

**YESHIVAT HAR ETZION
ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)**

TALMUDIC METHODOLOGY

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The Yeshiva and the VBM wish a very warm mazal tov to Rav Moshe and Atara Taragin on the birth of their son, brother to Gali, Shoshi, Tamar, David, Noam and Temima! Rav Taragin has been part of the VBM since its very inception, having authored the Talmudic Methodology series for the past several years. May you both raise your son to Torah, chuppa and ma'asim tovim!

This shiur is written in honor and recognition of chasdei Hashem in granting us a healthy son. May we be zocheh to perform Brit Mila in its proper time!

NOTE: This shiur expands upon a previous topic; the previous shiur is being sent along with the current one.

WHOSE MITZVA IS IT TO PERFORM MILA ON THE EIGHTH DAY?

The mishna in Kiddushin (29a) lists five mitzvot which a father must perform for his son. In the list appears the mitzva of mila on the eighth day. The gemara derives the devolution of this chiyuv upon the father from a pasuk in Vayeira. A debate emerges from this gemara as to how exactly a father must execute this mitzva. Is it enough to hire a 'mohel,' or should he ideally perform the mila himself, if possible? Independent of that issue, a second question emerges regarding the performance of his son's mila. Do we view the mitzva as the father's mitzva, or do we effectively see it as the son's obligation, only one which, at the age of eight days, he is incapable of performing, requiring the designation of the father to execute the son's mitzva on the latter's behalf? According to the second possibility, the father fulfills not his own mitzva, but rather that of his son to be circumcised. After all, once the son reaches the age of thirteen, he bears the personal responsibility to perform a berit mila if it hasn't been performed already. Does this not indicate that mila is the son's mitzva, which he cannot execute until he becomes thirteen years old, and which is therefore transferred to his father beforehand? Or, do we recognize here two separate mitzvot: the father's independent mitzva to circumcise his

son, and the son's mitzva after his thirteenth year to perform mila if his father neglected to do so? This question will be examined in the context of this shiur.

We will begin by studying the makor (source) for the father's obligation regarding his son's mila. The Bavli in Kiddushin derives this obligation from the verse in Bereishit (21:4), "And Avraham circumcised his son, Yitzchak, at the age of eight days, as he was commanded by God." This pasuk would suggest little as to whose mitzva this really is. The Yerushalmi, (Kiddushin 9:7), however, infers the father's obligation from a pasuk in Vayikra (12:3): "On the eighth day the foreskin shall be circumcised." Might this pasuk be more indicative of a mitzva upon the parent, as it is ensconced in Parashat Tazria among the various korbanot offered by the postpartum mother? If mila is listed among these korbanot, should we not assume that the basic mitzva belongs to the parent? Yet a third source is mentioned by the Rambam, in his Sefer Ha-mitzvot (asei #215), where he cites a different pasuk in Bereishit (17:10): "This is the covenant which you should preserve between Myself, yourself and your children afterwards: circumcise all males." This presentation might imply that the mila is the father's mitzva and the means by which he preserves HIS covenant with Hashem.

None of these pesukim, however, is conclusive regarding our question. Nonetheless, they should certainly be inspected in light of our issue.

A second text which ought to be investigated is the formulation of the mishna itself. The mishna employs a very intriguing and even confusing syntax to describe the father's performance of mila (and the other four mitzvot mentioned there). The mishna refers to "the mitzvot of the child upon the father" ("mitzvot ha-ben al ha-av"). The simple or intuitive reading of this phrase suggests that it refers to mitzvot that the CHILD must perform for his father. After some clarification, the gemara confirms that to the contrary, this refers to mitzvot/tasks which the father must perform for his son. Why, then, did the mishna present such a confusing syntax, thus allowing for a misunderstanding? In fact, the parallel passage in the Mekhilta reverses the syntax and lists "the mitzvot of the father to the son." This parallel - and more logical - syntax merely highlights our earlier question: why does the mishna describe mila as a mitzva of the son for the father? Might the mishna be indicating that mila (and possibly its colleagues) are really the mitzvot belonging to the son, but executed by the father?

A third inspection might be to examine how many mitzvot mila occupies among the list of the 613 mitzvot. If, indeed, we recognize two separate mitzvot, one belonging to the father beginning from the eighth day, and another of the child, starting at age thirteen, should there not be a distinct listing within the 613 mitzvot? None of the Rishonim, however, actually divide mila into two separate mitzvot within the 613 (though some separate between the mitzva to circumcise sons and the mitzva to circumcise servants.) Does this indicate the presence of only a single mitzva belonging to the son and executed by the father as his agent? Or might we accede to the concept of two mitzvot, but claim that these separate mitzvot are combined into one item within the list of 613? This question reflects a broader issue relating to the counting strategy employed by Rishonim in assembling the list of 613 mitzvot.

So far we have examined formal issues: from which pasuk we derive mila, the syntax of the mishna and the listing of the 613 mitzvot. Let us now turn our attention to more practical halakhic ramifications of this question. In mitzva 2, the Minchat Chinukh poses the following question: Would the father retain an obligation to circumcise his son after the latter passes the age of thirteen and assumes his own chiyuv? This all depends upon the nature of the father's initial duty. If the father's duty was independent of the son's later obligation, there is no reason why the father's chiyuv should cease just because his son has reached the age at which he is responsible for his own mila. If, however, the father was entrusted with performing his son's mitzva on his son's behalf because his son was too young, this responsibility to act on his son's behalf quite conceivably terminates at the point at which his son can fulfill his own chiyuv.

What would happen if someone circumcises the child without the father's permission? The gemara in Chulin prescribes a monetary fine for someone who steals another's mitzva. Would this interloper be considered as having stolen the father's mitzva, and thus be required to pay this fine? Ostensibly, this question should revolve around our earlier one, whether we view mila as the father's mitzva or merely the one he executes on behalf of his son.

The Ran authored a responsum (#52) in which he discusses the problem of conducting a mila on a ta'anit. If no one can drink the wine, the berakha of ha-gefen would become a berakha le-vatala. One solution he proposes has the baby taste the wine to avoid this predicament (In fact, the Rama, in Yoreh De'ah 165, cites a minhag to give a drop of wine to the baby even when a brit occurs on a non-ta'anit). On the other hand, this

drinking might not be sufficient given that the baby has not reached the age of chinukh. At one point, the questioner suggested that since mila is the baby's mitzva, his drinking should suffice in spite of his young age. To this the Ran responds, "It is clear that the obligation is not the baby's, but the father's"; hence, the baby's drinking is insufficient. This formulation and ruling point to the independent nature of the father's chiyuv to circumcise his son. The Tashbatz (volume III, chapter 65) argues and seems to indicate that the baby's drinking indeed suffices, since it is his mitzva that the father performs on his behalf.

The Rama cites a halakha regarding a child who – Rachamana litzlan - dies prior to his mila. The Or Zarua cites an opinion in the name of Rabenu Hai Ga'on that a mila in such a case is only a minhag, but not considered halakhic, since the baby is no longer capable of experiencing the covenant which is so central to mila. If we view the mila as the father's obligation towards his son, would we disqualify this type of mila as non-halakhic, simply because the baby cannot participate in the 'brit?' Indeed there might be other reasons to view this type of brit as only minhag and not halakha, but the baby's inability to 'perform' the mitzva might not be so consequential. Similar issues arise in the writings of many Acharonim regarding a brit performed upon a mentally handicapped child or a blind child. In each case, the baby might be excused from mitzvot, and therefore, if the father is merely an agent for his son, no mitzva exists in these situations, and any mila must be viewed as purely minhag.

The gemara in Kiddushin (29a) excludes a mother from performing her son's mila. The Torah describes Avraham as performing mila to Yitzchak "as God had commanded HIM" (Bereishit 21:4) – implying HIM and not her. Most Rishonim question the need for this exclusion, since mila is a mitzvat aseï she-ha'zman gerama (time-bound obligation), from which women are generally excluded. Why, then, did the gemara base the mother's exclusion on a special pasuk? Tosafot respond to this question by deliberating as to whether or not mila is a classic zeman gerama. The Ramban takes a different approach. Without a pasuk, he writes, we might have included a woman (even though mila appears to be zeman gerama) since it is not her mitzva, but rather the mitzva she performs for her son. Presumably, zeman gerama excludes women only from their own mitzvot, but not from the mitzvot of others which they perform. For example, would a woman be excluded from training her son in the mitzva of sukka because it is a zeman gerama? Of course not. If mila is indeed the son's mitzva performed by the parent on the child's behalf, we cannot

exclude a mother simply because of zeman gerama, and the gemara therefore searches for an alternate source.

(See also the Chatam Sofer in responsa Yoreh De'ah 295, where he states clearly that the father's mitzva is completely independent of his son's.)

Whose Mitzva is it to Perform Mila - Revisited

The Mishna in Kiddushin (29a) describes several mitzvot which a father must perform on behalf of his child. Among this list appears the most familiar one – the mitzva of mila. The primary obligation devolves upon the father, and if he doesn't execute his responsibility, Beit Din (acting as a representative of the broader Jewish community) arranges the mila. As the gemara concludes, if a father has neglected this responsibility and Beit Din likewise avoided its obligations, the child himself must fulfill the mitzva. Upon reaching the age of thirteen years, a boy who has not received mila – neither through his father nor through Beit Din - must personally arrange his brit.

An interesting question emerges as to the nature of the paternal obligation. When he does perform or arrange the mila, is he fulfilling a personal obligation to deliver mila to his son, or is he merely administering his son's mitzva until the latter is old enough to personally attend to it? In other words, whose mitzva is being fulfilled on the eighth day – the father's mitzva to deliver mila to his son, or the son's personal mitzva which, at this stage, he is still too young to perform? Does the fact that, at age thirteen, the son will clearly be charged with a personal mitzva, indicate that, essentially, mila was always his responsibility, and the Torah merely charges a father with stewarding the performance until that child reaches halakhic age? Or, do we assert the presence of two autonomous mitzvot – one upon the father to deliver mila to a young son, and one upon the son who has reached halakhic age without receiving mila?

The previous shiur listed various sources for the father's chiyuv. The Bavli in Kiddushin derives this obligation from the verse in Bereishit (21:4), "And Avraham circumcised his son, Yitzchak, at the age of eight days, as he was commanded by G-d."

This pasuk would suggest little as to whose mitzva this really is. The Yerushalmi in Kiddushin (9:7) infers the father's mitzva from a pasuk in Vayikra (12:3): "On the eighth day the foreskin should be circumcised." Might this pasuk be more evocative of a mitzva upon the parent, since it is ensconced in Parashat Tazria among the various korbanot offered by the postpartum mother? If the mila is listed among the korbanot, shouldn't we thus assume that the basic mitzva belongs to the parent? A third source is mentioned by the Rambam in his Sefer Ha-mitzvot (asei #215), where he cites the pasuk in Bereishit (17:10), "This is the covenant which you should preserve between Myself, yourself and your children afterwards: circumcise all males." This presentation might imply that the mila is the father's mitzva and the manner by which he preserves his covenant with Hashem. Since the commandment addresses a person's obligation to circumcise all males (including servants), presumably the pasuk establishes an obligation upon the father / head of household. By embedding the mitzva to circumcise a child within a general mitzva of circumcising all males, the Torah might be asserting that the father constitutes the obligated party. Similar sentiments may be gleaned from the Midrash Rabba to Bereishit (perek 53), which derives a father's obligation from a pasuk in Bereishit which concludes with the phrase "you should circumcise all your males" - a reference both to servants and male children. By associating the two, the Torah might thereby indicate that just as the father possesses primary responsibility for the mila of slaves, so is he identified as the chief address of his son's mila.

How many mitzvot among the list of 613 should mila occupy – one or two? Clearly, if we would discover two mitzvot allotted – one for the father who performs mila, and one for a son who performs mila at the age of thirteen if he did not have one earlier - we would be convinced that indeed a father enjoys his own mitzva. For example, the Yereim (mitzva 11) lists the father's responsibility and the son's within the same mitzva, suggesting the presence of only a single mitzva initially charged upon the father but ultimately adopted by an uncircumcised child. The Semak, by contrast, lists separate mitzvot for child and parents (157, 159), implying two, independent mitzvot.

At least three Rishonim articulated this question in concrete halakhic terminology. Rashi, in his commentary to Bava Kama (88), comments upon a gemara which contrasts ketanim (minors below the age of thirteen) and slaves. The gemara suggests that ketanim are dissimilar to slaves, since they enjoy mitzva obligation. The simple reading of this gemara is that minors will one day arrive at mitzva performance, and therefore their halakhic status is incomparable to the halakhic identity of slaves. Rashi (s.v. einan),

however, claims that ketanim possess mitzva obligation EVEN BEFORE they reach halakhic maturation – namely, they possess the mitzva of mila from day eight. Presumably, Rashi viewed the mitzva as belonging to the boy himself. Had it been designated as a parent's mitzva, it would not have been treated as the mitzva of the katan and would not have served as grounds for distinguishing between a slave and a katan.

The Me'iri, in his comments to Shabbat (137), addresses the syntax of the berakha recited on mila. Since "the primary mitzva does not apply to the father (who currently performs the act)," he writes, the berakha 'al ha-mila' (a more indirect formulation) is employed. This statement echoes Rashi's opinion that the mitzva truly belongs to the katan and is merely being enabled by the father. Ironically, a different view emerges from a responsum of the explorer Rivash – about the very same issue. In siman 131, the Rivash explores the position of the Rambam, who assigns different berakhot for a father redeeming a firstborn and a boy redeeming himself (if his father has not). The Rivash claims that the mitzva of pidyon ha-ben essentially belongs to the child, and the father merely acts as his child's proxy in redeeming his thirty-day old child. Since the Rivash contrasts mila and pidyon ha-ben in this regard, he seems to maintain that mila is indeed an independent mitzva imposed upon the parent. This inference is elaborated upon by the Birkhat Shemuel, in his comments to Kiddushin (siman 18).

Several additional issues might also be impacted by this question. A famous debate developed, surrounding the father's ability to defer performance of mila to the mohel. Should a father ideally perform the actual mila, or may he (even if personally qualified to fulfill the mitzva) dispense it to the mohel? Many authorities cite a ruling of the Or Zarua (see Darkhei Moshe) claiming that a capable father should ideally perform the mitzva himself. This position was popularized by a well-known passage by the Shakh (Choshen Mishpat 382), who inferred from a Rosh in Chulin that the mitzva should ideally be performed by the father himself. Several gemarot (for example, Kiddushin 41) assert a principle that a mitzva should ideally be performed personally rather than being dispensed through the agency of a shaliach. Needless to say, this dramatic demand of the Shakh elicited much controversy, and many endeavored to disprove this chumra. Historically, the Shakh's position has not found widespread acceptance, though there are those who adhere to his stringency. It would seem more likely to consider the Shakh's ruling if we viewed the mitzva as a primary obligation upon the father. This personal obligation might warrant personal performance - when possible. If, however, the father

merely executes his son's obligation, it would seem less likely to mandate personal performance.

A second interesting question pertains to a reluctant father: can he be coerced to fulfill the mitzva if he is unwilling? This question naturally splits into two varieties. Perhaps all would agree that a father who entirely withholds mila from his child may be coerced into allowing the mila to occur. But what about a father who refuses to administer the mila to his child, but is perfectly willing to allow others to provide this mitzva? The Chokhmat Adam (Sefer Binat Adam shaar issur v'heter siman 7) suggests that such a father may not be compelled. Most Rishonim, however (see Hagahot Maimoniyot Hilkhhot Talmud Torah 1:1, and the Tashbatz 3:8), seem to hold that a father can be coerced. (We say "seem to hold" because it is difficult to ascertain whether they mandate coercion when a father refuses personal administering but allows other provisions, or if they only allow coercion if the father completely withholds mila). Perhaps part of this debate concerns defining the father as the primary or secondary address of the mitzva. If the mitzva is primarily his, we would likely call for enforcing its performance, just as we enforce any mitzva. If he merely acts as a proxy toward the performance of his son's mitzva, it is certainly less likely to be compelled.