

YESHIVAT HAR ETZION
ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

TALMUDIC METHODOLOGY
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THE PERSONAL TRANSFORMATION OF A NAZIR

Several *gemaras* reinforce a fundamental difference between a *neder* and a *shevu'a*. (See for example *Nedarim* 2b and *Nedarim* 13b). Both belong to the general category of *hafla'ah*, empowering a person to create halakhic change through verbal declaration; while a *neder* alters the halakhic status of a particular **item** (*issur cheftza*), a *shevu'a*, at most, creates a personal obligation to execute or avoid certain actions (*issur gavra*).

To which category does *nezirut* belong? On the surface, it resembles a *shevu'a*, since a vow of *nezirut* bans three distinct activities – drinking wine, contacting dead bodies, and shaving body hair. There are several *gemaras*, however, which emphasize similarities to a *neder*. A *nazir* effectively bans **all** wine from his own benefit and bans **all** dead bodies from contact, and perhaps he also bans his body from the benefits of hair removal.

An interesting comment of the Maharik, (1:53) which is echoed in earlier *Rishonim* and amplified in many later opinions, asserts a novel approach to *nazir*. By adopting the *nazir* experience, a *nazir* does not address select actions, nor does he alter the status of particular items. Instead, he adopts the **personal status** of a *nazir* and transforms **his own identity**. Once he redefines **his own** halakhic status, he is now regulated by various *halakhot*, in the same manner that a *Kohen* (who was born as such) is regulated by specific *halakhot*. Some actually compare this transition to *giyur*, conversion to Judaism, to highlight the capacity to initiate this change (as opposed to the inability to initiate the status of *Kohen*). When a person converts, he does not directly adopt **specific mitzvot**. Instead, he accepts the package a Judaism and performs conversions rituals, at which point Halakha imposes newfound regulations. This idea is alluded to by the Rosh (*Nedarim* 2b), as well as the Ramban (in his comments to *Nazir* 2b). It is explicitly articulated by a little known *talmid* of the Ramban, R. Natan bar Yosef, in his comments to *Nedarim* (17a), as cited in the *Shita Mekubezet*.

There are multiple applications of this issue, and this *shiur* will merely introduce some of the more primary ones. Each issue must be more fully explored to appreciate its levels of nuance.

One issue that the Maharik immediately raises is the status of “*nazir* wine,” and particularly the ability to employ this wine as a template to create further *neder*-based prohibitions. One technique for creating a *neder* is the process of *hatfasa* - **associating** an item with a previously prohibited item, as in, “X should be forbidden to me in the same way that Y is forbidden to me.” This “transference” conveys the *issur* from one item to the other. The prohibition of the base item must be the product of a *hafla'ah* declaration, rather than an inborn prohibition. For example, a *korban* or a previously *neder*-banned item can be a base for *hatfasa* (*davar ha-nadur*), whereas a *neveila* cannot, since its prohibition is unrelated to *hafla'ah* (*davar ha-asur*). Can a *nazir* employ *hatfasa* in order to transfer the status from his wine to a different object, and thereby prohibit it? The Maharik assumes that he cannot, since his *nazir* declaration did not directly trigger the prohibition upon wine. His *nazir* designation directly converted his personal status and consequently and indirectly became prohibited.

Perhaps the most obvious and broader manifestation of the Maharik's theory is the interesting position of the Rabbanan cited in the *mishna* in *Nazir* (3b) about a person who adopts a contoured version of *nezirut* by stipulating that he only bans wine products. Despite this stipulation, he converts into a complete *nazir*. This is a surprising discrepancy between the actual declaration and the result – one that is typically unacceptable. The result of a *neder* or a *shevu'a* is tightly bound to the original intent and verbal articulation of the author of the *hafla'ah*. The position of the Rabbanan in this case may indicate that a *nazir* does not **directly** ban the constituent prohibitions, but merely transforms himself into a “*shem nazir*” (identity of a *nazir*), and the Torah mandates various *halakhot* accordingly. By embracing **even one** aspect of a *nazir*, he has bought in to the institution, and **all** of its *halakhot* therefore apply.

Analogous logic may also explain the applicability of an interesting principle to *nazir* – *matneh al ma she-katuv ba-Torah*, that a person may not stipulate a condition that counters the Torah's halakhic guidelines. This

application was discussed in a [previous shiur](#). As we noted, it possibly reflects a novel way to understand the principle of *matneh al ma she-katuv ba-Torah*.

Tosafot in *Ketuvot* articulate a theory that a person may not stipulate an anti-halakhic condition, because halakhic packages are preset and inflexible. A person cannot marry while stipulating an exemption from marital responsibilities, because Halakha does not recognize this form of marriage – *ein ishut la-chatza'in*. This principle does not disqualify anti-halakhic conditions; it merely asserts that halakhic *kiddushin* is an all-or-nothing proposition. Tosafot explain the inability to adopt *nezirut* conditioned on permissibility of wine in a similar fashion. The guidelines of a *nazir* are inseparable; a *nazir* without a wine prohibition is partial *nezirut*, and *ein nezirut la-chatza'in*. Conceivably, if a *nazir* **directly** creates the respective *issurim*, he may be able to craft a personalized and partial version. Clearly, however, if he merely buys into the prospect of *nezirut* and the Torah imposes the package of *halakhot*, he cannot separate the various elements.

This comparison between *nezirut* and *kiddushin* is striking. A husband does not directly obligate himself in various marital responsibilities; he merely marries, and by redefining himself as a husband, he is obligated by Halakha to fulfill the various marital components. By analogy, a *nazir* does not directly adopt the various rules of a *nazir*, but merely defines himself as a *nazir*, and the Torah then imposes the various laws of *nezirut*.

A third relevant test case surrounds a *gemara* in *Nazir* (3b), which debates whether a *nazir* may drink *Kiddush* and *Havdala* wine. The *gemara's* conclusion is unclear, but many maintain that he may not – even though a person cannot cancel a *mitzva* through a *shevu'a* ([see here](#)). The simplest manner of explaining this dispensation is that a *nazir* does not directly ban himself from drinking wine; if he did, he could not employ *nezirut* to prohibit *mitzva* wine. Instead, the *nazir* adopts the status of a *nazir*, which then invites a set of *halakhot* which includes a prohibition for wine. Since this process is indirect, it can prohibit even wine of a *mitzva*. This is the basic premise of both the Brisker Rav and R. Meir Simcha of Dvinsk in their comments on this *gemara*.

This definition of *nazir* would also dramatically affect the application and dynamics of the *bal yachel* prohibition for *nazir*. The Torah prohibits one from violating his oath: “*lo yachel devaro*,” “he should not defile his

declaration.” This syntax implies that the foundation of the prohibition is the defilement of a verbal commitment. If a *nazir* merely accepts the personal transformation but does not directly prohibit wine, perhaps the *bal yachel* prohibition should not apply. This is indeed the premise of the *gemara* in *Nedarim* (3a), which questions the applicability of *bal yachel* for a *nazir* and only accepts this prohibition based on equating a *nazir* to a classic *neder*.

Based on this uncertainty, the *Minchat Chinukh* poses an interesting question. Although a person who only adopts a narrower *nezirut* from wine transforms into a complete *nazir*, would he violate *bal yachel* if he came into contact with a dead body? Since he did not actually articulate the prohibition of contact with *tum'a*, perhaps he shouldn't violate *bal yachel*. This question is predicated upon two very important assumptions. First, the *Minchat Chinukh* assumes that *bal yachel* violation consists of violating oaths; any prohibition not referenced in the original declaration would not violate *bal yachel*. This is not entirely indisputable, as many view the prohibition of *bal yachel* as partaking of objects or activities that the original declaration **affected**. For example, if Reuven bans his object for Shimon's use, quite possibly Shimon may violate *bal yachel* by partaking, even though Shimon never issued an oath and is not violating a declaration. Reuven created a ban on an object (for Shimon), and Shimon's partaking of this violated item constitutes *bal yachel*. Similarly, by stipulating buying into *nezirut*, a person has triggered a Torah mandated set of prohibitions; violating those prohibitions may constitute *bal yachel* even though the *nazir* did not explicitly mention these *issurim*. (See the *Kehillas Ya'akov*, *Nazir*, *siman* 2, for an elaboration upon the nature of *bal yachel* in response to this assertion of the *Minchat Chinukh*.)

Additionally the *Minchat Chinukh* assumes that a classic *nazir* **does** indeed directly reference the respective prohibitions, and by extension does violate *bal yachel*. Even a person who declares general and unconditional *nezirut* is essentially directly referencing the package of *issurim* that the Torah outlines; by drinking or shaving, he has defiled his previous statement and violates *bal yachel*. The only question pertains to someone who specifically excludes *nazir*-based *issurim*; even though the *issurim* emerge involuntarily, perhaps *bal yachel* should not apply in such a case. According to the Maharik, in contrast, there is effectively little difference between standard *nazir* designation and one who adopts a partial *nezirut* and absorbs the entire package. In each instance, the person merely redefines himself as a *nazir* and receives new *halakhot* geared for his newfound status. Since there is no

discrepancy between classic *nazir* designation and partial *nazir* designation, there should be no difference when it comes to *bal yachel*. At first glance, it appears that the *Minchat Chinukh* disagrees with the premise of the Maharik.

An additional question would surround the separability of these *issurim* of a *nazir*. If the Maharik is correct, they entail one inseparable package, as alluded to earlier within the framework of the Rabbanan's position regarding partial acceptance yielding complete *nezirut*. A second issue pertaining the integration of these prohibitions surrounds the question of "*kollel*." Halakha typically does not allow for overlapping *issurim* – *ein issur chal al issur*. Thus, for example, if a *Kohen Gadol* marries a woman who was first divorced and subsequently widowed, he is only liable for one prohibition; an already forbidden item cannot become forbidden a second time. However, if the second prohibition is broader in scope than the original, it is referred to as *issur kollel* and can devolve upon the already forbidden item. For example, when Yom Kippur commences, eating even non-kosher food is banned due to the prohibition of eating on Yom Kippur. Since the Yom Kippur prohibition affects a broad spectrum of food, it also superimposes a prohibition upon non-kosher food. Would *nezirut* similarly become superimposed upon wine that was already forbidden by a previous oath? By drinking the wine, would a *nazir* violate his previous oath, or would he also violate his subsequent *nazir* declaration, since it is broader in that it also prohibits *tum'a* contact and shaving?

This may be the subject of a *machloket Tanna'im* between R. Shimon and the Rabbanan (*Nazir* 4a). If the various prohibitions are one package, the prohibition of wine may just be an element of a broad spectrum ban on multiple items. This breadth may allow the wine-aspect of a *nazir* package to superimpose upon a previously generated prohibition upon that wine. If, however, the prohibitions are autonomous, the *issur* of wine cannot be cast as broad simply because it incidentally is accompanied by related prohibitions.