

Queering Eve: Imagining Transgender Acceptance in Orthodox Judaism

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[See table of contents](#)

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Article abstract

While the Reform and Conservative Jewish movements have made a concerted effort to welcome transgender Jews in the last twenty years, transgender congregants are often shunned by Orthodox rabbis and synagogues in the United States. Studies about Orthodox Judaism's relationship with transgender identity often focus exclusively on Talmudic justifications for the acceptance or rejection of transgender Jews, ignoring the increasingly sizeable effect that secular politics has on the American Orthodox community. To address this gap in the academic understanding of transgender Jewish issues, this analysis takes a more holistic approach to the issue of transgender acceptance in Orthodox Judaism by (1) assessing the potential for the acceptance of transgender Jews in ultra-Orthodox and Modern Orthodox Jewish communities in the United States using halakhic rulings on intersex and transgender issues and (2) tracing the potential effects of the American political landscape on the Orthodox community's acceptance of transgender identity.

Queering Eve: Imagining Transgender Acceptance in Orthodox Judaism

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Abstract

While the Reform and Conservative Jewish movements have made a concerted effort to welcome transgender Jews in the last twenty years, transgender congregants are often shunned by Orthodox rabbis and synagogues in the United States. Studies about Orthodox Judaism's relationship with transgender identity often focus exclusively on Talmudic justifications for the acceptance or rejection of transgender Jews, ignoring the increasingly sizeable effect that secular politics has on the American Orthodox community. To address this gap in the academic understanding of transgender Jewish issues, this analysis takes a more holistic approach to the issue of transgender acceptance in Orthodox Judaism by (1) assessing the potential for the acceptance of transgender Jews in ultra-Orthodox and Modern Orthodox Jewish communities in the United States using halakhic rulings on intersex and transgender issues and (2) tracing the potential effects of the American political landscape on the Orthodox community's acceptance of transgender identity.

Introduction

Each morning, swathes of Orthodox Jewish men recite the Talmudic blessing: "Blessed are you, Lord, our God, ruler of the universe who has not created me a woman."¹ And yet, for some, this daily celebration of masculinity becomes an ironic vocalization of their greatest internal struggle. Abby Stein, a former ultra-Orthodox rabbi, always knew she was not meant to live life as a man, and eventually came out as a transgender woman at twenty-four years old.² Because of her gender identity, Stein was shunned from her community, leaving behind her siblings, wife, and parents to live her truth. Stein's case highlights a tension between transgender identity and Orthodox Jewish communities, yet the tension that exists is neither as simple nor straightforward as sex being the sole determiner of gender in Orthodoxy. Orthodox Jewish notions of sex and gender are deeply rooted in religious jurisprudence, which does address and occasionally permit gender reassignment surgery, a common mode of affirming transgender identity.³ However, transgender women like Abby Stein still experience acceptance as a near impossibility in Orthodox circles. Because Orthodox Judaism relies heavily on the prescriptions of Jewish law, imagining an Orthodox Judaism that might accept women like Stein requires an examination of halakha and recent moves from within the Orthodox Jewish community to reshape its attitudes towards trans women. This analysis explores the potential for the acceptance of transgender Jews in ultra-Orthodox and Modern Orthodox Jewish communities in the United States using halakhic rulings on intersex and transgender issues. In addition, this exploration traces the potential effects of the American political landscape on the Orthodox community's acceptance of transgender identity.

Transgender Acceptance in Non-Orthodox Movements

While Orthodox Judaism has not moved to accept transgender individuals, the issue of transgender rights in Judaism has become increasingly topical within the Reform and Conservative Jewish rabbinates. In recent years, both the Reform and Conservative movements have sought to fully accept members of the LGBT community. While the actual acceptance of transgender Jews may still vary depending on the synagogue they attend, the major rabbinic committees in both movements have become concerned with transgender acceptance and inclusivity. Responsa by Rabbi Solomon Bennett Freehof shows that the Reform movement held nearly the same views as the Orthodox movement on transgender issues in the early 1970s.⁴ By the early 2000s, Reform Judaism had completely reversed its stance, downplaying the general importance of gender in the Reform movement and breaking with Rabbinic tradition to support the inclusion of transgender Jews.⁵ In 2015, the Reform movement passed a resolution in full support of the equality of transgender and gender nonconforming individuals.⁶ In the Conservative movement, The Committee on Jewish Law and Standards, the central authority on Conservative halakha, began its debate around transgender identity in Judaism in 2003 with “Status of Transsexuals,” a collection of responsa by Rabbi Mayer Rabinowitz.⁷ Since then, the Conservative movement has released extensive responsa on the issue of transgender rights in Judaism, striving to be inclusive of transgender identity in all aspects of Jewish law. In 2011, the Conservative movement called for equal rights for transgender and bisexual persons,⁸ and in 2017 the Committee on Jewish Law and Standards voted to adopt a collection of responsa entitled “Transgender Jews and Halakha” by Rabbi Leonard A. Sharzer MD.⁹ This responsa outlines how transgender individuals may observe gendered halakhic rules and signifies the acceptance of binary and nonbinary transgender identities by the Conservative rabbinate. The acceptance of transgender identity by both the Reform and Conservative movements may not inherently set a precedent for the Orthodox movement, however, it does indicate that the topic of transgender identity has become increasingly important for Judaism to address.

It is also essential to note that the process of transgender acceptance in the Reform movement and the Conservative movement cannot be cleanly applied to the Orthodox movement, but this does not negate the potential for Orthodox Judaism to accept transgender individuals. In

rabbinic responsa from 2003, the Reform movement concluded that evaluating gendered halakha was an unnecessary step in accepting transgender Jews, as men and women are both equal in the Reform movement. According to Ronit Irshai,

For the first time, and in contravention of the Talmudic tradition, it is stated that the determination of an individual person's gender is not so important for Reform Jews. For those who are committed to the notion of gender equality and are affiliated with a movement that, being committed to gender equality, imposes the same religious obligations and rituals on women and men alike, the debate about gender identity is of lesser significance. Hence, there is no need to determine a person's "true" gender and all individuals should be accepted as they define themselves.¹⁰

This approach would neither be appropriate nor accepted in Orthodox Jewish communities, where the Talmud forms the backbone of religious observance. The acceptance of transgender individuals must be forged through Talmudic tradition, rather than through a break from it, in Orthodox Judaism. The Conservative movement made a marked effort in its attempt to approach transgender acceptance through a halakhic framework in the 2009 responsa "Transgender Jews and Halakha" by Rabbi Leonard A. Sharzer who states in his responsa that he hopes the Orthodox movement might adopt and apply his general approach. However, Sharzer and the Conservative movement, especially its egalitarian subset, do not treat gendered halakha with the same level of importance as the Orthodox movement. Sharzer even states that he will not approach gendered halakha that is more Orthodox in nature:

Therefore, I will not address issues such as which side of a *mehitzah* one should sit on, whether one may lead any and all parts of a service as *shaliach tzibbur*, whether one may or must don *tefillin*, serve on a *beit din* or be a witness, etc.¹¹

An Orthodox acceptance of transgender individuals, therefore, could not follow the same process as the Reform and Conservative movements.

Defining Orthodox Judaism and its Stance on Transgender Acceptance

Orthodox Judaism is not a monolith, but rather an umbrella category encompassing several groups that approach observance differently. Because Orthodox Judaism is heterogenous, it may be easier for one sub-denomination to accept transgender individuals than another. This analysis will look at two major categories within the Orthodox community: Haredi (ultra-Orthodox) and Modern Orthodox Judaism. Modern Orthodox Judaism, as its name would suggest, is simultaneously concerned with preserving Orthodox observance and assimilating within modern society.¹² It is within the Modern Orthodox desire to acknowledge changes in society and assimilate that transgender Jews may be able to find acceptance. Haredi communities, which do not have the same

proclivity to assimilate, pose a greater challenge for transgender Jews. Some Haredim, like those from Abby Stein's Hasidic community in Brooklyn, are actively attempting to recreate the ideal, hyper-observant shtetl life, which leaves little room for transgender identity, as it is perceived to be a modern innovation.¹³ However, there are Haredi rabbis and individuals who are dedicated to the issue of transgender acceptance.

Though there are some key voices of transgender acceptance in the Orthodox community, the Orthodox rabbinate overwhelmingly do not accept transgender identities. According to Aaron Devor, "Orthodox Judaism generally does not accept that a person can change gender/sex."¹⁴ Orthodox responsa first condemned sex-change surgeries for transgender-identifying Jews in the 1970s and its views have remained the same since.¹⁵ Orthodox Judaism is heterogeneous and decentralized, however, Orthodox denominations largely share in their opposition to transgender identity.

Queering the Body of Halakha and Responsa on Intersex Jews

Pre-modern rabbis likely could not have imagined modern notions of nonbinary or transgender identities, but they were able to recognize gender identities beyond male or female and accommodate them through halakha. In their discussions of intersex individuals, the rabbis were able to delineate sexes and genders beyond the binary including *tumtum* and *androgynous*. A *tumtum* was an intersex individual with neither male nor female external sexual characteristics, and an *androgynous* was a person with both male and female characteristics.¹⁶ In his commentary on *Avodat Kochavim*, Rambam concluded that *androgynous* and *tumtum* should adhere to some elements of halakha prescribed for men and some for women:

The status of a *tumtum* and an androgynous is doubtful. Therefore, the stringencies applying to both a man and a woman are applied to them, and they are obligated by all [the mitzvot].¹⁷

Despite their acknowledgment of divergent sex and gender identities, the rabbinic construction of gender still stands in opposition to the understandings of modern gender theory; the rabbis did associate the *tumtum* and *androgynous* identities directly with intersex characteristics, which is an equivocation of sex and gender.

Now that sex-change surgeries have become an option for intersex individuals, some Orthodox rabbis will permit them. According to the Orthodox Rabbi Eliezer Waldenberg, who is well known for his responsa on medical issues, sex-change operations are permissible. One of his

responsa details the story of an intersex child with internal testes and XY (male) chromosomes, who had the option of undergoing sex-change surgery.¹⁸ Physicians advised that it would be easier to surgically create the appearance of female genitalia for the child. Waldenberg not only found the surgery to be permissible, but also recommended specifically that the child undergo sex-change surgery to receive female genitalia, including removal of the testes. Leviticus 22:24 is typically interpreted as a prohibition against cutting or removing the testicles, however, Rav Eliezer Waldenberg concluded that this prohibition does not apply to individuals who were already unable to reproduce. Waldenberg's ruling breaks from Rambam's commentary on *Avodat Kochavim* in that it concludes that the *tumtum* with internal male characteristics can be raised as a woman. Rambam concludes:

And whoever has neither maleness nor femaleness, but is closed up is called a *tumtum* and they are also of an uncertain category. But if a *tumtum* is opened [by surgery or an accident] and a male organ is found, they are a definite male. And if a female organ is found, they are a female.¹⁹

Since the intersex child had more male characteristics, Waldenberg's ruling stands in opposition to Rambam's commentary on *Avodat Kochavim* in the *Mishnah Torah*. His responsa also creates a differentiation between genotype and gender; even though the child had XY chromosomes, it was perfectly acceptable for them to be raised as a girl. His stance on this issue may have relevance for transgender individuals, as the child was permitted to undergo sex-change surgery and live as a woman instead of as a man despite having more male than female sex characteristics.

What emerges from these discourses is a clear rabbinic desire to return to binary notions of gender and sex wherever possible, but equally, a framework for transcending the binary to extend Orthodox halakha to individuals who may not identify as a man or a woman. Responsa on intersex individuals may also be useful for forging the acceptance of binary transgender Jews, as it legitimizes the idea of a gender transition. Additionally, responsa on intersex identity emphasizes that genotype and gender are not synonymous, which may be useful for both binary and non-binary transgender Jews seeking acceptance. This is not to equivocate intersex identity with transgender identity, but to suggest that Maimonides' commentary on *Avodat Kochavim* and Rav Eliezer Waldenburg's rulings on intersex individuals may affect the acceptability of transgender identity in the Orthodox movement. The rabbinic understanding of non-binary gender identities and the

prescription of sex-change surgeries for intersex individuals suggests that the acceptance of transgender Jews may be possible for Orthodox denominations.

The Points of Contention

While Orthodox Judaism presents a number of ideological challenges to transgender acceptance, this analysis deals with three of the most prominent. First, Orthodox Judaism typically views sex and gender as synonymous. Even the halakhic rulings that are concerned with intersex individuals rely on this direct equivocation, as Rambam's commentary on *Avodat Kochavim* and Eliezer Waldenburg's ruling in *Tzitz Eliezer* 11:78 show. Secondly, sex-change surgeries are exclusively permitted for intersex individuals in responsa and, occasionally, for those who have been in an accident that has substantially damaged their genitalia. Even then, not all Orthodox rabbis permit sex-change operations; while Rav Waldenberg is undeniably a prominent figure, there are those who disagree with his ruling.²⁰ Transgender individuals who desire sex-change surgeries are often seen as harming themselves on a whim. Orthodox Judaism treats the body as a near extension of the spirit, and accordingly cosmetic procedures like sex-change surgery may be viewed as self-mutilation and fall under the prohibition of self-wounding, *hovel b'atzmo*.²¹ Thirdly, the sexual relations of transgender individuals, especially transgender women, may not be seen as permissible. For those who have not undergone sex-change surgery, their gender is associated with their sex; certain partnerships therefore, may be viewed by Orthodox Judaism as homosexual intercourse, which is prohibited in Leviticus 18:22. In fact, this association between transgender identity and homosexuality has been a key talking point for Orthodox rabbis who do not wish to permit sex-change surgeries for transgender Jews. In his work "The Transitioning of Jewish Biomedical Law: Rhetorical and Practical Shifts in Halakhic Discourse on Sex-Change Surgery," Hillel Gray states:

This bright-line prohibition of SCS [sex-change surgery] is backed up by authoritative precedents, justified by multiple halakhic rules and reinforced by a cross-cultural discourse linking transsexuality to the thorny issue of homosexuality.²²

Even for transgender women who have already undergone sex-change surgery, their sex lives may still not be permissible. It will likely be impossible for transgender women to reproduce after surgery, and thus vaginal sex with a penis may be considered a spilling of the seed, which is condemned in Genesis 38:8-10. There are, of course, also logistical issues in determining the

appropriate halakha for transgender individuals to follow. However, this analysis will not concern itself with whether trans women must use the *mikveh* and other situationally specific issues that arise in the deeply gendered body of halakha. Given the sheer breadth of gender-specific halakha, a more extensive analysis focused solely on gendered halakha would be required. Instead of addressing gendered halakha, this analysis will explore and present arguments refuting the overarching ideologies that condemn transgender Jews and assess the potential for transgender acceptance in Orthodox Judaism.

Additionally, it is important to note that the issue of secular politics in the United States does play a role in Jewish affairs. Scholars of Jewish studies including Hillel Gray and Aaron H. Devor have provided exceptional analyses on transgender issues in Orthodox Judaism, but these scholars have not acknowledged the role that secular conservative politics has grown to play within Orthodox Judaism and the effect this has on transgender Jews. While most American Jews vote for leftwing, or democratic party, candidates, the Orthodox community leans markedly further right. In a recent survey of the American Jewish community, the Pew Research Center concluded:

Orthodox Jews, however, stand out as a small subgroup (roughly one-in-ten Jewish adults) whose political profile is virtually the reverse of Jews as a whole: 60% of Orthodox Jews describe their political views as conservative, 75% identify as Republicans or lean toward the GOP, and 81% approved of Trump's job performance at the time of the survey.²³

Particularly since the beginning of the COVID-19 pandemic, the alignment of Orthodox Jews within politically conservative party lines has become more visible. In 2020, swathes of Haredi Jews in Borough Park, Brooklyn burned their masks in a bonfire, demonstrating against COVID-19 restrictions.²⁴ The group carried Trump flags and was led by the city council candidate, and avid Trump supporter, Heshy Tischler. While Orthodox communities are deeply religious, they are affected by secular politics, and in turn, their votes impact these politics. Conservative politicians in the United States proposed over 110 anti-trans bills in the year 2021 alone.²⁵ The challenge this poses for transgender people hoping for acceptance in Orthodox circles cannot go unacknowledged.

A Path Forward for Acceptance: Modern Orthodox Judaism

As was previously noted, Modern Orthodox Judaism is more concerned with assimilating into modern society than ultra-Orthodox Judaism, and accordingly it may be easier for transgender Jews to find acceptance in Modern Orthodox communities. More figures within the Modern

Orthodox sphere have been willing to argue for transgender rights. Steven Greenberg, the first openly gay Orthodox rabbi, is the co-director of Eshel, which seeks to create acceptance for LGBTQ+ Orthodox Jews. His organization provides resources for synagogues, families, and individuals, and it has become a prominent force in the journey toward transgender acceptance in the Modern Orthodox sphere. The Eshel website also lists LGBTQ+ friendly Modern Orthodox synagogues, which signifies a growing acceptance within Orthodox communities.²⁶ Organizations like Eshel are integral in the fight for transgender acceptance in the Orthodox world.

One of the largest aforementioned barriers to transgender acceptance is the conflation between sex and gender in halakha and responsa. While sex-change surgeries are controversial at best and outright condemned at worst in the Modern Orthodox community, pre-operative transgender individuals and those who have elected not to pursue sex-change surgery pose an even greater challenge to existing halakha. Intersex individuals create a potential precedent for the acceptance of transgender identities post-operatively, but it would be harder to envisage a transgender person who is able to maintain distinctly male or distinctly female genitalia while living as a different gender than they were assigned at birth. Especially if an individual chooses to dress as their chosen gender without surgical intervention, this could be seen as cross-dressing, which is prohibited in Deuteronomy 22:5: “Neither shall a man put on a woman’s garment.” This poses an especially difficult challenge for non-binary and FtM (female to male) transgender individuals who are less likely to undergo any form of sex-change surgery.²⁷ However, some Modern Orthodox rabbis have begun to address this issue, according to Aaron Devor:

Those few Orthodox rabbis who accept that people may change their gender are developing halakhically-based policies about how to accommodate trans and non-binary people who have changed gender without undergoing genital surgeries. Rabbi Zev Farber is a leader in this regard. He argues that a rabbi should never enquire about a trans or non-binary person’s genital status except in matters directly related to genitals (such as marriage or conversion).²⁸

For individuals who do not plan on undergoing sex-change surgery, the incredibly high suicide rates within the transgender community may warrant a tepid acceptance regardless of the conflation of sex and gender. The principle of *pikuach nefesh* obligates the violation of Jewish law to save a life. In the Talmud, bYoma 85b outlines many of the core principles of *pikuach nefesh*, which emphasizes that a Jew must save his own life and the lives of others whenever possible, even if that means breaking the laws of the Torah. The philosophy behind the principle is that a

Jew should live by the Torah and Jewish law—not perish because of them. Because 98% of transgender individuals who experienced four or more incidences of discrimination or violence in the past year were suicidal, and over half that population did attempt suicide, transgender acceptance is a matter of life or death.²⁹ Even if it is not clear whether a specific act of discrimination or rejection will lead to suicide, Mishnah Yoma 8:6 applies *pikuach nefesh* to cases where death is a possibility rather than a certain outcome. Though a transgender Jew may not commit suicide because of community rejection, this application of *pikuach nefesh* indicates that Jewish communities should accept transgender Jews regardless because the likelihood of a suicide attempt is still considerably high. In Modern Orthodox circles, *pikuach nefesh* has gained increasing acceptance as a viable reason to accept, affirm, and support transgender Jews.³⁰ While halakha conflates sex and gender, it also permits the breaking of laws when a life must be saved.

Typically, the rabbinical ban on sex-change surgery is tied to the idea that a sex-change operation qualifies as castration and self-harm. The ban on castration, however, as Rabbi Ben-Ephraim points out, is not applicable for FtM transgender individuals:

Furthermore, Ben-Ephraim shows that the strongest legal rationale for a clear-cut ban on SCS, the biblical prohibition of castration, applies differently to women, who are not punished for what the rabbis consider the female equivalent of castration—a nuance that had already drawn attention.³¹

For those who would need their testicles removed during surgery, Rabbi Steven Dansky offers a solution. Rav Waldenberg argued that the ban on castration was only for individuals who are able to reproduce. Transgender individuals who have undergone hormone therapy prior to castration are often already unable to have children because of hormonal treatment.³² Therefore, it would be permissible for transgender individuals with testicles to have them surgically removed. The prohibition against self-harm, *hovel b'atzmo*, has been applied by some Orthodox rabbis to all forms of sex-change surgery. However, lifesaving surgeries are permitted in halakha, and therefore sex-change surgeries may be permitted for transgender individuals because of the provision for *pikuach nefesh*. The high suicide rate among the transgender population makes gender-affirming surgery a life-saving operation. In addition, sex-change surgery may allow a transgender Orthodox Jew to be permitted to observe the halakha for their gender identity, rather than their birth sex: “In a responsum about transsexuals and marriage, Waldenberg ruled in 1967 that sex change surgery

would alter a person's halakhic gender."³³ Rav Waldenberg's ruling sets a precedent for post-operation transgender Jews to receive acceptance in Modern Orthodox circles.

The ban against sexual relations for transgender individuals is often tied to homosexuality and the prohibition on sex for post-operative intersex individuals. Pre-operative transgender Jews, and those who will not undergo sex change operations, face a more difficult halakhic challenge than post-operative Jews. For transgender Jews that engage in sexual relationships with those of the same sex they were assigned at birth, their activities are considered homosexual. Under halakhic rules, the acceptance of sexual relations for pre-operative transgender Jews may have to come along with the acceptance of homosexuality in rabbinic spheres. In this regard, some progress has been made. While most Modern Orthodox rabbis do not attempt to argue that homosexuality is permissible in the Torah, some do argue that the prohibition against homosexuality does not warrant the ostracization of homosexual Orthodox Jews. In 2010, a joint statement of principles signed by 150 Orthodox rabbis and educators in the United States and Israel declared:

Every Jew is obligated to fulfill the entire range of mitzvot between person and person in relation to persons who are homosexual or have feelings of same sex attraction. Embarrassing, harassing or demeaning someone with a homosexual orientation or same-sex attraction is a violation of Torah prohibitions that embody the deepest values of Judaism.³⁴

While not all Orthodox congregations agree that homosexual congregants should be accepted, this joint statement does signify that transgender and homosexual Jews may be able to find Orthodox congregations where they are not harassed or ostracized for their identities. Post-operative transgender women face an additional challenge if they engage in sexual relations with a partner who has a penis; even if a congregation accepts the identity of a post-operative transgender woman, she is thought to be in defiance of the ban against the spilling of the seed if she engages in vaginal sex because she cannot procreate. However, most rabbis in Orthodox communities believe that an infertile woman, or a woman who has gone through menopause, may still engage in sexual relations. The permissibility of sexual relations for post-menopausal and infertile women could suggest that transgender women may also be permitted to engage in sexual relations, regardless of their ability to reproduce.

While Modern Orthodox Jews vote for conservative political parties, organizations like Eshel signify a change within the community that may eventually translate to politics. The

American Republican party has become a home for some prominent Modern Orthodox Jews including Donald Trump's son-in-law, Jared Kushner, and the well-known conservative speaker and podcast host Ben Shapiro. However, the small but growing support for the LGBTQ+ community within the Modern Orthodox sphere signifies that political conservatism's hold on the Modern Orthodox world may not always be as strong. Even if the political hold is slow to shift, there is the potential that Modern Orthodox Jews may begin to offer some degree of acceptance, regardless of their personal political alignments, which would nonetheless benefit transgender Orthodox Jews who are hoping to find space within the community.

A Unique Set of Challenges: Transgender Acceptance in Haredi Judaism

In the previous section, *pikuach nefesh* was illustrated as an essential line of argument for transgender Jews to be able to receive at least a tepid acceptance and undergo sex-change surgeries; however, the usage of *pikuach nefesh* becomes more complicated in Haredi communities. Haredi Judaism, like Modern Orthodox Judaism, does agree that *pikuach nefesh* is an important tenant of the faith. That being said, the COVID-19 pandemic has shed an interesting light on how the importance of saving a life can sometimes be reduced in its essentialness by ultra-Orthodox communities. While social distancing was considered integral to save human lives, the Orthodox community in New York City chose to hold enormous weddings, endangering Jewish lives and breaking local COVID-19 regulations. Thousands also attended the funerary procession of a prominent rabbi in late April on the streets of New York, and many in the Orthodox community continued to attend *shul* despite bans on large gatherings.³⁵ Haredi protests against COVID-19 regulations sprang up in Brooklyn, featuring pro-Trump paraphernalia and other secular markers of conservative politics. The incidents that occurred during the COVID-19 pandemic revealed that the preservation of tradition can supersede the importance of preserving human life in ultra-Orthodox communities, which has difficult ramifications for transgender individuals.

The importance of preserving tradition in the Haredi movement highlights how challenging it may be for some in the Orthodox community to accept transgender Jews. The overwhelming emphasis on preserving tradition is likely to prevent many in the ultra-Orthodox sphere from accepting *pikuach nefesh* as a defense for condoning gender reassignment surgery, or even as a reason to admit and respect transgender congregants in ultra-Orthodox synagogues. Especially for

Haredi communities that wish to maintain and recreate a shtetl-esque life, like the Hasidic community that Abby Stein belonged to, it may be difficult for them to envisage a Jewish future with individuals who they cannot imagine in the shtetl-dwelling Jewish past.³⁶

Additionally, the ultra-Orthodox protests during the COVID-19 pandemic illustrate that the Haredi community in the United States strongly aligns itself with conservative politics, which also has consequences for the future of transgender acceptance. According to *The New Yorker*:

The animating political forces for Haredim are conservative Justices, school choice, ‘law and order,’ and opposition to same-sex marriage. Support for Israel, particularly conservative leaders like Netanyahu, is paramount.³⁷

Because these key issues overlap with the talking points of the Republican party, the ultra-Orthodox community is home to staunch and dedicated conservatives. Many within the Haredi community listen to prominent conservative political commentators who disagree with the concept of transgender identity, including Tucker Carlson and Ben Shapiro.³⁸ The Haredi world is not fully isolated from the secular world, and the ideological influences of conservative commentators can affect ultra-Orthodox perspectives on transgender rights and acceptance. These commentators may serve to solidify and affirm anti-trans sentiment already within the ultra-Orthodox community. Equally, ultra-Orthodox Jews are likely to continue voting for Republican party figures, which aids the passage of anti-trans legislation in the United States. Through the voting process, ultra-Orthodox Jews are likely to continue contributing to transgender discrimination in the United States, and through the conservative commentators they listen to, they are likely to remain firmly situated in the belief that transgender individuals do not deserve acceptance.

Neither the politics of ultra-Orthodox individuals nor the need to preserve tradition, however, preclude Haredi communities and rabbis from accepting transgender Jews. The arguments currently being made in Modern Orthodox communities to forge acceptance may yet take hold in ultra-Orthodox communities. Staunch political conservatism and the importance of tradition make the road to acceptance much longer in ultra-Orthodox communities than in any other denomination of Judaism, but acceptance is not an outright impossibility. The American political landscape also is not static, which leaves room for shifts in the Haredi community’s alignment. Prevailing halakhic interpretations are not static either. As Gray admits:

Orthodox resistance to changes in Jewish law is, arguably, a strategic self-representation. Orthodox communities are responsive at times to the preferences of the larger society, even in relation to gender issues that distinguish Orthodoxy from non-Orthodox Judaisms.³⁹

Even within ultra-Orthodox circles, change is beginning to take hold. Haredi Rabbi Mike Moskowitz works in Modern Orthodox and ultra-Orthodox communities to promote the inclusion and acceptance of transgender Jews. Moskowitz has faced significant opposition and backlash for his outspoken support of the LGBT community, but he remains optimistic that the rest of Orthodoxy may soon agree with his point of view. Moskowitz, who works at the prominent non-denominational LGBT synagogue Congregation Beit Simcha Torah, stated in an interview with Haaretz:

I think there's an expiration date on homophobia and transphobia, even within orthodoxy—certainly within centrist orthodoxy. In America, we just marked the 50th anniversary of the Stonewall riots. Back then, you couldn't find one rabbi anywhere willing to say it was OK to be gay. When CBST started out 40 years ago, people questioned how you could have a gay synagogue. Today, people ask why you even need it anymore.⁴⁰

Despite the greater challenges ultra-Orthodox communities face in accepting transgender identity, there is hope that a change of heart is possible. This is not to suggest that an overnight change, nor perhaps even the forty-year change that Rabbi Moskowitz has seen in other denominations, will occur. Haredi Judaism may take twice as long, given its current political and halakhic leanings. However, a longer timeline for change does not mean it is entirely impossible.

Conclusions

While Reform Judaism and Conservative Judaism have made a concerted effort to welcome transgender Jews in the last twenty years, Orthodox Judaism has largely refused to accept transgender identity. Because of the nature of Orthodox Judaism, transgender acceptance must be forged with significant attention to halakhic rulings; all portions of gendered halakha must be taken into account, which contrasts with the approach that the Reform and Conservative movements were able to take. In Orthodox Judaism, Rabbinic rulings must be used to determine the acceptability of gender identities that Maimonides and other pre-modern rabbis likely could never have imagined. However, halakhic rulings on intersex individuals suggest that there are legal precedents for permitting sex-change surgeries and accommodating non-binary identities. Modern Orthodox responsa has already begun to encourage transgender acceptance using these precedents, among other applicable portions of the Talmud. Modern Orthodox rabbis have started to produce responsa that assesses the equivocation between sex and gender in the Talmud, the permissibility

of sex change surgery, and the conflation of homosexuality and transgender identity. *Pikuach nefesh* has arisen as a prominent argument for transgender acceptance, as it supersedes some of the most challenging rabbinic debates that arise. Outside of the purely halakhic debates, organizations, individuals, and organized groups of Orthodox Jewish educators have begun to push for change in Orthodox society. Their push for transgender acceptance is complicated by the political leanings of the Orthodox community, which favors the fervently transphobic Republican party. However, the sheer quantity of responsa and recent support for transgender issues suggests that change may be on the horizon in Modern Orthodox Judaism. Ultra-Orthodox communities, which have a more intense focus on the preservation of tradition, will likely take much longer than the Modern Orthodox community to accept transgender identity. However, transgender acceptance remains a viable possibility for both Modern Orthodox and Haredi communities. Even in Haredi circles, some individuals remain hopeful that change may eventually be on the horizon.

Notes

- ¹ Ari Hart, "Should I Thank God for Not Making me a Woman?," *HuffPost*, Last modified July 2, 2013, https://www.huffpost.com/entry/should-i-thank-god-for-not-making-me-a-woman_b_3197422.
- ² Nahanni Rous and Abby Stein, "Episode 35: Becoming Abby Stein (transcript)," *Jewish Women's Archive*, 2019, <https://jwa.org/podcasts/canwetalk/episode-35-becoming-abby-stein/transcript>.
- ³ See Rabbi Eliezer Waldenberg's ruling on gender reassignment surgery for intersex children in *Tzitz Eliezer*, 11:78
- ⁴ Ronit Irshai, "The Construction of Gender in Halakhic Responsa by the Reform Movement: Transgender People as a Case Study," *Journal of Modern Jewish Studies* 18, no. 2, (2019): 165. <https://doi.org/10.1080/14725886.2019.1595496>.
- ⁵ Ibid 170
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