

Gender Diversity in Halacha (The way we walk): Mishna and Tosefta (1st-2nd centuries C.E.)

by Rabbi Elliot Kukla, 2006

If someone said: “I will become a Nazir when a son is born to me” and a son was born to him. Behold, this one is a Nazir! If a daughter, a *tumtum* or an *androgynos* is born to him, he is not a Nazir. But if he said “When I see that a child is born to me [I shall be a Nazir]”, even if a daughter, a *tumtum* or an *androgynos* is born to him, behold he is a Nazir.

— *Mishna Nazir 2:7*

All are obligated for the reading of the Scroll of Esther [on Purim]: Priests, Levites, converts, freed slaves, disqualified priests, *mamzarim*, a born *saris*, a *saris* by human action, those with damaged testicles, those lacking testicles – all of them are obligated. And all of them have the power to fulfill the obligation of the community [if they read the Scroll of Esther to the community as a whole]. A *tumtum* and an *androgynos* are obligated [to read the Scroll of Esther]. But they do not have the power to fulfill the obligation for the community as a whole. The *androgynos* has the power to fulfill the obligation for his own kind [another *androgynos*] and does not have the power for one who is not his own kind. A *tumtum* does not have the power to fulfill the obligation for others, whether they are of his own kind or not of his own kind. Women, slaves, and minors are exempt. Thus they do not have the power to fulfill the obligation of the community.

— *Tosefta Megillah 2:7*

An *androgynos* is in some respects legally equivalent to men, and in some respects legally equivalent to women, in some respects legally equivalent to men and women, and in some respects legally equivalent to neither men nor women.... Rabbi Yose says: an *androgynos* he is a created being of her own, but the sages could not decide if the *androgynos* is a man or a woman. But this is not true of a *tumtum* who is sometimes a man and sometimes a woman.

— *Mishna Bikkurim 4: 1, 5*

Text Study Questions:

- What general impression do you get from these texts of the role of the tumtum and androgynos in antique Jewish society? How do they differ from the role of gender variant people in our own times?
- Based on all these texts what system do the rabbis seem to be using for dividing up genders? Is it binary? Is it a quadrant or something else entirely?
- How are gender and power related in this text? Who seems to have higher status women or the tumtum and the androgynos?
- What does it mean to you to be “a created being of its own”? What implications does this have for the way we experience gender? Do you experience other people as uniquely created beings? Do you experience yourself as a uniquely created being? What would the world and this community look like if everyone was treated as uniquely created beings?

“In order to understand transgender expression and see and respect people as they really are, we have to break down our gender conditioning. We have to get used to (and excited about) bearded ladies... short boys with ‘dessert hands’ and big-boned gals with deep voices. We have to trash the lists. This is exciting because when we validate other people and create space for their own unique gender, we do the same for ourselves.”

– from *Tumtum: A Trans Jew Zine* by Micah Bazant