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WHAT DOES THE TZITZ ELIEZER SAY ABOUT THE HALAKHIC IMPLICATIONS OF SURGERY INTENDED TO CHANGE THE SEX OF THE PATIENT?

By Rabbi Aryeh Klapper

Rabbi Eliezer Waldenberg discusses surgery and halakhic sex identity in three responsa: Tzitz Eliezer 10:25:26:(6), 11:78, and 22:2.

[An in-depth analysis of these responsa by Rabbi Tzvi Sinensky recently appeared in Lehrhaus.](#) Rabbi Sinensky also summarizes an array of prior analyses. I have deep respect and appreciation for Rabbi Sinensky, and little if anything original to contribute. My intent here is simply to present what I see as the best reading, and why.

I understand the crux of the issue to be: what are the realities that Rabbi Waldenberg addresses in these responsa?

Tzitz Eliezer 22:2, dated 22 Shvat 5757, or January 30, 1997 but referring to an indeterminately earlier conversation, addresses a question that Rabbi Waldenberg reports was asked “from outside the Land of Israel” to Sephardic Chief Rabbi Mordechai Eliyahu. The question is formulated as

Regarding a man who was transformed absolutely into a woman, what is his legal status etc.

בגבר שנהפך לגמרי לאשה, מה דינו וכו',

No details are provided about the transformation other than describing it as “absolute”.

Rabbi Waldenberg cites as precedent the position of Rav Chaim Pelagi in *Yosef Et Echav*, Gimmel:2, regarding

One who changed from female to male in each and every way

דנשתנית מנקבה לזכר בכל מכל כל

Here too the description is purely qualitative: “in each and every way”.

Rabbi Pelagi told his audience not to wonder at the case, because “everything is possible” (שהכל באפשר), and also because the book *Yad Ne’eman* describes several such cases. He notes later that *Yad Ne’eman* explains how such transformations can occur naturally and should not be viewed as miraculous.

Yad Ne’eman rules that such a transformation ends a marriage without need for a get. Rabbi Pelagi reports that

this conclusion was disputed by Rabbi Eliya Abulafia in his *Devar Eliyahu*, who further wrote that “silence is preferable regarding an upside-down world and things that are not found” (יפה שתיקה בעולם הפוך ובדבר שאינו מצוי). It is not clear to me whether Rabbi Abulafia means that such cases are rare enough to be ignored, or rather denies their existence.

Rabbi Waldenberg then notes that *Korban Netanel* to *ROSH* Yebamot 8:6 and *Maharit Algazi* to *Hilkhot Bekhorot* 6:58 each cite *Maasei Tovyah* (Olam Katan Chapter 5) citing doctors as reporting cases in which androgynes gave birth to children and later sired other children.

Rabbi Waldenberg concludes, as best I understand him, that in the case brought to Rabbi Eliyahu, there is no way to know whether the person has changed sex or rather was an *androgynous* (אנדרוגינוס) all along. (The latter possibility aligns with the position cited by Magen Avrohom 589:2 in the name of RIF that an *androgynous* is someone whose body flips between the sexes rather than consistently having both sets of genitalia. See Rabbi Waldenberg’s brief discussion of this position in 11:78.)

Regardless, this responsum does not address surgical or other artificial transformations. The only criterion it provides for whether a transformation has occurred is the ability to bear or sire a child. This does not mean that fertility is a necessary condition for a change of sex. But no evidence can be brought from this responsum for any case where the patient was and remains infertile, or for any physical transformation that can reasonably be seen as less-than-absolute.

Tzitz Eliezer 10:25:26:(6), undated but according to Rabbi Sinensky published in 1967, begins its discussion of sex transformation as follows:

There is need for a full-scale investigation of the halakhah regarding where there occurs qualitative-organic change in a human body as for example if it transforms from male to female, or vice versa.

I have heard, and this has also been publicized in various periodicals, that nowadays surgeries such as these are even performed in special cases (that are obviously rare) Such a qualitative change truly generates many questions with regard to establishing the identity and personality of such a human being.

מחקר גדול יש אמנם לחקור
בהיכא שמתחולל שינוי מהותי-אורגני בגופו של אדם
כגון בנתהפך מזכר לנקבה, או להיפך,
וכפי ששמעתי, וגם נתפרסם על כך בכתבי-עת שונים –
מבצעים כהיום גם נתוחים כאלה במקרים מיוחדים (וכמו
נדירים).
בשינוי מהותי כזה –
נוצרים באמת הרבה בעיות
הנוגעות לקביעת זהותו ויחודו האישי של אנוש כזה.

Rabbi Waldenberg then cites *Yad Ne'eman* in more detail than in 22:2, clarifying that Yad Neeman believed that sex-transformations were possible because male and female genitalia are merely inversions of each other. He then cites *Yosef et Echav* in full, and briefly evaluates some of the technical arguments brought therein.

Rabbi Waldenberg's reference to "surgeries such as these" assumes the possibility of artificial sex transformation. However, he provides no direct criteria for evaluating whether a specific surgery has effected such a transformation. The body of the patient "transforms from male to female, or vice versa" in a manner that is "organic and qualitative". In context, he is contrasting "organic and qualitative" transformation with the effects of a heart transplant. This standard is so vague and incomplete as to be almost useless. Even so, it seems at the least to exclude cosmetic surgery.

Tzitz Eliezer 11:78, dated 6 Cheshvan 5731, or 1970, directly addresses a specific case, with medical details provided by the physician Y. A. Schussheim. An infant was born with female-appearing genitalia, including the appearance of a vagina, labia, and clitoris. However, at age six months, a lump within a fold of the apparent labia was biopsied and determined to be a testis. A surgical investigation revealed no internal reproductive organs such as a uterus or ovaries. Genetic testing revealed that the child was chromosomally XY, or male.

Dr. Schussheim formulated two questions. The first was whether it is permitted to transform a genetic male into a female. The second was whether removing the testis was

permitted in this case. Dr. Schussheim asserts that the child will be infertile regardless. However, he regards removing the testis as necessary

to prevent the operation of male hormones which would interfere with the development of the female
כדי למנוע פעילות הורמונלית זכרית
שתפריע להתפתחותה של הנקבה

Rabbi Waldenberg rules that the child is halakhically female as-is, before any surgery. His ground for this ruling is that the child has no external signs of male genitalia, and "the external organs that are visible to the eye are what establishes the halakhic status" (האברים החיצוניים הנראים) (לעין הוא הקובע בהלכה). In a parenthesis, he reports that a doctor told him that males and females have the same hormones, and the difference between them is one of ratio. He regards this as clear evidence that only external features can determine halakhic sex, and sex-linked chromosomes are halakhically irrelevant.

He then makes the following two statements:

That being so, it appears obvious in the instant case that it is permitted to perform surgery on this child and thereby transform him into a female even in his internal development.

בהיות כן נראה לפשוט בידון השאלה
שמותר איפוא לנתח ילוד זה
ולהפכו ע"כ לנקבה גם בפנימיות התפתחותו.

What still remains in need of some little investigation is that a male testis is found within one of the labia, whether it is permitted to excise this single testis so as to thereby prevent male hormones from operating that will interfere with the development of the female, without violating the prohibition against castration.

מה שיש לעיין עדנה קצת
הוא מה שנמצא בתוך אחת השפות אשך-זכרי,
ואם מותר לכרות האשך היחיד הזה כדי למנוע ע"כ פעילות
הורמונלית זכרית
שתפריע להתפתחותה של הנקבה,
ולא יעברו בזה על איסור סירוס.

Recall that Dr. Schussheim formulated two questions: whether it is permitted to transform a genetic male into a female, and whether removing the testis is permitted in this case. Rabbi Waldenberg's two statements correspond to those questions.

The second statement is straightforward. Since the child is halakhically female, and would regardless be unable to sire children, removing the testis is not halakhically forbidden as castration.

The first statement, however, is puzzling. What does Rabbi Waldenberg mean by “transform him into a female even in his internal development”? Dr. Schussheim’s question made no reference to internal development.

It seems to me that Rabbi Waldenberg thought Dr. Schussheim was proposing surgery in addition to the removal of the testis that would implant internal female organs that would develop with the child. Such organs would enable the child to produce estrogen and progesterone. Removing the testis would prevent male hormones from interfering with the development of those organs.

My understanding is that no surgery currently offered, or available then, would give the child any internal female organs. The child described by Dr. Schussheim had no “intersex” characteristics other than the appearance of the external genitalia. The surgeon may have intended to surgically enhance the infant’s capacity to function socially as a female, e.g. by enabling seated urination, or via cosmetic surgery on other body parts. But none of this would constitute “transforming him into a female even in his internal development.”

Tzitz Eliezer 11:78 thus addresses an imagined case in which surgical intervention provides a patient with internal sex-linked organs. Recognizing this sheds light on 10:25:26(6). Rabbi Waldenberg there addressed surgery which effected a “qualitative-organic” shift on a human body by transforming its sex, without specifying what that meant physically. I suggest that it meant that the surgery provides the body with functioning sex-linked organs.

Such surgery was initially within the ambit of surgeons treating patients with gender dysphoria or similar conditions. For example, according to [Wikipedia](#),

Between 1930 and 1931, [Lili Elbe](#) underwent four sex reassignment surgeries, including orchiectomy, an [ovarian transplant](#), and penectomy. In June 1931, she underwent her fourth surgery, including an experimental [uterine transplant](#) and vaginoplasty, which she hoped would allow her to give birth. However, her body rejected the transplanted uterus, and she died of post-operative complications in September, at age 48.

Uterine transplants for transwomen are [again being proposed](#). As Rabbi Waldenberg’s only gesture toward empirical reality in 10:25:26(6), is a citation to unnamed periodicals, we cannot know what sort of surgical interventions he thought were being performed in 1967, or were necessary to effect sex transformation.

In sum:

22:2 discusses only “absolute” transformations and does not reference surgery.

11:78 discusses an imagined case of surgical transformation.

10:25:26(6) discusses surgical transformation without providing any details as to what those transformations entailed.

None of these responsa have any necessary application to contemporary gender-affirming/confirming surgery, which primarily involves the construction of external genitalia that do not connect biologically to the internal organs of their usual sex.

However:

By the same token, since 10:25:26(6) provides no details as to what is required, there is no internal evidence demonstrating that any form of such surgery is insufficient to affect halakhic sex-assignment. It is a question of the burden of proof.

And 11:78 includes a statement that halakhic sex-assignment is based entirely on the appearance of external genitalia, even if that appearance is biologically misleading. Nothing in 11:78 indicates whether or not that statement applies to genitalia that were artificially created, for example via surgery. It is again a question of the burden of proof.

There is no straight line between the best reading of any specific text and halakhic decision making. Moreover, Rabbi Waldenberg’s responsa never consider the question of whether psychological identity has halakhic effects. His halakhic reasoning also takes no account of the effects of hormonal treatments on secondary sex characteristics.

My intent here is not to issue a halakhic ruling or to set halakhic standards. I hope instead to have shown that Tzitz Eliezer’s works are not a sufficient or proper ground for the necessary halakhic conversation.