

YESHIVAT HAR ETZION
ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

TALMUDIC METHODOLOGY
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Shiur #12: *Makeh Be-Patish* Infractions for Halakhic Status Changes

In a [previous shiur](#), we discussed the prohibition of *makeh be-patish*, which literally refers to the final stages of hammering out metal. One view determined that *makeh be-patish* prohibits activities that entail the culmination of a manufacture or crafting process. The very “blow” by which or **through** which an item evolves is prohibited on Shabbat. Alternatively, this *melakha* of *makeh be-patish* may prohibit minor or peripheral adjustments that typically **accompany** the conclusion of the manufacture process. Several *gemarot* discuss *makeh be-patish* in the context of halakhic changes, and this *shiur* will address this scenario.

The *gemara* in *Shabbat* (106a) discusses whether the *melakha* of *chovel* is prohibited even if it yields no enhancement. The *gemara*, at least according to Rashi's reading, indicates that the performance of *mila* violates *makeh be-patish*, since it renders a halakhic change to the baby. This is the first indicator that *makeh be-patish* may be violated when an activity enables a change in halakhic status. Not all *Rishonim* read the *gemara* in this fashion, perhaps implying that they disagree and maintain that only **physical** changes qualify as *makeh be-patish* violations.

At first glance, the extension of *makeh be-patish* to halakhic status changes suggests that *makeh be-patish* is defined as completing a manufacture process. If the *melakha* is defined in this way, perhaps enabling a halakhic change can be cast in a similar light since it entails the conclusion or completion of a “process.” The baby is fully defined as Jewish only after his *mila*, and this resembles the material completion of a manufactured item.

A second *gemara* (*Beitza* 17b) discusses the prohibition of *mikve* immersion for utensils on Shabbat. The *gemara* lists several reasons for the prohibition, concluding with Rava's suggested logic: Immersing utensils in a *mikve* resembles *makeh be-patish*. Presumably, this *gemara* reinforces the assertion of the aforementioned *gemara* in *Shabbat* that rendering halakhic changes violates *makeh be-patish*. Rava's language is ambiguous, however, possibly prohibiting immersion only because it **appears** similar to classic *makeh be-patish* (and is therefore only prohibited Rabbinically). Even if Rava classifies immersion as classic *makeh be-patish*, many other *Amora'im* suggest alternate reasons for the prohibition of immersion on Shabbat, and they presumably deny the applicability of *makeh be-patish* to halakhic changes. In fact, the Rif appears to side with this latter option, citing the opinion of the other *Amora'im* who assign different reasons to the *issur*. The

Rosh, however, rules as Rava did, writing that immersion is prohibited on Shabbat because of *makeh be-patish*.

If we read Rava literally, it would appear that creating a halakhic status is an act of *makeh be-patish*. By extension, *makeh be-patish* would then be defined as completing an act of manufacture.

Alternatively, the *makeh be-patish* status of immersion (if it exists at all) may be based on a different factor. Unlike *mila*, which is exclusively a halakhic change, utensil immersion enables **benefit** by allowing the use of the utensil. Perhaps *makeh be-patish* in general is defined not as completing a manufacture process, but as performing post-production adjustments that yield certain improvements. Any time adjustments that yield benefit are performed toward the conclusion of a process, *makeh be-patish* is violated. It is not the status change **per se** that violates *makeh be-patish*, but rather the end-stage activity that yields significant benefits.

This reading is supported in the continuation of the *gemara*, in *Beitza*, which permits human immersion in a *mikve* on Shabbat because the person appears to be swimming in order to cool down. Had *mikve* immersion been prohibited based upon the halakhic change *per se*, the **appearance** of the process would be inconsequential. However, if utensil immersion is considered *makeh be-patish* because it resembles post-production activity meant to yield expanded benefit, however, perhaps activities that do not **resemble** adjustments, but instead appear to be hygienic treatment, would not be forbidden.

The *Mishna Berura* appears to read the *gemara* in this fashion when he distinguishes between immersion of impure vessels, which the *gemara* bans, and the immersion of new utensils, which the *gemara* does not discuss and which is not prohibited *mi-de'oraita*. Immersing impure utensils allows their use and is therefore considered *makeh be-patish*. By contrast, immersion of new vessels provides no new utility; food placed in new vessels that have not yet been immersed may still be eaten. This type of immersion is not considered *makeh be-patish*. Evidently, it is the **benefit** yielded that violates *makeh be-patish*, rather than the halakhic status change.

Interestingly, Rabbenu Chananel may have prohibited halakhic change as *makeh be-patish* **because** of the benefits yielded, rather than the actual status change. Commenting on the *gemara* that prohibits *mila* as *makeh be-patish* (*Shabbat* 106), he explains that *mila* will allow the child to consume *teruma* (which is forbidden to uncircumcised males) and also permit his father to offer a *korban Pesach* (which is forbidden to a parent of an uncircumcised boy). By stressing the benefits of *mila* rather than highlighting the status change, Rabbenu Chananel appears to define the *makeh be-patish* component as end-stage adjustments that yield extra utility/benefit.

A third *gemara* discussing halakhic change and *makeh be-patish* may help sharpen the basis for the prohibition. The *gemara* in *Beitza* (36b) prohibits *teruma* processing on Yom Tov, presumably because it yields a

halakhic change, once again confirming our initial suspicions that rendering halakhic status change per se is tantamount to material construction and in violation of *makeh be-patish*. Consistent with this logic is a *gemara* in *Shabbat* that allows (at least according to R. Yehuda's opinion) the processing of *teruma* that has become mixed with permissible grains. This mixture – known as "*meduma*" – can only be repaired by introducing a 100:1 ratio of permissible grain **as well as** removing a volume of grain equal to the original *teruma*. R. Yehuda allows this removal on Shabbat even though this process permits consumption of the mixture. As several Tosafot in *Shas* comment (see Tosafot, *Gittin* 31a and *Bechorot* 59a), processing the mixture is permissible because no real status changes entails. The non-*teruma* grains were never halakhically defined as *teruma*; they could not be eaten because they were submerged in a *teruma* mixture. Removing a volume equivalent to the original *teruma* adulteration does not change the halakhic status of the non-*teruma* grain, but practically allows it to be eaten. By contrast, **assigning** original *teruma* status changes non-*teruma* grains into *teruma* and is forbidden as *makeh be-patish*. This reading of the *gemara* corroborates the view of *makeh be-patish* as status alteration and explains the exemption for cases in which a status was not truly converted.

Despite this compelling logic, the *gemara* appears to draw a different distinction between permissible processing of *teruma* mixtures and prohibited *teruma* designation. *Teruma* designation requires an **action**, whereas removal of a column of grain can be effected through mental designation. In a pinch, a person can simply look to a certain area of the mixture and designate the requisite volume as *teruma* and designated for removal. Since the processing does not require an action, it cannot be prohibited as *makeh be-patish*. This logic does **not** evoke *makeh be-patish* based on completing a process of manufacture of halakhic rendering, as in that case the need for material action would be inconsequential. Apparently, *makeh be-patish* consists of end-stage adjustments, and only discernible activities can be prohibited. Activities that can be replaced by mental designation are not evocative enough to resemble end-stage adjustments and cannot be forbidden. Just as a human can immerse in a *mikve* on Shabbat because it **appears** as if they are merely swimming, unwanted grains can similarly be removed because they can be mentally marginalized. In both cases, no demonstrative **action** has been performed and no *issur* can entail.

Finally, the *gemara* in *Sukka* (34) discusses the processing of corrupted *haddasim* stalks that are incorporated into the *lulav* bundle. If the berries outnumber the leaves, the stalk is invalid. The *gemara* prohibits reducing the berries and one reading of the *gemara* indicates that this is forbidden due to **actual** *makeh be-patish* (see the Mordechai in *Sukka*). This reading of the *gemara* once again indicates the *makeh be-patish* can stem from any halakhic status change.

However, the continuation of the *gemara* asserts that if the owner possesses alternate *haddasim* stalks, the validation of this superfluous stalk does not violate *makeh be-patish*. This would indicate that *makeh be-patish* is

based on the benefit accrued. If the owner derives no benefit, as he possesses sufficient alternate resources, *makeh be-patish* is not violated.

(The Arukh famously read this *gemara* differently, suggesting that the presence of alternate *haddasim* makes the act permissible based on a *pesik reisha* exclusion, thereby neutralizing this *gemara* as a an indicator source of *makeh be-patish* for halakhic transformations.)