

“לא תבערו אש בכל משבתיכם ביום השבת”

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Chazal make a *derasha* on a *posuk* in this week’s *parsha*, “לא תבערו אש בכל משבתיכם ביום השבת” (שמות?), that Beis Din does not carry out a punishment of *sereifah* on Shabbos. By extension, other punishments from Beis Din are also not carried out on Shabbos. Rambam, in ז : כד, הלכות שבת, *paskens* this *lehalocho* and says that all *onshei Beis Din* are included in this *issur* of “לא תבערו אש בכל משבתיכם ביום השבת”.

There are several interesting *ha’aros* on the *inyan*: One that I find interesting, even though I don’t think it is such a *chiddush*, is that the Rambam codifies this *halocho* in *Hilchos Shabbos* instead of *Hilchos Sanhedrin*. It would seem more apropos to place it with the other *halochos* which discuss the responsibility of Beis Din to carry out their affairs and its details. The fact that he brings this *din* in *Hilchos Shabbos* suggests that Rambam views the nature of this *issur* to be a form of taking away from the *chashivus* of Shabbos. This is quite logical given the fact that the *issur* is *darshened* from our *posuk* of “לא תבערו אש בכל משבתיכם ביום השבת”.

Perhaps we can compare this to the following idea. R. Chaim Ozer, in סימן פא אות כג (בסוף), asked R. Chaim [Brisker] on the *posuk*, (יד, דברים ה, ...) “לא תעשה כל מלאכה אתה ובנך ובתך...”, why this is necessary when we already have another *posuk*, (ויקרא יא, מב) “לא תאכלום”, which tells us the *issur* for a *gadol* to feed *ma’achalos assur* to *ketanim* (עיי יבמות קיד). Once we know that one cannot assist *ketanim* in doing something wrong, why does Shabbos need a specific mention that *ketanim* as well should not perform *melocho*? R. Chaim answered from א : ה, גמ’ יבמות ה, which states *Hilchos Shabbos* is set apart because it is more *chamur*. Rashi explains that one who is *mechalel Shabbos* is עוֹבֵד עֵוִו. Therefore, “לא תאכלום” would just be a regular *issur*, however, the *posuk* of “לא תעשה כל מלאכה אתה ובנך ובתך” gives it the stronger *chomer* of being specifically a *Shabbosdigge issur*.

The Mishna l’Melech on our Rambam raises an interesting question: The *גמ’ סנהדרין* delineates that one has a mitzvah to stop someone from killing another *Yid*, even if it means killing the *rodef*. Equally, even if the *rodef* were chasing after a *na’aro me’orasa* to be *metameh* her, one is *mechuyav* to save her from the *zenus* even if one must resort to killing the *rodef*. Mishna l’Melech says it is obvious that the *rodef* to kill another may be killed on Shabbos because it is *sakonas nefashos*. However, when there is someone chasing a *na’aro me’orasa* to be *metameh* her, can one kill that *rodef* on Shabbos? Despite the Torah allowing for extreme measures to be taken to save her from this *pegam* and the terrible aftermath which she will have to endure for the rest of her life, she will not die from this circumstance. Maybe one cannot not kill her *rodef* on Shabbos?

The Mishna l’Melech is *mashma* that he is comparing this dilemma to the *din* of *ein onshim b’Shabbos*—just as Beis Din does not carry out its judgements on Shabbos, so too one cannot kill to save this woman. This is hard to understand because the *dinim* are seemingly unrelated. One is on Beis Din carrying out their affairs, and the other being *matzil* someone from a *rodef*. Yet, maybe he is asking that even though it is a *hatzolidigge heter* it still does not have the *koach* to be *docheh Shabbos* in lieu of her not being *b’sakonas nefashos*. He then

cites the Rif in (דפי הר"י טז) : פסחים טז : who *paskens* outright that saving one from *rodef achar ha'erva* by killing the *rodef*, applies even on Shabbos.

I want to point out an interesting *din* brought by the Pri Megodim in ג' ס"ק ג' : או"ח סי' שלט אשל אברהם ס"ק ג' :
In the *din* of *kano'im pogin bo*, when the *kano'im* have the right to kill one who is *bo'el aramis b'farhesya*, if the case were to take place on Shabbos the *kanoy* would not be allowed to kill the "Zimri". Because this *din* is only a *reshus* given to the *kanoy*, and not a *chiyuv*, it is not *docheh* Shabbos.

Were we to ask what the difference between the Rif's *din* of saving the *na'aro me'orasa* by killing her *rodef* and the Pri Megodim's *din* not allowing *kano'im pogin bo* on Shabbos, we would say the following: The Torah views the *pegam* of the woman, even though she will live through it, as *k'ein misah* because of what happens to her and the enduring effects. Because of this, the Rif *paskens* that saving her even by means of killing the *rodef* on Shabbos. However, the case of *kano'im pogin bo* is merely a *reshus* to the point that the *din* is the "Zimri" can defend himself and kill the *kanoy* in self-defense (גמ' סנהדרין פא). The *kanoy* has the *din* of a *rodef* because he isn't *chayiv* to kill "Zimri," and therefore "Zimri" has *הבא להרגך השכם והרגו*. It stands to reason, then, that *kano'im pogin bo* does not apply on Shabbos.

The Sfas Emes in יו"ט פרק יו"ט raises the following *shayluh*: If one were to witness both a case of *rodef achar chaveiro l'hargo* and *rodef achar ha'erva l'tamo* simultaneously, and he could only save one of them, which one gets precedence? He answers that the *nirdof* should be saved over the *isha*. The reason for this is because even though the woman will suffer a terrible trauma that we cannot even imagine, and have to live with it for the rest of her life, the *nirdof* will be dead if he is not saved. Therefore, one should save him from death before the saving the *isha* from her *pegam*.

Maybe this is why the Mishna l'Melech was *mesupak* whether saving the *na'aro me'orasa* on Shabbos through killing the *rodef* is allowed. Since we see her *din* of *hatzolo* is less than that of the *nirdof*, perhaps her *din hatzolo* to kill her *rodef* would not be *docheh* Shabbos. *L'maaseh*, he brings the Rif who *paskens* that indeed her *din hatzolo* is *docheh* Shabbos.