

# Parsha Ponders

Bris Milah | November 15, 2019 | 17 Marcheshvan 5780

## *Appointing a mohel and humility<sup>1</sup>*

זאת בריתי אשר תשמרו ביני וביניכם ובין זרעך אחרֵיך המול לכם כל-זכר

This is my covenant that you are to observe between Me and you and your offspring that follow you:  
circumcise all boys<sup>2</sup>

The Torah places a *mitzvah* on the father to give his son a *bris milah*<sup>3</sup>. However, very often is the case that the father doesn't know how, and he appoints a *mohel* to do the *mitzvah* for him. Seemingly, the *mohel* is acting as the father's *shliach*, his agent. Some even explicitly appoint the *mohel* as their *shliach*<sup>4</sup>. However, this isn't so simple. Some are of the opinion<sup>5</sup> that a person who can perform *milah* himself isn't allowed to appoint another to do it for them. Seemingly, they hold that *shlichus*, agency, doesn't work for the *mitzvah* of *milah*<sup>6</sup>. Where do they know this from?

There's a *halacha* that if someone "steals" a *mitzvah* from you, they are obligated to pay you ten gold coins<sup>7</sup>. The Rosh brings<sup>8</sup> a case where this happened. Someone appointed another to give their son a *bris milah*, and a third person came and did it first. This case was different though and the person who stole the *mitzvah* from the *mohel* was exempt from paying him, for various reasons. However, the Rosh never discusses why the perpetrator didn't have to pay the father ten gold coins. Since this perpetrator wasn't the father's *shliach* (the *mohel* was), when he performed the *milah*, the father didn't fulfill his *mitzvah*! It must be that the father forfeited his *mitzvah* anyways when he appointed someone else to do it. Therefore, there was no loss incurred when this third person snatched the *mitzvah*<sup>9</sup>.

What's hard to understand is why is *milah* different than any other *mitzvah*? We have a rule that שלוחו כמותו, a person's agent is like himself<sup>10</sup>. This applies to many *mitzvos*. Why wouldn't it apply to *milah*? A possible explanation is based on the fact that *shlichus* doesn't work on a מצוה שבגופו, a *mitzvah* that applies to a person's body<sup>11</sup>. I can't appoint another to sit in a *sukkah* for me, nor can I have them put on *tefillin* for me. We see *shlichus* works for things like *kiddushin*, *gerushin*, separating

<sup>1</sup> Based on Minchas Asher Bereishis § 15 and Chasam Sofer Al HaTorah to Deuteronomy 30:12

<sup>2</sup> Genesis 17:10

<sup>3</sup> Kiddushin 29a

<sup>4</sup> See Shulchan Aruch Yoreh Deah 265:9

<sup>5</sup> Ohr Zaruah Hilchos Milah 107:5, brought by Darkei Moshe to Tur Yoreh Deah § 264:1; Shach to Shulchan Aruch Choshen Mishpat 382:1 § 4 (he writes that those that do are מצות עשה (מבטלים מצות עשה); Ketzos HaChoshen ad. loc. § 1. See also Pischei Teshuvah to Shulchan Aruch Yoreh Deah 264:1 § 1

<sup>6</sup> Ketzos HaChoshen loc. cit. The Darkei Moshe also seems to understand the Ohr Zaruah this way, since he asks why is *milah* any worse than any other *mitzvah* where *shlichus* works. However, see Teshuvos Maharam Shik Yoreh Deah § 239 and Teshuvos Beis HaLevi IV § 169, who point out that Ohr Zaruah HaGadol Hilchos Milah § 107 is pretty implicit that *shlichus* **does** work, just that a father should do the *milah* himself if he can (either because יותר מבשלוחו (Beis HaLevi), see below, or he means the father shouldn't let someone else do it **without shlichus** (Miluei Choshen ad. loc. § 2))

<sup>7</sup> Bava Kamma 91b; Chullin 87a; Mishneh Torah Hilchos Chovel UMazik 7:14; Shulchan Aruch loc. cit.

<sup>8</sup> Piskei Rosh Chullin 6:8

<sup>9</sup> Ketzos HaChoshen loc. cit.

<sup>10</sup> *Inter alia*, Berachos 5:5; Kiddushin 41b

<sup>11</sup> Tosafos Rid to Kiddushin 42b s.v. שאני התם

*terumos* and *maaseros*. We can say that *milah* is a *mitzvah* that is incumbent upon the father's body, to perform the *milah* on their son. Therefore, *shlichus* wouldn't work<sup>12</sup>.

A problem with all of this is that those that forbid having another perform *milah* only indicate it's a problem if the father himself knows how to perform *milah*. How could the explanation be that there's no such thing as *shlichus* for *milah*? It would seem that if the father doesn't know how to do it, it's perfectly fine to appoint another. If *shlichus* isn't possible for *milah*, why would this differentiation exist? It should either always work, or never work.

In fact, perhaps all these opinions simply mean is that it's **better** for a father who can do to it himself, and that's why they are **not permitted** to appoint another. There's a rule of *מצוה בו יותר מבשלוהו* a *mitzvah* is better performed by oneself than through a *shliach*<sup>13</sup>. This is because a person earns more reward by toiling themselves in the *mitzvah*, instead of having someone else fulfill it<sup>14</sup>. Alternatively, it's showing more honor to the *mitzvah* to do it oneself<sup>15 16</sup>. But if they appoint another, it **would work**<sup>17</sup>.

Perhaps there's another reason to explain why a person who can perform *milah* shouldn't appoint another to do it for them. What these opinions meant is that honoring another person with the *mitzvah*, without appointing them as a *shliach*, is a problem. Doing it this way, the father never actually fulfilled the *mitzvah*. However, if they explicitly appoint another as a *shliach*, it would be fine<sup>18</sup>. The problem is

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<sup>12</sup> Ketzos HaChoshen *loc. cit.* The Miluei Choshen *ad. loc.* § 5 brings from the Beis Ephraim Choshen Mishpat § 67 who asks that it's obvious that *milah* isn't considered a *מצוה שבגופו* (see also Miluei Choshen 181:1 § 1). However, he also brings from the Chasam Sofer to Chullin *loc. cit.* why it would indeed make sense to say that *milah* is a *מצוה שבגופו*

<sup>13</sup> Kiddushin 41a. Rav Asher Weiss has pointed out on many occasions that this is the only source in all of *sifrei Chazal* for this concept. See note 21

<sup>14</sup> Rashi *ad. loc.*, seemingly based on Avos 5:23

<sup>15</sup> See Mishneh Torah Hilchos Shabbos 30:6, who says a person too honorable to do chores should themselves toil for *shabbos* preparation, *שיה הוא כבודו*. One way to read it is that this is the **person's** honor, to toil for the *mitzvah* of *shabbos*. Perhaps this is how the Shulchan Aruch Orach Chaim 250:1 understood the Rambam. However, I recall Rabbi Elimelech Reznick suggesting that the Rambam meant this is the honor of **shabbos**, as the Rambam learned *מצוה בו יותר מבשלוהו* to be because it shows more honor to the *mitzvah* to do it oneself

<sup>16</sup> Someone I know suggested a third reason why *מצוה בו יותר מבשלוהו*. Outer actions affect our inner thoughts and attitudes (see Rambam to Avos 3:15, Sefer HaChinuch § 16, and Mesillas Yesharim end of Chapter 7). This is the reason behind many of the *mitzvos* (as evident from most of Sefer HaChinuch). Even if a person's thoughts could be affected if a *shliach* performed the *mitzvah*, there's no question they'll be affected more by doing it themselves

<sup>17</sup> This is what Rav Asher Weiss would say if not for what the Ketzos HaChoshen says to explain the Ohr Zaruah and Shach. Although the Shach writes that those that appoint another are *מצות עשה מבטלים*, this expression has precedent to be used to mean someone is failing to fulfill a *מצוה הידור* (in this case *מצוה בו יותר מבשלוהו*)

<sup>18</sup> Pleisi 28:8:3. Rav Asher Weiss also cites Teshuvos Kesav Sofer Yoreh Deah § 121. See Minchas Chinuch 2:14 who asks according to this why do we need a verse to exclude a non-Jew from performing *milah* (Avodah Zara 27a), if the only way it is permitted for them to do so would be through *shlichus*, and a non-Jew can't do *shlichus* (Kiddushin 41b). The Tevuos Shor *ad. loc.* § 14 seemingly has another resolution to these opinions which forbid appointing another for *milah*. He writes that the rule of *מצוה בו יותר מבשלוהו* is when a person is too lazy to perform the *mitzvah* themselves. However, if their intent is to honor a righteous individual with the *mitzvah*, that's perfectly fine. The Minchas Chinuch and Darkei Teshuvah *ad. loc.* § 1 understood the Tevuos Shor to be saying the opposite of the Pleisi, but Da'as Yehonasan *ad. loc.* § 12 points out that the Tevuos Shor obviously meant honoring another **by making them a shliach**, whereas the Pleisi forbade honoring another **without** making them a *shliach*

that why should I need to explicitly appoint them as my *shliach*? By honoring another with the *mitzvah*, isn't it obvious that I'm making them my *shliach*? *Shlichus* by definition is another doing something because I asked them to<sup>19</sup>.

Further, who says I need to physically do the *milah* myself, such that I would need to invoke *shlichus* to have someone else do it for me? In fact, some are of the opinion<sup>20</sup> that a father's sole obligation is to see to it that their son has a *bris milah*. If the father hires someone else to do it, they've fulfilled their obligation, even without *shlichus*. According to this opinion, there should be no problem having another person perform the *milah*, even if the father could do it himself. The goal is to have the boy have a *milah*, and that was accomplished. It doesn't matter who does it.

Finally, perhaps there's another explanation for the Rosh. Why didn't he discuss if the person that snatched the *mitzvah* of *milah* from the *mohel* owes the father of the baby ten gold coins? Those that forbid appointing another for *milah* proved their opinion from here, and say that since the father shouldn't have appointed another, he nullified his *mitzvah* and lost the right to the ten gold coins. However, Rav Asher Weiss wants to explain the Rosh using a unique opinion.

There is no concept of *shlichus* for *segulah*, only for *dinim*. Meaning, a person appoints a *shliach*, and gives him the power to effect *kiddushin*, *geirushin*, or any type of *chalos*. The *shliach* could even fulfill the person's obligation for them. But the spiritual effects of the *mitzvah*, the *tahara*, and the *sechar*, **all go to the *shliach***<sup>21</sup>. At the end of the day, he performed the *mitzvah*, not the one who appointed the *shliach*<sup>22</sup>. The latter just fulfills his obligation through the *shliach*, no more. Thus, the ten gold coins goes solely to the *shliach*, as it is his *mitzvah*. The father had no claim against the perpetrator, so the Rosh didn't discuss him.

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<sup>19</sup> Rav Asher Weiss asks that by צא הרוג את הנפש (see *Kiddushin* 43a), would it make a difference if I made them my *shliach* vs. if I simply honored them with this command?

<sup>20</sup> *Tosafos Rid* to *Kiddushin* 29a s.v. מאי מילת בנא writes במילת בנא. See also *Chiddushei Rabbi Akiva Eiger* to *Avodah Zarah* 27a s.v. וא"כ צריך לומר

<sup>21</sup> In *Minchas Asher Kiddushin* 44:3, he uses this to explain why מבשלוחו בו יותר מצוה is only said by *Chazal* by the *mitzvos* of *kiddushin* and *kevod shabbos*. These two *mitzvos* are unique in that if they are performed by a *shliach*, it turns out that **no one** has performed the *mitzvah*. It's just that the result is that a woman becomes married, or there's food for *shabbos*. In these two specific instances it's better to do the *mitzvah* oneself so that **someone** gets reward, instead of **no one**

<sup>22</sup> In *Minchas Asher Bereishis* 28:2, he uses this to explain how a *shliach* could say the *beracha* on the *mitzvah* he is performing, different than the explanations of the *Mor UKtziah* § 432, *Beis Meir ad. loc.*, *Shulchan Aruch HaRav Orach Chaim* 263:5, and *Mishnah Berurah* 432:2 § 10 (see there)

The Torah says<sup>23</sup> לא בשמים הוא, it is not in the Heavens, that we would say: מי יעלה-לנו השמימה: Who will take us up to Heaven, ויקחה לנו, and take it for us? Some say this is referring to the Torah<sup>24</sup>. Chazal interpret<sup>25</sup> this verse to be telling us that the Torah is not found in someone whose ego is so inflated that it's as if they're up in the heavens. As well, some point out<sup>26</sup> that the first letters of מי יעלה לנו השמימה spell out מילה. What's the significance of this?

The *gemarra* originally thought<sup>27</sup> to say that a person could<sup>28</sup> have a very tiny amount of haughtiness. The amount described was an eighth of an eighth of haughtiness. Why specifically this amount? A possible explanation is it's referring to becoming proud of the seal of a *bris milah*<sup>29</sup>. It was implanted on the body on the eighth day, and it's the eighth *mitzvah* in the Torah, coming after the seven Noahide *mitzvos*. I would have thought that it's permissible then to be proud regarding one's *milah*. It's like a badge of honor, testifying that we are Hashem's holy nation. The Torah therefore says לא בשמים היא, with the allusion to *milah* in מי יעלה לנו השמימה. Haughtiness and pride are never permitted<sup>30</sup>, even with one's *milah*.

We decided to name our child **Noam Tzvi**, after both of our grandfathers. My maternal grandfather, known as Harry Simkover, had the Hebrew name Tzvi. My wife's paternal Zaida, Desiderio Mittelman, was also named Tzvi. I feel like a very good description of my grandfather is someone who was humble. He was the exact opposite of haughty. He was always soft spoken, and I can't imagine him raising his voice at someone. He was one of the smartest people I know, and never imposed his opinions on others. He was always happy to hear what others had to say. My wife's Zaida was an exceptionally hard worker, both through his dedication to support his family and through his *avodas Hashem*. Yet, he always kept things under the radar. One example is that every day he would go very early to *shul* to say *tehillim*, but didn't make a big fuss about it.

The name Noam we think is both an apt description for our son, and a prayer for the future. From the moment he was born he had this pleasantness to him. He's relatively quiet, and peaceful. By naming him Noam it is our prayer that Hashem grant us the ability to raise him to continue with this *middah* of *neimus*, being pleasant to all those around him. Also, the verse says דרכיה דרכי נעם, the Torah's paths are pleasant<sup>31</sup>. We hope that our son will truly embody this way of living. As well, with the name Tzvi, we hope he will grow up to emulate his grandfathers.

Mazel tov!

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<sup>23</sup> [Deuteronomy 30:12](#)

<sup>24</sup> [Rashi ad. loc.](#) Cf. [Ramban ad. loc.](#)

<sup>25</sup> [Eruvin 55a](#)

<sup>26</sup> The [Chasam Sofer](#) brings this from דורשי רשומות. The [Ba'al HaTurim ad. loc.](#) says this. It's also brought by [Rabboseinu Ba'alei HaTosafos](#) and [Rav Yehudah HaChossid ad. loc.](#), [Moshav Zekeinim](#) to [Leviticus 12:3](#), [Rabbeinu Ephraim](#) to [Genesis 18:1](#), [Rav Chaim Paltiel](#) to [ibid 17:21](#), [Peirushei Siddur HaTefillah LaRokeach Birkos HaMilah s.v.](#) על כן בשכר זאת המילה, [Menoras HaMaor \(Alankava\) Perek HaMitzvos Gedolah Milah](#), [Menoras HaMaor \(Abuhav\) 3:1:1:2](#), [Shibbolei HaLeKet Hilchos Milah § 1](#)

<sup>27</sup> [Sotah 5a](#)

<sup>28</sup> The [Chasam Sofer](#) writes מותר, but the *gemarra* writes צריך

<sup>29</sup> Like we see with Dovid *HaMelech*, who was proud of his *milah* ([Menachos 30b](#))

<sup>30</sup> See [Mishneh Torah Hilchos De'os 2:3](#)

<sup>31</sup> [Proverbs 3:17](#)