

Traditional Sources Against Prohibiting Trans Jews from Transitioning Gender

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Introduction

This work is not a determination of Jewish Law. It is, rather, an exploration of a serious question of law. It is important to note that Judaism is a rabbinic religion, not a biblical one. We will explore biblical verses and rabbinic texts to help understand how seriously Gender Transition should be taken. It is always advisable to contact a Jewish Law scholar for specific questions of Jewish law.

All translations in this work are my own. Commonly, God's name is represented as The Lord. I use H', which is short for *HaShem*, literally "The Name." This avoids gender and status¹ language.

על אֵלֶּהָ אֶנִּי בּוֹכָה עֵינַי עֵינַי לְרֹדֵה מַיִם כִּי רָחַק מִמֶּנִּי מְנַחֵם מִשִּׁיב
נַפְשִׁי הָיוּ בְּנֵי שׁוֹמְמִים כִּי גָבַר אֹיֵב

For these things I weep, for water streams from my eyes,
because respite is out of reach to restore my soul, my
children are desolate because the enemy overcame us.

(Lam. 1:16)

Threats Trans² People Face

1 While Jewish tradition sees God as the "Almighty" many people have differing views of theology that may not support this. Eliminating status language makes this work more accessible to many readers.

2 Transgender refers to any person whose gender identity or expression differs from the sex assigned at birth. Cf. <http://www.glaad.org/reference/transgender> for the most widely accepted discussion of this term.

Those of us in the transgender community have known tremendous oppression at the hands of others. Some mean well but do wrong, while many others directly mean to cause harm, be it conversion therapy,³ excommunication, exorcism, being kicked out of the house, etc.

This trend is shown very clearly in the *National Transgender Discrimination Survey* (NTDS) 2015.⁴ This report states:

The findings paint a troubling picture of the impact of stigma and discrimination on the health of many transgender people. A staggering 39% of respondents experienced serious psychological distress in the month prior to completing the survey, compared with only 5% of the U.S. population. Among the starkest findings is that 40% of respondents have attempted suicide in their lifetime—nearly nine times the attempted suicide rate in the U.S. population (4.6%).

This is staggering. Mental health issues surface at a rate nine times that of the general population. As the report shows, this is **not** because transgender people are mentally ill, as is claimed by Paul McHugh.⁵ Rather, they experience numerous, substantial amounts of external

3 Kenneth Zucker was previously Psychologist-in-Chief at Toronto's Centre for Addiction and Mental Health and Head of the Gender Identity Service until December, 2015. It has been suggested that his position that conversion therapy would fix gender dysphoria resulted in his dismissal from this position (<https://www.psychologytoday.com/us/blog/hormones-and-the-brain/201602/prejudice-not-science-wins-the-day-in-toronto>).

4 James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi M., *The Report of the 2015 U.S. Transgender Survey*. Washington, DC: National Center for Transgender Equality, 2016.

5 <https://www.mercatornet.com/articles/view/transgenderism-a-pathogenic-meme/16363>.

stressors that cisgender people don't face. These include the above named attacks, as well as inability to find or maintain work, access to basic healthcare – let alone transition-related healthcare, housing, and other basic needs.⁶

However, studies such as Bailey et al. 2014⁷ clearly show an improvement in the mental health of trans people with gender transition, and thus a reduction in suicidality.

Unfortunately, the biggest threat to transgender people comes from the “religious” community. This can be in the form of a parent who might rather see their child dead than queer, a clergy person who tries to force conversion therapy, or worst of all, a government body making state policy based on religious law. Sadly, the clergy person who is doing this is also violating such religious tenets as loving others as you love yourself (Lev. 19:18), not putting out a stumbling block (Lev. 19:14), and many other important principles in the Holiness Code.

The media have paid much attention lately to the issues surrounding transgender people. President Trump has banned transgender people from military service, although current estimates are that there are about 15,000 transgender personnel currently in uniform. This figure comes from a Rand study⁸ which estimates the total number of active and reserve component troops. This is separate from the number of transgender military veterans and retirees. Jazz Jennings (*I am Jazz*, TLC Network) has been garnering a tremendous amount of attention, espe-

6 Cf. Erickson-Schroth, L. ed., *Trans Bodies, Trans Selves*. Oxford: Oxford University Press, 2014 for a much more detailed exploration of these issues.

7 Bailey, Louis, et al., “Suicide risk in the UK Trans population and the role of gender transition in decreasing suicidal ideation and suicide attempt.” *Mental Health Review Journal* 19, 2014, 209-220.

8 <https://www.rand.org/news/press/2016/06/30.html>

cially with the difficulties she faced during her operations. And a recent rabbinic court in Haifa rendered a very troubling ruling about the status of a post-operative transgender woman.⁹

Text Explorations

What is the textual basis for encouraging transition? There is, of course, a commandment to live:

וּשְׁמַרְתֶּם אֶת חֻקֹּתַי וְאֶת מִשְׁפָּטַי אֲשֶׁר יַעֲשֶׂה אִתְּם הָאֲדָמָה וְחַי בָּהֶם
אֲנִי ה'

You shall preserve my laws and statutes, that a person does them to live by them, I am H' (Lev. 18:5).

The rabbis gloss this verse as follows:

אמר רבי יהודה אמר שמואל: ... **וחי בהם** - ולא שימות בהם.
Rabbi Yehudah said in the name of Shmuel, (Lev. 18:5) **and live by them** – that you should not die by them (*b. Yoma* 85b).

Ramban,¹⁰ Rabbi Moses Nachmanides, of 13th Century Catalan, goes further on this verse:

ורבותינו אמרו (יומא פה:): **וחי בהם** - ולא שימות בהם, ללמד
על פקוח נפש שדוחה את השבת והמצות.
And our rabbis said (*b. Yoma* 85b) **and live by them** – that you should not die by them – to teach regarding saving a life, that it overrides the Sabbath and all the Commandments [emphasis added].

9 <http://www.israelnationalnews.com/News/News.aspx/227012?f-bclid=IwAR0ui0MUkx9HIvIEoccJTLzX5nPc9CdHMWHi-d3L0eXWHGu47I2wWcLRhOpc>

10 Rambam, Rabbi Moses Maimonides, 12th Century Spain, writes similarly in Mishneh Torah, *Hilkhot* Shabbat 2:1-3.

What a startling ruling! Saving a life transcends **every** other Torah Commandment!¹¹ If transitioning is considered an act of saving a life, then transitioning would override most other commandments in the Torah. We have already seen that in general, transgender people are subject to much higher suicidality rates than the general public and that oppression such as preventing them from transition is a large contributor to that. While there are no guarantees that transition will ease suicidality, it has been shown to reduce it in many cases, thus statistically we can say that allowing transition **may** save lives. Conversely, based upon data from national surveys there is a strong basis to claim that prohibiting transition **risks** lives.

Why can gender transition save lives? Let us explore some texts in the Codes of Jewish Law regarding suicide. Many Jews are of the impression that if one commits suicide they are not allowed a Jewish burial or mourning rites. This comes from:

המאבד עצמו לדעת אין מתעסקים עמו לכל דבר ואין מתאבלין
עליו ואין מספידים אותו ולא קורעין ולא חולצין אבל עומדין
עליו בשורה ואומרים עליו ברכת אבליים וכל דבר שהוא כבוד
לחיים

(Regarding) one who commits suicide intentionally, we do not engage in any matters with him, we do not mourn over him or eulogize him, we do not tear our garments or remove our shoes. But we do stand in a row over him and say the Blessing of the Mourner as well as doing any item which honors the living (*Shulhan Arukh, Yoreh Deah* 345:1).

So according to this law, the mourning rites are not

11 Excluding three prohibitions, which a person should die rather than transgress: Shedding blood, certain inappropriate sexual relations, and worshiping idols (see *b. Sanhedrin* 74a).

performed. Yet, if one reads further in this same section there is an important caveat.

קטן המאבד עצמו לדעת חשוב כשלא לדעת וכן גדול המאבד עצמו לדעת והוא אנוס כשאול המלך אין מונעין ממנו כל דבר
Minors who kill themselves intentionally are considered as if it was accidental. Likewise, for adults who kill themselves intentionally but who “were forced,” like King Saul, we do not withhold any mourning practices (*S.A., Y.D. 345:3*).

The *Arukh HaShulhan*, composed by Rabbi Yecheiel Epstein in the 19th century, to make it clearer (note that this is not considered universally accepted) states:

כללו של דבר: במאבד עצמו לדעת – תלינן בכל איזה תלייה כל שהוא; כגון לתלות ביראה, או בצער, או שיצא מדעתו... דחשוב כשלא לדעת

In general for people who take their lives intentionally, we assign any possible reason to it; for instance overcome by fear, or troubles or insanity... that it is to be considered their death was unintentional (*Arukh HaShulhan, Yoreh Deah 345:5*).

Rabbi Epstein, in summation, is stating that we consider **anyone** who commits suicide to have been suffering from some form of severe emotional stress. He goes out of his way to be lenient, to allow for Jewish burial and mourning, for someone who commits suicide. Modern rabbis such as Elliot Dorff¹² have made it very clear that suicides are treated as a symptom of mental illness, yet the perception is still pervasive in the Jewish community that mourning rites are not performed over a suicide. So how is this relevant to the present discussion? It is important to note that gender dysphoria in and of itself is **not**

12 Cf. Dorff, Elliot, *Matters of Life and Death*. Philadelphia: The Jewish Publication Society, 2003, 181.

a mental illness. However, when transgender people are prevented from transitioning, or face severe oppression in the myriad ways detailed in the NTDS, severe depression and anxiety, along with eating disorders and other mental illnesses do develop. It is these, and not the dysphoria itself which lead to the suicidality.

Judaism places an extremely high value on living, such that the author of the *Shulhan Arukh* sought to ban funereal rites for a suicide, yet this was, in effect over-riden. What might be the basis for this? Let us explore some texts to help understand this. In the Talmud, in Tractate Yoma, which primarily deals with the laws of Yom Kippur, is a Mishna regarding restoring a person to health, if they have become too weakened due to the Yom Kippur fast. It is important to note that the Yom Kippur fast is a Torah obligation (Lev. 15:31) to afflict your souls to affect atonement. Thus, breaking the fast was of significant consequence. Yet:

מי שאחזו בולמוס - מאכילין אותו אפילו דברים טמאים, עד
שיאורו עיניו
(Regarding) one who is overcome by “bulmos”
(ravenous hunger, e.g. faintness after fasting) – we
feed them even unclean food, until the light returns
to their eyes (*m. Yoma* 8:6).

This is an exemplar of overriding a Torah commandment to save a life. If no kosher food is available, we feed a person overcome by hunger with any food that is available. In the Gemara to this Mishna (*b. Yoma* 83a), the rabbis go on to explore the question of saving a life on Shabbat. This is a logical extension of the Mishna. Leviticus 15:31 states that Yom Kippur is שבת שבתון, the Sabbath of Sabbaths. Thus, it is logical to also examine the laws of regular Sabbaths here. Most readers will have

already studied the creation epic in chapter one of Genesis. In this epic, verse 1:27 states (doubled for emphasis) that humans are created in God's image. Verses 2:1-3 go on to state that God completed the work and rested. This text is used as a liturgical proof text for resting on Shabbat and keeping it holy. Yet, as we will see, violating Shabbat to save a life is required.

What a powerful notion! To save a life, we even transcend the very acts that God did, in resting, even though we are created in God's image. Life is holy and we are to preserve it.

תנו רבנן: מפקחין פקוח נפש בשבת והזריז הרי זה משובח, ואין צריך ליטול רשות מבית דין. הא כיצד? ראה תינוק שנפל לים - פורש מצודה ומעלהו. והזריז הרי זה משובח ואין צריך ליטול רשות מבית דין - ואף על גב דקא צייד כוורי

Our Rabbis taught we are required to save a life on Shabbat, and the one who is urgent in doing this is praiseworthy; and there is no need to get permission from the Rabbinic Court. How so? If one sees a child fall into the sea, one spreads a net and brings it up. The one who does this urgently is praiseworthy and they are not required to get court permission, even though he catches fish in the net (*b. Yoma 84b*).

The most amazing thing about this requirement is that God rested on Shabbat and we are created in God's image. We even transcend what God did, in order to preserve human life. These laws are codified in *Shulhan Arukh, Orah Hayim*, 328, which discusses the issues of life saving overriding the Shabbat.

מי שיש לו חולי של סכנה, מצוה לחלל עליו את השבת; והזריז, הרי זה משובח; והשואל, הרי זה שופך דמים
If one is dangerously ill on Shabbat, it is an obligation to desecrate the Shabbat. The one who is quick to do so is praiseworthy. One who asks (his rabbi for

permission is considered guilty of) spilling blood (S.A. O.H. 328:2).

כשמחללין שבת על חולה שיש בו סכנה, משתדלין שלא לעשות ע"י א"י וקטנים ונשים אלא ע"י ישראלים גדולים ובני דעת
When the Shabbat is desecrated for the dangerously ill person, the one engaged in this should not be a non-Jew, minor, or woman. Rather it is a well-educated Jewish male adult. (S.A. O.H. 328:12).¹³

היה חולה שיש בו סכנה וצריך בשר, שוחטים לו ואין אומרים: נאכילנו נבילה; אבל אם היה החולה צריך לאכילה לאלתר, והנבילה מוכנת מיד והשחיטה מתאחרת לו, מאכילין אותו הנבילה

If the dangerously ill person requires meat (on Shabbat), we kosher slaughter an animal for him, and do not say let us feed him non-kosher meat. However, if the sick person requires meat immediately, and there is non-kosher meat immediately available but it will take too long to prepare the kosher meat, we feed him the non-kosher meat regardless. (S.A. O.H. 328:14)

We see from this code both the requirement to desecrate the Shabbat to save a life, and the requirement to violate other Torah requirements to save a life. Shabbat and Kashrut are considered by many to be two of the most important ritual obligations, and here Jews are obligated to violate them to save a life. From a traditional perspective, Shabbat and Kashrut are universally incumbent on all Jews while most other ritual obligations have time binding and only apply to men. In addition, these are the first two obligations that people are subject to when they convert to Judaism. It is these acts that for many are the distinguishing characteristics of Jews. Thus, it is well es-

¹³ Note that in Hatzalah and MDA ambulances, the most righteous members staff the ambulances on Shabbat.

tablished in Talmud and Codes, that to save a life overrides the Shabbat and Torah law. How does this inform our understanding of transitioning? The NTDS shows the many things that are done to transgender people that put their lives in jeopardy. Why do these things occur? Transphobia takes many forms, but probably the most insidious one in the United States is people who take a false adherence to Bible and legislate it. The First Amendment states that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” This, in practice, means that it is not legal in the US to legislate religious law. Most Jewish people strongly support the First Amendment Separation Clause, and oppose legislation that has the perception of violating it.

Further, many Jewish transgender people may be prevented from transitioning by a rabbi or family member who holds to a strict adherence to the Commandments that we must transcend in order to transition (removal of genitals, removal of beard, and cross-gender dressing).

Three Torah Issues Trans People Must Transcend

Let us examine three issues that are often proffered as concerns with transitioning. First is destruction of male genitals. There are two verses in Torah that cover this regarding humans:

‘לֹא יָבֹא פְצוּעַ דָּבָהּ וְקָרוֹת שְׂפָכָה בְּקִהְלֵי ה'

No man with wounded or crushed (testicles) or cut off male organs shall join H's congregation (Deut. 23:2).

כִּי כָל אִישׁ אֲשֶׁר בּוֹ מוֹם, לֹא יִקְרָב... אוֹ מְרוֹת אֲשֶׁר

For any man (from the priestly class) who has any blemish shall not bring (the offerings to the altar)... or has crushed testicles (Lev. 21:18, 20).

The text from Deuteronomy concerns converts joining the people, and the text from Leviticus concerns the priests. Together they make it very clear that damaged male sex organs are unacceptable. But, is this a problem for transgender women (assigned male at birth)?

First let us consider a prophetic text, read on public fast days:

וְאֵל יֹאמֶר בֶּן הַנְּכָר, הַגִּלּוּהָ אֶל ה' לֵאמֹר, הַבְּדֵל יְבַדִּילֵנִי ה',
מְעַל עִמּוֹ; וְאֵל יֹאמֶר הַסְּרִיס, הֵן אֲנִי עֵץ יָבֵשׁ. כִּי כֹה אָמַר ה',
לְסְרִיסִים אֲשֶׁר יִשְׁמְרוּ אֶת שְׁבִתוֹתַי, וּבָחֲרוּ, בְּאֲשֶׁר הִפְצַתִּי;
וּמְחֻזְּקִים, בְּבָרִיתִי. וְנָתַתִּי לָהֶם בְּבֵיתִי וּבְחֹמֹתַי, יָד וְשֵׁם טוֹב,
מִבָּנִים וּמִבְנוֹת: שֵׁם עוֹלָם אֶתֶן לוֹ, אֲשֶׁר לֹא יִכָּרֵת.

The son of the stranger who accompanies God shall not say God has separated me from God's people, and the eunuch shall not say I am a dried up tree. For thus says H' to the eunuchs who guard my Sabbaths and choose what I desire and hold My covenant. I shall give to them, in My house and inside My walls, a monument and a memorial, better than sons and daughters, I give him an eternal name that shall never be destroyed (Isa. 56:3-5).

This prophetic text is saying that even though Torah prohibits eunuchs from being in God's congregation, God still allows it. While there are no Orthodox authorities who permit gender confirming surgery (GCS) *lekhathilah*, from the outset, one authority, the *Tzitz Eliezer*, Rabbi Eliezer Yehuda Waldenberg¹⁴ ruled, that *bedi'avad*, after the fact, a transgender woman (a person who was assigned male at birth) who had GCS is a woman. Most other Orthodox authorities do not rule with him. It is important to note that most progressive authorities accept any form of gender transition, with or without medical treatment.

14 <http://daattorah.blogspot.com/2013/01/tzitz-eliezar-sex-change-by-surgery.html>

Let us now take a look for a minute at what is one of the most confounding verses in Torah:

וְאַתָּה זָכָר לֹא תִשְׁכַּב, מִשְׁכַּבֵּי אִשָּׁה: תוֹעֵבָה, הוּא
And you, man, shall not have penetrating sex with
another man, in the ways of having penetrating sex
with a woman; it is an abomination (Lev. 18:22).

This unfamiliar rendering is deliberate to show all the nuances of the Hebrew for those unable to access it. The key ambiguity in this verse is the term *mishkevei isha*. Why? A cisgender (as opposed to transgender) woman has three paths: oral, anal and vaginal. Cisgender men do not have vaginas. So what does it mean to have penetrating sex in the ways of having penetrating sex with a woman? There is a possible answer in the *Miqra'ot Gedolot*; *Rabbeinu Hananel* (10th Century Tunisia) states:

יש מי שיחדש בגופו כצורת בשר אשה
There could be a man who changes the form of the
flesh of his body to that of a woman.

This is an absolutely remarkable statement, and is widely rejected. This is a literal rendering of the statement by the *Rabbeinu Hananel*. Most Orthodox authorities, however, see this as a man who creates a pocket of flesh in his body for the purpose of sodomy, not that a man removed his male genitals and created female genitals instead. Regardless of how one chooses to understand this reading, it is in response to the very troubling phrase מִשְׁכַּבֵּי אִשָּׁה, since cisgender men do not have vaginas. *Ibn Ezra* (12th Century Spain) comes in and rejects this comment thus:

וזה לא יתכן בתולדות. וי"א אנדרוגינוס. וכל הצער הזה...
בעבור היות משכבי אשה לשון רבים

[After quoting Rabbenu Hananel] and this could never happen in nature. And some say *Androginous*. And all of this trouble is because “*mishkevei isha*” (all the ways of having penetrating sex with a woman) is a plural noun.

Ibn Ezra’s reading makes it clear that he does not accept the modern suggestion of making a sex pocket. That is something that would be easy to do. He specifically uses the word תודלות, which is normally rendered as generations. This would seem to mean he is saying this could never happen in **our** (i.e., his) time (but it might in the future). In the Mosad HaRav Kook edition,¹⁵ there is a very fascinating editorial note to Ibn Ezra, however:

בטבע: והתורה לא תאסור מה שאיננו בטבע
In nature: And the Torah does not prohibit what cannot happen naturally.

Note that the editorial note uses טבע, nature, not תול-דות. Their note, while not changing the original manuscript, offers a translation which *could imply* a different understanding; that of in nature, vice in Ibn Ezra’s time, even though Ibn Ezra intended to say that it could not happen naturally. This *could* create an opening for allowing GCS. Anecdotally, many transgender people refer to their dysphoria causing body parts as benign tumors, and other similar terms. It is well established that these parts cause extreme emotional distress, which is a large part of gender dysphoria. Bailey, et al., 2014 (see above) shows that with GCS, dysphoria tends to be relieved. Thus, from the standpoint of פיקוח נפש, saving a life, even by those authorities that reject the *Tzitz Eliezer*, they should allow GCS from

15 ס' תורת חיים, חל' ויקרא. ירושלים: הוצאת מוסד הרב קוק. 1990. קסה

this standpoint.

The next relevant issue is cross-gender dressing:

לֹא יִהְיֶה כָּלִי גְבוֹר עַל אִשָּׁה וְלֹא יִלְבֹּשׁ גְּבוֹר שְׂמֹלֶת אִשָּׁה, כִּי
תוֹעֵבֶת ה' אֶלְקִיךָ כָּל עֲשֵׂה אֵלֶּה
Women shall not wear men's clothing [lit. men's
instruments – i.e. weapons] and men shall not
wear women's clothing – because all who do this
are (carrying out) an abomination to H' Your God
(Deut. 22:5).

It is fascinating to note that the wording is not parallel between the sexes and there are commentaries on this. First off Rashi:

לֹא יִהְיֶה כָּלִי גְבוֹר עַל אִשָּׁה - שְׂמֹלֶת דּוּמָה לְאִישׁ כְּדֵי שֶׁתִּלְבָּשׁ
הָאִשָּׁה, שֶׁאֵין זֶה אֶלָּא לְשֵׁם נִיאוּף
Women shall not wear men's clothing: so they
would be like men, and go among the men; the only
purpose for this is (to commit) adultery.

So, Rashi seems to have little faith in women and thinks they will go to sexual immorality. Ibn Ezra states:

נִסְמְכָה בְּעִבּוּר צֵאת לְמִלְחָמָה, כִּי הָאִשָּׁה לֹא נִבְרְאָת כִּי אִם לְהַקִּים
הַזֶּרַע
An insistence on going to war; (this is forbidden)
since woman was created only to raise children.

The commentators say far less about men wearing women's clothing, but ultimately come to the same conclusion; that the only purpose for this is sexual immorality. It is important to remember that roles of men and women were different in biblical and rabbinic times than in modern times, so perhaps judgment can be suspended. Ibn

Ezra's comment is based on the literal translation of *kli gever*; which is instruments of might, i.e. weapons. This understanding ultimately comes from the Midrash, *Sifrei Devarim*, 226.2, which states:

ר' אליעזר בן יעקב אומר שלא תלבש אשה כלי זיין ותצא
למלחמה
R' Eliezer son of Jacob says that a woman should
not wear weapons and go to war.

Of course this is somewhat startling in view of Devorah and Yael in Judges Chapter 4.¹⁶ Thus, whether one adopts Rashi's view or that of the Midrash, the bottom line is that this is meant to ensure people live a proper life and fulfill the roles they were created for. Transgender people were created with souls that do not match their bodies, and so transition, in order to fulfill their roles in life. Further, transgender people do not wear cross gender clothing for sexual immorality. They wear them to fulfill their lives as who they really are. This also comes under *פיקוח נפש* as anything that helps transgender people maintain their dignity and emotional balance is ultimately life enhancing.

The last issue to consider is destruction of the beard:

וְלֹא תִשְׁחִית אֶת פְּאַת זְקִנְךָ

16 In this text, Devorah is asked to lead the battle. The text does not indicate her carrying weapons, but just being the general would seem to be contrary to the intent of this prohibition. Yael kills Sisera with a tent peg in the end of the chapter. This is a household item which has been weaponized, and so while the design of the item was not originally as a weapon, its use was, and so it also would be contrary to the intent of the prohibition. This might be considered inversely analogous to the text (*b. Shabbat* 122b) that allows the use of a blacksmith hammer for cracking nuts on Shabbat from the standpoint of use of a tool for a purpose for which it was not intended.

Do not destroy the corners of your beard (Lev. 19:27b).

The verse that follows states:

וְשָׂרֵט לְנֶפֶשׁ לֹא תִתְּנוּ בְּבָשָׂרְכֶם

And do not cut your skin (in grief over death of) a soul (Lev 19:28a).

There is a principle of exegesis¹⁷ which states that adjacent verses are related in topic. Thus, by this understanding, the command to refrain from destroying the beard may be over an expression of grief, and **not** over removing it for other reasons. Indeed, if one considers contemporary practice, there are many Orthodox Jewish men who are clean shaven, suggesting that removing a beard under ordinary circumstances is not understood as forbidden. It is not completely clear what this prohibition means. What seems clear, however, is that for a transgender woman to remove her facial hair is not a desecration. It is life affirming.

There is substantial disagreement in the Jewish community about what is and is not allowed regarding GCS. The most traditional authorities do not allow it under any circumstances for transgender women, and consider these people to be damaged men instead (e.g., *Shulhan Arukh, Even HaEzer* 172:7). Note that the *halakha* does not prohibit sterilizing women, so transgender men (assigned female at birth) do not face quite the same hurdles. Nonetheless, regardless of whether one is a traditional authority, follows the ruling of the *Tzitz Eliezer* that GCS is permissible after the fact, or of progressive authorities

ספרא: ברייתא דרבי ישמעאל: רבי ישמעאל אומר, בשלש עשרה מדות התורה נדרשת בהן... (יב) דבר הלמד מענינו, ודבר הלמד מסופו.

that all gender transition is permissible, it has been well established that prohibiting a transgender person from transitioning can cause grievous harm. We cannot prove conclusively that *allowing* transition saves lives, but we can state categorically that *prohibiting or obstructing* transition **does** endanger lives. This might be comparable to the following case:

וְכִי יִנְצוּ אָנָשִׁים וְנִגְפוּ אִשָּׁה הָרָה וַיִּצְאוּ יְלָדֶיהָ וְלֹא יִהְיֶה אָסוֹן
עָנוּשׁ יַעֲנֵשׁ כְּאֲשֶׁר יִשִּׁית עָלָיו בְּעַל הָאִשָּׁה וְנָתַן בְּפָלְלָיִם. וְאִם
אָסוֹן יִהְיֶה וְנִתְּתָה נַפְשׁ תַּחַת נַפְשׁ.

If two men are fighting and hit a pregnant woman, who miscarries, but she does not die, they shall be fined according to her husband's wishes, as ordered by a judge. But if the woman dies, they shall give life for life (the death penalty) (Exod. 21:22-3).

In other words, if their action causes a death, they are guilty of *shetikhat damim* (spilling blood), and they pay the price. If their action does not directly lead to a death, they still bear guilt, but it is not blood guilt. The same might be applied to obstructing transgender transition. If one obstructs a transition, and harm comes, the obstructing person faces the consequences. If immediate harm does not come, there is still the potential for harm in the future. Thus, we have seen here that preventing a Jew from transitioning should be prohibited, and may even be considered *shetikhat damim*.

Further, while there are many judges and *poskim* (determiners of Jewish law), who dispute this, the present reading of traditional sources indicates that a transgender Jew might be encouraged to begin gender transition from the standpoint of saving a life. Moreover, transition would not be considered a desecration of creation. It is important to keep in mind that transgender individuals of any and

no religion are merely seeking to live. It is my hope that a time will come when religious authorities will recognize the compelling argument from Jewish traditional sources to actively encourage transition.