

Hattafat Dam Brit

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This paper was adopted as the Minority Opinion by a vote of 5 in favor and 10 opposed on March 10, 1982. Members voting in favor: Rabbis David M. Feldman, David H. Lincoln, Mayer E. Rabinowitz, Joel Roth and Morris M. Shapiro. Members in opposition: Rabbis Kassel Abelson, Jacob B. Agus, Ben Zion Bokser, Salamon Faber, Edward M. Gershfield, Wolfe Kelman, David Novak, Alexander M. Shapiro, Harry Z. Sky and Henry A. Sosland.

Note: The section of a paper, "The Question of Hattafat Dam Brit in Halakhah," by Rabbi David Novak, dealing with the case of a Jew who was not circumcised on the eighth day, or was circumcised by a Gentile, or was circumcised as a purely medical procedure, was adopted as the Majority Opinion by a vote of 10-5 on March 10, 1982. This paper also appears in this volume.

In his paper concerning the need for *hattafat dam brit* in the case of a Jew who was circumcised inappropriately, in which he specifically deals with the case of circumcision by a Gentile as a purely medical procedure, Rabbi David Novak relies upon three sources to advise that there be no *hattafat dam brit*. He makes reference to the Mishneh Torah, *Hilkhot Milah* 2:1, to the Shulhan Arukh, *Yoreh De'ah* 264:1, and quotes from a letter by Dr. Mortimer Ostow regarding the psychological impact of the procedure.

Rabbi Novak is quite correct in noting that Maimonides does not require "second circumcision," presumably *hattafat dam brit*, when circumcision has been performed by a non-Jew. However, it does not seem nearly as certain that Rambam was referring to a purely medical procedure. Much more likely, given the conditions of Maimonides' period, is the assumption that he refers to a *brit milah* in which the circumcision was performed by a non-Jew. That is, the father of the child asked a non-Jew to perform the mitzvah of circumcision on his son. The intention of the father was *leshem mitzvah*. In our day, that would be roughly comparable to a Jewish family asking a non-Jewish urologist or pediatrician to perform the *brit* because they live in some faraway community where no *mohel* or Jewish doctor who might serve in lieu of a *mohel* is available.

Indeed, the beginning of the paragraph in the Rambam lends support to this interpretation. There, Maimonides allows several classes of people to serve in lieu of a *mohel* when no adult, male *mohel* is available. In the

continuation of the paragraph, he forbids one class, non-Jews, from serving the same function as he permitted to other classes in the first part of the passage. The prohibition, however, is only *lekhatilah*. After the fact, though, a circumcision *leshem mitzvah*, performed even by a non-Jew, fulfills the requirement for *brit milah*. In the case of a purely medical procedure, it is very likely, in fact almost certain, that Maimonides would have required *hattafat dam brit*. Surely, most Jews who have their children circumcised inappropriately today do so as a purely medical procedure, and not *leshem mitzvah*. The fact that they have the circumcision performed without consulting with a rabbi (as they do, for example, about marriages or funerals or Bar Mitzvah), that nobody recites a blessing of any kind, that the circumcision is not performed with any ritual accompaniments, not to mention the fact that it is performed prior to the eighth day, all support the thesis that it is not done *leshem mitzvah*. (In many cases, regrettably, the parents have the circumcision performed inappropriately *lehakhis*.)

The Shulhan Arukh, with language almost identical to that of the Mishneh Torah, seems to be based upon the latter, and as a result, the same objections apply.

Dr. Mortimer Ostow's opinion on the subject also leads us to require *hattafat dam brit*. His assumption that no real trauma will exist in the case of psychologically healthy men obviates extratextual objections to the ceremony. In fact, his suggestion that the "experience could contribute to a feeling of true rebirth" suggests that the ceremony is in fact desirable.

In all probability, this question has practical implications for two classes of people: the *ba'al teshuvah*, and someone from a non-religious background who is not concerned with the halakhic details involved. For the latter, there is no need to seek a lenient position. All too often, we have fallen into the trap of seeking leniencies for those who do not care one iota for halakhah. It is counterproductive and leads only to the conclusion that halakhah really does not matter because "the rabbis" will find some rationale for everything we do anyway. For the former, the experience could be extremely positive. The Gemara (*Kiddushin* 29a) states that where neither the father nor the Beit Din have had a child circumcised, the responsibility falls upon the individual. For someone seeking to assert to himself the importance of his new commitment to Jewish standards, performance of this commandment can have only the most positive of ramifications.

Given our reading of the Rambam and the Shulhan Arukh, and taking into consideration the positive psychological effects of the ceremony, we advise requiring *hattafat dam brit* in the case where circumcision was performed by a Gentile as a purely medical procedure.