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## Our agenda

Jewish law, dating back to the Bible, has worked with the assumption that there are two genders, and gender is identified based on visible genitalia. While millennia-old rabbinic literature included the possibility of indeterminate gender, it did not clearly address today's ethical questions resulting from gender dysphoria. How can a medical professional help Jewish patients who are dealing with these issues?

## Preface

### 1. Nina Dragicevic, *Canada's Gender Identity Rights Bill C-16 Explained*

<https://www.cbc.ca/cbcdocspov/features/canadas-gender-identity-rights-bill-c-16-explained>

Passed in June 2017, Bill C-16 has become part of a larger conversation surrounding gender, pronoun use, freedom of speech, and the rights of transgender and gender-diverse Canadians. What changes, exactly, are in the new law? Bill C-16 added the words "gender identity or expression" to three places.

First: It was added to the Canadian Human Rights Act, joining a list of identifiable groups that are protected from discrimination. These groups include age, race, sex, religion and disability, among others.

Second: It was added to a section of the Criminal Code that targets hate speech — defined as advocating genocide and the public incitement of hatred — where it joins other identifiable groups.

Third: It was added to a section of the Criminal Code dealing with sentencing for hate crimes. If there's evidence that an offence is motivated by bias, prejudice or hate, it can be taken into account by the courts during sentencing.

### 2. Federal Legislation, Bill C-4, December 8, 2021

<https://www.parl.ca/DocumentViewer/en/44-1/bill/C-4/royal-assent>

#### SUMMARY

This enactment amends the *Criminal Code* to, among other things, create the following offences:

- (a) causing another person to undergo conversion therapy;
- (b) doing anything for the purpose of removing a child from Canada with the intention that the child undergo conversion therapy outside Canada;
- (c) promoting or advertising conversion therapy; and
- (d) receiving a financial or other material benefit from the provision of conversion therapy.

It also amends the *Criminal Code* to authorize courts to order that advertisements for conversion therapy be disposed of or deleted...

#### Definition of *conversion therapy*

320.101 In sections 320.102 to 320.104, *conversion therapy* means a practice, treatment or service designed to

- (a) change a person's sexual orientation to heterosexual;
- (b) change a person's gender identity to cisgender;
- (c) change a person's gender expression so that it conforms to the sex assigned to the person at birth;
- (d) repress or reduce non-heterosexual attraction or sexual behaviour;
- (e) repress a person's non-cisgender gender identity; or
- (f) repress or reduce a person's gender expression that does not conform to the sex assigned to the person at birth.

For greater certainty, this definition does not include a practice, treatment or service that relates to the exploration or development of an integrated personal identity — such as a practice, treatment or service that relates to a person's gender transition — and that is not based on an assumption that a particular sexual orientation, gender identity or gender expression is to be preferred over another.

3. Azeen Ghorayshi, *Doctors Debate Whether Trans Teens Need Therapy Before Hormones*, NY Times 1/13/22  
<https://www.nytimes.com/2022/01/13/health/transgender-teens-hormones.html>

An upsurge in teenagers requesting hormones or surgeries to better align their bodies with their gender identities has ignited a debate among doctors over when to provide these treatments.

An international group of experts focused on transgender health last month released a draft of new guidelines, the gold standard of the field that informs what insurers will reimburse for care.

Many doctors and activists praised the 350-page document, which was updated for the first time in nearly a decade, for including transgender people in its drafting and for removing language requiring adults to have psychological assessments before getting access to hormone therapy.

But the guidelines take a more cautious stance on teens. A new chapter dedicated to adolescents says that they must undergo mental health assessments and must have questioned their gender identity for "several years" before receiving drugs or surgeries.

### Vignettes

- 1> Rabbi David Schwartz is approached by Steven, a 50-year old, unmarried, apparently male congregant who joined the synagogue five years ago while reciting kaddish for his mother. Steven divulges that he was assigned female at birth but he always felt male, and twenty years earlier he underwent gender confirming surgery. Steven has not discussed this with anyone in the congregation, but he has been learning more Torah in recent years and he is seeking an understanding of how the Torah views his experience, beyond the realm of Halachah. What can Rabbi Schwartz say to Steven?
- 2> As Rabbi Schwartz and Steven continue their conversations, they inevitably come to a central Halachic question: how does Judaism assign gender? Is it based on physical appearance, such that Steven would now be viewed as male in Jewish law?
- 3> Rabbi Schwartz shares with Steven that many halachic authorities would view Steven as halachically female, despite his surgery. This leads to a discussion of where Steven should sit in the synagogue during services. Steven asks Rabbi Schwartz outright: Would Halachah really place Steven in the section where women sit?

### Explanatory material

4. Prof. Joy Ladin, *The Soul of the Stranger: Reading Gd and Torah from a Transgender Perspective*, pp. 17-18

But just as we rely on the gravity that keeps us from flying to ground us in the world, we rely on gender to ground ourselves and our friendships, families, and social relationships in a shared sense of what human beings are. Binary gender has never had a place for me, but I still rely on it to help me name and know those I love: I call my female parent "mother," my male child "son," my female child "daughter," my spouse "wife"; I recognize my closest friends as "women," and I want others to recognize me as "she." Even feminist thinkers who have devoted their lives to demonstrating the injuries and injustices of binary gender depend in their analyses on gender's power to divide humanity into males and females, men and women.

In short, as hard as we may find it to live with binary gender, it seems to be harder to live without it, a situation that reminds me of a joke Woody Allen tells at the end of *Annie Hall*: "Guy walks into a psychiatrist's office and says, 'Hey doc, my brother's crazy! He thinks he's a chicken.' Then the doc says, 'Why don't you turn him in?' Then the guy says, 'I would but we need the eggs.' I guess that's how I feel about relationships. They're totally crazy, irrational, and absurd, but we keep going through [them] because we need the eggs."

5. Mayo Clinic staff, *Transgender facts*

<https://www.mayoclinic.org/healthy-lifestyle/adult-health/in-depth/transgender-facts/art-20266812>

People who are transgender include:

- Those who have a gender identity that differs from the sex assigned to them at birth
- Those whose gender expression — the way gender is conveyed to others through clothing, communication, mannerisms and interests — and behavior don't follow stereotypical societal norms for the sex assigned to them at birth

- Those who identify and express their gender fluidly outside of the gender binary, which might or might not involve hormonal or surgical procedures

6. American Psychiatric Association, *What is Gender Dysphoria?*

<https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria>

The term "transgender" refers to a person whose sex assigned at birth (i.e. the sex assigned by a physician at birth, usually based on external genitalia) does not match their gender identity (i.e., one's psychological sense of their gender). Some people who are transgender will experience "gender dysphoria," which refers to psychological distress that results from an incongruence between one's sex assigned at birth and one's gender identity. Though gender dysphoria often begins in childhood, some people may not experience it until after puberty or much later.

7. Centre for Suicide Prevention, *Transgender people and suicide*

<https://www.suicideinfo.ca/resource/transgender-people-suicide/>

Trans people are more at risk of suicide than heterosexual people and lesbian, gay, and bisexual people. Studies and surveys have shown many transgender people have thought about and attempted suicide, and previous suicidal behaviours such as these are the most reliable indicators of future suicide risk (Suicide Prevention Resource Centre [SPRC], 2008).

Transgender people also experience mental illness at significantly higher rates than the general population. This heightened risk is primarily due to the fact that transgender people face unique stressors, including stress from being part of a minority group, as well as stress related to not identifying with one's biological sex. If left untreated, these mental health disorders can also be indicators for suicide risk.

8. American Psychological Association, *Transgender People, Gender Identity and Gender Expression*

<https://www.apa.org/topics/lgbtq/transgender>

According to the Diagnostic and Statistical Manual of Mental Disorders (DSM-5), people who experience intense, persistent gender incongruence can be given the diagnosis of "gender dysphoria." Some contend that the diagnosis inappropriately pathologizes gender noncongruence and should be eliminated. Others argue that it is essential to retain the diagnosis to ensure access to care. The International Classification of Diseases (ICD) is under revision and there may be changes to its current classification of intense persistent gender incongruence as "gender identity disorder."

Vignette 1: Gender Dysphoria in Judaism

9. Talmud, Kiddushin 2b

דרכו של איש לעשות מלחמה ואין דרכה של אשה לעשות מלחמה... דרכו של איש לחזור על אשה ואין דרכה של אשה לחזור על איש  
It is the way of men to wage war, it is not the way of women to wage war... It is the way of men to pursue women, it is not the way of women to pursue men.

10. Talmud, Avodah Zarah 19a

"אשרי איש ירא את ד'" (תהלים קיב:א) אשרי איש ולא אשרי אשה? א"ר עמרם אמר רב אשרי מי שעושה תשובה כשהוא איש. ר' יהושע בן לוי אמר אשרי מי שמתגבר על יצרו כאיש.

"Fortunate is the *ish* who reveres Gd" – "Fortunate is the *ish*," and not "fortunate is the *ishah*"? Rabbi Amram cited Rav: Fortunate is one who repents while still an *ish* [in his prime]. Rabbi Yehoshua ben Levi said: Fortunate is one who overpowers his desires like an *ish*.

11. Midrash, Shemot Rabbah 28:2

"כה תאמר לבית יעקב", אלו הנשים... ד"א למה לנשים תחלה שהן מזדרזות במצות...  
"So shall you tell the house of Yaakov" refers to the women... Another explanation: Why tell the women first? Because they are energetic in pursuing mitzvot...

12. Talmud, Bava Metzia 59a

אמר רב: לעולם יהא אדם זהיר באונאת אשתו, שמתוך שדמעתי מצויה אונאתה קרובה.

Rav said: One must always be careful not to abuse the feelings of his wife; because she cries readily, abuse happens more readily.

13. Talmud, Gittin 49b

מפני מה אמרו כתובת אשה בזיבורית? שיותר ממה שהאיש רוצה לישא האשה רוצה לינשא

Why is it inferior quality land acceptable to pay a *ketubah*? More than the man wishes to wed, the woman wishes to wed.

14. "Mishnah" Bikkurim 4:5

רבי מאיר אומר אנדרוגינוס בריה בפני עצמה הוא, ולא יכלו חכמים להכריע עליו אם הוא איש או אשה. אבל טומטום אינו כן פעמים שהוא איש פעמים שהוא אשה:

Rabbi Meir said: An *androgynus* is an entity of its own, and the Sages could not categorize it as either man or woman. But a *tumtum* is not so; sometimes it is a man, sometimes it is a woman.

15. Mishnah Shabbat 19:3 (134b)

אנדרוגינוס אין מחללין עליו את השבת ורבי יהודה מתיר באנדרוגינוס:

One would not violate Shabbat for [the circumcision of] an *androgynus*. Rabbi Yehudah permits for an *androgynus*.

16. Rabbi Samson of Sens (12<sup>th</sup> century France), Commentary to Bikkurim 4

יש לפרש דאנדרוגינוס לרבי יוסי [=ר' מאיר] שלשה ספיקות יש בו ספק בריה ספק איש ספק אשה ונפקא מיניה דאמו יושבת עליו לזכר ולנקבה ולגדה

One could explain that *androgynus*, for Rabbi Meir, has three doubts: It may be an entity of its own, it may be a man, it may be woman. A practical application would be that his mother would observe laws of *taharah* for a male, a female and niddah.

17. "Mishnah" Bikkurim 4:1

אנדרוגינוס יש בו דרכים שוה לאנשים ויש בו דרכים שוה לדרכים שוה לאנשים ויש בו דרכים אינו שוה לא לאנשים ולא לנשים:

[Within Jewish law:] An *androgynus* is like men in some ways, like women in some ways, like men and women in some ways, and like neither men nor women in some ways.

18. Mishnah Yevamot 8:6 (81a)

אנדרוגינוס נושא אבל לא נישא ר' אליעזר אומר אנדרוגינוס חייבים עליו סקילה כזכר:

An *androgynus* marries a woman but is not married by a man. Rabbi Eliezer said: A man who has relations with an *androgynus* is liable as for relations with a man.

19. Prof. Joy Ladin, *The Soul of the Stranger: Reading Gd and Torah from a Transgender Perspective*, pg. 19

But even in ancient times, the rabbis of the Talmud recognized that reading this verse as a divine decree that human beings can only be male or female doesn't fit the facts of human physiology. They knew that while most human bodies fit binary norms, some are what we now call "intersex," and have characteristics that make it impossible to categorize them as male or female. For these rabbis, the questions raised by people who don't fit binary gender categories were not theological or moral, but practical: how can people who are neither male nor female fit into communities governed according to laws and traditions that assume everyone is either one or the other? Whatever we think of how the rabbis answered this question, their discussions make it clear that they believed that Jews who could not be categorized as male or female should be accepted both as members of Jewish communities who were bound by Gd's law and as human beings created in the image of Gd.

20. Talmud, Berachot 61a

אמר רבי ירמיה בן אלעזר דו פרצופין ברא הקב"ה באדם הראשון שנאמר אהור וקדם צרתי

Rabbi Yirmiyah ben Elazar said: Gd made Adam of two faces. Tehillim 139:5 says, "Back and front He formed me."

## 21. Talmud, Sotah 2a

ארבעים יום קודם יצירת הולד בת קול יוצאת ואומרת בת פלוני לפלוני...

Forty days before a child is formed, a small voice issues, saying, "The daughter of X will be with Y."

## 22. Otzar Midrashim pg. 243

ונוטל הטיפה ומביאה לפני הקב"ה ואומר לפניו רבש"ע עשיתי ככל אשר צויתני וטיפה זו מה תהא עליה גזור עליה כרצונך, מיד הקב"ה גזור עליה אם גבור או חלש או ארוך או גוץ זכר או נקבה טיפש או חכם עשיר או עני, אבל צדיק או רשע אינו גזור דאמרינן הכל בידי שמים חוץ מיראת שמים. מיד רומז הקב"ה למלאך הממונה על הרוחות ואומר לו הבא לי רוח פלוני...

A *malach* takes the drop and brings it before Gd, and says, "Gd, I have done all that You have commanded me; what will happen to this drop? Decree upon it as You wish." Immediately, Gd decrees whether it will be powerful or weak, tall or short, male or female, foolish or wise, wealthy or poor. But righteous or wicked Gd doesn't decree, as we say, "All is in the hands of Heaven, except for the fear of Heaven." Immediately, Gd hints to a *malach* who is appointed over *Rucho*t, and says to him, "Bring me such and such a *Ruach*."...

## 23. Midrash, Yalkut Shimoni Shemuel I 78

וחנה היא מדברת על לבה, למה נשתתפו הנשים עם הקטנים והעבדים לענין המצות, לפי שאין להם לב אחד, שנאמר וחנה היא מדברת על לבה

"And Chanah spoke upon her heart" – Why are women joined with minors and *avadim* regarding mitzvot? Because they have only one heart [and no *yetzer hara*], as it says, "And Chanah spoke upon her heart."

## 24. Devarim 22:5

לֹא-יִהְיֶה כְּלִי-גִבּוֹר עַל-אִשָּׁה וְלֹא-יִלְבַּשׁ גִּבּוֹר שְׂמֹלֶת אִשָּׁה...

A man's implement shall not be on a woman, and a man shall not wear a woman's garment...

## 25. Talmud, Berachot 60a

ולא מהני רחמי? מתיב רב יוסף, "ואחר ילדה בת ותקרא את שמה דינה" - מאי 'ואחר'? אמר רב: לאחר שדנה לאה דין בעצמה ואמרה, 'שנים עשר שבטים עתידין לצאת מיעקב, ששה יצאו ממני וארבעה מן השפחות, הרי עשרה. אם זה זכר, לא תהא אחותי רחל כאחת השפחות,' מיד נהפכה לבת, שנאמר 'ותקרא את שמה דינה.'!"

And prayer is not effective? Rav Yosef challenged from the following lesson: "And then she birthed a daughter, and she called her Dinah" – What is "And then"? Rav said: After Leah judged independently, saying, 'Jacob will produce twelve tribes. Six have come from me, and four from the maids, for a total of ten. If this is a male, my sister Rachel will not even be like one of the maids.' Immediately, she became a daughter. Thus it says, 'And she called her Dinah.'!"

## 26. Rabbi Chaim ibn Attar (18<sup>th</sup> century Morocco, Israel), Ohr haChaim commentary to Bereishit 17:19

ויאמר אלקים אבל שרה [יולדת לך בן] וגו'. צריך לדעת טעם אומרו "אבל" כי אין לה משמעות. ונראה שנתכוין לומר אליו אין הכי נמי אם הנתינה היא בשבילך לבד יש לך פה לומר שאתה מסתפק בישמעאל, אבל שרה אשתך יולדת, פי' לצד שתלד שרה אינך רשאי לוותר בשל הזולת... עוד אפשר לומר כי ד' הקפיד על שאמר לו ישמעאל, שבחר בישמעאל. ואפשר כי זה היה סיבה שניתן לו יצחק מסטרא דנוקבא, והוא אומר שרה יולדת...

"And Gd said: But your wife, Sarah [will birth a child to you], etc." One must know why it says "but", which seems to have no meaning. It appears Gd intended to say to him, "Yes – if the presentation [of a child] were just for you, you could say you will suffice with Yishmael. But Sarah, your wife, will birth a child – meaning, you do not have the right to forgive Sarah's opportunity for a child, for the other"... One could also suggest that Gd was upset because he said "If only Yishmael", choosing Yishmael. And perhaps this is why Yitzchak was given to him from the female aspect, as it says, "Sarah will birth"...

## 27. Rabbi Yoel Sirkis (16<sup>th</sup>-17<sup>th</sup> century Poland), Bach to Orach Chaim 46

ופירוש שלא עשני גוי עבד אשה הוא שלא מסר נפשו על ידי מלאכו להורידה לתוך גופו של גוי או עבד או אשה בתחלת ברייתו.

The meaning of "He did not make me a non-Jew" "*eved*" "woman" is that He did not send our soul, via His *malach*, into the body of a non-Jew, *eved* or woman when it was first created.

28. Rabbi Yaakov Chaim Sofer (19<sup>th</sup>-20<sup>th</sup> century, Baghdad and Israel), Kaf haChaim, Orach Chaim 46:32

עוד אפשר לפרש כי גם בחיים חיותו אפשר לאדם להתעבר מאלו... כי בכל לילה עולה נשמתו למעלה לתת דין וחשבון לפני קונו והנה לפי מעשיו כך דנין אותו. ולפעמים נותנים לו איזו נשמה בסוד העיבור...

It is also possible to explain that during one's lifetime, one might become 'pregnant' with one of these... Each night, one's soul gives an accounting before its Creator, and is judged for its deeds. Sometimes they will give it another soul, in the 'secret of pregnancy'...

29. Rabbi Saadia Gaon (10<sup>th</sup> century Babylon), Emunot v'Deiot 6:8

אבל אומר שאנשים ממי שנקראים יהודים, מצאתים אומרים בהשנות, וקוראים אותו ההעתקה, וענינו אצלם שרוח ראובן תשוב אל שמעון, ואחר כך בלוי, ואחר כך ביהודה, ויש מהם רבים שאומרים, יש פעמים שתהיה רוח האדם בבהמה, ורוח הבהמה באדם, ודברים רבים מזה השגעון והערבוב. והסתכלתי במה שחושבים שהביאם אל המאמר הזה, ומצאתים ארבעה שבושים... והשני, שראו מדות רבים מבני אדם, ומצאום דומות למדות הבהמות...

I say that I have found some people among those who are called Jews who believe in *Gilgul*, and they call it "transmigration." In their minds, this means that Reuven's spirit enters Shimon, and then Levi, and then Yehudah. Some, perhaps most of them, believe that a human soul may enter an animal, or an animal enter a human. The types of foolishness and confusion are legion. And I have looked at the thought process which brought them to say this, and I have found four errors... The second is that they saw many human traits and found them to be similar to animal traits...

30. Rabbi Yigal Shafran (contemporary Israel), **ביתוח להחלפת המין**, Techumin 21 (2001)

בעיה פסיכולוגית חריפה

A harsh psychological problem

31. Rabbi Dr. Avraham Sofer Abraham (contemporary Israel), Nishmat Avraham Even haEzer 44:3

מחלה שגיונית

An irrational illness

32. Rabbi Yitzchak Zilberstein (contemporary Israel), Shiurei Torah l'Rofim 284

בחורים אלו דינם כדין בריא, אלא שבגלל השפעת החברה מבקשים הם לאבד את היקר להם ביותר והוא כח ההולדה...

These youths are viewed by the law as healthy, just that social pressure causes them to wish to destroy that which is most precious in them, the power to reproduce...

#### Vignette 2: How Does Judaism Assign Gender?

33. Rambam (12<sup>th</sup> century Egypt), Commentary to Mishnah Bikkurim 1:5

"ואנדרגינס" - מי שיש לו אברי הזרע שיש לזכרים ולנקיבות ביחד...

"And an *androgynus*" - One who has the reproductive organs of males and females together...

34. Rabbi Eliezer Waldenberg (20<sup>th</sup> century Israel), Tzitz Eliezer 11:78 (1970)

והילוד דנו, כפי שתיאר אותו במכתבו הרי למעשה האברים המיניים החיצוניים נראים אצלו כאצל נקבה, ואין לו שום סימן חיצוני מאבר זכרות, ורק הבדיקות המיוחדות שבוצעו בו הראו כי נמצאים בפנימיות גופו תאי - זכר, ולכן דעתי הוא כנ"ז שגם אם נניחהו כפי שהוא דינו יהא כדין נקבה, כי האברים החיצוניים הנראים לעין הוא הקובע בהלכה (ואגב. שמעתי מרופא שסוגי הורמונים משותפים יש למעשה לזכר ולנקבה גם יחד, וקובע בזה ריבוי האחוזים, ולכן ברור שרק האברים הממשיים החיצוניים המשונים בין זכר לנקבה המה הקובעים בזה למעשה).

This child, as described in the letter, his external organs appear female, and he has no external male sign, and only the special tests which have been carried out have demonstrated that he has male cells inside. In my opinion it is as I said earlier, that even if we leave him as he is now, he will have the status of a female. The external organs, which are visible to the eye, are what establish the law. (By the way - I have heard from a doctor that males and females alike have shared types of hormones, and ratio is what distinguishes them. Therefore, it is clear that only actual, external organs that are unique to males and females are what establish this in practice.)

35. Rabbi Dr. Avraham Steinberg (contemporary Israel), HaRefuah kaHalachah Vol. IV pg 652

מי שנראה כלפי חוץ כנקבה, אף שמבחינה גנטית הוא זכר, ואפילו אם נמצא שיש לו אשך טמיר - דינה כאשה גמורה...

[ג] ציץ אליעזר יא:עח:א, ר' יעקב אריאל, ר' זלמן נחמיה גולדברג, ר' אשר וייס, ר' דוב ליאור

One who appears female externally, even if genetically male, and even if this person has a hidden testicle – her status is as a full woman.

*Tzitz Eliezer 11:78:1; Rabbi Yaakov Ariel, Rabbi Zalman Nechemiah Goldberg, Rabbi Asher Weiss, Rabbi Dov Lior*

36. Rabbi Idan Ben-Ephraim (contemporary Israel), Dor Tahapuchot pp. 69-70

הנה לענין חיובי המצוות, בהשקפה ראשונה נראה שאין שינויים גופניים שאדם חולל בגופו על ידי ניתוחים מעלים או מורידים את חיובו במצוות התורה, משום שאין להתחשב בגופו של האדם לענין חיובו במצוות, שהעיקר לענין זה הוא נשמתו של האדם אשר מכסא כבוד חוצבה מאת השי"ת, כדכתיב "ויפח באפיו נשמת חיים"... נשמתו של האדם לא השתנתה ע"י הניתוחים, ואין השינויים החיצוניים שעשה בגופו משנים מאומה...

As far as mitzvah obligations, upon first examination it appears that physical changes one engineers in his body via surgery do not affect his obligation in the Torah's mitzvot, for one should not consider a person's body regarding his obligation in mitzvot. The essence for this is a person's soul, which is mined from the Throne of Honour, from Gd, as it says, "And He breathed into his nostrils the breath of life"... A person's soul does not change via the surgeries, and external changes one performs on his body change nothing...

37. Rabbi Eliezer Waldenberg (20<sup>th</sup> century Israel), *Tzitz Eliezer 10:25:26:6* (1967)

מחקר גדול יש אמנם לחקור בהיכא שמתחולל שינוי מהותי-אורגני בגופו של אדם, כגון בנתהפך מזכר לנקבה או להיפך, וכפי ששמעתי וגם נתפרסם על כך בכתבי-עת שונים, מבצעים כהיום גם ניתוחים כאלה במקרים מיוחדים (וכמובן נדירים). בשינוי מהותי כזה נוצרים באמת הרבה בעיות הנוגעות לקביעת זהותו ויחודו האישי של אנוש כזה... כן ראיתי בספר הנקרא בשם יוסף את אחיו (להרב ר' יוסף פלאגי ז"ל) מערכת ג' אות ה' שנשאל אם יארע מקרה כזה בנוגע להצרכת גט...

There is room for great analysis where a substantive, organic change takes place in a human body, such as a change from male to female or vice versa, as I have heard and as has been publicized in various publications, that they carry out today such operations in special cases (rare cases, of course). With such a substantive change, many questions are created regarding establishing the personal identity and status of such a person... So I have seen in a book called *Yosef Et Echav* (of Rabbi Yosef Palaggi), who was asked whether a *get* would be needed if such a thing happened...

38. Rabbi Eliezer Waldenberg (20<sup>th</sup> century Israel), *Tzitz Eliezer 22:2* (1997)

נלענ"ד שבמקרה שלפנינו יש לתת לו דין אנדרוגינוס [או טומטום].

In my humble opinion, in the case before us he should have the status of an *androgynus* [or *tumtum*].

39. Rabbi Idan Ben-Ephraim (contemporary Israel), Dor Tahapuchot pg. 102

אך שוב התבוננתי שאין כל ראייה מדברי הציץ אליעזר לגידונו, שהרי בסיום דבריו כתב "ורק צריכים קביעה דקדוקית ברורה אם אמנם ע"י ביצוע הניתוח שיבצעו באנדרוגינוס ישתנה ויהפך באמת לנקבה ודאית". הרי שמדגיש בדבריו שכל מה שאפשר לשנות אנדרוגינוס בניתוח, היינו רק כאשר הופכים אותו לאחד המינים לחלוטין, אבל אם לא הפכו אותו לשום מין נמצא שעדיין שם אנדרוגינוס עליו הגם שחתכו ממנו איברים.

But I examined further [and saw] that there is no proof from the words of the Tzitz Eliezer for our case. At the end of his words he wrote, "And we only need a thorough, clear establishment of whether the surgery carried out on the *androgynus* will change the person truly to a definite female." He emphasized in his words that to whatever extent one can change an *androgynus* surgically, that is only when he is changed to one of the genders fully. But they did not change him to any gender, it seems that he is still called an *androgynus*, even though they amputated some body parts.

40. Rabbi Yigal Shafran (contemporary Israel), *ניתוח להחלפת המין*, *Techumin 21* (2001)

האדם נשאר לעולמים כפי המין הגנטי שלו, וכמו שרואים בבדיקה כרומוזומאלית, שבמקרה זה הוא כידוע XX. החלטת בית המשפט עומדת כנגד בדיקת הדם המדעית, המלמדת את ההיפך. תימה איך אנשים, הרואים עצמם נאורים, הולכים נגד הטבע והביולוגיה, המורה את ההיפך בכל דגימת דם פשוטה, וכל זאת רק מטעם של מה שהם מכנים חירות הפרט להגדרה עצמית. אין צריך לומר שבית המשפט האזרחי בארץ שבה נעשה הדבר אינו מחייב את כל מי שהתורה הקדושה היא נר לרגליו ואור לנתיבתו, ומשה אמת ותורתו אמת, והם בדאים.

A person remains, always, with his genetic gender, as seen in an analysis of chromosomes, that in this case is, as is known, XX. The court's verdict stands against the scientific blood test which teaches the opposite. It is shocking that people who see themselves as enlightened can go against nature and biology which teach the opposite in any simple blood test. All of this is only because of what they call the freedom of the individual for self-definition. It need not be

said that the civil court of the the country in which this was done does not obligate the holy Torah, which is a lamp for his feet and a light for his path, and Moshe is true and his Torah is true, and they are liars.

41. Rabbi A. M. Stein (20<sup>th</sup> century Israel), Letter in Assia Vol 1 pg. 326

והנה זה ברור, שגבר זכר ודאי שיעשה ניתוחים לשינוי המין לא יוכל להפקיע בזה את עצמו ממצוות או מלאווין...

This is clear, that a definite man who undergoes surgery to change gender cannot thereby remove himself from commandments or prohibitions...

42. Rabbi Raphael Evers (contemporary Holland), v'Shav v'Rapha 2:79

אולם לפענ"ד, אני הקטן, אין הדבר כן למעשה בנד"ד, דכל הנ"ל, שהובא בהציץ אליעזר, מיירי לכאורה בשינוי טבעי (לאפוקי מלאכותי כמו בנד"ד) והמדובר הוא באנדרוגינוס אמיתי שלדעת רוב הפוסקים הוא ספק זכר ספק נקבה... וא"כ מסתבר ומתקבל על הדעת שקיימת האפשרות, שאם יתגברו תכונותיו במשך הזמן לכוון זה או לכוון אחר – למשל שיתגברו ההורמונים של נקבות וע"י זה נהפך לאשה או שיתגברו ההורמונים של זכרות ונהפך מאשה לאיש (ומסתמא נגררים אח"ז ג"כ הסימנים החיצוניים במקצת, פחות או יותר) – שג"כ זהותו ויחודו האישי ישנה.

But in my humble opinion, I, the small, this is not true in practice in our case. All that is brought in the Tzitz Eliezer seems to refer to a case of natural change (as opposed to engineered change as in our case), and it is about a true *androgynus*, who is a doubtful male, doubtful female according to most authorities... And if so, it is logical and reasonable to say that there is a possibility that if his traits in one direction or the other would become stronger over time – for example, if female hormones would become stronger and so she would become female, or male hormones would become stronger and he would change to male (and presumably, external signs would also be drawn toward this somewhat, less or more) – then the personal identity would change.

43. Rabbi Eliyahu Abergel (contemporary Israel), **נישואי אישה עם אישה שהפכה לאיש**, Techumin 32 (2012)

הנה ברור הדבר, שאין השינוי החיצוני שעושה אדם בגופו, מאיש לאישה או להיפך, משנה מאומה מבחינה הלכתית...

ובשו"ת מנחת שלמה (ח"ב סי' צז) מבואר ששינויים הנעשים ע"י אדם בגופו, אין בכוחם לשנות את מהותו. לכן, אם יוצרים באופן מלאכותי סימני טהרה בבהמה טמאה, ע"י זריקות וכד', אין זה משנה דבר והיא נותרת טמאה.

It is clear that the external change a man makes in his body, from man to woman or vice versa, does not change anything from a halachic perspective...

And in Minchat Shlomo 2:97 it is explained that changes one makes in his body cannot alter his identity. Therefore, if they engineer kosher signs on a non-kosher creature via injections and the like, this does not change anything and it remains non-kosher.

44. Rabbi Idan Ben-Ephraim (contemporary Israel), Dor Tahapuchot pg. 91

גם אם נאמר שהגוף הוא הקובע, הדבר ברור שאין לנו להתייחס לענין חיובי המצוות אלא לצורת הבריאה הראשונה של האדם כפי שהיא בידי שמים...

Even if we would say that the body is what determines it, it is clear that we should only relate to the person's original creation, via Heaven, regarding obligations in mitzvot...

### Vignette 3: The Mechitzah

45. Rabbi Idan Ben-Ephraim (contemporary Israel), Dor Tahapuchot pg. 140

אף על פי שביארנו... שאשה שהפכה עצמה לאיש דינה כאשה, מכל מקום לענין לישיב יחד עם נשים בעזרת הנשים, נראה שיש לנו לילך בזה אחר המראה החיצוני הנוכחי. ולכן, כאשר אותו איש מתקרב לשמירת המצוות הרי שמקומו הוא ביחד עם הגברים...

Even though we have explained... that a woman who changes herself to a man has the law of a woman, still, regarding sitting with women in the women's section, it appears that we should follow her current external appearance. Therefore, when that man becomes close to mitzvah observance, his place is with the men...

46. Rabbi Raphael Evers (contemporary Holland), v'Shav v'Rapha 2:79

אח"כ שאלתי את פי הגרא"י וולדינברג שליט"א בעמח"ס ציץ אליעזר שאמר לי שמ"מ צריכין לקרבו ליהדות בכל מה דאפשר.

Afterward I asked Rabbi Eliezer Waldenberg, and he told me that we still must bring this person close to Judaism in any way possible.



47. Rabbi Yigal Shafran (contemporary Israel), **ניתוח להחלפת המין**, Techumin 21 (2001)

למרות שאישה זו נוטלת הורמונים של גבר אם תבוא למשל לבית הכנסת, אין להתיר לה לשבת בעזרת הגברים, ובשום אופן אין להעלותה לתורה כבקשתה.

Even though this woman takes male hormones, if she would come to the synagogue, for example, we should not permit her to sit in the men's section, and in no way to be called to the Torah as she requests.

48. Rabbi Dr. Avraham Steinberg (contemporary Israel), HaRefuah kaHalachah Vol. IV pg 657

איש שהפך לאשה ולהיפך, אף שלענין הלכות נותר דינם כמצבם המקורי כמבואר לעיל, מכל מקום בכל הנוגע למציאות של הרהור הולכים אחרי מה שנראה לעין. לפיכך... אשה שהפכה לאיש אין לאשה להתייחד עמו, אבל איש יכול להתייחד אתו..

If a man changes to a woman or vice versa, even though regarding the law their status remains in its initial state as explained earlier, still, regarding all matters that relate to the reality of *hirhur* we follow that which is visible. Therefore...

A woman should not be alone with a woman who changed to a man, but a man could be alone with him...