YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**PIKUACH NEFESH**

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**Shiur #06: “Permitted” or “Set Aside” (2):**

**Slaughtering on Shabbat or Eating *Neveila* Meat**

**I. Introduction**

In the previous *shiur*, we discussed at length the concepts of *hutra*, "permitted," and *dechuya*, "set aside," which originate in the laws of offering communal sacrifices in a state of ritual impurity. In this *shiur*, we will return to the laws of *pikuach nefesh*, "saving a life," and consider a dispute among the *Rishonim* on the matter of "permitted" and "set aside" with respect to the desecration of Shabbat.

The discussion in the *Rishonim* relates to two areas: one is the allowance to slaughter an animal on Shabbat for a sick person who must be fed meat, and the other is an extensive controversy about how to interpret the Rambam's rulings on the matter. This *shiur* will focus on the first issue.

**II. “The Less Forbidden Thing First”**

The Gemara in *Yoma* cites the Tosefta (*Yoma* 4:4) which establishes an important principle regarding a sick person who must be fed, even forbidden foods, for the purpose of *pikuach nefesh*:

Our Rabbis taught: If one was seized by a ravenous hunger, one feeds him with the less forbidden things first. (*Yoma* 83a)

The Tosefta goes on to spell out the order of "the less forbidden thing first" with respect to different foods, which gives rise to interesting discussions,[[1]](#footnote-1) but the *halakha* in itself is clear: even though *pikuach nefesh* sets aside all of the Torah's prohibitions, including forbidden foods, it is preferable to choose a food whose prohibition is less severe. Thus, it is preferable to eat a food subject to a prohibition punishable by flogging (*issur lav*), rather than a food subject to a prohibition punishable by excision (*issur karet*). And of course, it is preferable to eat a food forbidden by Rabbinic decree, rather than a food forbidden by Torah law.

The halakhic authorities disagree as to whether the law of "the less forbidden thing first" is a Torah law or only of Rabbinic origin. It is possible that this disagreement is connected to the very matter of "permitted" vs. "set aside," and with God's help, we will address that issue in the coming *shiurim*.

In light of the fundamental rule set down by the Gemara, some of the great *Rishonim* raised an interesting question: What is the law regarding a dangerously ill person who must be fed meat on Shabbat, and is faced with two options: one option is to eat the meat of an animal that was not properly slaughtered (*neveila*) but which is readily available, and the second option is to slaughter an animal for him on Shabbat so that he may eat kosher meat. Seemingly, the answer is simple: the prohibition of eating *neveila* meat is an *issur lav*, whereas the prohibition of slaughter on Shabbat is an *issur karet* and is punishable by judicial execution. Therefore, based on the principle of "the least forbidden thing first," it would seem that he should choose the *neveila* meat.

**III. Those Who Maintain that the Shabbat Prohibitions are “Permitted” for *Pikuach Nefesh***

**The view of the Ra'avad: "absolute allowance"**

There are, however, many *Rishonim* who maintain that in light of the distinction between "permitted" and "set aside," the preferable option is to slaughter an animal for the sick person on Shabbat. The first to address this issue was the Ra'avad, whose view we know from the words of the *Rishonim* who came after him. We will start with a citation from the words of the Ramban, where the Ra'avad does not explicitly mention the issue of "permitted" vs. "set aside," but merely alludes to it:

Rabbi Avraham bar David was asked about *neveila* meat and a [forbidden] act on Shabbat. This is the wording of the question: If there was a dangerously sick person, and a chicken had to be slaughtered for him, why should we not tell a non-Jew to slaughter [a chicken] for him and then feed him the *neveila* meat, which involves only an *issur lav*, rather than slaughter [the chicken] ourselves, and thereby set aside Shabbat which is a prohibition subject to death by stoning?

And he answered: What prohibition stands before this sick person and hinders him? Surely, it is the prohibition of Shabbat, not the prohibition of *neveila* meat. Know [that this is true], for were it not Shabbat, would we look for *neveila* meat for him? No; we would look for the meat of a properly slaughtered animal. This being the case, the prohibition that stands before him and hinders him is the prohibition that transforms into absolute allowance, not a different prohibition. Therefore, we permit for him the prohibition of Shabbat but not the prohibition of *neveila* (Ramban, *Torat ha-Adam*, *sha'ar ha-michush*, *inyan ha-sakana*)

According to the Ra'avad, even though it is true that the prohibition of Shabbat is more severe than the prohibition of *neveila* meat, in a situation of *pikuach nefesh*, the prohibition of Shabbat turns into an "absolute allowance," and therefore it is better to slaughter an animal for the sick person on Shabbat than to feed him *neveila* meat.

An obvious difficulty with the Ra'avad's position is that if *pikuach nefesh* absolutely permits the prohibitions of Shabbat, why does it not also permit the eating of *neveila* meat, so that it too should be defined as "permitted"? The Ra'avad himself was sensitive to this difficulty, and therefore he explains that in a situation of *pikuach nefesh*,one should act as he would on a weekday: if it is clear that on a weekday, we would choose the option of kosher slaughtering, then this is what we should do on Shabbat as well. In other words, Shabbat cannot be an "obstacle" in a situation of *pikuach nefesh.*

The Ra'avad's position is cited in a different formulation in *Piskei ha-Rosh*, and there a different answer is given for the distinction between slaughtering on Shabbat and eating *neveila* meat:

The Ra'avad was asked: Regarding a sick person who will be in danger if he does not eat meat – if there is *neveila* meat before him and there is no properly slaughtered meat unless we slaughter [an animal for him] on Shabbat, there are those who say that it is preferable that he himself transgress the *issur lav* of *neveila*, than that others transgress for him a prohibition punishable by stoning.

And he answered that the words of "those who say" are well-argued, but we can say that the prohibition of Shabbat can already be set aside to light a fire, to cook, and to heat water.Or else, it is impossible that there not be a single minor somewhere in the world. (*Piskei ha-Rosh*, *Yoma* 8:14)

The *Acharonim* discussed at length the Ra'avad's two answers and the relationship between them. The first answer assumes that since it will likely be necessary to perform additional prohibited labors for the sake of the sick person, the prohibited labor of slaughtering an animal should also be permitted. This is a very novel idea, and it seems that the Ra'avad is establishing here the principle of *ho'il ve-ishtari ishtari*: once it is permitted to desecrate Shabbat, the additional desecration of Shabbat through the performance of additional prohibited labors is less severe than eating *neveila* meat.[[2]](#footnote-2)

The second answer is even more novel. It is not at all clear what difference it makes that there is a minor somewhere in the world who might need meat for the purpose of *pikuach nefesh*, or why that minor could not also be fed *neveila* meat. The *Chatam Sofer* (*Responsa Chatam Sofer*, *Orach Chaim* 85) writes that "these words of his have no foundation," and extends himself to interpret them based on the previous answer – as saying that there must be a minor somewhere in the world who is to be circumcised on that Shabbat, and since Shabbat can be set aside for that *mitzva* of circumcision, it can also be set aside for *pikuach nefesh.*

Rabbi Shlomo Kluger, in his book *Chokhmat Shlomo* on the *Shulchan Arukh* (*Orach Chaim* 328:11) writes that the *Chatam Sofer's* responsum on the matter is "forced," but he also gives a forced explanation – that we are dealing here with a minor who is capable of slaughtering an animal by himself, and the desecration of Shabbat by a minor is less severe than an adult's eating of *neveila.*

Either way, the Ra'avad's words in the Rosh are quite a novelty.

**The view of the Maharam of Rothenburg: "the food itself is forbidden"**

In *shiur* no. 3, which dealt with the sources for the laws of *pikuach nefesh*, I mentioned that in the same responsum of the *Chatam Sofer* (*Orach Chaim* 85; and in a different formulation in *Responsa ha-Rashbatz*, III, 37), he suggests that we learn from the preference given to slaughtering an animal for the sick person on Shabbat that there is a difference between the prohibitions of Shabbat and the rest of the prohibitions in the Torah: the Shabbat prohibitions are absolutely "permitted" in a situation of *pikuach nefesh*, whereas the other prohibitions are merely "set aside." This is the reason to prefer slaughtering an animal over eating *neveila* meat. His words accord well with the Ra'avad's position, but they have no unequivocal source, and it can still be argued from a logical perspective that just as Shabbat is permitted in a situation of *pikuach nefesh*, so too is the prohibition of *neveila* meat.

A clearer distinction between the prohibitions was proposed by the Maharam of Rothenburg:

As for the objection raised by my teacher, how is it permissible to slaughter an animal for a sick person on Shabbat, which is subject to a prohibition punishable by stoning; it is better that they buy him *neveila* meat which is [merely] an *issur lav*… And where there is something permitted and something forbidden, we feed him the less forbidden food, for in the case of ritually slaughtered meat, the food itself is permitted, which is not the case with *neveila* meat, where the food itself is forbidden, and a lion rests upon it. (*Responsa Maharam mi-Rotenburg*, ed. Crimona, no. 4)

What the Maharam means to say is that prohibitions are divided between those which apply to the "*cheftza*," the object in question, defining its status, and those which apply to the "*gavra*," the person himself, mandating his behavior. *Neveila* is a prohibition involving the *cheftza*, and therefore even though *pikuach nefesh* permits eating it as a last alternative, we are ultimately dealing with prohibited meat and "a lion rests upon it." The prohibitions of Shabbat, on the other hand, are prohibitions involving the *gavra*, and therefore in a case of *pikuach nefesh*, there is a sweeping allowance.

It should be noted that the Maharam of Rothenburg's understanding of the prohibitions of Shabbat is very reasonable, but not necessary. My revered teacher, Rabbi Aharon Lichtenstein *z"l*, suggested several times[[3]](#footnote-3) that the desecration of Shabbat also involves a *cheftza –* Shabbat itself is desecrated. But even if we accept such a view, it stands to reason that desecrating Shabbat is not similar to eating *neveila*, which is clearly a prohibition applying to a "*cheftza*,"and therefore the Maharam maintains that it is preferable to slaughter an animal and eat kosher meat, rather than eat *neveila* meat.

As we have seen, the Ra'avad alludes to the issue of "permitted" versus "set aside." The Maharam also goes in that direction, and asks: How is it possible to slaughter an animal on Yom Tov, which involves both a positive commandment to rest from labor and a negative commandment not to engage in prohibited labor; why is not preferable to eat *neveila* meat, which is only prohibited by a negative commandment? The Maharam answers that labors involving food preparation are completely permitted on Yom Tov, and there is no prohibition whatsoever against slaughtering on Yom Tov. According to him, the same is true with regard to *pikuach nefesh* on Shabbat:

Rather it must be said that since the Torah permitted the preparation of food [on Yom Tov], preparing food on Yom Tov is like preparing it on a weekday, when all labors are permitted. Now we can also say that since we learned in *Yoma* that *pikuach nefesh* is permitted [on Shabbat], every labor performed for a dangerously sick person is permitted as it is on a weekday. (*Responsa Maharam*, ibid.)

*Pikuach nefesh* on Shabbat allows one to proceed as he would on a weekday, and thus it is permissible – and also preferable – to slaughter a kosher animal for a sick person, rather than to feed him *neveila* meat.

To summarize, neither the Ra'avad nor the Maharam explicitly mention the words "permitted" or "set aside," but it is clear that they relate to the issue and adopt the view that *pikuach nefesh* on Shabbat falls into the category of "permitted."

**IV. Those Who Maintain that the Shabbat Prohibitions are “Set Aside” for *Pikuach Nefesh***

**The Rashba and the Rosh**

The Rashba and the Ran understood the fundamental position adopted by the Ra'avad and the Maharam, and they were inclined to disagree. The Rashba wrote about the issue most clearly, so we will examine his responsum:

You also asked that I inform you of my opinion on what the Ra'avad wrote, and the Ramban was in doubt about,[[4]](#footnote-4) regarding a dangerously sick person for whom one is permitted to slaughter an animal on Shabbat, if there is *neveila* meat there – do we say that since there is *neveila* meat, we should not slaughter for him, or do we permit slaughtering and not feed him *neveila* meat? I was already asked about this and I replied and said that I would write to you.

Answer: I heard one of the great rabbis testify in the name of Rabbi Meir of Rothenburg, that he ruled that it was permitted to slaughter for him, even in a place where there is *neveila* meat to feed him. But the rationale that they reported in his name is very weak, and so I am not writing it to you. And the rabbi who told me, this is also his position, his reasoning being that if we do not slaughter an animal for [the sick person], he may come to danger, for he will refrain from eating the *neveila* meat and die. (*Responsa ha-Rashba*, I, 689)

The Rashba describes a discussion with one of the disciples of the Maharam of Rothenburg. It is reasonable to assume that he is referring to the Rosh, who was one of the greatest of the Maharam's disciples and who stayed with the Rashba in Barcelona when he fled from Germany to Spain. The rationale reported by the Rashba in the name of the Maharam's disciple is mentioned explicitly by the Rosh (in his *Pesakim* on tractate *Yoma*, 8, 14; *Responsa ha-Rosh* 26, 5); after mentioning the responsum of the Ra'avad and the responsum of the Maharam, the Rosh adds that in practice, it is better to feed the sick person meat from a properly slaughtered animal, due to the concern that he might refuse to eat the *neveila* meat and thereby come to danger.

The most important innovation in the Rashba's responsum, however, is in framing the entire discussion as based on the question of "permitted" versus "set aside." Thus he goes on to write:

And it seems to me that it all depends on the dispute whether we say Shabbat is permitted for a sick person or we say that it is set aside for him. If we say Shabbat is *permitted* for a sick person, we slaughter an animal for him, because the Torah did not prohibit labors on Shabbat for a sick person, and so we slaughter for a sick person on Shabbat just as we slaughter for ourselves [during the week]. And as they said about impurity, according to the one who said impurity was *permitted* with respect to communal sacrifices…

But according to the one who says [Shabbat] is *set aside* [for a sick person], we feed him the *neveila* that he needs to eat, and we do not sin in order to slaughter for him. For where he has meat to eat, we do not sin and *set aside* Shabbat.

It seems that the law is in accordance with those who say that Shabbat is "set aside," not "permitted." (*Responsa ha-Rashba*, ibid.)

The Rashba explicitly refers to the issue of "permitted" and "set aside" with respect to the offering of communal sacrifices in a state of impurity, and states that the same question pertains to the laws of *pikuach nefesh.* However, in contrast to the Ra'avad and the Maharam, who incline more to the notion that Shabbat is "permitted" in a case of *pikuach nefesh*, the Rashba maintains that the law is in accordance with the view that Shabbat is "set aside" in such a case. Ostensibly, from this point of view, the sick person should be fed *neveila* meat – but here the same concern arises, that he might refuse to eat the *neveila* meat and come to danger, and therefore in practice the Rashba agrees that a kosher animal should be slaughtered for him.

**The opinion of the Ran: “one negative commandment” versus “many negative commandments”**

In the previous *shiur*, I mentioned that the Ran in tractate *Beitza* disagrees with the Maharam and says there is no room to compare food preparation on Yom Tov, which is indeed defined as "permitted," to *pikuach nefesh* on Shabbat, which is defined as "set aside." Here too, the Ran expresses a view different from that of the Maharam. Like the other *Rishonim*, the Ran cites the responsum of the Ra'avad, but he raises against it the same objection that we discussed above:

Just as you say that the prohibition of Shabbat prevents him from slaughtering, so the prohibition of *neveila* prevents him from eating *neveila*, for were there no prohibition of *neveila*, he would eat it! Why then does the prohibition of Shabbat stand before him more so than the prohibition of *neveila*? (Ran, *Yoma* 4b in Alfasi, s.v. *ve-garsi*)

Indeed, according to this, it is reasonable to argue that it is preferable to eat *neveila* meat, whose prohibition is less severe. However, like the Rashba, the Ran too arrives at the conclusion reached by the Ra'avad and the Maharam – not for their reasons, but for a different:

But it seems to me that with respect to a sick person, the prohibition of *neveila* meat is not less severe than the prohibition of Shabbat. For while it is true that *neveila* is an *issur lav*, and Shabbat is a prohibition punishable by stoning, there is a different stringency regarding *neveila* meat, namely, that one who eats it transgresses a prohibition with each olive-sized amount that he eats, as we say regarding a nazirite who was drinking wine, that if they said to him: "Do not drink, do not drink," and he drinks, he is liable for each one.

But as for Shabbat, he transgresses only at the time of the slaughter, and he transgresses only once, for the product of prohibited labor is permitted, for we say: It is holy, but its product is not holy. For this reason, the many prohibitions of *neveila* are not called a light prohibition in relation to the single prohibition of Shabbat, even though it is a prohibition punishable by stoning. (Ran, ibid.)

The Ran’s innovative position regarding the rule of "the less forbidden thing first" is that many *issurei lav* are more severe than a single *issur karet.* Therefore, in his opinion, slaughtering on Shabbat is preferable to eating *neveila* meat.

I would like to emphasize that the Ran does not deal at all with the issue of "permitted" versus "set aside." In my opinion, the reason for this is that his understanding is the opposite of that of the Mahram and the Ra'avad: he adopts the position that Shabbat is "set aside" for a sick person, not "permitted." Therefore, he analyzes the entire issue in a different way, and reaches his conclusion in light of the fundamental distinction that he introduces regarding the rule of "the less forbidden thing first."

**V. The Ruling of the *Shulchan Arukh***

The conclusion that emerges from what we have seen is that in practice, the *Rishonim* agree that it is preferable to slaughter an animal for a sick person on Shabbat rather than to feed him *neveila* meat, but it is not clear whether or not this is based on the question of "permitted" versus "set aside." Indeed, the *Shulchan Arukh* rules simply:

If there is a dangerously sick person and he needs meat, we slaughter an animal for him, and we do not say that he should be fed *neveila* meat. But if the sick person needs to eat immediately, and the *neveila* meat is immediately available, whereas the slaughtering will be delayed, he is fed the *neveila* meat. (*Orach Chaim* 328:14)

The *Mishna Berura* (ad loc.) emphasizes that "many reasons have been offered for this." He refers primarily to the fact that the *Beit Yosef* (commentary on the *Tur* by R. Yosef Karo, author of the *Shulchan Arukh*) himself tends to decide in accordance with the Rambam, the Rashba, and the Ran, that Shabbat is "set aside" rather than "permitted," but nevertheless rules that slaughtering an animal for the sick person is preferable to feeding him *neveila* meat, by virtue of the other reasons discussed above.[[5]](#footnote-5)

The next *shiur* will begin with the extensive discussion surrounding the Rambam's rulings: Rabbi Yosef Karo (in the *Kesef Mishneh* and in the *Beit Yosef*) maintains that according to the Rambam, Shabbat is "set aside" for a sick person, not "permitted"; however, many disagree with this interpretation of the Rambam, as will be explained.

(Translated by David Strauss)

1. Thus, for example, they disagree in the Gemara which prohibition is more severe: eating *tevel* (untithed produce) or *teruma* (the portion set aside for the priests). The *Rishonim* also discuss the definition of the prohibition to eat produce from the Sabbatical year after the time of *bi'ur*, when the produce must be removed from the house, and of the prohibition of *sefichin*, produce that grows by itself during the Sabbatical year, and other issues. [↑](#footnote-ref-1)
2. This rationale has been formulated in different ways: see *Reshimot Shiurei ha-Grid Soloveitchik* on *Yevamot* (5b, s.v. *ve-nir'eh she-ha-Ra'avad*); and *Kuntrus Minchat Asher – Hilkhot Hatzala u-Pikuach Nefesh* (sec. 1, end of letter *gimmel*). [↑](#footnote-ref-2)
3. I heard this directly from him. For a written source, see in detail: *Kedushat Aviv: Iyunim bi-Kedushat ha-Zeman ve-ha-Makom*, chapter *Kedushat Shabbat ve-Yom Tov* (for the distinction itself, see sub-chapter *Ribbui be-Shiurim*, especially pp. 24-25). [↑](#footnote-ref-3)
4. The Ramban in *Torat ha-Adam* cites the Ra'avad's question and answer, but does not express his own opinion or doubt about it. [↑](#footnote-ref-4)
5. There might be practical differences between the reasons, for example: if the sick person on his part is prepared to eat the *neveila* meat; or in the case of a sick person who is a minor, who will not violate a Torah prohibition if he eats the *neveila* meat, while if we slaughter an animal on his behalf, there is such a violation. See *Mishna Berura* (*ad loc*.), who summarizes the discussions of the *Acharonim* on the issue. [↑](#footnote-ref-5)