

# **Conversion & Circumcision: A Trans Approach**

**Written by brin solomon**

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## Shə'eilah

Given trans understandings of gender, who must undergo circumcision as part of their conversion process? What alternate rituals are possible in a gender-expansive framework?

## Təshuvah

This is a question I myself asked on multiple occasions during my own conversion process. I asked it of several rabbis (at my own synagogue and elsewhere) as well as of friends and strangers knowledgeable in halakhah. None of the answers I received were fully satisfying.

To be sure, this is not because they were uniformly trans hostile. On the contrary, many of the answers I found explicitly attempted to make room for trans experiences. Most of them did so, however, in a piecemeal, ad-hoc fashion, attempting (explicitly or implicitly) to fit trans lives into the binary, cissexist framework of existing halakhah. The result, all too often, flattens the complexity of trans existence, providing little guidance to those who don't fit neatly into the boxes provided.

This təshuvah takes the opposite approach. Here, I will take the rich diversity of trans lives as my foundation and fit the halakhah to that reality, the reality of the lives it is meant to guide. I take it as a given that any viable halakhah must be clear, non-oppressive, and not overly dependent on highly localized conceptions of gender so that it can be applied widely. To this end, I will begin by outlining certain shortcomings of past approaches to this question before elaborating the path that seems most viable to me.

### **Part 1: Binary Failures**

Before diving into the halakhic issues at hand, a few words are in order about the approach to gender that underlies this təshuvah. In particular, I would like to foreground two points that will be woven thru this təshuvah, popping up at various critical junctures in the argument. The first involves the terminology: While the distinction between *sex* (used to refer to the physical realm) and *gender* (used to refer to the psychological, social, or otherwise non-physical realm) is a useful one, it is not absolute. Sex and gender bleed into

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one another, and each might affect aspects of the other in myriad ways.<sup>1</sup> As such, I reject the notion that *man* and *male* — or *woman* and *female* — can be teased apart, the former referring to the social realm and the latter referring to the physical. In English, *male* is simply the adjective of *man*, as *female* is the adjective of *woman*; all men are, definitionally, male, and all women female. This is not a teshuvah that has room to say some women are “really” (or “partially” or whatever) men, and some men “really” women.<sup>2</sup>

The second involves a broader philosophy of trans liberation. Many people feel an incongruence between their ideal and actual selves in the realm of gender. Many of these people take steps to bring their actual selves closer to their ideal ones, or attempt to, at least. A woman might ditch the childhood nickname Sammy in favor of Samantha as she grows. A man might ditch Sammy for Samuel instead. Some people take cooking classes, some go to the gym, some change their hairstyle or wardrobe, some get surgery, and on and on, all for the sake of feeling more comfortable in a gendered world.

Currently, our society accepts some of these paths and rejects others. If everyone thinks you’re a boy named Sammy who wears androgynous kiddie rompers and has no upper body strength, you will generally face little resistance if you later start introducing yourself as a man named Samuel who wears suits and regularly goes to the gym. The same is not true if you start introducing yourself as a woman named Eve, wearing dresses, and regularly painting your nails.

But in either case, the fundamental desires are the same. There is a discrepancy between how you *are* in the world and how you *want to be* in the world, and you take steps to rectify it.

In other words, this teshuvah is not written from the perspective that there is some ontological difference between trans people and cis people. The boundaries are blurry, sloshy, permeable; you can no more draw a bright, crisp, inviolable line between butch women and trans men than you can erect a neat picket fence in the mid-Atlantic. As such, this teshuvah rejects any halakhah that hinges on whether a person is *really* trans or trans *enough* to count as a certain category. Such attempts inevitably result in gender policing, and the gender cops are no less bastards than the regular variety. This teshuvah is written

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<sup>1</sup> To give the briefest of examples: A person might decide to change their hormone balance because of their understanding of their gender; the changes wrought by their new hormone balance might then lead them to favor different haircuts or styles of clothing.

<sup>2</sup> For an emphatic expansion of this idea, see Rabbi Xava De Cordova’s forthcoming teshuvah on trans women and nidah.

towards a future where we can all bob around the gender ocean in peace and the categories of *cis* and *trans* become much less salient (or even legible) than they are today.

This philosophy of gender carries over into a philosophy of sex. Trans and intersex struggles are not the same, but they are deeply interlinked. This teshuvah deals largely with genders, but circumcision inevitably raises the topic of bodies, and it is impossible to address this question without taking intersex existences into account. My approach, informed by intersex activists, is fundamentally the same as my approach to genders: We all have bodies, but society accepts some bodies and rejects others. I am writing towards a future not where we have more boxes to fit people's bodies into, but a future where we accept the diversity of humanity and let people decide for themselves how they want their bodies to be.

With all this in mind, we are ready to begin.

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Traditional halakhic sources have repeatedly affirmed that any man who wishes to convert to Judaism must undergo circumcision or *hatafat dam bərit*<sup>3</sup> as part of his conversion process. This halakhah is so emphatic that as recently as 1994, the Conservative Movement's Committee on Jewish Law and Standards approved a teshuvah ruling that a man who cannot be circumcised because of a life-threatening medical condition simply cannot convert to Judaism at all.<sup>4</sup>

It is hardly surprising, then, that the question of circumcision at conversion comes up regularly in general discussions of how gendered halakhot apply to trans people. If this is a halakhah that applies to every man who wishes to convert, which trans people does (or should) the halakhic system consider men?

The traditional answer has been, more or less, anyone with a penis. The initial commandment regarding circumcision, Bəreishit 17:10, uses the Hebrew word זָכָר | *zakhar* to instruct that "every male" be circumcised. *Zakhar* is a word that inclines towards the physical — Mishnah Keilim 13:2, for example, uses it to refer to the nib of a stylus due to

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<sup>3</sup> Hatafat dam bərit is the ritual drawing of a drop of blood for conversion candidates who have already been circumcised prior to their conversion.

<sup>4</sup> Rabbi Herbert J Mandl, "Conversion to Judaism Without Circumcision Due to Medical Complications", the Committee on Jewish Law and Standards, adopted October 5, 1994. A PDF of this reading is currently available here:

[https://www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/19912000/mandl\\_conversion.pdf](https://www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/19912000/mandl_conversion.pdf)

the resemblance to an erect penis — which has inclined many to understand the commandment of circumcision applying along equally physical lines.

When it comes to circumcision for conversion, however, other words enter the picture as halakha unfolds throughout history. In the Babylonian Talmud, the rabbis develop the halakhot of circumcision and conversion beginning on Yəvamot 46a. They begin this discussion as follows:

גַּר שֶׁמַּל וְלֹא טָבַל, רַבִּי אֱלִיעֶזֶר אוֹמֵר: הֲרֵי זֶה גֵּר, שֶׁכֵּן מְצִינוּ בְּאֲבוֹתֵינוּ שֶׁמְּלוּ וְלֹא טָבְלוּ. טָבַל וְלֹא מָל, רַבִּי יְהוֹשֻׁעַ אוֹמֵר: הֲרֵי זֶה גֵּר, שֶׁכֵּן מְצִינוּ בְּאִמָּהוֹת שֶׁטָבְלוּ וְלֹא מָלוּ

*Geir shemal valo taval, Rabi Eli'ezer omeir: Harei zeh geir, shekein matzínu ba'avotéinu shemalu valo tavalu. Taval valo mal, Rabi Yəhoshú'a omeir: harei zeh geir, shekein matzínu ba'imahot shetavalu valo malu.*

A convert who was circumcised and did not immerse: Rabbi Eli'ezer says, "This one here is a convert, as we found with our forefathers, who were circumcised and did not immerse." One who immersed and was not circumcised: Rabbi Yəhoshú'a says, "This one here is a convert, as we found with our foremothers, who immersed and were not circumcised."

Notably, this passage uses the word גַּר | *geir* | "convert" instead of *zakhar* for the person in question. *Geir* can only have a social dimension, since there's no anatomical feature that distinguishes converts from non-converts.

For its part, when the *Shulḥan Arukh* (Yoreh Dei'ah 268) discusses gendered requirements of conversion, it pairs *geir* with אִשָּׁה | *ishah* | "woman" — a word with both physiological and sociological connotations. (The myriad references to an *ishah* giving birth throughout Tanakh — Iyov 14:1 can be given as a paradigmatic example — obviously point to an anatomical dimension, but the discussion of the halakhic differences between a man (אִישׁ | *ish*) and woman (*ishah*) in Mishnah Sotah 3:8 is just as obviously describing different social roles, not anatomies.)

Taken together, I suggest we can use sources such as these to point to a traditional halakhic gender binary that does not make a sharp distinction between the physical and social domains. Instead, this is a gender binary that assumes that to have a penis is to be a man is to fill the social roles men fill. The halakhic sources don't make these distinctions because their authors do not assume that sex and gender are toggles that can be switched independently of one another; they are one category, a melding together of the physical and social, with different terms being used depending on which aspects are to be highlighted.



Nevertheless, there are moments where traditional halakhic sources grapple with people who do not fit into this neat binary. In this teshuvah, I am less interested in the specifics of such cases than I am in the way that the rabbis sought to incorporate these cases into their existing legal framework.<sup>5</sup> For some such cases, the rabbis treated them as essentially men or women who were simply sterile, and therefore exempt from certain mitzvot that depend on procreation — thus the *ailonit* is exempt from levirate marriage, since the Biblical reason for establishing levirate marriage is explicitly to create children.<sup>6</sup> In other cases, the rabbinic approach was to safeguard the categories of *man* and *woman* by halakhically forbidding any possible violation of gendered prohibitions — thus the *androgynos* is prohibited from being secluded with men (in case it seems like a woman is being so secluded) and also from being secluded with women (in case it seems like a man is being so secluded).<sup>7</sup>

Charlotte Elisheva Fonrobert's analysis<sup>8</sup> of such cases is useful here. Regarding the former cases, she notes that “the halakhic literature nowhere suggests that [they] are in fact not ‘really’ man or woman”; regarding the latter, she draws an analogy to the *koi*, a domesticated-wild animal hybrid, and concludes that they “operate primarily as theoretical test cases of the respective binary systems”. The ultimate purpose of such test cases is to fit everything possible into the established system, not to change that system's foundational assumptions; “the primary concern of the list [of which gendered halakhot apply to the *androgynos*] is to uphold the binary gender-grid of Jewish law”.

This, then, is one framework for approaching cases that do not match the halakhic gender binary: Keep the binary intact and address anomalous cases by treating them as effectively one binary gender or the other, frequently applying the maximum possible stringencies lest there be even the appearance of the violation of a mitzvah.

Many contemporary teshuvot that deal with trans experiences use this very framework. Unfortunately, because this framework leaves the halakhic gender binary in place, none of them adequately provide for the insuppressible diversity of human genders and bodies.

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<sup>5</sup> There are several other teshuvot being created by SVARA's Trans Teshuvah Collective that go into much greater depth on these halakhic categories, either to further explore the construction of the halakhic gender binary in the Talmud or to bring these categories forward into the present day as halakhic homes for trans Jews. In particular, I direct readers interested in such matters to Alyx Bernstein and Zachary Carruthers's thoughtful and thoro offerings.

<sup>6</sup> See BT Yavamot 24a.

<sup>7</sup> See Mishnah Bikurim 4 for an extended list of how gendered halakhot relate to the *androgynos*.

<sup>8</sup> Charlotte Elisheva Fonrobert, “Gender Identity in Halakhic Discourse”, Jewish Women's Archive, December 31, 1999, <https://jwa.org/encyclopedia/article/gender-identity-in-halakhic-discourse>

This has specific implications for the conversion process. Some of these tashuvot lean into the physical side of things, ruling that anyone with a certain anatomy, regardless of gender, requires circumcision or hatafat dam b̄erit upon conversion. These tashuvot halakhically misgender trans people who have not had genital reconstructive surgery, treating trans women who have a penis as men and trans men who have a vagina as women.<sup>9</sup> Nonbinary people are similarly misgendered here, regardless of their bodily configuration.

Additionally, these tashuvot — and the binary they seek to maintain — break down when confronted with the true diversity of human genitalia. As the Intersex Society of North America notes, “nature doesn’t decide where the category of ‘male’ ends and the category of ‘intersex’ begins, or where the category of ‘intersex’ ends and the category of ‘female’ begins”.<sup>10</sup> The full range of possibilities may not be equally common, nor may all of them be equally well known to the general public, but they nevertheless exist, and must be compassionately taken into account by halakhic rulings. Intersex people’s bodies are frequently heavily stigmatized, and asking prying questions about them as part of a conversion process has, at a minimum, a high potential for reinforcing this structural harm. Moreover, any attempt to define the exact number of millimeters a clitoris can be before it counts as a halakhic penis seems doomed to be both arbitrary and impossible to reliably assess without creating an entire new category of edge cases.<sup>11</sup>

To avoid the perilous territory of sex, some sets of guidelines on transness, circumcision, and conversion lean into gender instead, ruling that any man, regardless of anatomy, requires circumcision or hatafat dam b̄erit upon conversion.<sup>12</sup> Such approaches still leave

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<sup>9</sup> These tashuvot usually don’t come out and say that they are doing this, but the association between circumcision and maleness is so strong that it is difficult to avoid this impression. This is not unlike the way *AMAB*, while theoretically including some men, some women, and some nonbinary people, is, in practice, overwhelmingly used to refer to cis men or imply that everyone who was assumed to be male at birth belongs in the same basic group as cis men.

<sup>10</sup> Intersex Society of North America, “What Is Intersex”, no date, [https://isna.org/faq/what\\_is\\_intersex/](https://isna.org/faq/what_is_intersex/)

<sup>11</sup> And, of course, people’s bodies are not fixed at birth. Many people make conscious choices to alter their genitalia in ways small and large, and — to pick out just one avenue for such alteration — there is active, ongoing research in developing new techniques for genital reconstructive surgery for trans people. We are already living in a world where some people who were born without a penis wind up having a surgically constructed foreskin; the future possibilities are bountiful. For a more in-depth discussion of several categories of such surgical techniques and their bearing on the mitzvah of circumcision, I direct you to Zachary Carruthers’s offering in this project, tho our ultimate conclusions are somewhat different.

<sup>12</sup> For example, one shul I worked with as part of my conversion process had a policy that “all men are required to undergo milah or HDB and immersion for their conversion, regardless of sex assigned at birth. No woman is required to undergo milah or HDB, but trans women who have not had SRS are not forbidden from doing so”.

many nonbinary people out in the cold — while many nonbinary people are not men, nonbinary men certainly exist, as do demiboy, multi-gender individuals, and others who affiliate themselves in some ways with the gender *man* while distancing themselves from it in others — but they do avoid the other pitfalls outlined above.

Unfortunately, they come with their own pitfalls, even beyond the nonbinary difficulties outlined above. To begin with, questioning people may simply not know their gender at the time of their conversion, and closeted people may feel forced by such a framework to perform a gender that feels wrong to them in a moment of profound intimacy with the Divine. Further, a person who converts as a woman may retroactively question the sufficiency of their confusion if they later come to understand themselves as a man. This is to say nothing of plural systems that may have multiple people with distinct genders sharing the same body. A halakhic framework that relies on gender to the exclusion of sex may avoid invasive questions about a convert's genitals, but it invites invasive questions about a convert's gender that may be difficult — or even impossible — for a potential convert to answer.

If leaning into sex avoids the difficulties of gender and leaning into gender avoids the difficulties of sex, is it possible to combine the two and avoid the difficulty of both?

The approaches I have seen that take this route have not been convincing.<sup>13</sup> Many of them awkwardly carve out a subset of trans women to treat halakhically as men, while simultaneously saying that two people with the same body should enact different rituals depending on the intricacies of their genders in the moment of their conversions. The gender categories relied on tend to be highly localized in space and time, and also have a whiff of “you must be this trans to ride this ride.” Such approaches leave both intersex and nonbinary people with little guidance, and open both groups to invasive questions about personal matters that may be stigmatized or even traumatic to explore. Rather than combining the best parts of leaning into sex and leaning into gender, these combined approaches tend to combine the worst.

At this point, it's worth taking a step back. One of the reasons the mitzvah of circumcision at conversion is so difficult to adapt to these realities is that it intersects both genders and bodies. In this way, it is different than other halakhot that traditionally applied only to men. It does not require a deep grappling with the messiness of human genders and bodies to rule that anyone, regardless of gender, can count in a minyan or serve as a community's

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<sup>13</sup> One such approach, for example, would require circumcision of anyone converting who has a penis with a foreskin, but would only require hatafat dam b'orit from a man who has been circumcised prior to his conversion; a woman in the same circumstances would not have this requirement.



prayer leader, as these are not activities that involve a person's genitals. Because circumcision is so enmeshed in both gender and bodies, it's not clear that any proposed dividing line can avoid running afoul of either non-normative bodies, non-normative genders, or both. The problem, in other words, is less with the specific metrics used to divide the "must be circumcised" from the "do not need circumcision" than it is with the very act of making a division itself.

The interconnected oppressions of transphobia and interphobia raise the stakes here. In many legal jurisdictions, both historically and presently, trans men and women cannot be recognized legally as their actual gender unless they surgically alter their genitals to align with cissexual expectations.<sup>14</sup> Doctors around the world overwhelmingly insist on surgically altering intersex infants' genitals to match these same expectations, even when these newborns are at no risk from their anatomy.<sup>15</sup> Both groups are routinely subject to unjust, invasive, and traumatic policing of their genitals, and it is unacceptable for halakhah to replicate or reinforce that policing.

Given this, it is hardly surprising that attempts to use genders or bodies — alone or together — to demarcate the boundaries of this mitzvah are unsatisfying: Doing so amounts to using the very source of the difficulty in an attempt to resolve it. What we must pursue, then, is a halakhah that uses *neither* gender nor sex to determine how to welcome new converts into the Jewish community. The second part of this tashuvah will explore just such a halakhah.

## ***Part 2: Towards a New Ritual for Embodied Jewish Becoming***

Conversion is the central topic of this tashuvah, but conversion is not the only way new Jews join our communities: Our communities also grow when new people are born into them. As the commandment to circumcise (a subset) of converts ultimately derives from the commandment to circumcise (a subset) of newborns in Jewish communities, it is worth considering the circumcision of newborns before we move forward.

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<sup>14</sup> In addition to all the regular risks and costs of surgery and the difficulties of extended recovery times with limited independence, standard genital reconstructive surgeries result in sterilization and the inability to have one's own biological children.

<sup>15</sup> Even when these surgeries do not cause lasting physical and emotional suffering — and, to be clear, many of them do cause this harm — the very act of performing an unnecessary surgery on someone without their consent is a violation of their human rights that has been condemned by the United Nations. (See <https://www.unfe.org/intersex-awareness/> for more.)

It's possible, after all, to explain historical and contemporary approaches to circumcision to an adult convert and discuss which path they feel best matches their own halakhic practice when it comes to their specific particulars. It is not possible to do this with a baby. Even setting aside the question of whether eight-day-old babies even have a gender in any meaningful sense of the term, there will still be infants whose bodies do not neatly fit into strict normative boxes. Such newborns are not a modern phenomenon, and the Talmudic rabbis themselves grappled with how they should be treated.

The specifics of these disputes are not of the utmost significance here (and, indeed, in the Talmud there are meta-disputes about the point of contention in some of these disputes<sup>16</sup>); what matters for our purposes is that the sages created a ritual for cases where circumcision is impossible for one reason or another despite being mandated by Torah law. This is the ritual of *hatafat dam b̄rit*, of drawing a small drop of blood as a physical expression of entering the Jewish covenant with G-d. While the Talmudic sages disagreed about when *hatafat dam b̄rit* is required, later halakhists erred on the side of expanding the circumstances in which it is required. Of particular note, the Rambam in the Mishneh Torah (Circumcision 1:7) rules that it is required both for converts who have already been circumcised and infants that are born with a penis but no foreskin. So while earlier sources are often ambivalent about whether *hatafat dam b̄rit* is required in these cases, as the halakhah develops on this front, later sources increasingly rule in favor of requiring it.

At this point in our argument, we can make two moves. First, we can synthesize the notion of gender diversity with an infant's inability to communicate the full nuance of their inner lives to those around them. Some portion of newborn babies will grow up to be male, but at birth, it is impossible to know exactly which ones. While there are certainly people who know their gender at a very young age, it is doubtful that even the most precocious infant has a sense of this after a mere eight days outside of the womb, and even if they did possess such self-knowledge at that age, they would still lack the communication skills required to convey this to others, rendering it unknowable to those seeking to determine what halakhic category they fall into. Thus, if we are being strict about *הַמּוּל לְכֶם כָּל־זָכָר* | *himol lakhem kol zakhar* | "circumcise every male<sup>17</sup> among you" (B̄reishit 17:10), it seems that every newborn should be subject to this mitzvah, since any given newborn might turn

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<sup>16</sup> See, for example, the discussion of the *nolad mahul* — someone who is born with a penis but no (apparent) foreskin — that begins on Shabbat 135a.

<sup>17</sup> Above, I argued that *zakhar* is a markedly physical word in Hebrew. This is true, but it does not exhaust its usage in the Biblical corpus. In BaMidbar 1:2, for example, *zakhar* is used to denote those who count for the census of the Israelites, a census that is meant to tally those who can serve in the army, a social distinction that does not depend on a person's genitalia.

out to be male.<sup>18</sup> In a case of doubt involving Torah law, after all, the general practice is to be strict. At this point, the mitzvah stops being a mitzvah for men and becomes simply one more mitzvah that all Jews are subject to.

Second, we can return to the ethics of nonconsensual surgeries on intersex newborns. Once we understand that it is a human rights violation to perform cosmetic surgery on someone who cannot consent — even if the parents and doctors pushing for the surgery in question have a strong belief about how the non-consenting patient’s body “should” be — it becomes difficult to see how circumcision can be permitted. There is no conceptual difference between forcing an intersex infant’s body to conform to a societal expectation of acceptable genitalia and forcing a Jewish infant’s body to conform to a Jewish expectation of acceptable genitalia.<sup>19</sup> In either case, there is no threat to the health or safety of the newborn, there are only adults who believe those newborns’ genitals must be changed and who have the power to forcibly enact those changes.<sup>20</sup> All newborns, therefore, fall into the category of those for whom circumcision is impossible, in this case because of medical ethics. Combining this with the conclusion that all Jewish newborns are subject to the mitzvah of circumcision, it then follows that all Jewish newborns require hatafat dam bərit.

Traditionally, hatafat dam bərit has, strictly speaking, not been understood as an alternative to circumcision: It is a ritual done when circumcision is impossible, rather than an actual fulfillment of a mitzvah. As a practical matter, however, it is regularly treated as such in many communities, especially when it comes to conversion candidates who are already circumcised: It is regularly presented as “equivalent” to circumcision; various Jewish leaders have created liturgical texts as part of a hatafat dam bərit ritual; many converts

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<sup>18</sup> And, indeed, this view is essentially an extension of the view that the Gemara of the Babylonian Talmud attributes to Rabbi Yəhudah regarding this very verse: In Shabbat 137a, the Gemara analyzes certain conclusions of Rabbi Yəhudah to conclude that the *kol* in Bəreishit 17:10 is there to amplify the mitzvah to apply to anyone who could possibly be included in the category of *zakhar*. We might draw the boundaries of “anyone who could possibly be *zakhar*” in a different place than Rabbi Yəhudah or the Gemara, but this is a difference of degree, not kind.

<sup>19</sup> To make this distinction would ultimately require arguing that different ethical standards should apply to intersex infants than apply to endosex infants. This seems like fruitless territory to even approach.

<sup>20</sup> If not outright support for this approach, we can at least find a rhyme in the story of Rav Ada bar Ahavah as recounted in BT Shabbat 135a. Rav Adda bar Ahava had a child who was born circumcised, and went to thirteen mohels, all of whom refused to circumcise the baby. Rav Adda bar Ahava then circumcised the infant himself, with disastrous results. From this story, we can glean at least the kernel of the notion that one should not pursue an unethical circumcision — that no circumcision at all is preferable to such a circumcision.

take steps to imbue the ritual with deep spiritual significance.<sup>21</sup> I believe it is worth breaking with the precedent here to elevate hatafat dam bərit — a ritual practice with established roots dating back well over a thousand years in Jewish history — to the status of an actual fulfillment of the mitzvah of circumcision. By doing so, we can both fulfill our halakhic obligations while also respecting the real and important boundaries of medical ethics as they apply to newborn babies.

At this point, some might blanch at the prospect of a world that has Jews with foreskins in it. And yet we are already living in such a world. To begin with, as a matter of official policy, the Reform movement has welcomed Jewish converts without requiring circumcision since 1892. To be sure, many converts have still been circumcised, either on the encouragement of their rabbi or from their own halakhic understanding, but not all have, and Judaism has endured. Beyond this, some infants born to Jewish parents have not been circumcised due to a danger to the infants' lives — there is a dispute in the Babylonian Talmud (Yəvamot 64b and following) over whether two or three of a mother's babies born with foreskins need to die upon being circumcised for the next to be exempt from circumcision due to mortal danger, but there is no dispute that at some point her subsequent babies born with foreskins should not be circumcised. It is difficult to find precise statistics for either of these cases, but clearly the existence of Jews with foreskins will not lead to the wholesale destruction of Judaism or halakhah.

Moreover, it is difficult to square the tradition's abhorrence of foreskins with the value of respecting our fellow human beings. In Mishna Nedarim 3:11, Rabbi El'azar ben Azaryah says that the foreskin is "מְאֻסָּה | *mə'usah* | repulsive", a stance that is not challenged by his textual interlocutors. I do not believe we can make a Judaism that full-heartedly includes those whose bodies — and whose genitals, especially — are stigmatized by mainstream society while carrying forward a halakhic stance that decries some people's genitals as objectively disgusting. The two are in inescapable tension, and I believe we have an obligation to choose living Jews over conventionally interpreted halakhic tradition.<sup>22</sup>

So if we are welcoming all newborn Jews into the covenant with the ritual of hatafat dam bərit, it stands to reason that we should welcome all converts in the same way. This results in a uniform standard that can be applied to all without getting tangled up in the

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<sup>21</sup> So, for example, the mikveh Mayyim Hayyim lists hatafat dam bərit on equal footing to circumcision in their overview of the conversion process: <https://www.mayyimhayyim.org/conversion-affirmation/the-process-of-conversion/>

<sup>22</sup> And, of course, nothing here is at all an argument against anyone who wants to have their foreskin removed doing so once they are old enough to give informed consent to the procedure.

intractable thicket of genders and bodies discussed in the first portion of this teshuvah. We are now very close to finishing our task.

There remains the question of where, exactly, hatafat dam bərit should be performed. Happily, we can find an answer in the discussions of the Talmudic rabbis. The Gemara of Shabbat 108a discusses a tana'itic dispute about where circumcision should take place, with Rabbi Natan concluding that it should be done “מקום שניכר בין זכרות לנקבות” | *məqom shənikar bein zakhrut lanaqvut* | in the place that distinguishes between maleness and femaleness”. To the rabbis, this clearly meant the genitals, but for us, that is not what determines a person's gender. There are many different theories as to the precise origin of a person's gender — and it may well be that there is no one way that a person comes to have a gender, just as there isn't necessarily one singular way that a person comes to have a national identity — but the ultimate deciding factor is a person's own understanding of their internal experiences, a complex dance of embodiment, thought, desire, intuition, and feeling. If we indulge in a bit of poetry, we can say that a person's gender — what decides their maleness, femaleness, bothness, or otherness — is determined in their heart.

And indeed, this is a possibility that finds support on the very same page of Talmud. The Gemara presents Rabbi Natan's opinion because of a conversation between Rav and Qarna in which Qarna cites Dəvarim 10:16<sup>23</sup> to suggest that circumcision might be done over the heart. Qarna meant this suggestion as a challenge for Rav to disprove, but we need not accept Rav's disproof. Dəvarim 10:16 has traditionally<sup>24</sup> been understood as a command to open your heart to Torah and separate yourself from impediments to holy living; it doesn't seem like a great stretch to perform a ritual over the heart to symbolically enact this goal. If one needs further proof, one could even add Mishlei 14:10 — לב יודע מרת נפשו ובשמחתו — לא יתערב זר: | *Leiv yodéi'a marat nafsho uvsimḥato lo yit'arav zar* | A heart knows its own sorrow; its joy is shared by no stranger. — and note how nicely its sorrow and joy map onto the ideas of gender dysphoria and euphoria. We each have our own paths thru the world, and no one else knows what makes us feel best and worst.

Here, then, are several lines of support leading to the same conclusion. I see no good reason to break with this consensus: To welcome a new Jew into the covenant, we should draw a small, ceremonial drop of blood from the skin above their heart. This should be done for newborns eight days after birth and for converts before immersing in the mikveh. As this act is done to fulfill a mitzvah, it should be preceded by a blessing. While other possibilities exist, and new ones may be devised, I suggest a blessing that concludes, after

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<sup>23</sup> ומלתם את ערלת לבבכם | *umaltem eit orlat lavavkhem* | And circumcise the foreskin of your heart

<sup>24</sup> See, for example, the commentaries by Rashi, Ibn Ezra, and Ramban.

the introductory formulas, “אֶת דַּם הַבְּרִית... | ...*lāhatif et dam habərit* | ...to drop the blood of the covenant”.

## **Pəsaq**

All Jewish converts and newborns should undergo hatafat dam bərit, performed over their heart. This applies regardless of their gender or anatomy.

1. This ritual enactment is a fulfillment of a mitzvah, and so should be accompanied by a blessing.
2. Those who have a foreskin may, if they wish, opt to have it removed once they are able to give informed consent, just as they may opt for other surgeries that reconfigure their genitals.

