

Be Whole: A Halakhic Approach to Gender & Transition

(Tamim Tihiyeh: Shita Hilkhait l'Migdar u'Ma'avar)

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"And then I said, 'Behold, I have come with the scroll of a book written about me.' To do Your will, my god, is my desire, and Your Torah is deep within my body." – Tehillim 40:8-9

"There are things about which people say, 'Look at this; it is new!' But it has already existed in the ages that were before us." – Kohelet 1:10

Introduction

How long will we be considered a scorn and derision in the eyes of the poskim? The evil of their decrees will not pass from upon us until we rise up and declare the truth of the blessed Creator before a great congregation.

I intend to lay out a halakhic approach to the questions at the heart of our identity as trans Jews: gender and transition. What are the pleasant ways of halakha for us, and what are its paths of peace, when we are called to undergo gender transition? This is the scroll of the book about which I have come to speak.

It is difficult even to begin the discussion. My hand hesitates to write on the topics of gender and transness, concepts which are beyond even the full grasp of experts and which have different meanings to each and every trans person. It is in the aspect of "deep, deep, who can fathom it" (Kohelet 7:24). I thought to myself, perhaps it would be better to be silent for fear of the innumerable traps and pitfalls that I would fall into attempting to clarify a halakhic approach to gender and transition that could apply broadly. But then I looked and saw that my people turn away from halakha and even from Judaism, God forbid, largely because of the transphobia that has corrupted the hearts of our leaders. We search in our holy laws and find no place for ourselves. We find instead that we are sinners, that we are outcasts, that we are liable for death at the hands of the court and of Heaven itself. And many of us do in fact die because of these rulings. Those who uphold them stand upon the blood of their neighbors. Seeing this, and knowing with perfect faith that all her paths are peace, I could not withhold my hand from writing; for the sake of my people, I will speak peace into us. And if I have erred in anything I say, if I have included where I should have excluded, or vice versa, may all the guilt rest with me alone.

I hope that this approach will help observant trans Jews to understand ourselves and to walk wholly before our Creator and our Redeemer. It is not my intention to issue rulings for

practical purposes here. I simply want, with the help of God, to explain the proper way to understand trans people in the eyes of halakha in a general manner.

In Part 1, I explain that it is proper to begin any halakhic discussion concerning gender with the same assumptions that underlie all halakhic discussions. That is to say, it is appropriate to assume as a default that the gendered categories of man and woman have the same meaning in halakha as they have in daily life. These terms do not have a special “halakhic” definition that applies to every case generally; in other words, there is no such thing as “halakhic gender/sex.” Rather, a person’s default gender-status in halakha is precisely whatever their gender actually is. If they are obligated otherwise, it must be because that obligation is not dependent on gender per se but on different criteria.

In Part 2, I argue that transition, for trans Jews, constitutes a fulfillment of the positive commandment “Be whole with Hashem your god” (Dvarim 18:13). The halakhot of this mitzvah follow the Ramban, by whom the Shulchan Aruch and the Rema rule. The general rule as it regards transition, in my humble opinion, is that trans Jews who are “worried” (ששון) about their signs of gender that are decreeing ill against them have an obligation to perform achievable acts of transition that will make them more whole, whatever these may be. And even in moments where there is no obligation, there is still an ideal of behavior that we should work towards wholeness in our genders. In short, gender transition is a mitzvah. I lay out my broader understanding of Ramban’s approach to the mitzvah of being whole in the Appendix.

In Part 3 I outline my understanding of how the principles established in Parts 1 and 2 might play out in practice. I present a series of generalized cases which I hope demonstrate the implications of this approach. Nothing I write in this section is intended as psak halakha; it is only offered to help the reader concretize their understanding of the relatively abstract theory laid out in the preceding sections.

I came to this shita after a personal reckoning with the halakhic writing that has so far existed addressing trans Jews. I was not at the time living in a strong halakhic community, and I was very new in my own halakhic practice. I found myself confronted, at the very beginning of what should have been falling in love with the ways of Torah, with hatred and misunderstanding in Her name. I felt that if I continued down the path of halakhic observance, it would be an abusive relationship. I knew this was wrong, that the Torah of Hashem restores the soul, but that I had no answer to the psak I had read. I could not live with the possibility that the choices I was making to transition might be sinful, or that they could be driving me further away from Jewish community, when they were what I needed in order to come closer to Hashem with my full being. As I was trying to understand all my life choices in the bundle of life that is halakha, I was also struggling to know what my acts

of gender transition meant halakhically. This approach is the result of that struggle. I have, with the help of Heaven, answered the questions for myself. Now I am offering the approach that has worked for me to find wholeness in my halakhic transition, in the hopes that it will raise questions and open the conversation, even if my conclusions will not work for anyone else, in the spirit of our sacred tradition of halakhic writing.

I am grateful to my friends Jamie Weisbach and Shlomo for helping me in more ways than I can list. I also owe a debt of thanks to my hevruta Peninah for being the first person with whom I studied the topic of transness in halakha, and to all those with whom I discussed my ideas: Xava de Cordova, Laynie Solomon, Aerin, Akiva, and Binya. I am also grateful to the Trans Halakha Project's Teshvua Writing Collective for supporting me in this work. And the last is the most beloved. I am yet grateful to Hashem, who redeemed me, who opened my sackcloth and wrapped me in joy, who performed for me in my smallness the miracle of canceling the decree of the stars of my birth upon me, so that my soul should sing to Ziv and not be silent. May I merit what has been written, "I will not die, for I will live and tell the works of God" (Ps 118:17). And may all the merit of my words be for the sake of all the souls of trans people who were not able to dwell in the house of Hashem in their lives; may the gates of the Garden be open for them. And may their merit protect us.

Part 1: Halakha Does Not Determine How to Establish a Person's Gender

***Summary:** Halakha says what it means. Halakhic terms acquire special significance only in the particular contexts from which those shifted meanings arise. We do not presume there to be an abstract system of theoretical concepts underlying the halakhic process. Therefore, there is no such thing as "halakhic gender" or "halakhic sex." 'Woman' means whatever it means to be a woman. Exceptions to this rule, such as "'Woman' means someone who menstruates," do not redefine the word across the board but only apply in relevant cases. This is known as category shift.*

When the Tzitz Eliezer wrote that external genitals determine a person's gender, he offered no proof.¹ Why not?² When Rambam defined twenty halakhic statuses relating to sex and gender, he did not define the two ostensibly most foundational: man and women.³ Did he forget to? On what basis do some poskim presume to hold that a person's gender status in

¹ Tzitz Eliezer 11:78.

² The 2022 article "Demystifying R. Eliezer Waldenberg on Sex Reassignment Surgery" by Tzvi Sinensky, while thorough in many regards, does not address this question.

³ Mishneh Torah, Laws of Marriage 2:27.

halakha is determined by genitals, either presently or at birth—and on what basis do we know that they are wrong? Essentially, the question is this: how does halakha relate to the determination of gender?

How should we answer these questions? My simple proposal here is that we should use the same process by which we answer all other questions of how to apply halakhic categories and statuses to reality. We always begin from the default assumption that a category's legal meaning is the same as its general meaning: the way we use the term in daily life is presumed to be its meaning in halakha. We only act to draw a distinction when we are presented with concrete circumstances that would cause the law to be misapplied if we rule according to our general, "simple" meaning, and even then, that distinction holds not across the board but only in the specific type of case that was being ruled on.

How does this work? To adapt a scenario from Rav Elisha Ancselovits,⁴ imagine there is a child overheating, and there is a halakha stating, "When you see a child suffering from the heat, give them water." Now you look in your cooler, and all you have is a hard seltzer and a chocolate milk. What should you do—what does "water" mean? Should you give them the hard seltzer, because, say, its origins are closer to water than the milk? Of course not! You fulfill your obligation with the chocolate milk, because you understand what "water" means in this situation.

Crucially, even if we grant that generations of psak ruling that it has to be the hard seltzer cannot be disregarded, we would not extrapolate that the definition of water has now been changed across the board to hard seltzer. The recategorization of water as hard seltzer only holds in cases like the original one. It would never mean that netilat yadayim must now be done with hard seltzer, because what relevance does a child asking for a drink have to netilat yadayim?

When a word does acquire a special halakhic meaning, how does it happen? Rav Ethan Tucker, in his article on category shift in halakha, brings the example of כיבוס, laundering. In the Mishna, כיבוס is forbidden during the week leading up to Tisha b'Av; in that source, כיבוס seems to signify according to its plain meaning, laundering. We would expect that throughout time כיבוס in the context of the first week of Av would continue to mean simply laundering. However, a baraita comes which separates the legal meaning of what is now the term כיבוס from its simple, daily meaning of laundering: "וּנְוִיָּהוּץ שֶׁלֵנו כְּכִיבוֹס שֶׁלֵהֶן/Our ironing is like their laundering." In Rav Tucker's words:

⁴ From "You Don't Understand Kitniyot? It's Common Sense!" on the podcast *Common Sense Halakha*, April 6 2022.

There is a legal category of כִּיבּוֹס; all other activities that do not rise to the level of this category are permitted (such as folding clothing or hanging it up). There is then a physical activity—laundering—that consists of taking dirty clothing and placing it in water in order to clean it. In the Mishnah, the mapping is simple. Laundering is כִּיבּוֹס and is forbidden. The Babylonian baraita claims that the prohibition on כִּיבּוֹס was never about laundry per sé, but rather כִּיבּוֹס is a legal category intended to capture the significance of a type of physical activity. Therefore, it is possible that the act of laundering might in another time and space fall outside of the Mishnah’s prohibitive legal category and a different type of activity might take its place. In the world of the Babylonian Talmud, laundering no longer fits into the Mishnah’s category and is therefore permitted. Ironing or pressing, however, now defines the category of prohibited care for clothing in the week of Tish’a B’Av. Laundering, in other words, has undergone a legal category shift. Once falling into the Mishnah’s forbidden category, it is no longer in that category, but permitted. And the forbidden category is now filled by a different activity, which becomes the focus of the prohibition.⁵

We should learn from this exceptional example that the default would be to treat the word כִּיבּוֹס as if it always meant simply laundry—whatever “laundry” might mean in any given time and social context. Until there is cause to treat כִּיבּוֹס as a legal term with a unique meaning separate from its simple one, we do not do so.

Presumably, man and woman function as halakhic categories in precisely the same way. In general, ‘man’ means whatever it means to be a man.⁶ That is, anyone who is a man would be presumed to be obligated halakhically like a man, and if there would be any exceptions to that man’s set of male obligations, they would not apply on the basis that he is not actually a man but on the basis of any number and variety of mitigating factors regarding that particular obligation in itself, and these contextually contingent exceptions or category shifts would in no way affect his general, default status of being a man.⁷ Unlike כִּיבּוֹס in the above example, the words “man” and “woman” do not have such a history of category shift,

⁵ “Category Shifts in Jewish Law and Practice” by Rav Ethan Tucker, p 2-3.

⁶ No one has been able to offer a complete definition of gender either theoretically or practically. Even the Rambam did not attempt a definition. What it means to be a particular gender is constantly changing and is fundamentally dependent on time, place, and people. Therefore the best working definition of any gender identity is that it means whatever it means to be that gender.

⁷ The fact that many common words, like “dairy” and “meat,” have special halakhic meanings in our daily lives is not a proof against the idea that the halakhic discursive default is to assume that a word signifies as it generally does in daily life—rather, the “dairy/meat” phenomenon is a result of a long history of development of these terms *in the specific context of kashrut* which indeed began with those words signifying in their general meaning.

at least outside the context of tefillah, and therefore should be assumed in current cases to refer to the way we use those words, unless proven otherwise in a specific context.⁸

For example, if we want to know in the most general way whether someone is a woman halakhically—meaning, are we going to assume that this person’s default presumption is to be obligated as a woman or not—the way of answering is quite simple: if she is a woman, then she is indeed a woman halakhically—meaning that she enters the discussion presumed to be obligated as a woman, and the burden is upon the posek to prove otherwise in the context of the specific question. And I must not let it go unsaid that by us, we hold that people are trustworthy to know their own gender, and that a person’s knowledge about their own gender carries nearly total power to override any contradictory claims. That is our social reality, and that is by us the daily, simple meaning of such terms as man and woman.

Although it is in direct contradiction with my theoretical approach, the 2022 psak of Rabbi Breitowitz that, in my words, binary passing trans Jews’ genders should be acknowledged regarding mehitza, yihud, and negiah, is a clear example of a gender category shift which shows that “halakhic gender/sex,” even if it is posited abstractly, is practically irrelevant.⁹ I will not quote him at length because his language is deeply transphobic, but this is the bottom line: “Even if [a trans man] is halakhically a woman, I do not have the issur of yihud and negiah because there’s no taavah... [He] would not count for a minyan...[but] we should look at this person like a man *legabei* sexual taavah issues.” Rabbi Breitowitz is shifting the category of man from its simple meaning of gender to the special legal meaning of “someone who does not arouse sexual desire in a heterosexual man”—and he explicitly does so only in the contexts of mehitza, yihud, and negiah. Given what we have seen from Rav Tucker about how category shifts function only in specific contexts, Rabbi Breitowitz’ psak is a perfect example of the phenomenon. He does not begin from the same assumption as me, that the man in question is a man—indeed, he assumes the opposite, on the strength of the presumption that an abstract concept called “halakhic gender” exists. But if his community continues down the road of making these context-limited category shifts (as it should), it may eventually turn out that there is no case in which an abstract

⁸ Obviously in our time we have witnessed the flourishing of the halakhic category shift of “woman” and “man” towards egalitarianism. But just as there was a burden of proof to demonstrate that women are not נשים regarding the obligation to pray, so too there is a burden of proof to demonstrate that any other instance of ostensibly gendered halakhic obligation is not in fact dependent on gender *per se*, and we should not assume a category shift without rigorous study. And may those who do such labor in the study of Torah merit a place in the heavenly yeshiva.

⁹ Ohr Somayach YouTube channel, “Q&A- Biological Names, Secular Books & Transgender Negiah,” 1:21:00 - 1:26:00. <https://www.youtube.com/watch?v=kVy7I74VVNs>

conception of “halakhic gender” can be meaningfully applied—every case can be category-shifted such that, halakhically, “man” and “woman” can never be presumed to correspond with any putative definition of halakhic gender! In this way they would arrive at my conclusion in practice, if not in theory, regardless of whether they accept my approach.¹⁰

By emphasizing that exceptions to a person’s default gender status must be proven, I do not mean to imply that there is necessarily a need to disprove a trans woman’s being obligated as a woman; indeed the burden of proof is the same in the case of a cis woman. My intention is to highlight the fact that the kind of proof a posek must offer to show that a trans woman is not obligated as a woman in such-and-such a case is that the term “woman,” in the context of the specific question, does not actually mean woman but refers instead to other historical and contextual criteria that in fact determine one’s obligation directly. In such a case, *no one* is a woman; or more precisely, whether or not one is a woman has no bearing on the psak. If a posek would attempt to offer a proof that the trans woman is not obligated as a woman because she is not a woman, such a proof would be invalid, and it would threaten to uproot one of the foundational principles of halakha and our Torah.

Nonetheless, it is conceivable to suppose that one might deduce special definitions for the halakhic categories of *איש* and *אישה* which are entirely unrelated to the simple definitions of these terms, purely from the Talmud, the Rishonim, and the Acharonim. We will set aside here for the sake of argument the principle that category shifts are not abstracted beyond their contexts. So perhaps it can be learned from such ostensibly gendered obligations as milah; or possibly there is a teaching from Chazal that implies that, when we say man or woman in a halachic context, it is always a special legal term. Let us examine these two possibilities.

Perhaps it is possible to hold the following: The fact that only males are obligated in circumcision, as well as the fact that this obligation only applies to people with penises, proves that the definition of “male” is a person with a penis. This logic does not take into account that gender is not necessarily connected to body parts. Rather, this is the truth of

¹⁰ Of course, they may decide that in certain contexts, what is at issue really is gender and not some other concern that in the past was properly referred to by gender-terms, and in that case they would presumably rely on their definition of “halakhic gender” to make rulings. However, I suspect that the truth of the matter is not that they think there is an abstract definition of gender given at Sinai, because as I have tried to explain, it would be very strange in the discourse of halakha to assume such a thing. Rather, they actually do not believe that trans people’s genders are legitimate, and they have invented the language of “halakhic gender” as a cover for this shameful opinion. Therefore I anticipate that in the fullness of time they will not rule in any context that gender itself is at issue, or they will accept something like the approach I am describing here.

the matter: either this mitzvah applies based on gender, or it applies based on body parts. That is, either circumcision applies based on gender, and all males are obligated in theory, whether they have penises or not (and only those that have penises would have something to be circumcised in practice); or circumcision applies based on body parts, and every person with a penis is obligated regardless of their gender. It is also possible that gendered mitzvot such as this apply based both on gender and on body parts, and then there would be two conditions in order to obligate: we would say that people are obligated in circumcision only if they are both male and have penises. In any case, the mere fact that some mitzvot ostensibly apply based on gender as well as a second factor is not in itself a sufficient proof that gender-categories in halakha are always and uniformly special legal terms.

Another argument may be raised from the words of Rabbi Tanhuma regarding the location of circumcision. It would appear that this teaching is the closest expression in Chazal to a definition of gender.¹¹ These are his words: “The verse ‘and an uncircumcised male’ makes sense: for is there in fact such a thing as an uncircumcised woman!? Rather, [the verse means that] it is in the place where it can be recognized whether they are male or female that we circumcise him.”¹² Is it not clear beyond a doubt that one ought to define gender according to external birth genitals from this statement? If one is motivated to make such an argument, I am not wise enough to disprove it absolutely. However, in my humble opinion, that is not the best reading of Rabbi Tanhuma’s statement.

Instead, it may be simply that Rabbi Tanhuma is speaking about maleness and femaleness only in the specific context of circumcision, in which case there is no justification for expanding the definition of maleness as having a penis to any other realm of halakha—in other words, “maleness” (זכרות) will have undergone a category shift from our contemporary perspective to have a special, fixed, legal meaning. However, let us assume for the sake of argument that this is not the case.

If one is to hold like Rabbi Tanhuma, I would explain his statement in the following way. He is speaking *davka* about circumcision. That is to say, he holds that at the time of circumcision it is necessary to determine whether the child is male or female, and we check in that place where we would perform the circumcision: the external birth genitals. If there is a penis there, then he is a male (or if they are an androgynos, their presumptive status is

¹¹ Charlotte Elisheva Fonrobert, “Regulating the Human Body: Rabbinic Legal Discourse and the Making of Jewish Gender,” in *The Cambridge Companion to The Talmud and Rabbinic Literature*, 274.

¹² Bereshit Rabbah 46. And see the similar statement of Rabbi Natan in Shabbat 108a: “Rabbi Natan says, ‘This is not necessary; behold, it says, “And an uncircumcised male the flesh of whose foreskin has not been circumcised”—the place where the difference between maleness and femaleness can be recognized.””

male). However, this does not necessarily mean that halakhically, gender is determined according to external genitals for all purposes. The verse that Rabbi Tanhuma is explaining was said about a Jewish man who was not circumcised in infancy.¹³ That is, in infancy—whether at 8 days old or later due to danger—it is necessary to determine the child’s gender in order to know if that child is obligated in circumcision. If male, he is obligated; if female, she is not obligated. At that age, one can only determine gender based on external genitals, because there is no place where any amount of maleness can be distinguished from any amount of femaleness except there. After infancy there begin to appear other places where gender can be recognized, such as the chest, face, and mind.¹⁴ ¹⁵ Then the sense of Rabbi Tanhuma’s statement would be as if to say, “It is in the place where, at the time of the activation of the obligation of circumcision, it can be recognized whether they are male or female that we circumcise him.” Because we do not ask 8-day-old infants what their gender is, against our will, as it were, we are forced to determine their gender based on external genitals when it comes to circumcision.¹⁶ However, all this is only relevant if we insist that Rabbi Tanhuma is speaking about gender when he uses the words “male” (זכר) and “female” (נקבה), which is not a necessary assumption. And the likeliest explanation of Rabbi Tanhuma’s statement is that it is not in fact normative; he was simply describing the way sex or gender was determined in common practice in his own time, rather than providing a prescriptive guideline for how to make such a determination.

In the end the support for the terms אישה זכר, איש, and נקבה being *ab initio* special halakhic legal terms seems at best unstable, as well as inconsistent with the standard development of halakhic terminology. Therefore, we ought to treat the gendered halachic categories of man and woman exactly the same way we treat all other halachic categories: that their

¹³ This is the opinion of Ibn Ezra, Rashi, Radak, and Malbim.

¹⁴ “Almost all children begin expressing their gender identity at around 2-3 years old. They do this in the way they talk about themselves and through the clothes they choose. Children can be very firm about their gender from an early age. For example, toddlers often proclaim ‘I’m a boy!’ or ‘I’m a girl!’ Many gender-diverse children also express their gender identity at around 2-3 years old. They can be firm about their gender too. For example, a child might get angry when people call them a boy or girl, refuse to wear particular clothes or say that they’re a different gender.” <https://raisingchildren.net.au/pre-teens/development/pre-teens-gender-diversity-and-gender-dysphoria/gender-identity>

¹⁵ The heart (what I have translated above as “mind”) is indeed called a place in this context. See above in Shabbat 108a.

¹⁶ It is indeed the practice of many families in our time to assume their child’s gender based on their genitals at birth, while they keep in mind that, when other signs of gender appear during the course of the child’s development (most commonly signs in the mind), the parents will need to revise their initial assumption.

legal and simple meanings overlap until it is proven otherwise in a specific, local context. To return to the questions which began this section: the Tzitz Eliezer did not offer proof that external genitals determine that infant's gender *because that was obviously how people decided a baby's gender at the time*, and Rambam did not define זכר or נקבה because *they are not terms defined by halakha*. And this is as it is said among the heralds of the nations: Trans women are women.

A Suggestion for Determining the Obligations of Non-Binary Jews and Jews Questioning Their Gender

I am not an expert in the subject of non-binary gender; however, I would like humbly to offer a small suggestion for how non-binary Jews, as well as Jews questioning their gender, might go about determining their halakhic obligations. It seems to me that it may be possible to consider non-binary gender in light of the way gendered obligations are assigned to an androgynos, and those questioning their gender may be obligated in a way that is parallel to a tumtum.

According to the Mishna in Bikkurim,¹⁷ an androgynos is obligated in some ways like men, some ways like women, some ways like both, and some ways like neither. Insofar as the androgynos has aspects of both genders, it seems that this category is parallel, at least in this one narrow sense, to someone of non-binary gender in our time.¹⁸ And if so, then it would be appropriate for non-binary Jews to consider in which ways they are obligated like men, in which like women, like both, and like neither. In drawing a parallel between non-binary gender and an androgynos, one would need to take into account to what extent the obligations of the androgynos are based on their, as it were, non-binary gender, and which are based on other considerations such as anatomy.

In a similar vein a Jew questioning their gender may be thought of as parallel to a tumtum regarding gender status. That is, in the same way that what defines a tumtum is the impossibility of determining their gender,¹⁹ so too someone questioning their gender

¹⁷ Mishna Bikkurim 4:1.

¹⁸ Compare Rambam's definition of androgynos: "It is doubtful whether they are a man or a woman, and they have no sign at all by which it may be known whether they are definitely a man or definitely a woman" (Mishneh Torah, Laws of Marriage, 2:24).

¹⁹ "And anyone who has neither maleness nor femaleness and is instead concealed [תומטום] is called a tumtum, and their status is also doubtful. And if a tumtum is torn open and found to be male, then he is definitively male. And if the tumtum is found to be female, then she is definitively female." Mishneh Torah, Laws of Marriage 2:25.

cannot determine what their gender is, however temporarily. And if that parallel is appropriate, then it may be useful for a questioning Jew to be obligated according to a similar heuristic as a tumtum would be.

And perhaps it is proper to note that inasmuch as no person perfectly fits into the general categories of man or woman, it would possibly be appropriate for each person to be obligated in some cases like men and in some cases like women. But I leave the details of this work to my colleagues who are wiser and of greater understanding than me in such matters.

Part 2: Transition is a Positive Commandment

***Summary:** Gender transition is a mitzvah for trans Jews. The positive, d'Oraita commandment "Be whole with Hashem your god" (Dvarim 18:13) obligates us, among other things, to remove any belief we may harbor that our signs of gender have the power to determine our gender for ill. A trans Jew, for whom any given sign of gender influences their gender to be not as they desire, is halakhically obligated in any concretely achievable acts of transition that will be effective to remove that belief. Because transitioning is a mitzvah, our Torah and tradition acknowledge and guide us through this core life journey.*

How does halakha guide us as we walk before Hashem in our gender transitions? Is there something positive and obligatory that it has to teach us, or perhaps Hashem has, so to speak, abandoned Zir people and left us in the silence of Zir Torah? God forbid! The judge of all the land has enacted laws for us as well. We certainly find advice and guidance in our halakha, which aids us to choose the way of pleasantness and the path of peace in all the decisions that confront us throughout our gender transitions. Halakha must see us, not only as exceptions requiring permanent emergency solutions or as problems to be solved by boxing us into bediavad lives, but as full human beings in need of the guidance, obligations, and opportunities for sacred unification that our law provides in every other major aspect of life in this world. Whether my particular answer to this question is ultimately correct or not, there is a halakhic approach to transition which is fully in line with Hashem's Torah. If I have failed to clarify that approach here, let the fault be with me alone and not with the sacred task of attempting this clarification.

How might halakha instruct us to relate to our gender transitions? What obligations are at play when I perform an act of transition, whatever such an act might be? I want to explore the possibility that trans Jews are obligated to transition by a positive mitzvah. If this is correct, the implications would be far-reaching, transforming what it means to be a trans

Jew and altering the way we understand ourselves in relation to the law, Torah, and the world.

But what mitzvah could possibly obligate us to transition? Perhaps it is this one: “Be whole with Hashem your god.”²⁰ Even on a surface level, this may seem to work. If we may transition to become more whole in ourselves, so that we can show up in all our relationships more fully, then how much more so when we stand before the Knower of Secrets, Who examines hearts and knows the truth of our souls!²¹ The long and continued history of trans people as bridges between this world and the higher ones surely testifies to the closeness we are able to achieve when we fully embrace the fact of our transness.²² Be whole with Hashem—that is to say, we must transition in order to walk before Hashem in the wholeness of our hearts.

Even if this sounds good, it is not enough. In order to learn practical halakha, we must be in conversation with our halakhic tradition. What laws do we learn from this verse? The answer will begin in what may seem to be quite a far-off place from gender transition: in the stars, astrology, and fate. Yet I hope to show that astrology and gender (as the lesbians already know) are perhaps not so distant from each other in this case.

Rema codifies the halakhic significance of our potential mitzvah in the section of Yoreh Deah on divination and sorcery in the following language: “[SA:] We do not inquire of astrologers or engage in fortune-telling. Note: Because of ‘being whole with Hashem your god’...[but] insofar as a person knows they are against the sign, they should not act and should not rely on a miracle. But one should not look into it because of ‘being whole with

²⁰ Dvarim 18:13.

²¹ See, however, the testimony of Eli Erlick about her bottom surgery: “It was not until after I had surgery and my doctor told me that my entire body looked better that I realized how this medicine can be exploitative of transgender people. I did not feel more whole or complete. Surgery did not have the power to confirm my gender. Medical professionals insinuated that my desirability and existence would not be validated until I fully transitioned. According to them, I would no longer feel trapped in the wrong body, which I never did in the first place. Instead, I simply felt satisfied that I was finally finished with such a large part of my own transition” (*Depathologizing Trans*). Granted that in the context of transmedicalist pathologization she did not feel more “whole,” meaning cured of a medical condition or more legitimately human. However, satisfaction with bottom surgery is not self-evident. What need or desire was satisfied here? If she means that her desire for surgery was indoctrinated into her by the medical establishment, then why didn’t she say she felt *dissatisfied* upon realizing this? Did it not feel satisfying because it led to greater happiness, greater wholeness of self, or if not wholeness *per se*, then the ability to be more wholly alive? In any event, regarding the technical halakhic definition of “being whole,” if we are to in the strongest possible sense her statement that “surgery did not have the power to confirm [her] gender” *at all*, then it may be the case that she would not have been obligated in that surgery.

²² See *Transgender Warriors* by Leslie Feinberg ztz”l.

Hashem your god' as has been explained."²³ It is clear from these sections that there is a strong connection between our verse and astrology; in order to clarify its precise nature, we must investigate the words of the Rishon upon whom both Rema and the Beit Yosef²⁴ are basing themselves: Ramban.

Ramban wrote extensively in several different locations about the mitzvah of "being whole with Hashem," the nature of astrology, and the specific mindset and behaviors this mitzvah obligates us in regarding the influence of the stars. I bring a detailed explanation of his approach to this topic in the Appendix for those who would like to verify my understanding of his opinion. For the sake of readability, I will present here only the most relevant elements to our conversation as needed.

In his Critiques of the Book of Mitzvot, Ramban explains that "being whole with Hashem" means that "we are commanded to be whole of heart with Hashem...that we must unite our hearts to Hashem alone."²⁵ So far this is similar to how we have understood our mitzvah above, with the important addition that the only one we must consider when becoming whole is not any other human being or power, but Hashem alone. The clearest expression of what fulfillment of this mitzvah looks like in practice for Ramban can be found in his teshuva referenced by Rema above: "Therefore we do not inquire of the stars, instead walking in wholeness, as it is written, 'Be whole with Hashem your god.' And if a person saw in the stars a thing they do not desire, they should do mitzvot and increase their prayer. But if they saw via astrology that a certain day would not be good for their work, they should refrain from working and not rely on a miracle, and as I hold, it is forbidden to go against the signs on the strength of a miracle." For most practical purposes that are unrelated to transness, the behavior required in Ramban's opinion is relatively straightforward. Ideally one assigns absolutely no importance to the decrees of the stars, or better yet is unaware of them altogether.²⁶ This state of awareness and consciousness is called "being whole with Hashem," perhaps because if one does not look to the stars to

²³ Shulchan Aruch, Yoreh Deah 179:1-2

²⁴ Although the halakha in S"A Y"D 179:1, "We do not inquire of astrologers," is also consistent with Rambam's opinion, it seems to me more plausible that he is generally holding according to Ramban throughout, based on how he rules in the following halakha as well as on the much greater length he affords to Ramban and Nimukei Yosef in the Beit Yosef, Y"D 179 s.v. "כתב הרמב"ם מעונן."

²⁵ Positive Commandments Omitted by Rambam 8.

²⁶ Compare Ramban's language, later in the same teshuva, of "piousness" regarding the convert-astrologer: "...therefore he became pious and was unconcerned about his trade." See also the Nimukei Yosef cited in the Beit Yosef ibid.: "However, Chazal warned that people should not spend their thought on these matters [of astrology], and that a person should make themselves entirely dependent upon the One Who Spoke and There Was the World." See further below, and in the Appendix s.v. ועוד ראיתי.

guide their actions, the only other place they could turn to is towards Hashem's providence. But if one somehow did become aware of some ill astral prediction—there seems to be no problem with becoming aware of a good prediction²⁷—such as tomorrow being an unlucky day to go to market if you are an Aries, then an Aries Jew who is aware of this decree should not go to market, because doing so would be as it were daring Hashem to perform a miracle to save you. That is, changing a star's decree directly would be, as Ramban explains earlier in his teshuva, a "hidden miracle." Once tomorrow has passed and the prediction's time gone, you would be able to return peacefully to a state of wholeness.

So far, the situation seems relatively uncomplicated: we know what the ideal is, and we know how to respond in a bediavad case which will pass. But what about a case where the decree of the star is permanent and constant? The most common such case is that of character traits assigned by the sign at birth, such as "one who was born under Mars will be a spiller of blood." Perhaps it is appropriate to hold like Meiri in these cases,²⁸ and to say that even though you may be predisposed towards negative or evil character traits, you must believe that you are capable of positive change and spiritual development. One ought to agree with his position, but it is not exactly a matter of halakhic obligation.

Perhaps there is another case of a decree which is permanent and constant, but not related to the planets' or, as we now say, to the Zodiac's decrees on our character traits. Indeed, trans people know very well that there is another decree made upon us by reading signs present at the time of our birth. I do not mean to make a clever pun here—I mean very seriously that, for the purposes of our mitzvah, signs of gender are astrological signs, insofar as they play the same roles, fill the same functions, and entail the same consequences. Just as the stars of one's birth are said to determine a person's social role and place in the world, so too signs of gender are read to determine a person's social role and function. Just as astrology is understood as a science by the poskim,²⁹ so too gender is understood to have a basis in biology, sociology, and psychology. And just as one strays from the mitzvah of "being whole with Hashem" by believing in the immutable power of the

²⁷ There is even reason to think that a good prediction is not only acceptable but encouraged. In the language of the Sma"K, brought by the Beit Yosef: "מחוקי" זהו להמתין לבחורים הבאים מחוקי" מה שנהגו קדמונינו להתחיל המסכתות בראש חדש זהו להמתין לבחורים הבאים מחוקי" מה שנהגו קדמונינו להתחיל המסכתות בראש חדש זהו להמתין לבחורים הבאים מחוקי" Compare to the Ramban's words at the beginning of his teshuva.

²⁸ "If it is known scientifically that because of the arrayal of the stars, certain energies and acquisitions of character traits have come to the newborn...nevertheless, one ought to believe that all this does not remove the ability to choose from the child, and one does not describe them in this matter as forced but as sinning voluntarily and knowingly" (Meiri on Shabbat 156b).

²⁹ See Appendix s.v. מה המעמד של אסטרונוגיה.

stars to determine their fate for ill, so too do we violate this mitzvah when we believe that bodily or social signs have the power to determine our gender against our will. As Ramban says, “if one sees in them a thing which is not as they desire, they must do mitzvot.” And it is what Kalonymus ben Kalonymus wrote in the 12th century, “Cursed be the one who announced to my father, ‘It’s a boy!’...This messenger shall be held guilty of bloodshed; cursed be he. How could he twist the course of the stars so much? How could he have erred so in his astrology?”³⁰ And compare as well the words of one of the philosophers of the nations on our topic: “We inspect this supposedly natural thing, ‘sex,’ only to find that it is already laden with meaning. At birth, bodies are sorted as ‘male’ or ‘female’...This originary division determines what social purpose a body will be assigned. Some of these bodies are for creating new bodies, for washing and clothing and feeding other bodies...Sex, which feminists have taught us to distinguish from gender, is itself already gender in disguise.”³¹

If it is correct that signs of gender are equivalent to astrological signs for the purposes of “being whole with Hashem,” then we have much to clarify about the boundaries of the law regarding our gender transitions. In fact, we must inquire whether this mitzvah relates to our acts of transition at all, given that it seems to be primarily concerned with more abstract things such as “uniting our hearts.” So, what are we doing when we transition?

Surely the answers to that question are as numerous as the stars, and only Hashem could call all of them by name. Limiting ourselves only to what we would be obligated in by our mitzvah, we might begin by considering that many of us hold varying degrees of belief in the power of a given sign, say for example our genitals, to determine our gender for ill. Many trans women are perfectly happy with their penises (or what would be called such by the gender-astrologers of the nations), and do not feel (strongly) that they have an evil decree upon them from these parts at all—in other words, they are not dysphoric about them. But for those of us who are dysphoric about our genitals, or the sound of our voice, or the way we dress, or any other possible sign decreeing gender in our lives—in my humble opinion, the extent to which a certain thing causes us dysphoria is the extent to which we harbor in our hearts belief in the truth of that sign to determine our gender. I am dysphoric about my penis because I believe, in some part of my soul, that it makes me a man. So far, according to our understanding of the mitzvah to be whole with Hashem, it seems that I am obligated to remove that belief from my heart. And how can this, or any other dysphoria, be removed from our hearts? It is known and obvious to us all that the only way to heal our dysphoria is to transition, whatever that may look like for each person

³⁰ From the *Even Bohan*, translated by Aharon N. Varady, Nir Krakauer, and Isaac Gantwerk Mayer.

³¹ *The Right to Sex* by Amia Srinivasan, xi-xii.

throughout their lives.³² Therefore it would seem that our acts of transition are actually halakhically obligatory.

But I have gone too far ahead. Doesn't Ramban say explicitly that if you see in the stars some ill decree that you are forbidden from going against it? And he even explains further that the average person cannot go against these decrees because we are so worried about them!³³ Shouldn't we say that the extent to which one is dysphoric is the degree to which they would be, God forbid, forbidden from transitioning?! Moreover, isn't it clear from Ramban's words and Rema's language that for practical purposes the verse "be whole with Hashem" only comes to teach us an ideal character trait, since neither of them suggests a case where we are obligated to take any positive action due to this mitzvah? Indeed, Ramban brings a case from the Yerushalmi, about a convert-astrologer, where he might have said that his deed in removing belief in the stars from his heart was obligatory, whereas in fact he says nearly the opposite: that this man was a greatly pious person to be able to do this, but most people are incapable of it; therefore, rather than requiring them to do the impossible, we should actually forbid them from behaving as if their hearts were whole when they really aren't!

This is the truth of the matter. Ramban did not want to require people to live up to impossible standards of mental purity and spiritual perfection; this is the intention of his statement that "when most people become aware of a star's prediction, they get worried about it." In my humble opinion, Ramban is using the word *חוששין* not in the usual technical sense of altering one's actions, but in the more mundane sense of being psychologically disturbed by or concerned about something.³⁴ If that is correct, the meaning is that, since most people have some degree of real belief in the stars' decrees, to act against the prediction would be daring Hashem to do a miracle for you. Rather than violating the principle of relying on miracles, it is better simply to do nothing. But even though Ramban forbids acting against a sign because of this state of "worry," it is also clear from his explanation of the Yerushalmi's story about the convert-astrologer that being free from worry is practically definitional of what it means to be in a state of wholeness.³⁵ So it seems that "worry" over an ill decree, which in our case may manifest as dysphoria, is both the

³² It is also theoretically possible that our dysphoria may be healed by vast societal restructuring to create positive social roles for trans people, as has been the case in many periods throughout history. But we do not wait for this.

³³ "But other people, when they hear [a star's decree], become worried." See Appendix s.v. ביחס לתשמעות מילת "חושש".

³⁴ See Appendix *ibid.*

³⁵ See Appendix *ibid.*

indication that we are in violation of the mitzvah and the reason that those of us of less-than-perfect spiritual fortitude are prohibited from acting against the sign! Instead, we are encouraged to “do mitzvot and pray” for the decree to be changed before it is too late, as long as in the moment of its coming true we do not endanger ourselves or our livelihoods by going against it.

However, all this does not apply to our case. I have already explained that the prohibition of “going against the sign” only applies to concrete predictions destined to come true at some particular, if unspecified, future time, and not to cases of permanent, constant coming true as is the case for trans Jews who have not yet become whole with Hashem regarding our genders. It is not clear that Ramban’s discussion of worry applies directly here. But supposing it is still relevant, his implication that only an extraordinarily pious person could stop worrying describes the reality that in most other cases is nearly impossible to stop believing in the truth of something to which you’ve given your heart. It is simply not possible to rule otherwise than to prevent the even worse harm of relying on miracles. But in our case, this does not hold: not only is it possible to move toward gender wholeness, there are concrete, specific, and well-known steps we can take to do so! Do your pronouns make you dysphoric? Change them! Is your heart given over to false and painful belief in your maleness because of the tone of your muscles, your lack of breasts, your body hair? Take estradiol!³⁶ Acts of transition such as these and others are known to work to remove dysphoria, or worry, from our hearts. Thus, there is no general concern that we would be unable to become whole in these matters,³⁷ and in my humble opinion this means that we should take Ramban seriously when he wrote that “being whole” is a positive commandment which obligates us in certain actions, and not restrict ourselves by Rema’s statement that “it is forbidden to go against the sign,” since the reason behind Ramban ruling this way in general is completely inapplicable and inappropriate in the case of transition. The intent of numbering something among the 613 mitzvot, with a phrase as strong as “we are commanded that our hearts be whole,” is to obligate us, and when we are reliably and practically able to fulfill those obligations, it is our responsibility as poskim and Jews to make that fact known publicly. Therefore, in my humble opinion, trans Jews

³⁶ My intention with this list is not to imply that these specific acts are appropriate or effective for every trans person with the corresponding dysphoria, which is not the case; rather, my intention is to demonstrate that worries over signs such as these are often addressable by concrete and definite actions, unlike the general worry over astrological signs which is best addressed by the less tangible injunction to “do mitzvot and increase prayer.”

³⁷ Although there are often many circumstantial obstacles which the nations place before us to prevent our wholeness.

who are worried about any of their signs of gender are obligated in achievable and relevant acts of transition on the same level as every other positive commandment.

Do not attempt to refute me with Ramban's words that "it is permissible to listen to [the stars' decrees via astrologers] or to believe their words." As if to say that the mitzvah of being whole cannot come to require a person to remove their belief about something in which it is permissible to believe! This is not Ramban's intention at all. Rather, his purpose there is to clarify the specific language of "we should not inquire of astrologers:" that we should not inquire of them, but if we happen to hear something they say, it is permissible to take their predictions seriously. After all, they are based on the science of astrology. And then he goes on to explain that the ideal—which in his Critiques and his Torah commentary he makes clear derives from a mitzvah—is "to walk in wholeness, as it is written, 'Be whole with Hashem your god.'" This reading is supported by a passage from the Nimukei Yosef, which the Beit Yosef considers to be parallel to Ramban's teshuva: "It is not sorcery, since there is an aspect of science for those who can recognize it, and it is permitted... But insofar as a person recognizes in the arrayal of the stars and their courses, such as these astrologers who gaze upon the stars, this is not in the category of sorcery, for it is a major science, as well as a decree which the Holy Blessed One decreed at Creation to manage Zir world thusly; therefore, all pious people should pray for the sign's decrees against them to be canceled, because all comes from the Lord of All... However, Chazal warned that people should not spend their thought on these matters [of astrology], and that a person should make themselves entirely dependent upon the One Who Spoke and There Was the World, for Ze in Zir mercy saves Zir servants from evil afflictions. And they said regarding this, "From where do we know that one does not inquire of astrologers? The Torah says, 'Be whole with Hashem your god.'" And as I have explained, in the specific case where what you have heard is an ill decree, in which we can reasonably expect you to be able to remove your belief, the mitzvah of "being whole" comes to obligate you to do so. We may explain Ramban's words about permissibility of belief in the context of gender to mean that it is permissible to believe, in general, that such-and-such a sign of gender does have a real effect on a person's gender in some way—assuming one happens unintentionally to come across such knowledge, which although legitimate is easily confused with idolatry.³⁸

³⁸ In our time, it seems to me that everyone should be presumed to have come across the knowledge of how to interpret all the signs of gender unintentionally, since such information is inculcated in us from birth. Therefore, it would not be appropriate to hold anyone strictly accountable for having knowledge of gender-signs or for believing in them, although perhaps we ought to say that we ought to believe that a person has the power to change the decrees of these signs, as Meiri explains (see above, footnote 28).

A note about the boundaries of this law. I have used dysphoria as my main example of “worry,” because it seems to me to be the clearest case. By dysphoria I do not mean any particular medical diagnosis; rather, I am speaking about the personal experience of dysphoria, which can be quite varied from person to person. Dysphoria is certainly not the only case that qualifies as “worry,” however. It seems to me appropriate to establish the criterion of worry according to the following language from Ramban’s teshuva: “and if one saw something in [the stars] that is not as they desire, they should do mitzvot and increase their prayer.” That is, a sign simply needs to be “not what you want” in order for you to be worried about it.³⁹ It may be that any amount of concern about or attention to one’s signs of gender is sufficient to be called worry, and even imagining that you might be happier after some kind of change to your gender would qualify.⁴⁰ The matter of the precise criteria for the activation of the obligation of being whole requires further study. I imagine that it will always depend in great measure on the questioner’s individual situation and judgment in their self-understanding.

The acts of transition that a person would be obligated in so that they can move towards wholeness with Hashem regarding their gender depend entirely on what would raise that person to a higher level of wholeness in practice. How so? Three trans female Jews are worried about their penises (or, again, what would be called such by the astrologers).⁴¹ For the first, she comes to understand that what would raise her level of wholeness regarding that sign is vaginoplasty; given that vaginoplasty is reasonably achievable for her, she

³⁹ It is, however, not so simple for many trans people to know what we want or what would make us happier. The forces (or, we might say here, the stars) of cis-heteronormativity cause many of us to suppress our instincts and our desires to the point that they are hidden even from our own hearts—we cannot tell what we want because we have grown used to a world that forbids us from wanting. It is often impossible to understand the extent of our lack of wholeness pre-transition, a lack which can only be fully understood in retrospect. Given that it can be so difficult for us to understand ourselves and what would be “not what we want,” I would suggest that whenever a trans, or potentially trans, Jew brings a question as to whether they could be more whole in a certain way, we should be strict by affirming their instinct to question, and the presumptive status of one who brings a question should be that they could indeed be happier in whatever way they are questioning.

⁴⁰ Compare this description of a trans woman’s stream of consciousness from the post-apocalyptic novel *Manhunt* by Gretchen Felker-Martin: “She passed a hand gingerly over her face, brushing light against the swollen skin around her stitches, and wondered if she’d have time for a quick shave tomorrow. It felt stupid to still care about it. Wasn’t like she’d ever passed, not at 6-foot-2 and 200 pounds with her long horse face, broad shoulders and blocky jaw. Why bother scraping another few days of stubble off something no one with eyes would ever think was a real woman? She made herself exhale. A self-pitying spiral wasn’t going to help anything. A shave would make her feel better. She didn’t need to put any more thought into it than that” (ch. 4).

⁴¹ As a trans woman myself, I have provided throughout this work examples of cases about which I possess the most expertise and personal experience. Omission of any other gender or type of transness is in no way intended to imply that the halakha would not necessarily apply to those cases.

would be obligated to undergo that surgery. For the second, HRT is sufficient to raise her level of wholeness *and* vaginoplasty would not increase her wholeness regarding that sign; therefore, she is not obligated in vaginoplasty, but she is obligated in HRT insofar as that is reasonably achievable for her. For the third trans woman, all she needs to raise her level of wholeness regarding her genitals is to shave them once a week, and she finds that positive-affirmation meditations also help her desire the sign of her genitals more; while she may be obligated in her weekly shaving, I would argue that positive-affirmation meditation does not qualify as a concretely achievable act, so she would not be obligated to do this but would be encouraged to be pious and to continue her practice.

Furthermore, I want to clarify that not all kinds of dysphoria would necessarily create an obligation. It seems to me, based on Ramban's general approach not to require the impossible of people, that only dysphoria that can be addressed by a concrete act, would obligate a trans Jew. For example, dysphoria about lacking a uterus or the ability to give birth that might in theory be addressed via uterine transplant cannot at present actually be addressed by such a concrete act – and therefore it does not entail the halakhic obligation of “being whole.” If such a procedure were to become reasonably available, then it is possible that the full obligatory force of this mitzvah would, so to speak, become active.⁴²

Even in cases where there is no obligation, it is obvious that a lack of obligation does not mean a prohibition or a discouragement. On the contrary, it seems to me that, from the language of the Ramban and the Nimukei Yosef,⁴³ we should still encourage acts of transition that would raise a trans Jew's level of wholeness even where they are not obligated to do so.

In my humble opinion this is the realistic, morally correct, and spiritually uplifting halakhic orientation towards gender transition. Based on the Shulchan Aruch and Ramban, “be whole with Hashem your god” is a positive commandment which involves both legal obligation and ideals of behavior. Trans Jews who are worried (ששח) about their signs of gender that are decreeing ill against them have an obligation to perform achievable acts of transition that will make them more whole, whatever these may be. Even in moments where there is no obligation, there is still an ideal of behavior that we should work towards wholeness in our genders. May we merit the reward of this mitzvah.

⁴² For reflections on the ethics of the development and marketing of gender-affirming medical procedures to trans people, see for example *Detransition, Baby*, and *Nevada*.

⁴³ See above, footnote 24.

Part 3: An Outline of the Practical Application of This Approach

In order to clarify the practical implications of Parts 1 and 2, I offer here several imagined cases and how one might rule on them according to my approach. Nothing said here is intended as psak halakha; it is only for the sake of education.

The case of a trans woman starting HRT regarding seyrus and being fruitful and multiplying

If a Jewish trans woman is considering HRT, then she is certainly worried about her signs of gender, which activates the obligation to be whole. Regarding the prohibition of seyrus: feminizing HRT is not necessarily sterilizing, so it may not be an issue at all. But if it is a problem, then, given that she is a woman, the prohibition of seyrus is not as strong—unless that prohibition is not in fact about gender. In any case, the positive obligation of being whole overrides the negative prohibition of seyrus. Regarding the obligation to be fruitful and multiply: as a woman, she is not obligated in this mitzvah—unless it is not in fact about gender. If it is not about gender and she is obligated, then ideally she should try to fulfill both. If it is not realistic for her to have children in the near future, in my humble opinion she should not delay one mitzvah for the sake of another which she can fulfill immediately, and therefore she should begin HRT.

The case of a trans femme who would be made more whole by practicing niddah

Suppose that worry about a sign of gender which manifests socially, such as immersing at the end of one's niddah cycle being coded female, would activate the obligation to "be whole" regarding it. In such a case, it does not seem to me that a trans femme who is worried about niddah would be obligated directly in niddah on the strength of their obligation to be whole; therefore, if they immerse as part of a niddah practice, the mitzvah they would be fulfilling is not niddah but "being whole." This assumes, however, that they are not independently obligated in niddah, which may not be the case.⁴⁴

The case of a trans person who cannot afford to transition

If a trans Jew is obligated in certain acts of transition that they cannot afford, we should apply the principle that one is not required to spend more than a fifth of their wealth on a positive mitzvah.⁴⁵ And communities should support their trans members in fulfilling their mitzvah obligations.

⁴⁴ See Rabbi Xava de Cordova's tshuva on trans female niddah.

⁴⁵ See Hayyei Adam, Laws of Kriyat Shema and Prayer 21:13: "...but to fulfill a positive commandment, one is only required to disburse up to a fifth of their wealth."

The case of a trans person who lives in a place where it is dangerous to be trans

If one is not required to spend more than a fifth of their wealth on a positive mitzvah, all the more so one is not required to put oneself in danger to fulfill their positive obligations. A trans Jew should not think that they are halakhically required to endanger themselves for the sake of this mitzvah.

Cisgender Jews' obligation to be whole regarding gender

A cisgender Jew would not generally have an obligation to perform any acts of transition: either they are not worried about their signs of gender, or the kind of worry they experience would not be solved by transitioning. However, I would argue that the values of the mitzvah of being whole encourage every Jew to examine their hearts to see whether they are blindly obeying the decrees of these signs, so that they should have the opportunity to become more whole in their own genders. As I heard from one trans intellectual, "Are you a man? Are you a woman? What makes you that way? No matter what your answer is, most people never even ask themselves the question."

The case of someone who deadnames a trans person

One who deadnames a trans person has sinned, as Rambam explains in the Laws of Repentance 7:8, "And it is a great sin to say to one who has repented, 'Remember your earlier actions,' or to recall them to the person's face in order to shame them, or to mention things and ideas similar to those actions in order to make them remember what they did—all this is forbidden, and it has been warned against in the principle of oppression of words, about which the Torah admonishes, saying, 'And one shall not oppress their fellow.'"

The case of someone who is upset about being the target of transphobia

One might think that a trans person who is upset about being the target of a transphobic action might be considered to be in a state of "worry" about it, and therefore would be halakhically required not to be upset about that transphobic act. However, this mitzvah does not apply to people, only to signs themselves. If a trans person's dysphoria is triggered by another person's transphobia, there is at least an aspect of their reaction that is not "worry" over the sign, and there is no violation of the obligation to be whole or of the moral principles invoked by the mitzvah insofar as the person is upset about the transphobic action itself.

Should one make a blessing on acts of transition?

Although an act of transition may constitute fulfillment of a positive mitzvah, it does not seem to me appropriate to innovate blessings. It may be appropriate to say beforehand,

“For the sake of the mitzvah of being whole,” in a similar manner to the act of tying tzitzit, where the purpose is to orient one’s heart to the sacredness of the act they are performing. As with tying tzitzit, each individual act of transition (for example, taking a dose of hormones) does not necessarily in itself constitute fulfillment of the mitzvah, because being whole is a project towards which we may merit to be working all the days of our lives.⁴⁶ Likewise we do not make the blessing, “Who has sanctified us with Zir commandments and commanded us to remember Shabbat,” because we cannot be sure that we will be able actively to remember Shabbat the entire day—but this does not detract from the fact that it is a mitzvah to do so, and that we work towards it every week.⁴⁷ It may alternatively be appropriate to recite an intention-setting meditation before an act of transition, such as, “In the name of uniting the Holy Blessed One and Zir Presence, in fear and trembling, in a complete unification in the name of all Israel. Behold I am prepared and called to fulfill the positive commandment to be whole with Hashem my god, as it is written in the Torah, ‘Be whole with Hashem your god.’”

The case of a trans Jew to whom all this sounds like nonsense

What if, like Eli Erlick, your transition and your transness have nothing to do with wholeness or worry over decrees of signs of gender? Strictly in terms of halakha, the ruling would be that the mitzvah to be whole does not apply to you regarding gender or transition.⁴⁸ However, that is not necessarily what is at issue here; although this is a work of halakha, it is also an attempt to construct a story that inscribes meaning into our actions and our lives (as all halakhic discourse is). Western academics and medical professionals have already attempted to create an archetypal narrative of transness, and they have failed. I admit that the halakhic reasoning in this approach constitutes a particular Jewish story about what it means to be trans and about what we are doing when we transition. Insofar as all attempts to capture the meaning of transness as an abstract concept are bound to fail, my attempt shares that fatal flaw. I have written a halakhic story that speaks to my own experience as a trans Jew. I have no expectations that it will work for all of us. If nothing else, I hope that my approach encourages more trans Jews to explore the ways in which their transness creates

⁴⁶ See also Laynie Soloman’s tshuva on the question of making a bracha over HRT. Thanks to them for providing the comparison between tzitzit and our mitzvah.

⁴⁷ See Appendix s.v. דהיינו נראה שלפי לעדתו, where I argue that the positive mitzvah of Shabbat is in the same class as the mitzvah to be whole.

⁴⁸ Or, if this approach becomes normatively definitive of Jewish transness, then it is conceivable that we might insist that any trans Jew is acting on the strength of our mitzvah in any act of transition, regardless of what they say about themselves. This would be similar to how we view apostate Jews as still obligated in the Torah. In this sense my approach would pose the same problems as any normative halakhic ruling.

opportunities to live a more sacred life, in deeper connection with themselves and with Hashem—and I hope that I have demonstrated one way that it is possible to live a full, trans life wholly aligned with the Torah and the law of Moshe and Israel.

Appendix: The Ramban's Approach to "Being Whole With Hashem Your God"

הנה תשובת הרמב"ן⁴⁹ שהיא יסוד ההלכות של מערכת יחסים לאסטרולוגיה⁵⁰ מתחילתה עד סוף ציצוטה בבית יוסף.⁵¹

מה שנוהגין שאין נושאים נשים עד מלוי הלבנה באלו הארצות, אינו ניחוש, אלא כשם שמושחין המלכים על המעיין דתמשך מלכותו, כן עושין במלוי ולא בחסרון, וסימנא טבא הוא כדרך שמושחין יין בצינורות לפני חתנים, ואין בו משום דרכי האמורי. מה שאמרו אין שואלים בכלדיים דבר ברור הוא משמעתא דפרק מי שהחשיך שהם בעלי המזלות החוזים בכוכבים כדברי בעל הערוך. ובודאי משמע שאין האצטגנינות בכלל נחש דמיבעי ליה מנין ועוד דר' חנינא סבר מזל מעשיר ויש מזל לישראל. ואע"ג דלית הלכתא כוותיה מ"מ משמע דלאו ניחוש הוא ואלו שמנחשים בכוכבים דקתני (סנהדרין סו.) לאו באצטגנינות קאמר ומההיא שמעתין דפרק מי שהחשיך נמי משמע דמותר לשמוע להם ולהאמין דבריהם מאברהם דאמר נסתכלתי באצטגנינות ומדרי עקיבא דהוה דאיג אמלתא דברתיה טובא ולאחר שנצולה דרש דמשום צדקה ניצלה ממיתה ממש ש"מ מאמין היה בהם ומעובדא דרב נחמן בר יצחק נמי אלא שפעמים הקב"ה עושה נס ליראיו לבטל מהם גזירת הכוכבים והם מן הנסים הנסתרים שהם בדרך תשמיש של עולם שכל התורה תלויה בהם לפיכך אין שואלים בהם אלא מהלך בתמימות שנאמר תמים תהיה עם ה' אלהיך ואם ראה בהם דבר שלא כרצונו עושה מצוה ומרבה בתפלה אבל אם ראה באצטגנינות יום שאין טוב למלאכתו נשמר ממנו ואין סומך על הנס וכסבור אני שאסור לבא נגד המזלות ולסמוך על הנס. [ובירושלמי⁵² דפי' במה אשה ר' הונא הוה משתעי הדין עובדא חד גיור הוה אסטרולוגוס והוה מתעסק בסחורה של רידיים חד זמן בעא מיפק אמר כדון נפקין חזר ואמר כלום אדבקית להדא אומתא קדישתא אלא בנין מיפרש מן אלין מליא נפק על שמא דרחמנא כיון דמטא למכסח יהב ליה חמריה ואכליה שבקה למדינתא מאן גרם דיפול דהרהר מן גרם ליה דאשתזיב דאתרחיץ בברייה. וגם זה בענין כך הוא לפי דעתי שאם היה לו לשאול ולעיין באסטרולוגיא שלו ולפיכך נתחסד ויצא ולא חשש לסחורה ונעשה לו נס ונצול מן המכסח כיון שעשה לשי"ש ולגדור עצמו מן העבירה אבל שאר בני אדם כיון ששמעו חוששין.] ואותם שאין מתחילין בב"ד מפני שאין מזל לבנה קל ואין מלאכה נגמרת בו כהוגן ובגמרא נמי סבר הכי מאן דבלבנה יהא סותר ובני מזל מאדים נמי קשה הוא כמ"ד דמזל יום גורם שהוא צומח מ"מ אין דברים אלו מדוקדקים אפי' באותה חכמה שלא מזל יום ולא מזל שעה גורמים אלא במבטי כוכבים של שנאה ואהבה וכל שכן שאינו משנת חסידים והרמב"ם ז"ל כתב שכל העושה מעשה מפני האצטגנינות וכיון מלאכתו או הליכתו בעת

⁴⁹ תשובות הרשב"א מיוחס להרמב"ן רפ"ג. ונדפס בספר כתבי רמב"ן בשם "תשובות הרמב"ן בעניני אמונות ודעות."

⁵⁰ ש"ע יו"ד קעט ס' א-ב.

⁵¹ שם ד"ה כתב הרמב"ם מוענן כגון אלו.

⁵² הלשון הזה אינו נמצא בב"י, אבל מצאתי אותו בספר כתבי רמב"ן.

שקבעו הוברי שמים הי"ז לוקה משום לא תעוננו ועוד האריך לומר שדברי הבל ושטות הם והמאמין שיש בהם ממש בכלל נשים ועמי הארץ ושמעתא כולה ליתא הכי ועוד דאפי' בניחוש לא משמע הכי מעובדא דרב עיליש ובב"ר אמרו כי עוף השמים יוליך את הקול זה העורב וכי ואלו דברים צ"ע ופי' רב מ"מ אל תדקדק עם בני אדם יותר מדאי.

קשה להבין את דבריו. במדה שהוא כותב כאן תשובה לרבים, אולי יש קודם כל להבין את כוונתו עם דעתו על ענין של "תמים תהיה," שהוא כתב על זה במקומות הרבה.

הרמב"ן, בהשגותו על ספר המצוות, סובר שאנחנו חייבים במצות עשה של "תמים תהיה עם ה' אלקיך." וז"ל:

וענין הצוואה הזאת שנייחד לבבנו אליו לבדו ית', ושנאמין שהוא לבדו עושה כל והוא היודע אמתת כל עתיד וממנו לבדו נדרוש הבאות מנביאיו...ולא נדרוש מהורבי שמים ולא מזולתם ולא נבטח שיבאו דבריהם על כל פנים אבל אם נשמע דבר מהם נאמר 'הכל בידי שמים' כי הוא משנה מערכת הכוכבים והמזלות כרצונו...ונאמין שכל הבאות תהיינה אלינו כפי התקרבתו לעבודתו.⁵³

משמע שאין שמים לב לאסטרונומים או לתחזיתם אלא מבטיחים על העתיד להי"ת לבד. והוא מסביר בפירושו על התורה⁵⁴ שלשון תמים הוא שלם: כתרנום אונקלוס, "שלים תהא בדחלתא דה' אלהך, שלא תהא חסר ביראתו, כי תמים הוא השלם בדבר." כלומר שכל יראתך יהיה אל הי"ת לבדו ולא אל הכוכבים כלל, ושתירא אותו ית' בהתקרבות אל כל רצונו עליך, אפילו אם זה סותר את גזרת המזלות. כלנו נצטוונו להתקרב אליו בתמימות ולא נשים לב לשום מזל שלכאורה יש לו כח לגזור עתידינו, כי הי"ת נתן למזל את כחו ובידו לשנות גזרותיו כרצונו.

מה המעמד של אסטרונומיה לדעת הרמב"ן? הוא מתיחס לה כמו אנחנו מתיחסים למדע, וראיה לזה נמצאת בפירושו על הענין של כישוף:

ועתה דע והבן בעניני הכשפים: כי הבורא יתברך, כאשר ברא הכל מאין, עשה העליונים מנהיגי התחתונים אשר למטה מהן, נתן כח הארץ וכל אשר עליה בכוכבים ובמזלות לפי הנהגתם ומבטם בהם, כאשר הוא מנוסה בחכמת האצטגנינות. ועשה עוד על הכוכבים ועל המזלות מנהיגים מלאכים ושרים, שהם נפש להם, והנה הנהגתם מעת היותם עד לעולם ועד גזרת עליון אשר שם להם. אבל היה מנפלאותיו העצומות ששם בכח המנהיגים העליונים דרכי תמורות וכחות להמיר הנהגת אשר למטה מהם, שאם יהיה מבט הכוכבים בפניו אשר כנגד הארץ טובה או רעה לארץ או לעם או לאיש, ימירו אותם הפנים העליונים עליו להפך במבט עצמו, כענין שאמרו תמורת עונג נגע. ועשה כן להיות הוא יתעלה שמו: מהשנא עדניא וזימניא קורא למי הים לעשות בהם כרצונו, והופך לבקר צלמות מבלי שנוי טבעו של עולם, ושיעשו הכוכבים והמזלות מהלכם כסדרן.⁵⁵

לשון "כאשר הוא מנוסה בחכמת האצטגנינות" הוא במקביל ללשונינו של השיטה המדעית. וראה תמיכה לזה להלן מן הנמוקי יוסף.

⁵³ השגות הרמב"ן על ספר המצוות, שכחת העשין ח.

⁵⁴ רמב"ן על דברים יח:יג. ע"ש.

⁵⁵ רמב"ן על דברים יח:ט.

מאי שנא בין אמונת "תמים תהיה" לאמונה הכללית של אמנת האלהות, עד שלדעת הרמב"ן הוצרך במצוה מיוחדת? בלשונו, "זה ענין גדול" בתורה.⁵⁶ לפעמים התורה מביאה כמה איסורים על נושא מסוים ואחר כך אומרת שאנחנו חייבים לעשות כמידה המבססת לאיסורים הנ"ל. למשל ראה פרשת דיני משא ומתן (דברים ו:יח), וז"ל על זה:

וזה דרך התורה לפרוט ולכלול בכיוצא בזה כי אחרי אזהרת פרטי הדינין בכל משא ומתן שבין בני אדם לא תגנוב ולא תגזול ולא תונו ושאר האזהרות אמר בכלל ועשית הישר והטוב (דברים ו:יח) שיכניס בעשה הישר וההשויה וכל לפנים משורת הדין לרצון חבריו... וכן בענין השבת אסר המלאכות בלא והטרחים בעשה כללי שנאמר תשבות.⁵⁷ [נעוד כתב במקום אחר], וזה ענין גדול לפי שאי אפשר להזכיר בתורה כל הנהגות האדם עם שכניו ורעיו וכל משאו ומתנו ותקוני הישוב והמדינות כלם אבל אחרי שהזכיר מהם הרבה כגון לא תלך רכיל... וכיוצא בהן חזר לומר בדרך כלל שיעשה הטוב והישר בכל דבר.⁵⁸

דהיינו כאשר מוזכרים בתורה כמה לאוין על התנהגות בדבר אחד וא"כ צוה כלל מוסרי, הפירוש הוא שזו מצוה של מדה עיקרית של ההתנהגות. ונראה שדבר כזה שונה מן המצוה הכללית "להדמות בו יתעלה" במידותיו,⁵⁹ כי כאן נצטוונו להיות ישר וטוב דווקא בדיני משא ומתן.

הנה דוגמה שנית על הענין בפירושו על "התקדשתם והייתם קדושים." הוא חולק על הרמב"ם בעיקרי מנין המצוות בזה הלשון:

העיקר הרביעי אמר הרב שאין ראוי שימנו המצוות הכלולות בתורה כולה, ובזה טען על בעל ההלכות גדולות אמר 'וכבר טעו בעיקר הזה עד אשר מנו קדושים תהיו מצוה בכלל מצות עשה ולא ידעו שאמרו יתעלה קדושים תהיו והייתם קדושים הם מצות לעשות כל התורה כולה. ולשון ספרא קדושים תהיו פרושים תהיו כלומר הסירו המדות המכוערות כולם שמנעתי אתכם מהם.' [עכ"ל הרמב"ם].

כלומר, רמב"ן מסכים עם עיקר הרמב"ם שאין למנות מצוה כוללת עשיית כל התורה כולה, ולהלן הוא יסביר למה מצות והתקדשתם היא מצוה יותר ספציפית:

ואמנם בעל ההלכות גדולות לא מנה קדושים תהיו אבל מנה והתקדשתם והייתם קדושים והקדושה באמת להיות פרושים, ואשר הם כלל למניעת כולן לא ימנו... אבל אמרו יתעלה והתקדשתם והייתם קדושים היא מצוה להיותם קדושים מליטמא באכילת השרצים והרמשים ביחוד כאשר מפרש והתקדשתם ולא תטמאו את נפשותיכם בכל השרץ הרומש על הארץ ואם כן הפורש מאכילתם מקיים מצות עשה המיוחדת בהן.⁶⁰

דהיינו, נראה שלפי דעתו יש מין מיוחד של קדושה שבאה מן פרישות מאכילת השרצים, ונצטוונו גם במניעת מהן גם במדת הקדושה המיוחדת שהמניעה תוביל לה. שלא רק נמנע אלא עוד שנעלה לקדושת הפרישות. כעין

⁵⁶ רמב"ן על דברים ו:יח.

⁵⁷ רמב"ן על ויקרא יט:ב.

⁵⁸ רמב"ן על דברים ו:יח.

⁵⁹ ספר המצוות עשה ח, ורמב"ן לא חולק על זה.

⁶⁰ השגות הרמב"ן על ספר המצוות, שורשים ד'

זה הוא מביא מ"ע של שבת: שלא רק נמנע מן המלאכות האסורות במפורש אלא עוד שנעלה למנוחה במניעת מכל הטרחים.⁶¹ כשם שמניעה מן טרחים טוביל למנוחה, מניעה מן השרצים טוביל לקדושה, לדעת הרמב"ן.

מצות "תמים תהיה" היא מצוה כאלה הנ"ל. אחרי כמה לאוין על מנחשים וחוזי כוכבים, תלמוד לומר תמים תהיה עם ה' אלקיך. והטעם לפי שיטת הרמב"ן כך. כי אי אפשר להזכיר בתורה כל מיני דרכים לדרוש העתידות וכל דרך שמובילה לאמונת בכח לא-א"ל לגזור גזרות עלינו, חזר ואמר בדרך כלל שנהיה תמימים עמו ית' לבדו בענין זה. ובמצות עשה הזאת כלול האיסור לדרוש עתידות מן אסטרוולוגים, כי זה בוודאי מרחיק מן התמימות עם ה"ת – כשם שמ"ע של מנוחת השבת כוללת איסור לעשות טרחים.

ביחס למשמעות מילת "חושש" בתשובת הרמב"ן, לענ"ד הוא משמש במילה זו במשמעות מיוחד, להראות למצב רוח של אדם. בדרך כלל היינו קוראים את הביטוי "ויצא ולא חשש לסחורה" כלומר "והוא יצא לסחורתו בלי שינוי מעשיו משום גזרת הכוכב." דהיינו מילת "חושש" מתארת את מעשיו ולא מצב רוחו ביחס להם. אז יש שלושה מקרים אפשריים: (א) הוא יוצא לסחורה, יודע שזה ישתבש אבל מקווה שילך טוב; (ב) הוא יושב בבית מתוך פחד שישתבש; (ג) הוא יוצא לסחורה, מודע שגזרת הכוכב רעה, אבל לא אכפת לו כלל. אם "חושש" מיחס רק למעשים כאן, אז מקרים (א) ו (ג) שווים ומותרים. אולם הקריאה הזאת קשה. אם היתה נכונה, אז יהיה מותר לבוא נגד גזרת כל כוכב אם לעשות כך צריך סתם להתנהג כרגיל. אבל כוונת הרמב"ן להצדיק סברתו "שאסור לבא נגד המזלות ולסמוך על הנס!" דהיינו הוא סובר שמקרה (א) אסור, ומקרה (ב) עדיף כדי שהוא לא יעבור פעמיים—פעם אחת משום תמים תהיה ופעם שניה משום שסומך על הנס. ורמב"ן מודה שבאופן מעשי מקרה (ג) נדיר מאד: "אבל שאר בני אדם כיון ששמעו חוששין," כי התחזיות האלה לדעתו תוקפות מבחינה עבודתית, באופן דומה ליחס שלנו לתחזיות מדעים, וקשה מאד להיעשות מודע על עובדה שתשפיע על חיך לרע ואחר כך לשכנע את עצמך שבאמת לא אכפת לך כלל. לפיכך לענ"ד הקריאה הנכונה של מילת "חושש" בתשובת הרמב"ן היא שזה מתיחסת לא למעשים אלא למצב רוח פנימי ביחס לכוכבים. והקריאה הזאת מסכימה למה שהוא כתב על מצות תמים תהיה כדבר שבלב בהשגות על ספר המצוות: " שנצטוינו להיות לבבנו תמים עמו יתעלה והוא שנאמר (דברים י"ח:י"ג) תמים תהיה עם ה' אלהיך, וענין הצוואה הזאת שנייחד לבבנו אליו לבדו יתברך, ושנאמין שהוא לבדו עושה כל והוא היודע אמתת כל עתיד.

ועוד ראיתי שהבית יוסף סבר שיש להבין את תשובתו באור של נמוקי יוסף, וז"ל:⁶²

וכיוצא בזה כתב בנמק"י בס"פ ד' מיתות אהא דתנו רבנן לא תנחשו אלו שמנחשים בחולדה ובעופות ובכוכבים וז"ל פירשו ז"ל דהא דחשיב הכא עופות וכוכבי היינו דומיא דהנך דחשיב לעיל כגון פתו נפלה מפיו מקלו נפל מידו שאין בהם דבר חכמה אלא דברי שטות בעלמא הן אבל במי שמכיר בצפצוף העופות אין נחש שדבר חכמה יש למכירים ושרי... מה שאדם מכיר במערכת הכוכבים ומהלכן כגון אלו הוברי שמים החוזים בכוכבים אין זו בכלל נחש שזו חכמה גדולה וגזירה שגור הקב"ה מששת ימי בראשית להנהיג עולמו בכך על כן יתפלל כל חסיד לבטל ממנו גזירת המזל כי מאת אדון הכל בא הכל ובידו לשנות ולעשות כחפצו... ומיהו ח"ל הזהירו לבל ישים אדם מחשבתו באלו הדברים ויתלה אדם עצמו במי שאמר והיה העולם והוא ברחמיו יציל עבדיו מפגע רע ואמרו ע"ז מנין שאין שואלין בכלדיים ת"ל תמים תהיה עם ה' אלהיך.

⁶¹ רמב"ן על ויקרא כג:כד.

⁶² בית יוסף יו"ד קעט ד"ה כתב הרמב"ם מעונן.

ש"מ שאסטרולוגיה היא חכמה גדולה, כלומר מדע אמיתי, ועוד ש"תמים תהיה" כולל גם מהלך אידאלי וחסיד.

אז לאור כל המובא לעיל, לענ"ד יש לקרוא את תשובת הרמב"ן, שהיא מקור ההלכה בנידון דידן, כך:⁶³

מה שנוהגין שאין נושאים נשים עד מלוי הלבנה באלו הארצות, אינו ניחוש, אלא כשם שמושחין המלכים על המעיין דתמשך מלכותו, כן עושין במלוי ולא בחסרון, וסימנא טבא הוא כמאחז"ל אע"פ שאין נחש יש סימן, כדרך שמושכין יין בצינורות לפני חתנים, ואין בו משום דרכי האמורי.

האם אסטרולוגיה בכלל איסור של ניחוש, כדעת הרמב"ם? ומה שאמרו: אין שואלים בכלדיים (כדאיתא בפסחים ק"ג ע' ב: "מניין שאין שואלים בכלדיים? שנאמר תמים תהיה עם ה' אלקיך"), מי הם הכלדיים? דבר ברור הוא משמעתא דפרק מי שהחשיך שהם בעלי המזלות החוזים בכוכבים, כדברי בעל הערוך. והלשון עצמו ידוע שהם הכשדיים הקדמונים הנקראים צלדיב"ש בלשון חכמי הגוים, והם שהתעסקו תחלה במזלות, ושכתבו באותה חכמה ספרים. ובזאת משמע שאין האצטגנינות בכלל נחוש, דמיבעיא ליה מנין, כלומר שראית הקרא "תמים תהיה" לא שייך לכלל של ניחוש אלא לאסטרולוגיה. ועוד ראה שאסטרולוגיה לא בכלל ניחוש היא דהא רבי חנינא סבר מזל מעשיר ויש מזל לישראל. ואע"ג דלית הלכתא כוותיה, מ"מ משמע דלאו ניחוש הוא כי ניחוש בודאי אסור והנה ר' חנינא היה מתעסק בזה (ראה לעיל בגמרא, ד"ה פוקו אמרו לבר לוואי). ואלו שמנחשים בכוכבים דקתני, לא באצטגנינות קאמר. אז ברור שאין לשאול מאסטרולוגים, אבל האם תחזיותם שקר? ומה היא שמעתא דפרק מי שהחשיך נמי משמע דמותר לשמוע להם ולהאמין דבריהם כי דבריהם מיוסדים על חכמה אמיתית של אסטרולוגיה ואינם דברי הבל ושטות בעלמא, והנה לך דוגמאות מן הגמרא: מאברהם שאמר נסתכלתי באצטגנינות, ומדרי עקיבא דהוה דאיג אמלתא דברתיה טובא, ולאחר שנצלה דרש משום צדקה נצלה ממיתה ממש. ש"מ מאמין היה בהם. ומעובדא דרב נחמן בר יצחק נמי. אלא החשיבות של "תמים תהיה" היא שפעמים הקב"ה עושה נס ליראיו לבטל מהם גזירת הכוכבים, והם מן הנסים הנסתרים שהם בדרך תשמישו של עולם שכל התורה תלויה בהם. לפיכך אין שואלים בהם לא במפורש ולא בסתר לבבנו, אלא מהלך בתמימות, שנאמר תמים תהיה עם ה' אלהיך. ואם באופן מקרי ראה בהן דבר שלא כרצונו יתכוון לבו בזה אל הי"ת, עושה מצות ומרבה בתפלה. אבל אם ראה באצטגנינות יום שאין טוב למלאכתו, כלומר שמע תחזית שיבא אליו רע בנסיבה ספציפית בעתיד נשמר ממנו ברגע הזה, ואינו סומך על הנס. וכסבור אני שאסור לבא כנגד המזלות על הנס כי יותר רע לעבור גם על האיסור לסמוך על נסים מלעבור רק על תמים תהיה, וכך ההלכה.

ובירושלמי דפי' במה אשה: ר' הונא הוה משתעי הדין עובדא, חד גיור הוה אסטרולוגוס והוה מתעסק בסחורה של רדידים, חד זמן בעא מיפק, אמר: כדון נפקין. חזר ואמר: כלום אדבקית להדא אומתא קדישתא אלא בנין מיפרש מן אלין מליא. נפק על שמא דרחמנא. כיון דמטא למכסח יהב ליה חמריה ואכליה, שבקה למדינתא. מאן גרם דיפול, דהרהר. מן גרם ליה דאשתזיב, דאתרחיץ בברייה.

וגם זה בענין כך הוא לפי דעתי שאסור לבוא כנגד המזל על הנס, שאם היה לו לשאול ולעיין באסטרולוגיא שלו ולפיכך נתחסד ויצא ולא חשש בלבו לסחורה, ונעשה לו נס ונצול מן המכסח כיון שעשה לשי"ש ולגדור עצמו מן העבירה של מצות תמים תהיה, אבל שאר בני אדם כיון ששמעו חוששין

⁶³ לשון של הרמב"ן בטקסט רגיל, והבאיר שלי בכתב נטוי.

בלבם על גזרת המזל, לפיכך אם היו במקום הגר האסטרוולוג ויצאו לסחורם, היו סומכים לכאורה על כרחם בלבם על הי"ת לעשות להם נס להצילם מרוע הגזרה.

ועוד יש להסביר את המקרים הבאים: ואותם שאין מתחילין בב"ד, מפני שאין מזל לבנה קל, ואין מלאכה נגמרת בו כהוגן. ובגמרא נמי סבר הכי: מאן דבלבנה יהא סתר ובני. ובר מזל מאדים נמי קשה הוא, כמ"ד מזל יום גורם שהוא צומח. מ"מ אין דברים אלו מדוקדקים אפילו כפי אותה חכמה ואלה יותר קרובים לסימנים טובים או רעים ולא לניחוש או אסטרוולוגיה ממש, שלא מזל יום ולא מזל שעה גורמים, אלא במבטי כוכבים של שנאה ושל אהבה, וכ"ש שאינה משנת חסידים כי יש לכל חסיד ליחד לבו אל הי"ת לבדו.

והרמב"ם ז"ל כתב שכל העושה מעשה מפני האצטגנינות וכיון מלאכתו או הליכתו בעת שקבעו הוברי שמים, הרי זה לוקה משום לא תעוננו. ועוד האריך לומר שדברי הבל ושטות הם, והמאמין שיש בהם ממש בכלל נשים וע"ה הם.

ושמעתיא כולה ליתא הכי. ועוד דאפילו בניחוש נמי לא משמע הכי מעובדא דרב עיליש. ובב"ר אמרו: כי עוף השמים יוליך את הקול, זה העורב וכו'. ואלו דברים צריכים עיון ופירוש רב. מ"מ אל תדקדק עם בני אדם יותר מדאי כי רוב האנשים לא יכולים לעלות למעלת תמימות שניצטוונו עליה בפועל, אז לא ראוי לחייב אותם בזה ביחס למנהגים האלה.