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**PIKUACH NEFESH**

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**Shiur 30: A Border Town – The Source of the Law**

**Introduction**

The previous two *shiurim* discussed the challenge posed by the paucity of sources for *halakhot* governing military and security matters. Because of this challenge, when *poskim* locate "remnants of the laws of the monarchy" (as they were called by Rav Kook; *Responsa* *Mishpat Kohen*, no. 143) in the words of *Chazal*, they pounce on them “like one who finds great treasure”[[1]](#footnote-1) and set them, like a crowning attainment, as a firm foundation of the *halakha*.

This is the case with the relatively short Talmudic passage in tractate *Eiruvin* about a "border town." The *Rishonim* did not discuss this passage at length, but in the words of the *Acharonim*, and especially among the *poskim* of the last generation, it has become one of the fundamental sources for the laws governing military and security matters.

In this *shiur* we will address the Talmudic passage itself, and in the coming *shiurim* we will examine the varied applications of the *halakha* that emerges from it.

**Matters of Hay and Straw in the Case of a Border Town**

The Mishna in *Eiruvin* (4:3; 44b) discusses the case of one who went out of his Shabbat boundary (*techum* *Shabbat)* for the purpose of saving lives, and teaches that he is permitted to walk another two thousand cubits in every direction. This stands in contrast to someone who went past his Shabbat boundary *without* halakhic permission, who is forbidden, as soon as he crosses that boundary, to walk more than four cubits. From this, a discussion develops in the Gemara regarding the limits of what is permitted to those who go out to save lives, with an emphasis on those who go to war. With God's help, we will relate to the issue of returning from a life-saving mission later in the series, but for now we will focus on the following discussion found in the Gemara there:

Rav Yehuda said in the name of Rav: If gentiles besieged Jewish towns, [the Jews] are not permitted to go out against them with their weapons or to desecrate Shabbat [in any other way on their account.]

So it was also taught [in a *baraita*]: If gentiles besieged etc. About which circumstances was this said? Where they came with regard to monetary matters – but if they came with regard to life-and-death matters, they are permitted to go out against them with their weapons and to desecrate Shabbat on their account. (*Eiruvin* 45a)

The distinction brought in the *baraita* is clear and simple: When there is concern about danger to life, it is permitted to desecrate Shabbat. There is no doubt that if the gentiles who are besieging the town came, God forbid, to kill, this is a situation of "a sick person before us" and "a danger before us." However, when it is clear that the gentiles came only to steal money, there is no allowance to desecrate Shabbat, for as we have already learned in the past ([*shiur* 27](https://www.etzion.org.il/en/halakha/studies-halakha/in-relation-to-public-funds)), the fundamental law is that Shabbat may not be desecrated in order to rescue money.

The *baraita* continues with a novel ruling:

In the case of a border town, even if they did not come with regard to life-and-death matters, but with regard to matters of hay and straw, they may go out against them with their weapons and desecrate Shabbat on their account. (*Eiruvin* 45a)

"Matters of hay and straw" are minor financial matters. That is to say, not only do the gentiles not intend to kill anybody, but even the theft for whose sake they besieged the city relates to items of relatively little value, such as hay and straw. In this case, even though the established law is that Shabbat may not be desecrated for monetary matters, the *baraita* permits doing whatever is necessary to stop the thieves – because it is a border town.

The obvious question is why the Sages permitted desecration of Shabbat to prevent the theft of hay and straw. The *Rishonim* disagree on this issue, as will be shown below.

**The Ra’avan – *Pikuach Nefesh* in the Present**

The Ra’avan, Rabbi Eliezer ben Natan, one of the *Rishonim* of Ashkenaz in the generation after Rashi, dealt with the parameters of what is permitted and prohibited regarding extinguishing a fire on Shabbat. In the course of his discussion, he cites our passage and explains:

And it was taught: In the case of a border town, even if they only came with regard to monetary matters, they may go out against them with their weapons on Shabbat. For since they are close to the border, if the Jews stand up [to protect] their money, they will kill them, and not fear to do so, since they are close to other gentiles. (Ra’avan, *Shabbat* 363)

The words of the Ra’avan are reminiscent of the law of one who is found breaking into a house (*ha-ba ba-machteret*). The Gemara in *Sanhedrin* explains that the Torah permits killing a burglar who was found breaking into a house because his attempted theft will likely lead to attempted homicide. According to the Ra’avan, this is also the concern in the case of a border town: Even though the gentiles' initial intention is to come for a small amount of money, since we are dealing with a border town, and the gentiles feel safe and protected because they can easily escape over the border, there is a real concern that the case of theft will turn into one of murder. If there is indeed a fear of murder, it is a situation of *pikuach nefesh*, for which it is permitted to desecrate Shabbat.

It is important to note that even according to the Ra’avan, there is no **certainty** that the theft will develop into homicide. However, if that does happen, then the danger is "here and now" – the present theft, on this Shabbat itself, could deteriorate and lead to a situation of *pikuach nefesh.*

The Ra’avan’s words are cited by the *Terumat ha-Deshen* (*Pesakim u-Khetavim*, 156) and the *Hagahot Oshri* (*Eiruvin* 4, 6), and were codified as law in the *Shulchan Arukh*:

There is one who says that in our times, even if they come regarding money, we may desecrate Shabbat, because if we do not allow them to plunder the money, they will kill, and so it becomes a matter of saving lives. (*Shulchan Arukh* OC 329:7)

In the *Terumat ha-Deshen*, and in its wake also in the *Shulchan Arukh*, it is clear that the fear of theft developing into murder exists in all places, not just in a border town. Therefore, they rule that it is permitted to desecrate Shabbat for any monetary matter that may deteriorate into a life-and-death matter, even not in a border town. The Rema there emphasizes: "Everything is according to the situation," that is to say, each case must be examined on its own merits – but the principle is that there is indeed a real fear of danger to life.

**Rashi – Communal *Pikuach Nefesh***

Rashi explains the passage in *Eiruvin* differently:

"To the border" – a town that separates between the territory of Israel and the territory of the nations. They may go out against them, lest they capture it and it becomes easier from there for them to conquer the land before them. (Rashi, *Eiruvin* 45a)

Rashi does not explain how the gentiles' stealing of hay and straw will lead to their capturing the city, and from there, the entire country. It may be suggested that "here and now," on this Shabbat, no danger is posed by the theft of hay and straw. However, repeated thefts will impinge on governance and national security. It is certainly possible that these gentiles will come at first only for hay and straw, but later, those same gentiles are liable to engage in more significant thefts, and when we look into the future, this will undermine Israel's hold on the borders of the country, to the point of a war in which the gentiles may, God forbid, conquer the border areas and perhaps even the entire country.

The background for this interpretation of Rashi's words is found in the Gemara in *Sanhedrin*, which teaches that a border town cannot be declared an *ir ha-nidachat*, an Israelite city that was led astray to idolatry and is therefore designated for destruction:

And near the border, even a single city cannot be condemned. Why? Lest the gentiles become aware of it and destroy the whole of the Land of Israel. (*Sanhedrin* 16b)

The Gemara explicitly states that the destruction of a city close to the border damages our hold on the entire land, and therefore it is impossible to apply the laws of an idolatrous city. It is easy to discern that Rashi had this Gemara in mind when he came to explain the passage in *Eiruvin.*

But there is still room to ask: Is a future concern such as this defined as a situation of *pikuach nefesh*? After all, it is clear that a process that would lead from stealing hay and straw to conquering the land would take months, if not years, so what is the allowance to desecrate Shabbat in order to prevent it?

In order to answer this question, we must return to the principle we dealt with at length in the first part of the series, regarding the fundamental difference between *pikuach nefesh* in the case of an individual and *pikuach nefesh* in the case of a community. Regarding a danger posed to individuals, a situation is defined as one of *pikuach nefesh* only if there is a present danger, when "the sick person is before us" and "the danger is before us." However, regarding a danger posed to the community, and in this case to the entire Land of Israel, the parameters of *pikuach nefesh* greatly expand, and obligate us to be concerned even about future consequences.

A striking formulation of the connection between Rashi's interpretation and the concept of communal *pikuach nefesh* can be found in the writings of Rabbi Yosef Rosen, the Rogatchover Gaon. The Rambam (*Hilkhot Shabbat* 2:23) codifies the Talmudic allowance to desecrate Shabbat for matters of hay and straw in a border town. In his commentary on the Rambam, *Tzofnat Pa'ane'ach*, the Rogatchover explains:

"And in a border town." This is based not on the law of *pikuach nefesh*, but on the law of conquest, as in *halakha* 25 [the reference is to the law that "a siege may be laid on gentile cities three days before Shabbat"; A.S.], and an obligatory war can be started even on Shabbat, as explained in the Jerusalem Talmud…

And see Ran, chapter 3 of *Shabbat*, that in the case of harm to the community, any harm is considered a danger, and therefore even when there is no clear and present danger, they may go out against them on Shabbat… See what the *Tosafot* in *Sanhedrin* 26a write about planting in the Sabbatical year because of the "*arnona*," that they permitted this because of a concern about *pikuach nefesh*… that in the case in *Sanhedrin*, it is like for the community, as we have explained. (*Tzofnat Pa'ane'ach*, *Hilkhot Shabbat* 2:23)

The Rogatchover, in his usual manner, connects different passages together. He maintains here that a clear line can be drawn between the issue of a border town and the position of the *Halakhot Gedolot* and Rabbeinu Chananel (cited by the Ran, in chap. 3 of *Shabbat* [19b, in the pages of the Rif, s.v. *u-mei-ha sham'inan*]) regarding a fiery ember of metal, which we have already seen serves as a fundamental source regarding *pikuach nefesh* ([*shiur* no. 22](https://www.etzion.org.il/en/halakha/studies-halakha/ember-of-metal-1)).

To this the Rogatchover also adds the *Tosafot* in *Sanhedrin* (26a, s.v. *mi-she-rabu ha-anasin*), who permitted planting during the Sabbatical year because of "*arnona*," in order to protect the community from the threat of excessive tax payments to the king. We have also already discussed *Tosafot*’s position([*shiur* no. 26](https://www.etzion.org.il/en/halakha/studies-halakha/in-relation-to-government-monarchy)), including the words of Rabbi Reuven Margaliot, who cites the *Tzofnat Pa'ane'ach* and asserts: "And this is an important principle in the laws governing the state" (*Margaliyot ha-Yam, Sanhedrin* 26a, no. 2). The concept of communal *pikuach nefesh*, with an emphasis on its application in the context of national security and preventing making it "easier for them to conquer the land before them," is "an important principle in the laws governing the state."

It is important to emphasize that, even though the Rogatchover bases his position on passages dealing with communal *pikuach nefesh*,in his own words he clarifies that the allowance here is even broader, namely, that it is **not** based on the law of *pikuach nefesh*, but rather on the laws regarding conquering the Land of Israel. With God's help, we will discuss the relationship between "conquest" and *pikuach nefesh* in coming *shiurim.*

**Special Security Measures in Border Towns**

In addition to the passages in *Eiruvin* and *Sanhedrin* that we have already cited, border towns are mentioned in the words of *Chazal* in three other contexts, concerning the adoption of advanced security measures to ensure that the town is well guarded.

First: the Gemara in *Bava Batra* (7b) deals with the possibility of compelling the residents of a town to contribute to the building of a wall. It establishes, according to one opinion, that not every town needs a wall, but "a border town – it is fitting that it should have a wall." Therefore, in a border town, it is clear that its residents can be compelled to bear the costs of the wall and security.

In a similar fashion, the Tosefta (*Mo'ed Katan* 1:7) states that it is permitted to repair the wall of a border town on *Chol Ha-moed,* "in the usual manner," that is to say, without any change or limitation. Here, too, the vital security need permits the work to be done when it would otherwise be forbidden.

Another *halakha* appears in the Mishna in *Bava Kama* (7:7; 79b), which states that it is forbidden to raise a dog unless it is "on a chain." The Gemara there qualifies the prohibition, stating that in a border town, it is permitted to raise a dog, where "he keeps it chained during the daytime and lets it loose only at night" (*Bava Kama* 83a). In contrast to the two previous laws, the words of the Gemara here are codified as law by the Rambam (*Hilkhot Nizkei Mamon* 5:9) and the *Shulchan Arukh* (CM 409:3).[[2]](#footnote-2)

Thus, we see that a border town requires professional and high-quality security measures. Still, it seems to me that the novel idea in the passage in *Eiruvin*, regarding the allowance to desecrate Shabbat in a border town even for matters of hay and straw, is the most significant innovation of all the passages, and we will expand upon it in the coming *shiurim.*

**"The court of Shmuel the Ramatite was then in existence"**

The last issue I would like to examine in this *shiur* returns to the question raised in the previous *shiur* regarding issuing halakhic rulings based on the Bible*.* The law about a border town was transmitted by Rav Yehuda in the name of Rav, and its source is an explicit *baraita*. However, the Gemara in *Eiruvin* adds that it had actually been taught already thousands of years earlier, in the court of Shmuel the prophet.

As explained in the previous *shiur*, when we deal with war, our thoughts naturally wander to the great warriors of Israel during the Biblical period. Thus, the Gemara connects the law regarding a border town to David's war in the city of Ke'ila:

And they told David, saying: Behold, the Philistines are fighting against Ke'ila, and they rob the threshing-floors. Therefore, David inquired of the Lord, saying: Shall I go and smite these Philistines? And the Lord said to David: Go, and smite the Philistines, and save Ke'ila… And David and his men went to Ke'ila, and fought with the Philistines, and brought away their cattle, and slew them with a great slaughter. So David saved the inhabitants of Ke'ila. (I *Shmuel* 23:1-5)

The Gemara in *Eiruvin* learned from this the special law of a border town regarding "matters of hay and straw":

Rabbi Dostai of Biri expounded: What is that which is written: "And they told David, saying: Behold, the Philistines are fighting against Ke'ila, and they rob the threshing-floors"? A *Tanna* taught: Ke'ila was a border town, and they only came for matters of hay and straw, as it is written: "And they rob the threshing-floors.” (*Eiruvin* 45a)

This *midrash* accords well with the *peshat*, or straightforward meaning of Scripture; Ke'ila was indeed situated in a border area in the lowlands of Yehuda, between the territory of Yehuda in the mountains and the cities of the Philistines in the lowlands. The prophet does not tell of battles or murders in Ke'ila, but only of the theft of agricultural produce – yet, King David had to embark on a defensive war because of it and save Ke'ila.

What is of course not stated explicitly in the Bible is that the battle of Ke'ila took place on Shabbat. The *Tosafot* note this and explain:

It may be suggested that the matter is proven from that which is stated: "Are fighting (*nilchamim*)against Ke'ila," calling it a war (*milchama*), and David risked his life for it, even though they came only for matters of hay and straw. Learn from this that we also desecrate Shabbat on this account. (*Tosafot*, *Eiruvin* 45a, s.v. *i lo mitzlach*)[[3]](#footnote-3)

The *Tosafot's* proof ties in well with the various laws regarding a border town that were cited above. Indeed, nothing compels us to say that David's war took place on Shabbat, but the very fact that he went out to battle, risking his own life and the lives of his soldiers, only to eradicate a matter of "agricultural crime," teaches us that this is a matter of *pikuach nefesh,* for which it is permitted to desecrate Shabbat.

Indeed, we have here a new law of *pikuach nefesh* with regard to a border town. Where was this law first taught? The Gemara there continues:

And it is written: "Therefore David inquired of the Lord, saying: Shall I go and smite these Philistines? And the Lord said to David: Go and smite the Philistines, and save Ke'ila." What was it that he inquired about? If it would be suggested [that he asked] whether it was permitted or forbidden [to repulse the attack] – [it could be retorted that] surely, the court of Shmuel the Ramatite was then in existence [and he should have asked there, rather than via the *Urim* and *Tumim*]. Rather, [he inquired] whether he would be successful or not. The inference from the wording of the text also supports this view, for it is written: "Go and smite the Philistines, and [*you will*] save Ke'ila." This is conclusive. (*Eiruvin* 45a)

David inquires by way of the *Urim* and *Tumim* (twice) before going into battle. The Gemara explains that we might have thought this consultation was intended to find out whether it was permitted to desecrate Shabbat for matters of hay and straw in the case of a border town. But the Gemara vehemently rejects this, insisting that whenever halakhic questions arose in the army of King David, they were surely clarified in the court of Shmuel the prophet. Thus, we are forced to say that the consultation by way of the *Urim* and *Tumim* related to the question of whether David would succeed in battle, not whether he should engage in it.[[4]](#footnote-4)

There is an important halakhic principle that "it is not in heaven" (*Devarim* 30:12). Questions about military and security issues constantly arise among those who deal with the mitzvaof waging war and rescuing Israel from their enemies. The decisions are often complex, and the halakhic sources may be meager, as discussed in the two previous *shiurim*. We learn from the Gemara in *Eiruvin* that despite the complexities of the decision, it is the duty of those who sit in the *beit midrash* to reach conclusions and halakhic decisions on these matters as well.

The Sages have already taught us: "Yiftach in his generation was like Shmuel in his generation" (*Rosh Ha-shana* 25a). It is true that in our generation, we have not merited a court of the likes of Shmuel the prophet, but this does exempt the *beit midrash* from dealing with the questions that arise concerning military and security matters, and offering answers based on honest reasoning and a deep understanding of the operational reality. This is what the prophet Shmuel did when he clarified in his court the laws of King David, and this is what is required of the *beit midrash* in all generations.

(Translated by David Strauss)

1. [An allusion to *Tehillim* 119:162.] [↑](#footnote-ref-1)
2. The *Acharonim* discuss the scope of the allowance, and the question of what degree of danger permits a person to keep an aggressive watchdog in his house. See the summary in *Responsa Sho'el ve-Nish'al*, vol. I, *Choshen Mishpat*, no. 32), regarding a quarrel between neighbors, one of whom wished to keep a watchdog in his house due to the frequent robberies in the building; and the lengthy discussion in *Responsa Mishneh Halakhot* (vol. V, nos. 296-298). [↑](#footnote-ref-2)
3. This is also how other *Rishonim* explained the matter; see Rashba, Ritva, and others. [↑](#footnote-ref-3)
4. Against the background of this passage, Torah students across the generations have played with the question of whether it is permitted to inquire by way of the *Urim* and *Tumim* on Shabbat, or whether this involves the prohibition of writing. For hundreds of years, the question was purely theoretical – but in the last generation, several *poskim* wished to bring proofs from that discussion regarding various forms of electronic writing and recording. Regarding this matter, see, for example: *Responsa Tzitz Eliezer* (vol. XIV, no. 30); *Responsa Yabi'a Omer* (*Yoreh De'a*, vol. IV, no. 20). [↑](#footnote-ref-4)