

Improperly Circumcised Children and Parents' Synagogue Membership

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This paper was adopted on May 28, 1981 by a vote of 10-0-4. Members voting in favor: Rabbis Kassel Abelson, Ephraim L. Bennett, Ben Zion Bokser, Edward M. Gershfield, David H. Lincoln, Mayer E. Rabinowitz, Alexander M. Shapiro, Morris Shapiro, Israel N. Silverman and Henry A. Sosland. Members abstaining: Rabbis David M. Feldman, Joel Roth, Phillip Sigal and Harry Z. Sky.

SHE'ELAH

Should parents who *bemezid* circumcised their children before the eighth day be admitted to synagogue membership?

Should those children be given a Jewish education and the privilege of becoming Bar Mitzvah?

TESHUVAH

The authorities are divided on the question of *milah shelo bizmanah*:

If a man transgressed and performed a circumcision at night time, he must return and cause a drop of covenant blood to come from him. If he performed the circumcision during the eight days, it is a valid circumcision. *Bede'avad* it is a *milah kesherah*. (*Yoreh De'ah* 262:1 in the Rema)

Both the Shakh and the Taz reject this opinion of the Rema and require *hattafat dam*.

The Sha'agat Aryeh, on the other hand, maintains:

דכל היכא שנימול התינוק בתוך שמונה אין בזה שום מצוה כלל. ואפילו להני רבוותא דס"ל דא"צ להטיף ממנו דם ברית בזמנו, לא משום דכדיעבד קיים מצות מילה. אלא אדרבה ביטל מצותו לגמרי וה"ל מעוות שאינו יכול לחקן. (שאגת אריה, דיני מילה, סימן נב)

There is no remedy to a *milah shelo bizmanah*.

We would agree with the ruling of our beloved Rabbi Isaac Klein:

Since both the Shakh and the Taz and most later authorities require *hattafat dam*, we should accept their opinion. We also have the additional reason to concur with them in order *lemigdar milta*.¹

I would also agree that it would be improper to admit uncircumcised Jews or parents who refuse to circumcise their children into the membership of the synagogue. There is such a precedent in Jewish law: an uncircumcised Jew or a Jew who has not circumcised his children may not eat the paschal sacrifice.

כשם שמילת עצמו מעכבתו מלעשות פסח, כך מילת בניו הקטנים.

However, the authorities seem to agree that a child that was improperly circumcised is not an *arel*. For instance, the *hattafat dam* of a child circumcised before the eighth day may not be done on the Sabbath.

ואם עבר ומל בלילה או שמל בתוך ח' צריך לחזור להטיף ממנו דם ברית אלא שלא יטיף בשבת. די"א דמילתו כשרה. (חכמת אדם, סימן קמט)

The phrase *deyesh omrim demilato kesherah* is very significant. It seems that the ruling that "he must return and cause a drop of covenant blood to come from him" in the case of a circumcision performed *shelo bizmanah*, is based on the concept *safek deoraita lehumra*, and therefore one may not do it on Shabbat. Now, if we may not have *hattafat dam* on Shabbat because *deyesh omrim demilato kesherah*, could we not also rule that we should not exclude him from the congregation because *deyesh omrim demilato kesherah*?

Rabbi Moshe Feinstein specifically states:

דהא אף בנעשה שלא כדין כמו ע"י עכו"ם אינו שוב ערל מאחר דעכ"פ אין בו עורות הערלה והפרועה.

Maimonides, in *Hilkhos Terumos* Chapter 7, Halakhah 10 rules:

כהן ערל אסור לאכול בתרומה מדין תורה. שהרי נאמר תושב ושכיר בתרומה ונאמר תושב ושכיר בפסח, מה תושב ושכיר האמור בפסח ערל אסור בו אף תושב ושכיר האמור בתרומה ערל אסור בו.

In Halakhah 11, he rules: *Hanolad mahul okhel biterumah*.

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The Ridbaz comments:

ואע"ג דצריך להטיף ממנו דם ברית, מכל מקום לאו ערל הוא.

From the sources cited above, it seems clear that the status of a person who has been improperly circumcised is not the same as that of an *arel*, an uncircumcised person. I therefore do not see any halakhic basis to deny synagogue membership to parents who have improperly circumcised their children, nor any halakhic basis to deny Jewish education or Bar Mitzvah to the children. I do not believe that excluding them from *klal Yisrael* is called for.

Moreover, according to the *Minhat Hinukh*, there is no *issur* of circumcising before the eighth day:

לפ"ז כיון דהגבילה התורה זמן למצוה זו מיום השמיני והלאה, ותוך הזמן אינו מצוה כלל, נראה דאין איסור כלל אם ירצה לחתוך ערלתו תוך ח' ימים אפילו ע"י פסולים. (מנחת חינוך, מצוה ב)

Also, according to halakhah, in the event that the father has not circumcised his son, the obligation is upon the Beit Din; if the Beit Din fails to do it, the obligation is upon the son after he has grown up. We obviously cannot force *hattafat dam* to be performed without the parents' permission. Nevertheless, it is definitely our obligation to educate the children and to impress upon them their Jewish responsibilities, hoping that when they grow up they will undergo *hattafat dam*.

CONCLUSION

In summation, I would like to recommend the following:

- (1) The parents and the children should be accepted into synagogue membership and given a Jewish education.
- (2) The rabbi should try to persuade the parents of the necessity of *hattafat dam*.
- (3) However, the Bar Mitzvah privilege should not be withheld from the children.
- (4) Due to the fact that the child is traditionally named during the circumcision service, if the parents refuse to have *hattafat dam brit* performed, the children should not be named in the synagogue or by the rabbi. Otherwise, we might give the impression that we approve of such improper circumcision.

NOTES

1. Isaac Klein, *Responsa and Halakhic Studies* (KTAV Publishing House, 1975), p. 103.