YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

**PIKUACH NEFESH**

 **Rav Avihud Schwartz**

**Shiur 31: Border Town – Across the Generations**

**Introduction**

In the previous *shiur* (no. 30), we explored the sources regarding desecration of Shabbat to defend against enemies who besiege a border town for "matters of hay and straw." We noted that these discussions raise a fundamental principle regarding matters of national security; in the coming *shiurim*, we will learn about the many halakhic rulings that authorities of the last generation issued based on this principle.

In the present *shiur*, I would like to examine how this *halakha* found expression across the generations, in Jewish communities outside the Land of Israel.

**Nahardea in Babylon as a Border Town**

As we learned in the previous *shiur*, Rashi and the Ra’avan disagree about the foundation of the allowance to desecrate Shabbat in order to defend against enemies whose goal is “matters of hay and straw” – i.e., seemingly minor economic issues. According to the Ra’avan (*Shabbat* 363), the situation involves a real fear of danger to lifein the present, while Rashi (*Eiruvin* 45a, s.v. *li-sefar*) understood the concern to be that "from there it will be easier for them to conquer the land before them." As we explained, Rashi bases his position on an expansive perspective on the concept of national security. The Rogatchover Gaon as well explains that "this is based not on the law of *pikuach nefesh*, but on the law of conquest" (*Tzofnat Pa'ane'ach* *Shabbat* 2, 23).

 It would seem that Rashi’s words relate to a security outlook applicable in the Land of Israel, with a goal of ensuring the people of Israel's hold on its land. It is difficult, however, to talk about "conquest" of this or that part of the land in connection with the Jewish communities *outside* the Land of Israel. This is indeed what the author of the *Arukh ha-Shulchan* writes:

And in ancient times, when the Temple stood,[[1]](#footnote-1) and [the gentiles] came to a town situated on the border, even if they came only for matters of hay and straw, they [the Jews] would desecrate Shabbat on account of them (*Eruvin* 45a), for if such a town were conquered, it would be easy to conquer the entire land [Rashi, s.v. *li-sefar*]. (*Arukh ha-Shulchan* *Orach Chaim* 329:9)

Even though the words of the *Arukh Ha-Shulchan* are logically in accordance with Rashi’s position, they are very difficult to accept, for it is explicitly stated in the Talmudic passage that the allowance to desecrate Shabbat for matters of hay and straw in a border town applies even outside the Land of Israel:

Rav Yosef bar Manyumi said in the name of Rav Nachman: Babylon is regarded as a border town – and by this, he meant Nehardea. (*Eruvin* 45a)[[2]](#footnote-2)

Rashi and the other *Rishonim* there explain that Nehardea was situated in a border area between the main Jewish center in Babylon and the gentile towns. As noted, if we were to follow the Ra’avan, who says the concern is that an event involving stealing will deteriorate into *pikuach nefesh*, it is clear that such a fear exists outside the Land of Israel as well, and sometimes even in greater measure. But if the decisive factor here is "conquest," it is difficult to understand how this applies to the Jewish community in Babylon.

Indeed, Rav Ovadya Yosef objected to the *Arukh ha-Shulchan* and wrote:

Now, even according to the explanation of Rashi and the *Or Zaru'a*, who explained that from there it would be easy to conquer the land, it may be suggested that this is not because of *pikuach nefesh*, but because of the *mitzva* of conquering the land itself, for the conquest of the Land of Israel sets aside [the laws of] Shabbat, as they said in *Shabbat* (19a): "'Until it fall' – even on Shabbat"… And I also saw that the Rogatchover Gaon, in his *Tzofnat Pa'ane'ach* on the Rambam… And according to this, it may be suggested that according to what the *poskim* have written, that the mitzvaof conquering [the Land of Israel] does not apply today, there is no distinction between a border town and the rest of the towns in Israel, and the allowance applies only when they come with regard to lives, which involves *pikuach nefesh*. It seems that this is the reasoning of Rabbi Yechiel Michel Epstein in the *Arukh ha-Shulchan*.

However, from the words of the *Shulchan Arukh* (329), who brought this law as a matter of practical *halakha*, it is clear that he maintains that the reason is *pikuach nefesh*, and therefore this *halakha* applies even today. And so it is proven from the Gemara in *Eruvin* (45a), which concludes: "Rav Nachman said: Babylon is regarded as a border town – and by this, he meant Nehardea." Thus, we see that it is not based on the conquest of the Land of Israel, but rather on *pikuach nefesh*. (Rabbi Ovadya Yosef, "*Mesirat Shetachim be-Eretz Yisrael bi-Mekom Pikuach Nefesh*," in: *Techumin* 10)

Perhaps one can argue that there are two aspects to the law governing a border town. On the one hand, in the case of a border town in the Land of Israel, there is room for considerations of conquest and governance. On the other hand, there is also the issue of *pikuach nefesh,* and the law of a border town teaches that there is an obligation to desecrate Shabbat even for a future danger – a concern that applies even outside the Land of Israel.

**Extinguishing a Fire on Shabbat**

*Poskim* across the generations have referred to the law governing a border town when they ruled on matters involving *pikuach nefesh*, and especially in cases of fires.

According to Talmudic law (*Shabbat* 117b), if a fire breaks out on Shabbat, one is permitted to save only the minimal amount of food and clothing that will be needed on Shabbat. The Sages were exceedingly stringent in this matter; not only did they not allow the fire to be extinguished, but they also limited the scope of the allowance to remove objects from the burning house, for fear that the person will come to extinguish the fire.

The Ashkenazi *Rishonim*, however, encountered a reality in which it was almost impossible to apply these laws. When a fire broke out in the Jewish quarter, the fear that the fire would spread to gentile homes and the Jews would be blamed for it, as well as the fear of a pogrom developing under the cover of the fire, made it essential that the fire be extinguished immediately. As mentioned in the previous *shiur*, the Ra’avan proposed his interpretation of the issue of a border town in the framework of a discussion of this allowance to extinguish a fire on Shabbat:

But at this time, when we are few in number among the gentiles and they have the upper hand, and even if the gentiles come with regard to financial matters, [we presume that] “a person does not hold himself back with regard to his money,”[[3]](#footnote-3) and if the Jew stood up against the gentile, he would throw him into the fire, or kill him – it is permitted for a Jew to come and extinguish the fire in order to save his fellow… And it was taught: "In the case of a border town, even if they came only with regard to financial matters, they may go out against them with their weapons on Shabbat." Since it is close to the border, if the Jews stand up for their money, the gentiles will kill them, and not be afraid to do so, because they are close to other gentiles. All the more so for us, living among them, that they are not afraid to kill us, and therefore one may desecrate Shabbat and save lives. (Ra’avan, *Shabbat* 363)

Rabbi Yitzchak of Vienna, the *Or Zaru'a*,issued a similar ruling:

Our Rabbis permitted us to extinguish a fire on Shabbat because we live among the gentiles, and when there is a fire, they come and plunder and kill. It is no worse than a border town, for which we may desecrate Shabbat. Therefore, it is permitted. (*Or Zaru'a*, *Eruvin* 149)

This rule is also brought as *halakha* in the *Haggahot Oshri* (*Eruvin* 4, 6), and in the *Terumat ha-Deshen* (responsa, no. 58), and is codified by the Rema (*Orach Chaim* 334:26). We learn from them that regarding the allowance to perform certain actions to prevent danger to life, the Jewish community in the Diaspora was defined in an almost sweeping manner as "a border town," even in the case of an indirect or future danger to life.

**Desecrating Shabbat in Order to Prevent Enmity**

One of the most sensitive questions in the realm of the laws of *pikuach nefesh* is the question of what is permitted and what is prohibited when it comes to saving the life of a gentile on Shabbat. The *Chatam Sofer* tended toward leniency in this matter and was one of the proponents of the notion that if a Jew fails to provide life-saving assistance to a gentile on Shabbat, this will result in "enmity" (*eiva*)between Jews and gentiles, which may develop into a situation of *pikuach nefesh.[[4]](#footnote-4)*

This is not the forum to expand on the issue of "enmity" and its sources in the Talmud; what is relevant for our purposes is that in order to establish this allowance, the *Chatam Sofer* made use of the words of the *Rishonim* regarding extinguishing a fire on Shabbat:

If this enmity reaches the point of concern about danger to life, we permit even a labor that is prohibited by Torah law… See *Eruvin* 45 in the Mishna, and what the *Shiltei Giborim* ad loc. writes about it. It seems explicit that even a labor that is prohibited by Torah law is permitted, if it is indispensable. I wrote what seems right to me. (*Responsa Chatam Sofer*, vol. II, no. 131)

The *Chatam Sofer*'*s* mention of the *Shiltei Giborim* is referring to the allowance that we already saw to extinguish a fire when Jews live among gentiles. There too, the concern about enmity translates into a fear for life, which permits Shabbat desecration.[[5]](#footnote-5) This is how the *Tzitz Eliezer* explains it:

The novelty of the allowance to perform a labor prohibited by Torah law in such a case is that even though the danger is not yet tangible, nonetheless it is permitted, because it is considered like a danger to the community, and therefore it is considered like an actual “danger before us.” (*Responsa Tzitz Eliezer*, vol. 8, no. 15, *Kuntrus Meshivat Nefesh*, 6, 11)

We see then that the *halakha* regarding a border town, with the broad parameters of *pikuach nefesh* that arise from it, was applied across the generations both regarding enmity in general and regarding extinguishing a fire in particular. However, there is no doubt that when the questions arise in the Land of Israel, as opposed to Nahardea or any other community abroad, they are illuminated in a different light.

In the next *shiur*, with God's help, we will discuss the rulings that were issued by the *poskim* of the last generation based on the passage dealing with a border town. But even before that, there is room to mention another passage, dealing not with the laws of Shabbat, but with "the laws of the Land of Israel," which clarifies the extent to which the passage dealing with a border town plays a fundamental role in the attempt to formulate a concept of national security in light of *halakha*.

**"Territories for Peace"**

We cited above from the words of Rav Ovadya Yosef, who questioned the *Arukh Ha-Shulchan's* statement limiting the laws of a border town to the period during which the Temple stood. The context in which he was writing relates to one of the most sensitive questions in Israeli society since the Six Day War, namely, the question of handing over territories from the homeland as part of peace agreements or other political moves.

It goes without saying that we will not be able to conduct a comprehensive discussion in this framework of all aspects of this issue. We will focus exclusively on how the issue of a border town plays into this discussion.

Rav Ovadya Yosef's fundamental position is that if the politicians and security experts believe that a "territories for peace" agreement will prevent bloodshed and save human lives, it is halakhically permitted. However, he asks: How is it permissible to hand over parts of our homeland to our enemies, when according to the accepted law, we desecrate Shabbat in a border town in order to prevent a situation in which "it will be easier for them to conquer the land before them" (Rashi, *Eruvin* 45a, s.v. *li-sefar*).

Rav Ovadya's answer, in accordance with his position cited above, is that ultimately, this *halakha* concerning a border town is based on the laws of *pikuach nefesh* – and despite all the importance of future or indirect *pikuach nefesh*, it does not have the power to set aside immediate *pikuach nefesh*:

However, even if we say that [the law of a border town] is based on *pikuach nefesh*, in accordance with the plain sense of the words of the Gemara and the *poskim*, nevertheless in the territories of Yehuda, Shomron, and Azza, which were captured by the IDF from the Arabs, and they are demanding that they be returned – if they say that they are willing to make peace with us if we return to them those territories, and if not, God forbid, there is the danger of immediate war, and military and political experts establish that returning these passages imposes no danger at all, this is certainly not similar to a border town that was in our hands from times of old, and we come back to what has been explained, that *pikuach nefesh* sets aside the prohibition to return territories…

And all the more so, there is room to say further that no proof can be brought from the law of a border town to the issue under discussion, because preventing the danger of an immediate war takes precedence over concern about the outbreak of a war in the future. As was written about a similar case in *Responsa Noda bi-Yehuda*,that we do not apply the law of *pikuach nefesh* to permit a particular prohibition if the danger is not before us – but a situation in which perhaps a danger will arrive in the future is not considered a case of “possible [*safek*] *pikuach nefesh*”*…*

Whereas in the aforementioned Gemara and *poskim*, who permitted desecration of Shabbat when gentiles besiege a border town, the fear is based on the idea that by conquering that town, it will be easier for them to conquer the entire land. This is not so in our case, for if the military leaders and the politicians believe that returning the territories will not pose a danger to the country, there is no concern about returning territories in order to prevent the danger of immediate war. (Rav Ovadya Yosef in the aforementioned article)

Rav Ovadya cites the sources we have already dealt with in previous *shiurim* regarding situations of future, indirect *pikuach nefesh*. Indeed, regarding the community, indirect danger is also considered danger, but it certainly does not have the power to set aside clear and immediate danger in the present. Considerations of present *pikuach nefesh* prevail over considerations of future *pikuach nefesh*, on which the law about a border town is based.

Rabbi Chaim David Ha-Levi, who in general opposed surrendering territories as part of peace agreements, accepted Rav Ovadya Yosef’s fundamental approach to interpreting the *halakha* of a border town:

Other contemporary rabbis based the prohibition to evacuate settlements on the law governing gentiles who laid siege on the towns of Israel, that in the case of a border town, even if they came regarding matters of hay and straw, we desecrate Shabbat on their account… And Rashi explained the reason (*Eruvin* 45a), lest they capture it and the land be easier for them conquer before them… Based on this *halakha*, contemporary rabbis wished to derive a prohibition to surrender border towns, for if we return them to yesterday's enemy, this is liable to endanger the entire country.

All this is very puzzling to me, for surely this *halakha* deals with hostile activity on the part of the enemies of Israel, for it is stated explicitly, if gentiles "besieged" Jewish towns, that is to say, that they put a border town under siege, demanding that they be allowed to enter the town for monetary matters, even for hay and straw, and threatening that if they refuse, they will wage war against the besieged town. In such a case, the *halakha* teaches that they are obligated to fight even on Shabbat, for the reason explained above. What does this *halakha* have to do with the case under discussion, where two states, who were once enemies, sat down at a negotiating table, and in the course of the negations proclaimed their readiness to make peace, and signed a peace agreement, conditioned on returning to the pre-war borders.

If they wished to learn about the value of border towns in themselves, for this no *halakha* was necessary, as this is obvious. But no prohibition can be learned from this. And if they wished to learn about the value of strategic depth in a time of war, this is very correct in itself, but there is not even a trace of a hint to this in that *halakha*, for all that can be learned from that *halakha* is as stated, that we must defend border towns even on Shabbat. And so, from where do we learn that the state is forbidden to return territories that were captured in war and return to the old border, in the course of peace negotiations? If this retreat endangers the security of the state, neither this *halakha* nor any other *halakha* deals with that. This is left to the discretion of the government, and it bears all the responsibility for its decision. (*Responsa Aseh Lekha Rav*, vol. IV, no. 1)

As mentioned, Rabbi Chaim David Ha-Levi was opposed in principle to handing over territories as part of a peace agreement, but he clarifies that there is no proof for his position from the law of a border town, for that law deals with a siege and a time of war, not with a political arrangement signed in its aftermath. As we have already noted, the passage about a border town is indeed a fundamental source for the laws of war, but Rabbi Chaim David Ha-Levi limits this to actual war, and does not think that it reflects broader security and strategic outlooks.

On the other hand, Rabbi Shaul Yisraeli strongly disagreed with Rav Ovadya Yosef's halakhic ruling, stating that it is absolutely forbidden under any circumstances to return territories as part of a peace agreement. As stated above, we will not deal here with the entirety of the arguments and considerations in this discussion, but regarding the matter at hand, Rabbi Yisraeli is inclined to see the *halakha* of a border town as a decisive proof, in contrast to both Rav Ovadya Yosef and Rabbi Chaim David Ha-Levi:

But besides all this, there is an explicit passage in *Eruvin* (45a) that teaches that even though, when gentiles come regarding financial matters, the Jews are not permitted to go out against them in war if that involves the desecration of Shabbat, in the case of a border town, they do go out… And this is when there is concern that Jewish settlements will be captured, as this is considered a danger to life, when the place will be captured by gentiles, and then there is no stopping them even regarding matters of life. This law applies not only in the Land of Israel, as is stated there, that for this reason, even Nehardea (which is in Babylon) is considered like a border town.

And if in such a case, where they did not come even to capture the border towns, but only regarding financial matters, we are afraid that they will take control of the place, and from there they will continue to take over all the other settlements, all the more so if the entire discussion is to hand over to them a place that borders on the rest of the settlements of Israel, that according to *Chazal*, we are obligated to go out to war, because there is a reasonable fear that they will not stop with this, but will instead continue to capture additional places. (Rabbi Shaul Yisraeli, "*Mesirat Shetachim mei-Eretz Yisrael bi-Mekom Pikuach Nefesh* [*Teguva le-Ma'amaro shel Ha-Rav Ovadya Yosef*]," in *Techumin*, vol. 10)

We see that Rabbi Yisraeli is also aware that the *halakha* regarding a border town is not restricted to a situation of "conquest," but applies in Nehardea in Babylon and outside the Land of Israel in general – and nevertheless, he sees the concern about future capture as intrinsically and fundamentally integrated in matters of *pikuach nefesh*, to the point that it seems that they are the same: the very capture of border towns is defined as a situation of *pikuach nefesh*, in the broader national sense. In other words, even if we are not dealing with a special *halakha* in "the laws of conquest," but rather a general *halakha* in the framework of the laws of *pikuach nefesh*, the bottom line is that this *halakha* means the people of Israel – in the name of considerations of *pikuach nefesh –* are required to hold onto their land and not surrender it into the hands of the nations.[[6]](#footnote-6)

1. [Note from the Hebrew editor: The phrase "in ancient times" is very reminiscent of places where emendations were made to the text of the *Arukh ha-Shulchan* and other books of that generation, due to Russian censorship. However, Rabbi Eitam Henkin, *Hy"d*, in his article, "*Sifrei Arukh ha-Shulchan* – *Sefer Ketivatam ve-Hadpatam*" (*Chitzei Giborim – Pleitat Sofrim,* 7, Elul 5774, pp. 515-536, available on a site dedicated to his writings, [here](https://eitamhenkin.wordpress.com/2014/10/02/%D7%A1%D7%93%D7%A8-%D7%9B%D7%AA%D7%99%D7%91%D7%AA-%D7%95%D7%94%D7%93%D7%A4%D7%A1%D7%AA-%D7%A1%D7%A4%D7%A8%D7%99-%D7%A2%D7%A8%D7%95%D7%9A-%D7%94%D7%A9%D7%9C%D7%97%D7%9F/)), in the section entitled, "*Sefer Arukh ha-Shulchan u-Pig'ei ha-Tzenzura*," in a note (no. 36, p. 523), argues that this is one of the "few places" where the use of this type of phrase is actually not related to censorship, in light of what the *Arukh ha-Shulchan* rules in the next *halakha* (10). He is referring to the bringing of the view that disagrees with limiting the allowance to desecrate Shabbat to "ancient times, when the Temple stood," and according to which "there are those who say that now in this time, if robbers come even only for financial matters, we desecrate Shabbat on their account." But it is precisely the end of the next *halakha* that includes another caveat, according to which "this law cannot apply today in a city where there are rulers from the monarchy, so that the world is not lawless, but only in a village," which certainly sounds as if it reflects the influence of censorship. However, as we will see, Rav Ovadya Yosef took the trouble to comment on the ruling itself, which indicates that he did not think it was inserted because of the censor; A. B.) [↑](#footnote-ref-1)
2. The Gemara in *Bava Kama* (83a) brings this *halakha* in regard to raising a dangerous guard dog, and states that just as it is permitted to raise such a dog in a border town, as we learned in the previous *shiur*, it is also permitted to raise it in Nehardea in Babylon. [↑](#footnote-ref-2)
3. *Editor’s note*: This presumption leads the Gemara to assume that if someone comes to steal, he is prepared to fight the owner – who the thief does not expect will stand idly by while his money is stolen – and even kill him (see, e.g., *Sanhedrin* 72a). [↑](#footnote-ref-3)
4. Indeed, for hundreds of years it has been accepted among the *poskim*  that in practice, one must offer aid and rescue to a non-Jew on Shabbat. See the summaries in *Responsa Tzitz Eliezer* (vol 8, no. 15, 6) and in *Responsa Yabi'a Omer* (*Orach Chaim*, vol. 8, no. 38). The *Mishna Berura* (330:8) rules that this is prohibited, but there is a tradition in the Yeshiva world that what is written there was not written by the *Chafetz Chaim*; this is not the forum to expand on the matter. [*Editor’s note*: Readers may be interested to see how the issues regarding desecration of Shabbat to save a non-Jew are addressed, among many other places, in two other ongoing VBM series: [here](https://etzion.org.il/en/philosophy/issues-jewish-thought/rabbinic-thought/talmudic-attitudes-gentiles-1) and [here](https://etzion.org.il/en/series/fundamental-questions-study-oral-law) (#63).] [↑](#footnote-ref-4)
5. It is interesting to mention that the *Shiltei Giborim* there (*Eruvin* 12b in the pages of the Rif, no. 1) cites the *Or Zaru'a*, and then adds: "And my uncle brought a proof from the first chapter of *Shabbat* that we do not set a siege on gentile cities less than three days before Shabbat, and if they started, they do not stop." That is to say, the *Shiltei Giborim* connects the allowance to extinguish a fire not only to the "security" passage concerning a border town, but also to the "security" passage concerning the allowance to wage war on Shabbat. [↑](#footnote-ref-5)
6. The Lubavitcher Rebbe also firmly held this position. The book *Karati ve-Ein Oneh* (available [here](https://hageula.com/uploads/source/-00770-/80-10-06A%20Karati/karati-Vein-One.pdf)) contains a collection of the Rebbe's letters and articles regarding the severe prohibition against handing over territory from the Land of Israel. In many of the articles collected there, the Rebbe repeats his position that handing over those territories is halakhically forbidden, as it directly contradicts the halakhic ruling regarding a border town. [↑](#footnote-ref-6)