YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**PIKUACH NEFESH**

**Rav Avihud Schwartz**

**Shiur #07: “Permitted” or “Set Aside” (3):**

**The Position of the Rambam**

**I. Introduction**

In the previous *shiur*, we reviewed the different opinions among *Rishonim* regarding whether the prohibitions of Shabbat are "permitted" (*hutra*) or "set aside" (*dechuya*) in a situation of *pikuach nefesh*,in connection with the question whether or not slaughtering an animal on Shabbat for a dangerously sick person is preferable to feeding him *neveila* meat. This *shiur* will be devoted to clarifying the Rambam's opinion regarding "permitted" and "set aside."

The Rambam does not relate directly to the question of slaughtering an animal on Shabbat versus feeding a sick person *neveila* meat. Both medieval and modern commentators to the Rambam understand, based on various statements, that he does in fact take a position on the matter of "permitted" versus "set aside," but they differ on what that position is.

**II. “Shabbat Is Set Aside” – The Opinion of the *Kesef Mishneh***

The Rambam records the laws of *pikuach nefesh* on Shabbat already in the second chapter of *Hilkhot Shabbat.* The broad disagreement in explaining his position stems primarily from a question regarding the relationship between the first two laws in that chapter, which seem to contradict each other.

The Rambam opens the chapter with the following statement:

The [laws of] Shabbat are set aside in the face of a danger to life, as are [the obligations of] all the other *mitzvot.* (*Hilkhot Shabbat* 2:1)

As we saw in previous *shiurim*, the Rambam uses the terms "permitted" and "set aside" explicitly both in relation to communal impurity and in relation to a priest defiling himself for one of his relatives. This seems to suggest that the term "set aside" used here was chosen deliberately and that the Rambam wishes to rule that in a situation of *pikuach nefesh*,the Shabbat prohibitions fall into the category of "set aside," rather than "permitted."

Indeed, the *Kesef Mishneh* asserts:

In the chapter *Keitzad tzolin*, the *Tannaim* disagree as to whether ritual impurity is set aside with respect to communal sacrifices or permitted… The Gemara implies that the law is in accordance with the view that it is set aside, and this is the way our master rules in chapter 4 of *Hilkhot Bi'at Mikdash*.

And the implication is that just as they disagree about ritual impurity, so too they disagree about Shabbat with respect to a sick person, whether it is set aside or permitted. And we maintain in accordance with the view that it is set aside, and so write the Rashba and the Ran that Shabbat is set aside for a sick person, and not permitted. (*Kesef Mishneh*, *ad loc*., and he writes the same in *Beit Yosef*, OC 328:14.)

The *Kesef Mishneh* refers to the words of the Rashba and the Ran that we studied in the previous *shiur*, and decides that in a case of *pikuach nefesh*,the Shabbat prohibitions are "set aside" and not "permitted." He does not explain, however, where it is implied that just as the *Tannaim* disagree about ritual impurity, so too they disagree about *pikuach nefesh.*

The *Kesef Mishneh* may have learned this from the words of the Rambam himself, as explained above: If we find regarding ritual impurity that the Rambam explicitly relates to the matter of "permitted" and "set aside" (and decides that ritual impurity is "set aside" with respect to communal sacrifices), then we must assign great significance to his precise wording here too: "The [laws of] Shabbat are *set aside* in the face of a danger to life," and understand him to be specifying that they are "set aside," not "permitted."

To this we can add and suggest that according to the *Kesef Mishneh*, there is in fact a substantive connection between the issues: both involve an action that ideally should not be carried out (in our case, the desecration of Shabbat, and in the other case, offering a sacrifice in a state of ritual impurity), but owing to the circumstances, there is no choice but to do it. Carrying out an action without an alternative falls into the category of "set aside."

Some of the *Acharonim* disagreed on this very point in the *Kesef Mishneh*, and explained that the "jump" from the Rambam's ruling about impurity to his ruling about the laws of Shabbat is not necessary. Thus, for example, writes the *Chatam Sofer*:

The words of the Rashba in the *Kesef Mishneh* require great study; what did he see to compare Shabbat to impurity?…

Perhaps ritual impurity is set aside, whereas the laws of Shabbat are permitted. What connection is there between the sacrificial service and saving a life; perhaps regarding the one matter it is set aside, whereas regarding the other, it is permitted. (*Responsa Chatam Sofer*, part I, no.85)

Rabbi Tzvi Hirsch Chajes writes in a similar vein:

I have a difficulty with the position of the *Kesef Mishneh* who brings in the name of the Rashba, in Chapter 2 of *Hilkhot Shabbat*, that according to the one who says impurity is set aside, the same is true about *pikuach nefesh*, and that according to the one who says impurity is permitted, the same is true about *pikuach nefesh*.

After all, even with respect to sacrifices, we see that according to the one who says Shabbat is “permitted,” purity is nevertheless “set aside.” This proves that matters permitted with regard to sacrifices are not similar to each other, and all the more so we cannot compare impurity to *pikuach nefesh*. (Maharatz Chajes, *Yoma* 46a, s.v. *Shabbat de-hutra*)

The *Chatam Sofer* and the Maharatz Chajes do not take an unequivocal position on the question of "permitted" versus "set aside" with respect to *pikuach nefesh*, but they clearly argue that the discussion regarding impurity with respect to communal sacrifices and the discussion regarding *pikuach nefesh* are two separate issues.

**III. “Like a Weekday for all Purposes” – The Position of the Rema**

To understand the position of the Rema, let us first go back to the words of the Rambam. Following his fundamental assertion that Shabbat is "set aside" in situations of *pikuach nefesh*, the Rambam begins to spell out the laws of *pikuach nefesh* in detail*.* He begins by stating:

Therefore, we may perform everything that is necessary for the benefit of a sick person whose life is in danger. (*Hilkhot Shabbat* 2:1)

The phrase "everything that is necessary for his benefit" (*kol tzerakhav*) can be understood as indicating a broad allowance, but it seems more reasonable to say that all that the Rambam means to say here is that even if Shabbat is only "set aside," it is still permissible to do whatever is necessary for the needs of the sick person. However, in the next *halakha* there, the Rambam once again uses a particularly expansive phrase:

A lamp may be lit on his behalf and extinguished on his behalf. [Animals] may be slaughtered on his behalf, [food] baked and cooked on his behalf, and water heated for him, whether to drink or to use for bathing. *The general principle for a person who is dangerously ill is that Shabbat should be considered as a weekday regarding all matters that he needs*. (*Hilkhot Shabbat* 2:2)

This principle established by the Rambam, according to which Shabbat is "considered as a weekday regarding all matters that [the sick person] needs," led the Rema to conclude that according to the Rambam, the Shabbat prohibitions are "permitted" in a situation of *pikuach nefesh*, not only "set aside."

The background to this discussion is a disagreement among the *Rishonim* about a custom that was prevalent in their time, in which two *mohalim* (circumcisors) were involved at every circumcision: one cut the foreskin, and one performed the *peri'a*, the uncovering of the corona. The *Beit Yosef* and the Rema disagree whether it is permissible to perform circumcision in this manner even on Shabbat, or whether on Shabbat it is necessary that one *mohel* perform the entire circumcision. This is not the forum in which to discuss this dispute in detail (see *Shulchan Arukh* YD 266:14 and commentators there). What is relevant for our discussion is that the Rema hinges the entire discussion on the question of whether with respect to circumcision the Shabbat prohibitions are "permitted" or "set aside."

In the framework of this discussion, the Rema proves that with respect to the sacrificial service, the Shabbat prohibitions are certainly "permitted." We already saw in previous *shiurim* that this indeed follows from the fact that the Torah explicitly commands that some of the sacrifices be offered on Shabbat as well as during the week. The Rema emphasizes that if Shabbat is indeed "permitted” with respect to the sacrificial service, then that service should be performed precisely as it is performed on a weekday. From this, the Rema comes to the matter we have been discussing:

Another proof may be brought from the matter of *pikuach nefesh*, mentioned by the Rambam in Chapter 2 of *Hilkhot Shabbat* and by the *Tur*, that Shabbat for him is "considered as an absolute weekday." And therefore the *Tur* writes that we slaughter an animal for a sick person, rather than feeding him *neveila* meat, because for him it is considered as a weekday for all his needs. So too writes the Rosh, at the end of *Yoma*, in the name of the Maharam [of Rotenburg].

If so, we see that we need not be careful when engaged in *pikuach nefesh* to transgress the most lenient prohibition, for it is considered as a weekday. Similarly, [even if] two people could perform the prohibited labor [together], [one may conduct himself] as on a weekday. If so, the same applies to circumcision, for we learn from circumcision that *pikuach nefesh* sets aside Shabbat. (*Responsa ha-Rema*, no. 76)

The Rema strongly emphasizes the Rambam’s phrase that we saw above, and clarifies that Shabbat is "considered as a weekday" with respect to *pikuach nefesh*. He adds that this means there is no need to make an effort to find permitted ways to achieve one's goal, e.g., to give preference to performing the prohibited labor by way of two people – because, as stated, the Shabbat prohibitions are completely "permitted" in a situation of *pikuach nefesh* – and the same is true regarding circumcision on Shabbat.

In conclusion, Rabbi Yosef Karo and the Rema disagree about whether, according to the Rambam the Shabbat prohibitions are "permitted" or "set aside" in a situation of *pikuach nefesh*. Many *Acharonim* weighed in on the subject, arguing one way or the other. Their positions are summarized in detail in *Responsa Yechaveh Da'at* (part IV, no. 30).

**IV. The Obligation to Minimize Performance of Prohibited Labors in a Situation of *Pikuach Nefesh* – the Talmudic Passage in *Menachot***

As we saw in the first *shiur* regarding "permitted" versus "set aside," with regard to offering communal sacrifices in a state of impurity, we rule that the impurity is "set aside"; therefore, it is obligatory to seek out permissible ways to offer the sacrifices and make an effort to find pure priests. If so, according to the view of the *Beit Yosef*, this is also what must be done in a situation of *pikuach nefesh*: it is obligatory to try and reduce the desecration of Shabbat as much as possible. On the other hand, according to the view of the Rema, there should be no obligation to seek permissible ways to save the sick person's life; one can act precisely as he would on a weekday.

However, when we examine various implications of the "permitted" versus "set aside" controversy in upcoming *shiurim*, we will see that matters are quite the opposite: It is the Rema who requires that the prohibited actions be performed with a change or by a non-Jew, whereas Rabbi Yosef Karo does not require this and even tends to include *all* of a sick person’s needs in the allowance of *pikuach nefesh*, even those that are not essential for saving him.

But even before we get to those ramifications, which require a separate discussion, there is one Talmudic passage that seems to tip the balance in favor of the position that the Shabbat prohibitions are "set aside" in a case of *pikuach nefesh* – a passage that the Rema, in his responsum, has difficulty reconciling.

The Gemara in *Menachot* (64a) states that if there is a sick person who needs to eat two figs, and we are faced with two options: cutting one stem that has three figs (one act of cutting, but a measure greater than what the sick person needs), or cutting two stems, each of which has a single fig (two acts of cutting, but the precise measure) – it is preferable to follow the first option and minimize the acts of cutting. This is also how the Rambam rules (*Hilkhot Shabbat* 2:8), with the rationale: "so as not to increase [the performance of the forbidden labor of] plucking."

Ostensibly, the entire discussion assumes that the Shabbat prohibitions are "set aside" for *pikuach nefesh*, and one must take care to minimize the desecration of Shabbat. Indeed, this is what the Rashba says in a responsum dealing with a birthing mother who refuses to have food cooked for her on Shabbat. He clarifies that in the first days after giving birth, her request is ignored, because it is possible that she is being unnecessarily stringent with herself; therefore, we certainly cook fresh food for her. At the same time, the Rashba emphasizes that it is better to prepare a sufficient quantity of high-quality food on Friday, and thus avoid having to cook on Shabbat. He says this against the backdrop of his position that the Shabbat prohibitions are set aside for *pikuach nefesh*:

For Shabbat is *set aside* for sick people, because it is stated: "That he will live in them," and not die in them, but it is not *permitted*…

Now, regarding a sick person whom the doctors have assessed requires two figs, and picked figs are not to be found, and it is necessary to bring fruit that is still attached [to the tree], and there are two figs on one stem, and two other figs each on its own stem, it is forbidden to cut the two stems in order to bring two figs, but rather one must cut the one stem that has the two figs on it, in order to minimize the plucking. We do not say that whatever is done for a dangerously sick person is permitted, for the Torah only permits that which is needed to keep him alive, as it is stated: "That he may live in them." (*Responsa ha-Rashba*, part VII, no. 343)

The Rashba – consistent with his position that we saw in the previous *shiur –* maintains that the Shabbat prohibitions are "set aside," not "permitted," and therefore one must minimize the desecration of Shabbat as much as possible.

The Rema grapples with the issue. He cites the words of the *Tosafot* in *Menachot* (64a, s.v. *shetayim*), who argue that the passage there proceeds from the premise that the Shabbat prohibitions are set aside for *pikuach nefesh*. But the Rema suggests that this matter is subject to dispute and that according to the view that the Shabbat prohibitions are permitted, a view he holds, one can be more lenient:

That which is stated, "that he increases plucking," and therefore he should not bring two [stems] – that is only according to Rabbi Yishmael, who is concerned about increased [acts of] prohibited labor. But according to the Sages, it is permitted in any manner. Examine this passage carefully, and may God in His mercy illuminate our eyes in His Torah. (*Responsa ha-Rema*, ibid.)

Thus we see that the Rema does not establish the ruling in *Menachot* as the normative law, but rather stands behind his position that in situations of *pikuach nefesh*, the *halakha* is that Shabbat prohibitions are "permitted," not merely "set aside."

**V. “There Is No Desecration at All and the Shabbat Prohibitions Are Permitted” – The Position of the *Avnei Nezer***

 Rabbi Avraham Borenstein, the Sochatchover Rebbe, in his *Responsa Avnei Nezer*, deals at length with the issue of "permitted" and "set aside" as it pertains to *pikuach nefesh.* He agrees with the Rema that according to the Rambam, Shabbat prohibitions are permitted in a case of *pikuach nefesh*, and he proves this from the Rambam's statement of principle that we saw in the introductory *shiur*:

The Rambam writes in *Hilkhot Shabbat* 2:3: "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 statues that were not good." *It is explicit that truly there is no desecration at all, and the Shabbat prohibitions are permitted.* (*Responsa Avnei Nezer*, *Orach Chayyim*, no. 458, letter 5)

The *Avnei Nezer* derives from the "melody" of the Rambam's words that in a case of *pikuach nefesh*, the Shabbat prohibitions are completely permitted. In my opinion, this inference is not necessitated by the Rambam’s words: even if the prohibitions are only set aside, in practice one is permitted to transgress a broad variety of prohibitions in order to save a human life, and in order to explain that, the Rambam requires the moral principles of mercy, kindness, and peace in the world. If so, these principles reflect only "the bottom line," according to which one is permitted to desecrate Shabbat in order to save a life, but they cannot resolve the question of whether the Shabbat prohibitions are fundamentally "permitted" or only "set aside."

As an aside, it is interesting to note that the *Avnei Nezer* in that same responsum (and again in no. 351) proposes an exceedingly novel idea concerning the Temple service on Shabbat, suggesting that the Shabbat prohibitions are “permitted” only with respect to the daily offering and the additional offering on Shabbat, which from the very outset the Torah commands must be brought on Shabbat. As for the other additional offerings (e.g., of Rosh Chodesh or the Festivals), which may fall on Shabbat just as they may fall on any day of the week, we adopt the position that the Shabbat prohibitions are “set aside.” The *Avnei Nezer* derives this interesting novelty from the words of Rashi in *Eiruvin*; see there.

**VI. Shabbat is “Permitted” and No Limitations Should Be Put on Sick People – The Tradition of the School of Brisk**

I heard from my revered teacher Rabbi Aharon Lichtenstein *zt"l* that it was customary in the school of Brisk to adopt the view that according to the Rambam, the Shabbat prohibitions are certainly "permitted" in a case of *pikuach nefesh.* Based on this perception, the Grach (Rav Chayyim Soloveitchik) and the Griz (Rav Yitzchak Zev Soloveitchik) issued exceedingly lenient rulings in matters of Shabbat desecration and fasting on Yom Kippur. Thus, for example, the *Shulchan Arukh's* ruling(OC 618:7) that a sick person who must eat on Yom Kippur should eat less than the measure for which one becomes liable was not put into practice in Brisk, for the Griz said in the name of the Grach that that ruling applies only in the case of a healthy person who is required to eat so that he not become sick. As for a person who is already dangerously ill, no limitations were set on his eating, and he is permitted to eat in his usual manner.

To complete this point, it is important to note that the Grach and the Griz are reported to have emphasized that they were not being lenient with regard to the laws of Shabbat and Yom Kippur; rather, they were being stringent with regard to the laws of *pikuach nefesh*.

**VII. Conclusion**

We have devoted three *shiurim* to a theoretical explanation of the question of "permitted" versus "rejected." As emphasized several times in the course of the discussion, the central question is to identify the practical ramifications of the disagreement about whether the prohibitions of Shabbat are "permitted" in a situation of *pikuach nefesh*, or only "set aside." The passage in *Menachot* offers a perspective regarding the minimizing of Shabbat desecration, but we will begin to deal with the more central and significant ramifications in the next *shiur*.

(Translated by David Strauss)