

# **Caring For & Removing Body Parts Related to Gender-Affirming Care**

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**A publication of the Trans Halakha Project's Teshuva-Writing Collective  
at SVARA: A Traditionally Radical Yeshiva**

# Caring For & Removing Body Parts Related to Gender-Affirming Care

*Written by Willemina Davidson*

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*This teshuva is dedicated to the memories of Lea Anderson and MJ Eckhouse, z"l.*

## **She'eilah**

How should we care for and relate to body parts removed during gender-affirming care?

## **Teshuvah**

I'm interested in questions about the consequences of our existence. Where do queer Jews fit within a halakhic framework? How does our existence affect the framework itself? From this perspective, the sheilah arose in my mind: How should we care for and relate to body parts removed during gender-affirming care?

I want to put forward that, once removed, these body parts should not be considered limbs separated from their body but neutralized chunks of matter that no longer bear any relationship to their body of origin. This concept may not be intuitive for cisgender people because it is informed by a trans point of view; therefore, I believe a trans person can best speak to the experiences underlying it. For this reason, I'm looking for what should be done with these body parts that communicate their new status while also fulfilling any halakhic requirements for their disposal.

Relevant to this discussion is how the Jewish tradition conceives of the afterlife. A significant part of our tradition's conception of the afterlife is a belief in the revival of the dead, t'chiyat hameitim (תחיית המתים). This belief has come to take many forms, but the most basic is that our bodies will be restored and live again in the future. So, how do we communicate within a halakhic framework that these body parts should not be a part of any future body an individual might have?

Before answering this question, I would like to name two of my underlying assumptions: a) halakha is an incomplete system and b) asking for permission to exist is the least interesting question. Halakha has grown like a bush with some foliage in the shade and some in the sun. The branches that would have addressed the queer experience are neglected and withered from their relegation to the shade. Therefore, it is our job as queer-normative poskimot to coax those branches back to life, which requires an orientation toward innovation. Where there is a gap, we must bridge it. There is no

difference between our project and the project of the rabbis that created our diasporic, post-temple Halakhah—they too were bridging a gap. The temple's destruction forced the rabbis to nurture elements of halakha that addressed their lives in a normatively post-temple and diasporic world. Similarly, we nurture the parts of halakha that address our lives in a normatively queer context.

Turning to my second assumption, many people question the permissibility of being trans; however, I choose not to accept the premise of such questions. I have little interest in the permissibility of Jews being queer or pursuing gender-affirming care and engaging in a debate about permissibility in general because it inherently assumes that our right to exist and the shared experiences we have are up for debate, which I do not believe they are. There are many more compelling questions I'd ask instead, all stemming from the question: "Now what?"

With these two assumptions, I take a queer- and trans-normative approach to halakha. Things common or universal to queer and trans experiences are assumed facts that must be taken for granted and not debated. We must ask, "Given the existence of trans and queer people and their experiences, what does halakha look like for them?" My hope in asking such questions is to liberate not only trans and queer Jews but also cis and straight Jews. What does a fuller halakha that assumes the existence of queerness and transness mean for cis and straight Jews? That question is largely beyond the scope of this teshuvah but hovering in the background as I write this.

So, how will I explore the "Now what?" of gender-affirming surgeries? I will begin by addressing how to dispose of the removed body parts (bone, gonads, etc.) within our civil context with an eye towards temple purity. Then, I'll look at t'chiyat hameitim as it relates to removing body parts. Finally, with these two areas fleshed out, I will present a liturgical solution and explore one of its implications for the larger Jewish community.

***Dina d'Malkhuta - Civil Context***

Within Jewish tradition, there is a practice of burying amputated/withered body parts dating back to at least the Talmudic Era, as recorded in Masekhet Ketubot:

<b>Ketubot 20b</b>	<b>כתובות כ"ב</b>
Rabbi Chanina said: Because women bury their stillborns there along with those afflicted with boils bury their arms that withered and fell from their bodies.	אמר רבי חנינא: מתוך שהנשים קוברות שם נפליהן, ומוכי שחין זרועותיהם

This practice appears to be the preferred way to dispose of amputated body parts for most of Jewish history.<sup>12</sup> However, in the United States and throughout the world, people do not necessarily have access to their body parts when they're removed in a formal medical setting and are frequently incinerated or disposed of in some other way.<sup>3</sup> While this norm has obvious sanitary benefits, it also prevents Jews from burying body parts in line with our customs, or disposing of them according to our will.

A teshuvah that discusses disposing of amputated limbs was written during World War II and collected between 1943 and 1947 for chaplains in the US armed forces by the Committee of Army and Navy Religious Activities aptly titled *Collected Responsum in Wartime* that addresses the practice of burning amputated body parts is addressed. This is relevant for us due to the widespread burning of medical waste. Drawing an analogy from the burial of body parts and fetuses, this unnamed author writes:

While there has been the custom to bury amputated limbs, there is no law that the specific mode of disposal be burial and not (for example) burning. With regard to the body of the dead the law requires burial as a specific mode of disposal, since the earth provides atonement (or as an alternate explanation, it is a disgrace to the dead to remain unburied). But as to amputated limbs of the living, neither "atonement" nor "disgrace" apply. See Jacob Reischer (Shevuth Yakov II, 10.) who specifically makes this point, and also Ezekiel Landau (in Noda Bi'Yehuda II Y.D..#209). Jacob Reischer therefore concludes that since burial as such is not mandatory, one may simply put the limb away in a room where priests are not likely to come into contact with it.

...

If it is the procedure of the hospital to burn the limbs, Jewish law has no objection to the procedure.<sup>4</sup>

As he succinctly demonstrates, while the burying of limbs is a near-universal tradition up to the 20<sup>th</sup> century, it is not required and any form of disposal, such as putting it in an unused room or cremating it, is permissible. No course of action needs to be taken for the disposal of the limbs themselves outside of ensuring Cohanim do not come into contact with the body parts.

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<sup>1</sup> See: <https://www.torahmusings.com/2018/12/amputated-limbs/>

<sup>2</sup> Igrot Moshe, YD 3:141

<sup>3</sup> [https://www.cdc.gov/infectioncontrol/guidelines/environmental/recommendations.html#anchor\\_1557146190](https://www.cdc.gov/infectioncontrol/guidelines/environmental/recommendations.html#anchor_1557146190)

<sup>4</sup> *Collected Responsum in Wartime: Cremation of Amputated Portions of the Body*. Committee of Army and Navy Religious Activities 1943-1947

**Dina d'Shamaya - Temple Purity**

As was explained in the teshuvah from *Collected Responsum in Wartime*, the main point of concern halakhically for disposing of body parts is temple purity. The Torah prohibits Cohanim from coming into contact with the dead because it transfers *tumat hamet* (טומאת המת), ritual impurity from a dead body.<sup>5</sup> While tumah can come from the dead, it can also be transferred from amputated body parts. To impart tumah, body parts require both bone and flesh, as we see in Mishnah Ohalot:

<b>Mishnah Ohalot 2:1</b>	<b>משנה אהלות ב:א'</b>
These things defile by overshadowing: ... [a full] limb [severed] from a living person with the appropriate amount of flesh, a quarter [of a kav] of bones from the structural majority or numerical majority, and the structural majority or numerical majority [of the bones] of a corpse even though they do not amount to a quarter [of a kab]; [all these] are unclean... <sup>6</sup>	אלו מטמאין באהל... ואבר מן החי שיש עליו בשר כראוי, רבע עצמות מרב הבנין או מרב המנין. ורב בנינו ורב מנינו של מת, אף על פי שאין בהם רבע, טמאין...

While concern about Cohanim and purity would be necessary for any body part removed that fits the above qualifications, many gender-affirming surgeries do not fit this category because the removed body parts lack bone. For those that might, we have the following mishnah from Mishnah Keilim:

<b>Mishnah Keilim 1:5</b>	<b>משנה כלים א:ה'</b>
There are ten [grades of] impurity that emanate from a person:... If a limb on which there was not the proper quantity of flesh was severed from a person, it conveys impurity by contact and by carriage but not by ohel. But if it has the proper quantity of flesh it conveys impurity by contact, by carriage and by ohel. A "proper quantity of flesh" is such as is capable of healing...	עשר טמאות פורשות מן האדם... פגש ממנו אבר שאין עליו בשר כראוי, מטמא במגע ובמשא, ואינו מטמא באהל. ואם יש עליו בשר כראוי, מטמא במגע ובמשא ובאהל. שעור בשר כראוי, כדי להעלות ארוכה...

Regarding such body parts, the Mishneh Torah in Hilkhot Tumat haMet explains that bone without flesh and flesh without bone are both pure, making clear that the conception of

<sup>5</sup> ויקרא כ"א:א'

<sup>6</sup> All Mishnah translations are done by Dr. Joshua Kulp as made available through the Conservative Yeshiva

amputation is one of entire 'limbs' such as an arm or even a finger.<sup>7</sup> As such, most gender-affirming surgeries fall firmly outside of this category.

As we can see, there is not any particular course of action that needs to be taken with body parts removed as a part of gender-affirming care as long as they are stored in a way that prevents them from transferring tumat hamet if they are capable of doing so, which body parts removed during gender-affirming surgeries (sex organs, isolated pieces of bone and flesh, etc.) are not. While this teshuvah could end here, I hope to start a more extensive discussion concerning what an afterlife might look like for a trans person by addressing how the removal of these body parts informs our conception of the resurrection of the dead.

### ***T'chiyat haMeitim – Concerns of Status***

In rabbinic tradition, there is a well-established idea that at some future time the dead Jews of history will be resurrected. Our tradition even gives us two possible mechanisms for the revival of the dead: a) the body sprouting from the “luz” bone like a flower and b) the body rolling to the land of Israel and popping reconstituted out of the ground. While t'chiyat hameitim has also been reinterpreted to mean reincarnation, a personal spiritual revival during life, and other more metaphorical themes of renewal, it's worth addressing the older, more traditional understandings of what resurrection looks like can help foster productive, creative friction.

From this belief in bodily resurrection, the question naturally arises: "What is the relationship between body parts removed as a part of gender-affirming care and the resurrection?" Surely, we don't want trans people to be revived with their unaltered bodies after they've gone through so much work to align their bodies to match who they are. To explore this question more fully, we must first examine the two mechanisms of resurrection and their challenges.

The luz (לול), according to Bereishit Rabbah<sup>8</sup>, is an indestructible bone in the body that will act as a seed from which Jews that have died before the resurrection will grow like a flower or tree. In this model of the resurrection, we need to address how our bodies in our current life will inform our resurrected bodies. One might argue that Hashem will know the correct form for our bodies to take, but we had better be safe than sorry. Trans and non-binary bodies grew these body parts once before, so what's to prevent them from

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<sup>7</sup> משנה תורה הלכות טומאת מת ב:ג'

<sup>8</sup> בראשית רבה כ"ח:ג'

doing it again? As a result, we need a way to communicate to Hashem that when we're sprouting from the luz, these body parts shouldn't be a part of that process.

The second mechanism for resurrection has its origins in Masekhet Ketubot:

Ketubot 111a	כתובות קי"א א
<p>And according to the opinion of Rabbi Elazar, will the righteous outside of Eretz Yisrael not come alive? Rabbi Ile'a said: They will be resurrected through rolling [under the Earth to the Land of Israel where they'll be resurrected]. Rabbi Abba Salla Rava objects to this: Rolling is an affliction for the righteous! Abaye said: Tunnels are prepared for them.</p>	<p>וְלִרְבֵי אֶלְעָזָר, צְדִיקִים שֶׁבְחוּץ לְאֶרֶץ אֵינָם חַיִּים?! אָמַר רַבִּי אִילְעָא: עַל יְדֵי גִלְגּוּל. מִתְקִיף לֵהּ רַבִּי אַבְבָּא סַלָּא רַבָּא: גִּלְגּוּל לְצְדִיקִים צַעַר הוּא! אָמַר אַבְי: מְחִילוֹת נַעֲשׂוֹת לָהֶם בְּקֶרְקַע.</p>

While this version of resurrection might seem straightforward, a connection developed between it and the burying of amputated limbs that we saw in a previous section. As these two traditions converged, the belief emerged that not only will the righteous roll to the land of Israel but also their removed body parts. Once in the Land of Israel, the assumption is that the body will become whole again. This would prove distressing for people who have *intentionally* removed body parts as a part of gender-affirming care and would therefore certainly not want them reattached. Therefore, for this mechanism of resurrection, it needs to be made clear to Hashem that these are no longer their body parts and should be left behind as inert pieces of matter.

### **Bitul Eiver - A Solution**

A potential solution for addressing the issues raised in the previous section is to create an analogy between removing body parts as a form of gender-affirming care and brit milah. For various reasons, I am choosing to not use this analogy. (See the attached appendix, *Brit Milah - A Possibility*, for a fuller exploration of my thoughts on the matter.) To address the issues raised by t'chiyat hameitim, I would like instead to engage in an act of liturgical creativity through analogy. I want to adapt the legal formula used for bitul chametz (בִּטּוּל חָמֶצֶת), the nullification of chametz, to our topic as a way of nullifying body parts removed as a part of gender-affirming surgeries.

Two key elements make this option appealing to me. First, chametz within the context of Pesach is undesirable, can take various forms, and is to be removed. Similarly, the appendages we're dealing with are undesirable, can take a variety of forms, and are to be removed. Secondly, the nullification of chametz provides a useful analogy for nullifying

body parts. By nullifying any body part removed during gender-affirming care, it can lose any relation to the body of origin, addressing the issues raised by t'chiyat hameitim.

For our use of this analogy, we should first look at a few halakhot to guide our creative process. The first element to examine is the wording of the formula itself. Standardized language for Bitul chametz is recorded in the Shulchan Arukh:

<b>Shulchan Arukh, Orach Chaim 434:2</b>	<b>שולחן ערוך אורח חיים תל"ד:ב'</b>
...and say "All chametz that is in my domain that I didn't see and that I didn't burn shall be canceled and be as if dust of the earth" (Rema: And he should say it in a language that he understands and if he said it in the holy language of "all חמירא" this includes chametz and leaven, but in any other language he needs to mention each on its own)... <sup>9</sup>	...ויאמר כל חמירא דאיתיה ברשותי דלא חזיתיה ודלא ביערתיה ליבטיל וליהוי כעפרא דארעא: הגה ויאמר הביטול בלשון שמבין (מהר"י ברי"ן) ואם אמרו בלשון הקודש כל חמירא כולל חמץ ושאר (ת"ה סימן קל"ד) אבל בשאר לשונות צריך להזכיר כל אחד בפני עצמו...

The opinion of the Rema that the formula can be said in multiple languages, whichever is easiest to understand, is reflected in the version of the formula found in the Mishneh Torah:

<b>Mishneh Torah, Laws of Chametz and Matzah</b>	<b>משנה תורה הלכות חמץ ומצה ג'ז'</b>
And he should say, "All the chametz that is in my possession that I have not seen - behold it is like dust."	ויאמר כל חמץ שיש ברשותי שלא ראיתיו הרי הוא בטל והרי הוא כעפר.

Another pertinent halakha that I'd like to raise is that a person can be designated to do bitul chametz on behalf of someone else:

<b>Shulchan Arukh, Orach Chaim 434:4</b>	<b>שולחן ערוך אורח חיים תל"ד:ד'</b>
His emissary can nullify (And when the emissary nullifies he needs to say "The Chametz of So and So will be nullified..."). If the man is not in the house he can nullify from wherever he is and if he doesn't do it then it is acceptable that his wife will nullify.	שלוחו יכול לבטל (וכשמבטל שליח צריך שיאמר חמצו של פלוני יהא בטל וכו') [תשובת מהר"י ברי"ן] אם אין האיש בביתו יבטל במקום שהוא ואם אינו עושה כן טוב שתבטל אשתו:

<sup>9</sup> All translations of the Shuchan Arukh are my own



The final two halakhot informing this process are related to timing. We find that the formula should be said after searching for and burning chametz:

<b>Shulchan Arukh, Orach Chaim 434:2</b>	<b>שולחן ארוך אורח חיים תל"ד:ב'</b>
After checking, he should immediately nullify it at night... and it's acceptable to return and nullify it at another time on the day of the 14 <sup>th</sup> ...	אחר הבדיקה מיד בלילה יבטלנו... וטוב לחזור ולבטלו פעם אחרת ביום י"ד...

If chametz is found in one's home after the start of Pesach, it is immediately destroyed on chol hamoed and covered on Yom Tov:

<b>Shulchan Arukh, Orach Chaim 446:1</b>	<b>שולחן ארוך אורח חיים תמ"ז:א'</b>
A person that finds chametz in their house during chol hamoed takes it out and burns it immediately. And if it is found on Yom Tov, they place a cloth on top of it until nightfall and then they burn it.	המוצא חמץ בביתו אם הוא בחול המועד יוציאנו ויבערנו מיד ואם הוא יום טוב יכפה עליו כלי עד הלילה ואז יבערנו

The assumption demonstrated in the formula's language and timeframe is that the known chametz has already been removed. The equivalent of removing chametz in our scenario is having surgery. This means that our formula should be said after the gender-affirming surgery instead of before. That said, it would be appropriate for someone to develop an invocation to prepare oneself before surgery, such as a kavannah.

As seen in the Shulchan Arukh's language, the formula for bitul chametz should be said as soon as possible after the chametz is removed, so it makes sense for this to be true in our case. Given the effects of anesthetics and medicine used for pain mediation, a window of two days after surgery seems reasonable. Within two days, the earliest moment of lucidity should be taken to recite the formula. If one cannot, one should designate another person to say it on their behalf, such as a doctor, family member, or friend.

If one finds chametz after the start of Pesach, one may still destroy it or cover it up to negate the chametz. Given that most people who have had gender-affirming surgeries haven't had access to this teshuvah and in the future people might initially choose not to follow my guidance and then change their minds, I will use the aforementioned halakha to allow for bitul eiver (ביטול אבר), the nullification of the body part, to be said after the initial two days post-surgery if necessary. Meaning lehatchila one should say this formula within

the initial two days, but it is still valid to do bitul eiver even many years afterward if one did not do it during the two days.

Now that we know when to say the formula, we must explore what to say. Because of the accessibility of Hebrew as opposed to Aramaic and my personal love of Rambam, I'd like to use the Hebrew text found in the Mishneh Torah as my inspiration. As we see from the Rema in the Shulchan Arukh, the formula for bitul chametz can be said in any language the speaker understands. Similarly, the formula I'm about to present can be expressed in whichever language is most accessible to the individual.

So, I propose the following formula for an individual to say for themselves:

Any body part removed from my body is no longer part of my body for all purposes and is like dust.	כל איברים שהוסרו מהגוף שלי לא עוד מהגוף שלי לכל דבר וענין וכעפר.
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A person designated to act on behalf of the individual should use this formula:

Any body part removed from x's body is no longer part of her/his/their/etc. body for all purposes and is like dust.	כל איברים שהוסרו מהגוף של פלוני(ת) לא עוד מהגוף שלה/שלו/שלה לכל דבר וענין וכעפר.
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While bitul chametz has developed a more extensive liturgy around it, I'm choosing not to create one for bitul eiver so others who are more creative than I can pick up the mantle and create something extraordinary. As I explain in the attached appendix (*Brit Milah – A Possibility*), it would be appropriate to incorporate language around completing creation, but ultimately, I'm leaving the creative choices to future ritualists.

### ***Shlemut - Larger Implications***

As I stated previously, the implications of queer halakha for the larger Jewish world hover in the background of this teshuvah, and I'd like to bring one of them to the forefront for a moment. Trans people are not the only people that have body parts removed. When body parts are removed, it can be traumatic – for example cancer treatments and amputations. While the circumstances of these surgeries are already personally challenging, the social experience introduces another layer of difficulty.

Our society is ableist and favors people with bodies deemed "proper" and "whole." Consequently, how our society views and treats an individual can change after they undergo something like an amputation. People may express pity or disgust, condescend to the disabled individual, or segregate them. Despite societal discrimination, most people

that undergo these treatments come to peace with their bodies and live full and happy lives. In a word, they are whole.

Therefore, I would like to explicitly state that these formulas I've created can be used by people that undergo amputations of any kind to mark their new state as whole people. I hope they can be used to heal any emotional and psychological traumas that occurred during the process and affirm that these individuals are whole in the face of an ableist society. Of course, to act in accordance with halakha they should meet any requirements for the body parts removed and consult with their community rabbi on how to do so, but when they feel ready these formulas are waiting for them.

### **Psak / TL;dr: Summary**

In summary, gender-affirming surgeries generally do not remove body parts that transfer ritual impurity in a way that introduces the concern of tumat hamet. In the rare cases where tumat hamet might be relevant, removed appendages would have to be dealt with in a way that prevents Cohenim from encountering them unintentionally. Halakha does not require body parts that have been removed and can transmit tumat hamet to be disposed of in a particular way, so any method commonly used to deal with medical waste is permitted.

Once these body parts are removed, there needs to be a way to communicate to G,d that the body parts shouldn't be considered a part of the body for any purpose, including t'chiyat hameitim. So, I created a ritual based upon bitul chametz that can nullify the relationship between the severed body parts and the body of origin. I am calling this ritual Bitul Eiver.

To communicate the change in status of the body parts that have been removed, I recommend a series of formulas created through analogy from the ones used to nullify chametz for Pesach. The formula should be said within two days after surgery by the individual during a moment of lucidity. If they cannot say it during that period, they are allowed to say it when they are next able. This is the wording of the formula:

<b>Any body part removed from my body is no longer part of my body for all purposes and is like dust.</b>	<b>כל איברים שהוסרו מהגוף שלי לא עוד מהגוף שלי לכל דבר וענין וכעפר.</b>
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Someone else may be designated to recite an altered formula for bitul eiver on behalf of the individual, and this is the appropriate language for them:

<b>Any body part removed from x's body is no longer part of her/his/their/etc. body for all purposes and is like dust.</b>	<b>כל איברים שהוסרו מהגוף של פלוני(ת) לא עוד מהגוף שלה/שלו/שלה לכל דבר וענין וכעפר.</b>
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These formulas can also be used by people receiving other forms of medical care as they see fit to ease their transition into a changed body and to declare a state of wholeness once they reach that point emotionally and spiritually in their journey.

## **Appendix: Brit Milah – A Possibility**

I feel the need to address Brit Milah as a framework for locating gender-affirming surgeries within the Jewish tradition. The Sefer haChinukh's discussion of circumcision includes the idea that circumcision is the completion of a person.<sup>10</sup> It has very reasonably arisen in many people's minds that just as circumcision is to complete creation, gender-affirming surgeries can also be seen as completing creation.

However, behind this interpretation of Brit Milah is the question: "Why do we do it?" It appears on the surface to be a form of commanded body modification or mutilation, depending on your perspective, as a sign of the covenant between G,d and the Jewish people. Jewish thinkers have repeatedly tried to find a deeper meaning, such as the one found in Sefer haChinukh, because of what I see as discomfort with this obligation. If this were not commanded, halakha wouldn't permit it because of a general dislike of unnecessary bodily harm.

While I find reading gender-affirming surgeries into this tradition beautiful, a few things make me hesitate from using this as a model for body parts removed as a part of gender-affirming care. If one believes it is a mitzvah to transition, I could see an analogy being drawn between gender-affirming surgeries and brit milah. While some of my colleagues believe it is a mitzvah to transition, I'm not sure if I agree. I'm also opposed to any position that would obligate people in gender-affirming surgeries, something this position could lead to. Circumcision is also an initiation ritual, marking entering into the covenant between G,d, and the Jewish people, whereas gender-affirming care is not necessarily an initiation.

In the future, this may be used as a model for gender-affirming care, and I'm sure it currently is by someone, but at the moment I find it to be an inexact fit. If others pick up this option, I look forward to seeing their argumentation and the implications for the content of this teshuvah. This interpretation could be included in a liturgy of creation that complements my proposal.

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<sup>10</sup> Sefer haChinukh, Mitzvah #2