

# Preservation of Life Pushes Away<sup>1,2</sup>

## (*Docheh*) Shabbos

Clarifications within the General Discussion,  
and in the Opinion of Rambam

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### I.

#### A. Yoma 85a

R. Yishmael, R. Akiba, and R. Elazar b. Azaryah were once traveling on the road. . . . this question arose in front of them: From where do we know that preservation of life trumps the Shabbos? R. Yishmael responded and said, [From the following verse:] “if the thief shall be found in concealment”—and if this person [is one] about whom it is uncertain as to whether he came for monetary reasons or for homicidal purposes. . . . R. Shimon b. Menasya said, [From the verse] “And the children of Israel shall keep the Shabbos” (Shemos 31); the Torah said “desecrate one Shabbos for him in order that he be capable of observing many *Shabbosos*.” R. Yehudah said in the name of

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<sup>1</sup> Translated by Yehuda Salamon. *Translator’s note:* This article was translated with the permission of Rabbi Neuburger from Beit Yitzchak. The translation was not reviewed by the author prior to publication.

<sup>2</sup> The Hebrew word *docheh*, used throughout the text, has different connotations and nuances. Depending on context, it has been rendered as “trumps,” “casts aside,” “pushes away,” “suppresses,” or “supersedes.”

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Shmuel, If I had been there, I would have said that [my source] is better than theirs: “And live by them” (Vayikra 18)—and do not die by them. Rava said that all of them [these sources] have refutations, except for that of Shmuel, which cannot be refuted. . . . And [based on] all of them, we find [them to be the sources for] the case of certain death, but in a case of uncertainty, [still] how do we know it [that preservation of life trumps Shabbos]? That of Shmuel lacks a disproof.

The general assumption is that the exegetical interpretation of Shmuel (“And live by them—and do not die by them”) has been conclusively accepted, as evidenced by the fact that we learn the rule that Shabbos is to be violated even in cases of possible danger from Shmuel’s interpretation exclusively, and not from the other sources suggested in the above-mentioned discussion. That assumption, however, can be challenged as follows: according to R. Shimon b. Menasya, whose source for the law is “desecrate one Shabbos so that he observe many *Shabbosos*,” one could conclude that only in cases of “certainty,” i.e., where it is clear that the ill patient will definitely live to observe other *Shabbosos*, will we allow the violation of Shabbos (cf. Rashi there). As such, in cases of “doubt,” i.e., when it is unclear if the patient will survive until the next Shabbos, one would not be allowed to violate Shabbos on his or her behalf. Presumably this logical extrapolation prevents the allowance of Shabbos violation in cases of “doubt” to be learned from R. Shimon b. Menasya. However, this logic can similarly be implemented within Shmuel’s opinion as well. When the Torah states “and live by them,” perhaps the implication is that the fulfillment of the commandments should pose no *certain* danger. However, if observance of a commandment will only *potentially* cause harm, one cannot implement “and live by them” to excuse oneself from observance.

I would like to suggest the following explanation for why the Talmud elects for the former interpretation within Shmuel. Chazal based their extrapolation on the change of language in the verse

(Vayikra 18:5), “And you shall guard My statutes, and My laws that a person shall do them, and live by them, I am God.” In that verse the verbs change from the future tense (“and you shall guard,” “he shall do”) to a stronger, declarative form of “and live!” This grammatical shift implies that we are obligated to “preserve life” when performing the commandments. Therefore, a commandment cannot be fulfilled if it comes at the cost of even a potentially life-threatening situation. This inference is implicit in Rashi’s comments in D’H ‘That of Shmuel’: “that a person shall execute the commandments [so] that he should definitely live by them, and not that he should come through that performance to potentially deadly circumstances.” The declarative charge is therefore meant to mandate the violation of Shabbos in cases of possible danger.

**B.** We further need to frame our study in light of the discussion in Tractate Sanhedrin 74a:

R. Yochanan said in the name of R. Shimon b. Yehotzadak, “They voted and concluded in the attic of the house of Nitza in Lod, that all transgressions in the Torah, if we were to say to a person ‘Transgress and you will not be killed,’ that he should do so, but not in the cases of idolatry, immoral acts, and murder.” . . . But the *baraisa* states in the name of R. Yishmael, “From where do we know that if they said to a person ‘Serve this false deity and you will not be killed,’ that he should serve the idol and not be killed? The verse states ‘and live by them’—and he should not die by them.”

Interestingly, R. Yishmael does not utilize the phrase “and live by them” in the previous source in Yoma, while he implements it here to learn that one should violate any sin to save one’s life. Perhaps, then, the discussion in Yoma, which deals with the source for the law that “preservation of life trumps Shabbos,” expands the suppression of *mitzvos* in the face of human endangerment, over the allowance of the Talmud here in Sanhedrin.

A number of issues emerge which require clarification. First of all, we must elaborate the manner in which the Talmud in Yoma extends the suppression of commandments in the face of endangerment. We further need to understand why R. Yishmael utilizes “and live by them” in Sanhedrin (thereby allowing one to violate sins under the threat of death), yet searches for another interpretive source for the law that Shabbos is superseded by preservation of life in Yoma. Finally, we must clarify why Shmuel, an *amora*, relied on the source of “live by them,” in spite of the omission of this source among earlier *tannaim* (cf. Rashash in Yoma).

The Mabit, in *Kiryat Sefer*, at the beginning of the second chapter of Laws of Shabbos, explains that the passage in Sanhedrin teaches that a person who is directly in danger, i.e., a situation of certain danger, is allowed to save himself by violating *mitzvos*. The Talmud in Yoma, however, is clarifying the source that possible danger, as well, can push off the laws of Shabbos, and that *all* are required to save another in peril, even if it involves violating specific *mitzvos*. (Cf. Tosafot Yom Ha-Kipurim, where he attempts to argue with this idea; further see *Tzitz Eliezer*, vol. 8, 15:1.)

C. Our explanation can be supported by a statement made in the commentary of the Ba’alei Ha-Tosafot on the Torah (*Moshav Zekeinim*, Vayikra 18:5):

They said [in the name of] the gaon Ibn Hofni, “From where did our Rabbis learn such a grave thing as to be lenient in the commandments, upon whose performance the whole worlds depends? Perforce Moshe Rabeinu must have *received this explicitly*—for in his own life, they (*B’nei Yisrael*) obviated the grave commandment of circumcision, whose neglect incurs divine excision, in the desert. Moshe was there with them, and they did not perform it for this very reason: ‘that a person should do them, and live by them’—but not die by them. For if they had circumcised their children, they would have died for

the very reason stated in Sefer Yehoshua (5:7), “because they had not circumcised them on the way.”

Performing a circumcision in the desert was only potentially a life-threatening danger, as seen from the fact that the Levi'im circumcised themselves in the desert (*Sifrei Be-Ha'alotecha* 20, as quoted in Rashi, Devarim 33:9; see Malbim on Yehoshua 5:4). If this is indeed true, then the Jewish people must have had a tradition to interpret the verse “and live by them” as meaning “and not to die by them,” as explained above, and therefore even a case of possible danger is justification for deferring the obligation of *mitzvos*.

**D.** Based on the *Mabit* and the *Moshav Zekenim*, it is possible to reconcile the discussion in Sanhedrin with the one in Yoma. The simple interpretation of “and you shall live by them” that the Jews in the desert received was that one must not bring *oneself* into a potentially life-threatening situation through the performance of a mitzvah. This idea is articulated by R. Yishmael in Sanhedrin, who believes that the phrase “to live by them” obligates an individual to actively transgress a law in order to avoid placing himself in a dangerous situation. However, he did not extend this law to allow *others* to actively violate a mitzvah to save another from death.

Shmuel then explained his interpretation, based on the declarative verb usage in the verse (as noted by the *Kiryat Sefer*), that every person has the responsibility to transgress his or her own commandment in order that other individuals can continue to “live through them,” i.e., via observance of the commandments, and thus, even in situations of potential danger to others, one can violate commandments.

## II.

**A.** In analyzing the decisions of the Rambam, it appears that he has a different understanding on the matter. The supercommentaries on the Rambam debate whether the Rambam holds that the obser-

vance of Shabbos is merely suppressed (*dechuyah*) when a life is at stake, or whether violating Shabbos observance is entirely permitted (*hutrah*).

On the one hand, at the beginning of chapter 2 of Laws of Shabbos, the Rambam writes: “Shabbos is *suppressed* in the face of the endangerment of life, like all other *mitzvos*.” It is clear that the Rambam was precise in his wording, as evidenced by his formulation in another situation where Shabbos observance is pushed aside. In Laws of Approaching the Temple 4:39, the Rambam writes:

And any time-specific sacrifice, whether of public or private [interests], suppresses Shabbos and ritual impurity . . . (14) If the entire weekly priestly serving body is ritually impure due to contact with a corpse, another weekly group should come . . . (15) And why is it that we pursue the purity of another serving body? Because the impurity was not entirely removed in the public venue; rather, it stands in its impermissible state, and only now is it pushed aside due to extenuating circumstances. And we only push away something which should be pushed away where it is impossible. Because of this, the High Priest’s forehead plate is necessary to atone for such behavior.

Based on this second ruling, one can argue that the Rambam had a similar understanding in the Laws of Shabbos: prohibited labor performed on Shabbos remains in a forbidden state in theory, however it is pushed aside in cases of mortal danger. This is the approach found in the *Kesef Mishneh*. On the other hand, the Rambam continues in Laws of Shabbos (2:32):

The general rule of the matter is that Shabbos, in the case of a dangerously ill patient, is like a weekday for anything that is necessary in treating them. (33) When these actions are performed, they should not be done by a gentile, minor, servant, or woman, so that Shabbos should not become light in their eyes, only through the greatest of Jews and their scholars . . .

Now it would appear that the Rambam intends to qualify his language at the beginning of Laws of Shabbos. Here he is explaining that Shabbos observance is not merely suppressed but is completely permitted in cases of mortal danger. This is the approach held by the Rema (Responsum 76) and Avnei Nezer (Orach Chaim 455:5).

Regardless of which approach one uses to explain the Rambam (i.e., *hutrah* or *dechuyah*), his language still poses a dilemma, for he uses two different terms in the two different passages that explicitly contradict one another!

**B.** There are other problematic statements in the Rambam that also need to be addressed. The Rambam writes in Laws of Shabbos (1:33):

It is forbidden to delay in the desecration of Shabbos for the sake of a dangerously ill patient, as it says “that a person should do them, and live by them”—and not die by them. You see that the laws of the Torah are not vengeful, but rather provide compassion, kindness, and peace to the world . . .

Why did the Rambam wait until paragraph 33 to divulge the source of the law explicated in paragraph 1? He should have written that Shabbos is pushed away in situations of danger just like other *mitzvos*, as it says “that a person should do, etc.,” as he did at the beginning of chapter 5 in Fundamentals of the Torah (Yesodei Hatorah)!

Furthermore, why did the Rambam feel the need to expand upon the source of the law and add his continuation, “You see that the laws, etc.”? Why does this statement belong in the middle of the paragraph?

**C.** In order to better understand the Rambam in our chapter, it is necessary to examine his language in Laws of the Fundamentals of the Torah, chapter 5. At the beginning of that chapter, in his discussion of the commandment to sanctify the name of God, Rambam writes:

When an idolater rises and coerces a Jew to transgress any one of the commandments spoken in the Torah on pain of death, he should violate that commandment and not die, as it is said by the commandments, “that a person should perform them and live by them”—and live by them, and not die by them . . .

In the sixth paragraph, the Rambam adds:

. . . just as they [the sages] said in cases of external coercion [that the commandment should be violated], so too they said of sickness . . . and therefore we provide medical treatment using any of the prohibitions of the Torah in the case of danger . . .

From the language of the Rambam, we see that he is presenting a novel idea—that the law that one may violate any Torah prohibition for medical treatment is an additional aspect of “and live by them,” the same source which taught us that we are not required to sacrifice our lives in order to observe the commandments. Therefore, the Rambam codifies the commandment of “and live by them” by the discussion of coercion, and repeats it in the context of diseases and similar conditions. The Rambam understands that pushing away a mitzvah for the sake of healing—whose basis is found in Pesachim 25a and in our discussion in Yoma 84a—is an expansion of the law that one may violate commandments when under coercion, as well as an enhancement of the imperative “and live by them.” By coercion, the observance of the mitzvah would lead to the death of the one who performs it—and, as such, one is not obligated in its fulfillment. However, by a medical emergency, where the survival of the ill person is brought about directly through the violation of a commandment, the Rambam expands the allowance further and explains that it is “like a weekday.” In such a case, rigid observance of the mitzvah is an impediment to the individual’s survival.

In light of this distinction between mitzvah observance being the *cause* of death and being an *impediment* to survival, it is possible to reconcile the discussions of Yoma and Sanhedrin, and to explain



their similarities, as well as their disparities. In Sanhedrin, the topic under discussion is the law of coercion, and we learn that the mitzvah of “‘and live by them’— and do not die by them” means that a person cannot cause his own death through an attempt to uphold the *mitzvos*. In Yoma, however, the Gemara is deciding the parameters of the rule that “preservation of life trumps Shabbos.” When the act of survival will violate the commandment to observe Shabbos, how do we know that this desecration is sanctioned? As we explained based on the commentary of the *Moshav Zekenim* (Vayikra 18:5), the sages had a tradition from the generation of the desert, an entire generation who did not circumcise their children for fear of life-endangerment. That generation’s actions taught the sages the concept of “and live by them.” R. Yishmael, in citing this tradition in Sanhedrin, understands that one does not have to uphold a mitzvah whose performance will cause one to die or put one’s life in danger. However, the tradition did not clearly mandate that one can actively violate a mitzvah in order to save lives or heal. Shmuel, in Yoma, expands the meaning of the interpretive tradition to include the mitzvah of saving an ill patient from his or her disease, even through the violation of a mitzvah.

**D.** In Laws of Shabbos 2:3, the Rambam writes: “And it is forbidden to pause in the desecration of Shabbos in the case of a dangerously ill person, as it says, ‘that a person should perform them, and live by them’—and he should not die by them.” The language of the Rambam indicates that there is a special prohibition against delaying in saving a life due to observance of Shabbos. This prohibition is also learned from the mitzvah of “and live by them.” Therefore, one who delays life-saving activity for any reason may transgress the mitzvah of “do not stand near the blood of your friend.” Furthermore, even if the mitzvah of Shabbos exonerates a person from this indirect manslaughter, it would not undo the mitzvah of “and live by them.” Thus, a person who pauses in saving a life because he or she is searching out ways to avoid desecration of Shabbos may be violating two commandments according to the Rambam.

**E.** In light of this, the seemingly superfluous language of the Rambam in Law of Shabbos 1:33 is now clearer. “You see that the laws of the Torah are not vengeful, but rather provide compassion, kindness, and peace to the world.” These words are not merely a homiletical tangent placed in the discussion of the laws of the preservation of life. Rather they are the guidelines of the mitzvah “and live by them” as laid out by the Rambam in paragraph 3. Through that mitzvah, the mercy and kindness of the Torah can be perceived. In contrast, one who pauses during the attempt to save life in order to keep a commandment of God, denigrates the Torah, for it is as though the laws of the Torah are being advertised as a system which devalues life.

The Rambam understood all of this from the emphasis that the Gemara placed on the opinion of Shmuel in that even uncertain cases of danger cast aside the laws of Shabbos. If even uncertain cases of danger can push off Shabbos observance, then certainly one is prohibited to delay in violating Shabbos observance, as this delay may add to the level of potential danger.

**F.** Furthermore, now it is also possible to explain why the Rambam varies his wording when describing how Shabbos observance may be violated in order to save a life. In the Rambam’s introduction of Laws of Shabbos, chapter 2, he writes that “Shabbos is cast aside next to life-endangerment just like all other *mitzvos*.” In paragraph 2 of Laws of Shabbos, he changes his description to state “the general rule is that Shabbos, with regard to a dangerously ill person, is like a weekday for any necessary matters.” Why does he change his description? The answer is based on the Rambam’s distinction between mere suppression (*dechuyah*) and complete permission (*hutrah*) of Torah violations, as learned from Laws of Approaching the Temple. If the former term applies, and the *mitzvos* are merely suppressed, we must still search for venues where it is possible to keep them. That is, we try to keep both of these ideals—the preservation of life and observance of the *mitzvos*. However, if the latter term applies, then our obligation is simply to preserve life unequivocally. As we

have explained within Rambam's understanding of the obligation to preserve life, since even a potential threat to life pushes away any obligation to perform a mitzvah, it is prohibited to hesitate in order to observe both. In this way, Shabbos is not only suppressed due to the reason of life-endangerment, but it is also like a weekday with regard to life-endangerment. In other words, in reality we do not tarry when it comes to saving lives in an attempt to keep Shabbos, which results in its being treated just like a weekday. However, in instances where one does not cause any loss by taking time, we search out ways to preserve Shabbos and life, as Rambam says in paragraph 11 (according to the *Kesef Mishneh*), "and anything possible to be changed should be done ahead of time. For example, where her friend brings to her [the woman who had given birth] a vessel suspended in her hair; and if it is not possible, she can bring it in its normal way." As such, Rambam used both description regarding Shabbos. One to emphasize its nature of being *hutrah* when life is at stake, and one to emphasize that it is merely *dechuyah* when the situation allows for one to plan out Shabbos-minded options ahead of time.

**G.** Therefore, the Rambam waited until paragraph 33 to introduce the source of this ruling. He waited until he had illustrated the specifics of the law of the life-endangerment suppressing/overriding Shabbos. Only then did he label the source and explain the parameters of the law at length, since all of the details in the earlier paragraphs helped to define the law.

**H.** Now it is also clear why the Rambam introduced the chapter with the formulation "Shabbos is suppressed in face of life-endangerment" and deviated from the language of the discussion of the Gemara, "From where do we know that preservation of life pushes away Shabbos?" According to our analysis, and based on his understanding of the mitzvah of "and live by them," it is not that the *mitzvah of saving life* exclusively pushes Shabbos away; rather, it is the *endangerment of life* that pushes away Shabbos, so that *we do*

*not enter into a situation where life is endangered because of a commandment!*<sup>3</sup> Saving a life would merely suppress Shabbos observance and we would still be required or allowed to delay in order to try to avoid its violation. The endangerment of life is what actually pushes away and completely permits Shabbos violation.

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<sup>3</sup> Translator: Only 'endangerment of life' is bolded by the author. The other bolding and emphasis is mine.