TRANSGENDER

HALACHIC AND HASHKAFIC PERSPECTIVES

Transgender and transexuality is not a new issue. For thousands of years in many world cultures there have been individuals who were clearly born physically as one gender but who wished to 'become' the other gender. This has historically expressed itself through behavior and modes of dress, make-up and jewelry. In modern times, hormone treatment and gender realignment surgery have become an option. This has become a growth area in the last 25 years. Roughly 1000 MtF (Male to Female) gender-realignment operations take place in the US every year. That means those who have had such surgery now number in the tens of thousands and it is to expected that many more people who have not had the surgery still have transgender orientations.

A number of questions need to be addressed from a Jewish perspective when dealing with transgender:

• Is there a Jewish ‘view’ on gender? What are the key differences between male and female?
• Is there a Jewish perspective on a person who feels that their true ‘spiritual’ gender is different to their anatomical sexuality?
• Is it halachically permitted to have gender reassignment surgery (GRS) in either direction?
• Following GRS does the halachic gender change?
• What is an authentic Jewish approach to transexuality and transgender issues, on an individual and communal level?
• How should we react to and deal with a societal transsexual and intersexual culture-shift?

A] WHAT IS TRANSGENDER?

1. Transgender people experience a mismatch between their gender identity or gender expression and their assigned sex. Transgender is also an umbrella term because, in addition to including trans men and trans women whose binary gender identity is the opposite of their assigned sex (and who are sometimes specifically termed transsexual if they desire medical assistance to transition), it may include genderqueer people (whose identities are not exclusively masculine or feminine, but may, for example, be bigender, pangender, genderfluid, or agender). Other definitions include third-gender people as transgender or conceptualize transgender people as a third gender, and infrequently the term is defined very broadly to include cross-dressers.

Many transgender people experience a period of identity development that includes gaining better understanding their self-image, self-reflection, and self-expression. The degree to which individuals feel genuine, authentic, and comfortable within their external appearance and accept their genuine identity is referred to as transgender congruence. Being transgender is independent of sexual orientation; transgender people may identify as heterosexual, homosexual, bisexual, asexual, etc., or may consider conventional sexual orientation labels inadequate or inapplicable.

One effort to quantify the population gave a "rough estimate" that 0.3 percent of adults in the US (1-in-300) are transgender, overlapping to an unknown degree with the estimated 3.5 percent of US adults (1-in-30) who identify as LGB.

Wikipedia - 6 Jan 2016

1. For an excellent shiur on this topic, see Rabbi Efrem Goldberg from Boca Raton Synagogue, available on YU Torah. I am indebted to him for some of the sources on this sheet. See http://www.yutorah.org/lectures/lecture.cfm/837346/rabbi-efrem-goldberg/man-and-woman-he-created-them-torah-view-of-transgender/
Transgender study looks at 'exceptionally high' suicide-attempt rate

A whopping 41% of people who are transgender or gender-nonconforming have attempted suicide sometime in their lives, nearly nine times the national average, according to a sweeping survey released three years ago. Researchers from the American Foundation for Suicide Prevention and the Williams Institute at UCLA School of Law found that the risk of attempting suicide was especially severe for transgender or gender nonconforming people who had suffered discrimination or violence, such as being physically or sexually assaulted at work or school.

Among transgender people who became homeless because of bias against their gender identity, 69% said they had tried to kill themselves. Out of those who had been turned away by a doctor because they were transgender or gender-nonconforming, 60% had attempted suicide sometime in their lives, the survey found.

Nearly two-thirds of respondents who were the victims of domestic violence at the hands of a family member had attempted suicide, the study also showed. Suicide attempts were less common among transgender and gender-nonconforming people who said their family ties had remained strong after they came out....

Even transgender people at comparatively "low" risk were still much more likely to have attempted suicide than the general population, they wrote, with "lows" often ranging from 30% to 40%. Transgender and gender-nonconforming people who had gotten graduate degrees, for instance, had a lifetime risk of attempting suicide of 31% -- lower than less-educated transgender people, but still astoundingly high.

"It's alarming all across the board," said Jody L. Herman, manager of transgender research at the Williams Institute.

Los Angeles Times - January 28, 2014 by Emily Alpert Reyes

B] GENDER AND SEXUAL DESIGNATION IN TORAH THOUGHT

There are a number of interesting books on this issue. In particular, see Miriam Kosman - Circle, Arrow, Spiral: Exploring Gender in Judaism.

4:25:32 in the 2009 Feldheim English translation

2. Transcript of the English translation.
C) KABBALISTIC PERSPECTIVES

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- In the image of God He created him; male and female He created them. What is the meaning of the juxtaposition of the reference to the image of God with the creation of man as two sexes? In interpreting the phrase, male and female He created them, Chazal explained that when God initially created Adam, He created him in a dual form (see Rashi here). Male and female in this context are to be taken not only in a physiological sense but also in a spiritual/metaphysical one.

Every soul consists of a spiritual androgyny, a male and female persona. The combination of these elements is known in Rabbinic literature as duchra venhuva, which can be found in every individual. Duchra refers to dynamic, active man while nukva refers to affected, passive man. Man is both influenced and is influenced; he is both giver and receiver. Only in the biological world is man exclusively male or female. In the spiritual world, every individual carries both traits, and only through the development of both the duchra and the nukva perspectives can individuals attain their full spiritual potential.

For example, when a teacher instructs his students, he is the giver, the “male,” the duchra, while his students, who absorb his ideas, are the “female,” the nukva. At one point in the lesson, however, a perceptive student may ask a particularly incisive question that leads the thoughts of the teacher in new directions. Indeed, Rabbi Chanina exclaimed, ‘I learn from my students more than from anyone else (Taanis 7a). At this juncture, the duchra-nukva roles are reversed. The student has planted a seed that blooms into a beautiful flower within the mind of his teacher. The young student with eager eyes and an inquisitive expression becomes a duchra, while the teacher, with the grey beard and the august title of Harav HaGaon, is transformed into a nukva.

Who is the giver and who is the receiver? Who influences and who is influenced? As undeveloped as one’s intellect may be, no one is exclusively a student. And as great as a person may be intellectually, no one is exclusively a teacher.

The blessing that God bestowed on man during Creation operates in both the spiritual-physical realm as well as in the physical realm. Actualizing the potential of duchra venhuva is the greatest and most exalted of blessings. A person must actualize his nukva blessing to absorb spiritual wealth and beauty. Concurrently, he must actualize his duchra blessing by using his spiritual energies to give to others. The student who lacks a teacher, although born with great potential, cannot realize his potential as nukva. Similarly, sometimes a great teacher can lack students to absorb his wisdom and he therefore cannot develop his potential as duchra. One spiritual personality is necessarily dependent on the other in order to develop an elevated level of self-actualization.

Rav Yosef Dov Soloveitchik - Derashot HaRav

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D] REASONS WHY GENDER REASSIGNMENT SURGERY IS HALACHICALLY PROHIBITED

13. The Torah prohibits bringing any male animal with torn or crushed sexual organs as a sacrifice in the Temple and adds a separate prohibition not to perform a castration even in a non-Temple context.

14. Furthermore, a man with cut or crushed genital organs is prohibited from marrying a Jewish woman. This would include a vasectomy for men.

15. The Talmud explicitly states that the Torah prohibition on castration also applies to humans.

16. The Rambam rules that castrating any human or animal is prohibited all over the world (i.e. not just Eretz Yisrael), even if one is performing the operation on an animal belonging to someone else.

17. Sterilizing a female is not punishable under this prohibition but will be prohibited at least rabbincally and possibly min haTorah (this is disputed amongst the Rishonim - the view of the Vilna Gaon indicates an issur min haTorah).

18. The Torah prohibits cross dressing. Rashi understands from Chazal that the underlying reason for the prohibition is to prevent blurring of the sexes.

19. It is rabbincally prohibited to adopt the habits and lifestyle of the opposite gender - eg for men to shave body hair provided that such activities are exclusive to the other gender - unisex activities are fine. Modern poskim have applied this prohibition to GRS and also to hormone treatment. Furthermore, any candidate for GRS will be required to first spend some time in ‘training’ in the other gender role. This will involve cross-dressing and other prohibition of this mitzvah on a Torah level.

20. GRS and other gender-changing treatments are thus definitely prohibited by halacha.
E] Does the Halachic Gender Change Following GRS?

This will be relevant to many aspects of halacha, in particular marriage, divorce and mitzvot incumbent on men and women.

21. The Mishna makes mention many times of 2 questionable sexual statuses - tumtum and androginus. A tumtum is born with no apparent sexual organs. An androginus is born with both sets of sexual organs.

22. In halacha, both a tumtum and an androginus have a status of safek man and safek women so get the halachot of both lechumrah. It is important to note that a person born with a definite gender who then has GRS is NOT classified in halacha as a tumtum or androginus.

23. According to the Tzitz Eliezer, birth gender is defined by external examination, not internal organs or genetic/chromosomal configuration.

24. Ibn Ezra cites Rabbeinu Chananel (11th C) who stated that the definition of ‘zachar’ for the prohibition of sodomy includes a man who has had surgery to give him female sexual organs. It appears from this that such a person is still regarded clearly as a man. Interestingly he does not appear to be classed as an androginus even though he presumably still has male sexual organs. It would thus seem that, in the view of R. Chananel, GRS does NOT change gender.

25. The position of most poskim is that GRS will NOT change the halachic gender.

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4. For an overview of the relevant issues, see Tumtum And Androgynous, Rabbi Alfred Cohen, Journal of Halacha & Contemporary Society XXXVIII; Fall 1999 - Sukkot 5760
Would the halachic be different for a non-Jew who performed a GRS and then converted to be Jewish?

Or a child who underwent a GRS prior to bar/bat mitzva?

In a 19th C teshuva, Rav Yosef Pelaggi considers the following halachic scenario: If a married woman develops some condition whereby she grows male sexual organs and transforms into a man, does she need a halachic 'get' to divorce her from her husband? He rules that she does NOT need a 'get' since she is no longer a woman, rather a man, and the marriage is automatically annulled.

The Terumat Hadeshen (15th C) asks what is the status of Eliyahu’s wife. Since Eliyahu was taken alive to shamayim (see Melachim 2 ch 2), is his wife still married to him or is she free to marry someone else? He answers that she is free to marry another man since the Torah prohibited only the wife of a man and NOT the wife of a malach!

The Minchat Chinuch (203) explains as follows. Some marriages are totally invalid in halacha to the extent that, even if a marriage ceremony is carried out, there is no halachic ‘kiddushin’ involved. Any relationship of that severity of prohibition, if arising in the middle of a marriage will effectively uproot the original kiddushin and the couple are not married. So too in this case, since a marriage between a woman and a malach is totally not binding, if the husband became a malach during the marriage, the marriage is no longer binding. Thus Eliyahu’s wife is free to remarry.

This halachic principal is based on this statement of Rashi. The gemara here states a man is not allowed to remarry his wife if she became a Sotah (suspected adulteress). If he does remarry her however, the marriage is valid and there is a kiddushin. Rashi clarifies that it must be the case that marriage to a Sotah creates kiddushin since, had it not, the original marriage would have lapsed as soon as she became a Sotah.

Based on this principle, Rav Eliezer Waldenburg in a relatively recent teshuva (around 1970) ruled that if a married man had MtF RGS the marriage will lapse without the need for a divorce. The clear implication of this teshuva appears to be that the surgery DOES change the halachic gender of the person.
Rav Waldenberg, quoting Rav Pelaggi (see above), also discusses whether a woman who turns into a man (through a natural condition) can say ‘Shelo Asani Isha’. She was created a woman but now became a man.

Is status determined at birth or at the time of the beracha? For instance, can a convert say ‘shelo asani goy’? Rav Pellagi suggests a new beracha - ‘who has turned me into a man’. Leaving aside the issue as to whether we can invent new berachot today in this way (consider for example where ‘she’asani kirtzono’ came from - it is not mentioned in Chazal!) it would seem highly inappropriate to have G-d and then make a beracha claiming that G-d turned you into the other gender.

Limitations to the Application of the Teshuva of Rav Waldenberg

1. At no stage does he even suggest that GRS is permitted. All halachic authorities state that it is prohibited.
2. Although he assumes that GRS effects a change in gender to dissolve a marriage, there is no indication of what he bases such an assertion on. This does weaken the impact of this as a landmark teshuva. Using Rav Pellagi as a source is also fairly weak - Rav Pellagi is not known as a major halachic authority.
3. It is not clear that Rav Waldenberg is making a psak that extends beyond the case in question - the dissolution of the marriage. To extrapolate to a general statement on gender reorientation may be overextending the teshuva.
4. Rav Waldenberg is one minority voice amongst the modern poskim, none of whom has indicated that GRS effects a change of halachic gender.

CONCLUSIONS:
• GRS is prohibited according to all opinions - a number of Torah and Rabbinic prohibitions may be involved
• According to almost all (and perhaps all) poskim, GRS does not effect a shift in halachic gender for general purposes
• According to one major posek, GRS will result in an annulment of the marriage - most poskim disagree
• A person who has had GRS will not be allowed to enter into a halachic marriage, even in the ‘old’ gender

F) INDIVIDUAL AND COMMUNAL ISSUES

IMPORTANT NOTE we have NOT considered at length in this shiur the halachic and hashkafic issues involved in:
- counselling and helping individuals with transgender issues
- dealing practically, sensitively and authentically as a community with individuals who have had GRS
- responding as individuals and as a community to general societal movements and trends on gender and sexuality