

Foundations of Truth

*On
Chanukah:
Rambam Hilchos Kiddush Hashem*

*Torah Thoughts From
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Rosh HaYeshiva, Yeshivas Ner Yisroel



Torah nuggets harvested from Rav Weinberg’s thought-provoking classes given at Yeshivas Ner Yisroel and Aish HaTorah, Jerusalem, that uniquely reveal essential foundations of Torah and Jewish thought. While these essays include some edits for readability, they largely preserve the Rosh HaYeshiva’s unique style and original messages.

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Chanukah: Rambam Hilchos Kiddush Hashem
Rav Shmuel Yaakov Weinberg zt"l
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Hilchos Kiddush Hashem

During Chanukah, it's worth going through these *halachos* of *Kiddush Hashem*, sanctifying the name of *Hashem*. We're only going to look at the *Rambam's* personal *shitah* (view) that he was *kovei'ah* (established) by going through all the *sugyos* (areas of discussion). We won't have time to go through the *sugyos* themselves to see how he learns them and how the *Ba'alei Tosafos* deal with the same *sugyos*. So, we'll just be going through some of the *gidrei halachos*, the basic *halachic* framework, and the *halacha l'ma'aseh* (practical applications) as the *Rambam* sees it.

Part I

The *Rambam* [*Hilchos Yesodei HaTorah* (5:1)] says:

כל בית ישראל מצווין על קדוש השם הגדול הזה שנאמר ונקדשתי בתוך בני ישראל ומוזהרין שלא לחללו שנאמר ולא תחללו את שם קדשי

כיצד כשיעמוד עובד כוכבים ויאנוס את ישראל לעבור על אחת מכל מצות האמורות בתורה או יהרגו יעבור ואל יהרג שנאמר במצות אשר יעשה אותם האדם וחי בהם וחי בהם ולא שימות בהם ואם מת ולא עבר הרי זה מתחייב בנפשו

The entire house of Israel is commanded regarding the sanctification of [God's] great name, as the Torah says (Vayikra 22:32): "And I shall be sanctified amidst the children of Israel." And they are also warned against desecrating [His holy name], as the Torah says: "And they shall not desecrate My holy name."

How is this so? If a gentile should arise and force a Jew to either violate one of the commandments mentioned in the Torah or he will kill him, he should violate the commandment rather than be killed, as the Torah says concerning the mitzvos (Vayikra 18:5): "which a man will perform and live by them." One should live by them and not die because of them. If a person dies rather than transgress, he is held accountable for his life.

Let's go through it, piece by piece:

כל בית ישראל מצווין על קדוש השם הגדול הזה

"The entire house of Israel is commanded regarding the sanctification of [God's] great name..."

As an introduction, in earlier *perakim* (chapters 2-4), the *Rambam* was discussing the *gadlus* (greatness of) *Hashem Yisbarach*, in order to give us a way to understand how we could fulfill the *mitzvah* of *ahavah* and *yirah*, loving and fearing the *Ribono Shel Olam*.

Since he was just speaking about the *gadlus* of *Hashem Yisbarach*, so now here in the 5th *perek*, the *Rambam* sums it up: this **השם הגדול הזה**, *Hashem's* great name, that we just clarified His greatness in the 2nd, 3rd, and 4th *Perakim*, **כל בית ישראל מצווין על קדוש השם**, all of *Klal Yisrael* have to sanctify Him.

שנאמר ונקדשתי בתוך בני ישראל

"...as the Torah says (Vayikra 22:32): "And I shall be sanctified amidst the children of Israel."

For now, let's hold off discussing why he says earlier **כל בית ישראל**, "all Jews are obligated". Maybe it's because the *pasuk* here says **בני ישראל** and is using a similar choice of words. But it's still peculiar because the *Rambam* doesn't use the language: "**כל בית ישראל** are obligated to eat *matzah* on *Pesach*" even though all of *Bnei Yisrael* are obligated in eating *matzah* on *Pesach*. What is he coming to be *marbeh* (add) over here by mentioning this **כל בית ישראל**?

Maybe you'll want to say that he's coming to clarify that although it's a *mitzvas aseï she hazman grama* (positive time-bound command) that we would think women are therefore *peturos* (exempt)? But is that it or is he coming to add something specific to the laws of *kiddush Hashem* with this phrase **כל בית ישראל**? We'll leave that question for now.

ומוזהרין שלא לחללו שנאמר ולא תחללו את שם קדשי

"...And they are also warned against desecrating [His holy name], as the Torah says: "And they shall not desecrate My holy name."

They are obligated in a *mitzvas aseï* (positive *mitzvah*) of being *mekadesh Hashem* but there's also a *mitzvas lo saseï* (negative *mitzvah*) **לחללו שלא** ומוזהרין **שלא לחללו**, not to be *mechallel* (desecrate) *Shem Shamayim*.

כיצד

How is this so?

The *Rambam* shows how this idea express itself. Namely, where do we see the *l'ma'aseh*, the practical application for this obligation: to positively sanctify *Hashem* as well as the prohibition against desecrating the *Shem Hashem*? So, he says as follows:

כשיעמוד עובד כוכבים ויאנוס את ישראל לעבור על אחת מכל מצות האמורות בתורה או יהרגו יעבור ואל יהרג

If a gentile should arise and force a Jew to either violate one of the commandments mentioned in the Torah or he will kill him, he should violate the commandment rather than be killed.

When a *goy* (non-Jew), and actually the same *din* (law) would be true by a *yid*. *Rachmana litzlan*, if a Jew were to do this, the same is true; it's not limited to if a *goy* does it.

But if the *goy* tells you: "Be *over* (transgress) one of the *mitzvos* of the Torah or else I will kill you"; not that he actually says "be *over* one of the *mitzvos*". Rather he says "do such and such *melachah* (prohibited work) on *Shabbos* or else I will kill you", then the *halalcha* is: **יעבור**, he should transgress the *Torah* prohibition, **ואל יהרג** and he should not permit himself to be killed.

שנאמר במצות אשר יעשה אותם האדם וחי בהם וחי בהם ולא שימות בהם ואם מת ולא עבר הרי זה מתחייב בנפשו

As the Torah says (Vayikra 18:5) concerning the *mitzvos*: "...which a man will perform and live by them.", one should live by them and not die because of them. If a person dies rather than transgress, he is held accountable for his life.

Because regarding *mitzvos*, the *Torah* says **וְחַי בָּהֶם** “and you shall live by them” which we expound to mean **וְחַי בָּהֶם וְלֹא שִׁמּוֹת בָּהֶם**, “and you shall live by them, and not die through them”. But if he didn't keep this law and instead allowed himself to be killed in order not to transgress, then not only does he not have a *mitzvah*, but he's **מתחייב בנפשו**, he's wasted his *neshama*, *shelo k'din*, transgressing the *halacha*.

The Problem

We can seem understand most of this *halacha*, but this last piece is *pil'ei pla'im*, incredibly hard to understand for two reasons:

Later in this *perek*, in *halacha daled*, the *Rambam* goes on to enumerate what each of the consequences are if you keep the *dinim* of *kiddush Hashem* the way the *Torah* gave it, and what are the consequences if, *chas v'shalom*, a person doesn't follow the *halacha* that the *Torah* gave. As a result, in *halacha daled*, he says as follows:

כל מי שנאמר בו יעבור ואל יהרג ונהרג ולא עבר הרי זה מתחייב בנפשו

Anyone about whom it is said: "Transgress and do not sacrifice your life," if he sacrifices his life and does not transgress, he is held accountable for his life.

Wherever the *Torah* says that he should be *over* the *isur* and not allow himself to be killed, and instead inappropriately allows himself to be killed, then he's **מתחייב בנפשו**.

In *halacha daled*, he brings this *halacha* and in *halacha daled* is where it belongs. Because that's where he's discussing the particular *dinim*, and what the consequences are for each situation. **וְחַי בָּהֶם וְלֹא שִׁמּוֹת בָּהֶם** is the result of him inappropriately giving up his life; so that's where it belongs.

But in our original *halacha*, *halacha alef*, (1) why does he say **וְחַי בָּהֶם וְלֹא שִׁמּוֹת בָּהֶם** a second time? (2) And why does it even belong there at all? In *halacha alef*, the *Rambam* is just telling us what the *din* is, not the consequence; that's not discussed until *halacha daled*.

For what reason is the *Rambam* mentioning **וְחַי בָּהֶם וְלֹא שִׁמּוֹת בָּהֶם** in *halacha alef* and why twice? He's going to say it anyway in *halacha daled*, where it belongs.

In the Right Direction

B'hechrech, it must be, that the *Rambam* mentions **וְחַי בָּהֶם וְלֹא שִׁמּוֹת בָּהֶם** in *halacha alef*, not to tell us the consequence of the *din*, if you obey it or not, that's for *halacha daled*. But rather he needs to mention it in *halacha alef* in order to be *kovei'a* (*establish*) the *din* itself.

In order to be able to tell me that there is even such a *din* as **וְחַי בָּהֶם וְלֹא שִׁמּוֹת בָּהֶם**, that he should transgress and not be killed, you first have to know that if you don't do so, and instead inappropriately let yourself be killed, **וְחַי בָּהֶם וְלֹא שִׁמּוֹת בָּהֶם**, he's held accountable for his life.

This must be the case, because initially he's only coming to explain the *din*; the consequence of the non-obedience, again is discussed in *halacha daled*. Otherwise, it doesn't belong here and the *Rambam* would leave it until *halacha daled* where it belongs. You hear it clear - *halacha alef* is only coming to tell us how we could *pasken* the *din* of **וְחַי בָּהֶם וְלֹא שִׁמּוֹת בָּהֶם**.

But how's this so? How does the added phrase of **מתחייב בנפשו** actually show me, compel the *din* of **יעבור ואל יהרג** in *halacha alef* to be the case? To understand why, we have to first go through some foundational points. (*Answer is developed over next few sections until end of Part IV*)

Part II

Basic Mechanics

Hear this carefully: The *Rambam* says: “**כיצד**” - what does **כיצד** mean? **כיצד** means: what is the case where you're going to apply the *din* of *kiddush Hashem* or *chillul Hashem*? If a *goy* comes and says “be *over* an *aveirah* or I'll kill you”, then the *halacha* is that the Jew shouldn't let himself be killed, rather he should transgress the *aveirah*.

Why? Because the *pasuk* says **והי בהם ולא שימות בהם**, “*you should live by them and not die because of them*”. If not for the *pasuk* of **והי בהם**, what would the *halacha* be?

The *din* would be **יעבור ואל יהרג**, that he should let himself be killed rather than be *over*. The *Rambam* says the reason for this in *halacha alef*:

“יעבור ואל יהרג שנאמר במצות אשר יעשה אותם האדם וחי בהם וחי בהם ולא שימות בהם”

The reason he does not have to die is because we have a *halacha* by *mitzvos* called **והי בהם**, “*and you shall live by them*”. But if not for this *halacha*, then he would have to allow himself to be killed for any *mitzvah* or *aveirah* in the Torah because of *kiddush Hashem*.

But now that we have the *pasuk* of **והי בהם**, the *pasuk* tells us that you don't allow yourself to be killed. He doesn't die for any of the *mitzvos*, except for the three *aveiros* mentioned in *halacha beis*: “**בשאר מצות חוץ מעבודת כוכבים וגלוי עריות ושפיכת דמים**” – “idol worship, forbidden relations, and murder”.

So again, to summarize: Why would you have to allow yourself to be killed, if not for the *pasuk* of **והי בהם**? It's clear in the *Rambam* - because there's a *mitzvah* of *kiddush Hashem*. If not for the *mitzvah* of *kiddush Hashem*, you wouldn't need a *pasuk* of **והי בהם**. The only reason you need a *pasuk* of **והי בהם** is since there is a *mitzvah* of *kiddush Hashem* who's starting point would have been that you would need to be *moser nefesh* for all *mitzvos*. Comes the *pasuk* of **והי בהם**, to say: “No! Don't give up your life.” Why? Because there's a *din* of **והי בהם ולא שימות בהם**.

As a result, for the three *mitzvos* (idol worship, forbidden relations, and murder) where you do not have a *din* of **והי בהם**, there remains the *mitzvah* of *kiddush Hashem*. Why are you *mechuyav* (obligated) to die rather than worship the *avodah zarah* (idol)? Because of the *din* of *kiddush Hashem*. Why are you *mechuyav* to die and not be *over retzichah* (murder)? Because of the *din* of *kiddush Hashem*.

If not for the *din* of *kiddush Hashem*, what would be the *halacha* by these 3 *aveiros*? He wouldn't have to die - he wouldn't have to allow himself to be killed. But since the Torah said there's a *halacha* of *kiddush Hashem*; therefore, he now has to allow himself to be killed and not be *over* one of these 3 *aveiros*.

Similarly, if there was only the *halacha* of *kiddush Hashem*, then it would obligate him to be *moser nefesh* for all *aveiros*. Comes the *pasuk* of **וְחַי בָּהֶם** and says no, you're not *mechuyav* to be *moser nefesh* for all *aveiros*; only the three where there's no **וְחַי בָּהֶם**.

Application of this Rule: A Ben Noach

As a result, a *ben noach* (*gentile*) who doesn't have a *mitzvah* of *kiddush Hashem*, if somebody tells him: "Worship *avodah zarah* or I will kill you", what's the *halacha*? The *halacha* is that he should worship the *avodah zarah*; this is explicit in the *Rambam* (*Hilchos Melachim* 11:2).

A *goy* that forces a *ben noach* to transgress any one of the 7 *mitzvos l'bnei noach*, should be *over* the *aveirah* and he's not *moser nefesh*. Since he doesn't have a *mitzvah* of *kiddush Hashem*, he doesn't have to die.

Part III

The Next Step: A Choleh

We have another *halacha* that the *Rambam* brings later (in *halacha* 6):

כַּעֲנִין שֶׁאִמְרוּ בְּאוֹנְסִין כִּךְ אִמְרוּ בְּחֵלָאִים

"Just as these principles apply regarding being forced, they also apply regarding sicknesses."

This *halacha* has nothing to do directly with *kiddush Hashem*, so why does it belong here? *B'emes*, really, it's a *din* in *piku'ach nefashos*, saving one's life, and not a *halacha* in *hilchos kiddush Hashem*. But since it's built on the same *gedarim* (framework), that's why the *Rambam* brings it here.

What's that *halacha*? The *Rambam* continues:

מִי שֶׁחָלָה וְנִטָּה לְמוֹת וְאִמְרוּ הָרוֹפְאִים שֶׁרְפוּאָתוֹ בְּדַבַּר פְּלוֹנֵי מְאִיסוּרִין שֶׁבְּתוֹרָה עוֹשִׂין וּמִתְרַפְּאִין
בְּכָל אִיסוּרִין שֶׁבְּתוֹרָה בְּמִקּוֹם סָכְנָה חוּץ מִעֲבֹדַת כּוֹכָבִים וְגִילּוּי עֲרִיּוֹת וְשִׁפְיַת דָּמִים שֶׁאֵפִילוּ בְּמִקּוֹם
סָכְנָה אֵין מִתְרַפְּאִין בָּהֶן

"When a person becomes sick and is in danger of dying, if the doctors say that his cure involves transgressing a given Torah prohibition, [the doctors' advice] should be followed and he can be healed by using any of the Torah prohibitions. When there is a danger [to life], one may use any of the Torah prohibitions as a remedy, with the exception of the worship of idols, forbidden relations, and murder. For even when there is a danger [to life], one may not use them as a remedy."

For example, if the doctors say that in order to live you have to be *mechallel* (desecrate) *Shabbos*, then you should be *mechallel Shabbos*. If in order to live, you have to eat *tarfus* (non-kosher food), eat *tarfus*. The reason is because there's a *din* of **וְחַי בָּהֶם וְלֹא שִׁמּוֹת בָּהֶם**.

But if a person needs to transgress one of the 3 *aveiros* (idol worship, forbidden relations, or murder) in order to recover, then the *halacha* is that even if it's *b'makom sakana* (a life-threatening danger), he has to let himself die. The reason for this is because there's no **וְחַי בָּהֶם** there.

If there wouldn't be a *pasuk* of **וְחַי בָּהֶם** by a *choleh* (sick patient), what would the *din* be? That he has to die and not be *mechallel Shabbos* or eat *tarfus*. What kind of a *heter* would you have to be *over* the Torah's *isurim* (prohibitions) in order to save your life? If there would be no such *heter* of **וְחַי בָּהֶם**, if he's about to die and the only way to save his life is to be *over* an *isur* in the Torah, then for sure the *din* would be that of course he has to die. How could he commit the *isur* to save himself?

But now that the Torah tells us **וְחַי בָּהֶם וְלֹא שִׁמּוֹת בָּהֶם**, now you should be *over* the *isur*. Eat the *chazir* and don't let yourself die. But if not for **וְחַי בָּהֶם**, the *din* would be that you have to die and not eat *chazir*.

A Striking Question: Goy vs. Choleh

Now, it's clear that there's an intrinsic difference between these two *dinim*: between the case where a *goy* tells you "be *mechallel Shabbos* or I'll shoot you" and the case of "be *mechallel Shabbos* or you will die because of your sickness".

In the case of the *goy* forcing you, you can't transgress the *isur* because of *kiddush Hashem*. But if not for *kiddush Hashem*, you wouldn't need **וְחַי בָּהֶם** to tell me **יַעֲבוֹר וְאֵל יִהְרַג** (transgress and don't die); that would've been obvious.

A sick person who needs to be *mechallel Shabbos*, the Torah tells me **וְחַי בָּהֶם** - he should be *mechallel Shabbos*. But if not for **וְחַי בָּהֶם**, a *choleh* would have to let himself die. But why? There's no *kiddush Hashem* involved, why would he need to let himself die?! What's the *chiluk* (difference) between a *choleh* and one being forced by a *goy*?

An Enlightening Answer

The difference is that in one case he's an **אֲנוּס** (being forced) and in the other case he's not an **אֲנוּס**!

In the case where the *goy* tells him "be *mechallel Shabbos* or I will shoot you", there he's an **אֲנוּס**. If he's an **אֲנוּס**, the *halacha* it's *k'man d'lo yavid* (as if he didn't do the *isur*) and, as a result, he isn't being *mechallel Shabbos*!

If the *goy* tells him "worship *avodah zarah* or I'll shoot you", he's an **אֲנוּס** and it's *k'man d'lo yavid* and he's not transgressing the *isur* of *avodah zarah*. What is he *over*? *Chillul Hashem*. He's *mevatel* (nullifying) a mitzvah of *kiddush Hashem*, but he's not worshipping the *avodah zarah*. He's an **אֲנוּס**, *k'man d'lo yavid* and as if he didn't do the *isur*.

The only difference between these two cases is whether a *kiddush Hashem* applies or not. Because if there was a *kiddush Hashem*, he would have to die for *Shabbos* as well. But since the Torah tells us by *Shabbos* **וְחַי בָּהֶם וְלֹא שִׁמּוֹת בָּהֶם**, as a result there's no *kiddush Hashem* and he doesn't have to die.

Said another way: what is the **וְחַי בָּהֶם** doing? The **וְחַי בָּהֶם** isn't being *mefareish* (qualifying) the mitzvah of *Shabbos*, the **וְחַי בָּהֶם** is being *mefareish* (qualifying) the *din* of *kiddush Hashem*.

But by a *choleh*, the *choleh* is choosing to save his own life. You're not an **אנוס**. You're choosing to save your life. You're deciding to eat *chazir*. The reason you're going to eat *chazir* is because you want to save your life.

Without a **והי בהם**, the Torah would be saying that you're not allowed to eat *chazir* in order to save your life. The person says "But if I don't eat *chazir* I will die." The Torah says "die and don't eat *chazir*" - what kind of an **אנוס** are you!? So even if there's no *kiddush Hashem*, he would have to let himself die. But once the Torah says **והי בהם**, now he can eat the *chazir*, he doesn't have to die.

But by *avodah zarah*, where the Torah says in fact, that there's no **והי בהם**, if he goes ahead and worships the *avodah zarah* to save his life, who gave you the right to do so? You're not allowed to worship *avodah zarah* to save your life.

This distinction expresses itself in the *Rambam* in an additional way, as follows:

If he went and worshipped *avodah zarah* to save his life, the *Rambam* says that he's **חייב מיתה** (liable to be killed) for having worshipped the *avodah zarah* because he's not an **אנוס**. The Torah said don't worship *avodah zarah* even if it means you'll die. The person says "But Torah, *Ribono Shel Olam*, if I don't worship the *avodah zarah* I'll die." *Hashem* is telling you to die in this situation, he was *over* the *din*; what kind of an **אנוס** are you? That's what the Torah's telling you to do; he's not an **אנוס**.

This is in contrast to where a *goy* tells him "worship *avodah zarah* or I will shoot you" and then he went and worshipped the *avodah zarah* instead of letting himself be killed. What does the *Rambam* say there? "*Feh*, he was *over chillul Hashem!* He was *mevateil kiddush Hashem*." But since he was an **אנוס**, it's *k'man d'lo yavid* and he wasn't *over* the *avodah zarah*. As a result, the *Rambam* doesn't say that he's **חייב מיתה** - you can't give him **מיתה** for *avodah zarah* because he's an **אנוס**.

Now, you'll ask me, what's the *chiluk* (difference)? Why is he an **אנוס** by the case of the *goy* but not an **אנוס** by the case of *choleh*?

What Constitutes an **אנוס ?**

It's *b'emes, pashut me'od* (obvious). It's very, very clear.

By the *choleh*, he wants to eat *chazir*. Why do you want to eat *chazir*? To save my life. The reason you want to eat *chazir* is to save your life. You're not an **אנוס**, you wanted to eat the *chazir*. Are you allowed to eat *chazir* or not? If it says **והי בהם**, you are, if it doesn't say **והי בהם** you're not, but you're not an **אנוס** - you want to eat the *chazir*.

When the *goy* says "eat *chazir* or I'll shoot you", is he choosing to eat *chazir*? No, he's choosing to listen to the *goy*. What he's doing is not "I want, and am going to eat *chazir*." What he's doing is "I'm going to obey you, whatever you say." That's an **אנוס**. I'm doing *your* bidding. I'm not choosing to eat *chazir*; I don't want to eat *chazir*. I'm not eating *chazir* in order to save my life. Nonsense. I'm obeying you in order to save my life - that's an **אנוס**.

Then it's *k'man d'lo yavid*, as if he didn't do the *aveirah*. He has no intention of eating

chazir. He doesn't want to eat *chazir*. He's doing it because he has to obey the *goy*. *Mimeilah* (as a result), the *pe'ulah* (action) that he's doing is a *pe'ulah* of obeying him. Since the action he's doing is obeying him, that's an **אנוס**. That's *k'man d'lo yavid*, as if he wasn't *over* the *aveirah*.

This explanation is clear. There's no question that this is how the *Rambam* understands the difference. It's *muchrach* (compelled to say this) from the very *dinim* of *kiddush Hashem* and *choleh*. You couldn't *pasken* the *Rambam* any other way.

Some are truly bothered with a question in the *Rambam*, that both cases are an **אנוס**; but that's not hearing what the *Rambam* is saying. It's *muchrach* since in the one case (*choleh*) **והי בהם** is needed in order to be *matir* (permit) the *isur* and in the other case (*goy*), *kiddush Hashem* is needed in order to be *kovei'a* (establish) the *isur*, it's clear that you're discussing two different types of cases. In one case, you're talking about an **אנוס** and in the other case you're not talking about an **אנוס**. You can't say any different.

Said another way: once we've discovered the fact, that by the *goy*, if not for *kiddush Hashem* you wouldn't have to die even for *avodah zarah*, then we know that he is an **אנוס**. Once we discovered by a *choleh*, that if not for **והי בהם** he would have to die even for *Shabbos*, then you know he's not an **אנוס**. The *etzem* (very) *halachos* compel us to arrive at this *din*. If you find a *sevara* (reason) to explain this further, fine. If you don't find a *sevara* to explain this, it doesn't make a difference. The *din*, according to the *Rambam*, is *machri'ach* (proves) this *chiluk* (distinction).

Again, to summarize: once the Torah tells you that by an **אנוס** (the *goy*), a person should let himself die rather than be *over* an *isur*, because there's a mitzvah of *kiddush Hashem*, then you know it's *anus k'man d'lo yavid*.

Once the Torah tells you that you're *mechuyav* to die rather than worship the *avodah zarah* because there's no **והי בהם**, it's telling you you're not an **אנוס**. As long as you don't have a **והי בהם**, the mitzvah itself is *mechayev* (obligates) you to let yourself die because he's not an **אנוס**. That's *muchrach* in the *etzem din* in the Torah, the way the *Rambam* learns these *dinim*.

Tosafos holds there's a *gezeiras hakasuv* of **אנוס** even if he were to be *over* the *isur* and that the Torah *paters* him. *Mimeilah*, *Tosfos* is going to have a whole different approach, but this much is clear in how the *Rambam paskened* his *din*.

Part IV

Putting It All Together – A Question

Mimeilah, I'm going to ask you a tremendous question. Once the Torah tells me that there is a *halacha* of *kiddush Hashem*, is there a *din* **והי בהם**, that he should not let himself die despite the *kiddush Hashem*? Of course not.

Because if there were a *din* of **והי בהם** in the face of *kiddush Hashem*, then why does a person have to let himself die for *avodah zarah*? The *teitch* (very explanation) of *kiddush Hashem* is that there's a mitzvah in the Torah that says "let yourself die". The Torah is telling you directly: there is no **והי בהם**, you should let yourself be killed for *kiddush Hashem* and not live.

If that's true, then in a case where a *goy* forces you to be *mechallel Shabbos*, how do we say that **וְחַי בָּהֶם וְלֹא שִׁמּוֹת בָּהֶם** tells me that he should be *mechallel Shabbos* and not let himself be killed? We're not talking about *Shabbos*. We're talking about *kiddush Hashem*! When it comes to *Kiddush Hashem*, we just established that there's no **וְחַי בָּהֶם**!

Why are you applying the *din* of **וְחַי בָּהֶם** to the *halachos* of *kiddush Hashem*? The *din* of **וְחַי בָּהֶם** applies to a *choleh*. A *choleh* where there's no *Kiddush Hashem* involved, and the question is should I be *mechallel Shabbos* or not? The Torah tells us **וְחַי בָּהֶם**, be *mechallel Shabbos* and don't die.

However, by a *goy* forcing you to be *mechallel Shabbos*, the question is should I be *mekadesh* (sanctify) *Hashem* or not. When the Torah told me to be *mekadesh Hashem*, did the Torah ever say **וְחַי בָּהֶם** - don't be *mekadesh Hashem*? You're not talking about *Shabbos*, you're discussing *kiddush Hashem*. So how can you tell me that **וְחַי בָּהֶם** says that there's no *din* of *kiddush Hashem* in *Shabbos*?

If we had a question in the realm of *hilchos Shabbos*, then it would make sense to bring in **וְחַי בָּהֶם** to tell me that he's an **אָנוּס** and he's not being *mechallel Shabbos*. But we showed *b'brirus* (clearly) that we're not discussing *hilchos Shabbos*! The whole question is within the realm of *hilchos kiddush Hashem*. In *hilchos kiddush Hashem*, there's no **וְחַי בָּהֶם**; you're *mechuyav* (obligated) to die for *kiddush Hashem*.

So, if a *goy* forces you to be *mechallel Shabbos*, why are you telling me it's **וְחַי בָּהֶם וְלֹא שִׁמּוֹת בָּהֶם**, that he should be *mechallel Shabbos* and not let himself be killed? We're discussing *kiddush Hashem* – there's no **וְחַי בָּהֶם**. Why doesn't he let himself die?

Answer To This & Our Original Question

(Why does the Rambam mention **וְחַי בָּהֶם** at the end of *halacha alef*?)

It would seem that it depends - it depends on what **וְחַי בָּהֶם** is saying:

- (1) Is **וְחַי בָּהֶם** a *heter*, and telling us that it's *mutar* (permissible) to be *over* a particular *isur* in order to save your life. Although *kiddush Hashem* is at play here, **וְחַי בָּהֶם** doesn't require that I have to let myself die.
- (2) Or is **וְחַי בָּהֶם** a *gilui* (revelation) in the *etzem geder* (underlying framework) of *mitzvos* in general – like how the Rambam quotes the pasuk and says: “**שְׁנֵאמֹר בְּמִצְוֹת**” - that “*concerning the mitzvos*”, the Torah is being *megaleh* that I want you to live and not die - I don't want *mitzvos* to bring death.

Then **וְחַי בָּהֶם** is not a *halacha* in the specifics of *hilchos Shabbos* - it's a *gilui* in the *gedarim* of *mitzvos* in general. That the Torah says that the death of a *Yisrael* should not come out from His *mitzvos*. If that's true, then when **וְחַי בָּהֶם** is active, there's no *kiddush Hashem*, because the Torah didn't give the *mitzvah* in a way that you would have to give up your life.

➔ With this in mind, the Rambam comes along at the end of *halacha alef* and says: “How do I know that the *mitzvah* of **וְחַי בָּהֶם** is not a *din* of a *heter* (1st approach), but is a *halacha* that the Torah says *mitzvos* can't bring about death (2nd approach)? Because: “**וְאִם מֵת וְלֹא עֵבֶר הָרִי זֶה**”

הרי זה מתחייב בנפשו - if he was *over* and let himself be killed inappropriately: מתחייב בנפשו - he's held accountable for his death.

If not for the *din* at the end of *halcha alef*: **ואם מת ולא עבר הרי זה מתחייב בנפשו**, the *Rambam* tells us, that you couldn't apply **וחי בהם** in the face of *kiddush Hashem*. If you're applying the **וחי בהם** and not the *din* of *kiddush Hashem* it's only because **וחי בהם** is a *mechayev*, and not a *matir*. It's a *mechayev b'mitzvos* that you must not let yourself die.

Mimeilah the *Rambam* says: "שנאמר במצות" – relevant to the whole *geder* (framework) of *mitzvos* the it says: "אשר יעשה אותם האדם וחי בהם וחי בהם ולא שימות בהם ואם מת ולא עבר הרי זה מתחייב בנפשו" This is why **וחי בהם** tells me that there's no *kiddush Hashem* to go up against. This is why the *halacha* is **יהרג ואל יעבור**, to listen to the *goy* when he tells me to do a *melacha* on *Shabbos*.

If the *halacha* would have been that *b'di'eved* (after the fact), if he does give up his life, then it's fine too (i.e. he's not held accountable for his life), then you couldn't apply **וחי בהם** here altogether - because it would mean that *kiddush Hashem* was at play. If there's a *kiddush Hashem*, **וחי בהם** couldn't take off that *kiddush Hashem* and then the *din* would have been that he has to let himself die *l'chatchilah* (in the first place).

The *Rambam* has to demonstrate that there's no *kiddush Hashem* here at all. He does this by showing that the *halacha* is a *mechayev* (obligatory) - **יעבור ואל יהרג** – do not let yourself die. Because if it was a *heter* - meaning that if you give up your life, it's ok because there's a *kiddush Hashem* - then if there is *kiddush Hashem*, **וחי בהם** could never begin.

It's *muchrach*, we're compelled to say this – says the *Rambam*. The entire *din* of **וחי בהם**, to not let yourself die, can only exist because there is no such *mitzvah* of *kiddush Hashem* at all there. That's why he has to include "ואם מת ולא עבר הרי זה מתחייב בנפשו" at the end of *halacha alef*.

Part V

Out of Spite

The *Rambam* continues in *halacha beis*:

במה דברים אמורים בשאר מצות חוץ מעבודת כוכבים וגלוי עריות ושפיכת דמים אבל שלש עבירות אלו אם יאמר לו עבור על אחת מהן או תהרג יהרג ואל יעבור

When does this apply (that he doesn't let himself die)? With regard to other mitzvos, with the exception of idol worship, forbidden relations, and murder. However, regarding these three sins, if the goy tells him to transgress one of these sins or be killed, he should let himself be killed and not transgress.

There the *halacha* is **יעבור ואל יהרג** – he has to allow himself to be killed and not transgress one of those *aveiros* because of the *mitzvah* of *kiddush Hashem*. That's the *mitzvah* of *kiddush Hashem*.

The *Rambam* continues:

בד"א בזמן שהעובד כוכבים מתכוין להנאת עצמו כגון שאנסו לבנות לו ביתו בשבת או לבשל לו תבשילו או אנס אשה לבעלה וכיוצא בזה

When does this apply? When the goy intends it for his own personal benefit - for example, he forces a person to build a house or cook food for him on Shabbos, he forces a woman to have relations with him, or the like.

If the goy forces him to be *over* an *aveirah* because he needs something. For example, he wants his house built, so he says “build my house or I’ll kill you”. It's not because he's interested in the *yid* being *mechallel Shabbos*; he wants his house built, that’s why he's forcing the *yid* to do it.

But if all he cares about is that the Jew should be *mechallel Shabbos* and doesn’t really care whether there’s a house there or not. He wants to show the *yid* that he’s not going to be able to keep *Shabbos* and is therefore he's forcing him, then his whole purpose is only to force him to be *mechallel Shabbos*, only to force him to sin.

However, if the goy makes him build his house even though he also says “look I'm making you be *mechallel Shabbos*”, then he's also using it for himself and the *din* remains like the *Rambam* said before that **יעבור ואל יהרג**, that he should transgress and not let himself die.

But if he has no purpose other than forcing the *yid* to do a *yiddishe aveirah*, then the *din* is like this:

אבל אם נתכוין להעבירו על המצות בלבד אם היה בינו לבין עצמו ואין שם עשרה מישראל יעבור ואל יהרג ואם אנסו להעבירו בעשרה מישראל יהרג ואל יעבור ואפילו לא נתכוין להעבירו אלא על מצוה משאר מצות בלבד

However, if his intention is solely to have the Jew violate the mitzvos, [then the following rules apply:] If he’s alone and there are not ten Jews present, he should transgress and not sacrifice his life. However, if he forces him to transgress among ten Jews, he should let himself die and not transgress. [This applies] even if the goy intended that he violate only one of the other mitzvos.

If there isn't a *minyán* of 10 *yidden* there, then the *halacha* is that he should be *over* the *aveirah* and not let himself be killed.

But if he's forcing him to do an *aveirah* when 10 Jews are there, then he has to let himself be killed rather than commit the *aveirah*. This is even by one of the other *mitzvos*, when there’s no *din* of *mesiras nefesh*, but since the goy wants to force him to do it *because* it’s an *aveirah* and there's a *minyán* of *yidden* there, then the *Rambam* paskins the *halacha*: **יעבור ואל יהרג**.

Part VI

A Peleh

Before we go into the *halacha* itself, we first have to focus on a *peleh* (an amazing question) in the *Rambam*. The *Rambam* said:

"אם היה בינו לבין עצמו",
"ואין שם עשרה מישראל"

If the *Rambam* just told me that he was all alone, why does he then need to tell me that

there weren't 10 Jews there? Obviously, if he's alone, there aren't 10 other Jews there?

If you only told me "there weren't 10 Jews there", then it could be that maybe there were less than 10 there (i.e. a few Jews were there), but then why also say "if he was all alone"? What does he want with this - the *Rambam* isn't just wasting his words! Why does he say **אם היה בינו לבין עצמו**?

Sanctifying To a Minyan

When it comes to *minyanim* (counting), sometimes you have *nafka minas*, differences in how you should count things (*Megilla 23b*). The *halacha* is that for *birchas nesu'in* (marriage blessings) you need "*asara v'chossan min haminyan*" - ten Jews need to be present and the groom is included in the count. In order for the *brachos to be said*, you need the *din* of a *minyan*, but since the *chassan* is counted as one of the *minyan*, you only need another nine.

But when it comes to an *avel* (a mourner), the *din* is "*asara v'avel eino min haminyan*" – ten Jews are needed but the *avel* himself cannot be counted as part of the *minyan*.

The difference is as follows: By an *avel*, you need a *minyan* to be *menachem* (comfort the mourner). The *avel* is not being *menachem*, he's being *mis'nachem* (comforted). The *minyan* is needed to give him *nechumim* (words of comfort) and as a result, you need a *minyan* of 10 other people to be *menachem* him, not including the *avel*.

But when it comes to the *chossan*, you don't need a *minyan* to be *mesamei'ach* him (make him happy). You need a *minyan* for the *birchas nesu'in* to be said. As a result, the *chossan* can be included as one of the ten for the *minyan*.

What's the *din* by *kiddush Hashem*? By *kiddush Hashem* there's a *halacha* of *asara mi'Yisrael* for a *minyan*. Is he *mekadesh Hashem b'soch asara* (**within** 10, including himself) or does he have to be *mekadesh Hashem l'asara* (**to** 10, not including himself)? Does he have to be *mekadesh Hashem "to"* 10 people or does he have to be *mekadesh Hashem "within"* 10 people? Is the *ne'enas min haminyan* - the one being forced included in the ten, or is the *ne'enas* not *min haminyan*? Does he need 10 Jews besides himself or does he only need nine besides himself and he's the tenth?

Said another way: What is the *mitzvah* of *mekadesh Shem Shamayim b'rabbim* (sanctifying Hashem's name in public)? That there are 10 Jews **there**, or that there are 10 Jews who **observe** the *kiddush Hashem*? If you need 10 to observe the *kiddush Hashem* then you need 10 without him. If you need that there are 10 Jews there when the *kiddush Hashem* takes place, then he can also be one of them.

The *Rambam* tells us: "**אם היה בינו לבין עצמו ואין שם עשרה מישראל**" - if he's all alone and you don't have another 10". The *Rambam* says that you need 10 Jews besides him. That's what the *Rambam* is coming to say with the **אם היה בינו לבין עצמו** that you need 10 Jews besides yourself.

You also see that this is the case based on the following *diyuk* (inference):

Elsewhere, when the *Rambam* wants to bring the *din* that there aren't 10 there, will say "**אם היה בינו לבין עובד כוכבים**" – *he's by himself with goyim*". Now, there has to be at least

somebody else there with him - the *me'anes* (the one forcing him) has to be there, no? Rather what it means is: although he's alone with *goyim* because there aren't 10 Jews there, but he's not all alone literally - there could be many non-Jews there.

So over there, the *Rambam* says, **אם היה בינו לבין עובד כוכבים** - there are only *goyim* there. Why over here by *kiddush Hashem* does he say **אם היה בינו לבין עצמו**? He should have said **אם היה בינו לבין עובד כוכבים** too? The reason is because the whole idea here is not to tell you who was there, but to tell you this concept – that the one being forced is not counted as one of the 10 *yidden* who are there.

So, when the *Rambam* says **אם היה בינו לבין עצמו** that he's all alone, it means that he's not with other *yidden*. Although there can be many *goyim* there, but that's irrelevant. He's telling a *yid* that since he's only with *goyim*, he doesn't count in the *minyan*. The *Rambam* isn't coming to tell you that there are no *goyim* – that literally there are no other people there. *Farkert* (just the opposite), there could be nine other Jews there but since the **בינו** there is not a **בינו לבין עובד כוכבים** so then the *goyim* have nothing to do with why he's saying that phrase. Rather the *Rambam* says he's **בינו לבין עצמו**, he's all alone – meaning he's separate – he doesn't count in the *minyan* of *yidden*. As a result, if **עשרה מישראל**, there is not a *minyan* of 10 *yidden* – not including him, since he's counted separately, then you don't have a *din* of a *minyan* of 10 for *kiddush Hashem*.

With these words, the *Rambam* is coming to be *megaleh* (reveal) this *halacha* to us. That when it comes to the *din* of *kiddush Hashem b'rabbim*, **עשרה מישראל** means and that you need to be *mekadesh Hashem* **to** a *rabbim* and not **within** a *rabbim* – a *minyan* not including yourself.

We won't have time to finish this up now, but from here we've seen some foundational points in the *halachos* of *kiddush Hashem*.

This understanding will b'ezras Hashem give us a greater insight into understanding the mesiras nefesh that was involved on Chanukah as will be seen in upcoming shiurim.

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