



# Jewish Thought

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## Jewish Thought

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## Foreword

It is with great pride that we present the fourth issue of the annual journal, *Jewish Thought*, sponsored by the Goldstein-Goren International Center for Jewish Thought, at Ben-Gurion University of the Negev. This issue focuses on the topic of new trends in the research of Jewish thought. It consists of 12 articles – 8 in Hebrew and 4 in English.

Some of the articles raise methodological issues regarding the research of certain areas of Jewish thought, whether in Hassidic thought, Talmudic stories, or the editing of Jewish magical texts. Others point to fields of research that are relatively new – e.g., the impact of the social networks on Jewish thought, Jewish occultism. Many of the articles focus on the relation between Jewish thought with other fields of study, such as Jewish art history, medieval Jewish law, contemporary analytic philosophy.

As in the case of the journal's first three issues, *Faith and Heresy, Esotericism, and Asceticism in Judaism and the Abrahamic Religions*, which can be accessed at the following link: <https://in.bgu.ac.il/en/humsos/goldsteingoren/Pages/Journal.aspx>, most of the articles in this issue were written by established scholars, while some were written by young scholars who are at the beginning of their scholarly career. All articles that were submitted underwent a rigorous selection process involving at least two reviewers.

The editors

“A baby boy who dies before reaching eight [days]  
is circumcised with a flint or reed at his grave”

(*Shulhan 'Arukh*, Yoreh De'ah 263:5):

## From Women's Custom to Rabbinic Law

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### Abstract

The custom to circumcise newborns who died before being circumcised by their parents is addressed in a short but important responsum by R. Nahshon, Gaon of Sura (872–879). This article examines the development of the practice, and the way in which this geonic responsum was transmitted among later halakhic authorities. Rabbis active in Rome in the late 11th – early 12th centuries rejected this practice. Their approach that *halakhah* is directed to the living and not to the dead led them to dispute R. Nahshon's responsum, taking liberties with its language and contents in the process. In contrast, the Gaon's ruling was adopted by the sages of Barcelona and Lucena. They offered various reasons in support of their position, such as preventing the uncircumcised newborn's descent to Gehenna or assuring its place at the Resurrection of the Dead. These legal rulings, examined more broadly, reveal their image of the world after death. The responsum by the Italian sages opposing the practice was the basis for halakhic discussion in Ashkenaz even though the custom of circumcising the dead was prevalent there. The article concludes with an analysis of the tension between textual sources and the custom as practiced.

The obligation to circumcise a newborn boy who dies before his parents can enter him into the covenant of Abraham is settled *halakhah* and thus codified in *Shulhan Arukh*. By its very nature, the fulfillment of this obligation is hidden from the eye. It is not performed festively or before a large crowd, and it seems that the Jewish masses are unfamiliar with it and with the details of its performance, even though it is carried out to this day by *hevra kadisha* (burial society) members around the world. This article describes the history of this practice, which is possibly *halakhah*, possibly custom, possibly a balm for the soul of a mother who has lost a child, and possibly a practice that stems from beliefs about the nature of the afterlife. Along the way, it traces the development of this practice, from the responsa of the Babylonian

Geonim in the ninth century through Italy, Spain, and the Rhineland to fourteenth-century Provence. The historical-geographical journey presented below will show that the practice of circumcising the stillborn also provoked much opposition, and its supporters advanced different reasons for upholding it. Between them, a unique conception of the function of the commandments and the nature of life after death emerges, and the journey through the history of this neglected corner of Jewish practice becomes a journey among Jewish cultures. Indeed, they all address a single brief responsum from one of the Babylonian Geonim, and they all return to it while using it to meet their needs.

### The Responsum from the Sages of Rome

We read in the Laws of Circumcision in R. Isaac b. Moses of Vienna's *Or Zaru'a*: "Regarding the question that Solomon the Isaacite asked Mar Nathan, Mar Daniel and his son Mar Abraham, and our Mar R. Jehiel from the city of Rome, of blessed memory."<sup>1</sup> In the Laws of Rosh Hashanah, in a discussion that likewise addresses the laws of circumcision, we again read:

And I, the insignificant one, found support for their words in a responsum from the Geonim, Rabbenu Elazar b. R. Judah and Rabbi Kalonymus the Elder of Rome, the son of our Rabbi Shabbetai, when he arrived in the city of Worms after the death of Rabbenu Jacob b. Yakar, may the memory of the righteous be a blessing. They asked him about this matter, and he produced sealed holy testimony; he revealed a letter [in which] this question had previously been asked in the city of Rome, and therein it is written: "Master Solomon the Isaacite asked of our Master Rabbi Nathan the Gaon, author of the book called *'Arukh*, and of Master Daniel his brother, and of Master Abraham his brother, and they too responded that this had already been asked in the academy of their father, Master Jehiel the Gaon, and he responded in the name of Master Jacob, the head of the academy of the city of Rome."<sup>2</sup>

<sup>1</sup> Rabbi Isaac b. Moses of Vienna, *Or Zaru'a* (Jerusalem, 2010), vol. 2, §104; *The Rules of Circumcision by R. Gershom b. R. Jacob the Circumciser*, Jacob Glassberg edition, in *Zikhron Berit La-Rishonim*, vol. 2 (Krakow, 1892), pp. 126–28.

<sup>2</sup> *Or Zaru'a*, vol. 2, §275. The similarity between the topics of correspondence inclines us to think that the two parts of the question were originally one, but

The name of the questioner, Solomon the Isaacite (ostensibly Rashi), the identity of the respondents (R. Nathan, the author of *'Arukh*, and his brothers, from Rome), and the phenomenon of the question – not a response – that Rashi directed to the sages of distant Rome all conspired to excite and perhaps mislead eminent scholars. For example, the outstanding scholar Victor Aptowitzer put back Rashi's birthdate based on this attestation,<sup>3</sup> and Israel Elfenbein, who edited a collection of Rashi's responsa, included these questions in his work.<sup>4</sup>

In recent years, the voices casting doubt on this hypothesis have grown stronger and have joined those who did not accept it from the outset. Thus, for example, Avraham Grossman, who addressed this relatively extensively, asserts: "It is almost certain that this attribution is fundamentally mistaken," though he concedes that "there are no unambiguous proofs that contradict the view that this is Rashi."<sup>5</sup> Several years ago, Simcha Emanuel showed that R. Samuel b. Natronai, the son-in-law of R. Eliezer b. Nathan (Raavan) of Mainz, is the R. Samuel of Bari who corresponded with Rabbenu Tam. On his migration to the Rhineland, R. Samuel b. Natronai made the sages there aware of unique and valuable information from Italy. Apparently, this includes the responsum under discussion. Emmanuel's novel contribution inclines us to think that the Solomon the Isaacite mentioned here is an Italian sage, whose question, along with the response of the sages of Rome, reached the Rhineland with the migration of R. Samuel b. Natronai. This is how the responsum found its way into the work of his nephew, Raavyah, and from there

that they were split up by the author of *Or Zaru'a* so that they could be incorporated in the proper place in his book. See also *ibid.*, §52, a responsum on the blessing after a meal that the sages of Rome gave to "Solomon the Isaacite." See also *Sefer Raavyah*, David Deblitzky edition (Bnei Brak, 2005), vol. 1, §151, p. 120, which contains a responsum from R. Nathan and his brother R. Abraham concerning the status of apostates. The name of the addressee of this responsum is not mentioned.

<sup>3</sup> Victor (Avigdor) Apowitzer, *Introduction to the Book of Rabiah* [Hebrew] (Jerusalem, 1938), pp. 396, 403. See also *ibid.*, pp. 473–74. Evidently the first to note in scholarly literature was Solomon Judah Rapoport (Shir), "Toledot R. Natan Ba'al Ha-Arukh," [Hebrew], printed as a supplement to *Bikurei Ha-'Itim* 10 (1830), pp. 7–58 (separate pagination); *idem*, *Toledot Rabbenu Natan Ish Romi* (Warsaw, 1913), p. 12.

<sup>4</sup> Israel Elfenbein, *Teshuvot Rashi* (New York, 1943), §§39–41, pp. 30–36.

<sup>5</sup> Avraham Grossman, *The Early Sages of France* [Hebrew] (Jerusalem, 1995), pp. 241–43.



to Raavyah's disciple, R. Isaac b. Moses of Vienna, author of *Or Zaru'a*.<sup>6</sup> Yet even if the questioner is not Rashi, it seems that this question, the response to it, its incarnations within the field of *halakhah*, and its geographical-historical context are all Torah, and they must be studied.

The question posed by R. Solomon the Isaacite was exceedingly terse: "Regarding a child who dies before [he is] eight days [old], is it necessary to cut off his foreskin posthumously or not?" That is, must the parents circumcise a baby boy who dies before he is eight days old, when he would have a *berit milah* and enter the covenant of the patriarch Abraham through circumcision?<sup>7</sup> The questioner does not tell us where he obtained the idea that a dead child should be circumcised. This omission was filled by the respondents, who wrote: "This is the response. Our women certainly have the custom of cutting with a cane stalk (*kerumit shel qaneh*)." It stands to reason that the questioner and the respondents are referring to the same thing. The basis of the question was the custom of circumcising dead infants, and the questioner was inquiring about the propriety, justification, and legitimacy of this practice. Along the way, the respondents revealed two technical details about how the circumcision was performed: first, that women performed it, and second, that it was performed with a cane stalk, a type of makeshift wooden knife. Among the five things enumerated about this stalk in the Talmud (*BT Hullin* 16b) is the statement that one may not slaughter animals or perform circumcision with it. In his commentary on this passage, Rashi explains: "For when one presses down with them, shards splinter off, and there is danger in circumcision lest it pierce the penis and render

<sup>6</sup> See Simcha Emanuel, *Fragments of the Tablets: Lost Books of the Tosaphists* [Hebrew] (Jerusalem, 2007), pp. 65–68. On the path of this responsum to the Rhineland via R. Samuel b. Natronai, see the discussion on p. 17.

<sup>7</sup> The question is somewhat vague regarding the status of a baby who dies after eight days, but whose parents were unable to have him circumcised due to his weakness. The language of the question and some of the reasons that appear in the responsum clearly imply that such a child should be circumcised. However, notwithstanding the literal meaning of the question, it stands to reason that the question is more general, focusing on babies who die uncircumcised. The problem is more common among babies who die before reaching eight days of age, as none of them have been circumcised, unlike babies who die after their eighth day, some of whom will have been circumcised. It was therefore simpler to ask the question about babies who have not yet reached eight days of age.

him a *kerut shofkhah* [i.e., one whose penis has been cut off, making him ineligible for admission into the congregation (per Deut 23:2)].”

The prohibition on circumcising with a cane stalk thus stems from concern for the baby's wellbeing, a concern that is obviously absent if the baby is dead. Therefore, if there is an obligation to circumcise a dead baby, it would be permissible to do so with a cane stalk. However, this source states not only that one *may* use a cane stalk, but that it is customary; this is the way to circumcise a stillborn baby, and there is no other. It therefore seems that the respondents, the sages of Rome, implicitly conceded the existence of this practice, but in the same sentence, they also asserted that the means of performing it indicated that it was not a real *berit milah*, as it was performed with an instrument that is specifically disqualified from use in circumcisions.

It is likewise possible to explain, against this background, the emphasis that “our women” circumcise the stillborn babies. True, the second act of circumcision described in Scripture, following the circumcision of Abraham – the first to circumcise and be circumcised – was performed by Moses' wife Zipporah: “So Zipporah took a flint and cut off her son's foreskin, and touched his legs with it, saying, ‘You are truly a bridegroom of blood to me.’ And when He let him alone, she added, ‘A bridegroom of blood’ because of the circumcision” (Exod 4:25–26). Nevertheless, according to talmudic law, no decision is rendered as to whether a woman may perform a circumcision. It emerges from the course of the talmudic discussion that this was a matter of dispute between Rav and Rabbi Yoḥanan,<sup>8</sup> and among medieval halakhists, some adopted one position and some the other.<sup>9</sup>

<sup>8</sup> *BT 'Avodah Zarah 27a*. In that discussion, there is a ruling that disqualifies a circumcision performed by a non-Jew. Rav and Rabbi Yoḥanan disagreed about the source of this ruling. According to Rav, its source is the words, “But you, observe my covenant” (Gen 17:9), whereas according to R. Yoḥanan, the source is the double formulation *himol yimol* (“they must be circumcised”; Gen 17:13). Later in the discussion, the Talmud inquires, “What is the [practical] difference [between these two views]?” and suggests that the difference pertains to women. According to Rav, a woman may not perform a circumcision because she has neither the obligation nor the capability to circumcise herself; according to R. Yoḥanan, a woman may perform a circumcision because she is already “as one who has been circumcised.”

<sup>9</sup> *She'iltot De-Rav Aḥai Gaon*, Samuel K. Mirsky edition (Jerusalem, 1960), Parashat Vayera, p. 66, rules in accordance with the view of R. Yoḥanan that a circumcision performed by a woman is acceptable. This view is accepted by *Halakhot Gedolot*, R. Isaac Alfasi, and Maimonides. However, they accept the

In any event, even if we follow the view of *She'iltot* and its Ashkenazic followers who ruled that a woman may circumcise, a study of various types of sources – not all of which are halakhic – clearly shows that the prevailing and preferred practice was for men to circumcise.<sup>10</sup>

The reason for this is linked to two factors. First, the commandment to circumcise is essentially a masculine commandment, performed on the male body, and it is males who are commanded to ensure its performance – whether a father on his son or a man on himself if he has reached adulthood and has not yet been circumcised. It is therefore natural and expected that the commandment should actually be performed by men, even according to R. Yoḥanan, who allows women to serve as circumcisers. The second factor is the character of the *berit milah* ceremony. This can be viewed as a rite of passage, signifying the beginning of the transition from the female world, in which the male fetus lived throughout the pregnancy and during his first few days after birth, to the world of men. The transition begins with the shaping of the son's physical masculinity, and it continues with the boy's entry into school and into

principle with reservations; namely, that a woman should be allowed to perform a circumcision only when there is no capable man available. See *Halakhot Gedolot*, Hildesheimer edition, vol. 1 (Jerusalem, 1976), pp. 205–6; Maimonides, *Mishneh Torah*, Laws of Circumcision 2:1; Alfasi, *Shabbat* 56a. This is also the view of Raavyah (see above, n. 2), vol. 1, §279, p. 269. In contrast, the Tosafists accepted the ruling of Rav that women may not perform circumcision. See *Tosafot* to *Avodah Zarah* 27a, s.v. *ishah*, and the parallel passages in *Tosafot Rabbenu Elḥanan*, Kroyzer edition (Bnei Brak, 2003), p. 170, and *Tosafot Rash MiShanz*, Blau edition (New York, 1969), p. 86. In Ashkenaz, the view that women could in principle perform circumcision was prevalent, and some local sages even permitted this without reservation, in accordance with *She'iltot*. See *Sefer Yere'im*, Schiff edition (Jerusalem, 1995), §402, p. 225; *Or Zaru'a*, vol. 2, §98, p. 143; *The Rules of Circumcision*, pp. 53–54; R. Abraham b. Isaac of Narbonne, cited in *Temim De'im* (Jerusalem, 1974), §171, at the end. For secondary literature, see Yaakov Spiegel, “Ha-Ishah Ke-Mohelet: Ha-Halakhah Ve-Gilgulehah Ba-Smag,” *Sidra* 5 (1989): 149–57; Daniel Sperber, *Minhagei Yisrael*, vol. 1 (Jerusalem, 1989), p. 66; Avraham Grossman, *Pious and Rebellious: Jewish Women in Medieval Europe* (Waltham, MA, 2004), p. 190; Yosi Ziv, “Milah BiYdei Ishah Be-Sifrut Ḥazal UveMinhag Yehudei Ethiopia,” *Netu'im* 11/12 (2004): 39–54; Elisheva Baumgarten, *Mothers and Children: Jewish Family Life in Medieval Europe* (Princeton, 2004), p. 65.

<sup>10</sup> See Sperber, *Minhagei Yisrael*, pp. 60–66; Nissan Rubin, *Time and Life Cycle in Talmud and Midrash: A Socio-Anthropological Perspective* (Boston, MA, 2008), pp. 51–65.

the world of Torah study.<sup>11</sup> Regardless of whether one or both of these factors is correct, this can explain why even if formal *halakhah* permitted circumcision by women, this possibility was never implemented. The ascription of the ceremony to the masculine realm caused, in practice, women to be excluded from it, even if *halakhah* permitted them to take part.<sup>12</sup>

Returning now to the sages of Rome, we see that their response is straightforward: indeed, it is the custom of women to circumcise with a cane stalk, but this custom deviates from the parameters of *halakhah*, for a woman is not qualified to perform a circumcision, and the implement used is likewise unfit. It seems, therefore, that this response provides the elements of a polarized portrait, which contrasts the mistaken custom of women with the rulings of the sages that, in the writers' view, reflect the truth of the Torah.

### The Responsum of Rabbi Naḥshon Gaon: Text and Links

The responsum from the Rome sages did not appear out of nowhere. It was preceded, and not just chronologically, by a responsum from Rabbi Naḥshon, the Gaon of Sura (872–879), in whose name the following is recorded:

Regarding your question about a minor who dies before [he is] eight days [old]: we see that there is no need to circumcise him. Why? Because the Merciful One said, “and on the eighth day.” And if they circumcise him by his grave, as is customary, it is not necessary to recite the blessing. For this is [merely] cutting flesh, so if he blesses, he utters the name of heaven in vain.<sup>13</sup>

<sup>11</sup> On circumcision as a masculine initiation rite, see Lawrence A. Hoffman, *Covenant of Blood* (Chicago, 1996), pp. 78–83; Baumgarten, *Mothers and Children*, pp. 135–36. On the entry into school as a similar rite, see Ivan Marcus, *Rituals of Childhood: Jewish Acculturation in Medieval Europe* (New Haven, 1996), pp. 13–16, 107–13.

<sup>12</sup> Perhaps the Tosafists ruled in accordance with Rav, even though the view of R. Yoḥanan is generally preferred when those two sages are in dispute, because they, as was their wont, attempted to align local practice with the written sources of *halakhah*. In this case, common practice corroborated Rav's view.

<sup>13</sup> *Responsa Ge'onim: Sha'arei Tzedek*, compiled by Nissim Moda'i (Jerusalem, 1966), vol. 3, part 5, §5, p. 50.

Like the question asked in Italy, here too the query is about a male child who dies before reaching the age of eight days. Rabbi Naḥshon Gaon, like the sages of Rome two centuries later, asserted that there is no halakhic obligation to circumcise the deceased baby; but here their paths diverge. It emerges from the earlier responsum that R. Naḥshon was familiar with the custom and that he even included himself and his community among those who would customarily circumcise the dead child under such circumstances; he writes “as is customary” (*ki hekhi de-nehigin*) and adds that the circumcision takes place at the graveside, just prior to the burial. These words attest to an agreement with the custom. It seems likely to me that R. Naḥshon’s response reflects the question. The questioners did not challenge the custom at all; they were merely uncertain about one aspect of it, which apparently was practiced in their locale: reciting a blessing over the circumcision of the dead child. R. Naḥshon completely rejected the recitation of the blessing, first stating that it was “not necessary” and concluding with the assertion that such a blessing would be in vain. His rationale is that ultimately, the circumciser is merely “cutting flesh.”<sup>14</sup>

In contrast to R. Naḥshon, who recognized the legitimacy of the ceremony and only opposed reciting a blessing, which was evidently practiced by some, the sages of Rome deny the existence of this custom entirely, devoting the entirety of their lengthy responsum to it, the first part of which we have seen. However, this is not merely a dispute. A comparative study of the text of R. Naḥshon’s responsum and the responsum of the Italian sages demonstrates that the latter reworked R. Naḥshon’s responsum to the point that they completely changed its meaning. How so? The Geonic responsum contained four parts, as follows:

- A. The presentation of the question, with the words “a minor who died before [he is] eight days [old].” This part appears in Aramaic in the Geonic responsum and in Hebrew in the responsum of the sages of Rome.

<sup>14</sup> This expression is drawn from *b. Shabbat* 136a: “R. Ada b. Ahavah said: [A baby boy who is not yet thirty days old, and thus does not yet have a presumption of viability] may be circumcised [on the Sabbath]. Whichever you desire: If he is viable, it is a *bona fide* circumcision, and if not [it is not forbidden because] he is [merely] cutting flesh.”

- B. An assertion that exempts halakhic circumcision in such a case: "There is no need to circumcise him." This assertion is expanded and altered by the sages of Rome, who state: "It is not [a fulfillment of] a commandment [...] and he has accomplished nothing [...] and it is forbidden." The "no need" in the Geonic responsum has become extraneous and perhaps even forbidden.
- C. The rationale: "Why? Because the Merciful One said, 'and on the eighth day.'" This rationale appears further on in the words of the Roman sages, but here, instead of this rationale, the sages of Rome inserted a different claim: "For thus we have received [as a tradition] that this is [merely] cutting flesh." This claim was used by R. Naḥshon to explain why there was no need to recite a blessing. To this claim, the Roman sages added their assertion, which altered the significance of the words, that "he has accomplished nothing, and it is forbidden."
- D. After establishing that there is no obligation, R. Naḥshon describes the custom: "And if they circumcise him by his grave, as is customary."

As we have already seen, the sages of Rome were familiar with the custom, and the way they reject it is by casting it in a negative light. They present the custom as the practice of women, who are disqualified from performing circumcision, and they present the implement used to perform the circumcision as one that is likewise disqualified for such use. Moreover, they change the verb used to describe the procedure: the Geonic responsum describes the act as "circumcision" ("if they circumcise him by his grave"), but the Roman sages change it to an act of cutting ("Our women certainly have the custom of cutting with a cane stalk"). If women perform the act, and a cane stalk is used, then the entire act cannot be called *milah*, the halakhic term for circumcision. It goes without saying that the sages of Rome, who deny the very existence of this custom, have no need to cite the fifth part of the Geonic responsum, which asserts that no blessing should be recited over the circumcision of deceased children. Displaying the two responsa side-by-side will, I think helps to illuminate how much the segments of the responsa share on the one hand, and how the altered structure produces a completely new meaning on the other.

The Responsum of R.  
Naḥshon Gaon

The Responsum of the Sages of  
Rome

- |  |   |
|--|---|
| <p>a. A minor who died before [he is] eight days [old]:<sup>15</sup></p> <p>We see that there is no need to circumcise him.</p> <p>b. Why? Because the Merciful One said, “and on the eighth day.”</p> <p>c. And if they circumcise him by his grave, as is customary,</p> <p>d. it is not necessary to recite the blessing,</p> <p>e. for this is [merely] cutting flesh,</p> <p>f. so if he blesses, he utters the name of heaven in vain.</p> | <p>a. Regarding a child who dies before [he is] eight days [old], is it necessary to cut off his foreskin posthumously or not?</p> <p>d. Our women certainly have the custom of cutting with a cane stalk,</p> <p>b. but it is not [fulfillment of] a commandment,</p> <p>f. for thus we have received [as a tradition], that this is [merely] cutting flesh, and he has accomplished nothing, and it is forbidden,<sup>16</sup></p> <p>c. because the Merciful One said, “eight days old,” and this [child] is not eight days old.</p> |
|--|---|

<sup>15</sup> The way that the question is presented demonstrates, as mentioned, the closeness of the two sources. As we will see below, there are other ways of presenting it. When Naḥmanides discussed the question that was asked to R. Naḥshon, he wrote: “A newborn infant who is two or three or four days old.” The Karaite Yehudah Hadasi worded the question similarly. It is therefore clear that the shared mode of presentation, which describes the case as “a child who dies before [reaching] eight days [of age],” is instructive.

<sup>16</sup> The word *ve-'asir* (“and it is forbidden”) does not appear in the Geonic responsum and is also absent from the version of this responsum in R. Gershom’s *The Rules of Circumcision*, p. 126. The assertion that the custom is actually forbidden does not emerge from the rationales offered in the responsum; the most that can be derived from them is that there is no commandment to do so, as appears earlier. It is therefore clear that this word was added by a copyist who wished to clarify the intimation of the responsum as a whole and to generate opposition to the cited custom.

Thus, the sages of Rome used R. Naḥshon's words as the basis for their responsum, but altered them by reshaping the custom and reordering the claims and rationales – all to produce a new assertion, which differs in character and conclusion from that of R. Naḥshon.<sup>17</sup> If our hypothesis is correct and the words of the Roman sages do constitute a clever manipulation of R. Naḥshon's responsum, then it casts doubt on the ongoing supposition of scholars that the practice of circumcising deceased babies originated as a women's custom.<sup>18</sup> It is likely that women were included in the description only to devalue the custom that had been approved by a Gaon. The assertions that women perform the circumcision, that a cane stalk is the implement used, and that the action is one of “cutting” and not “circumcising” are nothing more than a tendentious refashioning that does not necessarily describe reality. Indeed, in most sources that support this custom, we find no mention of it being performed by women. The first documentation of this element is in the responsum of the Roman sages, who oppose the custom, and their responsum is suspected of overturning R. Naḥshon's words. Clearly, the presence of the assertion that this is a women's custom specifically in this responsum demands investigation.<sup>19</sup>

<sup>17</sup> It is possible that the sages of Rome copied and reworked the Geonic responsum from memory. This is supported by the verses that the responsa use as prooftexts. R. Naḥshon's responsum cites the verse, “and on the eighth day the flesh of his foreskin shall be circumcised” (Lev 12:3), whereas the responsum of the Roman sages quotes, “at eight days old, every male among you shall be circumcised” (Gen 17:12). For a similar example of a reworking of a Geonic responsum by the sages of Rome, see Moshe Hershler, “Teshuvot Ge'onim Qadmonim,” *Genuzot* 1 (1984): 169–74, sections 1 and 6. See also Micha Perry, *Tradition and Change: Knowledge Transmission among European Jews in the Middle Ages* [Hebrew] (Bnei Brak, 2010), pp. 158ff. I am grateful to R. Yaakov Yisrael Stahl for directing me to these last two sources.

<sup>18</sup> See the interesting discussion in Bitkḥa Har-Shefi, “Women and Halakha in the years 1050–1350 CE: Between Law and Custom” [Hebrew] (PhD diss., Hebrew University of Jerusalem, 2002), p. 68.

<sup>19</sup> See, however, *Tosafot Rabbenu Peretz: Eruvin*, Dickman edition (Jerusalem, 1991), 19a, s.v. *bar mi-sheba*: “It is explained in the lexicon of Rabbi Makhir that this refers to the foreskins of young sons who died before they were circumcised. [The foreskins] are taken and attached to men who have relations with Gentile women. Therefore, the women have the custom of cutting [the infants'] foreskins before they bury them.” It seems that R. Peretz added the last sentence (“Therefore [...] them”) to the material he quoted from R. Makhir's lexicon, and he may have taken this from the responsa of the sages of Rome,



## The Roman Sages' Rationale for Their Ruling

Later in their responsum, the Roman sages write: “When the Holy One, blessed is He, gives commandments, He gives them to the living, not the dead.<sup>20</sup> For once a person dies, he becomes free of the commandments, as it says, ‘among the dead is freedom’ (Ps 88:6).” This formulation nicely demonstrates the main motive for the Roman sages’ ruling, and it also draws support from R. Yoḥanan’s explication in the Talmud: “‘Among the dead is freedom’ – once a person dies, he becomes free of the commandments.”<sup>21</sup> Not everyone agreed with R. Yoḥanan’s assertion, and a close study of talmudic and medieval sources reveals a variety of approaches; occasionally, there are sages who describe a corpse as being obligated in the commandments. Needless to say, no one considered a dead person to be obligated in the practical commandments such as shaking a *lulav*, eating matzah, or procreating. Rather, the discussions of the commandments related to the dead focus on how the corpse is dressed: Can the shrouds be made of forbidden mixtures of wool and linen?<sup>22</sup> If the corpse is dressed in a four-cornered garment, must it have *tzitzit*?<sup>23</sup>

I propose that the significant efforts made by the sages of Rome to express their opposition to the circumcision of the dead is rooted in opposition to a worldview that sees the deceased as beings to whom halakhic guidelines apply, even if only passively. In their words,

which were widespread in his day. I am grateful to Prof. Simcha Emanuel for bringing this important source to my attention.

<sup>20</sup> This sentence is absent from the version of this responsum in R. Gershom’s *The Rules of Circumcision*, p. 126.

<sup>21</sup> *BT Shabbat* 30a, 151b; *BT Niddah* 61b.

<sup>22</sup> *M Kil’ayim* 9:4 states that there is no concern about forbidden mixtures in burial shrouds. The Talmud (*BT Niddah* 61b) concludes that such shrouds may be used at a funeral but not for burial, because when the deceased arise at the time of the final resurrection, such garments will still be forbidden to wear. Thus, the deceased may not be dressed in garments that are forbidden to the living.

<sup>23</sup> See Yechezkel Shraga Lichtenstein, *Consecrating the Profane: Rituals Performed and Prayers Recited at Cemeteries and Burial Sites of the Pious* [Hebrew] (Tel Aviv, 2007), pp. 114–73. Among the bounty of sources he cites, I wish to single one out: *Sifrei Zuta Bamidbar*, Horowitz edition (Jerusalem, 1966), p. 288: “Why was the section about the wood-gatherer juxtaposed with the section about *tzitzit*? To tell you that the dead are obligated in *tzitzit*.” At the foundation of this discussion is the question of whether it is possible to improve the status and situation of the deceased. See Arye Edrei, “Atonement for the Deceased” [Hebrew], in *Mehkarim Be-Talmud UveMidrash: Sefer Zikaron le-Tirzah Lifshitz*, ed. Arye Edrei et al. (Jerusalem, 2005), pp. 1–27.

“When the Holy One, blessed is He, gives commandments, He gives them to the living, not the dead.” The Roman sages detected such a worldview in the Geonic responsum. They rejected it the moment they heard it, whether by reworking its text or by direct confrontation with its ramifications. The question of the status of the deceased vis-à-vis the world of the living, and even more so the issue of the status of a corpse – which has been buried and will decompose into the dirt to which it has returned – is at the center of the debate. According to the sages of Rome, there is a clear dividing line between the living and the dead. Circumcision, even of the most unconvincing sort, even if performed by a woman using a cane stalk, which is nothing but the cutting of flesh – even from this it is right and proper to eschew.<sup>24</sup>

The responsum of the Roman sages was apparently written at the end of the eleventh century or the first years of the twelfth century.<sup>25</sup> Similar content and stances can be found among other contemporary Italian sages, whose writings will be mentioned below.<sup>26</sup> However, in other areas of Jewish culture, the picture was different, and it seems that the custom of circumcising deceased babies remained in place there. Different explanations were therefore given for this practice, from which we can learn about the thinking of those who upheld it.

### The Explanation of the Sages for R. Naḥshon Gaon's Ruling: “So That His Foreskin Does Not Come with Him”

R. Abraham b. Isaac of Narbonne (1080/85–1159), an early Provençal sage,<sup>27</sup> cites the responsum of R. Naḥshon Gaon: “The Gaon, of blessed memory, wrote that when a baby who has not reached eight [days of age] dies, so that his foreskin does not rise with him, the custom

<sup>24</sup> On this issue, see Rubin, *Time and Life Cycle*, pp. 166–76; Avriel Bar-Levav, “The Concept of Death in *Sefer ha-Ḥayim* (*The Book of Life*) by Rabbi Shimon Frankfurt” [Hebrew] (PhD diss., Hebrew University of Jerusalem, 1997), pp. 129–34; idem, “Death and the (Blurred) Boundaries of Magic,” *Kabbalah* 7 (2002): 51–64.

<sup>25</sup> R. Nathan b. Yeḥiel of Rome, the author of *'Arukh*, was one of the brothers who responded. He died, it seems, around the year 1110, so the responsum cannot be dated later than this year. See *Sefer Ha-'Arukh*, Kohut edition (Vienna, 1926), vol. 1, p. 4.

<sup>26</sup> See below, The Attitude of Other Italian Sages to the Circumcision of Dead Infants.

<sup>27</sup> See Israel M. Ta-Shma, *R. Zerahyah Ha-Levi Ba'al Ha-Ma'or U-Venei Hugo* (Jerusalem, 1993), pp. 7–9.

among us is that he is circumcised at the cemetery, to remove his disgrace from him.”<sup>28</sup> Unlike the sages of Rome, who upended the meaning of the Geonic responsum, the details and primary meaning of the responsum are preserved by the Provencal sage. However, the writer adds two explanations that are essentially the same: “so that his foreskin does not rise with him” and “to remove his disgrace from him.” It seems that one is the translation of the other.<sup>29</sup>

R. Abraham b. Isaac seems to have received the proposed explanation for the Geonic responsum, as well as the main contents of the responsum itself, from his teacher, R. Judah b. Barzilai of Barcelona,<sup>30</sup> in whose name it is said:

It is customary to circumcise a son who dies before reaching eight days [of age] [...] and thus was written by a Gaon. However, we do not know a reason for this custom, neither from the Torah nor from the words of the sages. Yet it is best to do so, so that his foreskin does not rise with him. Thus wrote R. Judah b. Barzilai, of blessed memory.<sup>31</sup>

We learn from R. Judah of Barcelona’s attestation that the responsum of R. Naḥshon Gaon contained the ruling, but no rationale, either from the Torah or from the sages.<sup>32</sup> Therefore, R. Judah suggests an explanation: “so that his foreskin does not rise with him.” This

<sup>28</sup> *Sefer Ha-Eshkol*, Albeck edition (Jerusalem, 1984), vol. 2, p. 2; *Temim De’im*, §171. The *Temim De’im* version adds: “What the Gaon wrote is a custom, and we do not know its source. However, it is good to perform any custom that does not involve a prohibition, especially here, where it seems correct, so that his foreskin does not rise with him.” It is evident from the content of this addition, plus its absence from *Sefer Ha-Eshkol*, that this is an explanation of the Gaon’s words, which originally contained no rationale.

<sup>29</sup> See Gen 34:14: “We cannot do this thing, to give our sister to a man who has a foreskin, for that is a disgrace for us.”

<sup>30</sup> See B. Z. Benedict, “Ha-Lamad R. Avraham b. R. Yitzḥak Mi-Narbonne etzel R. Yehudah b. R. Barzilai Be-Barcelona?” in Benedict, *Merkaz Ha-Torah Be-Provence* (Jerusalem, 1985), pp. 31–32.

<sup>31</sup> R. Aaron Hakohen of Lunel, *Orhot Ḥayim*, M. E. Schlesinger edition (New York, 1959), vol. 2, p. 11.

<sup>32</sup> R. Isaac b. Abba Mari, *Sefer Ha-’Ittur*, M. Yonah edition (New York, 1956), section 3, p. 51a, likewise cites the Geonic responsum without any rationale. R. Isaac was a student of R. Abraham b. Isaac of Narbonne. This, too, shows that the original responsum contained no explanation. See also n. 28 above with regard to *Temim De’im*.

explanation eventually made its way into the writings of his student, R. Abraham b. Isaac.

It is almost certain that the explanation “so that his foreskin does not rise with him” is in dialogue with a midrashic notion that appears in *Genesis Rabbah*:

R. Levi said: In the future, Abraham will be sitting at the entrance to Gehinnom, and he will not allow a circumcised person of Israel to descend into it. But those who sinned too much, what does he do to them? He removes the foreskin from babies who have died before they were circumcised, places it on them, and sends them down to Gehinnom. Thus, it is said (Ps 55:21): “He attacked his ally; he violated his covenant.”<sup>33</sup>

The implication is that those babies whose foreskins are not removed are prone to descending to Gehinnom. Abraham, the first to be circumcised and to circumcise, does not identify them at the gates of Gehinnom, so one who arrives there with his foreskin – his disgrace – upon his body will not be saved from the judgment of Gehinnom. It is almost certain that the explanation of the Geonic responsum offered by R. Judah of Barcelona, and R. Abraham b. Isaac of Narbonne in his wake, was shaped by this *midrash*. These writers viewed the custom of circumcising children who had died as a reaction to the implications of the *midrash*. If one who is still uncircumcised risks being improperly classified at the gates of Hell, then we must help our patriarch, Abraham, to identify those unfortunate infants who die before they are circumcised. While not a commandment, this is a beneficial custom.<sup>34</sup>

<sup>33</sup> *Genesis Rabbah*, Theodor-Albeck edition (Jerusalem, 1965), section 48, p. 483. Though this passage does not specify the identity of those who “sinned too much,” the Talmud (*BT Eruvin* 19a) asserts that one who has sexual relations with an idolatrous Gentile woman is deemed to have committed epispasm, and Abraham will not save him from Gehinnom. See also the editors’ notes on this *Genesis Rabbah* passage.

<sup>34</sup> It emerges from the words of R. Peretz (see above, n. 19) that women circumcise these infants not to protect them, but to protect those who sin “too much,” for if the foreskins of stillborn babies are removed, Abraham will not have enough foreskins to attach to sinners. The latter, then, stand to gain from the mothers’ actions. It stands to reason that this surprising explanation implicitly contends with the question of what sin these babies, who died before they could be circumcised, had committed such that they must be sent to Gehinnom. Their circumcision is thus not for their benefit, but for others.

But there is still a catch. A close study of the *midrash* shows that even if the circumcision of deceased infants can remedy the problem of classification at the gates of Gehinnom, it also clearly emerges from the *midrash* that the practice was **not** to circumcise these babies. The main principle of the midrashic narrative is that Abraham attaches the foreskins of those babies to those who “sinned too much”; justice dictates that even if these sinners have been circumcised, they deserve to go to Gehinnom. If we systematically remove the foreskins of stillborns before burial, then they will not be available for Abraham to attach to circumcised sinners! Indeed, this was the rationale behind the sages of Rome using this *midrash* to prove their point: that the foreskins of deceased infants should **not** be removed before burial. It is not only halakhic thinking that indicates this ruling, but also an expedient midrashic attestation. It indeed clearly emerges that in the world of the authors of this *midrash*, the custom was not to remove the foreskins of dead infants. The Roman sages sum this up succinctly: “It emerges from here that they did not cut them, for if they cut them, how would Abraham remove them?”<sup>35</sup>

What perhaps should have been obvious from the outset is thus made clear: the opposition of the Roman sages to circumcising the dead stems from their view that only living people, who are enjoined to uphold God’s commandments, act within the realm of *halakhah*. Only their choice to perform a commandment has value. Manipulating a corpse gives nothing to, and derogates nothing from, the dead, for the commandments have been given to the living. In contrast, those who upheld the custom in various times and places – and they seem to be the majority – integrated actions that originate in a different view of the world of the dead and their fate within it into their religious praxis. The rationale presented here, “so that his foreskin does not come with him,” is but the first portent of this trend, and a close study of additional sources and rationales for the custom can disclose additional conceptions of death and the substance of existence in the afterlife.

<sup>35</sup> *Or Zaru’a* (see above, n. 1). The version of the responsum in *The Rules of Circumcision* does not include this sentence. Perhaps it is an explanatory gloss added only to the *Or Zaru’a* version.

The Sages' Explanations of Rabbi Naḥshon Gaon's Ruling:  
The Resurrection of the Dead

R. Naḥshon's responsum included, I believe, only a treatment of the proper modes of behavior in the event of the death of an uncircumcised infant; the explanation presented in the previous section was added to the responsum later. A different rationale than the one ascribed to the responsum emerges from the words of R. Isaac ibn Gi'at (d. 1089), the head of the rabbinical academy at Lucena during the second half of the eleventh century. He wrote:

And Rabbi Naḥshon said: A newborn infant who is two, three, or four days old, we learned, and it is our custom, that when he dies, we circumcise him at his grave, but we do not recite the blessing "concerning circumcision," and he is given a name, so that when the heavens show mercy and the dead are resurrected, the infant will know and identify his father.<sup>36</sup>

In the first part of his statement (until "concerning circumcision"), R. Isaac ibn Gi'at summarizes R. Naḥshon's ruling, attesting to the custom of graveside circumcision and forbidding the recitation of the blessing over the circumcision. He then adds that it is customary to name the infant before burial so that at the time of the resurrection, he will be able to recognize his father and family. The locus of the explanation has thus shifted from the gates of Gehinnom after death to the future resurrection. According to this explanation, the entire custom seems to be a platform for giving the child a name, as ancient tradition teaches that it is customary for a name to be given on the day of circumcision.<sup>37</sup>

<sup>36</sup> *Sha'arei Simḥah*, Bamberger edition (Furth, 1861), Laws of Mourning, p. 41. For R. Isaac ibn Gi'at and his works, see Israel M. Ta-Shma, *Talmudic Commentary in Europe and North Africa: Literary History* [Hebrew], part 1 (Jerusalem, 1999), pp. 162–66.

<sup>37</sup> The custom of giving a name at the time of circumcision is ancient. The earliest evidence of it is in Luke 1:59–63, concerning the naming of John the Baptist: "On the eighth day they came to circumcise the child, and they were going to name him after his father Zechariah, but his mother spoke up and said, 'No! He is to be called John.' They said to her, 'There is no one among your relatives who has that name.' Then they made signs to his father, to find out what he would like to name the child. He asked for a writing tablet, and to everyone's astonishment he wrote, 'His name is John'" (NIV; this translation is used for all references to the Christian Bible in this article). See also Luke 2:21. This was the

This explanation for the early custom even crossed the borders of Rabbinic Judaism. The twelfth-century Karaite sage Judah Hadassi, in his *Eshkol Ha-Kofer*, writes:

Thus, the rabbis, your shepherds, instructed and practice until today that children who die at the age of two days old or three or more are circumcised by the midwives – which your God did not command. And they say that the uncircumcised will not arise upon the resurrection of your dead. They even draw a drop of the blood of the covenant from them. This entire practice is improper before God, and He did not command such a circumcision. For He commanded his covenant [of circumcision] upon the living, as it says, “and My covenant shall be in your flesh...” (Gen 17:13), and it says, “who does not circumcise the flesh of his foreskin shall be cut off” (Gen 17:14). From its saying “shall be cut off,” we understand that circumcision is commanded for the living, not for the dead, who have already been cut off from your land.<sup>38</sup>

Hadassi links the keeping of this custom – which he deems baseless – with the Rabbinite belief in the resurrection of the dead, even though he presents this slightly differently than R. Isaac ibn Gi’at. If, according to R. Isaac, the uncircumcised infant is deserving of resurrection and his circumcision (and naming) is meant mainly so that he can identify his family on the day of revival, according to Hadassi’s testimony, then the circumcision is a necessary condition for resurrection. In his words: “[The rabbis] say that the uncircumcised will not arise upon the resurrection of your dead.”

Evidently, there are two different, albeit similar, traditions before us. Nevertheless, it seems that the source of Hadassi’s knowledge of the custom and its explanation is found in the writing of R. Isaac ibn Gi’at or one of his predecessors or successors. Support for this, if not absolute proof, can be found in how the statement is presented. In the responsum of the sages of Rome, which is quoted at the beginning of this article, the problem addressed here was

Jewish custom throughout the generations. For example, the late eighth-/early ninth-century *Pirkei De-Rabbi Eliezer* (Luria edition [Warsaw, 1852], chap. 48, p. 114b) describes how Moses was circumcised and named Jekuthiel on his eighth day. See also *Siddur R. Sa’adia Gaon*, Davidson edition (Jerusalem, 1941), p. 99b.

<sup>38</sup> Judah Hadassi, *Eshkol Ha-Kofer* (Yevpatoria, 1836), §303, p. 113a.

presented with the words: "Regarding a child who dies before [he is] eight days [old]." This is how the question was presented in the responsum of R. Naḥshon Gaon that appears in collections of Geonic responsa, in the ruling of R. Judah of Barcelona, and in *Sefer Ha-Eshkol*. In contrast, R. Isaac ibn Gi'at reformulated the question and answer in the Geonic responsum in his own words, presenting the scenario as follows: "A newborn infant who is two, three, or four days old." He does not discuss a child who is less than eight days old, but only a child who is two, three, or four days old. Hadassi, the Karaite sage, described the case similarly: "children [...] of the age of two days or three or more." This style, along with the link to the topic of the resurrection, demonstrates that Hadassi's sources relied on the words of R. Isaac ibn Gi'at or someone close to him.

Naḥmanides similarly presented the responsum of R. Naḥshon using the words of R. Isaac ibn Gi'at: "A newborn infant who is two, three, or four days old [...] so that when the heavens show mercy and the dead are resurrected, the infant will know and identify his father."<sup>39</sup> These views were shared by R. Asher b. Jehiel and R. Jeruḥam b. Meshulam,<sup>40</sup> though the latter reformulated the passage and wrote:

A newborn infant who is three or four days old, it is customary, and we have a tradition, that if he dies, we circumcise him at his grave and place him there as a memorial, so that he will be shown mercy from the heavens and will be revived at the resurrection, when he will have intelligence and recognize his father. Thus wrote R. Gershoni.<sup>41</sup>

<sup>39</sup> Naḥmanides, *Torat Ha-adam*, in: *Kitvei Ha-Ramban*, Chavel edition (Jerusalem, 1964), p. 87.

<sup>40</sup> R. Asher, *Piskei Ha-Rosh*, *Mo'ed Qatan* 3:88. From there, it reached R. David Abudraham (*Perush Ha-Berakhot VebaTefilot*, *Abudraham Ha-Shalem* [Jerusalem, 1963], p. 352), a student of R. Jacob, the son of R. Asher. It stands to reason that he received R. Asher's formulation through this conduit. See R. Jeruḥam, *Toldot Adam Ve-Ḥavah* (Tel Aviv, 1960), vol. 1, p. 13a. On this author and his work, see Judah D. Galinsky, "Of Exile and Halakhah: Fourteenth-Century Spanish Halakhic Literature and the Works of the French Exiles Aaron ha-Kohen and Jeruham b. Meshulam," *Jewish History* 22 (2008): 84.

<sup>41</sup> R. Gershon b. Solomon, author of *Sefer Ha-Shalman*, who was active, evidently, during the middle third of the thirteenth century and passed away c. 1265. See Yisrael Mordechai Peles, "Din Petilat Ḥanukah 'al pi Ketav Yad me-et Rabbenu Gershom b. R. Shlomo mi-Béziers, Ba'al Ha-Shalman, Ve-Zikno Rabbenu Asher Mi-Lunel Ba'al Ha-Minhagot," *Ha-Ma'ayan* 47:2 (2007): 3-7.



For the practice of circumcising dead infants, which was approved and perhaps even partially shaped by R. Naḥshon Gaon in the ninth century, two different explanations were proposed. The first links the custom to the resurrection, and its earliest attestation is from the circle of R. Isaac ibn Gi'at. From there, it spread to Hadassi, Naḥmanides, R. Asher, and R. Jeruḥam. The second links the custom with the desire to prevent the deceased infant from arriving at the Day of Judgment with his foreskin intact, an explanation whose first attestation is from R. Judah of Barcelona, who was active in the generation after R. Isaac ibn Gi'at. This explanation can be traced to *Sefer Ha-Eshkol* and is copied into *Temim De'im*.<sup>42</sup>

As is typical of such processes, someone unified the two streams into a single framework and even added something of his own. We find the following in R. Aaron Hakohen of Lunel's early fourteenth-century *Orḥot Ḥayim*:<sup>43</sup>

The custom is to circumcise a son who dies before reaching eight [days of age] with a flint or reed in the cemetery, to remove his disgrace from him so that he is not buried with his foreskin, for it is a disgrace for him. Thus wrote the Gaon. However, we do not know a reason for this custom, neither from the Torah nor from the words of the sages. Yet it is best to do so, so that his foreskin does not rise with him. Thus wrote R. Judah b. Barzilai, of blessed memory. Rabbi Naḥshon also wrote thus, explaining that we do not recite a blessing over the circumcision, and we bring him up so that when the heavens perhaps have mercy and there is a resurrection of the dead, the child will know and distinguish his father.

In this short passage, the author cites practices and rationales that we encountered in the previous section from the "Gaon," R. Judah of Barcelona, and R. Naḥshon Gaon.<sup>44</sup> To these, R. Aaron added the words at the beginning of the cited passage, writing that the circumcision of

<sup>42</sup> See above, n. 9.

<sup>43</sup> *Orḥot Ḥayim*, *loc. cit.* R. Aaron lived from c. 1260 to c. 1330, and he wrote and revised his book between 1295 and 1313, and perhaps a bit later. See Galinsky, "Of Exile and Halakhah," p. 84.

<sup>44</sup> The words of R. Naḥshon and the rationales he cites from this point forward were transmitted to the author of *Orḥot Ḥayim* through the conduit of R. Isaac ibn Gi'at, as the rationales, which connect the custom to the resurrection, appear alongside it.

a deceased newborn is performed with a “flint or reed.” Unlike the sages of Rome’s description of the ceremony, which emphasizes that the cutting is done with a cane stalk, which is forbidden for use in circumcision, the author of *Orhot Ḥayim* goes out of his way to emphasize the opposite approach. The infant is circumcised with a flint or rock,<sup>45</sup> and this act is not merely cutting, as the sages of Rome defined it, but is actually circumcision. It seems that this tiny change is instructive for understanding his view, and perhaps even the conception of his contemporaries and locale and of the meaning of the practice under discussion.

It emerges from what we have seen thus far that the ruling of R. Naḥshon Gaon, which approves and supports the upholding of the custom, was adopted and encouraged among future generations in Iberia, Provence, and perhaps even the Byzantine empire, where the Karaite sage Hadassi was active. Some ascribed the custom to the desire to prevent the baby from entering Gehinnom, some wished to prevent the patriarch Abraham from attaching the foreskins to those who, despite being circumcised, “sinned too much,” and some tied the custom to the future resurrection in one of the ways we saw above. The exception was the ruling of the sages of Rome at the end of the eleventh century, some of which we have already seen. As we will see in the next section, their responsum is not only instructive about them.

### The Attitude of Other Italian Sages to the Circumcision of Dead Infants

To the negative view of the Roman sages, we can add another Italian source from about a generation later: *Midrash Sekhel Tov*, by the twelfth-century Rabbi Menaḥem b. Solomon:

A child who dies before being circumcised: we do not cut his foreskin, as it says, “But you, observe my covenant” (Gen 17:9), and once a person dies, he becomes free of the commandments, as it says, “among the dead is freedom” (Ps 88:6). One cannot argue that this is in order to grant him life in the next world; this

<sup>45</sup> According to *halakhah*, one may use any implement to perform a circumcision, except for a cane stalk. See *Orhot Ḥayim*, vol. 2, p. 5, which follows Maimonides (*Mishneh Torah*, Laws of Circumcision 2:1) in its formulation.

is unnecessary, for we learn in the Jerusalem Talmud, Tractate *Shevi'it*,<sup>46</sup> that the sages disagree with R. Elazar. And R. Elazar says that even the stillborn of Israel enter the next world. And the *halakhah* accords with R. Elazar, for he is later.<sup>47</sup>

All the arguments presented in *Sekhel Tov* had already appeared in the responsum of the Roman sages. We have already seen and analyzed the argument that “once a person dies, he becomes free of the commandments, as it says, ‘among the dead is freedom’ (Ps 88:6).”<sup>48</sup> The author of *Sekhel Tov* precedes this argument with several lines, including a biblical proof-text: “A child who dies before being circumcised, we do not cut his foreskin, as it says, ‘But you, observe my covenant.’” This proof-text from Genesis is expounded in the Talmuds to prohibit Gentiles, women, and uncircumcised Jewish males from performing circumcision.<sup>49</sup> To this talmudic list we can now add the dead, who are not obligated to be circumcised, for “once a person dies, he becomes free of the commandments.” The author of this collection, or one of his antecedents, expanded the Talmud’s derivation in a manner similar to that attributed to R. Hai Gaon in the responsum of the Roman sages: “And so ruled Rabbi Hai Gaon from this verse, ‘But you, observe my covenant’; anyone included in ‘observance’ is included in the covenant. This excludes the dead, who cannot ‘observe.’ Therefore, we do not cut them.”<sup>50</sup>

<sup>46</sup> The original mistakenly has “*Shevu’ot*.”

<sup>47</sup> *Midrash Sekhel Tov*, Buber edition (Berlin, 1900), p. 18. On this collection and its study, see Anat Raizel, *Mavo le-Midrashim* (Alon Shevut, 2011), pp. 378–82.

<sup>48</sup> See above, n. 21.

<sup>49</sup> Regarding women, see above, n. 8. Regarding Gentiles, see *BT ‘Avodah Zarah* 26b; *BT Menahot* 42a. Regarding uncircumcised Jews, see *PT Yevamot* 8:1, 8d.

<sup>50</sup> If this attribution is correct, then R. Hai, the last of the Babylonian Geonim, is the only sage who lived in the Islamicate sphere of whom I am presently aware who opposed this custom. However, the attribution of this derivation and the *halakhah* derived thereby to R. Hai Gaon is suspect. As I learned from my friend Dr. Uziel Fuchs, R. Hai does not frequently expound biblical verses as a basis for halakhic rulings, nor does he expand existing expositions (in contrast to early Ashkenazic sages). This approach, combined with the fact that this attribution appears neither in the Ashkenazic textual witness to the responsum nor in *Sekhel Tov*, reinforces the impression that the attribution to R. Hai is tendentious, similar to what we claim about another aspect of this responsum above, at n. 18. However well founded, this remains no more than a suspicion. See also Yitzhak Gilat, *Perakim Be-Hishtalshelut Ha-Halakhah* (Ramat Gan, 1992), pp. 377–82. Of his two examples of Geonic exposition of biblical verses, one is from R. Hai Gaon.

The final argument raised by the author of *Sekhel Tov*, which relies on *PT Shevi'it*, appears earlier in the responsum of the Roman sages. A comparison of the texts shows that they used the Jerusalem Talmud to make the following argument: "One cannot argue that this is in order to grant him [life/reward in] the next world; this is unnecessary, for we learn in the Jerusalem Talmud, Tractate *Shevi'it*, that the sages disagree with R. Elazar. And R. Elazar says that even the stillborn of Israel enter the next world."<sup>51</sup> It is clear that the responsum of the Roman sages and the passage in *Sekhel Tov* are interdependent, whether because *Midrash Sekhel Tov* relies on the responsum of the Roman sages, or because, as I consider more likely, both of these sources depend on a third text, an urtext that was refashioned in these two sources, each for its rhetorical needs.

Moreover, it is clear that *Sekhel Tov* was familiar not only with the custom of circumcising deceased babies, but also with the rationales behind it. The passage asserts that "one cannot argue that this is in order to grant him life in the next world; this is unnecessary." This is clearly linked to the claim documented in the words of the author's contemporary, Judah Hadassi, that circumcision is necessary to enable the deceased child to be resurrected. True, in contrast to Hadassi, who linked the removal of the foreskin with the resurrection, the author of *Sekhel Tov* connected it to "life in the next world." Did one of them confuse these two concepts? Did one of them identify the resurrection with the next world, and thus the speakers are both saying the same thing, albeit with different words? I believe that the speakers were precise with their words and did not mix up these concepts.<sup>52</sup>

<sup>51</sup> *PT Shevi'it* 4:10, 35c: "From when do the children of Israel have life? [...] R. Elazar said: [Even if they are] stillborn. Why? 'And restore the survivors of Israel' (Isa 49:6)." The version in *Sekhel Tov* has "stillborn of Israel," whereas the responsum of the Roman sages, as it appears in *Or Zaru'a*, has, "stillborn of the land of Israel." The additions of "of Israel"/"of the Land of Israel" that appear in the Italian sources indicate their interconnectedness, despite the differences in how they present their arguments.

<sup>52</sup> For a definition of "Gehinnom" and "life in the next world" in the teachings of the rabbis, see Chaim Milikowsky, "Gehenna and the Sinner of Israel in Seder 'Olam" [Hebrew], *Tarbiz* 55 (1985/86): 311–28. On defining the relationships between the concepts of the resurrection, the next world, the Garden of Eden, and Gehinnom, see R. Sa'adiah Gaon, *Sefer Ha-Nivhar Be-Emunot Ve-De'ot*, Kafih edition (Jerusalem, 1970), seventh treatise, pp. 218–36, and ninth treatise, pp. 261–86; Maimonides, "Haqdamah Le-Pereq Heleq," *Hakdamot Ha-Rambam Le-*

Support, if not outright proof, for this assertion can be found in the commentary of Rabbi Abraham ibn Ezra, who visited Rome very close to the time that *Sekhel Tov* was composed. In his commentary on the verse, “And an uncircumcised male who does not circumcise the flesh of his foreskin shall be cut off from his people” (Gen 17:14), he writes: “[The punishment of] being cut off is in the hands of heaven, but those who err think that if a lad dies and has not been circumcised, he has no share in the next world.” Like the author of *Sekhel Tov*, Ibn Ezra also fought against a view that denies uncircumcised babies the goodness that is hidden away for the future. What is most significant for the issue at hand is that this goodness, in the eyes of both writers, is the next world, not the resurrection. It is thus clear that in twelfth-century Italy, a tradition circulated according to which the privilege of the next world is conditional upon a person – even a day-old boy – being circumcised. While some saw the removal of the foreskin as a “safety net” that would prevent the baby from falling into Gehinnom, and others associated it with the resurrection, in twelfth-century Italy, circumcision, even if done postmortem, was the entry ticket to the next world.

### The Fate of the Custom in Ashkenaz

If this is the case, during the course of the twelfth century, there was a struggle between the sages of Italy, who were familiar with the custom of circumcising deceased babies but opposed it, and the sages of Provence and Spain, who followed the path blazed by Rabbi Nahshon, the Gaon of Sura, and practiced this custom, even offering new and innovative rationales for it. In light of these differing approaches, it would only be proper to examine Ashkenazic custom vis-à-vis this issue, as the conventional claim is that the Ashkenazic custom originated in Italy.<sup>53</sup>

*Mishnah*, Shilat edition (Jerusalem, 1992), pp. 129–46; Nahmanides, *Sha’ar Ha-Gemul*, in *Kitvei Ha-Ramban*, vol. 2, pp. 264–314. See also Moshe Halbertal, *Nahmanides: Law and Mysticism* (New Haven: 2020), chapter 3: “Death, Sin, Law, and Redemption,” pp. 103–36; Avraham (Rami) Reiner, “From ‘Paradise’ to ‘Bound in the Bonds of Life’: Blessings for the Dead on Tombstones in Medieval Ashkenaz” [Hebrew], *Zion* 76:1 (2011): 5–28.

<sup>53</sup> On the Italian roots of the communities of Ashkenaz, see Avraham Grossman, *The Early Sages of Ashkenaz* [Hebrew] (Jerusalem, 1981), pp. 29–58. See also Israel M. Ta-Shma, *Early Franco-German Ritual and Custom* [Hebrew] (Jerusalem, 1992), pp. 98–101, and in the notes *ad loc.* Grossman convincingly argues that the

The responsum of the sages of Rome, with which we began this article, has survived only in two Ashkenazic works, as mentioned above. The first and more familiar work is *Or Zaru'a* by R. Isaac b. Moses of Vienna, the disciple of R. Eliezer b. Joel Halevi (Raavyah). Raavyah was the nephew of R. Samuel b. Natronai, who migrated from Bari, in southern Italy, to the Rhineland, where he married the daughter of Raavan, the sister of Raavyah's mother.<sup>54</sup>

The second source is *Kelalei Ha-Milah* (*The Rules of Circumcision*) by R. Gershom b. R. Jacob the Circumciser (*ha-gozer*, lit. "the cutter"). Recorded in the title of the responsum, as it appears in this work, is: "In the book of Rabbi S. b. T. I found responsa from R. Daniel, R. Nathan, and R. Abraham, sons of R. Jehiel."<sup>55</sup> The testimony of R. Gershom, a contemporary of the author of *Or Zaru'a*, shows that he became familiar with the responsum of the Roman sages through the book of R. Samuel b. Natronai (S. b. T.), an Italian migrant. It is therefore almost certain that the source for *Or Zaru'a* is also the book of R. Samuel b. Natronai, who, as mentioned, was the uncle of Raavyah, the primary teacher of R. Isaac b. Moses. How, then, did this Italian responsum and its halakhic cultural foundation impact Ashkenazic custom?

When the author of *Or Zaru'a* finished citing the responsum of the Roman sages, he added: "My teacher, R. Simḥah, likewise responded that even on a weekday, it is not a Torah custom to remove the foreskin of stillbirths, based on that passage from *Genesis Rabbah*." If so, R. Simḥah of Speyer, a teacher of R. Isaac b. Moses,<sup>56</sup> outright

Babylonian tradition had become dominant in Italy in the tenth century, and it stands to reason that this shift was reflected in the Ashkenazic sphere as well. See Avraham Grossman, "When Did the Hegemony of Eretz Israel Cease in Italy?" [Hebrew], in *Mas'at Moshe: Studies in Jewish and Islamic Culture Presented to Moshe Gil*, ed. Ezra Fleischer et al. (Tel Aviv, 1998), pp. 143–57.

<sup>54</sup> See above, n. 5.

<sup>55</sup> *The Rules of Circumcision*, p. 126. The editor of the work, Jacob Glassberg, published two works on circumcision: *The Rules of Circumcision of R. Jacob the Circumciser*, in *Zikhron Berit La-Rishonim*, vol. 1 (Krakow, 1892), and the aforementioned *Rules of Circumcision by R. Gershom b. Jacob the Circumciser*. Recently, Simcha Emanuel demonstrated that the attribution of these works to two different authors is premised on an error; R. Gershom wrote both works in Worms after 1215. See Simcha Emanuel, "From First to Third Person: A Study in the Culture of Writing in Medieval Ashkenaz" [Hebrew], *Tarbiz* 81 (2013): 453–57.

<sup>56</sup> On him, see Ephraim E. Urbach, *The Tosaphists* (Jerusalem, 1980), pp. 411–20. On his ties with his pupil R. Isaac b. Moses of Vienna, see Uziel Fuchs, "Iyyunim be-

forbade the circumcision of stillbirths, like the opinion of the Roman sages – not only on the Sabbath, on which there are the additional problems of carrying things that may not be carried to perform the circumcision, but “even on a weekday.”<sup>57</sup> He explained his ruling by referring to “that passage from *Genesis Rabbah*”; namely, the *midrash* that tells how Abraham the Patriarch removes the foreskins of uncircumcised babies to cover the circumcisions of those who “sinned too much.” Among the variety of claims made by the sages of Rome,<sup>58</sup> R. Simḥah specifically addresses this rationale in order to forbid the circumcision of stillbirths.

This midrashic story likewise bothered R. Simḥah’s younger contemporary, R. Gershom the Circumciser, who asked: “If, like they say, the foreskin is removed from a baby who died, from where does the angel take the foreskin?”<sup>59</sup> R. Gershom wrote, “like they say,” indicating that he did not agree with this custom. This formulation, coupled with the fact that R. Gershom quotes the responsum of the Roman sages at length in his work, demonstrates his hesitation vis-à-vis the custom. Nevertheless, his hesitation did not prevent him from trying to resolve the contradiction while qualifying it. His first answer is brief: “If you wish, I would say that it is necessary to place the foreskin in the baby’s hand, and the angel will take it from his hand.”<sup>60</sup> The practice remains in place, but an instruction is added to address the words of the *midrash*: the foreskin should be placed in the infant’s hand, and the angel will take it from there and give it to Abraham. Is this the moment of the birth of a new custom – or, more precisely, a

Sefer Or Zaru’a le-R. Yitṣhak b. Mosheh me-Vienna” (MA thesis, Hebrew University, 1993), p. 32; Emanuel, *Fragments of the Tablets*, pp. 154–75.

<sup>57</sup> See below, p. 19.

<sup>58</sup> To the claims already presented in this article, we can add a proof that the sages of Rome brought from *b. Sanhedrin* 110b. The responsum in *Or Zaru’a* cites a similar, but not identical, passage from *y. Shevi’it* 4:10, 35c. The responsum that appears in *The Rules of Circumcision* refers to the *Shevi’it* passage, but does not quote it.

<sup>59</sup> *Rules of Circumcision of R. Jacob the Circumciser*, pp. 92–93. See, however, Emanuel, “From First to Third Person,” which proves that this work is by R. Gershom the Circumciser. The present transcription is based on MS Hamburg, State and University Library, Cod. Hebr. 148, p. 30. See Emanuel, *ibid.*, p. 436.

<sup>60</sup> The structure of the passage is quite reminiscent of the Tosafists’ style. The problem is presented as a contradiction between sources – in this case, a prevailing custom against a midrashic narrative – and then three solutions are offered, separated by the talmudic formula *iba’it eima* (“if you wish, I would say”).

sub-custom? To the best of my knowledge, this is the only source that mentions a procedure of this sort. It is not mentioned further in customary literature. The assumption that R. Gershom was very hesitant with respect to this custom and even saw fit to defend the contradiction between the *midrash* and the custom with three different solutions, as we will see, inclines one to think that these resolutions are purely academic, with no connection to the custom as actually practiced.

R. Gershom's second answer preserves the custom without modification. He writes: "And if you wish, I would say that the skin that is peeled back, which still remains on him, [the angel takes] that second skin and gives it to those who desecrated His covenant."<sup>61</sup> For our purposes, his third answer to the aforementioned contradiction is especially fascinating:

R. Gershom, of blessed memory, posited a distinction<sup>62</sup> between the babies. A baby who was carried to full term, with indications – his hair and his fingernails – demonstrating this, and who would have been fit for circumcision had he not died within eight [days], his foreskin is certainly removed from him, for he is not like a full-fledged stillborn. For had he lived, we would have performed a *bona fide*, kosher circumcision. So now, too, we bestow good upon him and cut off his foreskin with a flint or cane stalk, but not with a scalpel, and without a blessing, and not because this is a commandment. For the commandment was given to the living, not the dead, as it says: "Among the dead is freedom," and once a person dies, he becomes free of the commandments. And it helps him, saving him from the judgment of Gehinnom and bringing him into the Garden of Eden with other members of the holy covenant. But *bona fide* stillbirths, who never reached nine [months in the womb], never truly lived; we do not cut their foreskins, and the Holy One, blessed be He,

<sup>61</sup> This implies that even though the foreskin was removed, the peeling back of the remaining skin (*peri'ah*) was not done in such cases. This is an issue discussed by later authorities. R. Tzvi Yehezkel Michelson, *Responsa Tirosh Ve-Yitzhar* (Bilgoraj, 1937), §155, p. 327, reports that the custom in Warsaw and Hungary at the end of the nineteenth century was not to perform *peri'ah* in the case of a posthumous circumcision, just as R. Gershom implies here.

<sup>62</sup> This formulation, "posited a distinction" (*natan ḥiluq*), is typical among French and German sages of the era.



sends an angel to remove their foreskins, give them to those who have sinned too much, and bring them down to Gehinnom.

R. Gershom limited the custom to only those who were born after a full pregnancy of nine months and who died around their time of birth. His style indicates that he used the responsum of the Roman sages. Thus, for instance, he asserts that the circumcision is performed with a flint or cane stalk and emphasizes that this is not a commandment, for the commandments were given to the living – just like in the formulation of the Roman sages. If the sages of Rome altered the contents and spirit of the Geonic responsum and forbade practicing this custom, as we saw earlier, then at the beginning of the thirteenth century, R. Gershom reworked their statements when he approved of the practice vis-à-vis babies who were carried to full term. Hence, a custom that was first documented in a responsum of R. Naḥshon, which the sages of Rome rejected, even refashioning the Geonic responsum as they saw fit, was resurrected in the statements of R. Gershom, who addressed the language and contents of the responsum of the Roman sages in his own way. The responsum of R. Naḥshon Gaon was vigorously refashioned by the sages of Rome, but their refashioning itself was drastically changed by the sages of Ashkenaz.

Moreover, R. Gershom's intermediate course reflects the equivocation of the Ashkenazic sages regarding this matter. We have seen the position of R. Simḥah of Speyer, who completely rejected the custom, "even on a weekday." About three generations later, when the custom, it seems, had already become prevalent in Ashkenaz, despite the reservations that, in my view, originated in the Italian tradition, R. Meir Hakohen, author of *Hagahot Maimoniyot*, wrote the following:<sup>63</sup>

Stillbirths, whose foreskins it is customary to remove with a flint [or] stone – this is forbidden even on the diasporic second festival days. For what we learned – namely, that with respect to the dead, the second festival days are like weekdays – applies specifically to a dead person who had been viable. For one who leaves the body [unburied] overnight violates a prohibition, and delay [in the burial] constitutes a disgrace. For stillbirths,

<sup>63</sup> *Hagahot Maimoniyot*, Laws of Circumcision 1:10. This text is based on the Frankel edition of *Mishneh Torah* (Jerusalem and Bnei Brak, 2007).

however, whom there is no commandment to bury, as it is implied in several places in the Talmud that they were cast into a pit, the festival is not superseded for their burial.<sup>64</sup> Moreover, the custom of removing their foreskin is not a Torah custom. Even if you should suggest that it is merely the cutting of flesh, it is nevertheless forbidden to carry him and the stone. As for the custom of removing it during the week, perhaps this is to aid sinners. For we learn in *Genesis Rabbah* that the Holy One, blessed be He, removes the foreskins from children who die without being circumcised and places them on the sinners of Israel.<sup>65</sup>

R. Meir Hakohen confirms the practice of this custom, but his reservations and difficulties about it are made quite clear in his formulations and rulings. He forbids the practice of this ceremony on the diasporic second festival days, despite grounds for being more lenient than on matters related to burying the dead, and in accordance with R. Gershom he asserts that the act is performed with implements – a flint or stone – that may not be used for a normal circumcision.<sup>66</sup> He adds, as the sages of Rome attested, that this “is not a Torah custom.”

It thus emerges from the Ashkenazic record that in the late twelfth and early thirteenth centuries, there was vigorous opposition to the custom, which finds expression in the ruling of R. Simḥah of Speyer and in *Or Zaru'a*.<sup>67</sup> In contrast, during the thirteenth century the custom spread in Ashkenaz, even if the local sages were not wholeheartedly in favor of the practice, as we saw from how R.

<sup>64</sup> Regarding the view of the Provençal sages that it is permissible to bury a deceased baby on a festival, see Pinchas Roth, “Later Provençal Sages – Jewish Law (Halakhah) and Rabbis in Southern France, 1215–1348” [Hebrew] (PhD diss., Hebrew University of Jerusalem, 2012), pp. 244–46.

<sup>65</sup> *Mordekhai, Shabbat* §471 has a similar formulation.

<sup>66</sup> There is a slight difference in their formulations. R. Gershom wrote that the custom is to circumcise stillborn babies “with a flint or cane stalk, but not with a scalpel,” whereas R. Meir wrote of “stillbirths, whose foreskins it is customary to remove with a flint [or] stone.” Nevertheless, both meant that the act should be done with an implement that is not fit for a halakhic circumcision.

<sup>67</sup> See also R. Judah the Pious's *Sefer Gimatriyot*, Y. Y. Stahl edition (Jerusalem, 2005), p. 701: “At the resurrection of the dead those who were circumcised at eight days will be rescued.” This raises the possibility, if only speculative, that the special properties of circumcision are effective only if the baby is circumcised on time and while alive.

Gershon the Circumciser and R. Meir Hakohen, author of *Hayahot Maimoniyot*, addressed this issue.

## Conclusion

Does the process described here with respect to the regions of Ashkenaz attest, on the one hand, to the fundamental dependence of Ashkenaz on Italian culture, which initially negated this custom, and to the penetration of Geonic/Sephardic influence, which intensified in Ashkenaz over time, on the other?<sup>68</sup> It seems that this is, indeed, the explanation for the hesitancy of the Ashkenazic sages with respect to this custom.<sup>69</sup> Yet it also seems that the turning points that we have seen regarding this issue – in Sura, Rome, Barcelona, Lucena, Provence, and Ashkenaz – must be examined in connection with a broader worldview, which encompasses the specifics of the discussions that have emerged here.

Attitudes toward the afterlife, together with the parents' desire for what is best for their child who tragically did not have a long life, are at play in this issue alongside – and even in opposition to – the world of *halakhah* and rabbinic guidance. Everything functions within a world of belief that originates in the circles of the sages, but is itself influenced by folk beliefs about the nature of the afterlife and who merits entering it. Hovering above this is the sense of loss and pain experienced by women who suddenly lose the fruit of their wombs, the babies they have carried for nine months. No wonder that a question of this sort, which is tied to belief and psychology, *halakhah* and theology, privileges the brokenhearted mothers who want their tender children, who never even had the opportunity to be properly circumcised, to experience the good that is reserved for the righteous.<sup>70</sup>

<sup>68</sup> In his lecture at the Sixteenth Congress of Jewish Studies in the summer of 2013, Haym Soloveitchik argued that from the very outset, there were strong Babylonian traditions among the traditions of Ashkenazic Jewry. Perhaps the present case is instructive in this context.

<sup>69</sup> See above, n. 53.

<sup>70</sup> For extensive discussions of this issue, see Saul Lieberman, "Some Aspects of After Life in Rabbinic Literature," in *Harry Austryn Wolfson Jubilee Volume*, vol. 2 (Jerusalem, 1965), pp. 525–30; Nissan Rubin, "Historical Time and Liminal Time – A Chapter in the Historiosophy of the Sages" [Hebrew], *Jewish History* 2 (1988): 12–18.

Moreover, questions like these are not limited by time, place or community. The death of infants before circumcision happens everywhere, at all times; infant mortality is a global phenomenon. Clearly, however, there is room to note similarities and differences on this issue with respect to the customs practiced within Islam and Christianity, the prevailing religions in the spheres addressed in this article. As far as I know, in the Muslim world infants and children who died before being circumcised were not circumcised posthumously, nor did they undergo any similar procedure. Documentation of a slightly different tradition emerges from the writings of Ibn Qayyim al-Gawziyyah (Damascus, 1292–1350). He wrote: “There is agreement that the circumcision of the dead is not obligatory, but is it desirable? Most scholars claim that it is not, among them the four imams (= founders of schools of *shari‘a*), but a few of the later scholars maintain that circumcision is desirable.”<sup>71</sup>

This approach seems unsurprising. Circumcision is not mentioned in the Qur’an and is not considered an obligatory commandment. It was primarily a custom of Arab tribes before the advent of Islam.<sup>72</sup> As a result, Muslim traditions do not view circumcision as a commandment that defines the Muslim essence, even if the custom was deeply rooted and widespread. It is therefore no wonder that there is barely any mention of this matter in *shari‘a* literature.

In contrast, comparison to the Christian sphere and to the possibility of baptizing an infant posthumously is far more fruitful. The sacrament of baptism is the first in a human life, and it appears in several of the Gospels. Matthew 28:19 states: “Therefore go and make disciples of all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit.” More significant for our purposes is a verse from Mark (16:16), “Whoever believes and is baptized will be saved, but whoever does not believe will be condemned,” while in John (3:5), we read: “Jesus answered, ‘Very truly I tell you, no one can

<sup>71</sup> See M. J. Kister, “‘...And He Was Born Circumcised...’: Some Notes on Circumcision in Ḥadīth,” *Oriens* 34 (1990): 24. I am grateful to Nurit Tzafir for initially referring me to the Hebrew version of this article, and to Daniella Talmon-Heller for her assistance in translating the Arabic original. On Ibn Qayyim al-Gawziyyah, see Caterina Bori and Livnat Holzman, eds., *A Scholar in the Shadow: Essays in the Legal and Theological Thought of Ibn Qayyim Al-Gawziyyah* (Rome, 2010).

<sup>72</sup> See Uri Rubin, “‘Hanifiyya and Ka’ba: An Inquiry into the Arabian Pre-Islamic Background of ‘Din Ibrahim,’” *Jerusalem Studies in Arabic and Islam* 13 (1990): 103–5.

enter the kingdom of God unless they are born of water and the Spirit.”

Baptism is indeed an integral part of a person's belonging to the Church, and therefore one who is baptized, and only one who is baptized, merits redemption and Divine grace, for it is accepted that there is no redemption outside the Church. The assertion that baptism is the entryway into the realm of the faithful, the realm outside of which there is no salvation, greatly increased the intensity of the question of babies who died before baptism. The issue was further sharpened against the background of the conception that because of Original Sin, every person is tainted until they are baptized and enter the embrace of the Church, which originates with the Church Fathers and was developed in the teachings of Augustine. The direct result of the rise of this mood in Christian thought was the discussion of the fate of babies who die before baptism: on the one hand, they have not sinned, but on the other, they remain mired in Original Sin. Therefore, according to Augustine, it was decreed that these unfortunate babies must wait in Limbo, a realm with punitive connotations, even if the suffering that those who wait there can expect is decreased; after all, the Original Sin on account of which they were condemned is not their personal sin.<sup>73</sup> This difficult image was replaced in the twelfth century by a softer stance, when Abelard and Aquinas asserted that Limbo was an even less severe realm: those found there were not worthy to gaze upon the Divine light, but nor would they suffer from Original Sin, and they even enjoyed the natural happiness promised to those who did not sin.<sup>74</sup>

Either way, the fear that the deceased infant would suffer or would not become part of the Church and that they would therefore lose out on the good reserved for its members led to the development of the practice of baptizing dead infants, even if this practice was

<sup>73</sup> See Franz Cumont, *After Life in Roman Paganism* (New Haven, 1922), pp. 197–98. I am grateful to Prof. Zeev Gries for referring me to this book.

<sup>74</sup> Other existential implications of the view that excludes unbaptized babies from Christian redemption are the custom of not burying unbaptized babies on Church grounds, so that they do not contaminate the Christian cemetery, and the custom of burying such a baby with a stake driven through his or her heart. See Shulamith Shahar, *Childhood in the Middle Ages* (London, 1992), pp. 49–52. For certain reservations based on archaeological research, see Sally Crawford, “Baptism and Infant Burial in Anglo-Saxon England,” *International Medieval Research* 18 (2013), special edition, *Medieval Life Cycles: Continuity and Change*, ed. I. Cochelin and K. Smyth, pp. 55–80.

marginal. Some asked for a miracle to occur on the newborn's behalf and for it to live for just a moment until it could be baptized, while others renounced asking for such miracles,<sup>75</sup> like in the case of posthumous circumcision described in detail in this article.

It seems to me that the Jewish custom and the Christian custom do not allow us to posit a direct connection between them, nor an indirect influence of one on the other. It is more accurate to propose that the love of parents for their children, even those who lived but a few days, led both Christian and Jewish parents to try to improve their children's situation, each using the religious language with which they were familiar.<sup>76</sup>

<sup>75</sup> See Jacques Gélis, "La mort du nouveau-né et l'amour des parents: Quelques réflexions à propos des pratiques de 'répit,'" *Annales de démographie historique* (1983): 22-31.

<sup>76</sup> See, similarly: Eileen M. Murphy, "Children's Burial Grounds in Ireland (Cilini) and Parental Emotions Toward Infant Death," *International Journal of Historical Archaeology* 15 (2001), pp. 409-428. I am grateful to Prof. Pinchas Roth for referring me to this book.