

Transitioning: The Halakhic Ramifications

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If an Orthodox Jewish transsexual desires to transition, which will set him on a course of taking hormones and finally having SRS [Sex Reassignment Surgery], is this permitted per halakha? Are there any differences if this is MtF (male to female) or FtM (female to male) transitioning? What prohibitions, if any, does this course of action violate? Does pikuach nefesh [danger of life] play a role in determining the halakha? And assuming that someone goes forward with this surgery, rightly or wrongly, under halakha, is this person seen as being the sex which he was born, or the one he presents as and physically resembles? This is aside from the question of how Orthodox Jews ought to treat such a person on a whole. Is he to be included within the community, or summarily excluded?

While this is by no means an exhaustive list, these and other questions have been addressed by several extremely prominent scholars within the field of Jewish Medical Ethics. In his work "Contemporary Halakhic Problems," Volume 1, pages 100-105, Yeshiva University's own Rabbi Dr. J. David Bleich, RIETS Rosh Yeshiva and Rosh Kollel and Professor of Law at Cardozo, lays out the facts.

There, Bleich unequivocally states that "Sex-change operations involving the surgical removal of sexual organs are clearly forbidden on the basis of the explicit biblical prohibition, "And that which is mauled or crushed or torn or cut you shall not offer unto the Lord; nor should you do this in your land" (Lev. 22:24.) Sterilization of women is also prohibited, as recorded in Even ha-Ezer 5:11."

Bleich notes that these prohibitions may be expanded upon due to the commandment, "A woman shall not wear that which pertains to a man, nor shall a man put on a woman's garment" (Deut 22:5), which "is not limited to the wearing of apparel associated with the opposite sex but encompasses any action uniquely identified with the opposite sex, proscribing, for example, shaving of armpits or dyeing of hair by a male." In this vein, "a procedure designed to transform sexual characteristics violates the very essence of this prohibition."

Another renowned posek [halakhic decisor] and specialist in Jewish Medical Ethics, Rabbi Prof. Avraham Steinberg, former director of The Schlesinger Institute of Shaare Zedek Medical Center, currently works as a physician at Shaare Zedek's Pediatric Neurology, and is the Director of The Center for Medical Ethics, Hebrew University-Haddasa Medical School, Jerusalem. In Steinberg's "Encyclopedia of Jewish Medical Ethics" vol. III, pages 1036-1037, he addresses the

question of transsexual surgery as well. Steinberg notes that the biblical prohibitions of castration, crushing or wounding the genitalia, and "wearing women's clothes" which "includes conducting oneself like a person of the opposite sex," are violated in converting a man to a woman.

Are there any times during which such a surgery might be permitted? Several Orthodox Jewish transsexuals whom The Observer interviewed noted that they had been told by their physicians that by the time they underwent SRS, they were already sterile. When asked whether that affected the aforementioned prohibitions, Rabbi Bleich explained that, "Castration of a male who is physiologically sterile is equally forbidden." When asked how a situation of pikuach nefesh would affect the decision of a transsexual to transition, Rabbi Bleich stated, "You're telling me facts I do not believe are medically substantiated," claiming that he would need to see proof to that effect. When then asked how a situation of pikuach nefesh in which a transsexual threatened to kill himself would affect his ability to have the Sex Reassignment Surgery, Rabbi Bleich answered that he was skeptical of that claim.

"I have never found a psychiatrist who was willing to tell me that these people develop genuine suicide complexes. Clearly, when you have a person who is suicidal, there are all kinds of things that can be done." When offered some anecdotal evidence of transsexuals who had attempted to kill themselves and had been hospitalized because of it, Bleich remained unimpressed. "In other cases, psychiatrists will tell you that attempted suicide is not a real danger. Attempted suicide is an attempt to attempt suicide." However, he agrees that one does not "ignore the attempts at suicide- it's a call for attention, even if it's not real, and deserves treatment."

Yet this treatment may not be of the kind that transsexuals themselves prefer. If there are alternative treatments that are available and which will succeed in saving the life of the person in question, it is possible that those would be practiced. In his work, Bleich explains that although Judaism does not allow the reversal of sex through surgery, "transsexualism is a disorder which should receive the fullest measure of medical and psychiatric treatment consistent with Halakhah. Transsexuals should be encouraged to undergo treatment to correct endocrine imbalances, where medically indicated, and to seek psychiatric guidance in order to alleviate the grave emotional problems which are frequently associated with this tragic condition."

What happens if despite all this a Jewish person chooses to transition? At that point, does he retain his original sex, or does halakha view him as being a member of the new sex, with all of its mitzvot and halakhot incumbent upon him?

In his Encyclopedia, Rabbi Prof. Avraham Steinberg notes that, "Some Rabbis rule that external appearances determine the law; hence, a man who becomes a woman is absolved from commandments incumbent upon a man," citing the Responsa Tzitz Eliezer, Part 11 #78. At the

same time, "Other Rabbis rule that external changes do not alter the law in regard to a transsexual because biologically and genetically the man does not become a woman or vice versa. Therefore, the law is applicable to the person's original sex." He here cites the Responsa Yaskil Avdi, Part 7, Even Ha'ezer #4, Responsa Lev Aryeh, Part 2 #49, Rabbi M. Steinberg, Assia, Vol 1, pp. 144ff; Nishmat Avraham, Even Ha-ezer 44:3.

Rabbi Bleich comes to the conclusion that external changes do not alter the law with regard to a transsexual, and cites the Tzitz Eliezer, Rav Waldenberg, as the only dissenting opinion. He notes that "Rabbi Waldenberg, however, cites no evidence whatsoever for this view."

Rabbi Prof. Avraham Steinberg referred The Observer to a "new book devoted to transsexual surgery with many details," by Edan ben-Ephraim entitled "Dor Tahapuchot" ["An Upside Down Generation"] with *haskamot* [statements of approbation] from Maran Ovadiah Yosef (dated June 13, 2003), Rav Yosef Lieberman (dated April 2003), Rav Zalman Nechemiah Goldberg (dated June 1, 2003), Rav Shlomo Amar (dated August 1, 2003), Rav Yitzhak Yosef (dated April 4, 2003), and HaRav Asher Weiss (dated May 9, 2004). Curiously, ben-Ephraim is of the opinion that when it comes to *halakhot* that apply to the post-operative transsexual between an individual and God, he should behave like his birth sex, i.e. a man would have to pray three times a day or put on *tefillin* [phylacteries.] However, in areas of *halakha* which are between an individual and his fellow Jews, such as *yichud* [seclusion with a member of the opposite sex], *shomer negiah* [not touching a member of the opposite sex] and the like, he should behave like a member of the sex he physically resembles.

Rabbi Bleich does not agree with this differentiation, stating that, "If a male were to appear in *shul* [synagogue] in drag, he would certainly be told that is not appropriate, and would not be seated in the woman's section. The same applies to a transsexual." When it comes to Rav Waldenberg's view on the matter, Bleich explains that, "the Tzitz Eliezer would say he should sit in the women's section. I clearly disagree with him, and people may disagree with me! But remember, he did not endorse the procedure."

Despite this, members of the Jewish transsexual community claim that Orthodox Rabbanim have given them permission to transition. While The Observer was unable to get in touch with the prominent Rabbi cited as having granted this permission, another rabbi who views gender in an unusual light did come forward. Rabbi Hillel Yisraeli attended Hebrew Theological College in Skokie, Illinois, where he obtained his academic degree, Yeshivat Mercaz HaRav, Yeshivat Aderet Eliyahu in Jerusalem, and received his *semikha* [ordination] from members of the Jerusalem Bet Din. He currently serves as the rabbi of Congregation Bet Israel in Netanya, Israel, and is working on finishing his doctorate in Jewish Philosophy at Bar Ilan University.

Citing Kabbalistic and Lurianic sources, Rabbi Yisraeli argues that there is certainly precedent

for the idea that sometimes a man will be reincarnated in a woman's body, or a woman in a man's body. He is of the opinion that "a person's true halakhic gender is contained in their neshamah [soul], their mind, and that the genitals serve only as signs of what the true gender is. In rare cases, an anomaly might present whereby the body's sex was not consistent with the neshamah's gender. In such a case, I hold that the neshamah's gender is the deciding one. Surgically altering the body to be in consistency with that would not be a violation of castration or altering God's creation, but merely the removal or correction of a deformity." Rabbi Yisraeli does not believe that human intervention can change one's halakhic gender, but does believe that one can restore the body to fit one's true gender, that is, that of one's soul.

When The Observer asked Rabbi Bleich what he thought of this, he answered, "I didn't read it [Rabbi Yisraeli's currently unpublished article on the topic] and there's one thing I do know. That is, if you accept the notion of trans-migration or a dybbuk or anything similar, I assure you that if you have a female soul trans-migrated into a male, the person has the status of a male for all purposes of halakha. Kabbalistic notions, whatever merit they have on their own, have absolutely nothing to do with halakha in terms of male obligations and prohibitions."

When asked how the Orthodox Jewish community should treat a Jewish transsexual who transitions, Rabbi Bleich explained, "I consider this patient to be ill and think they should be treated with compassion, but as a male with compassion, not a female with compassion. By the same form, I don't think the community can do things which give an indication of approval. Precisely what is appropriate in a given situation is hard to tell in advance."

When asked more specifically about how students should interact with Dr. Ladin, Rabbi Bleich stated, "I think the administration has a problem and I think the administration has also recognized they have a problem. Nobody in the administration has asked me for my opinion, but I think it is clear this is one of the cases where this issue has to be addressed; namely, does this appointment represent approval, as this is a public issue. I don't see how students are involved in that kind of an issue; what can they do about it? I see it as a serious problem on the university level but the university doesn't consult the Roshei Yeshiva about anything."