YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**PIKUACH NEFESH**

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In Loving Memory of
Jeffrey Paul Friedman z"l
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לע"נ יהודה פנחס ז"ל בן הרב שרגא פייוועל נ"י
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**Shiur 23: "An Ember of Metal" (2) | "Harm to the Public"**

**Introduction**

In the previous *shiur*, we discussed the case of a red-hot metal ember in a public domain, and the controversy among *Rishonim* whether only Rabbinic prohibitions would be permitted for the sake of removing non-lethal “harm to the public," or perhaps even Torah prohibitions. We saw several halakhic authorities mention the view of the *Halakhot Gedolot* and Rabbeinu Chananel that in a situation of potential harm to the public, even Torah prohibitions are permitted. Admittedly, the mention of this opinion was quite incidental; it is clear in general that the law follows the opinion of the majority of *Rishonim* – that potential harm to the public, without concern of *pikuach nefesh*, permits only Rabbinic prohibitions.

We will now turn our attention to a distinctive case of *hilkhot medina*, laws governing the state, regarding which we find a major expansion of the position of the *Halakhot Gedolot* and Rabbeinu Chananel.

**Rabbi Herzog's Article**

As mentioned in an *earlier* shiurin this series, one of the first articles written about communal *pikuach nefesh* in our generation is an article by the Chief Rabbi of Israel, Rabbi Yitzchak Eizik Herzog, concerning internal security and police activity on Shabbat.

This article deals with various topics, and at its center is a discussion about returning from a rescue operation on Shabbat, an issue we will discuss separately in the future. For our current purposes, it should be noted that Rabbi Herzog emphatically states, at the very outset, that driving a car for the sake of police intervention in a violent incident, including confronting a burglar or property offender, is permitted on Shabbat, because incidents involving violence and burglary may very likely end in bloodshed.

According to Rabbi Herzog, when a fight has already broken out, it is a case of present *pikuach nefesh*, and it is permissible to do whatever is necessary to deal with the matter. However, he has serious doubts about the allowance to conduct a "routine patrol" in a police car, the whole purpose of which is to deter potential criminals even before a fight breaks out:

According to the explanation given by those responsible for matters of internal security, police patrol cars pose a threat to people of a certain type, and this prevents fights and thus also bloodshed. Let us assume that this is true, but it is also possible to conduct for that purpose patrols on foot or at most on ordinary bicycles... and there is no clear evidence that beatings and fights lead to murder, other than in a minority of cases. Therefore, it is not possible to stretch the issue of *pikuach nefesh* to the point of allowing patrol cars on Shabbat, and at most we can permit Rabbinic prohibitions… And in general, it is difficult to decide in favor of an allowance based on concern about *pikuach nefesh*, for there is certainly some limit to concern about *pikuach nefesh* as well. (*Responsa Heikhal Yitzchak*, *Orach Chayim*, no. 32)

In order to allow police actions to be carried out in a way that involves transgression only of Rabbinic prohibitions, Rabbi Herzog deals at length with the possibility of having non-Jewish police officers drive the patrol cars, the possibility of driving a police car in the manner of "two who performed a Shabbat labor," and the possibility of issuing tickets and fines in a way that does not involve a Torah prohibition – using ink that is not permanent, or using a foreign script, according to some *Rishonim*.

**The Opinion of Rabbi Shlomo Zalman Auerbach**

In discussing the parameters of *pikuach nefesh*, we have also mentioned Rabbi Sh. Z. Auerbach's response to Rabbi Herzog's article. According to Rabbi Auerbach, there is room to further expand the boundaries of *pikuach nefesh*, and thus to allow routine police patrols as well.

At the heart of Rabbi Auerbach's argument stands the passage dealing with an ember of metal and the risk of harm it poses to the public:

Similarly, it seems to me that in a big city with a large population, and we clearly know from experience that if police patrols are shut down on Shabbat, there are considerable grounds for concern about blood feuds or thefts and robberies that are liable to endanger lives – there is room to discuss whether the police patrols can be used like a known medicine, to save people from those pursuing them, because those causing harm and those in pursuit are found in the city…

It also seems [correct] for even though it is stated in *Shulchan Arukh* 316 about beasts and creeping things that bite and cause death, that even though they may be killed even if they are not pursuing a person, nevertheless one should not search them out[[1]](#footnote-1) – and even if the police do not kill them and do not even pursue them, nevertheless, by doing so [=conducting patrols], they cause the lion to run away and thereby save the people of the city from such people who harm the community and bite and kill. **It is also fitting to combine [with this] the opinion of Rabbeinu Chananel and the *Halakhot Gedolot* in *Shabbat* 42a, that "harm to the public is considered as danger to life," and one is permitted to perform even labors prohibited by Torah law in order to prevent harm to the public**…[[2]](#footnote-2)

All the more so here, for “were it not for fear” of the government, “one man would swallow up alive his fellow man” [*Avot* 3:2]. It turns out that in those places where there is good reason to fear physical fights and the like, it stands to reason that in our time, peace in the country requires that [the police] be equipped with all the modern devices required to save the people of the city from such snakes.

And it seems to me that it is permissible to desecrate Shabbat in order to inform the public that *pikuach nefesh* sets aside Shabbat if they are ignorant people who do not know that *pikuach nefesh* sets aside Shabbat, and they are in a big city where danger to life is common every day. Needless to say, I write this only as a mere comment. (*Responsa Minchat Shlomo Tinyana* (2-3), no. 37)

Rabbi Auerbach expands the allowance that permits routine police activity, and he explicitly emphasizes that in addition to the considerations that he brings, "it is also fitting to combine" with them the opinion of the *Halakhot Gedolot* and Rabbeinu Chananel, who consider "harm to the public" as real *pikuach nefesh* even if it does not involve clear and immediate danger to life*.*

**The Opinion of Rabbi Shaul Yisraeli**

Rabbi Shaul Yisraeli also wrote a long and detailed response to Rabbi Herzog's article. Rabbi Yisraeli, who would later head the Merkaz Ha-Rav Yeshiva, was at the time the rabbi of Kfar Ha-ro’eh. He took issue with several points that arose in the words of Rabbi Herzog.

In his response, Rabbi Yisraeli introduced a new term, *makhshirei pikuach nefesh*, to describe things that facilitate *pikuach nefesh*. According to him, it is sometimes possible to permit actions that do not involve the immediate saving of lives, as part of a broader understanding of the concept of *pikuach nefesh.* Rabbi Yisraeli made use of this definition mainly to permit returning from operational activity – a topic we will discuss in detail in the future.

After establishing his position on the idea of *makhshirei pikuach nefesh*, Rabbi Yisraeli continues:

However, it seems to me that another halakhic argument should be introduced here, which can serve as an auxiliary argument, if not as an important foundation in itself. I refer to the position of Rav Hai Gaon and the author of the *Halakhot Gedolot* and Rabbeinu Chananel regarding an ember of metal in the public domain on Shabbat. The Ramban and the Rashba were puzzled by this – How can we permit performing a labor prohibited by Torah law because of a concern about harm? – and they both wrote (the Ramban, using the term, "and perhaps," though he does not agree, and the Rashba using the formula, "and one can say," without revealing what his own position is): "Since its way is to cause harm, and many are caused harm by it, Shmuel considers it a danger to life, because the community cannot take precautions against it"….

It seems to me that the source of the matter is derived from [the laws of] an optional war… Therefore, it seems to me that the foundation of the matter is that everything connected to public welfare, or the removal of potential harm from the community, is all considered *pikuach* nefesh. For everything connected to public welfare indirectly involves *pikuach nefesh*…

The same is true about removing a communal hazard in the case of a metal ember. Even though it in itself is not dangerous, it is possible that the injured party will be unable to go to work, and it is also possible that he lives alone and cannot tell someone to come to help him, and in that way a small matter can lead to *pikuach nefesh.* **There are all kinds of cases like this, that if we consider the individual, it is a distant concern that need not be taken into consideration, but nevertheless, on the communal level, it will eventually happen, and regarding *pikuach nefesh*,this too is taken into consideration.** This is how I explain the opinion of the *Geonim* based on how the Ramban and the Rashba understood their words.

Now, as stated, the Ramban disagrees with this position of the *Geonim*, but in accordance with the suggestion that the source of the matter is the law of an optional war, it can be argued that even the Ramban does not disagree with the principle that a public hazard is considered like *pikuach nefesh*, only that he maintains that this matter of a hot piece of metal is not considered such a public hazard, as it is not common for people to [be harmed by it]… It is not at all unreasonable to argue that all agree in principle that a public hazard is considered like *pikuach nefesh* of an individual.

We will now discuss the case at hand of a [police] patrol to prevent fights and quarrels or to catch thieves and the like – even if it is true that rescuing from loss of life is perhaps a bit remote, rescuing from financial loss and physical injury is very common; it is no worse than a glowing ember of metal, and is [even] superior, because here the potential harm is not restricted to one place, but involves a hazard for the entire community. Certainly, then, this involves saving the community from harm, which according to the *Geonim* is considered like *pikuach nefesh*, and as written, it is reasonable to assume that even the other *Rishonim* agree with them regarding the fundamental law and in the case at hand. Even if it is difficult to rely on this and make it the main reason to be lenient, nevertheless, it seems to me that it is fit at least to join as an auxiliary argument to the main argument to permit it because sometimes it can lead to *pikuach nefesh*, and this has the power to give it the law of *pikuach nefesh* in all its details. (*Amud ha-Yemini*, no. 17)

Thus, we have here a new law, in the realm of state laws and communal *pikuach nefesh*,that is based in great part on the opinion of the *Halakhot Gedolot* and Rabbeinu Chananel.

**Additional Examples**

In a comprehensive article dedicated to the parameters of *pikuach nefesh* as they apply to the Israeli army, Rabbi Avraham Yitzchak Nerya writes that his father, Rabbi Moshe Tzvi Nerya, understood the position of the *Halakhot Gedolot* and Rabbeinu Chananel in precisely the same way as Rabbi Yisraeli:

In the booklet, *Le-Hilkhot Medina* (Tel Aviv 5713), my father, Rabbi Moshe Tzvi Nerya, explained that in the case of a community, the manner of assessing danger to life is broader, so that if there is concern that one member of the community will come to danger, this is considered uncertain *pikuach nefesh* that sets aside the laws of Shabbat*.* (*Pikuach Nefesh be-Shabbat ba-Tzava*," in *Techumin* 3, p. 20)

This is also how Rabbi Y. Zilberstein formulated the issue:

The Ran writes… and the *Halakhot Gedolot* even permits Torah prohibitions… only that it seems that the Rabbi maintains that harm to the public is considered like danger to life. Thus far the words of the Ran." Here too we see that a community is different from an individual, for even though an individual can be careful, when we come to issue a ruling for the community, *Chazal* understood that within the community there are individuals who will suffer injury, and therefore the matter is permitted. (*Chashukei Chemed Menachot* 36a)

Even though it is clear that the majority of *Rishonim* did not follow the opinion of the *Halakhot Gedolot* and Rabbeinu Chananel in practice, when Rabbi Auerbach, Rabbi Yisraeli, Rabbi Nerya, and Rabbi Zilberstein had to decide matters involving communal *pikuach nefesh*, they found in this position "a remnant of the laws of the monarchy," on whose basis they significantly expanded the parameters of *pikuach nefesh*.

**Conclusion – Shabbat Observance in the Police Force, Then and Now**

As mentioned, the issue of Shabbat observance by the police force was discussed by Rabbi Herzog and other halakhic authorities of the generation already in the early days of the State of Israel – though Rabbi Herzog emphasizes at the beginning of his responsum:

However, since according to the state of things today, the institutions in charge of this are not currently inclined to take into account the provisions of the Halakha, in order to establish a constitution that will obligate all those operating within it to act accordingly, the present discourse does not have the nature of practical Halakha, but is more akin to a halakhic discussion, the precise practical form of which will be established, God willing, following additional examination and consultation when conditions are suitable for it. (*Responsa Heikhal Yitzchak, Orach Chayim* no. 32)

Rabbi Sh. Yisraeli strongly disagreed with this comment and stated that, on the contrary, precisely because the police at that time were not at all careful about operating in accordance with Halakha, it was obligatory to clarify the issues, and even to formulate practical halakhic rulings, so that Torah-observant police officers could become integrated into the ranks of the police:

Many have come to abandon religious practice only because it seemed to them that there is no possibility of reconciling the Torah with the needs of the state, and only thanks to the possibility of using Jewish "Shabbat goys" can religious Judaism endure. It turns out that establishing the Halakha as enabling fulfillment of the urgent needs of the state in accordance with Jewish law will result in the strengthening of those whose Judaism is weak and pending, and thus we will save them from great stumbling blocks for the rest of their lives…

It seems that precisely with regard to this question of *pikuach nefesh* involving the police, this law itself requires that there be more and more Torah-observant people there, because only they properly know the value of a person and they will not be lazy under the pretense of convenience but will always be quick and the first to perform a matter of *mitzva*… And there is no doubt that the fulfillment of the duties of the police, which include a great deal of *pikuach nefesh*, will be done with greater efficiency if there are more Torah-observant people in its ranks, apart from the fact that the state's attempts in general to prevent corruption and acts of injustice also on the part of the police greatly depends on who the police officers are. Just as we were commanded to appoint judges, so too we were commanded to appoint police officers, and about both of them it is stated: "And they shall judge the people with righteous judgment." Is there a greater stumbling block than this, of distancing Torah-observant people from the ranks of the police?

… In the end, it is clear to me that the discussion on this point does not need to take into account the number of Torah-observant people in the police force today. We must also strive for them to become a majority there, no less than we must strive to reach a majority in other places. Rather, we are obliged to discuss the matter as if everyone is ready to heed the voice of the Torah and to inform them of the Halakha as it is for everyone in an equal manner, and whatever is permitted is permitted for everyone, and it is inappropriate to refrain from it, and whatever is prohibited, we must strive that this become part of the general code that applies and binds all police officers alike. And even before such a code is accepted, we will not hesitate from talking about it in public. He who hears, let him hear; he who refrains from so doing, let him refrain. His complaint and responsibility are not upon us. (*Amud ha-Yemini*, no. 17)

Rabbi Yisraeli's heartfelt and moving words did not entirely achieve their goal, and several decades passed before there were senior officers in the police department who wanted to consult Torah authorities in order to determine what was permissible and what was prohibited in police activity. The topic was raised about forty years ago, and it was one of the first issues dealt with by the Tzomet Institute in Alon Shevut. The first volumes of the periodical *Techumin* (mainly vols. 1-3) include articles that discuss various aspects related to Shabbat observance in the police department, both specific issues and also conceptual questions, and to these were added a thorough and comprehensive article written by Rabbis Israel Rosen and Uri Dasberg, entitled "*Shabbat ba-Mishtara* ['Shabbat in the Police Department'],"[[3]](#footnote-3) in which the concept of "communal *pikuach nefesh*" is explained in great detail, with its sources and antecedents.

However, to the best of my knowledge, the laws that were clarified in those days at the Tzomet Institute were never integrated into police procedure. It was a great privilege for me to write and publish, in 5774, a set of laws pertaining to the activities of the Military Police Criminal Investigation Department (MPCID). Similar to other halakhic collections from the Beit Midrash of the Military Rabbinate, this collection as well was written in full coordination with senior and junior officers in the MPCID, and the rulings contained therein were reached after in-depth study of the nature of the activity in the department. All of these collections are accessible on the website of the Military Rabbinate.

The set of guidelines was distributed as a binding military directive, signed by the commander of the MPCID. This was done to ensure that the unit's conduct would be in accordance with Halakha, as required by IDF orders.

When the volume was first published, I gave a copy to the commander of the MPCID at the time, and told him we were greatly privileged in our joint work, to establish a Jewish police force in the Land of Israel that operates in accordance with Halakha – something we have not been granted since the glorious days of the Kingdom of Israel thousands of years ago. The commander was moved by my words, got up from his chair, put the guidelines into his pocket, and said to me: While I do not wear a *kippa*, when I die and ascend to heaven, if I am not admitted to the Garden of Eden, I will take this booklet out of my pocket and say that I have been privileged to establish a Jewish police force in the Land of Israel that operates in accordance with Halakha, which has not existed since the days of King David.

In recent years, with the re-establishment of the Rabbinate of the Israel Police under the leadership of Rabbi Rami Rachamim Barkhayahu, with whom I maintain a close personal and working relationship*,* I am happy to say that to the best of my knowledge, the Israel Police Department as well is making great strides towards Shabbat observance in accordance with the parameters of communal *pikuach nefesh*, and that the grand vision of Rabbi Herzog and Rabbi Israeli is coming true.

(Translated by David Strauss)

1. There is a clear connection between the issue of an ember of metal and that of handling dangerous animals, as was noted by the Ramban. This will be addressed in the next *shiur*. [↑](#footnote-ref-1)
2. In this responsum as well, Rabbi Auerbach returns to the principle I have already cited from his words more than once – that the person who first spots the hot metal is not obligated to stand alongside it for the entire Shabbat, as this is an unreasonable bother, and therefore he is permitted to do whatever is necessary to remove the hazard even at the expense of desecrating Shabbat. [↑](#footnote-ref-2)
3. In *Techumin* 2; the introduction is available [here](https://www.zomet.org.il/?CategoryID=277&ArticleID=380&Page=1) on the Tzomet Institute website, and the article is [here](https://www.zomet.org.il/_Uploads/dbsAttachedFiles/t-02-05dasberg.pdf). [↑](#footnote-ref-3)