisdictions, consensual acts between two men were illegal, to a country that recognizes gay marriage. We have also gone from a world in which gender was seen as binary (male/female) to a world into which male and female are now viewed by many as endpoints on a continuum.

 I think it is fair to say that most, if not all, of us have been left a bit dazed by these changes. We find ourselves having to rethink notions that were once clear to us, and to learn new vocabulary and engage ideas about gender and sexuality that seem foreign. The object of this session is to begin a conversation about things that are new to us and the language that we can use to make meaning of a changing landscape.

**Part One: Gender**

 For most of human history, sex and gender were interchangeable concepts. From the moment of birth, almost every individual was recognized as male or female. That identity determined the individual’s education or socialization. Many obligations and privileges were assigned based on being male or female. And even in cultures that acknowledged the existence of same sex relationships, there was an overarching assumption that one’s gender – male or female – would determine one’s sexual pairing with an individual of the opposite gender.

 Today, we recognize that gender and sex are not the same. A person’s sexual orientation, that is the sexual attraction an individual feels towards men or women (or both or neither) is not a function of the individual’s own gender identity. Gender is **not** about sexual orientation or attraction. Rather, Joy Ladin writes,

Gender exists at the place where inner life meets the embodied life. It is neither purely personal and internal, nor is it purely biological. Each of us carries a distinct internal sense of our self as a gendered being.

**Gender and Judaism**

 Throughout human history, gender was generally determined/recognized by one’s external genitalia. A child born with a penis was recognized as a boy; a child born without a penis was recognized as a girl. This binary was imperfect; even in antiquity, writers acknowledge the existence of individuals who did not exhibit these markers of gender. In Mishnah Nazir 2:7, the rabbis distinguish between a male and three other types of human beings. One of those is the female; the other two do not conform to definitions of male or female. They are known as the androgynous and the *tumtum*. By the way, the grouping of female, *tumtum* and androgynous together in apposition to the male, probably reflects the idea that the male form is the “gold standard” of humanity; all others are deviations from that standard.

 Rabbinic texts offer no clear definition of the *tumtum*. Bavli Baba Batra 126b indicates that this type of individual has no clear genitalia. Because in the absence of genitalia, the rabbis could determine the gender of the *tumtum* they placed upon the *tumtum* the obligations of both men and women (just to play it safe) while denying the *tumtum* the privileges that come with an assigned gender; thus the *tumtum* is obligated to wear tzitzit, in case he is in fact male, but may not be part of a *zimmun* for Birkat HaMazon, in case she is female. These rulings reflect the rabbis’ preference for binaries, and for assigning obligations and privileges based on gender. One example of this is Mishnah Sotah 3:8

**Mishnah Sotah 3:8**

What is the difference between a man and a woman? A man [who is a *metsor’a*] bares his head and tears his clothes, but a woman does not. A man may take a vow making his son a *nazir*, but a woman may not. A man may bring the offerings and cut his hair to complete his father’s nazirite vow, but a woman may not. A man may sell his daughter into service, but a woman may not. A man may enact his daughter’s betrothal, but a woman may not. A man is stoned naked, but a woman is not. A man’s corpse is hung but a woman’s is not. A man may be sold to repay theft, but a woman may not.

 The fourth category in Mishnah Nazir 2:7 is the androgynous. This individual, according to rabbinic texts, exhibits evidence of both male and female genitalia, a penis and a vagina. Rabbinic tradition and contemporary scholars debate whether the androgynous (and the *tumtum*) were “real” or rabbinic fantasies. But in any case, both testify to the possibility, whether in rabbinic society or rabbinic imagination, to the intersex individual, an individual who cannot be defined as male or female based on appearance. This is interesting, but doesn’t help us much with a more contemporary reality: individuals who present or identify as non-binary or gender non-conforming (gender queer), because in the contemporary culture, gender is not, as it was for the rabbis, about one’s genitalia per se.

 Like the *tumtum*, the androgynous is described or understood by the rabbis through a binary lens. Consider Mishnah Bikkurim, chapter 4. Please note that I have deliberately used the masculine pronoun “he” in my translation, to reflect the masculine verbs used in the Mishnah, even when the Mishnah is asserting that the androgynous is “like women” or “not like men or women.” This use of the masculine verb underscores the androcentrism of rabbinic texts; the feminine verb is used only when the subject or subjects are definitely female (and not always then).

4:1 Androgynous – there are ways [he] is like men and ways he is like women, ways he is like both men and women, and ways he is like neither men nor women.

4:2 How like men? He becomes impure through a white discharge, like men, and wraps up, like men, marries but is not taken in marriage, like men, and his mother observes the number of clean days required for the birth of a male. He is not supported with daughters, and is held responsible for rounding the corners and cutting [the beard] and corpse contamination, like men. And he is responsible for all commandments in the Torah, like men.

4:3 How like women? He becomes impure through a red discharge, like women, and may not be alone with men, like women. He is not required to perform levirate marriage, like women, and does not inherit with sons, like women. He does not eat holy offerings, like women, and is disqualified from testifying, like women. And if someone forbidden has sexual relations with him, he is disqualified from eating *terumah*, like women.

4:4 How like men and women? Others are liable for harming or cursing him…One who kills him unintentionally is exiled and with intention, is executed… His mother brings an offering after childbirth… He eats lesser offerings… and inherits when there is no other heir.

4:5 How like neither men nor women? We do not burn *terumah* due to his discharge, we do not charge him for entering the Temple with a discharge… He is not sold as a Hebrew slave… He cannot be the subject of a vow of valuation…. Rabbi Yose says: Androgynous is a unique creation, and the sages were unable to determine if he is a man or a woman. But a *tumtum* is not like that, sometimes he is male and sometimes he is female.

**Mishnah Bikkurim 4:1-5**

* What does it mean to be “like a man?” Why is the androgynous treated “like a man” in the ways mentioned in Bikkurim 4:2?
* What does it mean to be “like a woman?” Why is the androgynous treated “like a woman” in the ways mentioned in Bikkurim 4:3?
* What do we learn about the commonalities between men and women from Bikkurim 4:4?
* According to Bikkurim 4:5, what disadvantages do the rabbis place on the androgynous? Why?

These mishnayot, like the others we have mentioned, testify to the rabbis’ binary understanding of gender. There are mitzvot that impact men and women, mitzvot that are only incumbent on men, and mitzvot that are only incumbent upon women. Gender, as understood by the rabbis, determines the individual’s obligations and privileges; if an individual is of indeterminate gender, the individual’s engagement with Jewish ritual is compromised.

**Transgender Jews**

 The word “transgender” is used to describe an individual “whose gender identity and/or expression is different from cultural expectations based on the sex they were assigned at birth” (Sharzer, 6). Although the term “transsexual” has been used to describe such individuals, transgender is the preferred word. Additionally, it is now considered more appropriate to use “transgender” as an adjective rather than a noun.

 Individuals who identify as transgender should not be confused with individuals who simply choose not to conform with society’s assumptions about what is masculine and feminine. Joy Ladin writes,

There are also many people whose internal sense of gender is fundamentally at odds with the gender assigned to them at birth. This often has little to do with the characteristics or expectations outlined above – gender is much more than how one dresses or which stereotyped behaviors one enjoys. Gender describes the internal map of the self, and the framework through which the self meets the embodied world.”

When we talk about “the internal map of the self” and an “internal sense of gender,” we are acknowledging that an individual has a sense of being gendered that may or may not correspond to that individual’s body and genitalia. To be transgender is to be an individual “whose gender identity and/or expression is different from the cultural expectations based on the sex they were assigned at birth.” When this sense of a disconnect between one’s understanding of one’s gender and one’s body is profoundly distressing it is known as **gender dysphoria**. In some cases, gender dysphoria occurs when a child is born with genitalia that are not clearly male or female; in the past, parents were often urged to “choose” a gender for such a child and then surgery was performed to make the child’s body “conform” to that gender. But most transgender individuals did not have this type of experience. Rather, despite appearing to the world as one gender, despite being raised as a person of that gender, transgender individuals know that they are in fact not the gender that others attribute to them.

1. There is no single “explanation” for gender dysphoria or the certainty experienced by transgender persons that they are not what others assume them to be.
2. Any “test” for determining gender – anatomy, hormones, chromosomes – will leave some people assigned a gender that does not “fit” their self-understanding.
3. For this reason, the best criterion for gender assignment is an individual’s self-understanding.

**Transitioning**

 **Gender transitioning** is the process by which a transgender individual ceases to live as the gender which was assigned at birth and lives (and is recognized by others) as the gender that they understand themselves to be.

* Gender transition often involves hormone treatment. Hormone treatments are often a vehicle to allow the trans individual to present to others as they see themselves.
* Gender transition may involve surgery. There are a variety of surgeries that an individual may choose in order to have a body that corresponds to the individual’s self-understanding. Some halakhic authorities (and some secular authorities as well) will only acknowledge an individual’s preferred gender when surgery has occurred. This is problematic because many trans people do not pursue surgery, which is expensive and invasive. Additionally, an expectation that a trans individual will have surgery is essentialist, as it privileges an anatomical understanding of gender.

**A Jewish Response to Trans People**

Gender transitioning raises many questions for us as rabbis and for the Jewish community. For some, these questions are halakhic – can we recognize a person based on the way they present to the world rather than on the basis of their genitalia at birth? If so, at what point in the process of transition is the person recognized according to the gender they present? How does gender transition impact marriage, divorce, conversion, etc. In the printed version of this talk, which will appear in the NAORR newsletter, I will offer resources that deal with these questions.

 Today I want to focus on the question of how we as Reform rabbis, family members and friends support and accept trans people. I want to argue that we do not need to understand why some individuals experience a disconnect between the gender assigned to them at birth and their own experience. What we do need to understand is that it is incredibly painful to be trapped in an identity that does not express your innermost sense of self, and to have your truest expression of yourself rejected by those around you.

As the CCAR Responsa Committee observed in 2006 in response to a question about a potential convert who was trans.

We therefore have no need as a community to determine the “correct” gender of any individual or to question any person’s expressed gender identity. We accept the person as that individual presents him- or herself, as male, female, or transgender. The person of whom you speak has chosen “to live exclusively as a woman.” That choice, which determines her gender identity, is enough for us, we accept her accordingly.

First and foremost, accepting someone means accepting them as they present themselves. Whether the individual is simply telling us what their gender identity is, whether they are taking hormones, whether they are changing their name to reflect their gender identity… our task is to accept and support them. It is important to offer support and acceptance immediately, because tying that support and acceptance to an act – hormone treatment, surgery, a legal name change – tells the trans person that we do not yet accept their own sense of who they are, or that they need to “prove” to us that this is not simply a whim or some sort of confusion. Sending that message is incredibly hurtful to a person struggling to be seen by others as they see themselves.

 I realize that this sounds easier than it is. I remember telling my parents that I was no longer using the English name they chose for me, but instead wanted to be called only by my Hebrew name, the name they gave me but never expected me to use it outside the temple. At nineteen, I had no grasp of the enormity of what I was asking or the sense of rejection my parents might be feeling. Think of the families of the individuals whom you helped convert to Judaism – how did those parents and grandparents react to their children’s abandonment of their birth religion and their embrace of a new faith, their “rebirth,” as it were, as a new person? How much more confusing and challenging is it to embrace your granddaughter who was until now, your grandson.

 But this is, nonetheless, what we are called upon to do. Consider the response of the *Tzitz Eliezer*, Rabbi Eliezer Waldenberg (1915-2006), to a question about an individual who had previously been known as a woman but then “became a man.” Granted the responsum offers no clue as to how this change occurred; Waldenberg writes as though this simply “happened,” but nonetheless his response acknowledges that in such a situation, we accept the individual’s new identity.

**Tzitz Eliezer, Part 10, Section 25, Chapter 26 (translation by Dr. Barry Wimpfheimer)**

I also saw in a book called Yosef Et Ahiv (by Rav Yossi Plaggi, z”l), [3:5] that asks…if Reuven married a female virgin, like all Jewish women, and lived with her as a man and woman do, and years later something happened to her and she became a man, does Reuven need to give a *get* in accord with the law of Moses and Israel because she was his wife, or is there no *get* because he isn’t a woman but a man?...It seems to me in this question that there is no need for a get because he’s a man and not a woman.

And as I said, as for a man like this—who was a woman who changed to a man—when he says morning blessings, he does not say, “who did not make me a woman,” because he came out of his mother’s womb and into the world as a woman. He should say, “Blessed are You, Lord our God, Ruler of the Universe, who has changed me into a man.”

The identity and birthright of a human is not expressed by the separate organ parts of his body—and this will be the most important—but by the spirit and the soul which are within them. The Hatam Sofer was correct when he wrote that the body is not the human; rather the body is a bag made of dust and within that bag is inner wisdom, knowledge, and thoughts, which are the true definitions of personality.

What do we learn about the impact of the change in gender identity?

* It negates the marital status of the individual such that the man does not need a *get*  from a marriage which was formed when he was a woman. Waldenberg’s focus is on halakahic status; we could draw from this the idea that transition is an absolute transformation, that the individual is to be treated in accordance with their gender identity in every way.
* The man no longer recites “Who has not made me a man” because he is now a man. Instead, he acknowledges that this change comes from God. {This is complicated by the lack of clarity of how Waldenberg understands this change to have occurred.} We might draw from this the idea that a trans person affirms their gender identity as they understand it as being what God truly meant them to be.
* Waldenberg recognizes that the body is the vessel through which the soul, the essence of a person’s being, interacts with the world around them. We must recognize the person’s soul, their sense of who they are, as the essence of that person. The body may express that identity, and may even be reshaped to allow the individual to feel that their body is now in sync with their essence. However, when a person transitions, the body cannot be used by others to counter the person’s self-understanding.

I want to conclude with a quote from a young woman who was recently accepted to the rabbinical program. In her essay, she writes about the formation of her Jewish identity and her transition. I think this excerpt from her application, shared with her permission, says it all.

Transitioning from male to female was a spiritual journey in and of itself. When I was a teen, I had no sense of spirituality. However, my gender dysphoria reflected a disconnect between my assigned male at birth body and my female soul. Though this disconnect has often caused me pain, it has also helped me realize that my soul is a spiritual entity, separate from my body. In my transition, I was finally able to open myself to G-d, and instead of being angry and resentful that G-d didn’t make me a woman, I became joyous as I realized that G-d had indeed made me a woman, just in a different way.

Resources for Further Reading

1. Sharzer, Rabbi Leonard A., MD, “Transgender Jews and Halakhah” (Rabbinical Assembly Committee on Jewish Law and Standards responsum) This responsum, in addition to addressing a number of ritual questions, offers an accessible discussion of the issue and cites a number of useful works on gender identity. [www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/2011-2020/transgender-halakhah.pdf](http://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/2011-2020/transgender-halakhah.pdf)
2. CCAR Responsa on Matters Pertaining to Transgender Individuals

[www.ccarnet.org/ccar-responsa/5769-6/](http://www.ccarnet.org/ccar-responsa/5769-6/)

[www.ccarnet.org/ccar-responsa/57762/](http://www.ccarnet.org/ccar-responsa/57762/)

1. Kukla, E, “A Created Being of its Own: Gender Multiplicity in Jewish Antiquity” HUC Rabbinic Thesis, 2006

<http://library.huc.edu/pdf/theses/Kukla%20E-LA-Rab-2006%20rdf.pdf>

1. Zellman, Reuben, “*Inyanei HaMitzvot*: The Tumtum and Androgynous in the Shulchan Aruch and Mishneh Torah, HUC Rabbinic Thesis, 2010

<http://library.huc.edu/pdf/theses/Zellman%20Reuben%20Isadore-LA-Rab-2010%20rdf.pdf>

Both of these rabbinic theses have a wealth of Jewish texts regarding the *tumtum* and the androgynous. They also represent a significant resource for anyone interested in constructs of gender, both in the past and in contemporary thought.