YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**PIKUACH NEFESH**

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**Shiur #01: Introduction to the Laws of *Pikuach Nefesh* and Their Conceptual Significance**

**Introduction**

With God’s help, we are beginning a series of *shiurim* on the laws of *pikuach nefesh*, the preservation of human life. These laws are among the most severe in the Torah, as they literally deal with matters of life and death. The grand principle is that the preservation of human life overrides virtually any other religious rule of Judaism. In the event that a person is in critical danger, almost all *mitzvot* are set aside (i.e., are overridden, or transgressed), with the exception of three serious offenses.

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This series of *shiurim* will focus on the question of how to define *pikuach nefesh*, and when a concern about danger to life sets aside other commandments. A fundamental distinction in this context is between *pikuach nefesh* with respect to an individual in his home, and *pikuach nefesh* with respect to the community and systemic issues within the fields of medicine and national security. With God's help, all of these matters will be discussed in depth.

The first two *shiurim* will introduce the conceptual significance of the principle that *pikuach nefesh* sets aside the Torah's commandments, primarily in light of the words of Rashi and the Rambam on the issue.

**Rashi: “Jewish Lives are Precious in His Eyes”**

In two places in his commentary to the Talmud, Rashi defines the fundamental reason, and thus also the meaning, behind the law that *pikuach nefesh* sets aside all other commandments of the Torah. Rashi's comments relate to one of the severe prohibitions which is *not* set aside by *pikuach nefesh* – the prohibition of bloodshed. The Gemara establishes that a person who is ordered to kill another person must allow himself to be killed, rather than transgress the prohibition, and explains the logic behind this ruling:

What makes you see that your blood is redder than his? Perhaps the blood of that man is redder than yours? (*Yoma* 82b)

That is to say, in a case where one of two people will lose his life, the person being threatened must not kill the other person, in order to be saved. Explaining this ruling, Rashi writes as follows:

In other words, what do you think permits the matter? Is it the principle of "'He shall live by them [God's statutes and laws]' – and not die by them"? The reason [there] is that Jewish lives are more precious to God than [observance of] the *mitzvot.* The Holy One, blessed be He, said: Let the mitzvabe cancelled, so that this one shall live. But now, where a Jew will be killed and the mitzvawill be cancelled, why would it be pleasing in the eyes of God to transgress his commandment? Why should your blood be more precious to Him than the blood of your fellow Jew? (Rashi, *Yoma* 82b)

Rashi writes in a similar vein in his commentary to the parallel passage in *Sanhedrin*:

The Torah said to transgress the *mitzvot* because of "He shall live by them," because a Jewish life is precious in His eyes… What makes you see that your blood is redder than his? Who knows whether your blood is more precious and beautiful to your Creator than the blood of your fellow? Therefore, we do not apply here: "'He shall live by them [God's statutes and laws]' – and not die by them." For the verse only permitted the matter because of the preciousness of Jewish lives to the Holy One, blessed be He. But here, where there is loss of the life of his fellow, the word of the King who prohibited murder cannot be set aside. (Rashi, *Sanhedrin* 74a)

Rashi cites the *halakha* that "'He shall live by them [God's statutes and judgments]' – and not die by them." He assumes as obvious that the rationale for this law is the preciousness of Jewish lives to God, and he emphasizes "more than the observance of the *mitzvot*." It seems to me that this emphasis should be understood as follows: One might have understood the preciousness of Jewish lives in relation to observance of the *mitzvot* – that the person whose life is saved from danger will then be able to observe many *mitzvot*. This is similar to *Chazal*’s statement, which we will address in future *shiurim*: "Desecrate one Shabbat on his account so that he may keep many *Shabbatot*" (*Shabbat* 151b). Against this possible interpretation, Rashi emphasizes that the *halakha* before us stems from an essential determination of value, according to which every person, regardless of the *mitzvot* that could be observed by him, is precious to God – more so than the *mitzvot*. Indeed, we learn in the Mishna at the end of *Makkot*: "The Holy One, blessed be He, desired to make Israel worthy; therefore He gave the Law [to study] and many commandments [to do]" (*Makkot* 3:16). The *mitzvot* come to elevate Israel, to refine and purify them, to draw them nearer to the *Shekhina*. But precisely for that reason, if there is no person, there are also no *mitzvot*; therefore, a Jewish life is more precious than the *mitzvot*.

Rav Kook expanded a great deal in his responsa on the matter of the allowance and the obligation for a person to give his life for another person. The topic is huge and this is not the forum in which to discuss it fully, but already at the beginning of his discussion, Rav Kook makes clear his position that there is a wide variety of situations in which one is allowed, and sometimes it is even considered a sign of piety, to sacrifice his life for another person. He cites Rashi’s words as the main support for his position:

That which seems so obvious to you, that one is also not permitted to sacrifice his own life to save another person, and that regarding a community of people, there is no obligation, but there is an allowance, and even a show of piety…

I am very perplexed about this, for surely Rashi explained to us… that a Jewish life is precious in His eyes…

From all this it seems that the principle of "he shall live by them" is not an individual matter pertaining to a particular person, who acts, or refrains from acting, or comes to ask. Rather, it relates in general to all Jewish lives, and thus the individual's life is included as well. When we come to consider the matter of sacrificing one life for another life, we do not decide based on the principle of "what do you see that your blood…." Accordingly, there is no room to forbid sacrificing one's life, even to save the life of another person. It is enough to say that there is no obligation to do so, because he can also say, "what do you see," but there is no room whatsoever for a prohibition. (*Responsa Mishpat Kohen*, no. 143)

According to Rav Kook, the preciousness of Jewish lives that obligates us to save other people may sometimes go as far as to permit sacrificing one's life for the sake of another person.

**The Rambam: “Mercy, Kindness, and Peace to the World”**

We learn from Rashi that the *halakha* regarding *pikuach nefesh* relates to the very foundations of our relationship to God and the preciousness of our lives in His eyes. The centrality of this *halakha* becomes even stronger when we examine the Rambam's ruling:

All in the house of Israel are commanded regarding the sanctification of [God's] great name, as it is stated: "And I shall be sanctified amid the children of Israel" (*Vayikra* 22:32). They are also warned against desecrating [His holy name], as it is stated [in the above verse]: "And they shall not desecrate My holy name."

What is implied? Should a gentile arise and force a Jew to violate one of the Torah's commandments at the pain of death, he should violate the commandment rather than be killed, because it is stated concerning the *mitzvot*: "which a man will do and live by them" (*Vayikra* 18:5). [They were given so that] one may live by them and not die because of them. If a person dies rather than transgress, he is held accountable for his life.

When does the above apply? With regard to other *mitzvot*, with the exception of the worship of other gods, forbidden sexual relations, and murder. However, with regard to these three sins, if one is ordered: "Transgress one of them or be killed," one should sacrifice his life rather than transgress. (Rambam, *Hilkhot Yesodei ha-Torah* 5:1-2)

Most of what the Rambam says here concerns situations in which a person is indeed required to sanctify the name of God and sacrifice his life for the observance of the Torah (in the case of the three serious transgressions or in public). But even before the Rambam deals with that, he clarifies that the "default" is that the preservation of human life sets aside all other *mitzvot*, by virtue of the principle of "And you shall live by them, and not die by them." The Rambam also maintains that one is forbidden to be stringent about this, and that one who is stringent "is held accountable for his life." This *halakha* requires separate clarification (and was discussed at length by the *Rishonim* and the *Acharonim*), but is not our primary concern here.

The Rambam brings this ruling once again in *Hilkhot Shabbat*, where he adds another layer that relates to the meaning of this law and its centrality in our worldview. In chapter 1 of *Hilkhot Shabbat*, the Rambam explains the basic categories of the laws of Shabbat (liability for transgression, exemption, and permission; a labor performed without intention; a labor performed when there was no need for the actual labor; and the like). In chapter 2, even before he discusses the labors (*melakhot*)of Shabbat, or the ways to prepare for Shabbat, he deals with the laws of *pikuach nefesh* that set aside Shabbat.[[1]](#footnote-1) The Rambam opens in *halakha* 1 with the statement that "[the laws of] Shabbat are suspended in the face of a danger to life, as are [the obligations of] the other *mitzvot*. Therefore, we may perform everything that is necessary for the benefit of a sick person whose life is in danger." In future *shiurim*,we will deal at length with the ideas of *hutra* [permitted] and *dechuya* [suspended]. What is important for our current purposes is what he writes after this:

It is forbidden to hesitate before transgressing the Shabbat [laws] on behalf of a person who is dangerously ill,as [reflected in the interpretation in the phrase of *Vayikra* 18:5], "which a person shall do to live by them," as "['to live by them'] and not to die by them." This teaches that the judgments of the Torah do not [bring] vengeance to the world, but rather bring mercy, kindness, and peace[[2]](#footnote-2) to the world. Concerning those non-believers who say that [administering such treatment] constitutes a violation of Shabbat and is forbidden, one may apply the verse (*Yechezkel* 20:25): "And I gave them also statutes that were not good, and ordinances whereby they should not live." (*Hilkhot Shabbat* 2:3)

Two points stand out in the Rambam's ruling. The first is the assertion that the *halakha* of *pikuach nefesh* is not another law in the count of the 613 commandments, but a law that establishes the purpose of the Torah's laws in the world: mercy, kindness, and peace. In keeping with his general approach, the *Maggid Mishneh* tries to find the source for the Rambam's ruling, but here he contents himself with the short sentence: "The words of our master, of blessed memory." Indeed, such a decisive and far-reaching definition is appropriate for the Rambam. The second point is the polemic with the "non-believers" [*minim*] (some versions read "Karaites" or "heretics" [*apikorsim*]), which will be discussed further in the next *shiur*.

In his *Chibbur ha-Teshuva*, the Meiri deals with, among other things, the laws of affliction on Yom Kippur – and in the course of that, with the *halakha* that a person who is dangerously ill is exempt from fasting. He cites the Rambam, and adds an explanation that accords with the words of Rashi:

What is meant by this is that they [= the heretics] will take the *mitzvot* to a place where they will not live by them, but rather will die because of them. But this is not their [i.e., the *mitzvot*’strue] intention, for the ways of the Torah are ways of pleasantness, and all her paths are peace.

We have already explained the idea of what is stated: "Be not righteous overmuch; neither make yourself overwise; why should you destroy yourself?" (*Kohelet* 7:16)… to teach that it was not the Torah's intention in its many *mitzvot* to kill a person through them, but rather the opposite, that is to say, to preserve us alive, as this day, with eternal life – to the point that through them one lives and does not die, that is to say, that he will live everlasting life in this world and the next,.

Those who understand and find wisdom in her words will recognize that her ways are ways of pleasantness and kindness is upon her tongue, and that her *mitzvot* do not obligate death for people. This is what it says: "For whoever finds Me finds life… but he that misses Me wrongs his own soul" (*Mishlei* 8:36). "He that misses Me" means he that misses My intention, to the point that he does not understand Me, that he does not understand the ways of My commandments – he wrongs his own soul. But whoever finds Me, i.e., who understands the full intention of the Torah and the *mitzvot*, “the heart of a wise man discerns…” (*Kohelet* 8:5), “that I have no desire for the death of the deceased” (*Yechezkel* 18:32).

But the main intention is to prolong his life on the right side, to reward him through them, as it is stated: "The wages of the righteous is life" (*Mishlei* 10:16). This is what is stated: "Give to a wise man, and he will be yet wiser; teach a righteous man, and he will increase in learning. For by Me your days shall be multiplied, and the years of your life shall be increased" (*Mishlei* 9:9, 11). (Meiri, *Chibbur ha-Teshuva*,part II, chapter 10)

In other words, Jewish lives are more precious than the *mitzvot*, since the whole purpose of the *mitzvot* is to add life in this world and in the world to come. It is interesting to note that in his commentary to the Torah (*Vayikra* 18:5), Rashi explains the words "and live by them" in accordance with the Targum and the Midrash, as referring to life in the world to come – not in accordance with *Chazal*, "and not die by them." In the words of the Meiri, on the other hand, the themes are interwoven, since the purpose of the Torah and the *mitzvot* is to add life both in this world and in the world to come.

**Conclusion**

I will conclude this *shiur* with a striking definition of the novelty in the words of the Rambam, as formulated by Rav Elyakim Krumbein:

When there is a conflict between human life and a particular mitzva, the Halakha adopts one of two solutions. It usually determines that the preservation of human life sets aside the entire Torah.

How should this determination be understood? In simple terms, it would seem that we have before us two different and disconnected values – the mitzvaand life – both of which are desirable, and the solution to the struggle between them lies in the principle: "The stronger side prevails." For example, if we are dealing with the law of *pikuach nefesh*, it might have been argued that God, as it were, prefers the preservation of life over the preservation of the Torah, and therefore *pikuach nefesh* overcomes every *mitzva*.

But that is not what the Rambam taught us when he explained the law of *pikuach nefesh*. According to the Rambam, the law of *pikuach nefesh* has significance over and beyond the law of *pikuach nefesh* itself. This law teaches us an important and fundamental principle regarding the entire Torah, the same Torah that is set aside by the preservation of life, that is to say, whose judgments are mercy, kindness, and peace in the world. If the Torah and life are disconnected values, how is it possible to reach this conclusion? Surely the two meet here only by chance, in the framework of the collision between them; how does the one teach about the other? It is clear that the Rambam did not perceive the law of *pikuach nefesh* as a matter of priority, but as a statement of principle: in a situation where keeping a mitzva leads to the destruction of life, it goes without saying that such a mitzva was never given. In such a case, the mitzva would have resulted in the opposite of its true purpose – the destruction of life, rather than its elevation. (Rav Elyakim Krumbein, "*Asher Ya'aseh Otam ha-Adam va-Chai Bahem*," *Alon Shevut* 98, Summer 5742)

(Translated by David Strauss)

1. For the purpose of comparison, in the *Tur* and the *Shulchan Arukh*, the laws of *pikuach nefesh* are brought towards the end of the laws of Shabbat (chaps. 328-330). This order is very logical; the details of the laws of Shabbat are first explained, and only then are we told how one is to conduct himself in a situation of *pikuach nefesh* that necessitates violation of these laws. [↑](#footnote-ref-1)
2. As mentioned above, this *halakha* is found at the beginning of *Hilkhot Shabbat*, with which the book of *Zemanim* in the *Mishneh Torah* opens. It is interesting to note that the last *halakha* in this book, at the end of *Hilkhot Chanuka*, once again deals with the centrality of peace: "If [a person has the opportunity to fulfill only one of two *mitzvot*,] lighting a lamp for one's home [i.e., Shabbat candles] or lighting a Chanuka lamp – or, alternatively, lighting a lamp for one's home or reciting *kiddush* – the lamp for one's home receives priority, since it generates peace within the home. [Peace is of primary importance, as is reflected by the *mitzva* requiring] God's name to be blotted out to create peace between a husband and his wife. Peace is great, for the entire Torah was given to bring about peace within the world, as it is stated (*Mishlei* 3:17): 'Its ways are pleasant ways and all its paths are peace'" (*Hilkhot Megilla ve-Chanuka* 4:14). [↑](#footnote-ref-2)