

Gender and Judaism

Shanah Tovah and a Happy Birthday to the world! 5784 years ago, God began creating the first six days, as written in Genesis:

Bereshit bara elohim et hashamayim v'et ha'aretz

This is the beginning of the Jewish story. Whether or not we believe it, it's our narrative and there will always be much to glean from the text.

No matter which passage we read, we are bound to face many translations and interpretations and with each interpretation comes countless take-aways and lessons. Sometimes adherence to a particular reading of the text may influence the way society, in general, views a controversial subject.

Take for example, the sixth day of creation. This is the day when humans are created. Genesis 1:26-28 reads:

God now said, "Let us make human beings in our image, after our likeness; and let them hold sway over the fish of the sea and the birds of the sky, over the beasts, over all the earth, over all that creeps upon the earth." So God created the human beings in the divine image, creating them in the image of God, creating them male and female.¹

The word for human being is *adam* and it comes from the Hebrew *adamah* which means "earth" or "soil." One could translate *adam* as "earthling" or even "humanity." Contrary to what many think, *adam* is not the name, Adam. *Adam* is not necessarily a man either. The pronouns are mixed in these verses which makes translating the text challenging. It is just as valid to come to the conclusion that God created a single, non-binary, human as it is to suggest that God created a man and woman simultaneously.

¹ Genesis 1:26-28. NJPS translation found in the Plaut Commentary.

Things get even more complicated when we continue reading in the Torah and find another creation story. This version, found in chapter two of Genesis reads as follows:

Then God Eternal fashioned the man—dust from the soil—and breathed into his nostrils the breath of life, so that the man became a living being. To the east, God Eternal planted a garden in Eden, setting the man there whom God had formed... Then God considered, “It is not good that the man be alone—I will make him a helpmate.”²

God attempts to give the first man potential helpmates from the animal kingdom but those don't take. The text continues:

Then, throwing the man into a profound slumber, so that he slept, God Eternal took one of his ribs and closed up the flesh in that place. Now God Eternal built up the rib taken from the man into a woman, and brought her to the man, and the man said, “This time—/bone of my bone, flesh of my flesh!/Let this one be called woman,/for this one is taken from man.”³

Two creation stories, side by side, and totally different. The first story presents an equality between the genders and it could suggest that the first human was non-binary. The second story is androcentric. Man is the central figure in the world and the woman is secondary. This version more clearly reflects society today and pretty much all of human history.

But the ambiguity of the first story is more appealing to me. One human, male and female. This is fascinating, especially considering the environment we are living in right now. With so many people quick to deny the existence of the gender spectrum beyond male and female and some wanting to erase non-binary people altogether, I find this first version of Genesis important to reflect on as the nation talks—and more often, yells at each other—about gender. Open up the news app on your phone, search

² Genesis 2:7-18

³ Genesis 2:21-24

for LGBTQ+ and you will quickly see articles about communities and whole states banning Pride flags and gender affirming care and school districts removing books from their libraries that depict “unconventional” relationships and identities. On radio talk shows and political podcasts I’ve heard at length about the injustice of trans women unfairly competing in sports competitions and kindergartners getting exposed to the “trans agenda.” Most of you know I hold none of these views. Should you identify as non-binary, trans, queer or questioning, please know that I am here for you and will do whatever I can to create a loving and affirming Jewish community here at Beth Israel.

Over the past few years I have been interested in the topic of Judaism and gender and I thought that today would be as good a day as any to explore with you what our tradition has to teach us.

Some of us might roll our eyes at folks who use their scripture to prove a point they are making. Just because the first creation story is confusing and mixes the genders does not necessarily mean what some of us think it means. One could say that we shouldn’t put too much emphasis on the first creation story, or any Torah story for that matter, when arguing for the rights of trans and non-binary people. The Torah text itself has many inconsistencies and most of us, I imagine, don’t take the words literally to begin with. If we prefer to view the Torah as a didactic text, then we must ask, what is that first story teaching us?

The Talmudic rabbis from the 3rd to 6th century CE expounded on every detail of the Torah. It is no surprise that they found something interesting about this first human. The midrash teaches:

Rabbi Jeremiah ben Elazar said: “When the Holy One, blessed be the One, created the first adam [human being], [God] created him [an] “androgynos.”⁴

⁴ Bereshit Rabbah 8:1

Androgynos is a Talmudic term defined as a person who has both “male” and “female” sexual characteristics. Think about it for a moment: The rabbis from around 1600 years ago possibly acknowledged the existence of a gender spectrum and suggested that the first human ever was non-binary.

The rabbis from ages ago understood that there was something significant about this text and if we were to scan the Talmud we would find hundreds upon hundreds of examples of people who would today be considered genderqueer or intersex. In fact, there are six different terms for gender diversity in the rabbinic texts.

Zachar is male and *nekevah* is female.

Androgynos: The term we just heard was borrowed from the Greek and refers to someone of ambiguous sex. In *A Rainbow Thread: An Anthology of Queer Jewish Texts from the First Century to 1969*, we learn that the rabbis attempted “to define the legal status of the *androgynous* in relation to the established categories of male and female. At times closer to one category, the other, neither, or both...It is clear that the *androgynous* is seen as a full member of the Jewish community.”⁵

Tumtum: This is a person whose sexual characteristics are indeterminate or obscured.

Ay'lonit: This is a person who is assigned female at birth but either develops “male” characteristics at puberty or doesn't show signs of female sexual characteristic and is not able to reproduce.

And finally, there is the *Saris* who is a person that is identified as “male” at birth but develops “female” characteristics at puberty or later.

All of these identities are covered extensively in the Talmud and Jewish legal codes. Here is one example from Mishnah Bikkurim:

⁵ Sienna, Noam. *A Rainbow Thread: An Anthology of Queer Jewish Texts from the First Century to 1969*. Print-O-Craft Press, 2020. pp.29-31

*Androgynos is in some ways like men, and in some ways like women, and some ways like both men and women and in some ways neither like men nor women.*⁶

*Rabbi Yose says: Androgynos is a creation of its own kind, and the sages could not decide if he was a man or a woman. But this is not the case for the tumtum. Sometimes a tumtum is a man, and sometimes a tumtum is a woman.*⁷

It seems clear that the rabbis were comfortable with discussing the fluid nature of sex and gender. In fact, the “rabbis were comfortable using gender fluidity and nonconformity to imagine our biblical ancestors”⁸ outside of *adam*.

In another midrash,⁹ the rabbis comment on why Abraham and Sarah were childless for so many years. Ray Ammi suggest they were *tumtumim* and Rabbi Nahman counters, teaching that Sarah was an *aylonit*. Regardless of whether or not you share these thoughts, what is clear is that, “as in other midrashim, the rabbis...show their comfort in applying their observations on the variations in sex and gender to our biblical ancestors.”¹⁰

Moving through the Hebrew Bible we find the prophet Isaiah speak of the *saris*, saying:

⁶ Mishnah Bikkurim 4:1

⁷ Mishnah Bikkurim 4:5

⁸ *A Rainbow Thread*, pp. 32-33

⁹ BT Yevamot 64a-b

¹⁰ *A Rainbow Thread*, pp. 40-41

*And let not the saris say: "I am a withered tree"
For thus says God:
"As for the sarises who keep My sabbaths,
Who have chosen what I desire
And who hold fast to My covenant—
I will give them, in My house, and within My walls
A monument and a name, better than sons or daughters."¹¹*

In both this verse from Isaiah and in the many descriptions of the *androgynos* in the Talmud, we learn that these individuals were seen as full members of the Jewish community. They were not ridiculed nor were they made to feel as less than or broken. The rabbis normalized them. For a tradition that oftentimes feels antiquated and out of touch with modernity, our rabbinic ancestors appear more accepting of and sensitive to gender and sexual diversity that we do in our own age.

There is one more midrash I want to share with you this morning. The rabbis saw something unusual in a verse¹² from the Book of Esther where it notes how Mordekhai “raised” Esther. We might understand this as nothing out of the ordinary: An uncle took care of his orphaned niece and raised her as his own. But some of the rabbis noticed that the word used for “raise” or “foster” could also be translated as “nurse.” Rabbi Yudan suggests that Mordekhai literally nursed Esther himself. And Rabbi Elazar goes even further, emphasizing the unique physicality of Mordekhai’s body that enabled him to nurse Esther. Could Mordekhai have been a transgender man? Only the writers or God can answer this.

What do these texts teach us? Jewish tradition recognized that when it comes to gender, there isn’t a simple binary. There are more categories. In *Torah Queeries*, we read, “Rabbinic tradition, which obsessively separated men and women and assigned distinct roles to each, was remarkably appreciative of the fact that some people do not fit neatly into

¹¹ Isaiah 56:1-8

¹² Esther 2:7 *aleph-mem-nun* can be translated as “nurse” as well as “foster.”

one category or another.”¹³ In fact, approximately 1.7%¹⁴ of the US population today is considered intersex. This equates to over 5 million people who, in talmudic times, might have been called *androgynous*, *tumtum*, *aylonit*, or *saris*.

Jewish tradition has long understood that gender is more complicated than simply “male and female.” But more than this, writes Rabbis Reuben Zellman and Elliot Kukla from *Balancing on the Mechitzah: Transgender in Jewish Community*, “Throughout our multifocal Jewish tradition, one teaching is clear: intersex people are to receive equal protection from harm, and their lives are to be sanctified, just like any other person...In the twenty-first century, we confront those who don’t ‘fit’ and endeavor to change them. In antiquity, our rabbis took people as they really were and went on from there.”¹⁵

On the other hand, and you knew this was coming, this topic is not as clear as we might like it to be. While our Jewish tradition knew of various genders and discussed them in the Talmud and legal codes, it appears that they were only doing so in order to figure out how these categories of people fall into the world of *Halakha*, which is by its very nature, gender specific and binary. For example, men are obligated to perform many mitzvot that women are not obligated to perform, such as one’s that are time bound, like wrapping *tefilin*, reading Torah, or shaking the lulav and etrog.

There is an argument that the sages were attempting to figure out how someone with indeterminate sexual characteristics should follow *Halakha*.

¹³ Wenig, Margaret Moers. *Torah Queeries: Weekly Commentaries on the Hebrew Bible*. Edited by Gregg Drinkwater et al., New York University Press, 2012. p. 15

¹⁴ That estimate is based on a review published in the American Journal of Human Biology that looked at four decades of medical literature from 1955 to 1998. The estimate includes people with extra or missing sex-linked chromosomes, and those born with other physical variations that don’t fit into categories of “male” or “female.”

¹⁵ Zellman, Reuben, and Elliot Kukla. *Balancing on the Mechitzah: Transgender in Jewish Community*. Edited by Noach Dzmura, North Atlantic, 1020. p. 184

Should they be obligated to shake the lulav like a man, or not? In other words, these discussions were not meant to celebrate the multi gender spectrum. They were talking about how the exceptions or outliers ought to follow Jewish law. Should they be considered a male or female with respect to any specific mitzvah. This being said, the rabbis' goal was to be as inclusive as possible. "The early rabbis of the post biblical period were very concerned with defining roles and expectations of women and men. But they also understood that humankind was not as simple as two sexes."¹⁶

In her article, *Gender Identity in Halakhic Discourse*, Professor Charlotte Elisheva Fonrobert of Stanford University, writes, "Halakhic discourse generally imagines the human body to be sexed as either male or female... The saris and the ailonit as halakhic categories are perceived as either man or woman via their primary sexual organs... They are in fact not distinct genders, but are men or women who cannot reproduce... The figure of the androgynous, however, is understood to be clearly doubly sexed and to remain such... the presence of the male organ has greater signifying force than the female organ. Thus, the androgynous must dress like a man (according to Jewish law) but, most significantly, he may take a wife, but cannot be taken as a wife... When a halakhic context requires decisiveness as to the gender identity of the doubly-sexed human or animal the default sex of the androgynous is the male."¹⁷ To put it bluntly, Jewish law is not concerned with how a person feels inside or with which gender they identify. Furthermore, when in doubt, *Halakha* chooses male.

The various talmudic categories of *tumtum*, *androgynous* and such are not necessarily considered genders in the ancient Jewish world. Gender was not much of a concept at all in the Talmud separate from biological sex. Therefore, considering these four categories aside from male and female to represent nonbinary genders is a modern interpretation.

¹⁶ *ibid.*, p. 186

¹⁷ Fonrobert, Charlotte Elisheva. "Gender Identity In Halakhic Discourse." *Shalvi/Hyman Encyclopedia of Jewish Women*. 31 December 1999. Jewish Women's Archive. (Viewed on August 30, 2023) <<https://jwa.org/encyclopedia/article/gender-identity-in-halakhic-discourse>>.

Noach Dzmura, editor of *Balancing on the Mechitza*, writes, “Modern conceptions of gender identity have no meaning for the ancients. Academics claim that the project of the rabbinic writers of the Mishnah was to test the limits of the law by imagining challenging test cases like the *tumtum* and the *androgynos*. Rather than being a document describing how an actual community might have lived in antiquity, the Mishnah was created as a teaching tool to train future rabbis, something like a textbook of case law that will establish a set of precedents for how the rabbi-as-interpreter-of-law should respond to legal questions.”¹⁸

While the rabbis may not have written about human diversity to show how they embrace all peoples, they did, through their discussions, show that Jewish law and the Jewish community is open enough to include them and treat them as holy creations of God. Not only are the *androgynos*, *saris*, *tumtum*, and *aylonit* human beings created in the image of God, but they are also Jews. At the very least, our rabbinic sages did not deny the existence of those who fit outside the gender binary. And furthermore, they showed deep care and concern to include them in the community.

One of the big take-aways for me from all of my reading and research over the past several years on Judaism and gender is that people cannot always be easily defined despite the fact that Judaism prefers distinctions and clear definitions. We are big on separating things that we think should not be mixed. But the Jewish approach also “protects those who live in the place in between, and it opens up space in society for every body.”¹⁹

Today, there is a lot of talk about gender and sadly, most of it is having the opposite effect of the Talmud. Lawmakers are trying to be as exclusive as possible and so many would like to deny the existence of genderqueer, non-binary, and transgender people. I know that this is new and possibly confusing to a lot of people, but this is real because it manifests in our world. People express themselves on a spectrum. And luckily, we live in a

¹⁸ *Balancing*, p. 159

¹⁹ *ibid.*, p. 185

free country where we ought to feel free to do so. The challenge for some of us is to reconsider many of the fundamental assumptions that we've been taught. Judaism recognizes that intersexuality is part of the beauty of the created world. It is a real fact about our society today and it was a real fact about society generations ago. Hopefully, like our sages and the many genderqueer and intersex scholars I've quoted today, we too will also tell the full truth about the diversity of God's world, and more importantly, love our neighbors as we love ourselves.

I'd like to end where I began, with creation and the birthday of the world. One of my favorite commentaries on the first days of creation comes from a queer, non-binary Christian poet and seminarian, Mick Atencio:

i'm nonbinary. how does this reconcile with the verse, "male and female he created them," you may ask?

the variety in God's creation emphasizes God's creativity as an artist. Genesis gives us several examples of this.

God made "day and night." this sounds like a binary, similar to "male and female," right?

that isn't quite all we experience in 24 hours. sunrises and sunsets do not fit into the binary of day or night. yet God paints the skies with these too.

On the second day God separated the sky from water. seems like another binary.

yet the clouds hold water for us in the sky, the condensation and rain cycle refreshing our earth constantly. the sky, separate from water, contains and releases water.

God also said "Let the waters under the sky be gathered together into one place, and let the dry land appear."

that isn't the full story, either. consider marshes, swamps, bogs, and fens. not fully land, not fully waters. there is such glorious variety in God's creation.

We see another binary in the celestial bodies God made: "the greater light to rule the day and the lesser light to rule the night." and then, almost as a footnote, "and the stars."

there is more than just sun and moon in outer space. planets, asteroids, black holes, supernovae.

side note: these magnificent stars hundreds of times more massive than our sun, as simple as that to God.

"and the stars."

I marvel. Hallelujah.

"God created the great sea monsters" and "every winged bird of every kind." a split again between water and sky.

yet we see creatures like penguins that are definitely a "winged bird," but do not fly and instead walk and swim.

and finally "male and female he created them."

first off, intersex people exist.

but, and perhaps more importantly, friends, look around. listen. do you have friends or family that say they don't fall under "male" or "female?" if so, honor that.

does all this variety invalidate God as creator? of course not!

I believe that this instead is an example of how authors weave words to tell a story. we see the author in Genesis give examples of the extremes that God creates. It doesn't exclude the possibility of more.

and so we worship the God of more. The God of the marsh, the penguin, the God of the sunrise, the cloud, the supernovae. The God of the nonbinary.

you are loved.