

Delivery For Future Shabbosos

One of the most widely-known fundamental Halachos is that *Pikuach Nefesh* overrides Shabbos. Therefore, it is a mitzvah and obligation to desecrate Shabbos to save a Jewish life in certain – or even questionable – danger. The Gemara (*Yoma* 85b) compiles several suggestions advanced by the *Tana'im* and *Amora'im* as to the source of this Halacha. The Poskim take the view that two of the reasons have Halachic ramifications:

From whence do we know that Pikuach Nefesh overrides Shabbos?...R' Shimon ben Menasia says: "And B'nei Yisrael shall observe the Shabbos" – the Torah said: "Desecrate one Shabbos for him so that he may observe Shabbos many times over". R' Yehuda said in the name of Shmuel: Had I been there I would have said, "Mine is superior to theirs": "vaChai Bahem' – He shall live through them" – he shall not die through them. Rava said: There is a refutation for all of them, except for that of Shmuel for which there is no refutation.

The Poskim widely accept that Shmuel's source is authoritative. Shmuel learns from the Pasuk in *Vayikra* (18:5), "You shall keep My statutes and My laws which if man obeys he shall live through them", that the commandments of the Torah were given so that man should live by them and abide by them, not that he should die as a result of keeping them. Therefore, whenever it is necessary to violate a Mitzvah to save a Jewish life, we are obligated to do so. (This excludes the three cardinal sins, of course.)

At the same time, the *Rishonim* and *Poskim* also adopt the source offered by R' Shimon ben Menasia. He learns from the Pasuk, "And B'nei Yisrael shall observe the Shabbos to maintain the Shabbos" (*Shemos* 31:16), that one is only commanded to keep Shabbos when this will not compromise his ability to observe Shabbos in the future. In other words, a person should only keep Shabbos when he is sure that this will not cost him his life. We derive from here that *Pikuach Nefesh* overrides Shabbos.

The Poskim debate the many practical ramifications of these two approaches.¹ One well-known example is the question of desecrating Shabbos to save the life of an unborn child. The *Ba'al Halachos Gedolos* rules that although a fetus is not considered "human life", and, for this reason, abortion is not considered murder, we are nonetheless obligated to be *Mechalel Shabbos* to save its life. He goes so far as to say that this even applies before the fetus has reached forty days of gestation, despite the

¹ We have covered this topic at length in several previous essays, all of which are available on the Beis haMedrash website. See *Acharei Mos* 5779, *Noach* 5781, *Toldos* 5781.

Gemara considering it "merely water" at this stage as its organs have not yet formed fully (*Yevamos*, 69b). Although the fetus is not covered by Shmuel's rule, "*he shall live through them*", as it is not yet "human life", nevertheless, since the normal course of events would be birth and Shabbos would be observed many times over, it falls under R' Shimon ben Menasia's rule, "*And Bnei Yisrael shall observe the Shabbos*."²

Moreover, some Poskim seem to recognize R' Shimon ben Menasia's approach as authoritative. For instance, the *Or haChaim haKadosh* (*Ki Sisa*) rules that one should not desecrate Shabbos to rescue a person who has no chance of surviving until the following Shabbos. He reasons that since he will not "observe Shabbos many times over", we have no right to "desecrate one". However, the *Minchas Chinuch* (*Musach haShabbos*) is shocked by this claim – after all, what happened to the Halacha of "*He shall live through them*"!? It is explicitly ruled in the *Shulchan Aruch* (O.C. 329) that one must desecrate Shabbos even to save momentary life!

We will now turn our attention to the question at hand. The *Shulchan Aruch* rules (330:2): "*We do not deliver the baby of a non-Jewish woman on Shabbos – even by way of a method that does not desecrate Shabbos*."

What is the source of this Halacha? The *Mishna* (*Avoda Zara* 26b) teaches that a Jewish midwife may not deliver the baby of a non-Jewish woman, because doing would lead to her raising a son for *Avoda Zara*. The Gemara qualifies this rule, out of concern that our willingness to exclusively assist laboring Jewish women while withholding assistance from all laboring non-Jewish women will cause *Eiva* (anti-Semitic enmity). The Gemara therefore distinguishes between delivering a baby for free and delivering a baby for pay; a midwife must only refuse calls to deliver a non-Jewish baby when she is requested to do so for free, as she can reasonably claim that she is not willing to work for free without arousing *Eiva*. On the other hand, when remuneration is offered for her services, she may not refuse the job, as this could well provoke hatred and enmity. The Gemara goes on to add that on Shabbos it is forbidden to deliver a non-Jewish baby even for pay, as here too the midwife can offer an acceptable excuse that Jewish law only permits the desecration of Shabbos for those who keep Shabbos; as the non-Jewish woman does not keep Shabbos, she is forbidden to help her.

The words of the Gemara imply that if the "Shabbos excuse" would not be well received and the fear of *Eiva* would still exist, it would be permissible to desecrate Shabbos to deliver a non-Jewish baby! *Tosfos* (*ibid.*), however, are unwilling to accept that proposition. Therefore, they suggest that the Gemara was specifically discussing assisting a non-Jewish woman when she is (a) already at an advanced stage of labor or (b) when the baby is known to be full-term. Only because such births do not involve any *d'Oraisa* prohibitions were *Chaza"l* willing to permit the participation of a Jewish midwife due to concerns of *Eiva*. However, it is categorically forbidden to transgress a

² See the *Ran* citing the *Ramban*, the *Ramban* in *Toras Ha'adam*, *Inyan HaSakana*, and the *Poskim* in *O.C.* 330.

d'Oraisa prohibition because of *Eiva*. Consequently, according to *Tosfos*, one may only desecrate Shabbos to save the life of a Jew.³

This is the source of the *Shulchan Aruch's* ruling that one may not deliver the baby of a non-Jewish woman on Shabbos even when it does not require *Chillul Shabbos*. The *Magen Avraham* (4) comments in the name of the *Keneses haGedolah*, "*However, it is permissible for the Karaites, since they observe Shabbos.*"

In other words, since the Karaites do observe Shabbos, as opposed to non-Jews, it is impossible to refuse them assistance on the grounds that we may only desecrate Shabbos to assist those who themselves keep Shabbos. Therefore, out of concern for *Eiva*, we must assist them even on Shabbos.⁴

A huge disagreement over this matter erupted between two of the leading *Acharonim*: the *Beis Meir*⁵ and Rabbi Akiva Eiger.

The *Beis Meir* relates that he received a letter from Rabbi Akiva Eiger in which he expresses his amazement at the *Magen Avraham's* ruling:

Also, I presently have difficulty with the Magen Avraham (330:4), "We do not desecrate Shabbos for a non-Jew... However, it is permissible for Karaites..." [but] "[the Shulchan Aruch] implies that it is prohibited if there is Chillul Shabbos".⁶ And I do not understand this, for the Karaites are considered Mumarim (heretics), and, according to the Rambam, they are considered a Tinok SheNishba (a captive child who is not at fault for his heretical beliefs), and, according to the Nimukei Yosef, they are [only] considered Mumarim if they grew up and became aware of Jewish law (see Shach Y.D. 159:6). On all accounts, this case regards a baby who is certainly a Tinok SheNishba, who is a bonafide Jew with regards to desecrating Shabbos for him. The same Halacha seemingly applies to every pregnant Mumar woman [who married a non-Jew], since the child of a non-Jewish male or an Eved (slave) is Kosher. According to the opinion of the Ramban, we do not desecrate Shabbos to save the fetus of a pregnant woman who was overtaken by a smell for the sake of the fetus...but only because of the danger to the mother. If so, in this case we would not desecrate Shabbos as the mother is a Mumar; see also the Magen Avraham, ibid., 15. His words are beyond me – how does he make this

³ The practical applications of this Halacha will not be reviewed in this essay, but we will revisit the topic in the near future.

⁴ Whether concerns of enmity apply to the Karaites in the same way that they apply to non-Jews is a separate discussion. For further information, refer to Rabbi Shlomo Kluger's comments on this Halacha in *Chochmas Shlomo*, ibid.

⁵ R' Meir Posner (1725-1807), Av Beis Din of Koenigsberg, Poland.

⁶ [Editor's Note: The *Magen Avraham* in the following *Se'if Katan* (referring to the *Psak* of the *Shulchan Aruch* that we do not deliver the child of a non-Jew on Shabbos) writes, "*because there is no Eiva as she can say that we do not desecrate Shabbos for one who does not keep Shabbos, which implies that if there is concern for Eiva, it is permitted [to deliver her child] if there is no Chillul Shabbos.*" R' Akiva Eiger infers that the *Magen Avraham* would permit delivering the child of a Karaite woman (since concerns of *Eiva* are present) only if no *Chillul Shabbos* is involved. See below for further explanation.]

dependent on the Ramban? The Ramban agrees that one must desecrate Shabbos in the setting of possible [risk to human life]. It is only regarding a fetus that he holds that one should not desecrate Shabbos for the above reason, not when the baby has been born. This requires much further study.

Let us explain Rabbi Akiva Eiger's arguments:

He infers from the *Magen Avraham* that the only justification to assist a Karaite woman to deliver on Shabbos is that refusal would result in *Eiva*. Therefore, it is only permissible to offer those forms of assistance that are allowed in the setting of *Eiva*. In other words, as stated in *Tosfos* above, only procedures that are not forbidden *mid'Oraisa* would be allowed. However, if delivering the Karaite baby entails violating a *d'Oraisa*, it would seemingly be forbidden according to the *Magen Avraham*. Rabbi Akiva Eiger contests this ruling, as, after all, the Karaites are Jews! While the mother may have the status of a *Mumar* – he cites the *Shach* who discusses this (Y.D. 159:6) and the disagreement between the *Rambam* and *Nimukei Yosef* as to whether adult Karaites are considered a *Tinok SheNishba* or whether maintaining their lifestyle following exposure to Jewish religion renders them a *Mumar* – the baby is certainly not a *Mumar*! The Karaite baby is no different from any other Jewish baby for whom we are obligated to desecrate Shabbos! (He further points out that this should also apply to a Jewish woman who married a non-Jew.)⁷

The *Beis Meir* retorted with a very sharp letter. He argues that since the permissibility of desecrating Shabbos to save human life is learned from the *Pasuk*, "And *Bnei Yisrael* shall observe the Shabbos", which R' Shimon ben Menasia interprets to mean, "Desecrate one Shabbos for him so that he may observe Shabbos many times over", we are not permitted to save this unfortunate baby born to a Karaite family. Even though he is an innocent *Tinok SheNishba*, it cannot be assumed that he will observe Shabbos in the future and, therefore, we are not permitted to desecrate Shabbos on his behalf!

He adds a further innovative argument:

Even though Shmuel learned this Heter from the Pasuk, "He should live by them",⁸ nevertheless, he presumably does not disagree in practice with the Tana who learned this from "And they should observe" and agrees that one should not desecrate Shabbos for someone whom we can assume will certainly not observe [Shabbos]. Likewise, in the case of a pregnant Mumar woman, from where can it

⁷ To understand Rabbi Akiva Eiger's comments on the *Magen Avraham* (16), one must learn that passage of the *Magen Avraham* in depth. It is highly recommended to study the *Biur Halacha* (*ibid.*) who explains this subject at length.

⁸ In other words, the *Beis Meir* suggests that perhaps Shmuel's approach is also recognized by Halacha, in which case everyone with the status of "Yisrael" must be saved, even those who are unlikely to keep the Mitzvos.

be derived to desecrate Shabbos on behalf of the fetus if the expectation is that he will be assimilated into them [the non-Jewish population]?

To paraphrase, the *Beis Meir* needs to explain why the *Rishonim*'s ruling that we desecrate Shabbos to save the life of a Jewish fetus does not apply in this case. He argues that although we cannot know for certain that any Jewish fetus will observe Shabbos when he grows up, nonetheless, since it is at least possible that he will observe Shabbos, we must desecrate Shabbos on his behalf. This is because we desecrate Shabbos even for a possible *Pikuach Nefesh*, even for a statistically improbable outcome ("*Ein Holchin b'Pikuach Nefesh Achar haRov*"). On the other hand, a *Tinok SheNishba* born to a Karaite mother or a *Mumar* mother is all but certain to become assimilated into his family's society and will never observe Shabbos. Therefore, it makes no Halachic difference that he is Jewish, for it is almost certain that he will never keep Shabbos. We cannot desecrate Shabbos for the outside chance that he will somehow discover his Jewish roots, escape his childhood home, and embrace Torah Judaism!

Rabbi Akiva Eiger replied to the *Beis Meir*, arguing that the Gemara in *Yoma* is clearly incompatible with this interpretation. On the contrary, the Gemara considers the *Pasuk* of "*vaChai Bahem*" to be the authoritative source. Accordingly, we are instructed to save the lives of every Jew, even if in all likelihood they will never observe the Mitzvos, as each Jewish soul is precious to Hashem.

There is much to say about this intricate dispute, but that is beyond the scope of this essay. We will suffice with two concluding remarks:

1. The *Shevet HaLevi* (3:37) asks a powerful question on both the *Beis Meir* and Rabbi Akiva Eiger. How did they overlook a compelling piece of evidence directly relevant to this subject? The *Rema* (E.H. 4) rules that we desecrate Shabbos to save the life of a child of unknown identity even in a city in which most of the residents are not Jewish. How could this be? After all, concerning all Halachic questions the legal status of this child is "not Jewish"; he is permitted to violate all the Mitzvos of the Torah. This must be because we do not follow the majority when it comes to *Pikuach Nefesh* – even if that person will never keep Shabbos! Evidently, Halacha requires us to desecrate Shabbos even for the life of a Jew that Halacha itself exempts from Mitzvah observance. This is contrary to the view of the *Beis Meir*.⁹
2. In practice, it is obvious that one is obligated to desecrate Shabbos to save the life of a Jewish baby who grows up in a non-religious home. First, because Halacha primarily follows Rabbi Akiva Eiger's view, and second because it is plausible that this child will observe Torah and Mitzvos when he grows up.

We intend to provide further details and commentary on this Halachic principle in a future essay.

⁹ See the *Shevet haLevi* who suggests that this is debatable even according to the other opinions.