

TALMUDIC METHODOLOGY
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Shiur #10: The Prohibition of *Amira Le-Nochri*
Instructing a Gentile to Perform Prohibited *Melakhot*

Several *gemarot* refer to the prohibition of *amira le-nochri*, instructing a gentile to perform *melakha* on Shabbat. Although a *Mekhilta* in *Parashat Bo* implies that this sub-prohibition is *de'oraita*, the *gemara* often employs language that clearly establishes it as a Rabbinic prohibition: "*Amira le-akum shevut.*" The Rambam (Shabbat 6:1) describes the reason for the Rabbinic injunction: If instructing a gentile to perform *melakha* were permissible, Jews might violate Shabbat themselves. Assuming that this is a Rabbinic law, how should the prohibition be defined?

Rashi (*Avoda Zara* 15) cites the prohibition of "*daber davar*" (based on the verse in *Yeshaya* 58), which instructs us to govern our Shabbat conversation to avoid non-Shabbat content. Material that should not be discussed includes finances and commercial activities or actions that are generally prohibited on Shabbat. By instructing a gentile to perform *melakha*, a person is effectively engaging in *melakha*-related **conversation** and violates the parameters of *Daber Davar*. Obviously, Rashi's innovation is that even casual instruction – rather than substantive conversation – is prohibited.

Even if we accept Rashi's position, it appears that the prohibition is based on additional halakhic categories. Firstly, the *gemara* in *Bava Metzia* (90a) considers the prohibition of *amira le-nochri* for **any** prohibition, even those that are not Shabbat related. This expansion could not possibly be based on an extension of *daber davar*, which is strictly limited to Shabbat. Secondly, the *Ohr Zarua* quoted by the Rema (OC 301:22) claims that even signaling non-verbal instructions would be prohibited, in a fashion which is clearly unrelated to *daber davar*. Finally, many *Rishonim* claim that even instructions delivered **before** Shabbat about *melakha* on Shabbat would be forbidden. This scenario cannot be based on *daber davar*.

Interestingly, Rashi in *Shabbat* (153a) asserts that a gentile becomes a *shaliach* for a Jew when he is instructed to violate a *melakha*. Through the halakhic agency of *shelichut*, the act of a gentile is considered as having been executed by the Jewish instructor. Typically, a gentile cannot operate as a *shaliach* for a Jew (based on a *gemara* in *Bava Metzia* 10b, which states that an agent must be a "*ben brit*"). However, Rashi in *Bava Metzia* 11b claims that Rabbinically, a gentile is considered a *shaliach* – at least for *chumra* applications. (The *gemara* bans a gentile from serving as a *shaliach* for one Jew to deliver an interest-loan to a different Jew; his *shelichut* agency would

create a situation in which his Jewish dispatcher has violated *ribbit*.) Based on this validation of Rabbinic *shelichut* for a gentile, Rashi in *Shabbat* (153a) explains the prohibition of *amira le-nochri* based on the convention of *shelichut*. By assigning the Shabbat violation to a Gentile the Jew himself has “executed” the *melakha* through the dynamic of *shelichut*.

This idea is far more compelling than *daber davar*, since it accounts for the aforementioned applications of *amira le-nochri* that cannot otherwise be prohibited. For example, non-verbal signaling would deputize the gentile as a *shaliach* and lead to a prohibition, as the *Ohr Zarua* described. Similarly, pre-Shabbat designation would create *shelichut* identity, thereby associating prohibited activities performed **during** Shabbat with the Jew. Finally, the prohibition of *amira le-nochri* would clearly extend beyond Shabbat violations.

However, an interesting *gemara* in *Bava Metzia* (90) suggests that *shelichut* per se is not the foundation of *amira le-nochri*. The *gemara* explores a situation in which a Jew instructed a gentile to work with the Jew’s animal while denying work-time snacking for the animal, a blatant violation of “*lo tachsom shor be-disho*.” Many *Rishonim* (possibly including Rashi) indicate that the prohibition only applies if **either** the **animal** or **objects being worked upon** belong to a Jew. If the Jew instructs the gentile to employ the gentile’s animal for the gentile’s work, no prohibition applies. If the gentile were to become the halakhic *shaliach* of the Jew, his activity should be forbidden regardless of whether an object of Jewish ownership is involved. Evidently, the prohibition of *amira le-nochri* **resembles** *shelichut*, but it isn’t a classic *shelichut* application. Indeed, the Rosh and the *Shulchan Arukh* delete this prerequisite and prohibit any *issur* instruction, even if both animal and grains belong to the gentile. Perhaps they maintain that the prohibition of *amira le-nochri* is based upon classic *shelichut* and would obtain even in the absence of Jewish ownership of the accessories to the *melakha*. However the simple reading of the *gemara* does suggest that *amira le-nochri* would only apply if animal or grains belonged to the Jewish instructor.

The Ran is sensitive to this concept and claims that only work “of a Jew” is forbidden if performed by a Gentile. He cites the verse in *Parashat Bo* that states that work cannot be performed for a Jew (see *Shemot* 12:16 in which a “passive” verb of “*lo yei’ase*” is employed). Based on this grammar, the *Mekhilta* claims that a gentile cannot perform *melakha*, suggesting that the prohibition is Biblical. The Ramban and the Ran reject this notion, since so many *gemarot* identify the prohibition as Rabbinic. However, they claim that the Rabbanan modeled the prohibition upon the *pasuk*. *Mi-de’oraita* a Jew himself cannot execute *melakha*, but *melakha* may be performed through other instruments on his behalf. Though, Beit Shammai forbade passive *melakha* performance through a person’s *keilim* or inanimate objects, Beit Hillel reject this notion and limit the Biblical prohibition to personal activity and execution. The Rabbanan though stretched the prohibition to include activity performed by others on behalf of the Jew – namely, *amira le-nochri*. Mere instruction is not sufficient to define the work as being performed on behalf of the Jew. If the work benefits the Jew or is performed with his items, the *melakha* is considered “*meleket Yisrael*” and forbidden.

Conceivably a different non-*shelichut* model for *amira le-nochri* may be suggested to justify the need for a "Jewish" object for a violation to occur. The gentile may not be a *shaliach* and the action of the *melakha* may not be attributed back to the Jewish dispatcher. After all, most positions deny even Rabbinic *shelichut* for a gentile. However, by instructing the *melakha* to the gentile the Jew has "caused" a *melakha* to be executed. Perhaps the prohibition lies in enabling a Shabbat violation to occur.

In fact, a seminal gemara in *Bava Kama* (60) suggests that *Hilkhot Shabbat* – unlike many other areas of Halakha – may not differentiate between direct executions of *melakha* and "caused" *melakhot*. Both situations may be prohibited. Of course, the Jewish dispatcher has not caused the *melakha* unless he **both** instructs as well as provides either the accessories to the *melakha* (the animal) or the object upon which the *melakha* is performed (the grains).