YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**PIKUACH NEFESH**

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**Shiur 26: Communal *Pikuach Nefesh* in Relation to a Non-Jewish Government**

**Introduction**

The laws of communal *pikuach nefesh*, which we have been studying in the last few *shiurim*, have been widely discussed in recent generations with our return to the land of our ancestors and the establishment of an independent Jewish state, which operates security and medical systems.

In this *shiur*, I would like to discuss two examples of communal *pikuach nefesh* that relate specifically to the realities of exile, where the people of Israel are subject to non-Jewish rule. As we know, throughout the years of exile, the Jewish people have been careful to maintain a proper relationship with the government, in the spirit of the Mishna’s statement in tractate *Avot*: "Pray for the welfare of the government" (*Avot* 3:2). In certain cases, the effort to maintain a proper relationship with the government was defined as a situation of *pikuach nefesh* – not always conforming to the parameters of individual *pikuach nefesh*, but certainly fitting in with those of communal *pikuach nefesh.*

**Planting during the Sabbatical year because of "*arnona*"**

**1. The Talmudic passage and the dispute among the *Rishonim***

The Mishna in tractate *Sanhedrin* (3:3; 24b) lists categories of people who are disqualified from testifying, among them "traders [in the produce] of the Sabbatical year." The Gemara there says there is a situation in which working the land during the Sabbatical year is permitted:

Rabbi Yannai proclaimed: "Go and sow your seed [even] in the Sabbatical year, because of the *arnona.*" (*Sanhedrin* 26a)

Rashi (ad loc., s.v. *arnona*) explains that "*arnona*" is a tax that the Jewish community was required to pay to the authorities, and according to Rabbi Yannai, it was permissible to sow seed during the Sabbatical year in order to pay the tax. Without a doubt, this allowance is a surprising innovation, and therefore Rashi emphasizes:

Go and sow your seed on the Sabbatical year – the Sabbatical year at this time is by Rabbinic decree, for the sanctity of the land has been cancelled. (Rashi, ad loc.)

According to Rashi, Rabbi Yannai would never have permitted a Torah prohibition in order to pay the tax; the allowance is solely based on the assumption that the Sabbatical year prohibitions at this time are by Rabbinic decree.[[1]](#footnote-1) This is also the understanding of the *Yad Rama* (*Sanhedrin* 26a, s.v. *piska*), who emphasizes that we are dealing with Rabbinic prohibitions "in a case of financial loss."

The *Tosafot* and the *Tosafot Rosh* cite Rashi's explanation that the allowance is limited to Rabbinic prohibitions, but they add another explanation as well, whose source is a passage in the *Yerushalmi*:

At first, when the government was oppressing [Israel], Rabbi Yannai instructed that the people should plow the first plowing. (*Yerushalmi Shevi'it* 4:2, 10a)

The wording of the *Yerushalmi* seems to imply that a failure on the part of the Jewish community to pay the tax could lead to a situation of real *pikuach nefesh.* This is implied by the continuation of the discussion in the *Yerushalmi*, where it is stated that the labors prohibited during the Sabbatical year do not fall into the category of "be killed, rather than transgress." That is to say, if there is concern about danger to life, it is clearly permitted to plant during the Sabbatical year.

The Rosh in his *Tosafot* (26a, s.v. *puku*) cites the *Yerushalmi* verbatim. But in the *Tosafot* printed on the page of our Gemara,we find a different formulation:

Alternatively, it can be argued that it is a situation of *pikuach nefesh*, that the king demands a tax, but the people do not have the means to pay it, and [therefore] they will die after having been arrested by the king. This is what is stated in the *Yerushalmi*: "Because of *chayei nefesh* [human life]." (*Tosafot* 26a, s.v. *mi-sherabu*)

According to the *Tosafot*, we are not dealing here with an actual situation of *pikuach nefesh*, involving a direct threat that if a particular person fails to pay his debt, he will be put to death. Rabbi Yannai's allowance is based on a much more remote fear, of *pikuach nefesh* in the future*.* There is no danger to life at the time of planting, but with the passage of time, failure to pay the tax will lead to tension with the authorities, and penalties, including imprisonment, might be imposed against the Jewish community. Such imprisonment would fall into the category of danger – among other things, in light of *Chazal*’s statement that "Captivity is the harshest of all" (*Bava Metzia* 8b). A captive is regarded as always being in a life-threatening situation.

As mentioned, the danger to life here is very much in the future: Letting the land lie fallow will lead (apparently) to late payment of the tax, which will lead (apparently) to tension with the authorities, which will lead (apparently) to imprisonment, which will lead (apparently) to mortal danger. Nevertheless, the *Tosafot* maintain that even Torah prohibitions were permitted for this reason!

**2. "*Chayei Nefesh*" according to *Tosafot* and the *Acharonim***

It stands to reason that the basis for this novel position of the *Tosafot* relates to the notion of communal *pikuach nefesh*. Were we dealing with an individual, such a distant concern would not be considered a situation of *pikuach nefesh*. But Rabbi Yannai is concerned with the welfare of the entire community, and in this context, it is considered a situation of *pikuach nefesh.*

An interesting allusion to this is found in the expression "*chayei nefesh*" used by *Tosafot*. Although *Tosafot* refer to the *Yerushalmi* in tractate *Shevi'it*, this expression is not found there. The *Yerushalmi* does use the expression "*chayei nefesh*" in an entirely different passage, namely, the passage dealing with a spring belonging to the residents of a city (*Yerushalmi Shevi'it* 8:5; 23b), which we addressed at length in the previous *shiur*. There it is statedthat the position of Rabbi Yose, who gives preference to the laundry of one city over the drinking water of another city, is based on his view that laundry is considered a matter of "*chayei nefesh.*" In line with what we said in the previous *shiur*, it can be argued that "*chayei nefesh*" is synonymous with public peace and security – even in situations that do not currently pose a threat to life but that may deteriorate into such in the future.

Rabbi Reuven Margoliot[[2]](#footnote-2) notes, in his book *Margaliyot Ha-Yam* on tractate *Sanhedrin*:

"Because of *chayei nefesh*" – The author of *Penei Meivin* notes: "I do not see this wording in the *Yerushalmi*"… see *Tzofnat Pa'ane'ach* on the Rambam (*Shabbat* 2:23), who brings the Ran in the third chapter of *Shabbat* that regarding injury to the community, every injury is considered a danger [and this is an important principle in the laws governing the state]. (*Margaliyot Ha-Yam, Sanhedrin* 26a, no. 2)

We will discuss the words of the *Tzofnat Pa'ane'ach* cited by Rabbi Margoliot in future *shiurim*, but his source, the Ran in chapter 3 of *Shabbat*, is familiar to us from previous *shiurim* (see especially *shiur* 22). The reference is to the position of Rabbeinu Chananel and the *Halakhot Gedolot* cited by the Ramban and his disciples regarding a fiery metal ember. What this means is that Rabbi Margoliot draws a direct line between the *Rishonim* who permit violating Torah prohibitions in order to remove a metal ember from the public domain, and the *Tosafot* who permit violating Torah prohibitions during the Sabbatical year because of "*chayei nefesh*." From here, we can easily understand Rabbi Margoliot’s bracketed comment that we are talking about "an important principle in the laws governing the state."

Rabbi Yehoshua Leib Diskin adds an important point of explanation:

Even though we find that the Sages permitted plowing in the Sabbatical year because of *arnona* (see *Sanhedrin* 26a), it seems to me that they only said this where there was a general decree, for there may be among them people who are afraid they may die, and there is a real concern about danger to life. And they permitted this even for the rich, for if not, the poor would be embarrassed and not plow and come to mortal danger. But in the case of an individual, to ransom one person, we certainly do not take into account the danger to this individual that he may die in prison. (*Responsa Maharil Diskin*, *Kuntrus Acharon*, letter *samekh*)

Maharil Diskin returns to the fundamental distinction between a ruling for an individual and a ruling for a community. He assumes that rescuing a single individual from captivity is not considered *pikuach nefesh* (the issue of ransoming captives and its status as *pikuach nefesh* will be discussed in a future *shiur*).But he clarifies that Rabbi Yannai's ruling relates to a community, and that when we rule for the community – rich and poor alike – we must treat even future and remote concerns as *pikuach nefesh*.[[3]](#footnote-3)

**3. The position of the Rambam and the Chazon Ish**

According to many commentators, the position of *Tosafot* as we understood it is also the position of the Rambam. The Rambam mentions the allowance to plant because of *arnona*, though he understands "*arnona*" in a slightly different manner:

When the number of those who impose their desires by force increased and the gentile kings required the Jews to supply food for their soldiers, [the Sages] permitted [the people] to sow only those crops that are necessary for the servants of the king alone. (*Hilkhot Shemitta ve-Yovel* 1:11)

The Rambam does not understand "*arnona*" as a tax, like Rashi, but as military supplies for the king's troops. For our purposes, his words seem to imply that he agrees with *Tosafot* that this need sets aside even Torah prohibitions.

The Ra'avad argues:

Avraham said: We received a tradition regarding those who forcefully seize *arnona*, that the king takes a fifth of the produce of the land, and anyone who does not work it, they seize it from him*.* In places of which the exiles who returned from Babylonia did not take possession, where the Sabbatical year applied only by Rabbinic decree, they permitted working the land because of this coercion, but not in those places of which they took possession. (*Hasagat ha-Ra'avad*, ad loc.)

In addition to the fact that the Ra'avad interprets "*arnona*" in a manner that is more similar to the understanding of Rashi, he emphasizes – like Rashi and the *Yad Rama* – that the allowance applies only in a situation where the Sabbatical year prohibitions are reduced to the level of Rabbinic decree, not to Torah prohibitions. His words imply that in his understanding, the Rambam does not distinguish, but would apply the allowance of *arnona* even when the Sabbatical year is observed by Torah law. Indeed, the Radbaz (ad loc., s.v. *mi-she-rabu* [end]) clarifies that the Rambam agrees with *Tosafot* (according to him, in the wake of the *Yerushalmi*).

In our generation, the *Chazon Ish* held a similar position:

Even though the Sages permitted everything because of *arnona*, as is stated in *Sanhedrin* 26 – there, there was more coercion because of the government, and it is close to *pikuach nefesh* because of poverty and tax collection. (*Chazon Ish*, *Shevi'it* 18, no. 4)[[4]](#footnote-4)

The *Chazon Ish* does not mention *Tosafot* or the Rambam – only the Talmudic passage. But it is clear from his words that he understood the allowance as based on the fact that the matter is "close" to *pikuach nefesh*; it is not actual *pikuach nefesh*, but nevertheless Torah prohibitions are permitted, as argued by *Tosafot* and the Rambam.

**Those who are close to the government**

1. **Greek wisdom**

The Mishna at the end of tractate *Sota* (9:14) relates that during the war of Titus, the Sages decreed that a person should not teach his son "Greek [wisdom]." (The study of Greek wisdom is an extensive topic, and this is not the place to deal with it. For a more detailed discussion, see Harav Aharon Lichtenstein's [article](https://etzion.org.il/he/halakha/yoreh-deah/topics-yoreh-deah/studying-greek-wisdom) on the topic). The Gemara objects to the *mishna* based on Rabban Shimon ben Gamliel’s explicit testimony that many children studied Greek wisdom under the auspices of the house of the Nasi; it then answers:

The house of Rabban Gamliel is different, as they were close to the government. (*Sota* 49b)

That is to say, in principle, one should not learn Greek wisdom, but those who are "close to the government," who are required to understand the language and culture of the local government, must also learn Greek wisdom. Presumably, this is an instance of "they said and they said" (see *Eiruvin* 67b): The entire prohibition to study Greek wisdom is a Rabbinic decree, and the Sages placed a proviso on their prohibition, permitting it to those close to the government.

1. **Trimming the hair in "*komi*" style**

The Gemara continues by quoting a related *beraita*:

As it was taught: Trimming the hair in *komi* style [=in the front] is of the ways of the Amorites. They permitted Avtolos ben Reuven to trim his hair in the *komi* style, because he was close to the government. (*Sota* 49b)

The *komi* haircut was common among gentiles and the *beraita* states that it falls under the prohibition of "the ways of the Amorites." The *Rishonim*, however,disagree on the force of this prohibition.

*Tosafot* (on the parallel passage in *Bava Kama* 83a, s.v. *hitiru*) explain that the haircut is prohibited on the Rabbinic level, thus the allowance for those who are close to the government parallels the allowance to study Greek wisdom – an allowance of a Rabbinic prohibition in a case of great need.

In contrast, the Rambam rules:

We may not follow the statutes of the idolaters or resemble them in their [style] of dress, coiffure, or the like, as it is stated: "Do not follow the statutes of the nation [that I am driving out before you]" (*Vayikra* 20:23), and as it is stated: "Do not follow their statutes" (*Vayikra* 18:3), and as it is stated: "Be careful, lest you inquire after them" (*Devarim* 12:30). [All these verses] share a single theme: they warn us not to try to resemble [the gentiles]. Instead, the Jews should be separate from them and distinct in their dress and in their deeds, as they are in their ideals and character traits. In this context, it is stated: "I have separated you from the nations [to be Mine]" (*Vayikra* 20:26).

[Thus,] one may not wear a garment which is unique to them or grow the tresses of our hair as they do. We may not shave our heads from the sides and leave hair in the center as they do. This is called a *blorit*. We may not shave the hair on the front of our faces from ear to ear and leave a growth at the back of our heads as they do. (Rambam, *Hilkhot Avoda Zara* 11:1)

The Rambam explicitly states that a *komi* haircut is subject to the Torah prohibition of following ways of idolaters. Later, he explains the allowance granted to those who are close to the government:

A Jew who is close to the government and must sit before its kings, and would be embarrassed if he did not resemble them, is granted permission to wear clothes which resemble theirs and shave the hair on his face as they do. (ibid., *halakha* 3)

Rabbi Yosef Karo, in his *Kesef Mishneh*, has difficulty with this:

You might say: Seeing that our master writes that one is flogged for each one of these, what authority did the Sages have to permit a Torah prohibition for those close to the government? (*Kesef Mishneh*, ad loc.)

Indeed, if it is a Torah prohibition, it can only be permitted in a situation of *pikuach nefesh*. Can we say that closeness to the government defines the situation as real *pikuach nefesh*? The *Kesef Mishneh* argues that indeed it does:

It can be argued that they permitted this for the salvation of Israel, and that when Jews stand before kings, they save Israel. (*Kesef Mishneh*, ad loc.)

Throughout the years of exile, there was a vital need for intercessors of this type, who could assist the people of Israel in tempering the laws and decrees enacted against them. Indeed, it is reported in tractate *Me'ila* (17a) that Reuven ben Isterobeli once succeeded in canceling a harsh decree against Jewish observance thanks to his ability to approach the government with a *komi* haircut.

According to the *Kesef Mishneh*, this reality should be seen as a situation of *pikuach nefesh*, which permits even Torah prohibitions. Here too, we are dealing with indirect and future *pikuach nefesh*: the assistance of that intercessor was not needed for a specific event in the present, when he violates a Torah prohibition with his *komi* haircut; rather, the help will be required one day in the future – and yet, this is considered a situation of *pikuach nefesh*.

The *Kesef Mishneh* also proposes another explanation, according to which "it was handed over to the Sages"[[5]](#footnote-5) to determine what is considered “the statutes of the idolaters,” thus they have the authority to determine that the haircuts of those close to the government do not fall into that category. In such a situation, their intention is not to imitate their ways or to be like them, but to serve the national interests of the Jewish people. According to this answer, there is no need for an allowance on the grounds of *pikuach nefesh*, for such haircuts are not prohibited at all.[[6]](#footnote-6)

Rabbi Yosef Karo repeats both understandings of the Rambam’s position in his *Beit Yosef*, but in the *Shulchan Arukh* (*Yoreh De'a* 178:2), he mentions the allowance for those close to the government without deciding between the two explanations. The *Taz* (ibid., no. 5) rules in accordance with the second explanation, that there is no sweeping allowance of Torah prohibitions indicated here, but only prohibitions of this type, as the Sages were given authority to determine what is considered “statutes of the idolaters.” This is also implied by the *Darkhei Teshuva* (ibid., no. 20), who notes various examples of allowances that were granted across the generations for those close to the government, and emphasizes that they permitted Rabbinic prohibitions, based on the principle of "they said and they said," but not Torah prohibitions. (For example, they permitted those close to the government to shave during the *Omer* period, but did not permit shaving with a razor).

In summation, it seems that the *Kesef Mishneh's* first explanation definitely meets the definition of "remnants of the laws of the monarchy," and we find in it a considerable expansion of the definition of *pikuach nefesh*, but the *Acharonim* maintain that this is not the explanation that has been accepted on the normative plane.

**Conclusion: "fear of the government"**

As noted above, the two examples addressedin this *shiur* are connected to Jewish life in the exile and the obligation to maintain a working relationship with the non-Jewish government.

Indeed, the "government," which includes on the one hand "peace of the government," and on the other hand "fear of the government," is a factor in *halakha* in other contexts as well. Thus, for example, in the famous story of Kamtza and Bar Kamtza (*Gittin* 55b-56a) that led to the destruction of the Temple, Rabbi Zekharya ben Avkulos decided against sacrificing a blemished offering sent by the Roman authorities, even though he was well aware that this would harm the "peace of the government." It seems that *Chazal* criticized this decision. Similarly, the *Magen Avraham*, while discussing a completely different subject, rules:

It is slightly implied in *Gittin* regarding the Bar Kamtza affair that it is permitted to transgress a prohibition because of fear of the government. See there. (*Magen Avraham* 656, no. 8)

The *Magen Avraham* maintains that we should not repeat the mistake of Rabbi Zekharya ben Avkulos, whose “modesty destroyed our house and burned our sanctuary" (*Gittin* 56a),[[7]](#footnote-7) and wherever there is fear of the government, it is permitted to transgress a prohibition, including a Torah prohibition.[[8]](#footnote-8)

The *Mishna Berura* cites this comment of the *Magen Avraham*, and adds (following on the *Peri Megadim*):

And the *Acharonim* are in doubt about this, for there it was a situation of *pikuach nefesh*. (*Mishna Berura* 656, no. 9)

What this means is that sometimes fear of the government is perceived as a situation of *pikuach nefesh* for all purposes, and in such cases it is certainly permissible to transgress any prohibition, with the exception of three severe prohibitions (and unfortunately, throughout the generations, the Jewish people were put to the test in this realm of self-sacrifice and "be killed and not transgress," despite fear of the government). But much thought and thorough examination are required to determine whether every "incident" involving the authorities reaches the level of *pikuach nefesh.* It is quite possible that this is also the position of the *Magen Avraham*: Not every "fear of the government" permits Torah prohibitions, but the parameters of *pikuach nefesh* in this area are expansive definitions, as we saw with respect to *arnona* and a *komi* haircut.

(Translated by David Strauss)

1. As the condition that "the majority of its residents are in it [=the land of Israel]" is not fulfilled; see *Arakhin* 32b, *Gittin* 36a. [↑](#footnote-ref-1)
2. Rabbi Reuven Margoliot was a scholar, researcher, and author of many books, recipient of the Israel Prize and the Mosad ha-Rav Kook Prize for Torah Literature. He also served for decades as the chief librarian of the Rambam Library in Tel Aviv. [↑](#footnote-ref-2)
3. Rabbi Aharon Roth, a contemporary rabbi in Bnei Brak, writes that he heard from Rabbi Yitzchak Zilberstein that these words of Rabbi Diskin are an important source for the allowance to operate first aid and rescue stations in public places even on Shabbat, and he explains: "Since a large number of people are in danger, there is reason for concern" (Rabbi Aharon Roth, "*Konenut be-Tachanot Ezra Rishona be-Shabbat*," in: *Emek Halakha* – *Asya*, vol. 1; the article is included in the article database of the Responsa Project). [↑](#footnote-ref-3)
4. The *Chazon Ish* emphasizes there that when it comes to actual *pikuach nefesh*, that is, people are literally starving because they have no food to eat during the Sabbatical year, it is obviously permitted to do any kind of work. It is true that the Toran promises: "Then I will command My blessing upon you in the sixth year" (*Vayikra* 25:21), but we do not presume to understand God's calculations – why one person merits His blessing, and another person does not. Therefore, in practice, if there is nothing to eat, it is surely permitted to work the land during the Sabbatical year.

   The first farmers' settlements in the Land of Israel did indeed encounter difficulties that sometimes reached the level of *pikuach nefesh*, and the halakhic authorities who dealt with the issue sometimes discussed the position of *Tosafot* and the allowance to plant because of *arnona.* See, for example, *Responsa Meishiv Davar* of the Netziv, part II, no. 46 – a well-known responsum in which he expresses his opposition to selling the land to non-Jews during the Sabbatical year. [↑](#footnote-ref-4)
5. The halakhic principle, "it was handed over to the Sages," is a broad and extensive principle. Its source is in the Babylonian Talmud (*Chagiga* 18a) in relation to performing labors on the intermediate days of the festivals, but it was greatly expanded by the *Rishonim* and the *Acharonim*. Regarding this matter, see the comprehensive article of Rabbi Asher Weis from the year 5777, available [here](https://minchasasher.com/he/shiur/%d7%a4%d7%a8%d7%a9%d7%94-%d7%a9%d7%99%d7%a2%d7%95%d7%a8%d7%99%d7%9d/%d7%a0%d7%9e%d7%a1%d7%a8-%d7%94%d7%93%d7%91%d7%a8-%d7%9c%d7%97%d7%9b%d7%9e%d7%99%d7%9d-%d7%aa%d7%a9%d7%a2%d7%96/). [↑](#footnote-ref-5)
6. In a similar way, the *Bach* explains (*Yoreh De'a* 178, 7) that a person who cuts his hair or dresses in such a manner for some pragmatic need, and not out of a desire to resemble non-Jews, does not violate a Torah prohibition. The *Bach* emphasizes that this answer is different from the answer of the *Beit Yosef*, but they seem to go in the same direction. For a detailed discussion, see *Responsa Seridei Esh*, part II, no. 39. [↑](#footnote-ref-6)
7. See also Rabbi Zvi H. Chajes on the passage (*Gittin* 56a, s.v. *anvatanuto*), who explains the passage in accordance with the *Magen Avraham*'s comment. [↑](#footnote-ref-7)
8. A specific example of such an allowance is found already in a ruling of the Rema (*Yoreh De'a* 345:2, based on Mahari Weil): "One who stole or robbed, as a result of which he was executed by government law, is to be mourned for, *if no danger will result* through him on account of the fear of the government, and he is not designated a suicide." That is to say, the mitzvaof mourning, which according to many *Rishonim* is by Torah law (at least on the first day), is set aside when there is "fear of the government," which will not look favorably on the fact that people are mourning the death of a person the authorities executed for a crime. Of course, this ruling of the Rema deals with a specific *halakha*, whereas the *Magen Avraham* formulates a general principle. [↑](#footnote-ref-8)