

FURTHER IYUN

Allowing One's Pe'ot Harosh to be Removed: The Laws of Mesaye'a in Halacha

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“לא תקפו פאת ראשכם” (ויקרא יט:כז)
In this *pasuk*, the Torah prohibits Jewish men from rounding the “corners” of their heads. The Talmud¹ explains that the intention of this *pasuk* is to prohibit making a uniform hairline between one’s temple and the bare skin above one’s ear by removing the hair between these two points. Rambam² writes that the clergymen of *avoda zara* used to shave their heads in this manner, and thus the Torah prohibited doing so in order to distance the Jewish people from *avoda zara* practices. In this article, we will first explore to whom this negative commandment (*lav*) applies and then discuss both the local and global ramifications of our conclusions.

From the terminology of the *pasuk*, לא תקפו, our first instinct is that this commandment is directed toward the מקיף, the one who removes the פאות הראש, “corners of the head” (as opposed to the ניקף, the one whose פאות are removed), i.e., the barber. Nonetheless, the Talmud (*Makkot* 20b) may indicate differently:

תני תנא קמיה דרב חסדא: אחד המקיף ואחד הניקף לוקה. אמר ליה: מאן דאכיל תמרי בארבילא



לקי? דאמר לך: מני? רבי יהודה היא, דאמר: לאו שאין בו מעשה לוקין עליו. רבא אומר: במקיף לעצמו ודברי הכל. רב אשי אומר: במסייע ודברי הכל.

A *tanna* taught before Rav Chisda: Both the *makif* (he who removes the hair) and the *nikaf* (he whose hair is removed) receive lashes. Said (Rav Chisda) to him: ‘Does one who eats dates from a sieve get lashed? According to whom is your statement? Rabbi Yehuda, who says one receives lashes for violating a negative commandment that has no action. Rava said: (The *tanna* refers to a case in which) one removes his own hair, and his statement is agreed upon by everyone (even those who disagree with Rabbi Yehuda). Rav Ashi said: (The *tanna* refers to a case in which the *nikaf*) is assisting (the *makif*) and his statement is agreed upon by everyone (even those who disagree with Rabbi Yehuda).

From the Talmud, it appears evident that the *nikaf* also violates a *lav* since the *tanna* states that there are instances in which the *nikaf* receives lashes. Apparently, the *nikaf* has somehow also violated the commandment of לא תקפו. **Rashi** offers two explanations as to how the words

1. *Makkot* 20b.

2. *Sefer HaMitzvot, Lo Ta'aseh* 43; *Hilchot Avoda Zara* 12:1.

לא תקפו can suggest that there is a negative commandment which devolves upon the *nikaf*:

1. The term לא תקפו does not mean merely 'do not round of the corners of', but rather it also means 'do not allow one to round the corners of (one's own head)', thus including the *nikaf*.
2. Since the phrase לא תקפו is written in the plural, the implication is that it is addressed to two parties, the *makif* and the *nikaf*.

There is a general dispute between Rabbi Yehuda and chachamim about the degree of activity on the part of the violator required in order to administer the punishment of lashes (*malkot*). Rabbi Yehuda believes that even one who violates a negative commandment passively receives *malkot*, while the chachamim hold that only one who actively violates a negative commandment receives *malkot*.

Despite the relative passivity of the *nikaf*, he still receives *malkot* in violation of לא תקפו, in accordance with one of the three explanations of the Talmud:

1. One can be lashed for violating a commandment even if no action is taken (Rabbi Yehuda);
2. If one removes his own פאות, he has indeed taken an action and is therefore lashed twice even according to the chachamim, once for violating the *lav* of *makif* and once for violating the *lav* of *nikaf* (Rava);
3. The *nikaf* is assisting the *makif* (by proffering the hair of his פאות to the *makif*) and this constitutes an action such that he can be lashed even according to chachamim (Rav Ashi).

It clearly emerges from Rashi's explanation of this passage that our initial assumption, that

the *lav* of לא תקפו applies only to the *makif* is incorrect. Rather, לא תקפו applies both to the *makif* and the *nikaf* such that even the passive *nikaf* has violated the commandment. Whether or not the *nikaf* is lashed is dependent upon the dispute between Rabbi Yehuda and chachamim. According to Rabbi Yehuda, the *nikaf* is always lashed; according to chachamim, the *nikaf* is only lashed when his violation is accompanied by an action, such as removing his own hair (Rava) or assisting the *makif* by proffering his hair (Rav Ashi). This position is also reflected in **Tosafot**.³

A rigorous analysis of the opinion of the Rambam, however, reveals an entirely different understanding of this Talmudic passage. The **Rambam** (*Hilchot Avoda Zara* 12:1) codifies the Talmud as follows:

לפיכך המגלח שני צדעיו אפילו בבת אחת והתראה אחת לוקה שתיים, אחד המגלח הפאות בלבד ומניח שיער כל הראש ואחד המגלח כל הראש כאחד לוקה הואיל וגילח הפאות, במה דברים אמורים באיש המגלח אבל איש המתגלח אינו לוקה אלא אם כן סייע למגלח.

Therefore one who shaves off the two sides of his head, even if done simultaneously with but one warning, receives two sets of lashes, regardless of whether one removed just the corners of the head and left the rest of the hair intact or shaved the entire head. This applies to the one who shaved the hair, but the one whose hair is shaved does not receive lashes unless he assisted the one who shaved.

A cursory reading of this Rambam does not reveal anything anomalous about his position; he seems merely to be codifying the opinion of Rav Ashi that the *nikaf* receives lashes only when

3. *Bava Metz'ia* 10b, s.v. *Akfi*.

he assists the *makif*. The Ra'avad's objection, though, implies otherwise:

אף על פי שאינו לוקה כיון שמדעתו עשה עובר בלאו.

Even though (the *nikaf*) does not receive lashes, since he was aware of (the *makif's*) action, he violates a *lav*.

The **Ra'avad** emphasizes that the *nikaf* violates a *lav* even when he takes no action, implying that he understood that the Rambam would not agree to this principle. Indeed, the same conclusion can be reached from examining the **Rambam's** abridged *Sefer HaMitzvot*. There he defines the 43rd positive commandment as follows:

שלא להקיף פאת ראש ככומרי ע"ז שנ' לא תקיפו פאת ראשכם

Not to round the corners of the head like clergymen of *avoda zara*, as it says, 'Do not round the corners of your heads.'

Here, again, the **Ra'avad** takes exception:

לאו למקיף ולאו לניקף

There is a *lav* for both the *makif* and the *nikaf*.

From both comments of the Ra'avad, it appears that the Ra'avad understood that according to the opinion of the Rambam there exists no *lav* for the *nikaf* to have his פאות removed, thus prompting the Ra'avad to write his own dissenting view. Three questions immediately arise. First, how can we reconcile this understanding of the Rambam with Rambam's ruling that the *nikaf* receives *malkot* when he assists the *makif* – if there is no *lav* for the *nikaf*, how can he receive *malkot*? Second, how did the Rambam understand the Talmud? Last, where

in the words of the Rambam did the Ra'avad see this understanding?

It would appear that the Ra'avad understood that the Rambam holds that when the *nikaf* assists the *makif* in the haircutting process, he receives lashes not because he has violated the *lav* of the *nikaf* (for indeed no such *lav* exists according to the Rambam), but rather because he has violated the *lav* of the *makif*. The act of assisting the *makif* effectively turns the *nikaf* into a *makif* with all of the accompanying ramifications (i.e., violation of a *lav* punishable by *malkot*). According to the Rambam, if the *nikaf* remains completely passive, he has violated nothing; if he assists the *makif*, then he, too, is considered a *makif* and is thus sentenced to lashes.

The *Acharonim*⁴ point out that this understanding is not just the Ra'avad's interpretation of the Rambam, but is in fact self-evident from the Rambam. The reader will recall that the Talmud offered three options to explain the *tanna's* ruling that the *nikaf* receives lashes: the *tanna* follows the opinion of Rabbi Yehuda that one can receive lashes for violating a *lav* even in the absence of an action, the *tanna* refers to a case in which one removed his own hair (Rava), or the *tanna* refers to a case in which the *nikaf* assisted the *makif*. Since the halacha (Rambam, *Hilchot Sanhedrin* 18:2) does not follow the opinion of Rabbi Yehuda but rather insists on an action as a prerequisite to the punishment of lashes, we would not expect the Rambam to codify the first explanation of the Talmud.

Why, though, does the Rambam only codify the third explanation (Rav Ashi)? Why does the Rambam rule against the second explanation

4. See, for example, Malbim to *Vayikra* 19:27.

(Rava)? As mentioned above, Rambam⁵ rules that one who removes both of his own פאות receives two sets of lashes, one for each פאה, implying that if he removes only one of his פאות, he receives one set of lashes, not two sets as Rava ruled. This begs the conclusion that the Rambam felt that the dispute between Rav Ashi and Rava was not merely a technical one about to which case the *tanna* was referring. Rather, there is a fundamental argument between them: According to Rava, there exists a *lav* for both the *makif* and the *nikaf*, such that if one removes his own hair he receives two sets of lashes as he has violated two negative commandments. Rav Ashi fundamentally disagrees: there is no *lav* for the *nikaf*; only the *makif* is prohibited by the Torah and thus the *nikaf* can only get lashes if he, too, becomes a *makif* by assisting the *nikaf*. The Rambam ruled in favor of Rav Ashi and thus, *ipso facto*, rejected Rava.

We have thus seen a fundamental dispute between the *Rishonim* with regard to the prohibition of לא תקפו. According to most *Rishonim* (Rashi, Tosafot, Ra'avad), this prohibition creates a *lav* for both the *makif* and the *nikaf*, while according to the Rambam the prohibition implies a *lav* only for the *makif* (though, as we have seen, the *nikaf* can also sometimes violate the *lav* of *makif*). We have also seen two practical differences between these approaches. First, if the *nikaf* remains completely passive, according to the Rambam he has violated nothing, whereas according to the other *Rishonim* he has violated a biblical prohibition. Thus, theoretically, it would be permissible according to the Rambam for a gentile to remove the פאות of a Jew, provided

that the Jew remains passive,⁶ while the other *Rishonim* would unequivocally forbid such a situation. Second, the *Rishonim* would dispute the punishment of one who removed his own פאות. According to most *Rishonim*, he would receive two sets of lashes, one for violating the *lav* of *makif* and one for violating the *lav* of *nikaf*. According to the Rambam, however, there is only one *lav* to violate, that of the *makif*, and he can therefore receive only one set of lashes.

Our exploration of the dispute between the *Rishonim* has thus far been contained to the laws of פאות הראש. As we turn to examine two aspects of the laws of Shabbat, we will soon realize that the ramifications of this dispute are broader than we originally imagined.

Mikveh Preparations on Shabbat

Before immersing oneself in a *mikveh*, a person must take care to remove anything that creates a *chatzitzah*, a physical barrier, between one's body and the *mikveh* water.

The **Rema**⁷ writes that since the practice has developed for women to cut their nails before immersing in the *mikveh*, if one immerses without cutting her nails, the nails are considered a *chatzitzah* and she must immerse again after cutting her nails. This ruling gives rise to the following dilemma: What should be done if a woman needs to immerse on Friday night but has forgotten to cut her nails before the commencement of Shabbat? On the one hand, she is required to cut her nails so that her immersion is considered kosher, but on the other hand, cutting nails constitutes *chilul Shabbat* (desecration of Shabbat). While there are many factors beyond the purview of our discussion that relate

5. *Hilchot Avoda Zara* 12:1.

6. The Rambam may forbid maintaining such a hairstyle for other reasons. See Rambam, *Hilchot Avoda Zara* 11:1.

7. Y.D. 198:20.

to the decision in this scenario, we will focus on the one relevant to our analysis.

The *Taz*⁸ rules that the woman may not ask a gentile to cut her nails because although the gentile will be doing the cutting action, the Jewish woman will inevitably assist the gentile by positioning her hand in a convenient manner. This assistance, claims the *Taz*, is akin to the assistance which the *nikaf* provides the *makif*. Since we know that it is prohibited for a *nikaf* to assist a *makif* to cut his פאות, it is similarly prohibited for the woman to assist the gentile to cut her nails on Shabbat.

The *Shach*⁹ rejects the opinion of the *Taz*: In general, claims the *Shach*, mere assistance is inconsequential and does not make one liable for the prohibited action; the *nikaf* receives lashes when he assists the *makif* only because there is a separate *lav* pertaining to the *nikaf*. Since there is no *lav* which pertains to the object of *chilul Shabbat*, but rather only to the subject who performs the *chilul Shabbat*, this case cannot be compared to that of the assisting *nikaf*.

It is clear that the dispute between the *Taz* and the *Shach* has its roots in the dispute between the *Rishonim* regarding a *nikaf*. The *Taz*, like the Rambam, understands that there is no *lav* that applies specifically to the *nikaf*, but the *nikaf* can violate the *lav* of *makif* via his assistance.

According to the Rambam and *Taz*, this logic is not specific to the laws of פאות הראש; it applies equally to other areas of halacha. The Talmud (*Makkot* 20b) has demonstrated in the context of the laws of פאות הראש a general

principle that when one assists someone violating a commandment with one's body, one is considered halachically to have violated that commandment. Thus, if the woman assists the gentile in cutting her nails, it will be considered halachically as if she is cutting her own nails and she is therefore in violation of desecrating Shabbat.¹⁰

Conversely, the *Shach*, like the other *Rishonim*, understands that there is a separate *lav* for the *nikaf*. When the *nikaf* assists the *makif*, his assistance is only a relevant factor in deciding whether he receives the punishment of lashes (which can only be administered if an action takes place), but either way the *nikaf* will violate a biblical prohibition. However, it cannot be concluded, according to these *Rishonim*, that any time one physically assists someone violating a prohibition, one is considered to have violated the prohibition oneself. Only after a prohibition is pre-established does the degree of assistance become important in determining whether to administer lashes, but if there is no prohibition in the first place, mere assistance is not grounds for prohibition. Thus, it is improper to use the case of the *nikaf* as a precedent to prohibit the woman from having her nails cut by a gentile, since the two cases are fundamentally incomparable.

Dental Work on Shabbat

While it is generally rabbinically prohibited for a Jew to ask a gentile to desecrate Shabbat on his behalf (*amirah lenochri*), in cases of illness or incapacitating pain, this prohibition is waived

8. Y.D. 198:21.

9. *Nekudot Hakesef* 198:20.

10. A difficulty which faces the *Taz* is that the Talmud (*Shabbat* 93a, *Beitzah* 22a) rules “*mesayeya ein bo mamash*,” “mere assistance is inconsequential.” The *Taz* is thus forced to distinguish between different types of assistance. See *Taz* (o.c. 328:1) for the distinction. See also Ritva (*Makkot* 20b s.v. *bemesayeya*) and Aruch LeNer (*Makkot* 20b s.v. *begemara*) for variations on the distinction of the *Taz*, and Chiddushei Chatam Sofer (*Shabbat* 93a s.v. *mesayeya*) for a nuance in the opinion of the *Taz*.

and one can ask a gentile to violate Shabbat.¹¹ Based on this principle, the **Rema**¹² rules that one suffering from a severe toothache may ask a gentile to remove his tooth on Shabbat, despite the fact that removing teeth falls under the prohibited category of *Melecheth Gozez*, shearing. Here, too, the **Taz**¹³ argues. Although there may be grounds to waive the rabbinic prohibition of *amirah lenochri*, since having one's tooth pulled out will inevitably involve opening one's mouth and positioning it in a way that provides access for the gentile, the Jew himself will be in violation of *Melecheth Gozez*.

By now, the logic of the *Taz* is familiar: Just as the *nikaf's* assistance turns him into the one violating *לא תקפו*, so, too, the Jew's assistance turns him into the one pulling the tooth. The Rema, it would seem, sides with the other *Rishonim*. Since the *nikaf* is only culpable because there is a separate *lav* that applies to him as the object of the *הקפה* (cutting process), we cannot extrapolate that assistance is forbidden in other areas of halacha where no such comparable *lav* exists for the object of the prohibition. Thus, it is permitted for the Jew to assist the gentile in extracting his tooth.

We have seen that the existence of a *lav* of *nikaf* is the subject of disagreement both between the *Rishonim* and the *Acharonim*. This issue is pivotal both with regard to the laws of *פאות הראש* and other areas of halacha, such as the laws of Shabbat. Regarding *פאות הראש*, we have seen that the law of one who removes his own *פאות* and the law of one who passively allows a gentile to remove his *פאות* depend on this point. In terms of other areas of halacha, the critical issue of whether one who physically

assists someone to violate a prohibition has also violated that prohibition has also been shown to revolve around this argument.

11. *Shabbat* 129a; *Beitzah* 22a.

12. o.c. 328:3.

13. o.c. 328:1.