

## Created by the Hand of Heaven: Making Space for Intersex Jews

Commentary on Parshiyot Tazria-Metzora  
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God spoke to Moses, saying: Speak to the Israelite people thus: When a woman at childbirth bears a male, she shall be unclean seven days . . . She shall remain in a state of blood purification for thirty-three days . . . If she bears a female, she shall be unclean two weeks as during her menstruation, and she shall remain in a state of blood purification for sixty-six days. On the completion of her period of purification, for either son or daughter, she shall bring to the priest, at the entrance of the Tent of Meeting, a lamb in its first year for a burnt offering, and a pigeon or a turtledove. . . Such are the rituals concerning her who bears a child, male or female. . .

— Leviticus 12:1-7

After eighteen hours of labor, Devorah gave birth at 4:37 a.m. on the Tuesday before Shavuot. Over the baby's piercing cries, Devorah tilted her head upward and strained to hear the most important news from the midwife. "Is it a boy or a girl?" The long months of pregnancy were finally over. Now, the midwife's answer would mean everything. Devorah (like all new parents) knew that, from the moment of birth onward, most facets of her child's life – the clothes it would be told to wear, the activities it would be anticipated to like, the careers and hobbies it would be encouraged to pursue, the loving relationships it would be expected to have – would be guided by the answer to this one crucial question.

The first of this week's double parshiyot, *Tazriya-Metzora*, opens with instructions to the Israelites regarding the birth of a baby. There are two separate sets of instructions to expectant parents, and they must begin following one of them immediately after their child is born. How to proceed is dependent on one factor: whether the baby is a girl or a boy. In the world-view of the Bible, as in the 21<sup>st</sup> century, it is assumed that there are two possible answers to this one crucial question, and that answer is immediately apparent from our first moments on earth – every person has either one body or the other one.

It isn't true.

The Intersex Society of North America<sup>1</sup> states that one out of every one to two thousand infants are born intersex – they are born with physical traits that cannot be easily classified as male or female. Many more people discover at the onset of puberty that they have ambiguous hormonal or chromosomal status. Intersexuality is quite common. But the 21<sup>st</sup> century is structured to allow two, and only two, sexes. There are two locker rooms, two boxes to choose between on every form we fill out, and two diagrams in the science book. So what do we do when someone doesn't “fit”?

We fix it.

Modern medical science has provided a “solution” to this challenge. If visible anatomy does not identify the sex of a baby, a surgeon operates to transform the infant into an unambiguous boy or girl. If an individual's body takes an alternate route to maturity at puberty, we offer hormone therapies, to stimulate conformity. We now (perhaps for the first time in history) have the know-how, as well as the will, to make real people fit into one of the two categories found in this week's parashah.

Andie, an intersex teenager, says: “I have not suffered because of my birthright, which is really how I now feel about being intersex. I have suffered because of well-intentioned intervention along the way that was meant to shape me into a person that someone else wanted me to be, that someone else believed I should be, that someone else thought was best for me. I was prodded and poked, photographed, examined and cut. I was six years old.”

This modern “solution” may seem like the only way to handle intersexuality in a strictly sexed and gendered society. But Jewish sacred tradition offers us a different approach. In the post-biblical era, rabbinic sages struggled to understand the sometimes abstract teachings of the Bible and make them “fit” with the complexity of the actual people that surrounded them. By the third century of the Common Era, a substantial section of Jewish civil and sacred law had been written that was dedicated to the question of how to integrate intersex people into the gendered society of Jewish Antiquity.

The Mishnah (Bikkurim 4: 1) explains: “The *androgynos* in some ways is like men, and in some ways is like women, and in some ways is like both men and women, and in some ways is like neither men nor women.” Among other things, we learn in this chapter of the Mishnah how the ritual laws of our parashah apply to the birth of an intersex infant. We also learn that intersex people are to be protected from physical harm and their lives sanctified, just like any other person. This chapter of the Mishnah is just one of many texts. The *tumtum* and

<sup>1</sup> <http://www.isna.org>

*androgynos* (two intersex labels applied by the Sages) appear over 300 times in the Babylonian Talmud alone! The Mishnah, Talmud, and the legal codes address questions about intersex people in every aspect of society: marriage, property, dress and conduct, inheritance, sex, conversion, and religious duties.

Today, 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. There are many ways to read these texts, and the Sages' approach is very far from perfect. They certainly do not advocate the overthrow of binary systems; they do not argue for sex and gender liberation, as some of us might wish that they had. But they also never question whether intersex people really exist, or whether these "conditions" were better eradicated. They do not advocate operations to transform an infant's body to better fit a gender category. They understand that intersex people are created "*al y'dei shamayim* / by the hand of Heaven" (from the Maggid Mishneh's commentary on Rambam's Hilchot Shofar) – and that every Divine creation is entitled to be seen, considered, and included.

Today, we've gone back to the more simplistic world-view of the Bible. We have forgotten the complexity and humanity of the approach of our classical thinkers towards intersex people. Modern medical science has created a world of intersex invisibility, perhaps more than any culture in any other era. Suzanne Kessler, a contemporary scholar who writes about intersexuality states: "Genital ambiguity is corrected not because it is threatening to an infant's health, but because it is threatening to an infant's culture." As Jews, our sacred tradition provides us with both the resources and the mandate to begin to transform our culture to better reflect the diversity of real bodies. Our heritage asks us to speak out to stop the exclusion of intersex people and to challenge a culture of medical interventions on intersex people when they do not choose them for themselves. This approach would help to create more space in society for the uniqueness of all of our identities whether we are male, female, intersex or something else.

In the Mishnah, Rabbi Yosi makes the radical statement: "*androgynos bria bifnei atzma hu* / the androgynos he is a created being of her own." This Hebrew phrase blends male and female pronouns to poetically express the complexity of the *androgynos*' identity. The term *bri'a b'ifnei atzma* is a classical Jewish legal term for exceptionality. This term is an acknowledgement that not all of creation can be understood within binary categories. It recognizes the possibility that uniqueness can burst through the walls that demarcate our society. The Hebrew word *bria* (created being) explicitly refers to divine formation; hence this term also reminds us that all bodies are created in the image of God. People can't always be easily defined; they can only be seen and respected, and their lives made holy. This Jewish approach allows for genders beyond male and female. It opens up space in society for every body. And it protects those who live in the places in between.

# TRANS TORAH

To challenge the myth of binary sex is to ask our society to reconsider some of the fundamental things that we have all been taught since the day we were born. And yet this is exactly what Jewish sacred texts ask us to do. What if instead of asking “Is it a boy or a girl?” the moment an infant is born, we simply celebrated that a new person has been created in the image of God? What if, whenever we are asked if a new baby is a boy or a girl, we simply responded: “It’s a created being of its own.” Jewish tradition recognizes that intersexuality is part of the beauty of the created world. Like our Sages, we must insist upon telling the full truth about the diversity of God’s creation.