YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**PIKUACH NEFESH**

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**Shiur 22: "An Ember of Metal" [1] – "Harm to the Public"**

**Introduction – "Remnants of the Laws of the Monarchy"**

In the previous *shiur*, we discussed the difference between *pikuach nefesh* for an individual versus the community, and we saw that this difference expresses a fundamental distinction between laws governing an individual and laws governing the community. As Rabbi Kook explained, there must have been entire collections of laws that governed the community in ancient times, but we are left only with "remnants of the laws governing the community, which are not in accordance with the Torah's parameters regarding the laws pertaining to the individual" (*Responsa Mishpat Kohen,* no.143).

We will now embark on a journey on the heels of those remnants of the laws of the monarchy, which can be found in the words of *Chazal*, the *Rishonim*, and the *Acharonim*, who considerably expanded the parameters of *pikuach nefesh* in cases related to public safety and welfare, such as the removal of hazards from the public domain.

At the outset, it is important to note that sometimes vestiges of the laws of the monarchy can be identified in sole dissenting opinions in *Chazal* and the *Rishonim*. Even though *halakha* is generally not decided in accordance with such opinions against the opinion of the majorit*y,* for the sake of clarifying our issues, there is room to assign a certain weight even to such sole dissenting opinions, as will be seen over the course of the discussion.

In this and the following *shiurim*, we will deal with a well-known example of a law that, in my humble opinion, definitely meets the definition of "remnants of the laws of the monarchy," and that many of those who deal with the laws of *pikuach nefesh* involving the community have cited: leniency with regard to Rabbinic prohibitions in a situation of "harm to the public."

**The Talmudic Source**

The Gemara states:

Shmuel said: One may extinguish an ember of metal in the public domain, so that it should not harm the public, but not an ember of wood. (*Shabbat* 42a)

Presumably, the "harm to the public" under discussion here involves the possibility of injury or an obstacle to those who may encounter the ember, but not actual danger to life. According to Rashi and most other *Rishonim*, this is why Shmuel distinguishes between metal and wood. In his opinion, since we are not dealing with a situation of danger to life, there is no allowance to desecrate Shabbat by violating a Torah prohibition, to remove the hazard; the entire allowance relates only to Rabbinic prohibitions, which are at times permitted in situations of financial loss, need, or pressing circumstances. Extinguishing an ember of metal is generally prohibited only by Rabbinic law,[[1]](#footnote-1) whereas extinguishing a burning piece of wood produces charcoal, and therefore involves a Torah prohibition.[[2]](#footnote-2)

The Gemara there concludes that in light of the fundamental principle of leniency with respect to Rabbinic prohibitions in a place of harm to the public, it is permissible to move a thorn or other hazard in the public domain, with a series of moves, each one less than four cubits, and so too it is permissible to move it in a *karmelit* (an area in which carrying is prohibited on Shabbat only by Rabbinic law) without any limitations.

As mentioned, this is how most of the *Rishonim* understood the Talmudic passage, and this is how it was codified as normative law.

The Rambam, who believes in principle that one is liable for a *melakha she-eina tzerikha le-gufa* [see note 2] (*Hilkhot Shabbat* 1:7), codifies the words of Shmuel: he permits the extinguishing of a piece of fiery metal, but not of a burning piece of wood (*Hilkhot Shabbat* 12:2).

The *Shulchan Arukh*, like the majority of *Rishonim* and against the Rambam, exempts a person of liability for a *melakha she-eina tzerikha le-gufa* (like the *Tur*, *Orach Chayim* 334); he thus permits the extinguishing of both a piece of fiery metal and a burning piece of wood, because in both cases, the extinguishing involves only a Rabbinic prohibition (*Orach Chayim* 334:27).

Similarly, the *Shulchan Arukh* permits moving a thorn or other hazard in a manner that involves only a Rabbinic prohibition: with moves of less than four cubits in a public domain, or in a *karmelit* (*Orach Chayim* 308:18). The Rema further permits the removal of broken glass, which falls into the category of *muktzeh*, from a public place, here too because of "harm to the public" (*Orach Chayim* 308:6).[[3]](#footnote-3)

It should be noted that the disagreement among the *Rishonim* relates not to our topic, but to the issue of *melakha she-eina tzerikha le-gufa.* As for the fundamental issue of our discussion, there is no difference between the Rambam and the other *Rishonim*; all agree that the removal of a public hazard permits only Rabbinic prohibitions, not Torah prohibitions.

**The Position of Rabbi Chananel and the Author of the *Halakhot Gedolot***

The Ramban and his disciples, however, cite a different interpretation in the name of the *Halakhot Gedolot* and Rabbeinu Chananel. According to them, the difference between a piece of hot metal and a burning piece of wood is not connected to the production of charcoal and *melakha she-eina tzerikha le-gufa*, but rather to the fact that a lump of fiery metal is simply more dangerous; there is concern that it could be exceedingly hot without people taking notice.

` The Ramban emphasizes that the different interpretation of the distinction between wood and metal also reflects a fundamental view of the law itself, and therefore he asks:

It is puzzling that we permit a full-fledged [Torah-prohibited] labor on account of injury even where there is no danger to life. Perhaps Shmuel considers all harm to the public as a danger to life. But this is incorrect. (*Chiddushei ha-Ramban*, *Shabbat* 42a, s.v. *aval be-halakhot*)

The Ramban clarifies that if the distinction between wood and metal relates not to *melakha she-eina tzerikha le-gufa* but to the degree of danger, then there is no source for a distinction between Torah prohibitions and Rabbinic prohibitions; thus, we might come to the conclusion that in the case of a public hazard, even Torah prohibitions are permitted!

As a result, the Ramban rejects the position of the *Halakhot Gedolot*. According to the rules of *pikuach nefesh* that we have already dealt with, it is clear: When a burning piece of metal or wood is found in the public domain, there is no "sick person before us"; the danger by its very essence is a future danger – lest someone pass by and not notice the burning item. It is also difficult to consider the danger in such a case as common and likely, because even if that person is injured or burnt, the chances of this leading to death are exceedingly slim.

In order to explain the position of the *Halakhot Gedolot*, we must return to the fundamental distinction between an individual and a community. That is to say, the parameters of *pikuach nefesh* with respect to a future danger relate to an individual, for whom we will not desecrate Shabbat in such a case. However, when the danger threatens not an individual, but an entire community, we are concerned even about those remote cases in which such a hazard may lead to a danger to life. This is Shmuel's innovation regarding a piece of fiery metal in a public domain: Since we are dealing with a public hazard, we desecrate Shabbat even in order to prevent "only" a future danger.

As mentioned above, the Rambam and the *Shulchan Arukh* accepted the simpler interpretation in the *Rishonim*, according to which a public hazard permits only Rabbinic prohibitions. However, there are certain contemporary authorities who attach importance to the position of the *Halakhot Gedolot* and Rabbeinu Chananel, as we will see.

**Dealing With a Fallen Electric Cable**

A modern application of the case of a piece of hot metal relates to a fallen electrical cable in the public domain.[[4]](#footnote-4) Admittedly, the similarity is a bit remote, because an electric cable does in fact pose a serious danger to those who touch it, more so than a piece of hot metal, and therefore it is easier to permit the performance of an otherwise prohibited action in order to remove the hazard. Accordingly, *Shemirat Shabbat ke-Hilkhata* (41, 21) rules as a simple matter that one is permitted to call the electric company on Shabbat in order to deal with a fallen cable.

However, Rabbi Neubert adds there in the name of Rabbi Sh. Z. Auerbach (note 69) that the person who first noticed the fallen cable is not obligated to remain there until the end of Shabbat to warn passers-by, and is permitted to call the electric company to remove the danger. This ruling is part of the broader outlook of Rabbi Auerbach that there is no obligation to trouble oneself excessively in order to spare actions necessary for the sake of *pikuach nefesh*. Rabbi Auerbach expands on this issue in *Responsa Minchat Shlomo*,[[5]](#footnote-5) and bases his position on, among other things, our passage:

Even so, nowhere is it mentioned that the one who saw the piece of fiery metal is obligated to stand next to it, or ask others to do so, and warn passers-by so as not to suffer harm from it. And so it must be that since he was walking on his way, the Sages did not require him to excessively trouble himself in order to avoid an act of extinguishing that is permitted by law.

And furthermore, Rabbeinu Chananel and the *Geonim* in *Shabbat* 42a maintain that even according to Rabbi Yehuda – who imposes liability for a *melakha she-eina tzerikha le-gufa*, so that extinguishing a lump of fiery metal involves the Torah-prohibited labor of "hardening" – nevertheless permits extinguishing a red-hot lump of fiery metal on Shabbat, because after the metal blackens, anyone who sees it will think that it has cooled down and is liable to suffer injury from it, and in a place where there is concern about bodily injury to the community, even if there is no threat to life, one is permitted to desecrate Shabbat and extinguish the piece of fiery metal even when it is red, and there is no mention at all that ideally he must wait until it blackens or stand there and warn people or hire people to watch over the metal, in order to avoid an act that is prohibited by Torah law. This is as we said. (*Responsa Minchat Shlomo*, vol. 1, no.7)

The words of Rabbi Auerbach are not related to the issue of communal *pikuach nefesh*, but it is clear that he established a *halakha* in the laws of *pikuach nefesh* in light of the position of the *Halakhot Gedolot* and Rabbeinu Chananel, who saw in the hot piece of metal a case of real *pikuach nefesh* that permits Torah prohibitions. Rabbi Auerbach concludes from their words that when a situation is defined as one of *pikuach nefesh*, there is no obligation to go to unreasonable trouble to avoid performing the permitted labors, and thus one is permitted to call the electric company rather than standing in place to warn everyone who passes.

**Fixing a Power Outage in a Large City**

Rabbi Auerbach adopts the same position with regard to another issue of electricity that was discussed by many contemporary authorities: fixing an electrical outage in a large city. Contemporary authorities agree that fixing such a problem is permitted, because electricity is needed for hospitals and other essential facilities, as well as for dangerously ill patients who are in their homes. This is stated explicitly in *Shemirat Shabbat ke-Hilkhata* (chapter 32, note 182) and in *Yalkut Yosef* (*Shabbat* – vol. 3, no. 318, 1, "Benefiting from Electricity Produced on Shabbat"). They were preceded by Rabbi Shlomo Goren, who wrote already in the early days of the State of Israel:[[6]](#footnote-6)

And so it is customary among the great Torah authorities to base the allowance to use electricity on Shabbat, even when its production necessitates desecration of Shabbat, on the fact that electricity is essential for hospitals to operate devices for lighting and heating that involve *pikuach nefesh*. There are also other public institutions, buildings, and services in which electricity in all its types and purposes – for light, for heat, and for power – involves *pikuach nefesh.*

However, *Responsa Teshuvot ve-Hanhagot* calls for cautious and precise consideration regarding this allowance:

And when it is not known that there is a sick person before us, but only the logical argument that in a large neighborhood, due to the large number of residents, there must be a sick person – is it permitted to perform a prohibited labor on Shabbat to fix the malfunction… Indeed, great caution is required, and the allowance is not given to everyone, lest it lead to the cancellation of Shabbat, for regarding any repair that is needed, they will always say that it involves *pikuach nefesh*. Therefore, what is needed is the decision of a God-fearing Torah scholar who is fit to issue halakhic rulings, that indeed it is permitted in the particular case before us, by clarifying whether there is a danger before us, whether the cold is great, etc. Even though one who asks in a situation of *pikuach nefesh* is reprehensible, nevertheless, in such a case it is fitting and proper and will bring blessing to all the sides. (*Responsa Teshuvot ve-Hanhagot*, vol. 3, no. 100)

He goes on there to mention the discussions we have already dealt with regarding autopsies, and emphasizes that the allowance of *pikuach nefesh* applies only when the danger is common and likely. However, when we are dealing with the lives and health of the community, there is room for leniency even if there is no specific sick person present, based on the assumption that in a large city, there is certainly somebody who is in need of electricity – though as stated, this allowance must be applied with reason and proportionality.

Many halakhic authorities have dealt with the question of whether, when a power outage is fixed in a permitted manner – for the sake of *pikuach nefesh* – it is proper for somebody who does not need the electricity to refrain from benefitting from it. This is not the forum to expand on the issue of benefiting from Shabbat desecration in general, or benefitting from Shabbat desecration for the sake of *pikuach nefesh* specifically. For our purposes, I will mention that Rabbi Auerbach dedicated a long responsum to this issue, in which he returns to the halakhic principle that he learned from the *Halakhot Gedolot* and Rabbeinu Chananel regarding a piece of burning metal:

And here, too, the machines that were turned on before Shabbat are ready for all consumers to use on Shabbat as they ordinarily use them on weekdays, and therefore it is possible that the people of the city are not required to refrain from using electricity on Shabbat so that the workers will not have to add gas afterwards, because when they add the gas they do so in a permitted manner because of *pikuach nefesh*, so that the lights in hospitals not go out, and the like…

In similar fashion, we find that it is permitted to extinguish on Shabbat a piece of fiery metal so that it not harm the community, and the *Halakhot Gedolot* and Rabbeinu Chananel maintain that extinguishing a lump of fiery metal also involves a Torah prohibition, but nevertheless, since when it is hot and black, and one who sees it will think it is cold, therefore it is permitted to extinguish it. And nevertheless, it is not mentioned that ideally it is proper to stand there and make sure that nobody burns himself, in order to spare Shabbat desecration. And it is clear from this that there is no obligation to make a great effort in order to refrain from setting Shabbat aside in a permitted manner for the sake of *pikuach nefesh.* Even according to those who say that the Shabbat prohibitions are only “set aside” and not “permitted,” nevertheless, one is not obligated to trouble oneself and stand there. Here too, we should not prohibit the people of the city from using on Shabbat that which was prepared for them as well….

And even though for the sake of the sick people alone, they would have had to add only a little, and the fact that they add a lot is because healthy people also use it… nevertheless, it seems to me since it is not at all possible to add for the sick people without also adding for the healthy people, this is considered like one who slaughters an animal on Shabbat for a sick person, the meat of which is permitted even for a healthy person, because it is impossible to attain an olive-sized piece of meat without slaughtering the entire animal. (*Responsa Minchat Shlomo Tinyana*, [2-3], no. 24)

As stated, the very allowance to repair the malfunction, based on the assumption that in a large community there is certainly a dangerously ill person, is an expression of the concept of "communal *pikuach nefesh*," but it does not necessarily follow from the issue of a metal ember. The principle established by Rabbi Auerbach is that there is no obligation to trouble oneself in an unreasonable manner in order to avoid Shabbat desecration for the sake of *pikuach nefesh*, and he learned this, among other things, from the words of the *Halakhot Gedolot* and Rabbeinu Chananel in the passage dealing with a piece of fiery metal.

**Streetlights**

Rabbi Yisrael Rosen *z”l* hinted in one of his articles[[7]](#footnote-7) that sometimes even the repair of a streetlight may be defined as an essential need on Shabbat, or as a case of "possible *pikuach nefesh*." There is no doubt that such a position accords very well with the approach of the *Halakhot Gedolot* and Rabbeinu Chananel. That is to say, even if it is known with certainty that the electricity is not needed for a patient who is in danger or for a hospital, it is permitted to repair broken street lighting in order to illuminate dark streets and alleyways. Ultimately, there is a certain degree of fear of falling or tripping in the dark, and perhaps this too can be defined as a "public hazard," which in their opinion is considered like a case of *pikuach nefesh*.

However, Rabbi Rosen only alludes to this, and does not establish any halakhic rules in the matter. In my opinion, one should not be lenient about this, because the danger posed by mere darkness is in fact a remote danger even in terms of communal *pikuach nefesh.*

In practice, it is accepted in such situations to enlist a non-Jewish worker, or to utilize other solutions that involve only Rabbinic prohibitions – for as we have learned, in the case of a public hazard, one may be very lenient about actions that do not involve the violation of a Torah prohibition.

(Translated by David Strauss)

1. The exception would be if extinguishing will "harden" [*metzaref*]the metal, in which case it is considered an act of "striking the final hammer's blow" (*makeh be-patish*, one of the actions prohibited on Shabbat by Torah law). However, this concern about "hardening" only applies to a new metal vessel, and so in general, extinguishing a piece of fiery metal does not involve the violation of a Torah prohibition. [↑](#footnote-ref-1)
2. If the extinguisher wishes only to remove the hazard, and not to produce charcoal, we are then dealing with a *melakha she-eina tzerikha le-gufa*, a labor performed for a purpose other than the goal of that act in the building of the *Mishkan*. Indeed, the Gemara establishes that Shmuel's ruling depends on the Tannaitic dispute whether a *melakha she-eina tzerikha le-gufa* is prohibited by Torah law or only by rabbinic decree. [↑](#footnote-ref-2)
3. Commentators to the Rema disagree about whether there are situations in which even harm to an individual permits rabbinic prohibitions, and they even suggest that a distinction can be made between different rabbinic prohibitions (e.g., between the prohibition of *muktzeh*, which is considered a light prohibition, and the prohibition of carrying less than four cubits in the public domain, which is considered a more severe prohibition). For a summary, see *Responsa Tzitz Eliezer* (vol. 6, no. 7), regarding the question of whether a person is permitted on Shabbat to use a hearing aid whose operation is rabbinically prohibited. In the course of his discussion, he notes that the hearing aid can certainly prevent injury (e.g., falling), and even though it is a matter relating to an individual and not the community, perhaps there is room for leniency. [↑](#footnote-ref-3)
4. A similar example: a mine from a minefield which, due to a flood, ended up outside the fence of the minefield, in a place where people may walk – see Rabbi Y. Zilberstein, *Chashukei Chemed*,on the passage in *Shabbat* 42a. [↑](#footnote-ref-4)
5. Another application of this idea is that it is not necessary to perform labors for the sake of *pikuach nefesh* in an altered manner (with a "*shinnui*"), so as not to trouble those involved in saving lives. We mentioned this issue when we dealt with performing rabbinic prohibitions with a *shinnui* in situations of *pikuach nefesh* (*shiurim* nos. 11-12). [↑](#footnote-ref-5)
6. In *Machanayim*, 29 Av 5718. [↑](#footnote-ref-6)
7. Rabbi Yisrael Rosen, "*Pe'ula ha-Goremet Tzorekh le-Chalel Shabbat mi-shum Pikuach Nefesh*," in *Morasha* vol. 6. This allusion of Rabbi Rosen is also mentioned in *Encyclopedia Talmudit*, appendix to the entry of "*Chashmal*," note 47. [↑](#footnote-ref-7)