

Milah & Hatafat Dam Brit in a Case of Sakanah (Danger)

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“והאר עינינו בתורתך ודבק לבנו במצוותך ויחד לבבנו לאהבה וליראה את שמך”

"Enlighten our eyes with Your Torah and attach our hearts to Your mitzvot and unify our hearts to love and revere Your name"

Ariel Berry

ד' ניסן תשפ"ג

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שאלה / Sheilah

אפשר להתגייר אנשים טרנסג'נדרים למי מילה או התפת דם ברית היא סכנה?

May we perform a conversion for a transgender individual for whom *milah / hatafat dam brit*¹ poses a *sakanah*?²

תשובה / Teshuvah

Halakhah is the path by which our people have been inspired and guided throughout our exile. It was the means by which we transitioned from a Temple-centered people, to a tradition in which the individual could connect to *Hashem yitbarakh* and to one another, no matter where they are found in the world.

We are but the latest link in this enduring chain of tradition. We, like our ancestors before us and like our descendants to come, struggle to strike a balance between our traditions and the changing world in which we live. This is an eternal struggle, always seeking balance,

¹*Milah* is a ritual circumcision as performed within the Jewish tradition, which involves the removal of the foreskin. *Hatafat dam brit* is a symbolic ritual circumcision performed within the Jewish tradition where the individual was medically circumcised at a previous time but not *l'shem mitzvah* (for the sake of the commandment of *milah*), which involves a minor prick to the scar tissue of the original circumcision to bring forth a drop of blood.

² "A danger." Understood to be a serious threat to one's well being or life.

always adapting, and never ending. *Halakhah* is itself a testimony to this. Throughout the centuries our rabbis, z"l, have struggled with our texts, adapting them to new realities and changing them when old circumstances became untenable.³ Whether it was in the Babylonian academies, Islamic lands, the shtetl, emancipated Europe, the wake of the Sho'ah, or our modern day, we have continued to walk this path. So too today, *halakhah* is being inspired and transformed by those who historically have been excluded from the study halls and the halakhic process.

It is said that all of the Jewish people, who were and would be, stood at Sinai together to receive the Torah.⁴ Moses stood with Rabban Gamliel, who stood with Rashi, who stood with R' Moses Karo, with R' Zacharias Frankel, with R' Abraham Joshua Heschel, with R' Gail Labovitz, with R' Benay Lappe, who stood with us. We too heard the revealed word of the Living G-d and feel the internal call to interpret, understand, and apply that which we heard in light of the world in which we live.

Each individual lives a life of unique experiences, which allow them to see things in a unique way. We are called to bring this life to bear on our texts and to share our distinctive revealed Torah, for only we are able to do so. It is for this reason that we as queer and trans Jews must make our voices heard. As it is written, "The sages of each generation- each of them received what was theirs from Sinai".⁵ By giving us this special Torah, Hashem calls us to speak, for without our voices, our tradition is not merely incomplete, but antiquated and calcified—and even worse, untrue. The time has long since arrived for queer and trans lives to bear on our holy tradition. If the Torah, if *halakhah*, is to continue into the future, we must take an active part in deciding what that present will look like, thereby influencing generations to come. A *halakhah* that ignores the new and remains frozen is destined to stagnate. A *halakhah* that sees the world for what it is and seeks ways to preserve our traditions while responding to the real needs of the world is destined to thrive.⁶

R' Simon Greenberg, z"l, writes of Torah:

³ See R' Benay Lappe's 'Crash Theory':

<https://www.myjewishlearning.com/eli-talks/an-unrecognizable-jewish-future-a-queer-talmudic-take/>

⁴ See Shemot Rabbah 28:6

⁵ See Shemot Rabbah 28:6

⁶ We are taught that when we teach, we bring the name of those who taught us. To this end, I owe the greatest of debts to my dearest friend, *chevrutah*, and teacher, Alex Friedman, not only for helping me to better express this paragraph, but for his generous and kind feedback on this teshuvah in general. It is an understatement to say that his influence on me is a major factor that made this teshuvah possible.

The schools of Spain, Northern Africa, Germany, and Eastern Europe, the needs of new situations, the contacts with new cultures, all left their marks in the commentaries upon the Talmud, in the new codes that were formulated, and in the new legal, theological, moralistic, and liturgical literature that developed. This process, which has continued down through the ages with varying degrees of vitality in different countries and eras, is still functioning within Judaism. The oral Torah thus continues to grow and, within limits, to change.⁷

So, how is this growth to happen? *Halakhah* is a system with rules and customs that the *posek* must follow in rendering *p'sak*.⁸ This systematic approach has allowed our people the world over to adapt *halakhah* to their unique circumstances while remaining in conversation with our people as a whole. The flexibility of this system has allowed our people to remain unified, in spite of distance and time. Despite radically different conclusions, this system has made it possible for Ashkenazi, Sefardi, and Mizrachi Jews to share meals, daven together, and to fulfill the commandment to love our fellows as ourselves.⁹

Halakhah as a system is the continuation of interpretation and application, going all the way back to Sinai. Hashem revealed Their Torah to the Israelites and almost immediately, it began to be interpreted. Alongside the Written Torah was given the beginnings of the Oral Torah: from the Tannaim, to the Amoraim, to the Geonim, to the Rishonim, and to the Achronim, our traditions have been recorded and transmitted to successive generations, each passing to the next the tradition along with their understandings and interpretations.

We are but the latest link in this chain, continuing to pass along this tradition that we truly cherish. It is my prayer that this teshuvah will be one of the stepping stones in this chain of transmission, serving as a step by which the system can adapt to the needs of our world, and as a step by which our descendants may continue to push forward towards a world more perfected.

Conversion has long been established in our tradition, with Abraham and Sarah as the first converts, all the way to Ruth, among whose descendants would be King David, and eventually the messiah (may they come speedily in our days). While the exact requirements of conversion have evolved over the centuries, *brit milah*—circumcision—has remained central to this process. Historically, *milah* was performed on any child or adult convert who had a penis. In the mind of our ancient ancestors, and later in the minds of *chazal*, this was

⁷ *Foundations of a Faith*, R' Simon Greenberg, 1967.

⁸ A *posek* (plural: *poskim*), is one who issues *p'sak*, a legal decisor and a legal decision respectively.

⁹ Leviticus 19:18

a given. In our day, righteous individuals continue to approach our communities seeking to join our people, among them individuals who are transgender. For some of these individuals, *brit milah* is a barricade to their conversion as a result of dysphoria. It is my opinion that we are duty bound to investigate whether the *halakhah* may provide any pathways to tear down this barrier.

It has been argued by many that the *chiyuv*¹⁰ of *milah / hatafat dam brit* is incumbent upon any individual who has a penis (whether having a foreskin or having been medically circumcised at a previous time), and is therefore based on the anatomy rather than the gender identity of the individual.¹¹ This approach suggests that any individual with a penis is obligated in *milah / hatafat dam brit*, which includes many transgender and non-binary individuals. A situation which poses a challenge to the conversion process is one for whom *milah / hatafat dam brit* would be a *sakanah*, such as hemophilia or gender dysphoria. In the case of one who has hemophilia, the medical danger of undergoing surgery is too great a risk. Similarly, for many who have dysphoria, the danger of this surgery is too great. If an individual could not safely be circumcised, could they convert without it?

Notwithstanding, it is my opinion¹² that such individuals, who are born to a Jewish gestational parent, would be *patur*¹³ from *milah/ hatafat dam brit* should the fulfillment thereof be a *sanakah*, based on the principle of *pikuach nefesh*.¹⁴ We make no distinction between physical and mental health in this regard as modern medical and psychological

¹⁰ "The obligation."

¹¹ "The various dimensions of human sex and gender...were unknown to our ancestors. For them, gender assignment was exclusively on the basis of genital anatomy....In short, the *mitzvah* of *brit milah* [or *hatafat dam brit* when applicable] is based on anatomy rather than gender and applies to any person with a penis". EH 5:11.2017b, *Transgender Jews and Halakha*, R' Leonard A. Sharzer MD, 2017, CJLS. (see sources referenced therein)

<https://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/2011-2020/transgender-halakhah.pdf>

¹² See also Har Tzvi 2:220 who brings sources that those whose sibling died as a result of circumcision are exempt from circumcision. It seems to me that in the case of a transgender individual who was born to a Jewish gestational parent would be treated in the same light, in that for many transgender individuals the prospect of circumcision would be a great danger to their wellbeing, and as such, should they express that being required to do so would be a danger, they would be exempt. Unfortunately, for many of our trans siblings, they have been forced into situations that endangered them, and we are obligated to learn and do better if we are to honor their memories.

¹³ "Exempt."

¹⁴ *Pikuach nefesh* is the concept that the preservation of life is supreme in matters of halakhah. If it is known, or even if there is a possibility, that someone will be endangered, certain halakhic obligations/prohibitions are suspended to preserve the individual's life.

professionals have demonstrated clearly that the two are heavily interrelated and have profound effects on the overall wellbeing of the individual, and in any case of risk to an individual's wellbeing, even one of *safek*,¹⁵ we are *machmir*¹⁶ in the preservation thereof. Even within the canon of rabbinic literature, there are sources which support this. In Bavli M. Yoma 83a¹⁷, the sugya brings the case of an individual who feels ill and believes that by eating, they will be healed. Even if experts believe the individual need not be fed, we permit the individual to eat nonetheless, as "the heart knows the bitterness of its own soul".¹⁸ This case is codified in the Shulchan Arukh as well as the Halakhot Gedolot and the Peninei Halakhah.¹⁹ Based on the opinions of mental health experts such as Dr. Dave Eldredge²⁰, as well as the sources presented above, it seems that in matters of *halakhah*, we must treat mental health in the same way as we would physical health. It is clear in the sugya that the advice of experts carries great weight in halakhic decisions, but the individual is the foremost expert in their own needs.

In addressing our sheilah, the majority of poskim hold that an individual who has a penis must be circumcised in order to convert, even in the case that there is a serious danger to their health (such as hemophilia or other conditions).²¹ Such individuals would therefore be unable to convert, with the sources going so far as to prevent such a conversion even

¹⁵ "Doubt."

¹⁶ "Strict."

¹⁷ See footnote 31 for greater detail.

¹⁸ Proverbs 14:10

¹⁹ Shulchan Arukh OH 618:1 "ואם החולה אומר צריך אני אפילו מאה רופאים אומרים אינו צריך שומעים לחולה" "If the ill person says 'I need', even if 100 doctors say 'they don't need', we listen to the ill person". Halakhot Gedolot 13:7 on Menachot 64a. Peninei Halakhah: Days of Awe 8:4:7 "It is important to know that even though these halakhic decisions are in the hands of doctors, if a patient thinks that his life may be in danger, and that eating and drinking can save him, then even if the doctors disagree, he should eat and drink. This is because sometimes a person can sense the gravity of his condition more than doctors can, as it is written, 'The heart alone knows its bitterness (Mishlei 14:10)'".

²⁰ "Until we start to view mental illness as an illness that impacts your brain the same way we view an illness that affects your heart or your kidneys, we'll continue to face the devastating consequences caused by stigma," Dave Eldredge, MSW, LCSW, Senior Director of Clinical Operations at Huntsman Mental Health Institute, University of Utah. <https://healthcare.utah.edu/healthfeed/postings/2022/04/mental-health-is-physical-health.php>

"Mental and physical health are equally important components of overall health," Center for Disease Control and Prevention. <https://www.cdc.gov/mentalhealth/learn/index.htm>

²¹ See R. Avraham Yitzchak Ha-Kohen Kook (Da'at Kohen, YD 150), R. Weinberg (Seridei Esh 2:67-68), R. Tzvi Pesach Frank (Har Tzvi 2:220), and the Tzitz Eliezer (14:92:3).

should the individual be willing to accept the risk circumcision would pose, lest harm come to them.²² There are, however, several Achronim who hold that such people would be *patur* from *milah / hatafat dam brit* and would therefore be permitted to convert.²³

One opinion that prohibits conversion in a situation in which circumcision is dangerous is that of Rav Ephraim Greenblatt, z"l. He argues that the prospective convert may eventually become healed and thereafter the danger would be removed, such that the circumcision and conversion would then be able to go forward at that time.

בדבר השאלה בנכרי שרוצה להתגייר ורופא אמר שסכנה למולו...ודעתו **בחולה שיכול להיות שיתרפאת עתה המילה מעכבת....**ואם כן משמע דאין שום עצה לקבלו בלי מילה

Concerning the sheilah of a non-Jew who wishes to convert and a doctor said that it is a danger to circumcise them...And his opinion (see sh"ut Zakhar Yitzchaq) **concerning an ill person who may be healed, currently delays milah...** if so by conclusion there is no advice to accept them [for conversion] without circumcision.²⁴

The impetus behind prohibiting the conversion is due to the possibility that the illness may be healed, thereby allowing the convert to be safely circumcised and the conversion to go forth in the typical manner. Rav Greenblatt further writes that this is also the reasoning behind the opinion of R' Weinberg in Seridei Esh 2:67–68. This is further elaborated in R' Mandl's teshuvah on the same *sheilah*:

However, in our case we are dealing with a situation where a potential convert cannot be circumcised *now*, and possibly *now only*....Therefore, one could draw the conclusion that with a potential convert who is ill, who could possibly be healed in the future, conversion, without

²² See sources cited in footnote 24. Further explained in the teshuva of Rav Greenblatt: אפילו אם יתרצה להכניס עצמו לסכנה ולמול אין לקבלו לפי שיש בזה חלול השם וסכנה לכלל ישראל, אם ח"ו ימות מחמת מילה, וא"כ משמע דאין שום עצה לקבלו מילה, "even if they want to subject themselves to danger and be circumcised, do not accept them because this is a chilul Hashem (desecration of G-d's name) and a danger for the community of Israel, if G-d forbid, they were to die due to the circumcision, and if so by conclusion there is no advice to accept them without circumcision."

²³ R. David Zvi Zehman (Minchat Solet 2:6; see also Derekh Pikudekha, Mila 29) and R. Asher Weiss who "suggests that this question may depend on whether mila is a necessary component of conversion for a[n individual] or simply a preparation for the *tevila*. According to the latter understanding, when a circumcision cannot be performed, it does not undermine the *tevila* as the act of conversion. R. Weiss notes that he is inclined to accept this view" ([a further exploration can be found here](#)).

²⁴ Rav Ephraim Greenblatt (Revivot Efraim). He also cites Rabbi Goldschweig, Harav Hagaon Weinberg, and Rabbi Chayim Ozer Hagaon as being in agreement with this argument.

circumcision at the present time would, therefore, be forbidden by Jewish law and **postponed until the possible improvement of the medical condition.**²⁵

In summary, the conventional opinion amongst the majority of *poskim* is that in a situation wherein an individual who wishes to convert is unable to be circumcised, the conversion is placed on hold until a time that they may be healed. For these *poskim*, the possibility that the individual may become healed is essential to their *p'sak*.

Regarding advances in medical knowledge, it is clear in the halakhic sources that new developments in knowledge are valid factors in deciding how to apply halakhic precedent. In some cases, it may “be used to justify the abrogation or modification of a norm or a matter of precedent when the evidence proves that the norm or precedent had been erroneously decided on the basis of an inaccurate answer to a question of fact [about a specific medical question]”.²⁶

We know that certain medical conditions are life-long, and that postponing circumcision until one's condition changes is not possible. While treatment may exist to mediate symptoms, many underlying conditions do not go away, making conversion in these circumstances impossible in light of halakhic precedent. Given the above source by Rabbi Roth, *shlit"a*, inasmuch that the original *p'sak* was based on a medical presumption which is known to not be the case in our situation, there is room to reevaluate the *p'sak* as it stands.

Rav Greenblatt—and others who maintain that conversion should be postponed without circumcision—argue that since an individual has the possibility of recovery, they were presently unable to convert. The conversion in these cases should be then put on hold, until such a time may arise that they may recover. In our day, however, we know that many conditions are not subject to change. As such, individuals for whom the danger to their health is not subject to the possibility of being healed are outside the purview of Rav

²⁵ *Conversion to Judaism Without Circumcision Due to Medical Complications*, R' Herbert J. Mandl, YD 268:1.1994, CJLS. Italics original.
https://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/19912000/mandl_conversion.pdf

²⁶ *The Halakhic Process: A Systematic Analysis*, R' Joel Roth, page 235.

Greenblatt's *teshuvah*.^{27 28} Such cases therefore would be permitted for conversion without circumcision. The limitation of the *p'sak* of Rav Greenblatt and other Achronim is further supported by the Achronim who held that a convert for whom circumcision is a danger may indeed convert, regardless of whether the condition was able to be healed or not.²⁹

It is my opinion to not fully abrogate Rav Greenblatt's position, but rather to limit the scope of its applicability. In my opinion, his *p'sak* is correct for those for whom there is a likely and imminent recovery. Their conversion should be delayed, but not prohibited, until they are able to undergo *milah / hatafat dam brit* safely. How to apply this distinction should be made in consultation with the appropriate medical professionals and the individual in question, with the final decision being made by the rabbi.

For many trans and non-binary individuals, the experience of undergoing *milah/ hatafat dam brit* would be severely traumatizing. The mental anguish experienced as a result of dysphoria is a daily challenge. Being required to undergo such an intimate procedure for many would surely only aggravate their suffering, and result in avoidable danger. Given these factors, it is my opinion that individuals for whom circumcision is prevented due to danger, physical or psychological, be permitted to convert without circumcision.³⁰

Based on the sugya in Yoma 83a, we heed the word of experts in this matter. Should medical professionals indicate that they feel it is in the best interest of the prospective convert to not perform circumcision, then we heed their word. Further, should the

²⁷ This is to say that for those for whom the danger is likely or possibly able to be healed, conversion should be postponed until it may be determined whether the danger will cease. If it is determined that the danger is able to be healed, the conversion should continue at that time. If it seems unlikely, the conversion should be permitted in the absence of circumcision.

²⁸ See footnotes 21, 22 for further sources. Further support is found therein, for example in Daat Kohen YD 150: כשאי אפשר לו לקיים מפני הסכנה.... ומאחר שאפשר שיתרפא, וקם הדין שאינו נר עד שימול to survive due to the danger...and afterwards since it is possible to be cured, and the law ensures that they do not convert until they are circumcised".

²⁹ See footnote 23.

³⁰ I do express some reservation to this opinion. Gender dysphoria is a genuine medical condition experienced by many transgender individuals and this matter should not be made light of in being applied elsewhere. As such, my opinion does not extend to those for whom circumcision would be uncomfortable, only to those for whom it would be dangerous physically or psychologically.

