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So that One's Soul Be Tranquil: A Jewish Definition of Health and Gender-Affirming Care

In 2023, 510 anti-LGBTQ+ bills were introduced at the American state level, 167 of them having to do specifically with medical care for queer individuals. More than two-thirds of those were focused on blocking gender-affirming care for trans youth.¹ As the politics of gender-affirming care continue to be a central discussion in the American public square, questions also circulate in medical ethics circles. In medical ethics the questions regarding gender-affirming care are often focused on the philosophical and definitional basis for the interventions, as well as about exemptions for physicians and medical institutions that object to this kind of care on religious or other ideological grounds. This paper takes up the first question regarding definitions of medicine and health, and how they can be harnessed to support or oppose gender-affirming care. Some arguments against gender-affirming care (which often stem from religious ideologies) are based on a narrow definition of health, where the purpose of medical care is only to restore an individual to typical physical functioning. Per this view, gender-affirming interventions cause unnecessary harm to the body. Some defenders of gender-affirming care argue that the interventions are necessary due to the intensely negative mental health consequences of gender dysphoria, including depression and suicidality. I want to offer here a different, and religiously based, definition of health, one that provides a positive grounding for gender-affirming care outside of life-threatening mental illness. The Jewish medieval thinker Moses Maimonides, in his *Laws of Character Traits*, argues that the purpose of health is to be the best possible servant of God, which necessitates proper sleep, nutrition, and that one's "soul be tranquil."² This definition of health includes more than baseline functionality, and it presents an argument that an individual must be able to live with integrity regarding their identity so they can be "tranquil," flourish, and serve God properly. This capacious definition of health as a kind of human flourishing directed toward the larger good of serving God provides a sound basis for allowing trans people to seek out health care services that allow them to live with the utmost integrity and sense of wholeness.³ I will also note that in Judaism, being a servant of God can require technically physiologically unnecessary bodily interventions, namely male circumcision. Thus, as a category these kinds of interventions cannot simply be seen as damaging God's already "perfect" creation, like in other definitions of the body and health. Although this argument does not solve all the Jewish *legal* issues regarding trans health care, and is not meant as a

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¹ Annette Choi, "Record Number of Anti-LGBTQ Bills Were Introduced in 2023," *CNN*, January 3, 2024, sec. CNN Politics, <https://www.cnn.com/politics/anti-lgbtq-plus-state-bill-rights-dg/index.html>.

² Maimonides, *Mishneh Torah, Hilchot Deot*, 3:3. Simon Glazer translation.

³ I note that some gender non-conforming people also seek out medical interventions while not seeking to transition totally to a new gender. For the sake of brevity and clarity I use "trans" here as a catchall for those seeking gender-affirming care while noting that there are different ways to live out and express this identity.

universal ethic, it provides an alternative religious understanding of health that positively grounds gender-affirming care.

Before diving into the content of these arguments, I want to note a few important subjects that this paper does *not* address. First, although this is a paper that deals with a specific Jewish definition of health, it does not address the halakhic (Jewish legal) issues around gender-affirming care per se.⁴ Some of the halakhic considerations regarding gender-affirming care are bans on self-mutilation and sterilization. Although I believe that the definition of medicine I promote could help remove these halakhic issues from the proverbial table, this is not a halakhic argument, and those arguments ought to be made by experts in these areas of Jewish law. Second, this argument is also not specific to pediatric gender-affirming care and does not address the attending ethical issues when it comes to children and health care. Most of the bills and much of the public discourse on gender-affirming care revolves around the potential long-term consequences of certain interventions on young bodies and the kinds of consents necessary for this kind of care. Jewish ethics, as far as I am aware, does not have much to add to this debate beyond stating that parents are responsible for the health of their children. Although my argument provides a positive basis for providing (and seeking) gender-affirming care, whether for adults or children, it does not address the particular ethical questions raised by providing care to those under eighteen. Finally, there is also a debate circulating about the long-term safety of certain interventions used to help in gender transition (particularly for children) that ought to be taken up only by medical experts.⁵ My argument here only provides a basis for considering this kind of care (including psychiatric, hormonal, surgical, and other interventions) to be legitimate medicine, and does not weigh in on specific interventions and the safety thereof.

The Basis for Arguments For and Against Gender-Affirming Care

In bioethics circles, there is a current debate regarding the very basis for gender-affirming care: namely, what kind of medicine is it, and what grounds the care as a justified medical intervention? These are not questions just being asked by those who oppose or wish to limit gender-affirming care, but also a question asked by supporters who wonder whether the care must resolve a medical/psychiatric problem or can be more positively grounded in affirming a deeply desired identity. It is important to note that gender-affirming care includes a broad suite of interventions, some of them psychological, hormonal, and surgical, and that not all trans people require access to health services in order to transition in the way they desire. Here I present two influential arguments about the grounding for gender-affirming care, as well as the definitions of health and health care required for those grounds. I believe both of these definitions are inadequate as a way to positively ground gender-affirming care, and a different foundation should be sought.

⁴ For some of the halakhic issues that stem from trans care and identities and the work being done to address them from the Jewish trans community, see: “Trans Halakha Project,” *SVARA: A Traditionally Radical Yeshiva* (blog), accessed March 5, 2024, <https://svara.org/trans-halakha-project/>. Particularly of interest to the subject of this paper is Alexandra Rose Kohanski teshuva (rabbinic legal position paper): “Be Whole: A Halakhic Approach to Gender & Transition” (Trans Halakha Project’s Teshuva – Writing Collective at SVARA: A Traditionally Radical Yeshiva, 2023), <https://svara.org/twc/>.

⁵ For how some of these debates are playing out in Europe, and its reverberations in US politics, see Kaja Klapsa, “The Real Story on Europe’s Transgender Debate,” *POLITICO*, October 8, 2023, <https://www.politico.com/news/2023/10/06/us-europe-transgender-care-00119106>.

“The Way of Medicine” Delegitimizing Gender-Affirming Care

Physician and clinical ethicist Farr Curlin and Christian ethicist Christopher Tollefson have put forward a narrow definition of health that delimits certain kinds of procedures commonly practiced today, such as contraception, abortion, certain palliative interventions, and gender-affirming care as outside of “medicine.” In their book *The Way of Medicine: Ethics and the Healing Profession*, Curlin and Tollefson contrast what they consider to be the proper purview of medicine with a more consumer directed model. They write:

According to the Way of Medicine, health is the end or purpose of medicine, the principal goal that medicine seeks, the principal good that is realized internal to medicine’s practice. But “health” here is meant in a limited, circumscribed, and embodied sense: what [Leon] Kass describes as “the well-working of the organism as a whole,” realized and manifested in the characteristic activities of the living body in accordance with its species-specific life-form.⁶

This notion, taken from influential conservative bioethicist Leon Kass, argues that health is the basic and normal functioning of the human body, and that interventions that do not explicitly restore a human body to typical functionality are outside the definition of health and thus beyond the proper role of the physician. For example, according to Curlin and Tollefson, prescribing contraception to an otherwise healthy young woman to prevent pregnancy is not medicine, since it makes the patient temporarily sterile. “Normal” function for a young woman having heterosexual intercourse would be fertility and pregnancy, something contraception prevents.⁷ As they write, prescribing birth control “contradicts the physician’s commitment to the patient’s health” and is not even “medicine at all, even if it has many of the trappings of medicine.”⁸ It should be noted that this is not a standard definition of health, and indeed “health” is a tricky term to define. While health has been used to mean “the absence of disease,” it also has been related to concepts such as “wellness” and “well-being.”⁹ The World Health Organization defines health as “state of complete physical, mental, and social well-being, and not merely the absence of disease or infirmity.”¹⁰

The application of Tollefson and Curlin’s extremely narrow definition of health to gender-affirming care recategorizes this kind of clinical care as being outside medicine. Since “typical physical functioning,” according to Tollefson and Curlin’s view, would be for trans people’s sex expression to accord with their sex assigned at birth, interfering in those processes would be outside

⁶ Christopher Tollefson and Farr Curlin, *The Way of Medicine: Ethics and the Healing Profession* (Notre Dame: University of Notre Dame Press, 2021), 30-31.

⁷ Notably, some consider pregnancy, an often-dangerous state, to be more akin to disease than standard health.

⁸ Tollefson and Curlin, 98. This is an extremely narrow definition of health, one which would mean much of contemporary medical care is not medicine. Most bioethicists reject such narrow definitions but it is still an influential account. In particular Leon Kass, who was one of the key proponents of such a definition, is still widely read, and also had a major influence on policy during the second Bush administration.

⁹ Gary B. Ferngren, *Medicine and Religion: A Historical Introduction*, 1 edition (Baltimore: Johns Hopkins University Press, 2014), 7.

¹⁰ “Constitution of the World Health Organization,” accessed March 5, 2024, <https://www.who.int/about/accountability/governance/constitution>.

of medicine. Worse, it would be potentially intentionally destroying or damaging the “basic good” of health. Curlin and Tollefson explain that the kinds of interventions sometimes performed in gender-affirming care, if they were not consensual, “would be considered profound mutilations of a *healthy* body.”¹¹ For Curlin and Tollefson, their idea of proper medicine, which “takes its bearings from the health of the patient as a member of the human species,” would see that “every surgical attempt to change an individual’s sex damages or destroys some secondary sex characteristic that otherwise displays health and is necessary for reproductive function, itself a constitutive dimension of human health.”¹²

Notably, Curlin and Tollefson’s argument is not based explicitly in religious thought. Indeed, they argue that their position is not based in “bigotry or phobia” but rather in solidarity with trans patients, because clinicians ought to “act only in ways that are congruent with the patient’s health.”¹³ However they also argue that medical interventions must be “open to other basic goods, including marriage and child-bearing,” and in another place they refer to marriage as the “one-flesh union of marriage.”¹⁴ Although Christianity is not mentioned explicitly here, marriage and child-bearing are considered goods in that particular religious context, and the language of “one-flesh” is drawn directly from Genesis.¹⁵ William Parker, in a response to an address Curlin delivered at the University of Chicago in November 2023, argues that Curlin’s definition of medicine is limited to “a specific religiously derived conception of a ‘good life’ and therefore health.” For Parker, this is made explicit when Curlin “describes procreation as a ‘characteristic feature of a healthy human being.’”¹⁶ As Parker and others contend, for many in American secular society singlehood and/or childlessness is a key component to their understanding of the good life and flourishing. Curlin and Tollefson’s argument also neglects the fact that for many women pregnancy is dangerous; some like Parker consider pregnancy to be a disease.¹⁷ The idea that these are basic goods constitutive of a healthy individual is drawn, at least partially, from a Christian picture of the good life.

Addressing Acute Mental Illness as Grounds for Trans Care

Whatever the external ideological commitments of the authors, Curlin and Tollefson offer a narrow definition of health that excludes gender-affirming care, and thus delegitimizes it. The most popular basis for supporting trans care, which grounds the need for access to transition care in severe mental illness, can also be problematic. Not all trans people who wish to access gender-affirming care have major mental illness, and so this kind of grounding potentially delegitimizes an individual’s real desire for transition care. Some trans individuals do suffer from significant mental

¹¹ Tollefson and Curlin, 109. Emphasis my own. Curlin also laid out this argument in a presentation at the MacLean Center Conference in Clinical Ethics in 2018. A video of his talk can be seen here: *Farr Curlin - Gender Transition Services: Progress or Medical Hubris?*, 2018, <https://www.youtube.com/watch?v=4LT1rE66S30>. The video has been viewed close to 1000 times.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid. Both Curlin and Tollefson are open about their Christian commitments in other writings.

¹⁵ Genesis 2:24. The full verse is “Hence a man leaves his father and mother and clings to his wife, so that they become one flesh.” NJPS.

¹⁶ William Parker, “Response to “Detransitioners, Civil Discourse and the Silence of Clinical Ethics” (MacLean Lecture Series, MacLean Center for Clinical Medical Ethics, University of Chicago, November 15, 2023), 2-3.

¹⁷ Ibid, 3.

health disorders, and indeed, for many people gender-affirming care is lifesaving and relieves mental health burdens.¹⁸ But that does not mean that all trans people wish to access gender-affirming care due to mental illness. Still, many have grounded the “rights” to gender-affirming care in “the right to be cured of, or to mitigate, an illness,” namely gender dysphoria.¹⁹ Tying gender-affirming health care to mental illness potentially leaves trans people who do not have acute mental distress without access to this care. It can also have the effect of making mentally stable trans people feel as though they are “not trans enough,” for not suffering due to their gender non-conformity.²⁰ Many trans people, activists, and institutions wish to move away from pathologizing trans identities, which can increase stigmatization and stereotypes of trans people as “mad, bad, deceived, or deluded.”²¹ The need to pathologize trans people and provide care in order to “cure” mental illness returns us back, in some respects, to the position of Curlin and Tollefson, where medical care can only be defined as restoring one to normal functioning (here, restoring one’s mental health).

Despite the issues with this grounding, in the public imagination gender-affirming care is often defended as a necessary intervention to save otherwise endangered trans people. In public discourse about gender-affirming care, many simply claim that gender-affirming care is “lifesaving,” implying that without access to this care trans patients will experience extreme suffering and potentially commit suicide. For example, a news article on the page of the University of Columbia’s psychology department states:

It is well documented that TGNB [transgender and nonbinary] adolescents and young adults experience anxiety and depression, as well as suicidal ideation, at a much higher rate than their cisgender peers. According to The Trevor Project’s 2020 National Survey on LGBTQ Youth Mental Health, 54 percent of young people who identified as transgender or nonbinary reported having seriously considered suicide in the last year, and 29 percent have made an attempt to end their lives. In contrast, numerous research studies have found that gender-affirming care leads to improved mental health among TGNB youth.²²

This kind of narrative is also present in popular culture. For example, the fourth season of the hit British TV show *Sex Education* follows the story of Cal, a nonbinary teenager who was assigned female at birth. When Cal gets their period they enter a deep depression, eventually running away, worrying the larger community that they might harm themselves before being found. The storyline ends with their larger school community donating the proceeds from a fundraiser to pay for Cal’s

¹⁸ There is some discrepancy in the literature about this, whatever the case may be, not *all* trans individual seek gender-affirming care due to severe mental illness. See Christina Richards et al., “Trans Is Not a Disorder – but Should Still Receive Funding,” *Sexual and Relationship Therapy* 30, no. 3 (July 3, 2015): 309–10, <https://doi.org/10.1080/14681994.2015.1054110>.

¹⁹ Rach Cosker-Rowland, “Integrity and Rights to Gender-Affirming Healthcare,” *Journal of Medical Ethics* 48, no. 11 (November 1, 2022): 832, <https://doi.org/10.1136/medethics-2021-107325>.

²⁰ Ibid.

²¹ Ibid.

²² Kareen M. Matouk and Melina Wald, “Gender-Affirming Care Saves Lives,” Columbia University Department of Psychiatry, March 30, 2022, <https://www.columbiapsychiatry.org/news/gender-affirming-care-saves-lives>.

transition care, thus “relieving” Cal’s severe depression.²³ Cal’s story, as well as the way gender-affirming care is discussed in many popular publications, grounds the need for trans care in the requirement to relieve the mental illness of a trans individual. While there are trans people who are at much higher risk of self-harm and suicidal ideation, this basis for care leaves out the many who are not and yet still deserve access to the interventions they need. A different foundation or definition of medicine is required to ground gender-affirming care that is capacious enough to both consider it medicine and not be tied only to resolving mental health issues.

Maimonides and a Broad Definition of Health

A different definition of health, and thus a different understanding of the purpose of medicine, could help us ground gender-affirming care as legitimate health care, outside of addressing a mental health disorder. For this definition, I want to turn to an unlikely source – Moses Maimonides, a 12th century Jewish legalist, philosopher and physician. Maimonides wrote one of the first Jewish legal codes – the Mishneh Torah – and is still considered today to be one of most important halakhic thinkers of all time, as well as a major theologian. Maimonides also wrote explicit works on medicine, often Hebrew translations and commentaries on Galen, the reigning medical authority of the time.²⁴ Here I am interested in his legal and ethical text *Hilbot Deot*, “laws of character traits,” which is one of the tractates that makes up the Mishneh Torah. *Hilbot Deot* is an ethical text that in many respects adapts Aristotle’s virtue ethics from the *Nicomachean Ethics* to 12th century Jewish life in medieval Muslim Cairo. Maimonides, echoing Aristotle, advises that one generally take a middle path between extremes, while aiming at a highest good.²⁵ Although the focus of the tractate is on virtue and character, much of the text is taken up with medical advice. The text is *not* a Jewish legal text per se, since the advice provided is not about matters related to halakha. So when Maimonides’ advises a certain diet, sex life, or relationship to alcohol, the rules he lays out are not based on keeping kosher, or menstrual purity laws, or the restrictions on consuming wine with non-Jews, but rather about how to live the good life alongside a life of Jewish observance.

How to live a healthy life, and why, is part of Maimonides discussion here as he directs the individual to center their life towards service of God. *Hilbot Deot* includes long excursions on healthy eating habits, hygiene, sleep, and exercise as part of developing the right way to live one’s life.²⁶ In one particular passage Maimonides lays out why one ought to life a healthful life:

He who follows the medical directions, but sets his heart merely to keep his body and limbs healthy and beget children to do his work and strive for his needs, such is not the good way.

²³ “Season 4, Episode 6” and “Season 4, Episode 8,” *Sex Education* (Netflix, September 21, 2023), <https://www.netflix.com/watch/81562902?trackId=255824129>.

²⁴ For more on Maimonides’ medical writings in relationship with his Jewish religious works see: Elinor Lieber, “Medicine Versus Religion in the Works of Maimonides,” *Oriente Moderno* 19 (80), no. 3 (2000): 577–90.

²⁵ Mishneh Torah, *Hilbot Deot*, Chapt 1.

²⁶ See Mishneh Torah, *Hilbot Deot*, chapt. 4 for the details of Maimonides personal health regime. The chapter begins with a reiteration of Maimonides’ idea of the purpose of medicine: “Since maintaining a healthy and sound body is among the ways of God - for one cannot understand or have any knowledge of the Creator, if he is ill - therefore, he must avoid that which harms the body and accustom himself to that which is healthful and helps the body become stronger.”

But he should set his heart to have a sound and strong body so that his soul be tranquil to acquire the knowledge of the Lord; for, it is impossible that one should comprehend and improve himself in scholarship when he is hungry, or sick, or when one of his limbs pains; [...] Consequently, one who follows such a way all of his life, is constantly in God's service, even when he is buying and selling, even when he performs the grossest duty, seeing that his thought beneath it all is to find enough to satisfy his wants, so that his body be sound, ready to serve God. Even when one sleeps, if his sleep be purposeful so that his mind be rested, and rests his body so as to prevent himself from becoming sick and be unable to serve God as a result of sickness, it will be found that even his very sleep is part of his service to God, blessed is He!²⁷

Maimonides here outlines for us a purpose and definition of medicine and health respectively.²⁸ One is meant to maintain their health so that they can be in service to God. This requires proactive activity: eating right, getting enough sleep, exercising. One must “set his heart” to “have a sound and strong body so that his soul be tranquil” requiring active cultivation of the healthy, whole, and flourishing human body. This is not the more narrow definition of medicine as restoring physical functioning or health as merely the absence of disease. Rather, here we see health as physical and mental flourishing. As Benjamin Gesundheit explains, physical health for Maimonides “is a precondition for a healthy mind, which is a requisite for recognizing God.”²⁹ Noam Zohar, in a long excursus on Maimonides’ position on the role of the divine in healing, explains that in the rabbi’s view whatever medical intervention “is deemed desirable and appropriate constitutes the legitimate goal of medical practice,” since it all aims of the ultimate good of making an individual able to serve God.³⁰

What does this mean for gender-affirming care? If for Maimonides the purpose of medicine is to provide a sound and strong body, as well as a tranquil mind, in order to allow for the service and contemplation of God, than gender-affirming care, which provides for that wholeness of mind and body, should be considered legitimate and necessary.³¹ One does not need to be in the depths of depression, experiencing suicidality, or otherwise suffering from severe mental illness to think that gender-affirming care will bring tranquility and soundness. Gender-affirming care that makes an individual feel at home in their body and secure in their identity allows a trans person to serve God more fully. In traditional Judaism, the commandments are also gendered (certain commandments

²⁷ Mishneh Torah, *Hilbot Deot*, 3:3. Simon Glazer translation.

²⁸ From a disability lens perspective Maimonides focus on a physical health and strength are problematic. Although Maimonides himself would not likely say this, I think we can take his call for soundness and tranquility to be individualized to one’s sense of what that means for their particularly body, whether it is living with chronic illness, disability, or any of the other myriad long-term vulnerabilities one can face. The extra sleep necessary for some, or other interventions, are all part of one’s service to God in this paradigm.

²⁹ Benjamin Gesundheit, “Maimonides’ Appreciation for Medicine,” *Rambam Maimonides Medical Journal* 2, no. 1 (January 31, 2011): 3, <https://doi.org/10.5041/RMMJ.10018>.

³⁰ Noam J. Zohar, *Alternatives in Jewish Bioethics* (Albany NY: State University of New York Press, 1997), 33.

³¹ In *The Soul of the Stranger* Joy Ladin has a lengthy discussion of how Maimonides’ negative theology could have intersected with her trans identity and relationship with God. She does not discuss Maimonides’ medical work. See Joy Ladin, *The Soul of the Stranger: Reading God and Torah from a Transgender Perspective*, HBI Series on Jewish Women (Waltham MA: Brandeis University Press, 2018), 65-68.

are only incumbent on men, others on women) and so unifying one's gender expression and identity may impact exactly how one properly performs their service to God. Gender-affirming care here is helping an individual to flourish such that they can live an authentic life of integrity, firm in their own identity, practice, and place, and so be fully in service to God.³²

This conception of trans health as allowing for the soundness and the tranquility necessary for the higher good of divine service dovetails nicely with arguments for gender-affirming care as being necessary for trans people to live lives of integrity. To live with integrity in this sense is for there to be “a congruence or fit between the commitments, projects, or principles that are constitutive of one's identity or identities and one's actions.”³³ Rach Cosker-Rowland argues that this need to live with integrity can serve as a grounds for the right to gender-affirming care. Cosker-Rowland writes that many trans individuals state that they have transitioned in order “to be able to live their lives authentically or to live their lives as their true or best selves—and some report that they felt they were living inauthentically before transitioning.”³⁴ Thus “*for many trans people, GAH [gender-affirming health care] is essential to their transition or desired transition, which for many is essential to their living authentically.*”³⁵ Living authentically, I would argue, is similar but not the same as living such that one can flourish and serve God. Living with integrity and authenticity, however, are key components to the soundness and tranquility that Maimonides' believes true health requires. Although this is a Jewish definition of health, and unlike the idea of integrity, Judaism does not aspire to provide a universal ethic, I do think this definition is a useful way of broadening the scope of what we consider medicine and how that can support access to gender-affirming care.

It must be noted however, that Maimonides is not generally considered a progressive voice on issues of gender. First, Maimonides' lived in a world of gender binaries and likely could not conceive of the trans and genderqueer identities we see around us today.³⁶ Maimonides adopted Aristotle's system of gender, associating men with form and women with matter, elevating the gender binary to metaphysical significance. Correspondingly, in his Jewish theology it is the male that endows the female “with meaning and value.”³⁷ For Maimonides, the female always desires to be joined with masculine form. This ontological conception of women and gender caused Maimonides to express, in the words of Daniel Boyarin, a “virulent misogyny” that was “more virulent, indeed, than any known in the older formation of midrashic Judaism.”³⁸ Maimonides'

³² In the teshuva “Be Whole: A Halakhic Approach to Gender & Transition” Alexandra Rose Kohanski makes a similar but slightly different argument regarding the need in Judaism for one to “be whole” as a foundation for a commandment for trans people to gender transition. See Alexandra Rose Kohanski “Be Whole: A Halakhic Approach to Gender & Transition,” (Trans Halakha Project's Teshuva - Writing Collective at SVARA: A Traditionally Radical Yeshiva, 2023), <https://svara.org/twc/>.

³³ Cosker-Rowland, 833.

³⁴ Ibid.

³⁵ Ibid, 834. Emphasis the author's.

³⁶ Rabbinic texts that would have been familiar to Maimonides do acknowledge the existence of sexualities outside of male and female, what we might call intersex. These would be the class of persons known as the *androgynos*, *tumtum*, *aylonit*, and *saris*. All of these classes deal with people with genitalia and sexual expression that do not easily align with male or female. None of them classically however refer to people who transition between genders or choose to exist outside of the gender binary despite being designated a certain sex at birth.

³⁷ Abraham Melamed, “Maimonides on Women: Formless Matter of Potential Prophet,” in *Perspectives on Jewish Thought*, ed. Alfred Ivry, Elliot R. Wolfson, and Allan Arkush (Amsterdam: Harwood Academic Publishers, 1998), 100.

³⁸ Daniel Boyarin, *Carnal Israel: Reading Sex in Talmudic Culture* (Berkeley CA: University of California Press, 1993), 58.

binary thinking and views on women notwithstanding, it is worthwhile to adapt his conception of medicine and how it can be useful in our contemporary frameworks for grounding trans health care, while acknowledging that this was not a leap the rabbi would have been able to make himself.

Circumcision and Physiologically Unnecessary Interventions to the Body

I want to make one final argument regarding a Jewish understanding of health and the body and the debate regarding gender-affirming care. One of the tenets that grounds definitions of health like Curlin's and Tollefson's is the idea that the body, generally speaking, is perfect and should not be intervened upon unless necessary. Indeed, it is generally true in medical ethics that one should not intervene without positive gain, and the first rule of doctoring is "do no harm."³⁹ But certain non-physiologically necessary interventions are generally allowed in Western medical ethics and clinical practice, for example cosmetic plastic surgery or vasectomy.⁴⁰ But I would also argue that although Judaism does not allow for self-mutilation, it does not conceive of the body as "perfect," or not requiring any kind of intervention. The centrality of male infant circumcision in Judaism belies any idea that we are born physically perfect; perfectly healthy baby boys require a minor surgery in order to enter the Jewish covenant. Circumcision is one of the oldest practices in Judaism; in the Bible it is a commandment given to Abraham as part of a promise of covenant and future descendants. In Paul's letters in the New Testament circumcision also becomes the sign of Jewish identity and fidelity to the commandments, while Christians were released from circumcision and other ritual law. This movement away from circumcision allowed Christianity to become a universal religion and distinguished it from Judaism. Today, for a male to convert to Judaism he must undergo some kind of circumcision, making the medically unnecessary procedure a key signifier of Jewish identity and religious commitment.⁴¹

Indeed, those who oppose circumcision often do so by arguing that it maims the otherwise perfect male body and genitalia. Lindsey Jackson, in a study of Jews in Montreal who choose not to circumcise their sons, shows that anti-circumcision activists argue that the procedures "pollute and corrupt the body" and render imperfect what was born correct.⁴² Much of this anti-circumcision literature is based on a Christian understanding of the body as created perfect by God. As Jackson

³⁹ This, in traditional Western medical ethics would be the need to outweigh non-maleficence with beneficence.

⁴⁰ For example Cosker-Rowland writes "there are positive rights to health care and medical procedures that are not grounded in health and harm-reduction. For instance, in the UK everyone has a right to a vasectomy funded by the NHS if they request one; one does not need to demonstrate that one needs a vasectomy for one's health or to prevent harm coming to one in order to be provided with a vasectomy. Similarly, rights to abortion are not grounded in harm-reduction or health-based considerations, but are normally thought of as grounded in autonomy. And, in many jurisdictions, people have positive rights to an abortion in virtue of their rights to bodily autonomy rather than their rights to health. So, positive rights to health care are not only grounded in rights to health or health related considerations." Cosker-Rowland, 835.

⁴¹ One significant difference between circumcision and the idea of health I derive from Maimonides' is that *brit milah* is an objective ritual required of all those born with a foreskin, while health is based in subjective criteria related to individual flourishing and tranquility. I do not mean here to argue that the objective nature of *brit milah* should be translated to health, since the planes of ritual and of health are here quite distinct. *Brit milah* is a ritual which is done "correctly" by following prescribed steps, with clear beginnings, ends, and procedures for proper completion. On the other hand, medical care and health is not so proscribed and precise.

⁴² Lindsey Jackson, "Brit Without Milah: Jewish Responses to Ritual Circumcision in Canada and the United States" (PhD, Concordia University, 2022), 127. <https://spectrum.library.concordia.ca/id/eprint/991084/>.

explains in these materials, “God creates bodies with foreskin, and these perfect, Godly bodies should not be tampered with.”⁴³ I would argue that this kind of thinking is relatively absent from Jewish conceptions of the body – instead the human body, while good, is also something that is vulnerable, requires maintenance, and at times intervention. Physiologically non-required procedures are sometimes recommended or required in order to live out one’s life fully as Jew, seeking to serve God. I should note that circumcision itself is a very gendered ritual, and only men have such a bodily ritual for entering the Jewish covenant.⁴⁴ On the opposite end of the spectrum, intersex infants often have non-essential genital surgeries forced upon them that they do not consent to. These surgeries are done to them so they appear like the norm, and can be considered “fit” to, if not serve God, then participate in society.⁴⁵ That being said, the centrality of circumcision undermines any attempts to base a Jewish notion of health on the idea that the body begins as “perfect” and that medical care is only an attempt to restore the body to its original perfection.

Conclusion

In the contemporary debate surrounding gender-affirming care, different definitions of health and questions regarding the purposes of medicine are being harnessed to argue for or against this kind of care. Extremely narrow definitions of health can rule out gender-affirming care as legitimate medical interventions. Those in favor of gender-affirming care fall back on linking trans identities to severe mental health burdens in order to justify the necessity of this care. Most health care, however, does not require that one suffer severe mental distress to be legitimate or accessible. In this paper I have presented an alternative Jewish definition of health stemming from the work of Moses Maimonides that can ground the legitimacy of gender-affirming care positively. By thinking of medicine and health more broadly as something necessary to allow an individual to flourish such that they can fully serve God, we can see how gender-affirming care is necessary for that service. Gender-affirming care allows an individual to live with integrity, with confidence in their identity and place in the world, such that they can focus their energies on a higher good (in Maimonides’ case, the service and contemplation of God). As a Jewish definition of medicine, and one reliant on a particular theistic belief, this is not going to be a universal foundation to legitimize gender-affirming care. I believe, however, that this conception of health could be crucial in several ways. First, for Jewish trans people, particularly those embedded in religious Jewish communities, this understanding of health could be legitimizing, affirming, and comforting. In the larger public, this religious picture of health care could help others search for more capacious understandings of medicine and health that can affirm trans care and identities, whether those stem from religious or secular commitments. Finally, I hope this positive account of Judaism, health, and gender-affirming care can help broaden the conversation on religion and gender queerness, which is typically

⁴³ Ibid, 128.

⁴⁴ For more on women and circumcision in Judaism see Shaye J. D. Cohen, *Why Aren't Jewish Women Circumcised?: Gender and Covenant in Judaism* (Berkeley CA: University of California Press, 2005). Cohen does include an argument from the Bekhor Shor that menstrual purity rituals might be the equivalent of male circumcision for women, thus giving women a similarly bodily covenantal ritual. This however is a minority opinion.

⁴⁵ For more on Jewish approaches to intersex see Sarra Lev, *And the Sages Did Not Know: Early Rabbinic Approaches to Intersex* (University of Pennsylvania Press, 2024).

understood to be oppositional. Resources from within religious texts, cultures, and communities can be mined to support and affirm trans individuals and their health care, and we should not assume that religions must be unwelcoming to trans people and the medical care they require.

It is also important to note that a definition of health is not the only work necessary to welcome trans people into the Jewish community. Trans Jews and allies are doing incredible work transforming Jewish texts and culture to be queer friendly and those projects are integral to creating a world and community that is affirming of all people. These include text-based projects like Joy Ladin's biblical interpretations, Max Strassfeld's book *Trans Talmud*, and the Trans Halakha Project.⁴⁶ Institutions like Svava are teaching Talmud in ways that are open to radical queer readings and the Trans Hallel project makes liturgy accessible to all. Access to gender-affirming care is just the tip of the iceberg for creating a (Jewish) world open and welcoming to trans identities, and to think that that project ends with a new definition of health is naïve. Much work must be done to make trans health care accessible to those who need it (not to mention making general health care accessible to all), and much more work must be done to make our culture welcoming to those with different gender expressions. May we all one day, whatever our gender expressions, be able to achieve soundness of body and tranquility of mind such that we can serve each other, and God, fully with joy and inclusivity.

⁴⁶ See Max K. Strassfeld, *Trans Talmud: Androgynes and Eunuchs in Rabbinic Literature*, First Edition (Oakland, California: University of California Press, 2022), as well as Ladin and the Trans Halakha Project cited above.