YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**PIKUACH NEFESH**

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**Shiur #02:   
The Polemic with the Non-Believers Regarding Pikuach Nefesh**

**I. Introduction**

In the previous *shiur*, we examined the Rambam's remarks in chapter 2 of *Hilkhot Shabbat*, where he portrays the law that *pikuach nefesh* sets aside (overrides) the laws of Shabbat as a fundamental principle that teaches us about the general purpose of the Torah's laws in the world.

We also saw that the Rambam includes a polemic against those who challenge this *halakha*:

Concerning those non-believers who say that [administering such treatment] constitutes a violation of the Shabbat and is forbidden, one may apply the verse: "And I gave them also statutes that were not good, and ordinances whereby they should not live"(*Yechezkel* 20:25). (*Hilkhot Shabbat* 2:3)

Against whom were these words of the Rambam directed? What was their viewpoint? Why did they oppose the principle that *pikuach nefesh* sets aside Shabbat? And what does the Rambam wish to prove from the verse in *Yechezkel*?

**II. “Everything is Foreseen, But the Right [of Choice] is Granted”**

In explaining the fundamental principle behind the law of *pikuach nefesh* and its basis, the Rambam there states that “the judgments of the Torah do not [bring] vengeance to the world, but rather bring mercy…” What is this "vengeance"? R. Isser Zalman Meltzer explained as follows:

The words of the Rambam require explanation. It seems that his intention is as follows: We find that the Gemara says: "‘And heal he shall heal’ (*Shemot* 21:19) – from here it is derived that authorization was granted [by God] to the physician to heal" (*Bava Kama* 85a), so that we not say that the Merciful one smites and he heals. If so, a person's illness may have come as a punishment, and therefore it would have been possible to say that it is prohibited to desecrate Shabbat on his behalf, to heal him; thus, Shabbat would be a help to the punishment that God imposed upon the person on account of his sins. Therefore, he said that thus you see that the Torah's laws cannot serve as help for punishments, even if the person is liable to punishment. (*Even ha-Ezel*, *Hilkhot Shabbat* 2:3)

R. Meltzer's words accord well with the principle we discussed in the previous *shiur*,that Jewish lives are more precious to God than the *mitzvot.* The observance of a mitzva– in this case, the keeping of Shabbat – cannot possibly be intended to punish a person and end his life. If he deserves to be punished, his punishment will be carried out in other ways, but not by way of the *mitzvot*, which are intended only “to bring mercy, kindness, and peace to the world,” as stated by the Rambam.

R. Yissachar Tamar, in his commentary to the *Yerushalmi*,proposed a different explanation:

This is the reason, because *pikuach nefesh* sets aside all [*mitzvot*], and it is written: "Take you good heed to yourselves." Apparently, the position of the non-believer was that the sick person must accept his death, seeing that he is sick on Shabbat, and so this must be the will of God and the law of the Torah. However, they distorted the Torah and the will of God regarding this matter, as stated by the Rambam. (*Alei Tamar*, *Yoma* 8:5)

According to this, the Rambam is arguing with a deterministic view that if illness breaks out on Shabbat, it is God's will, and one must not lift a finger to try and change what He wants. The Rambam clarifies that this approach is false – because even though everything is foreseen and subject to Divine providence, man was given the right of free choice to act in the world. Thus, in a case of *pikuach nefesh*, a person should choose life – which is even more precious than the *mitzvot* – as that is what the Torah wants at the deepest level.

**III. The Second Temple Sects and the Karaites**

Rav Tamar's comments fit in well with the historical reality of the Second Temple Period. Many authorities who address the laws of war on Shabbat point to the "innovation" introduced by Matityahu the Hasmonean when he established that it is permissible to engage in war on Shabbat.[[1]](#footnote-1) It seems that the sects of the time assumed that the value of Shabbat outweighs all other values, and therefore it is prohibited to continue fighting on Shabbat. Some completely rejected fighting on Shabbat, while others proposed that a distinction be made between a defensive war and an offensive war. Shammai the Elder's exposition (which we will discuss in detail in a *shiur* to come on the topic of war), "'Until it [the city you are besieging] falls' (*Devarim* 20:20) – even on Shabbat" (*Shabbat* 19a), reflects the revolutionary innovation that the Hasmoneans introduced when they allowed waging war on Shabbat.

In his book *Zakhor ve-Shamor* (chapter 12), R. Yoel Bin-Nun conducts a comprehensive discussion of this topic and the rationale of the Second Temple sects who opposed waging war on Shabbat. Like R. Tamar, he suggests that the sects preferred an approach that minimizes human action and casts everything "in the hands of heaven," and within this framework prohibits all work on Shabbat, even in a situation of *pikuach nefesh.* In any event, it was clear to the Rambam that over a thousand years before his time, there were already "non-believers" who did not accept the *halakha* that *pikuach nefesh* sets aside the laws of Shabbat.

Over the years, it was the Karaites who opposed this rule that *pikuach nefesh* sets aside Shabbat law. It stands to reason that this was known to the Rambam,[[2]](#footnote-2) but more explicit testimony is found hundreds of years later in the words of R. Avraham ben Mordechai Halevi, the chief rabbi of Egypt in the second half of the seventeenth century. In his *Responsa Ginat Veradim,*[[3]](#footnote-3)he discusses the complex and sensitive question of *pikuach nefesh* with respect to a non-Jew. In the course of his discussion, he relates to the question of whether a Jewish midwife is permitted on Shabbat to deliver the babies of Karaite women, who reject the law that *pikuach nefesh* sets aside Shabbat. He writes as follows:

What is more, there is great desecration and disdain in the matter, for the Sadducees [the reference here is to the Karaites; A.S.] do not recognize the law of *pikuach nefesh* and they maintain that one must observe the commandments even if he will die on their account, and they do not desecrate the Torah for *pikuach nefesh*. Therefore, when it happens that one of their women is in labor on Shabbat, they do not summon their own midwives, so that they not desecrate Shabbat, but rather they summon a Jewish midwife to deliver the Sadduccee, so that the Jewish woman desecrates Shabbat to save the life of the birthing woman. We learn this from the words of the Rambam in the second chapter of *Hilkhot Shabbat*… It is clear that he is referring to the Sadduccees, who maintain that *pikuach nefesh* does not set aside Shabbat.

I too examined the matter, and to this day they have not budged from their mistake, and they mock us for desecrating Shabbat. Therefore, it is a difficult matter, evil and bitter, that they should abstain from profaning Shabbat, according to their opinion, and hold us in scorn that we should profane Shabbat to save their wives. The rationale of [preventing] enmity is also lacking here, for on the contrary, our complaints and enmity will be directed toward them for they cause us to profane Shabbat and we are so light and despicable in their eyes. I have written what appears right to me, the young Avraham Halevi.

The communities described in *Ginat ha-Veradim* wished to turn Jewish midwives into their "Shabbat goys," and ask them to desecrate Shabbat for *pikuach nefesh*, which in their opinion is absolutely forbidden. The *Ginat Veradim* considers this a great insult and show of disrespect, and therefore he rules that it is prohibited.

**IV. *Midrash Yechezkel***

We see then that from the time of the Second Temple through the Middle Ages and into the modern age, there have been sects of non-believers/Sadducees/Karaites who reject the law that *pikuach nefesh* sets aside the laws of Shabbat. In his opposition to them, Rambam cites a verse from Yechezkel's prophecy:

And I gave them also statutes that were not good, and ordinances whereby they should not live. (*Yechezkel* 20:25)

The good laws are those that increase mercy, kindness, and peace in the world, and the laws that are “not good” are those that assume that keeping Shabbat overrides human life. It seems to me that the citation of this verse is not accidental. The prophecy begins with: "In that day I lifted up My hand to them, to bring them forth out of the land of Egypt into a land that I had sought out for them, flowing with milk and honey, which is the beauty of all lands" (*Yechezkel* 20:6), and ends with the promise: "and with fury poured out, will I be king over you" (*Yechezkel* 20:33). A brief study of the prophecy as a whole indicates that it is in fact a *midrash* on the source of the law of *pikuach nefesh* from the verse, "He shall live in them."

So I caused them to go forth out of the land of Egypt, and brought them into the wilderness. And I gave them My statutes, and taught them Mine ordinances, **which if a man do, he shall live by them.** **And also I gave them My sabbaths,** to be a sign between Me and them, that they might know that I am the Lord that sanctifies them. 

But the house of Israel rebelled against Me in the wilderness; they walked not in My statutes, and they rejected My ordinances, **which if a man do, he shall live by them, and My sabbaths they greatly profaned;** then I said I would pour out My fury upon them in the wilderness, to consume them. But I acted for My name's sake, that it should not be profaned in the sight of the nations, in whose sight I brought them out…

And I said to their children in the wilderness: Walk not in the statutes of your fathers, neither observe their ordinances, nor defile yourselves with their idols; I am the Lord your God; walk in My statutes, and keep My ordinances, and do them; **and sanctify My sabbaths,** and they shall be a sign between Me and you, that you may know that I am the Lord your God. But the children rebelled against Me; they walked not in My statutes, neither kept My ordinances to do them, **which if a man do, he shall live by them;** **they profaned My sabbaths;** then I said I would pour out My fury upon them, to spend My anger upon them in the wilderness. Nevertheless, I withdrew My hand, and acted for My name's sake, that it should not be profaned in the sight of the nations, in whose sight I brought them forth.

And I gave them also statutes that were not good, and ordinances whereby they should not live. (*Yechezkel* 20:10-14, 18-22, 25)

Again and again, the prophet repeats the verse from the book of *Vayikra*: "which if a man do, he shall live by them" (*Vayikra* 18:5), and of all the commandments, he specifically emphasizes the observance of Shabbat. It is possible that the Rambam wanted to say that "he shall live by them," i.e., *pikuach nefesh*, is connected in its essence to Shabbat observance, since the whole purpose of observing the commandments, including that of Shabbat, is for the sake of life in this world and in the world to come.

The author of the *Da'at Mikra* commentary (ad loc.) notes:

"And I gave them also statutes that were not good" – a difficult expression, which has already been explained in different ways.

Indeed, the commentators have tried to explain the idea of statutes that are not good, and where we might find that God gave laws that can be defined this way – see Rashi, Radak, and the other commentators on the verse. I wish to suggest that the Rambam tried to explain the verse by way of midrashic exposition: The manner in which a person observes Shabbat may, God forbid, transform its laws into “statutes that are not good” – if he follows in the path of the non-believers and fails to understand the great foundation of human life, which is a supreme value. One who turns the Torah's laws into vengeance, instead of mercy, kindness, and peace, makes these laws in general, and the commandment of Shabbat in particular, into "statutes that are not good."

**V. *Chassid Shoteh* – One Who is Foolish in His Supposed Acts of Piety**

We find in many places in books of *Chassidut* and *Mussar* that a person must sometimes fight against disbelief or heresy that rests in his own heart. In fact, those who are involved in *pikuach nefesh* know that often, at the moment of truth, there are pious and wholesome Jews who find it extremely difficult to desecrate the Sabbath for the purpose of *pikuach nefesh* or to eat on Yom Kippur in a situation of mortal danger. It is related in the book, *Halikhot Shlomo*:

It once happened that the esteemed Rabbi Shlomo Zalman Auerbach, *ztz"l*, heard about a Torah scholar who was ill but insisted on fasting. He immediately went to visit him and they talked, and in the middle of the conversation he said that it was obvious that he should not fast, and the other person insisted again that he was strong enough to fast. When Rabbi Auerbach saw the extent of his insistence, he said to him: The smell of heresy, God forbid, is here. (*Halikhot Shlomo*, *Hilkhot Yom ha-Kippurim*)

The non-believers against whom the Rambam polemicized are liable to leave their mark in the heart of one who wishes to be stringent and not save his life, as Rabbi Auerbach hinted to that scholar.

This phenomenon of “piety,” not to desecrate Shabbat for the purpose of *pikuach nefesh*, is already alluded to in the words of *Chazal*. The Gemara in *Shabbat* discusses killing poisonous animals on Shabbat. In a case where these animals are "running after him" – that is, when there is a clear and immediate danger to life – all agree that one is permitted to kill them. But there are various intermediate situations in which the allowance is less clear. Without going into the details of the discussion of this issue (which is also related to the matter of public *pikuach nefesh*, an issue that will be discussed in a later *shiur*), the Gemara there comments:

A *Tanna* taught before Rabba the son of Rav Huna: If one kills snakes or scorpions on Shabbat, the spirit of the pious is displeased with him. He said to him: As to those pious men, the spirit of the Sages is displeased with them. (*Shabbat* 121b)

On one side stands "the spirit of the pious," which strives to avoid excessively expanding the boundaries of *pikuach nefesh*, and on the other side stands "the spirit of the Sages," which clarifies that in all cases of uncertain *pikuach nefesh*, Jewish lives are precious.

As mentioned, the discussion in the Gemara there deals with a situation that is difficult to define as a clear case of *pikuach nefesh.* But in a case where the danger is clear, all agree that one must not be stringent and overly pious. The Ramban, for example, clarifies:

We do not find that it is considered pious conduct not to desecrate Shabbat for a person who is dangerously ill. Rather, one who hurries [to desecrate Shabbat in this situation] is praiseworthy, and one who holds himself back is held accountable for his life. (Ramban, *Milchamot Hashem*, *Sanhedrin* p. 18 in Alfasi)[[4]](#footnote-4)

The Radbaz in his responsa writes even more explicitly, about an account of one of the great early *Rishonim* who in fact was stringent with himself and refrained from eating on Yom Kippur. The Radbaz writes that one must not draw any practical halakhic conclusions from this:

You asked me about what has been written in the name of the Riva,[[5]](#footnote-5) *z"l*, that he took ill with the illness that would kill him, and Yom Kippur fell out on those days, and the doctors told him that if he does not eat, he will surely die, and if he does eat, he may survive, and he said: In a case of a confident claim and an uncertain claim, priority is given to the confident claim, and he did not want to eat. And you wanted to know my opinion as to whether he acted correctly or not.

Answer: For the law in practice, it is inappropriate to learn anything whatsoever from him**,** for surely we maintain: [Even] a double uncertainty regarding *pikuach nefesh* sets aside the laws of Shabbat and of Yom Kippur, and even for a momentary measure of life. All the more so for the uncertainty that perhaps he will die, but perhaps he will live, and even for an uncertainty about another Shabbat… Therefore, it is inappropriate to learn from him, because perhaps the Riva felt in himself that even if he eats, he will die, for “the heart knows the bitterness of its soul” [*Mishlei* 14:10]. This is what he meant when he said: In the case of a confident claim and an uncertain claim, priority is given to the confident claim. That is to say, my confident claim is better than your uncertain claim, and therefore he did not want to eat. I was already asked about such a case on another occasion, and I concluded that this is not an act of piety. I have written what seems right to me. (*Responsa Ridbaz*, III, no. 444)

Rabbi Ovadia Yosef cites several *Acharonim* who questioned this simple ruling. In light of the well-known words of the Ramban in his commentary to the Torah, according to which in an ideal situation, a person who trusts in God has no need for physicians (*Vayikra* 26:1), those *Acharonim* wished to propose that a person can be stringent with himself and not desecrate Shabbat or eat on Yom Kippur even in a situation of *pikuach nefesh.* But of course, in light of the emphatic words of the Ramban, and especially because of the Rambam's fundamental teaching regarding the *"*the spirit of non-believers*"* within this perspective, as formulated by Rabbi Auerbach, Rabbi Ovadia rejects this proposal altogether, and summarizes:

Regarding a dangerously ill person, who is told by a doctor that if he fasts on Yom Kippur, there is concern about possible danger to his life, he must listen to him and eat on Yom Kippur, because uncertain *pikuach nefesh* sets aside the commandment of affliction on Yom Kippur. If the ill person is stringent with himself and fasts, not only does he not act in a pious manner, but on the contrary, he will be punished for it at the hand of heaven. There is a *mitzva* to tactfully explain this to the ill person through influential rabbis. (*Responsa Yechaveh Da'at*, I, no. 61)

(Translated by David Strauss)

1. See, for example, Rabbi Sh. Goren, "*Lechima be-Shabbat le-Or ha-Mekorot*," in *Sinai*, Jubilee volume, 5718. [↑](#footnote-ref-1)
2. It is possible that "those non-believers who say that [administering such treatment] constitutes a violation of the Sabbat and is forbidden" (*Hilkhot Shabbat* 2:3), mentioned by the Rambam, are to be identified with the Karaites of his day. Compare what he writes in his commentary to the Mishna (*Avot* 1:3) about the Sadduccees and the Boethusians: "And from that time on, these wicked sects grew, the communities of non-believers who are called in this country – that is to say, Egypt – Karaites." Similarly, as we see here, the *Ginat Veradim* himself relates to the Karaites of his day as "Sadduccees." [↑](#footnote-ref-2)
3. *Orach Chayyim*, 3, no. 1. His words are also cited in *Responsa Tzitz Eliezer*, part 15, chap. 2. [↑](#footnote-ref-3)
4. The Ramban also writes this in his *Torat ha-Adam*, *sha'ar michush*, *sakana*, and the Ran in *Yoma* (chapter 8) cites his words. [↑](#footnote-ref-4)
5. Seeing that the Riva is counted among the Tosafists, perhaps there is a connection between his position here and the position brought in *Tosafot*, according to which "if he wished to be stringent with himself [and sacrifice his life; A.S.], even regarding other commandments, he is permitted to do so" (*Tosafot*, *Avoda Zara* 27b, s.v. *Yakhol*). This is in sharp contrast to the Rambam’s position that "anyone about whom it is said : 'Transgress and do not sacrifice your life,' if he sacrifices his life and does not transgress, *he is held accountable for his life*" (*Hilkhot Yesodei ha-Torah* 5:4). [↑](#footnote-ref-5)