

## *Survey of Recent Halakhic Periodical Literature*

### **CIRCUMCISION: THE CURRENT CONTROVERSY**

*[The Holy One, blessed be He] said to [Elijah], "By your life! [To] every place at which My children impress this holy mark upon their flesh you shall make your way. The same mouth that testified that Israel forsook the covenant will testify that Israel upholds the covenant."*

ZOHAR, LEKH LEKHA 93a

For Jews, circumcision is first and foremost fulfillment of a divine command. But circumcision is unique among *mizvot* in that it represents the covenant established between God and Abraham and, through Abraham, with his progeny. Since the covenant represented by circumcision is shared by the entire people of Israel, circumcision also serves as a symbol of identification as a member of the community of Israel. As stated by *Sefer ha-Hinnukh*, no. 2, circumcision is designed "to separate [Israel] from other nations in the form of their body as in their souls." Thus, circumcision carries with it a nationalistic as well as a religious meaning. It is because of that consideration that Spinoza, in his *Tractatus Theologico-Politicus* 3:53, writes that circumcision, in and of itself, is sufficient to guarantee survival of the Jewish people.<sup>1</sup>

Little wonder, then, that, as recorded in II Maccabees 6:10, when Antiochus Epiphanes sought to eradicate the people of Israel he prohibited them from practicing circumcision. Jews, however, knew precisely what was at stake and responded accordingly.<sup>2</sup>

Perhaps astonishingly and perhaps not, gentile oppressors were aided and abetted by Jews themselves. The Hellenists of antiquity accepted assimilation not only with equanimity but with enthusiasm. Many not only renounced circumcision, as is recorded in the Book of Jubilees 15:33-34, but sought to obliterate the sign of the covenant by undergoing a painful procedure designed to make them physically indistinguishable from their neighbors.

Since circumcision is the hallmark of the Jew, when Jews became self-conscious of their identity as Jews they sought to forsake the sign of the covenant. In modern times, during the period of the French Revolution and its aftermath, circumcision increasingly came under attack by anti-Semites. Ridicule and accusations of primitivism or barbarism by non-Jews served as an impetus for renunciation of both the sign of the covenant and the covenant itself. The call for abolition of circumcision by the Frankfurt *Verein der Reformfreunde* is a case in point.

Those attacks upon circumcision abated over the course of time, in large measure, because circumcision came to be socially and culturally accepted among non-Jews because of its presumed medical benefits. With re-evaluation of the medical data in recent decades, circumcision again became ripe for attack. Many respected and well-meaning persons, particularly physicians, now discourage routine medical circumcision as medically unnecessary, economically wasteful and, in a small number of cases, potentially deleterious. In truth, that stance is unexceptionable. After all, Judaism not only fails to demand that non-Jews subject themselves to circumcision but actually discourages the circumcision of non-Jews.<sup>3</sup>

Unfortunately, the measured and nuanced tones of scientific journals become both shrill and discordant when converted to the language of popular publications and the inevitable media reports. The problem currently confronting the Jewish community is discouragement of and opposition—often both strident and vehement in nature—to ritual circumcision of Jews.<sup>4</sup> Far too often, Jews are in the forefront of the movement and occupy leadership positions in organizations whose sole agenda is eradication of circumcision. Their attacks focus both upon the procedure itself and upon the lack of palliation of accompanying pain.

The present undertaking is designed to place the issue of circumcision in perspective. A review of the information that has appeared in the medical literature and the several published statements of the American Academy of Pediatrics reveals a medical consensus that does not oppose ritual circumcision. Although it is superfluous to emphasize that the opinion of the medical profession has no bearing upon the commitment of Jews to fulfillment of divine commandments, it is nevertheless important to separate fact from fiction. Of more significant practical consequence are the halakhic views regarding employment of pain-reducing measures.

## I. MEDICAL CONSIDERATIONS

Circumcision is the oldest and most common surgical procedure performed by man.<sup>5</sup> It is estimated that in the United States 1.2 million newborn males are circumcised each year.<sup>6</sup> For a considerable period of time the rate of circumcision among the general population was extremely high. The incidence of circumcision rose to 80% in the years subsequent to World War II, but climaxed in the mid-1980's. Nevertheless, circumcision rates have consistently been higher in the United States than in any other Western country. Circumcision has been particularly prevalent among Caucasians and there has been a uniformly high statistical correspondence between circumcision of infants and the level of parents' formal education.<sup>7</sup>

The attitude of the medical profession toward circumcision has had a somewhat checkered history. Ostensibly, the motivating force behind the high rate of circumcision was its presumed prophylactic value. Alleged medical benefits included a decrease in the incidence of urinary tract infection and resultant kidney disease, lower susceptibility to sexually transmitted diseases, less likelihood of developing cancer of the penis as well as a lower rate of cervical cancer in sexual partners. Circumcision is also believed to protect against inflammation of the prepuce (posthitis) and of the glans (balinitis). Such inflammation is due to phimosis, i.e., stenosis of the orifice of the foreskin which may be congenital or acquired and results in inability to retract the foreskin behind the corona. Posthitis is more common in warm climates, presumably because the organisms responsible for the inflammation multiply more rapidly in the presence of heat and humidity.<sup>8</sup>

A noticeable decline in the incidence of circumcision in the general population followed in the wake of a re-evaluation of the practice in the 1970's by the American Academy of Pediatrics. The 1970 edition of *Standards and Recommendations of Hospital Care of Newborn Infants* published by the Committee on the Fetus and Newborn of the American Academy of Pediatrics stated that "there are no valid indications for circumcision in the neonatal period."<sup>9</sup> The issue was again re-examined in 1975 by the Ad Hoc Task Force established by that committee. Upon review, the Task Force concluded that "there is no absolute medical indication for routine circumcision of the newborn."<sup>10</sup> In 1983 both the American Academy of Pediatrics and the American College of Obstetrics and Gynecology reiterated that conclusion in a jointly published work.<sup>11</sup>

However, subsequently discovered evidence suggested that circumcision might indeed yield medical benefits. The American Academy of Pediatrics responded to the publication of those findings by establishing a Task Force on Circumcision. In a report issued in 1989, this Task Force concluded that “newborn circumcision prevents phimosis, paraphimosis, and balanoposthitis and has been shown to decrease the incidence of cancer of the penis among U.S. men.”<sup>12</sup> The Task Force also found an increased incidence of cancer of the cervix in sexual partners of uncircumcised men infected with human papillomavirus. Evidence of a decreased incidence of urinary tract infection is described as tentative,<sup>13</sup> while evidence regarding the association of sexually transmitted diseases and circumcision is reported as conflicting. In a balanced conclusion the Task Force declared: “Newborn circumcision has potential medical benefits and advantages as well as disadvantages and risks. When circumcision is being considered, the benefits and risks should be explained to the patient and informed consent obtained.”<sup>14</sup> The Task Force indicated that the incidence of post-operative complications following circumcision is low but studiously refrained from a recommendation for or against the procedure.

Somewhat later, the pendulum swung back, at least partially, in the direction of the findings of the 1970's. In 1997, the *Journal of the American Medical Association* published a report<sup>15</sup> analyzing data regarding sexual, attitudinal, and health-related experiences of circumcised and uncircumcised Americans. That report analyzed a survey conducted in 1992 that involved a nationally representative probability sample of 1511 men and 1921 women between the ages of 18 and 59. The authors of the *JAMA* analysis conclude: “. . . we have discovered that circumcision provides no discernible prophylactic benefit.”<sup>16</sup> Contrary to early reports, they found that circumcision “may in fact increase the likelihood of STD (sexually transmitted disease) contraction” but that “circumcised men have a slightly lessened risk of experiencing sexual dysfunction, especially among older men . . . .”<sup>17</sup> The latter phenomenon does not appear to have been considered in any of the earlier studies; on the contrary, earlier discussions focus upon putative diminished sexual gratification on the part of the circumcised male.<sup>18</sup>

Most recently, in March 1999, the Task Force on Circumcision<sup>19</sup> of the American Academy of Pediatrics issued yet another “Circumcision Policy Statement.” In all likelihood, that statement was prompted at

least in part by the by the 1997 *JAMA* report and is a reaction to its conclusions. In contrast to the *JAMA* report, the latest policy statement of the American Academy of Pediatrics Task Force reiterates the balanced conclusions of the earlier 1989 report and in a nuanced manner is even somewhat more supportive of circumcision.

The 1999 report of the Task Force on Circumcision presents a careful review of numerous studies of urinary tract infection indicating that uncircumcised infants have a 4 to 10 or even 12-fold increased risk of urinary tract infection<sup>20</sup> and also concludes that there is at least a threefold increase in the risk of penile cancer in uncircumcised men. Nevertheless, the Task Force did not feel that either of these considerations is sufficient to warrant a recommendation for routine circumcision since the absolute risk of urinary tract infection is low and penile cancer even in uncircumcised males is rare.

The Task Force also cites studies indicating that circumcised males may have a diminished risk for contracting syphilis<sup>21</sup> and points to a substantial body of evidence linking non-circumcision with HIV infection<sup>22</sup> but declines to recommend circumcision on that account because it regards behavioral factors as far more significant in this regard than circumcision status.

The Task Force readily concedes that “existing scientific evidence demonstrates potential medical benefits of newborn male circumcision” but asserts that “these data are not sufficient to recommend routine neonatal circumcision.”<sup>23</sup> The Task Force further unreservedly acknowledges that “it is legitimate for parents to take into account cultural, religious and ethnic traditions” in making a decision with regard to circumcision.<sup>24</sup> The Task Force recommended that, when circumcision is performed, a topical anesthesia be employed.

The ambivalence of the medical profession with regard to the prophylactic benefit of circumcision should not come as a surprise to students of rabbinic literature. One searches in vain among the writings of the classical expositors of the *ta'amei ha-mizvot*, i.e., the meaning and rationale underlying each of the commandments, for an indication that the *telos* of circumcision is avoidance of disease or promotion of health.<sup>25</sup> At the same time, apart from the risk from perioperative complications which were well known to the Sages of the Talmud and which were far more common and far more serious in days gone by, it would be quite surprising to discover that there are health risks associated with circumcision.

## II. ALLEVIATION OF PAIN

In the absence of significant health hazards associated with the procedure, opponents of circumcision have focused upon the pain experienced by the infant.<sup>26</sup> Until recent years, it was generally assumed that the immature and incompletely developed neurological system of neonates left them more or less impervious to pain.<sup>27</sup> Many still-practicing physicians can well remember the days when major surgery was routinely performed upon neonates without benefit of any form of anesthesia other than a dose of ethanol sufficient to induce a mild state of inebriation. Pain is known to vary markedly from individual to individual; different people respond differently to identical pain stimuli. Since pain defies precise quantification it is extremely difficult to compare the pain experiences of different individuals in a scientifically meaningful way. The difficulty of assessing the degree and severity of pain in infants is compounded by their inability to communicate. Hence, despite the fact that it is now generally conceded that newborns are capable of experiencing pain, the nature and intensity of such pain remains largely unknown. Nevertheless, human compassion and decency should dictate that pain-relieving measures be adopted, at least when such measures do not present additional medical risks, even if the presence of, or potential for, pain is a matter of doubt.

The earliest local anesthetic technique for newborn<sup>28</sup> circumcision seems to have been the dorsal penile nerve block developed by Kirya and Werthmann in 1978.<sup>29</sup> The procedure involves the injection of a small quantity of 10% lidocaine (without epinephrine) in the area of the dorsal penile nerves. The work of Kirya and Werthmann received scant attention, perhaps because it was conducted without a control group, and no attempt was made to determine possible genitourinary side effects or long term behavioral effects. However, a series of studies conducted between 1982 and 1985<sup>30</sup> confirmed the original results and served to generate enthusiasm for the procedure.

Those findings were again confirmed in a 1988 study which showed in addition that the procedure also effectively diminished increases in serum cortisol levels.<sup>31</sup> It was shown that infants injected with lidocaine in the appropriate area experienced significantly less stress as evidenced by smaller decreases in transcutaneous oxygen pressure levels, less crying and lower increases in heart rate as compared with infants circumcised in an identical manner without anesthesia.

However, employment of a dorsal nerve block is not entirely prob-

lem free. The procedure requires skill in determining the site of the injection and in carrying out the injection itself. In addition, injection of the infant is itself a source of pain. There is also the danger, albeit a low one, of development of a hematoma at the site of the injection and of possible gangrene from accidental puncture of the dorsal artery or vein of the penis in the course of the attempt to infiltrate the underlying dorsal nerves.<sup>32</sup>

Obviously, were a topical anesthetic available, those problems would be avoided entirely. The first attempt to rely upon a topical anesthetic in conjunction with circumcision occurred in 1989 and met with some success.<sup>33</sup> The procedure involved use of a topical 40% lidocaine in acid mantle cream. Two subsequent studies were reported in 1993. In one study reported in *Pediatrics*<sup>34</sup> the concentration was modified and 30% lidocaine in acid mantle cream was employed. In that study the mean heart rate, respiratory rate, oxygen capture and diastolic blood pressure did not vary significantly between the placebo and the lidocaine groups. The mean systolic blood pressure was significantly higher in the placebo created group. The authors of that study reported a rise in the serum  $\beta$ -endorphin level in 11 of 15 infants who did not receive lidocaine while only one third of those receiving lidocaine experienced such an increase. In addition, there was also an increase in various types of crying. Although they noted that no previous studies examined changes in serum  $\beta$ -endorphin concentrations in newborns before and after an invasive procedure such as circumcision, the authors regarded the absence of an increase in serum  $\beta$ -endorphin as a crucial indicator of the absence of pain.

A second study reported in the *Journal of the American Medical Association*<sup>35</sup> involved use of an eutectic mixture of local anesthetics, viz., lidocaine and prilocaine hydrochloride bases. Heart rate, oxygen saturation, facial action and crying were found to be significantly different in those receiving topical anesthesia as opposed to those receiving a placebo.

There are, however, considerable grounds for skepticism with regard to the need for pain relief in conjunction with neonatal circumcision as traditionally practiced by Jews. Each of the studies that determined the presence of pain as manifested in various physiological phenomena involved examination of infants subjected to surgical circumcision utilizing a Gomco or bell clamp. The procedure described in the 1993 *JAMA* article involved a series of steps, including restraining the child, clamping the dorsal side of the foreskin, longitudinal incision of the foreskin, lysis

of adhesions between the foreskin and the glands, application of the Gomco clamp, cutting the foreskin, removing the Gomco clamp and removing the restraints. The time required for completing the cumbersome procedure ranged from six to forty minutes. In contrast, ritual circumcision carried out in the traditional manner involves only separation of the foreskin from the glans, cutting the foreskin and retracting the underlying mucous membrane. Excision of the foreskin is performed rapidly and is accomplished in a matter of seconds. Emblematic of the swiftness of the procedure is the frequently observed phenomenon associated with the *mohel's* recitation of the blessing for performance of the *mizvah*: The *mohel* begins to pronounce the blessing as he commences to cut. Generally, the cutting of the foreskin is completed well before the *mohel* has managed to finish reciting the twelve-word blessing.

Studies demonstrating pain experience in conjunction with circumcision utilizing a Gomco clamp are entirely irrelevant to circumcision involving a rapid excision with a sharp knife. Any person who has accidentally cut himself with a very sharp knife knows that the cut itself is virtually painless.<sup>36</sup> It is quite likely that distress evidenced by infants during ritual circumcision is largely discomfort as a result of unwelcome manipulation and positioning rather than a response to pain. It is not uncommon for a baby to cry prior to the circumcision but to serenely and apparently contentedly suck on a bottle of sugar water during the actual severance of the foreskin.

## III. PAIN RELIEF AND HALAKHAH

### A. *General Anesthesia*

Over the years a number of responsa and other brief remarks discussing the permissibility of performing circumcision under general anesthesia have appeared in rabbinic works. Those discussions deal primarily with adult circumcision in instances of conversion and, occasionally, with circumcision of naturally born Jews who, for whatever reason, were not circumcised in infancy. Utilization of general anesthesia for this purpose presents a number of halakhic issues, both because of the fact that the person circumcised is rendered unconscious during the course of the procedure and because an adult, unlike an infant, is himself personally bound by the commandment regarding circumcision.

Among the earliest authorities to address this topic, R. Yo'av Yehoshu'a of Kintzk, renowned as the author of *Teshuvot Helkat Yo'av*,



writing in the initial issue of a rabbinic journal, *Ohel Mo'ed*, vol. I, no. 1 (Tevet 5686), permits the use of general anesthesia, as does R. Shalom Mordecai Shwadron, *Teshuvot Maharsham*, VI, no. 108,<sup>37</sup> while R. Eliyahu Posek, in his classic work, *Koret ha-Brit*, *Nahal Brit* 261:4, and R. Meir Arak, *Imrei Yosher*, II, no. 140, sec. 3, forbid the practice.<sup>38</sup> Among more recent authorities, circumcision under general anesthesia is permitted by R. Ovadiah Yosef, *Yabi'a Omer*, V, *Yoreh De'ah*, no. 22,<sup>39</sup> but is forbidden by R. Yechiel Ya'akov Weinberg, *Seridei Esh*, III, no. 96; R. Shmu'el ha-Levi Wosznar, *Teshuvot Shevet ha-Levi*, V, *Yoreh De'ah*, no. 147, sec. 2; and R. Moshe Sternbuch, *Teshuvot ve-Hanhagot*, I (Jerusalem, 5752), no. 590 and II (Jerusalem, 5754), no. 510.

Maharsham's brief discussion addresses only one objection raised with regard to the practice. His interlocutor cites a rule governing the principle of agency, viz., "For anything [the principal] cannot do he cannot appoint an agent," i.e., an agent cannot perform an act on behalf of a principal who lacks capacity to perform the act himself. Maharsham suggests that since a person under anesthesia is physically incapable of circumcising himself he lacks the capacity to designate an agent to act on his behalf while he is unconscious. Maharsham dismisses that contention by demonstrating that the power of an agent to act is not suspended while the principal sleeps. R. Raphael Joseph Hazan, *Hikrei Lev*, I, *Even ha-Ezer*, no. 46, reconciles that rule with the validity of an act performed when the principal is asleep by declaring that the rule limits agency only in instances in which the principal lacks legal capacity to act but is not at all applicable in instances in which the principal cannot act because of a physical impediment.<sup>40</sup> Unconsciousness induced by anesthesia, asserts Maharsham, is no different from sleeping.<sup>41</sup>

Maharsham adds yet another point that is the subject of considerable analytic discussion among latter-day authorities. Maharsham asserts that since circumcision constitutes a commandment involving one's body (a *mizvah she-be-gufo*) it cannot be fulfilled through agency. That principle and its applicability to circumcision is elucidated by *Kezot be-Hoshen* 382:2. Indeed, *Shakh*, *Hoshen Mishpat* 382:4, as well as *Or Zaru'a*, no. 11, cited by *Darkei Mosheh*, *Yoreh De'ah* 264:1, rule that if a father is capable of circumcising his son he should not designate an agent to do so on his behalf. However, *Teru'ot Shor*, *Yoreh De'ah* 28:14, and *Darkei Mosheh* himself maintain that the obligation may be discharged through the act of an agent.<sup>42</sup> Taking note of *Kezot be-Hoshen*'s explanation, Maharsham remarks that it must be understood that the authorities who sanction designation of an agent must maintain that the

*mizvah* of circumcision is not fulfilled through the act of excising the foreskin but rather that the essence of the *mizvah* is that the person be in a circumcised state, i.e., that his body be sealed with the sign of the covenant. It then follows that, since the *mizvah* is fulfilled as the *result* of an act rather than *by* the act *per se*, the *mizvah* is essentially passive in nature, and hence whether or not the person being circumcised is conscious is of no consequence.

Maharsham's latter point, i.e., that the *mizvah* of circumcision is not the performance of the act of circumcision but is fulfilled by being in a circumcised state, is a position first explicitly espoused by the thirteenth-century authority, R. Isaac of Vienna, *Or Zaru'a*, no. 11.<sup>43</sup> *Or Zaru'a* propounds that thesis in the course of formulating his view that a father need not personally circumcise his son. The father's obligations vis-à-vis his son, asserts *Or Zaru'a*, do not require him personally to teach his son Torah, himself to serve as the son's swimming instructor, to train him in a trade, or to perform the actual act of circumcision; rather, those obligations require the father to assure that those ends are achieved. According to *Or Zaru'a*, the essence of the commandment regarding circumcision of both one's son and oneself is that the sign of the covenant "be sealed in the flesh." In support of that thesis *Or Zaru'a* cites the statement of the Gemara, *Menahot* 43b:

When David entered the bathhouse and perceived himself standing naked, he said, "Woe unto me that I stand naked without a *mizvah*." But when he remembered the circumcision in his flesh his mind became at ease.

The Gemara cannot be understood as reporting that David's disquietude was dispelled by the sight of an organ of the body used for fulfillment of a *mizvah* for, were that the case, David might readily have observed that the arm and the head are bodily organs utilized for fulfilling the *mizvah* of donning phylacteries. It is evident that David was not assuaged by the realization that organs of his body had in the past been utilized in fulfillment of a *mizvah*; his concern was that, standing in the bathhouse he was, at that moment, bereft of actual fulfillment of *mizvot*. He found comfort at the sight of his circumcision because, among the organs of the body, only the circumcised membrum represents a continuous and uninterrupted fulfillment of a *mizvah*. If so, it is clear that the essence of the *mizvah* is passive, i.e., the *mizvah* lies in being in a circumcised state, rather than in the performance of the act of circumcision.<sup>44</sup> On the contrary, the act of circumcision is only a

means to the end,<sup>45</sup> i.e., it represents a procedure instrumentally necessary in order to achieve the state of being circumcised.<sup>46</sup>

If it is assumed that the essence of the *mizvah* is the act of excision of the foreskin and that agency is inoperative in fulfillment of the commandment because it is a *mizvah she-be-gufo*,<sup>47</sup> it then follows that a father who does not personally circumcise his son, or an adult who does not physically circumcise himself, has not performed a *mizvah*; rather the *mizvah* accrues to the *mohel* who performs the act.<sup>48</sup> If that is the case, it follows that no intention whatsoever is required on the part of the person being circumcised with the result that unconsciousness induced by anesthesia does not present a problem with regard to fulfillment of the *mizvah*. *Seridei Esh* argues that if agency is operative in the circumcision of an adult and hence it is the person being circumcised who fulfills the *mizvah*, circumcision may nevertheless be performed upon an adult while he is asleep because the agent performing the circumcision is alert and has the requisite intent in performing the act that he is empowered to perform by virtue of the principle of agency. *Seridei Esh* suggests, however, that there may be a fundamental difference between the obligation to circumcise one's son and the obligation to circumcise oneself. The obligation to circumcise one's son, since it involves the body of another person, is not a *mizvah she-be-gufo*, whereas the obligation to circumcise oneself is a *mizvah she-be-gufo*. Nevertheless, contends *Seridei Esh*, the *mizvah* to circumcise oneself may be fulfilled in the act of making oneself available and positioning oneself for circumcision rather than by personally performing the act of circumcision.<sup>49</sup> On the basis of that analysis, suggests *Seridei Esh*, the individual must be conscious during the procedure in order to have the requisite intention to fulfill the *mizvah*.

*Seridei Esh* further suggests that, even if circumcision is not regarded as a *mizvah she-be-gufo*, intention to fulfill the *mizvah* is required and hence the person being circumcised must be conscious. If circumcision is not a *mizvah she-be-gufo* the act of circumcision may be performed by another person just as another person may blow *shofar* on one's behalf. Nevertheless, the person fulfilling the *mizvah* of listening to the *shofar* being blown must have the requisite intent. Similarly, the person undergoing circumcision must have the intention of fulfilling the *mizvah*. Such intent is of course impossible if the person being circumcised is under anesthesia.<sup>50</sup> A similar view is expressed by R. Shmu'el ha-Levi Wosznier, *Teshuvot Shevet ha-Levi*, V, *Yoreh De'ah*, no. 147, sec. 2, who states without elucidation that general anesthesia is unacceptable because

of a requirement of intention to fulfill the *mizvah*. R. Moshe Sternbuch, *Teshuvot ve-Hanhagot*, II, no. 590, also declares that a person must be "awake and in possession of his faculties at the time that he is circumcised" in order to fulfil the *mizvah*, but adds that "if experts certify that [circumcision] is impossible without general anesthesia" employment of anesthesia is preferable to allowing the person to remain uncircumcised.

It is readily apparent that the foregoing considerations apply only with regard to the circumcision of an adult who is himself subject to the *mizvah* of circumcision. An infant, however, is not under obligation to fulfill *mizvot*. The circumcision of an infant is clearly a *mizvah* incumbent upon the father rather than upon the child. Since the child is under no obligation and performs no *mizvah* there would appear to be no halakhic reason why a child may not be circumcised while he is asleep or when rendered unconscious by anesthesia.<sup>51</sup>

Nevertheless, *Seridei Esh* refuses to sanction general anesthesia even for an infant on the grounds that circumcision represents entry into the covenant of Abraham.<sup>52</sup> *Seridei Esh* asserts that, for that reason alone, the possibility of anesthesia for an adult convert cannot be entertained. Just as a proselyte must accept the yoke of *mizvot*, so must he intend to enter into the covenant of Abraham. Such intent is impossible unless the individual is conscious. *Seridei Esh* further asserts that every circumcision represents entry into the covenant and therefore the individual being circumcised must be conscious. That consideration would serve to preclude anesthesia in the case of an adult. *Seridei Esh* further contends that

one conducts oneself with a child as with an adult . . . but if [the child] is rendered unconscious he is as an inanimate<sup>53</sup> stone and one does not enter into a covenant with a stone. In the eyes of people, severance of the foreskin of a sleeping child is in the nature of a battery rather than entry into the covenant of our father Abraham.

Quite obviously, the concerns expressed by *Seridei Esh* with regard to general anesthesia do not apply to local anaesthesia delivered by injection. From the perspective of Halakhah, a penile nerve block or other injected anesthesia is indistinguishable from topical anesthesia which is the subject of the following section.

### **B. Topical Anesthesia**

Nothing in the foregoing discussion would serve as a barrier to the use

of a topical anesthesia in order to prevent pain in either an infant or an adult. Nevertheless, one authority, R. Meir Arak, *Imrei Yosher*, I, no. 140, takes a very strong stand against use of topical anesthesia. In that context, *Imrei Yosher* cites a statement found in *Shemot Rabbah* 47:9:

In the self-same day Abraham was circumcised" (Genesis 27:26): R. Abba said, "He felt the smart and suffered pain so that the Lord might double his reward." R. Levi said, "It does not say 'Abraham circumcised himself,' but rather 'Abraham was circumcised,' this intimates that he examined himself and found that he was [already] circumcised." R. Berekiah observed, "It was at that time that R. Abba ben Kahana humiliated R. Levi saying to him, 'It is a lie and a falsehood! He felt the smart and suffered pain so that the Lord might double his reward.'"

In response, *Seridei Esh* correctly points out that the midrashic citation establishes only that Abraham desired heavenly reward for fulfilling the *mizvah* and that such reward is directly commensurate with the pain that is suffered. However, this midrashic statement does not serve to establish an obligation to suffer pain and certainly does not establish a normative principle making it incumbent to inflict such pain upon an unwitting and unwilling infant.

It is, however, a misreading of *Imrei Yosher's* responsum to infer that the midrashic statement serves as the basis of that scholar's ruling. *Shemot Rabbah* is cited by *Imrei Yosher* only to demonstrate that circumcision is associated with pain; an entirely different halakhic source is cited by *Imrei Yosher* in prohibiting topical anesthesia. The Gemara, *Bava Kamma* 85a, speaks explicitly of amputation of a limb by chemical, rather than surgical, means and describes chemical amputation as being painless.<sup>54</sup> Similarly, the Gemara *Kiddushin* 21b, declares that a Hebrew slave who refuses to be set free after serving a statutory six-year period and who must therefore undergo a ritual involving the boring of his ear must have his ear pierced by means of a metal implement but not by means of a chemical.<sup>55</sup> The foreskin, asserts *Imrei Yosher*, can also be removed in a like manner by means of application of a chemical. But quite apart from the problem of obviating the pain of circumcision, such a procedure, asserts *Imrei Yosher*, could not be sanctioned for an entirely different reason. *Imrei Yosher* is among the authorities who maintain that the foreskin must be removed by excision rather than by means of some other process.<sup>56</sup> Some commentators find that requirement reflected in the verb "to cut" employed in the biblical idiom that connotes entering into a covenant as in the verse "*ve-kharot imo ha-brit*

—and He cut a covenant with him.” (Nehemiah 9:8).<sup>57</sup> *Imrei Yosher* comments that the biblical term “*himol*” (Genesis 17:13) indicates excision of the foreskin.<sup>58</sup> That understanding is reflected in *Targum Onkulos*’ translation of the term as “*migzar*.”<sup>59</sup> Nevertheless, reasons *Imrei Yosher*, if flesh-eating chemicals were available to the Sages of the Talmud, pain-quelling drugs must have been available to them as well. Yet rabbinic sources make no mention of use of topical anesthesia for purposes of circumcision. This argumentum *ad silencium*, concludes *Imrei Yosher*, demonstrates that such pharmaceutical products may not be used to eliminate pain because experience of pain is one of the elements of circumcision.<sup>60</sup>

R. Israel Veltz, who at the time was a *dayyan* in Budapest, consulted R. Judah Leib Zirelson concerning the circumcision of a five-year old child. The child had been sickly and was not circumcised in infancy. The child’s mother was willing to permit circumcision only on the condition that the pain be assuaged by means of a topical anesthetic. In his response, published in his responsa *Ma’arkhei Lev*, no. 53, Rabbi Zirelson dismisses the notion that circumcision must be accompanied by pain as being without basis in rabbinic sources. Indeed, *Ma’arkhei Lev* endeavors to show that pain is not at all a required concomitant of circumcision. The Gemara, *Shabbat* 135a, cites conflicting opinions with regard to whether a child born without a foreskin and a prospective proselyte who has been circumcised while yet a gentile require “letting of the blood of the covenant” and explains in detail the considerations of the proponents of the various views. Entirely absent from that discussion is the concept that “letting of blood” is required because pain is a necessary element of circumcision.

*Ma’arkhei Lev*’s argument, however, is readily rebuttable. Pain in itself is certainly not a requirement. The sole issue is whether pain is required as a concomitant or epiphenomenon of circumcision. When no circumcision is possible because the person is already circumcised or because he has no foreskin there can be no requirement of pain for its own sake. In such circumstances, the pain is entirely divorced from the act of circumcision and hence without any significance in fulfillment of the *mizvah*.

Despite his dismissal of the notion that pain is a necessary element of circumcision, *Ma’arkhei Lev* decries the attempt to seek innovative measures to avoid pain but tempers that position with the observation that rigidity with regard to such a policy is inappropriate. Thus, concludes *Ma’arkhei Lev*, if insistence upon following time-hallowed prac-

tices would result in failure to carry out the circumcision because of the mother's refusal to grant permission for performance of the procedure if it is to be accompanied by pain, as in the case brought to his attention, a topical anesthesia should be employed.<sup>61</sup>

Despite his disagreement with *Imrei Yosher's* halakhic reasoning, Rabbi Weinberg declares that he gives greater weight to the stringent view of *Imrei Yosher* than to the balanced position of *Ma'arkhei Lev* because "a custom of Israel is Torah and should not be denigrated." The position of *Imrei Yosher* is also espoused by R. Abraham Jacob Horowitz, *She'erit Ya'akov*, no. 5.<sup>62</sup>

One aspect of this position requires elucidation. Causing unnecessary pain to another human being is certainly not permissible. Causing wanton pain to brute animals is prohibited by virtue of the prohibition against causing *za'ar ba'alei hayyim*. There is indeed a controversy with regard to whether humans are included in the ambit of the "*ba'alei hayyim*" or "living creatures" protected by that stricture. However, it may well be the case that humans are not included in that prohibition because such a prohibition is superfluous. Ramban, in his *Torat ha-Adam*,<sup>63</sup> declares that the physician's obligation to heal is rooted in the commandment "and you shall love your fellow as yourself" (Leviticus 19:18). That admonition establishes an obligation to manifest love and concern in general for one's fellow and, according to Ramban, in particular, requires one to provide medical attention for the cure of disease and relief of pain.<sup>64</sup> It assuredly serves to prohibit causing grief or pain to one's fellow as is indeed encapsulated in Hillel's aphorism recorded in the Gemara, *Shabbat* 31a, "What is disdainful to you do not do to your friend." Why, then, are these authorities unconcerned by the specter of causing avoidable pain experienced by an infant in the course of circumcision?

The answer lies in the midrashic comment cited by *Imrei Yosher*. The Midrash does more than allude to an act of piety on the part of Abraham. In no other context does one find a rabbinic ecominuum for seeking out avoidable pain in performing a *mizvah*. A person who, for example, has an *etrog* conveniently available but seeks to select one from beneath a mass of thorns should not anticipate enhanced heavenly reward because of the pain incurred in the process. Pursuit of pain that is both avoidable and extrinsic to fulfillment of the *mizvah* is simply masochism. Circumcision is quite different. Although pain is not a necessary condition for fulfillment of the *mizvah*, the *mizvah*, as commanded, does perforce entail a measure of pain. Therefore, although it is not

an intrinsic element of the *mizvah*, the pain inherent in the act must be part of the divine *desideratum* and hence, as the Midrash indicates, the pain will be rewarded even when it could have been avoided. It is thus readily understandable that there is no obligation to spare another person from the pain naturally attendant upon circumcision.

This point is also formulated by *Shevet ha-Levi*, *Yoreh De'ah*, V, no. 147, sec. 2, albeit without raising the issue of an obligation to avoid or diminish pain and without citing either *Imrei Yosher* or *Shemot Rabbah*. Instead, *Shevet ha-Levi* cites the comment of the Gemara, *Gittin* 57b, the verse elucidating "For Your sake are we killed all of the day" (Psalms 44:23). The Gemara interprets the verse as an allusion to circumcision. *Shevet ha-Levi* understands the comment as a reference to the pain entailed in circumcision.<sup>65</sup> Accordingly, contends *Shevet ha-Levi*, the "form" of the *mizvah* involves pain and, moreover, it is certain "that such is the form of the *mizvah* in its source from Sinai." However, the pain to which the Sages allude is only the pain that is ordinarily experienced by an infant.<sup>66</sup> Accordingly, declares *Shevet ha-Levi*, in unusual circumstances in which circumcision would cause inordinate pain,<sup>67</sup> or if the person to be circumcised is not an infant, a topical anesthesia may be used.<sup>68</sup>

There is one additional matter not mentioned by these authorities that must be addressed. Use of a salve or ointment on *Shabbat* or *Yom Tov* involves a biblical transgression and is forbidden other than for reasons of *pikuah nefesh*, i.e., application of a salve is permitted to mitigate danger to life but not to alleviate pain.<sup>69</sup> Accordingly, application of a topical ointment on *Shabbat* or *Yom Tov* by a Jew cannot be condoned even if refusal to employ a topical anesthesia will result in refusal to permit performance of the circumcision.

Although the arguments against use of topical anesthesia cannot be described as compelling, they are buttressed by the weight of tradition. As noted earlier, the author of *Seridei Esh*, who was hardly an extremist and who was known for his sagacity, regarded topical anesthesia as permissible but nevertheless declined to express approval of its use. *Seridei Esh* well understood that Jewish tradition and practice must not be allowed to bend with changing winds.<sup>70</sup> *Mizvot* dare not be permitted to be held hostage by the *Zeitgeist* of any particular age. Attacks upon *milah*, whether frontal or peripheral, should be met with proud reaffirmation of the covenant of Abraham together with its time-hallowed traditions.



# NOTES

1. The notion that the people of Israel are preserved from extinction in the diaspora by the *mizvah* of *milah* is expressed by Ramban, *Commentary on the Bible*, Genesis 15:18, as well as by R. Jacob Emden, *Migdal Oz*, *Breikhah Elyonah* 2:20.
2. See, for example, I Maccabees 1:48.
3. See *Bet Yosef*, *Yoreh De'ah* 266; *Levush*, *Yoreh De'ah* 363:5; and *Taz*, *Yoreh De'ah* 363:3. Cf., *Shakh*, *Yoreh De'ah* 363:8. Cf., however, *Shulhan Arukh*, *Yoreh De'ah* 268:9 and *Teshuvot ha-Rambam*, ed. R. Joshua Blau (Jerusalem, 5718), I, no. 148, reprinted in *Iggerot ha-Rambam*, ed. R. Isaac Shilat (Jerusalem, 5747), pp. 212-214.
4. See, for example, Ronald Goldman, *Circumcision: The Hidden Trauma* (Boston, 1997) and *Questioning Circumcision: A Jewish Perspective* [sic] (Boston, 1998); idem, "Circumcision: A Source of Jewish Pain," *Jewish Spectator*, Fall, 1997, pp. 16-20; Jim Bigelow, *The Joy of Uncircumcising* (Aptos, 1998); Jewish Telegraphic Association Daily News Bulletin, March 3, 1999; and "Is Brit Milah Cruel and Unnecessary?" *The Jerusalem Report*, November 22, 1999, p. 104.
5. T. E. Wiswell and W. E. Hachey, "Urinary Tract Infection and the Uncircumcised State: An Update," *Clinical Pediatrics*, vol. 32, no. 3 (March, 1993), p. 130.
6. American Academy of Pediatrics, Task Force on Circumcision, "Circumcision Policy Statement," *Pediatrics*, vol. 103, no. 3 (March, 1999), p. 686.
7. See Edward O. Laumann, Christopher M. Masi *et al.*, "Circumcision in the United States: Prevalence, Prophylactic Effects, and Sexual Practices" *Journal of the American Medical Association*, vol. 277, no. 13 (April 2, 1997), pp. 1053-1057. See also "Circumcision Policy Statement," *supra*, note 6, pp. 686-693.
8. See Joseph Katz, "The Question of Circumcision," *International Surgery*, vol. 62, no. 9 (September, 1977), p. 490.
9. American Academy of Pediatrics, Committee on the Fetus and Newborn, "Report of the Ad Hoc Task Force on Circumcision," *Pediatrics*, vol. 5, no. 4 (October, 1975), p. 611.
10. American Academy of Pediatrics, Committee on the Fetus and Newborn, *Guidelines for Perinatal Care*, 1st edition (Evanston, 1983), p. 87.
11. American Academy of Pediatrics, "Report of the Task Force on Circumcision," *Pediatrics*, vol. 84, no. 4 (August, 1989), pp. 388-390.
12. *Ibid.*, p. 390.
13. Curiously, an Israeli study involving only circumcised male infants found an overall higher incidence of urinary tract infections in infancy but found that males were affected more commonly than females during the first four weeks of life. The authors of that study indicate that this phenomenon may be attributed at least in part to pain-induced urine retention occurring immediately following circumcision but suggest that such an infection may be the product of non-sterile techniques used during the procedure and accordingly urge that stricter sterile techniques be employed. See Michael Goldman, Joseph Barr, Tsvy Bistritzer and Mordechai Aladjem, "Urinary Tract Infection Following Ritual Jewish Circumcision," *Israel Journal of*

*Medical Sciences*, vol. 32, no. 11 ( November, 1996), pp. 1098-1102.

14. "Report of the Task Force on Circumcision", *supra*, note 11, p. 390.
15. "Circumcision in the United States", *supra*, note 7, pp. 1052-1057.
16. *Ibid.*, p. 1057.
17. *Loc. cit.*
18. Masters and Johnson report no difference in exteroceptive and light tactile discrimination on either the ventral or dorsal surfaces of the glans as a result of circumcision. See Warren H. Masters and Virginia E. Johnson, *Human Sexual Response* (Boston, 1966), pp. 189-191.

It should however be noted that Rambam, in his *Guide for the Perplexed*, Book III, chap. 49, states that circumcision is designed to mitigate sexual desire and counteract excessive lust by weakening the power of sexual excitement and, at times, by lessening natural enjoyment. It is of interest to note that the authors of a recent article have argued: 1) Keratinization of the glans lowers the sensitivity and hence the sexual excitability of a circumcised male's genitals; the result is lowering of excitability and raising the threshold for sexual arousal. 2) In antiquity, societies instituted the practice of circumcision in order to make young males less sexually excitable and distractable and hence more amenable to acceptance of the group's authority. See Ronald S. Immerman and Wade C. Mackey, "A Bicultural Analysis of Circumcision," *Social Biology*, vol. 44, no. 3-4 (Fall-Winter, 1997), pp. 265-275. The authors present the same material in a somewhat modified form in a second article, "A Proposed Relationship between Circumcision and Neural Reorganization," *Journal of Genetic Psychology*, vol. 159, no. 3 (September, 1998), pp. 367-378. In the latter article they further suggest that abated male sexual drive as a result of circumcision more closely parallels that of the female and serves to reduce extramarital liaisons. Accordingly, they argue, those societies instituted circumcision in order to benefit from strengthened and more durable marriages.

Also of interest are Philo's comments in *The Special Laws*, trans. F.H. Colson (Cambridge, 1937), I, 9, p. 105. Philo writes that, apart from "the explanations handed down to us from the old-time studies of divinely gifted men," he considers circumcision to be a "symbol" designed to "dock the organ which ministers to intercourse, thus making circumcision the figure of the excision of excessive and superfluous pleasure, not only of one pleasure but of all the other pleasures signified by one, and that the most imperious." Philo differs from Rambam in regarding removal of the foreskin as merely symbolic of curtailment of sensual pleasure.

19. *Supra*, note 6.
20. The report suggests that this phenomenon may be due to the fact that there are increased numbers of uropathogenic organisms in the area of the urethral meatus of uncircumcised infants. Such periurethral colonization decreases in all infants after the first six months of life. See T. E. Wiswell, G. M. Miller, H. M. Gelston *et al.*, "Effect of Circumcision Status on Periurethral Bacterial Flora During the First Year of Life," *Journal of Pediatrics*, vol. 113, no. 3 (September , 1988), pp. 442-446. It has also been demonstrated that these bacteria adhere to, and readily colonize, the

- mucosal surface of the foreskin that is removed in circumcision but do not adhere to the keratinized skin surface. See E. N. Fussell, M. B. Kaack, R. Cherry and J.A. Roberts, "Adherence of Bacteria to Human Foreskins," *Journal of Urology*, vol. 140, no. 5 (November, 1988), pp. 997-1001.
21. See L. S. Cook, L. A. Koutsky and K. K. Holmes, "Circumcision and Sexually Transmitted Diseases," *American Journal of Public Health*, vol. 84, no. 2 (February, 1994), pp. 197-201 and J. Newell, K. Senkoro, F. Mosha *et al.*, "A Population-Based Study of Syphilis and Sexually Transmitted Disease Syndromes in Northwestern Tanzania." II. "Risk Factors and Health Seeking Behaviour," *Genitourinary Medicine*, vol. 69, no. 6 (December, 1993), pp. 421-426.
22. See S. Moses, F. A. Plummer, J. E. Bradley *et al.*, "The Association Between the Lack of Male Circumcision and the Risk for HIV Infection: A Review of the Epidemiological Data," *Sexually Transmitted Diseases*, vol. 21, no. 4 (July-August, 1994), pp. 201-210; J. Seed, S. Allen, T. Mertens, *et al.*, "Male Circumcision, Sexually Transmitted Disease, and Risk of HIV," *Journal of Acquired Immune Deficiency Syndrome and Human Retrovirology*, vol. 8, no. 1 (January 1, 1995), pp. 83-90; J.K. Kreiss and S.G. Hopkins, "The Association Between Circumcision Status and Human Immunodeficiency Virus Infection among Homosexual Men," *Journal of Infectious Diseases*, vol. 168, no. 6 (December, 1993), pp. 1404-1408; M.W. Tyndall, R. Ronald, E. Agoki *et al.*, "Increased Risk of Infection with Human Immunodeficiency Virus Type 1 among Uncircumcised Men Presenting with Genital Ulcer Disease in Kenya," *Clinical Infectious Diseases*, vol. 23, no. 3 (September, 1996), pp. 449-453; J. Bwayo, F. Plummer, M. Omu, *et al.*, "Human Immunodeficiency Virus Infection in Long-Distance Truck Drivers in East Africa," *Archives of Internal Medicine*, vol. 154, no. 12 (June 27, 1994), pp. 1391-1396; J. Pepin, M. Quigley, J. Todd *et al.*, "Association between HIV-2 Infection and Genital Ulcer Diseases among Male Sexually Transmitted Disease Patients in Gambia," *AIDS* vol. 6, no. 5 (May, 1992), pp. 489-493; and J.N. Simonsen, D.W. Cameron, N.M. Gakinya *et al.*, "Human Immuno-deficiency Virus Infection among Men with Sexually Transmitted Diseases: Experience from a Center in Africa," *New England Journal of Medicine*, vol. 319, no. 5 (August 4, 1988), pp. 274-278. This phenomenon is explained on the basis of the fact that the mucous surface of the uncircumcised penis allows for viral attachment to lymphoid cells at or near the surface of the mucous membrane. There is also increased likelihood of minor abrasions in the uncircumcised foreskin that may provide an avenue for HIV infection.
23. "Circumcision Policy Statement," *supra*, note 6, p. 691.
24. *Loc. cit.*
25. Philo, who was not a rabbinic scholar, regards circumcision as designed to increase fertility as well as to promote cleanliness and health. See *De Circumcisione*, ed. T. Mangey (1785), II, 210, and *The Special Laws*, I, 4-9, pp. 103-105. It has been suggested that Philo made the association between circumcision and fecundity, which he describes as "the most vital reason" for the practice of circumcision, because the birth of Isaac came

- closely upon the circumcision of Abraham. See J. D. Eisenstein, *Ozar Yisra'el* (New York, 5712), V, 170.
26. See, for example, the letters to the editor published in *Lancet*, vol. 345 (April 8, 1995), p. 927, as well as Thomas J. Ritter and George C. Denniston, *Say No to Circumcision*, 2nd ed. (Aptos, 1966), secs. 3-4.
  27. See, for example, "The Question of Circumcision," *supra*, note 8, p. 491.
  28. It should be noted that, as will be discussed in the following section, a significant number of responsa dating from the beginning of the century refer to use of topical anesthesia in the circumcision of adults and older children. The novelty of this and subsequent medical studies lies in the fact that the subjects were newborns.
  29. See C. Kirya and Milton Werthmann, "Neonatal Circumcision and Penile Dorsal Nerve Block: A Painless Procedure," *Journal of Pediatrics*, vol. 92, no. 6 (June, 1978), pp. 998-1000.
  30. See C. A. Sara and C. J. Lowry, "A Complication of Circumcision and Dorsal Nerve Block of the Penis," *Anesthesia and Intensive Care*, vol. 13, no. 1 (February, 1985), pp. 79-82.
  31. Howard J. Stang, Megan R. Gunnar, Leonard Snellman *et al.*, "Local Anesthesia for Neonatal Circumcision: Effects on Distress and Cortical Response," *Journal of the American Medical Association*, vol. 259, no. 10 (March 11, 1988), pp. 1507-1511. An earlier study found no such distinction. See Paul S. Williamson and Nolan Donavan Evans, "Neonatal Cortisol Response to Circumcision with Anesthesia," *Clinical Pediatrics*, vol. 25, no. 8 (August, 1986), pp. 412-415.
  32. See "A Complication of Circumcision and Dorsal Nerve Block of the Penis," *supra*, note 30.
  33. See Diane Mudge and Jantet B. Younger, "The Effects of Topical Lidocaine on Infant Response to Circumcision," *Journal of Nurse-Midwifery*, vol. 34, no. 6 (November-December, 1989), pp. 335-340.
  34. Kathleen B. Weatherstone, Lynn B. Rasmussen, Allen Erenberg *et al.*, "Safety and Efficacy of a Topical Anesthesia for Neonatal Circumcision," *Pediatrics*, vol. 93, no. 5 (November, 1993), pp. 710-714.
  35. Franca Benini, C. Celeste Johnston, Daniel Faucher and J. Aranda, "Topical Anesthesia During Circumcision in Newborn Infants," *Journal of the American Medical Association*, vol. 270, no. 7 (August 18, 1993), pp. 850-853.
  36. For sources substantiating the absence of pain attendant upon incision with a sharp knife, see this writer's *Contemporary Halakhic Problems*, III (New York, 1989), 209, note 18.
  37. R. Aryeh Leib Grossnass, *Lev Aryeh*, I, no. 2, permits general anesthesia for the circumcision of a convert but, by implication, not for the circumcision of a naturally-born Jew. *Lev Aryeh* bases himself upon R. Abraham Kahana-Shapiro, *Teshuvot Dvar Avraham*, II, no. 25, who terms the circumcision of a proselyte a mere preparation (*hekhsher*) for a *mizvah*.

Cf., R. Abraham Isaac ha-Kohen Kook, *Da'at Kohen*, no. 194 who, *en passant*, refers to the use of both general and topical anesthesia in conjunction with circumcision and offers no criticism of the practice. Use of general anesthesia is also permitted by R. Moshe Dov Welner, *She'ilat Hemdat*

- Zevi, no. 4. R. Aaron Epstein, *Kappei Aharon*, no. 19, similarly assumes as a matter of course that use of general anesthesia is permissible. *Kappei Aharon* expresses doubt with regard to whether the person being circumcised should recite the blessing "to enter the covenant of Avraham" before the anesthetic is administered or whether, since a significant period of time will elapse before the incision is made, the blessing should be recited by the *mohel*. *Koret ha-Brit*, *Nahal Brit* 261:4, considers the problem of recitation of the blessing as an additional reason not to employ general anesthesia.
38. This responsum originally appeared in *No'am*, XII (5729), 1-10.
  39. See also R. Shalom Yosef ha-Levi Feigenbaum, *Ohel Mo'ed*, vol. I, no. 2 (Shevat 5686), p. 36 and *idem*, *Teshuvot Meshiv Shalom*, no. 318.
  40. Cf., however, *Mahaneh Efrayim*, *Hilkhot Gerushin* 3:15, who cites a discussion recorded in *Bava Kamma* 110a from which it may be inferred that the exclusion must be understood quite literally and hence is applicable in instances of physical impediment as well. This also seems to be the understanding of *Tosafot Yeshanim*, *Eiruv* 13a.
  41. *Koret ha-Brit*, *Nahal Brit* 261:4, cryptically comments, "Perhaps one should distinguish between natural sleep and sleep such as this," but offers no rationale to support that distinction.
  42. This is also the position of *Teshuvot Maharil*, no. 7, as cited in *Binat Adam*, *Sha'ar Issur ve-Hetter*, sec. 7.  
 R. Joseph Dov ha-Levi Soloveitchik, *Bet ha-Levi*, I, no. 10, asserts that the *mizvah* of circumcision can be fulfilled through an agent but that the additional *mizvah* devolving upon a father to circumcise his son can be fulfilled only by the father himself.
  43. See also Maharit, *Kiddushin* 29a, s.v. *oto ve-lo otah*.
  44. Further support for *Or Zaru'a's* position may be found in the statement of the Gemara, *Shevu'ot* 38b. Genesis 24:3 records that Abraham demanded that Eliezer swear a solemn oath not to select a bride for Isaac from among the daughters of Canaan. Genesis 24:2 states that Abraham also demanded that Eliezer place his hand "under my thigh" while swearing the oath, i.e., that Eliezer hold the site of Abraham's circumcision in his hand while swearing the oath. The Gemara comments: "From here it is derived that a person being administered an oath must seize an object [of a *mizvah*] in his hand." See also Rashi's comment on Genesis 24:2. The problem reflected in this talmudic text is similar to the problem addressed by *Or Zaru'a*: Why does the circumcised glans serve as an "object of a *mizvah*" more so than, for example, a hand or scalp used for donning *tefillin*? The answer must lie in the fact that a hand is merely functionally related to fulfillment of the *mizvah* but is not itself intrinsic to the *mizvah*. The role of the membrum with regard to the act of excising of the foreskin is entirely similar. The *mizvah* of circumcision, however, also includes a commandment to bear the sign of the covenant at all times. As the organ in which the sign of the covenant is continuously borne the circumcised membrum constitutes an actual object of a *mizvah* in a manner entirely similar to the sense in which phylacteries or a Torah scroll constitute an object of a *mizvah*. See R. Shimon Moshe Diskin, *Ohel Yehoshu'a: Mas'et ha-Melekh*, 3rd

- edition (Jerusalem, 5758), *Parashat Hayyei Sarah*. See also the discussion of R. Yitzchak Bezalel Morgenstern, *Ha-Me'asef*, vol. XVIII, no. 6 (I Adar 5673), and R. Jacob Denison, *Ha-Me'asef*, vol. XIX, no. 1 (Tishri, 5674).
45. *Bet ha-Levi*, I, no. 10 maintains that the *mizvah* is twofold in nature, i.e., the act of excising the foreskin constitutes fulfillment of the *mizvah* in addition to which there is an ongoing *mizvah* to be in a circumcised state. See also *Bet ha-Levi*, II, no. 47 and *Bet ha-Levi, Parashat Lekh Lekha*. For further elaboration see R. Ya'akov Kanievsky, *Kehillot Ya'akov, Kiddushin*, no. 32, sec. 3.
  46. R. Ovadiah Yosef, *Yabi'a Omer*, V, *Yoreh De'ah*, no. 22, suggests that *Or Zarua's* analysis of the nature of the *mizvah* of circumcision is the focal point of a controversy between *Tosafot* and Rambam. *Tosafot, Yevamot* 72a, maintain that a person who elongates the remaining foreskin in order to appear uncircumcised is categorized as uncircumcised and is forbidden to partake of *terumah* only by virtue of rabbinic decree whereas Rambam, *Hilkhot Milah* 3:8, rules that a person performing such an act incurs the biblical punishment of excision (*karet*). [Cf., however, Rambam, *Hilkhot Teshuvah* 3:6; see also *Mishneh le-Melekh, Hilkhot Melakhim* 10:7; *Ma'aseh Rokeah, Hilkhot Teshuvah* 3:6; R. Abraham Lits Rosenbaum, *Teshuvot Ben Yehudah*, no. 90; and R. Naphtali Zevi Judah Berlin, *Ha'amek Davar*, Genesis 17:13.] Rabbi Yosef suggests that the controversy flows from conflicting analyses of the *mizvah*: If the *mizvah* lies in the severance of the foreskin, once the act is completed the person has irreversibly discharged his obligation; if the *mizvah* is fulfilled by being in a circumcised state, the *mizvah* is ongoing and may be frustrated because this state is reversible. R. Yosef Engel, *Ben Porat*, no. 2, sec. 4, points to Rambam's ruling, *Hilkhot Milah* 1:2, that failure to perform circumcision does not entail *karet* so long as the person is yet alive and Ra'avad's conflicting view that the person is liable to the penalty of *karet* every moment. Mahari Engel asserts that, for Ra'avad, the *mizvah* is to be circumcised and hence every moment that a person remains in an uncircumcised state occasions punishment anew, whereas for Rambam the *mizvah* is a single act that can be performed at any moment so long as the person is alive. Neither the analysis of *Yabi'a Omer* nor that of Mahari Engel is compelling.
  47. The ruling recorded in *Shulhan Arukh, Yoreh De'ah* 264:8, to the effect that a minor may perform circumcision would seemingly indicate either that the commandment is passive in nature or that no intent is required. Cf., *Minhat Hinnukh*, no. 2. *Seridei Esh*, III, no. 96, asserts that circumcision by a minor is efficacious only in the sense that the person upon whom the minor performs the procedure is not regarded as uncircumcised for purposes of partaking of *terumah* or of the paschal sacrifice and is not subject to the punishment of *karet* but that the *mizvah* remains unfulfilled. See *Teshuvot Hatam Sofer, Yoreh De'ah*, nos. 132 and 200, who makes the same point in explaining the position of those authorities who regard circumcision performed by a gentile as valid.
  48. This is the view of *Shakh, Hoshen Mishpat* 382:4, as understood by *Kezot he-Hoshen*. R. Abraham Kahane-Shapiro, *Dvar Avraham*, II, no. 1, explains that agency is inoperative, not because circumcision is a *mizvah*

*she-be-gufo*, but because, upon failure of the father to circumcise his son, every Jew is obligated to perform the *mizvah*; hence, the person performing the circumcision is perforce acting on his own behalf rather than as an agent. See also *Bet ha-Levi*, I, no. 10. Ramban, *Shabbat* 137b, adopts a position of this nature in declaring that circumcision of a convert does not involve agency because any person who performs the circumcision is fulfilling his own *mizvah*. Rashba, *ad locum*, makes the same point with regard to the members of the *Bet Din* who are charged with circumcising an infant when the father fails to do so.

49. *Seridei Esh* bases this argument upon the comments of *Taz*, *Orach Hayyim* 328:1.
50. See also *Koret ha-Brit*, *Nahal Brit* 261:4.
51. *Koret ha-Brit*, *Nahal Brit* 262:3, who cites a report to the effect that *mohalim* routinely refuse to perform circumcision while a child is asleep lest the child become a "*nikhpeh*," i.e., lest the circumcision cause an epileptic seizure. There is, however, no known medical basis for that concern.
52. A similar argument is advanced by R. Moshe Sternbuch, *Teshuvot ve-Hanhagot*, I, no. 590, II, no. 510 and III, no. 308.

In *Teshuvot ve-Hanhagot*, III, no. 308, Rabbi Sternbuch reports that an unnamed rabbi, apparently in South Africa, had advised a candidate for conversion to undergo surgical circumcision under anesthesia and later to perform the relatively painless "letting of the blood of the covenant" (*hatafat dam brit*) for purposes of conversion as would be the procedure for any previously circumcised person seeking to become a proselyte. Rabbi Sternbuch objects to that solution because of Rabbenu Chananel's view that a previously circumcised non-Jew who converts to Judaism is not permitted to marry a Jewish woman. The opinion of Rabbenu Chananel (or, according to some versions, Rabbenu Tam) is cited by *Tur Shulhan Arukh* 268. Although Rabbenu Chananel's view is not normative, Rabbi Sternbuch is of the opinion that it should not be ignored in situations in which other options are available.

53. The Hebrew term used in this context, viz., "*domem*" can also be translated as "mute." *Seridei Esh* may well have intended a *double entendre*.
54. Cf., Aretaeus, *De Curatione Morborum Diuturnorum*, Book 1, chap. xiii, and Caelius Aurelianus, *On Acute Diseases and on Chronic Diseases*, trans. I. E. Drabkin (Chicago, 1950), Book III, chap. iv, p. 753.
55. See also *Avodah Zarah* 28a: "Jacob the sectarian prepared a medicine for [R. Abbahu's] leg and were it not for R. Ammi and R. Asi who licked his leg he would have cut his leg off."
56. See R. Alter Saul Pfeffer, *Avnei Zikaron*, III, no. 3. Cf., *Hamudei Dani'el* cited by *Pithei Teshuvah*, *Yoreh De'ah* 264:13.
57. The issue is whether the foreskin must be severed by cutting or whether it may also be destroyed either by chemical means or by cutting off the blood supply and thereby causing necrosis of the tissue. Both the Gomco clamp and the Magen are designed to cause necrosis with the result that the dead tissue may be simply sloughed off rather than severed by cutting. Use of the Gomco clamp was banned by the Union of Orthodox Rabbis in the United States and Canada for this and for other reasons. The full text of

- that ban was published in *Ha-Pardes*, Shevat 5711, p. 31. Objections to use of the Gomco clamp and the Magen are detailed by R. Moshe Sternbuch, *Dat ve-Halakhah* (Jerusalem, 5730), no. 2. See also R. Yosef Eliyahu Henkin, *Edut be-Yisra'el* (New York, n.d.), p. 144; R. Yitzchak Ya'akov Weisz, *Teshuvot Minhat Yizhak*, V, no. 24, sec. 2 and VIII, no. 89; R. Eliezer Waldenberg, *Ziv Eli'ezer*, VIII, no. 29 and X, no. 38; and R. Moshe Feinstein, *Iggerot Mosheh*, *Yoreh De'ah*, II, no. 119 and *Yoreh De'ah*, III, nos. 98-99. Cf., R. Moshe Bunim Pirutinsky, *Sefer ha-Brit*, *Likkutei Halakhot* 264: 68 and 268: 75.
58. See, however, *Tosafot Ri ha-Lavan*, *Ketubot* 5b, who explicitly permits use of a chemical for this purpose. R. Israel Isserlein, renowned as the author of *Terumot ha-Deshen*, apparently espouses a similar view as reflected in a work by his student R. Joseph ben Moshe, *Leket Yosher*, ed. Jacob Freimann (Berlin, 5663), p. 51.
  59. Cf., however, *Teshuvot Hatam Sofer*, *Yoreh De'ah*, no. 249, who understands the term as connoting only "removal." That is also the position of *Teshuvot Divrei Hayyim*, II, *Yoreh De'ah*, no. 114.
  60. Of interest, albeit lacking halakhic import, are the comments of the nineteenth century authority, R. Eliyahu Guttmacher in his only recently published commentary on *Shabbat* 130a. R. Eliyahu Guttmacher remarks that prayers for the sick etc. are particularly propitious at the time of circumcision because on such occasions the prayers ascend to heaven together with the cries of the newly circumcised child.
  61. A similar view was expressed by R. Aryeh Zevi Frommer, *Teshuvot Erez Zevi*, no. 56, in a situation involving somewhat different but extraordinary circumstances.
  62. *She'erit Ya'akov* is published as an appendix to that author's *Teshuvot Zur Ya'akov*.
  63. *Torat ha-Adam*, *Kitvei Ramban*, ed. Bernard Chavel (Jerusalem, 5724), II, 48.
  64. The Gemara, *Sanhedrin* 73a, declares that the verse, "and you shall restore it to him" (Deuteronomy 22:2) mandates not only the return of lost property but, *a fortiori*, preservation of life as well. Thus, the verse does not refer solely to the return of objects of material value. R. Yehudah Leib Zirelson, *Teshuvot Azei ha-Levanon*, no. 61, argues cogently that restoration of health to a person suffering from an illness is included in the commandment "and you shall restore it to him." Accordingly, it may be argued that the commandment "and you shall restore it to him" also includes an obligation to restore a person to a pain-free state.
  65. Cf., however, Rashi, *ad locum*, who understands the application to circumcision quite literally, i.e., circumcision may, at times, result in loss of life.
  66. Although a statement by R. Joseph Shalom Eliashiv himself is not available, in a letter dated 5 Shevat 5758, a copy of which is in the possession of this writer, Rabbi Nachum Eisenstein reports that Rabbi Eliashiv accepts the position of *Imrei Yosher*, but permits use of a topical anesthesia in situations in which there is a particular medical need.
  67. Even more fundamentally, only pain that is a natural accompaniment of simple excision may be tolerated. Accordingly, any extrinsic procedure



- causing additional pain is prohibited, including the pain of crushing the foreskin inherent in use of the Gomco clamp or the Magen as described in "Topical Anesthesia During Circumcision in Newborn Infants," *supra*, note 35, p. 852 and in *Lancet*, April 8, 1995, p. 927. See Rabbi Henkin, *Edut le-Yisra'el*, p. 144, who declares that, even absent other considerations, that concern is in itself sufficient to prohibit use of such devices.
68. Cf., R. Moshe Sternbuch, *Teshuvot ve-Hanhagot*, I, no. 590, and II, no. 510, who prefers that the topical anesthesia be administered in a manner that will yet allow for "some pain."
69. Application of a salve or ointment constitutes an act of *memahak*, one of the thirty-nine prohibited categories of labor. However, were the pharmaceutical agent to be formulated as a liquid there would be no objection to its use on *Shabbat* provided that the liquid not be applied by expressing it from gauze, cotton or cloth.
70. See also the comments of *Teshuvot Meshiv Shalom*, no. 318, s.v. *ve-hineh*.