YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**PIKUACH NEFESH**

**Rav Avihud Schwartz**

**Shiur #21: Introduction to Communal *Pikuach Nefesh***

**Introduction – Presenting the Halakhic Questions**

In the previous *shiurim*, we dealt with the question of who defines, and how to define, a particular situation as one of danger. We saw (especially in the last two *shiurim*) that a fundamental distinction can be made in this context between a situation that is dangerous in the present, regarding which even a remote concern about danger is defined as a situation of *pikuach nefesh*, and a situation that will become dangerous in the future, regarding which the definition of *pikuach nefesh* is more restricted.

The halakhic principles that we established could present a difficulty for the proper functioning of the Israeli security forces. The IDF and security forces perform routine actions daily to prevent a potential future dangers that are neither common nor likely, and based on the principles we learned, it would seem difficult to permit such actions on Shabbat.

Here are three representative examples:

1. The IDF conducts ongoing security activities along the country's borders. Of course, securing the border requires mass Shabbat desecration, when there is no "danger before us" or "sick person before us," and the entire task is performed out of fear of future danger. When it comes to "hot" borders, it can be argued that the danger (infiltration of terrorists and means of warfare) is in fact common or likely, though it is in the future. But along peaceful borders, where hostile terrorist activity is extremely rare, the concern about danger is very low,[[1]](#footnote-1) and ostensibly would not permit Shabbat desecration.

2. Similarly, the IDF secures its camps not only along Israel's borders and in areas of conflict, but also in the heart of the country. Here, too, the fear of terrorist infiltration into a camp located in Gush Dan or other large cities is remote (there has been no such occurrence for many years), and it is not clear what allowance there is to desecrate Shabbat in order to prevent such an event.[[2]](#footnote-2)

3. Soldiers carrying out operational activity on Shabbat are obligated to adhere to all safety regulations and perform various routines. Many of these regulations adopt an extreme degree of fear of unlikely malfunctions. Admittedly, the IDF slogan asserts that "the regulations are written in blood," and that failure to adhere to established procedures may cost human lives. Nevertheless, the feeling is often that there is no "sick person before us" or "danger before us," and desecrating Shabbat for the sake of following procedure is perceived as acting on a remote concern about future cases.

It seems to me that every reasonable person understands that these and similar actions are undoubtedly permitted on Shabbat. If the IDF abandons its camps, or its ongoing security tasks along peaceful borders, serious issues are liable to arise that will pose great dangers. While it is true that there is no concern in the present, if we adopt a broad security perspective that looks to the future, these are essential actions, which must be carried out even on Shabbat and the festivals. The same is true about absolute adherence to the entirety of safety procedures.

Thus, we might ask what the basis is for such allowances. How does this simple assumption fit in with the principles we have been discussing?

In my humble opinion, the answer to this question can be summed up in just three words: communal *pikuach nefesh.* That is to say, when dealing with a danger that relates not to a particular individual but to a large community, and all the more so if it relates to an entire country, a much more expansive policy must be adopted in the definition of *pikuach nefesh* – one that includes remote fears of future dangers.

**Rabbi Shlomo Zalman Auerbach: Different measures of Danger for the Individual and the Community**

In the previous *shiur*,we engaged at length with the teachings of Rabbi Shlomo Zalman Auerbach regarding the definition of *pikuach nefesh*. In my humble opinion, the most on-the-mark definition of the concept of communal *pikuach nefesh* is the one given by Rabbi Moshe Mordechai Farbstein, one of the heads of the Hebron Yeshiva in Jerusalem, in the name of Rabbi Auerbach. Because of the topic’s importance, I will quote his words in full. He opens with an account of a case:

A young man served in the army in the intelligence corps, where they managed to infiltrate the communications network of a hostile country and decipher its code. The soldier's job was to decipher the code using a computer. The decoding, of course, involved the desecration of Shabbat. The argument that he put forward to his commanders was that on Shabbat he wanted to decode only some of the transmissions, those regarding which he believed there is a high probability that they relate to Israel, but a transmission whose probability of being related to Israel is low, such as a transmission to one of the countries in Africa, he wanted to set aside and decode only after Shabbat. His commanders argued that while they rely on his judgment, that is only when it is based on factual information. In other words, the decoding on Shabbat must be complete, but the decision as to which of the transmissions must be passed forward on Shabbat is left to his discretion."

We went together to Rabbi Sh. Z. Auerbach to ask his opinion, and he ruled that the soldier must decode all of the transmissions, for an interesting and important reason relating to uncertain *pikuach nefesh*, and as follows: Even though there is no halakhic difference between *pikuach nefesh* relating to an individual and that relating to the community, so that we desecrate Shabbat even for uncertain *pikuach nefesh* relating to an individual – nevertheless, there is a great difference between them regarding the level of danger that is considered a situation of *pikuach nefesh.* For it is possible that there be a level of danger which regarding an individual is not considered a situation of *pikuach nefesh*, but regarding a community it is indeed considered a situation of *pikuach nefesh*.

For example, people do not hesitate to travel between cities, even though this involves a certain level of risk, say, one in 10,000. But without a doubt, a head of state who assumes a risk of one to 10,000 for his country would be considered irresponsible in his actions, for with respect to a community, such a degree of risk is considered a danger.

Therefore, Rabbi Sh. Z. Auerbach ruled that the soldier must decipher all the transmissions, since they deal with matters of state security, even though the same degree of risk with respect to a private individual would not be considered a situation of *pikuach nefesh*. (Rabbi Moshe Mordechai Farbstein, "*Gidrei Safek Pikuach Nefesh – Chilul Shabbat le-Khol Tzorkhei Choleh*," in *Sefer Asya*, vol. 9)

Rabbi Auerbach clarifies that the parameters of *pikuach nefesh* – especially future *pikuach nefesh* – are interpreted more broadly when dealing with a large community rather than private individuals. From this important distinction of Rabbi Auerbach, let us turn to another important distinction, that of the *Chazon Ish*.

**The *Chazon Ish*: "Regarding Ruling for the Community, It Should Be Considered a Situation of *Pikuach Nefesh*"**

We saw in previous *shiurim* that the *Chazon Ish* noted the fundamental distinction between present *pikuach nefesh* and future *pikuach nefesh.* He emphasized this distinction once again in a letter that he wrote to the members of the Civil Guard during World War II, whose responsibility it was to operate a warning system against enemy bombings (today's Home Front Command). While there is no date on the letter, its recipient, Rabbi Avraham Yosef Wolf, testified that it was written during World War II. The *Chazon Ish* wrote as follows:

Informing the public to rush to a shelter in the current situation should be considered as an act of saving lives, and for this one is permitted to drive and to speak on the telephone.

But one must be careful [to avoid performing] a labor that is prohibited by Torah law in every possible way, since in the end, there are no lives [requiring rescue] before us. Even though we do not follow the majority in matters of *pikuach nefesh*, nevertheless, in cases that are very far from *pikuach nefesh*, we do not treat them as cases of *pikuach nefesh*, and it depends on the degree of trust, and we do not object to one who is strict in this matter.

But regarding ruling for the community, it should be ruled as a situation of *pikuach nefesh*. Regarding labors that are prohibited by Rabbinic decree, one should not be stringent at all, and one who is stringent about Torah-prohibited labors is not permitted to be stringent and prevent informing others about the warning; he is only permitted to evade and have it done by others. (*Pe'er ha-Dor*, vol. 3, pp. 183-184)

I will not address here the idea of "degree of trust," and its implications for the definition of *pikuach nefesh*, but it is clear from the *Chazon Ish*'s letter that in cases that "are very far from *pikuach nefesh*," there is room to distinguish between a ruling for a private individual and a ruling for the community. In other words, it is possible that in the very same reality, the answer given to a private individual would be that this is a remote danger about which we are not concerned (for, as the *Chazon Ish* himself says: "we are not experts about the future," *Yoreh De'a* 208, 7), whereas for the community, the situation would be defined as one of *pikuach nefesh* which permits the desecration of Shabbat.

**Rav Kook: Laws Applying to the Individual and Laws Applying to the Community**

The statements of Rabbi Auerbach and the *Chazon Ish* seem very persuasive, and may resolve the questions raised at the beginning of this discussion and others like them: Since we are dealing with the security of the state, or with a danger that hovers over the heads of many (if safety procedures are not enforced), then any future and remote danger is defined as a situation of *pikuach nefesh.*

But what is the source for this? From where did Rabbi Auerbach, the *Chazon Ish*,and others derive this distinction in the laws of *pikuach nefesh* between the case of an individual and the case of the community?

In order to answer this question, let us examine a novel definition proposed by Rav Avraham Yitzchak Kook, which will serve as an introduction for us to understand the entire issue. In the framework of a halakhic discussion with Rabbi Shlomo Zalman Pines concerning a different matter, Rav Kook addressed the question of the degree of risk that a person is permitted or obligated to assume for the sake of rescuing another person. This is a vast issue; of interest for our purposes is that Rav Kook explains that the clearest example of a person endangering his life for another person is war, in which many soldiers give their lives for their comrades and for the nation as a whole – however, he explains, this example is not representative but unique, and one cannot learn anything from it about the question of a private individual who wishes to risk his life for another person:

In my humble opinion, nothing can be learned from [the rules of] an obligatory war, because matters of war are exceptions to this rule of "that he may live by them," for even optional wars are permitted, and where do we find an allowance to endanger many lives for expansion?

Rather, wars and the laws relating to the community are different. Perhaps it is part of the laws of the monarchy, which certainly were many and known by tradition to the nation. As the Rambam writes (in *Hilkhot Melakhim* 3:8), that the king may only execute people by decapitation, and that he may not confiscate property, and if he does so, it is considered theft. And that the assets of those executed by the king go to the king (*Sanhedrin* 48b), which the Rambam codified there. All these laws and others like them are remnants that are left to us from the laws of the monarchy, which are not in accordance with the Torah's parameters regarding the laws pertaining to an individual… The laws of war are also from them, whether an obligatory war or an optional war, and it is impossible to learn from this to [apply to] another context. (*Responsa Mishpat Kohen*, 143)

Rav Kook expands the distinction between an individual and the community beyond the specific context before us, regarding the level of danger that is considered a situation of *pikuach nefesh*, to a more general perspective that distinguishes between laws governing the individual and laws governing the community. According to Rav Kook, the allowance to endanger oneself in a war, even an optional war, is just one example taken from a broader framework that distinguishes between laws applying to the community and laws applying to the individual.

**Conclusion: "Remnants of the Laws of the Monarchy," in Light of Rav Kook**

Rav Kook maintains that those communal laws are called "the laws of the monarchy." They were certainly studied and clarified in *batei midrash* over the years – in the years of the kingdom of Israel, from Moshe Rabbeinu until the end of the First Temple period, and to a certain degree in the days of the Second Temple, and perhaps even afterwards, until the Bar Kokhva rebellion.[[3]](#footnote-3) Unfortunately, however, during the years of exile, the laws of the community were lost, and we are left with a *Shulchan Arukh* that is devoted entirely to the laws of the individual.

However, even though the laws of the community have become lost from us, Rav Kook asserts that "remnants of the laws of the monarchy" remain in our hands. He cites three laws in the Rambam's *Hilkhot Melakhim* which, in his opinion, do not accord with halakhic principles that we find elsewhere. Since these laws do not deal with the laws of *pikuach nefesh*, I will not elaborate upon them here. For our purposes, what is significant is Rav Kook's conclusion: There exists an entire realm of lawsthat "are not in accordance with the Torah's parameters regarding the laws pertaining to an individual," and they belong to this broad realm of laws of the community.

Where can we learn and clarify these laws applying to the community? Rav Kook notes that this was the Torah role of the king of Israel:

Elsewhere, I explained that these too have a source in the Torah, but the modes of exposition regarding these matters were given to each king in accordance with his broad understanding. For this reason the king must write himself two Torah scrolls, each one for the sake of a special sanctity. Regarding the Torah scroll that belongs to every member of Israel, it is stated: "that his heart be not lifted up above his brothers, and that he turn not aside [from the commandment]," even though in the Torah scroll on the part of the monarchy, the king may force a way through private property and none may oppose him. (*Responsa Mishpat Kohen*, ibid.)

The line "the king may force a way through private property and none may oppose him" comes from the ruling of *Chazal* (*Sanhedrin* 20b) that a king is permitted to pave a physical path for his war needs and for the needs of his kingdom. Rav Kook suggests that this also alludes to a Torah and spiritual path that seeks to expound the Torah's verses such that one may learn from them about the laws of the community, which are different from the Torah's parameters regarding the laws of an individual.

In recent generations, there has not arisen a king in Israel who could expound the verses of the Torah and re-establish the Torah's realm of laws pertaining to the community. But as Rav Kook himself clarifies, remnants of these laws of the monarchy can be found in the words of the Gemara and the *poskim*. In my opinion, Rav Kook is calling out to us – those who fill the seats of the *beit midrash* in the generation of redemption – to try and locate these remnants, in the sense of "the remnants to whom the Lord shall call" (*Yoel* 3:5).

It is the way of the world that archaeologists search for remnants below the surface of the earth. Rav Kook teaches us that those who wish to deal with the laws of the community must serve as "archaeologists of the Torah," and locate the foundations and remnants of these laws governing the community.

Of course, it would be possible to conduct a general discussion about the concept of "laws applying to the community," which is found already in the words of *Chazal* (*Shabbat* 139a, in a slightly negative context). The idea of laws pertaining to the community may explain the power of the collective in monetary matters, which finds expression in the fact that "a path of which the public has taken possession must not be destroyed" (*Bava Batra* 100a), and in the special attitude toward "pressing circumstances of the community," which has served as the basis for extreme leniencies in halakhic literature across the generations.[[4]](#footnote-4) We might even say that other concepts, e.g., "trouble for the community" (*Berakhot* 27b) or "merits of the community," because of which prayers are always answered (*Berakhot* 8a), are also connected to the framework of laws of the community.

But in my view, the clearest example of the fundamental distinction between laws pertaining to the individual and laws pertaining to the community is the one we have been discussing: the parameters of *pikuach nefesh*  regarding the community are different from the parameters of *pikuach nefesh* regarding the individual.

In response to Rav Kook's call, we will embark in the next *shiur* on a journey through the "remnants of the laws of the monarchy." We will seek these remnants in the words of *Chazal*, the *Rishonim*,and the *Acharonim*, finding hints toa difference regarding the definition of *pikuach nefesh* between the individual and the community.

(Translated by David Strauss)

1. A great deal of security activity is carried out along these borders to thwart criminal activity and smuggling. In light of the concepts of communal *pikuach nefesh* that will be clarified in this *shiur* and in the following *shiurim*, the basis of the allowance in this matter of desecrating Shabbat in order to fight crime will also become clear. [↑](#footnote-ref-1)
2. Here too, it can be argued that the security measures are necessary not only against terrorists, but also against thieves of ammunition and classified equipment. This matter is also related to the criminal aspects that are part of communal *pikuach nefesh*, as will be explained in the following *shiurim*. [↑](#footnote-ref-2)
3. On the eve of Pesach 5779, I was invited, together with the Chief Rabbi of the IDF, to the office of the Prime Minister of Israel, Mr. Benjamin Netanyahu, who at the time also served as the Minister of Defense, and was asked to sign an authorization that would allow the Chief Rabbi of the IDF to sell the *chametz* of the IDF and the security forces. During the meeting, we presented the Prime Minister with the "*Torat ha-Machaneh*" books from the *Beit Midrash* of the Military Rabbinate, and I told him these were books clarifying laws that had not been dealt with for two thousand years. The Prime Minister immediately corrected me and said: It is a little less than two thousand years, because Bar Kokhva's soldiers were probably still dealing with these issues. [↑](#footnote-ref-3)
4. One of the many examples of this can be found in Rav Kook's discussion of the need for the *heter mekhira* (the sale of agricultural land in Israel during the Sabbatical year) because of the pressing circumstances for the community; see the introduction to his book, *Shabbat ha-Aretz*, chap. 14. [↑](#footnote-ref-4)