YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**PIKUACH NEFESH**

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**Shiur 27: *Pikuach Nefesh* and Public Funds**

**Introduction**

We have learned in previous *shiurim* that the term "communal *pikuach nefesh*" includes broad allowances that are intended to ensure public safety and security, even in situations that do not involve an immediate danger to life in the sense of "a sick person before us" or "a danger before us."

This *shiur* will discuss examples of this principle taken from the economic realm. At first glance, it would seem that the safeguarding of public funds is indeed an essential need, but that it would be difficult to define it as a matter of *pikuach nefesh* that permits violation of Torah prohibitions.

Of course, there is no disputing that poverty and economic deprivation can be devastating. We see in the Torah that the great blessings for obeying God’s word are abundance and economic wealth, while the disasters in the Torah passage of rebuke relate to economic scarcity and hunger. Indeed, the Sages established that a poor person is considered as if he were dead (*Yevamot* 64b), and warned that extreme poverty causes a person to act against the will of his Creator (*Eiruvin* 41b). And yet, the idea that economic deprivation can be defined as a situation of *pikuach nefesh*, at a level that permits Torah prohibitions, is a novel one.

**Redeeming captives for more than their value**

The basis for the discussion regarding the halakhic status of public funds in our context is found in a Talmudic passage dealing with the ransoming of captives.

We learn in a *mishna*:

Captives should not be redeemed for more than their value, because of *tikkun olam* (the betterment of the world). (*Gittin* 45a)

Unfortunately, the issue of ransoming captives has been discussed as a practical issue many times over the generations. The State of Israel has often had to rescue civilians and soldiers from captivity, and sometimes even the remains of soldiers who fell in the line of duty and whose bodies were kidnapped by the enemy.[[1]](#footnote-1) Later in this series, I will devote a separate discussion to the national, political, and military aspects of this issue. In this *shiur*, we will focus on one principle that finds expression in the Talmudic passage.

The *Rishonim* disagree about whether the prohibition against redeeming captives at an exorbitant price applies even when the captives' lives are in immediate danger. The *Tosafot* (*Gittin* 58a, s.v. *kol mamon*) cite an opinion according to which a Rabbinic ordinance instituted "for the betterment of the world" does not set aside *pikuach nefesh*, and therefore, if the captive's life is in danger, it is obligatory to redeem him for all the money in the world. The Ramban (*Gittin* 45a, s.v. *mishum duchka*) also mentions this opinion, but rejects it, deeming the approach implausible.

There is broad disagreement among the *Acharonim* too as to how the *halakha* should be decided regarding this issue. The *Pitchei Teshuva* (*Yoreh De'a* 252, no. 4) cites various opinions, but does not decide between them.

**The *Keneset Yechezkel*: Financial pressure on the community does not set aside *pikuach nefesh***

Among the various opinions, the *Pitchei Teshuva* cites an argument put forward by Rabbi Yechezkel Katznelfogen,[[2]](#footnote-2) in *Responsa Keneset Yechezkel*,that the roots of this disagreement are in the two reasons the Gemara suggests for the ordinance:

A question was raised: This [ordinance] for the betterment of the world – is it due to the [financial] pressure on the community? Or perhaps it is so that they will not seize and bring additional [captives]? (*Gittin* 45a)

According to the first option, the ordinance not to redeem captives at an exorbitant price was intended to safeguard the financial strength of the Jewish community, and to avoid an excessive burden being placed on the public. As Rashi puts it: "We must not press the community and bring it to poverty."

According to the second option, the ordinance is not related to the economic dimension, but to the more serious concern about repeated kidnappings. The Gemara sees a practical difference between the two options in a case where a private citizen is prepared to pay the full amount of the ransom demand: According to the first possibility, he is permitted to do so, because he does not put a strain on the public purse; according to the second possibility, he is not permitted, because his payment of the ransom is liable to encourage future kidnappings.

The Rambam (*Hilkhot Matanot Aniyim* 8:12) and the Meiri (*Gittin* 45a, s.v. *kevar bei'arnu she-ein*) explicitly rule in accordance with the second possibility, that captives should not be ransomed at an excessive price because of the fear of future kidnappings. In contrast, the Rosh in his *Pesakim* (*Gittin* 4, 44) and the Ran (on the Rif, *Gittin* 23a and *Ketubot* 19a; a detailed discussion of his position is found in *Responsa Chaim Sha'al*, I, no. 35) write that there is no unequivocal ruling on this matter. Indeed, in accordance with the Gemara's "practical difference," some leading halakhic authorities, such as the Maharshal (*Yam shel Shlomo­*, *Gittin* 4, 66) and the *Shakh* (*Yoreh De'a* 252, no. 4), permit those who are wealthy to pay the kidnappers the full amount that they are demanding, as long as the burden does not fall on the public purse.

As stated, the author of the *Keneset Yechezkel* maintains that the disagreement about ransoming captives at an exorbitant price when the captives' lives are in danger depends on these two possibilities in the Gemara:

The argument of danger to life applies if the reason [for the ordinance] is [financial] pressure on the community, for in a situation of danger to life, all of Israel are obligated to give everything they own in order to uphold "You shall not stand idly by the blood of your neighbor" (*Vayikra* 19:16). But according to the reason “so they will not seize additional captives,” the logic is the opposite: if we redeem a captive when his life is in danger, they will threaten to kill captives so that we will redeem them at a higher price. (*Responsa Keneset Yechezkel*, *Yoreh De'a*, no. 38)

That is to say, refraining from redeeming captives at an exorbitant price does indeed put the captives' lives in immediate danger – but according to the second possibility in the Gemara, it is permissible because from a communal and systemic perspective, leaving these individuals in danger saves the entire community from future danger. If, God forbid, the kidnapping phenomenon expands, more people will be in mortal danger.

But if we accept the first possibility in the Talmudic passage, that the ordinance was made in order to safeguard the public purse, it is unthinkable that such an ordinance should set aside *pikuach nefesh*, and therefore the captives must be rescued at any cost. In other words, a financial burden on the public – no matter how heavy – can never outweigh *pikuach nefesh.* Rabbi Ovadya Yosef cites additional opinions that reach this conclusion:

And so ruled Rabbi Yehoshua Tzuntzin in *Responsa Nachala li-Yehoshua* (no. 5)… that we do not take into account the reason of financial pressure on the community in a situation of possible loss of life. Without a doubt this is what all the *Rishonim* relied upon to redeem captives at more than their value. (*Responsa Yabi'a Omer*, *Choshen Mishpat*, vol. X, no. 6)

**The Tzemach Tzedek and the Chatam Sofer: Financial pressure on the community is considered a situation of *pikuach nefesh***

However, two major authorities in recent generations did not accept the position of the *Keneset Yechezkel*.

The following question is discussed by Rabbi Menachem Mendel Krochmal in *Responsa Tzemach Tzedekh ha-Kadmon*[[3]](#footnote-3):Jews traditionally made painstaking efforts to serve fish at the Shabbat table. It once happened that due to a fish shortage, gentile fish sellers took advantage of the Jews' devotion to the mitzvaof delighting in Shabbat, and steeply raised the price of fish. The *Tzemach Tzedek* was asked whether it would be possible to make an ordinance not to eat fish on Shabbat, in order to prevent the price-gouging. He replied in the affirmative and clarified that despite the importance of delighting in Shabbat, there is room for leniency about it in order to combat unjust price-gouging.[[4]](#footnote-4) The author's son added a note in the margin of the responsum:

This can also be compared to what is stated in the Gemara (*Gittin* 45) that captives are not to be redeemed for more than their value, for the betterment of the world. And the conclusion is [that this ordinance] is due to the financial pressure on the community, and according to one answer in *Tosafot* (*Gittin* 58), this applies even when there is danger to life. (*Responsa Tzemach Tzedek* [*ha-Kadmon*], no. 28)

It is explicitly stated here that the consideration of "pressure on the community" is relevant even according to those opinions that maintain that captives should not be redeemed for more than their value even when their lives are in danger. That is to say, concern about the public purse sets aside considerations of *pikuach nefesh.*

A few generations later, the *Chatam Sofer,* who was several decades younger than the author of the *Keneset Yechezkel*, wrote about this issue even more explicitly.He discusses at length whether there are situations in which it is permitted to pay kidnappers an exorbitant price, and at the end of his responsum, he raises the question that troubled the *Keneset Yisrael*: If the captive's life is in real danger, how can one violate the Torah prohibition of "You shall not stand idly by the blood of your neighbor," and not secure the captive's release only because of "pressure on the community" and economic damage?! As may be recalled, due to this difficulty, the *Keneset Yisrael* argued that the entire question arises only according to the possibility that the ordinance was made so as not to encourage future kidnappings. The *Chatam Sofer,* on the other hand, maintains that financial pressure on the community can itself be considered a situation of *pikuach nefesh*:

But as for a pressured community, and in particular at a time when the nations of the world are treating "the haters of Israel"[[5]](#footnote-5) with severity, [financial] pressure on the community is considered a situation of *pikuach nefesh*,as the Rosh writes in the first chapter of *Bava Batra* and as is written in *Shulchan Arukh Yoreh De'a* 251, at the end; so it seems to me, [that] therefore they were concerned about [financial] pressure.(*Responsa Chatam Sofer*, 5, 177)

The statement that "pressure on the community" is considered a situation of *pikuach nefesh* is a novel and far-reaching statement. The *Chatam Sofer* seeks to base it on the Rosh in *Bava Batra* (1, 22), which deals with how to divide the tax burden among the residents of a city, though he does not explicitly say there that financial pressure is considered a situation of *pikuach nefesh*. The *Chatam Sofer* also cites as basis a ruling of the *Shulchan Arukh* in the laws of charity:

[The community] may divert money, even that which had been allocated for Torah study, for the payment of the annual per-capita tax of thirty *peshitim* paid to the [gentile] commander, because it is a matter of saving lives; for if they will not come to terms with him now, there are many poor people who do not have the wherewithal to pay, and who will be beaten and stripped naked. (*Shulchan Arukh Yoreh De'a* 251:14)

This ruling is close to the words of the *Tosafot* in *Sanhedrin* that we saw in the previous *shiur*: When there is concern that failure to pay the king's tax will lead to abuse and injury, especially to the weaker classes, this should be considered a situation of *pikuach nefesh.* Therefore, although it is generally forbidden in any way to use charity funds intended to finance Torah study for other needs, in this case it is permissible to use those funds to make payments owed to the king, and to consider this as an instance of saving lives.

Thus, the *Chatam Sofer* explicitly writes that financial pressure on the community is considered a situation of *pikuach nefesh*. However, if we interpret his words in the light of the *Shulchan Arukh's* ruling that he cites, we must conclude that it is not the economic damage to the public purse that is defined as *pikuach nefesh*, but rather the potential physical harm to weaker sectors of the population, which is liable to reach the level of danger to life.

It should be noted, however, that Rabbi Shmuel Wosner argues that the *Chatam Sofer* was writing in light of the reality of his day, when the financial strength of the Jewish community was vital, and in its absence the community could certainly have reached a situation of *pikuach nefesh* – but in our time, the reality is different:

From his explanation, we further learn that in the reality of our time, the idea of financial pressure on the community leading to danger and *pikuach nefesh* does not apply. (*Responsa Shevet ha*-*Levi*, vol. 5, no. 174)[[6]](#footnote-6)

According to Rabbi Wosner, in today's reality, despite all the importance of economic strength and resilience, financial pressure should not be considered a matter of *pikuach nefesh.*

As mentioned above, the goal in this lesson is not to exhaust the discussion regarding the redemption of captives. But for our purposes, we have learned that, at least according to the son of the *Tzemach Tzedek* as well as the *Chatam Sofer*, the passage dealing with the ransoming of captives indicates that at times, significant financial pressure is liable to reach the level of *pikuach nefesh.*

**The Rema's ruling: Public funds as *pikuach nefesh***

This idea is found even more explicitly in a ruling of the Rema regarding the laws of interest. The *Shulchan Arukh* rules that the prohibition of interest, like every other Torah prohibition, is set aside in a case of *pikuach nefesh.* Therefore, if a person needs money in order to save a life, he is permitted to take a loan at interest. The Rema comments that there are those who tried to extend this allowance to all communal needs:

It is prohibited to borrow at interest for the sake of the community, even if it is not fixed interest, and all the more so if it is fixed interest. This is not like those who are accustomed to be lenient in certain places to lend and borrow at fixed interest for the sake of the community. They have nothing to rely on, unless we say that communal needs are considered *pikuach nefesh* or for the sake of a *mitzva*… But one should not rely on this, except for a great need. (*Rema*, *Yoreh De'a* 160:22)

Most of the Rema's strictures on the *Shulchan Arukh* are based on the books that record the traditions of the leading authorities of Ashkenaz. However, this one concludes with the words: "Most of the stricture consists of his own words," indicating that we are dealing with a novel ruling of the Rema himself. The Rema rules that there is no allowance to lend at interest in order to enrich the community's coffers, though he notes that there are places where this is common practice, based on the understanding that communal funds fall into the category of *pikuach nefesh*: the need to maintain a community's financial strength is liable to reach the level of *pikuach nefesh*, which permits the transgression of Torah prohibitions. On the one hand, it is evident that the Rema strongly disagrees with this allowance, but on the other hand, he concludes that one may rely on it "for a great need." What this means is that the need to maintain financial strength may be considered a situation of *pikuach nefesh* (although only in extreme cases).

It is important to note that when there is a question of a community borrowing money at interest, there may be other grounds for allowance – such as for the sake of a *mitzva*, or the fact that there is no specific borrower who violates the prohibition.[[7]](#footnote-7) Nevertheless, the main consideration that the Rema introduces here is seeing economic strength as a matter of real *pikuach nefesh* even when there is no "sick person before us" or "danger before us." The welfare of the community and its economic well-being greatly expands the boundaries of *pikuach nefesh.*

**Rabbi Yosef Engel: Public funds and a hot metal ember**

Rabbi Yosef Engel elaborated on this point in his *Responsa Ben Porat.* He discusses at length a dispute that arose regarding the distribution of charity funds between two "*kollels*," i.e., communities, which had collected charity for the poor. In the course of his discussion, he points out that while there may seem to be room to offer a compromise between the parties, he refuses to do so on the grounds that if the claim of the first *kollel* – which collected the charity specifically for the poor of its community – is justified, then any compromise on the issue is considered robbing the poor. According to Rabbi Yosef Engel, this kind of robbery is particularly serious:

He really does not have the power to enter into any kind of compromise, because it never occurred to the donors to give of the money to the poor of another community, and every *peruta* that is unjustly taken from the poor is outright robbery. For even regarding a rich person, they said in *Bava Kama* 119: "Whoever robs his fellow-man of the value of a *peruta* is considered as if he took his life," and all the more so robbing the community.

I have heard for many years, in the name of a certain *tzaddik*, that public funds are considered like actual lives. Therefore, in the section [of *Shema*], "*Ve-haya im shamo'a*," it does not say: "*u-ve-khol me'odkhem*" – "and with all your might." For regarding "*u-ve-khol me'odekha*" [in the singular, in the section of "*Ve-ahavta*"], *Chazal* said in chapter *Ha-Ro'eh*: "with all your money." And therefore only in the section of *Ve-ahavta*, which is formulated in the singular, was it necessary to say "and with all your money." This is not the case in the section of "*Ve-haya im shamo'a*," which is formulated in the plural. There it was not necessary to be said, because public funds are like lives, and it is already included in "*u-ve-khol nafshekhem*." This is what I heard. (*Responsa Ben Porat*, II, no. 10)

This precise reading of the passages of *Shema* is interesting, but it is difficult to establish *halakha* based on this type of analysis. Rabbi Yosef Engel continues with support for his position, and although he does not cite the aforementioned ruling of the Rema, he presents two other halakhic sources.

One source is a ruling of the *Shulchan Arukh* (*Choshen Mishpat* 388:12) regarding the laws of an informer, where the *Shulchan Arukh* establishes that one who hands over public funds to the non-Jewish authorities, thereby causing the community harm and grief, should be treated more harshly than one who causes pain to a single individual. Admittedly, it is not stated there that the situation is a matter of *pikuach nefesh*, but the ruling certainly demonstrates a severe attitude regarding public funds.

The second source cited by Rabbi Yosef Engel is already well known to us:

See the Ran in *Shabbat*, chapter *Kira*, regarding extinguishing a metal ember in the public domain so that it not cause injury to the community, what is written there about the *Halakhot Gedolot*… that harm to the community is considered like danger to life. Even though it is dealing there with bodily injury, that their bodies will be injured by the hot metal, nevertheless, since it does not involve a danger, it is like a monetary matter… Thus we see that something that does involve a danger is called monetary. (*Responsa Ben Porat*, ibid.)

Here we have a novel interpretation regarding the matter of a hot metal ember in the public domain: We are dealing here not with danger to life, but with monetary damage, that will require the healing and rehabilitation of anyone injured by the fiery metal. According to Rabbi Yosef Engel, it was the financial pressure on the community that brought the *Halakhot Gedolot* to define the situation as one of *pikuach nefesh.*

This interpretation offers another example of the case of a metal ember allowing us to greatly expand the boundaries of *pikuach nefesh*: it provides a basis to define economic pressure, or detriment regarding public funds, as real *pikuach nefesh*.

**Allocation of national resources**

Before we conclude, it should be mentioned that the discussions we have dealt with in this *shiur* are relevant to one of the most complex and extensive questions in the realm of *hilkhot medina*,the laws governing the state, namely: what is the correct way to distribute state resources with regard to the laws of *pikuach nefesh*?This question arises on two planes. The first plane relates to the laws of *pikuach nefesh* themselves: Is it correct to allocate resources for medical research or preventive medicine, when those funds could instead have been directed towards saving the lives of patients whose lives are in danger? Rabbi Shabtai Rappaport elaborated on this question in a pair of articles, "*Kedimiyot be-Hakhtza'at Mish'avim Tziburiyim li-Refu'a*" (in: *Sefer Asya*, vol. 7), and the matter was even discussed at length in *Encyclopedia Hilkhatit Refu'it*, vol. 4, s.v. *mish'avim mugbalim*.

The second and even more extensive plane is whether it is correct to allocate resources to needs that are not life-saving, such as budgets for the economy, education, and culture, when these budgets could have been used to improve security forces, internal security, or medical services.

Rabbi Shlomo Dichovsky conducted an extensive analysis of this question, including the issues that we have been discussing– a hot metal ember, a spring belonging to the residents of a city, and the redemption of captives for more than their value. All of them together led him to the following conclusion:

From the sources that will be cited below, it will be made clear that communal needs – not necessarily matters of real *pikuach nefesh* – are considered *pikuach nefesh*, and we must relate to them as such. Therefore, communal needs, such as the construction of roads to prevent accidents, should be viewed as a kind of *pikuach nefesh*, comparable in value to the saving of individuals. In the same way, "financial pressure on the community" – real pressure for public needs – should be seen as a halakhic factor in the allocation of resources for medical needs. (*Lev Shome'a li-Shlomo*, vol. 2 [available [here](https://www.gov.il/BlobFolder/legalinfo/levshomea2/he/LevShomea2.pdf), no. 39, letter 10; p. 124)

The example offered by Rabbi Dichovsky is that of road construction, which clearly involves future *pikuach nefesh* through the prevention of road accidents. In light of what has been said in this *shiur*, there may be room to expand the canvas even more. Rabbi Aryeh Katz, one of the rabbis of the Puah Institute, cites the above-mentioned ruling of the Rema regarding public funds as a matter of *pikuach nefesh*, as well as the words of the *Tosafot* in *Sanhedrin* (26a) regarding planting during the Sabbatical year on account of the *arnona* tax, and concludes:

Funds can also be diverted to other channels in order to develop the economy of the State of Israel, but these matters must be considered with extreme caution so that a situation does not arise in which money is allocated for purposes that are not necessary when budgets are still lacking to save lives. I am not sure that an unequivocal answer can be given, how exactly to balance things, but the questions must be brought before the leading halakhic authorities when they come to discuss budget planning in light of the *halakha*. ("*Shikulei Pikuach Nefesh Mul Shikulim Chevratiyim be-Tikhnun Taktziv*," *Tzohar* 25, Tammuz 5780 [available [here](https://ethics.tzohar.org.il/%D7%A9%D7%99%D7%A7%D7%95%D7%9C%D7%99-%D7%A4%D7%99%D7%A7%D7%95%D7%97-%D7%A0%D7%A4%D7%A9-%D7%91%D7%AA%D7%9B%D7%A0%D7%95%D7%9F-%D7%AA%D7%A7%D7%A6%D7%99%D7%91-%D7%A2%D7%9C-%D7%A4%D7%99-%D7%94%D7%94%D7%9C/)])

Indeed, the question is quite extensive, and requires a much more extensive discussion, but that will come at another time.

**Conclusion**

This is the seventh *shiur* dealing with matters of communal *pikuach nefesh*. The examples which we have dealt with up until now are connected to the municipal world: hazards and obstacles in the public domain, a spring belonging to the people of a city, fear of non-Jewish authorities, and monetary needs. We have not yet entered the primary realm of communal *pikuach nefesh* – matters of security, army, and war. We will address these issues in the coming *shiurim*.

(Translated by David Strauss)

1. *Editor’s note*: This *shiur* was originally written in Hebrew in 2022. The extra resonance of the topic now, in the wake of the October 7th, 2023 attack, is a devastating reminder that indeed, redemption of captives and other issues of communal *pikuach nefesh* have raised practical questions too many times in our history. May our study of the halakhicsources surrounding the efforts of the State of Israel and the IDF serve as a merit for their success. [↑](#footnote-ref-1)
2. Rabbi Yechezkel Katznelfogen (sometimes incorrectly spelled Katznelbogen) was one of the leading Torah authorities in Ashkenaz in the first half of the eighteenth century. [↑](#footnote-ref-2)
3. Rabbi Menachem Mendel Krochmal, born in 1600, lived and was active in what is today Poland and the Czech Republic. He was a student of the *Bach*, a friend of the *Taz*, and one of the greatest Torah scholars of his generation. His work is referred to as *Tzemach Tzedek ha-Kadmon*, to distinguish it from *Responsa Tzemach Tzedek* of the third *Admor* of Chabad, Rabbi Menachem Mendel Schneerson, who lived almost two hundred years after the first *Tzemach Tzedek*. [↑](#footnote-ref-3)
4. The *Tzemach Tzedek* cites examples from *Chazal* of ordinances introduced by the *Tannaim* and *Amoraim* in order to balance market prices, "even in matters of Torah law." R. Shimon ben Gamliel did this to balance the prices of birds offered in the Temple (*Keritot* 8a), and Shmuel did it to balance the price of new pots for Pesach (*Pesachim* 30a) and the price of myrtle branches on Sukkot (*Sukka* 34b). [↑](#footnote-ref-4)
5. Editor’s note: a euphemism for Israel itself. [↑](#footnote-ref-5)
6. The discussion there deals with a painful and disturbing question: Unfortunately, we all hear from time to time about a person whose life is in danger and who needs very costly surgery or treatment. The usual practice is to conduct a fundraising campaign, and ask for the public's help. Rabbi Wosner was asked the following: Why don't we say that anyone who can raise the amount required to save the patient – by selling his car, mortgaging his apartment, etc. – is obligated to do so? Do we not rule, in accordance with the *Keneset Yechezkel*,that in a situation of *pikuach nefesh* it is obligatory to spend all the money in the world?!

   The question in this case is not a matter of "pressure on the community" to save the life of a particular individual, but rather pressure on the individual to save the life of another person. In practice, Rabbi Wosner establishes that were there only one person who could help, he would indeed be obligated to sell all his possessions in order to save the life of the other person. However, the reality is usually that the appeal for help is sent to the entire public, not to a particular person; in such a situation, it is more correct that everyone should contribute a little of his own and that we not obligate one person to spend all his money to save the patient.

   For more information on this matter, see Rabbi Yitzchak Zilberstein's responsum: "*Shikulim Kaspiyim be-Hatzalat Chayei Adam*" (*Sefer Asya*, vol. IX). Rabbi Zilberstein deals there at length with the principle of "your life comes first," and questions whether there are situations in which even a person's money takes precedence over the life of another person. In his usual manner, he cites various and varied sources. [↑](#footnote-ref-6)
7. Indeed, this issue regarding a community lending money at interest is an important source in the discussion among *poskim* regarding interest with respect to a limited company; see, for example, *Responsa Chelkat Yaakov* (*Yoreh De'a* 65), regarding the relationship between the Rema's ruling and the general discussion concerning the status of a limited company. [↑](#footnote-ref-7)