

## *Kiddush HaShem: Israel's Mission*

By: ASHER BENZION BUCHMAN

### *The Shem*

“The *mitzvah* of *Kiddush HaShem* is stated [in the Torah] in the words ‘I will be sanctified in the midst of the Children of Israel’ (*Vayikra* 22:32). It consists in that we are commanded to publicize the true faith in public, and that we not fear from the damage threatened by any aggressor, to the extent that even if an oppressor demands of us to deny the Almighty—we will not heed him, but give ourselves up to certain death rather than let him be led to believe that we have denied even though in fact our hearts are still true to Heaven. This is the *mitzvah* of *Kiddush HaShem* that all of Israel was commanded in, to give ourselves up to death in the hands of the oppressor for the sake of the love of the Almighty and our belief in His Unity as did Chananiah, Mishael, and Azariah in the days of Nevuchadnetzar the Evil when he forced [all people] to bow to an idol, and all people bowed to it and Israel was amongst them, and there was none to sanctify (*mekadesh*) the Name of Heaven. And this was a matter of great shame to Israel that the *mitzvah* was lost from them all, and none was willing to fulfill it—all feared. And this *mitzvah* is only fulfilled in such a situation, where the entire world is in a state of fear, and then the obligation exists to publicize G-d’s unity and to announce it at that time. G-d had already promised via Yeshayah that Israel’s shame would not be total when this plight would arise, and that young men would step forward in that difficult situation, and not tremble before death and they would offer up their blood and publicize the faith and sanctify G-d in public as the Almighty commanded us via Moshe as it says: “And now Yaakov will not be embarrassed nor his face turn pale, when he

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sees his children, the work of My hands in the midst of him, sanctifying My name; they will sanctify the Holy One of Yaakov and stand in awe of the G-d of Israel” (*Yeshayah* 29:22–23). The language of the Sifra is “on this condition I took you out of Egypt—on the condition that you will sanctify me in public.”<sup>1</sup> (*Sefer Hamitzvos, Aseh* 9)

As Rambam presents the *mitzvah* of *Kiddush HaShem* (קדוש השם) here in the *Sefer HaMitzvos*, its central theme is that Israel is obligated to demonstrate its loyalty in public to the One true G-d, who was revealed to them at Sinai. The crucial element of this publicizing is that the individual Jew demonstrates his willingness to give up his life rather than give the oppressor the impression that he has abandoned his religion because of the threat to his life. Although not stated explicitly here, in the time of *shemad* even for the smallest of *mitzvos* one must not relent before his oppressor.<sup>2</sup> The *mikra* itself speaks of making this demonstration specifically before a Jewish public: “I will be sanctified in the midst of the Children of Israel,” and consequently *halachah*<sup>3</sup> requires that should the oppressor demand the Jew transgress a lesser violation for his personal gain rather than for the purpose of having him abandon his faith, he must only forfeit his life in refusal if this

<sup>1</sup> הציווי שנצטוונו על קדוש השם, והוא אמרו: "ונקדשתי בתוך בני ישראל" (ויקרא כב, לב). ועניין מצווה זו: שאנו מצווים לפרסם דת אמת זו ברבים, ושלא נירא בכך מהזק שום מזיק, עד שאפילו יבוא אלינו אגס עריץ ויקרא אותנו לכפור בו יתעלה - לא נשמע לו, אלא נמסור את עצמנו למות בהחלט; ו[אפילו] לא ניתן לו לחשוב שכפרנו, אף שלבנו מאמין בו יתעלה. וזו היא מצוות קדוש השם שנצטוו בה כל בני ישראל, כלומר: שנמסור את עצמנו למות בידי העריץ על אהבתו יתעלה והאמונה בייחודו, כמו שעשו חנניה מישאל ועזריה בימי נבוכדנצר הרשע כשהכריח להשתחות לצלם, והשתחוו כל בני אדם וישראל בכללם, ולא היה שם מקדש שם שמים. והיה בכך חרפה גדולה לישראל שאבדה מכולם מצווה זו, ולא היה שם מי שמקיים אותה אלא הכל פחדו. ואין מצווה זו נוהגת אלא בכגון אותו המעמד העצום שבו פחדו כל באי העולם, והיה חובה לפרסם ייחודו ולהכריז עליו באותה העת. וכבר הבטיח ה' על ידי ישעיהו, שלא תהיה חרפת ישראל גמורה באותו המעמד, ושיופיעו בהם בחורים באותו המעמד הקשה, שלא ירתיעם המות, ויפקירו דמם ויפרסמו את האמונה ויקדשו את ה' ברבים, כמו שציונו יתעלה על ידי משה רבנו, והוא אמרו: "לא עתה יבוש יעקב ולא עתה פניו יחורו. כי בראותו ילדיו מעשה ידי בקרבו יקדישו שמי והקדישו את קדוש יעקב ואת אלקי ישראל יעריצו" (ישעיה כט, כב-כג). ולשון ספרא: "על מנת כך הוצאתי אתכם מארץ מצרים - על מנת שתקדשו את שמי ברבים" (סו"מ עשה ט).

<sup>2</sup> *Hilchos Yesodei HaTorah* 5:3.

<sup>3</sup> *Hilchos Yesodei HaTorah* 5:2.

transgression is to be done before ten Jews.<sup>4</sup> Thus on the one hand the central element of the *mitzvah* is standing up against the gentile oppressors and demonstrating to them our steadfastness and on the other hand it takes on an added dimension in front of a Jewish public.<sup>5</sup>

Rambam further states that it is only because the Jewish people would one day produce Chananiah, Mishael and Azariah, who would stand up against idolatry when the whole world gave in to it, that we were taken out of Egypt. The sense that Rambam conveys is that the Jews who witnessed Chananiah, Mishael and Azariah saw an example of faith, courage and love of G-d that would forever sustain the nation and preserve the mission they were entrusted in by the Creator. Rambam in *Moreh Nevuchim* (1:64) explains that שם ה' (the name of G-d) has several meanings and one of them is “G-d’s mission,” as in שמי בקרבו “My name is within him (Israel)” which means that Israel is “a vessel for My (G-d’s) will”<sup>6</sup> and it is this meaning that it has with regard to *Kiddush HaShem*.<sup>7</sup>

### Refraining or Resisting?

Some Rishonim<sup>8</sup> say that the requirement to give up one’s life for *Kiddush HaShem* only pertains to cases where one is called upon to actively transgress a *mitzvah* in the Torah.<sup>9</sup> One must refrain from

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<sup>4</sup> See also *Lav* 63 that it is חלול השם ברבים when done before ten Jews. The *lav* of *Chillul HaShem* is the counter to the *mitzvah* of *Kiddush HaShem* and in general a failure to perform *Kiddush HaShem* includes a violation of *Chillul HaShem*. In this essay we will use the terms *Kiddush HaShem* and *Chillul HaShem* without dealing with the nuances that differentiate one from the other.

<sup>5</sup> The *herugi malkot* who are on the highest plane of existence resisted *shemad* before all of Israel, but according to Rambam’s definition, in *Yesodei HaTorah* 5:4, they may have attained that status even if it was not the time of *shemad*.

<sup>6</sup> Kappach’s translation reads כלי להפצי ורצוני.

<sup>7</sup> Later on in this essay we will explain the term קדוש and sharpen the definition of the *mitzvah*.

<sup>8</sup> See *Nimukei Yosef* (*Sanhedrin* 82a) and Ran (*Shabbos* 49a) quoted in *Kesef Mishneh* (Y.H. 5:1–3).

<sup>9</sup> Following Abaye in his dispute with Rava.

doing a “sinful act” a *maaseh issur* (מעשה אסור). Thus, if the oppressor assaults a woman, as long as her submission is passive and requires no positive action, there is no need for her to give up her life—this is the principle that the Amora Abaye refers to as *karka olam* (קרקע עולם)<sup>10</sup>. This principle applies to murder and *avodah zarah* as well; thus, if one would stay still and allow himself to be used as a projectile to kill another, that would be permissible.<sup>11</sup> Applying this principle further, these Rishonim deduce that in the case of refraining from doing a *mitzvah*, *bitul aseh* (בטול עשה), where the gentiles “could prevent one from acting” anyhow, the law would not apply. These Rishonim seem to see *Kiddush HaShem* more as a halachic principle than as a unique *mitzvah*.<sup>12</sup> The maintenance of the performance of *mitzvos* is so important that one should rather die than abandon them<sup>13</sup>—but if one will not be able to perform a specific *mitzvah* anyhow, there is no reason to give up one’s life only to show resistance.

According to Rambam, the resistance itself is the *mitzvah* of *Kiddush HaShem* and thus refraining from doing a *mitzvah* is not an option.<sup>14</sup> Rabbi Akiva, who gave his life to preserve the *mitzvah* of *talmud Torah*, epitomizes this *mitzvah*. He steeled himself and even ordained others during a period of *shemad*.<sup>15</sup> The obligation is to

<sup>10</sup> אסתר קרקע עולם היתה. Literally, “Esther was [like] the ground of the Earth.”

<sup>11</sup> Likewise, an act of *avodah zarah* that is done without any action would be allowed.

<sup>12</sup> This *mitzvah* is not found in all counts of the *mitzvos*. It is not found, for example, in Ibn Gabirol’s. As we shall see, Rambam packages several diverse requirements under this one concept and in this he is certainly unique.

<sup>13</sup> The *Chinuch* (296) writes as follows: שורש מצוה זו ידוע, כי האדם לא נברא רק לעבוד בוראו, ומי שאינו מוסר גופו על עבודת אדוניו איננו עבד טוב. והרי בני אדם ימסרו נפשותם על אדוניהם, קל וחומר על מצות מלך מלכי המלכים הקדוש ברוך הוא.

<sup>14</sup> See *Hil. Yesodei HaTorah* 5:2 and 5:4. In *Iggeres HaShemad* he calls the refraining from *talmud Torah* and *milah* a מעשה which we must not acquiesce to.

<sup>15</sup> See *Kesef Mishneh* (*Yesodei HaTorah* 5:3) who brings this as proof against *Nimukei Yosef*.

sustain the Jewish religion and positive acts of resistance are necessary for this.<sup>16</sup>

### *Kedushah*

The *Baalei Tosafos*<sup>17</sup> and *Chinuch* (296) explain Rabbi Akiva's actions and similar conduct recorded in the Talmud by claiming that those people went beyond their legal requirement, *lifnim mi'shuras hadin*.<sup>18</sup> These Rishonim who on the one hand limit the cases where one is obligated to give up his life, on the other hand balance this by saying that it is saintly conduct, *middas chassidus* (מדת חסידות), to sacrifice one's life when it is not required.<sup>19</sup> This position itself also clashes with Rambam who states: "To whomever it is said that he should transgress rather than being killed, should he choose to be killed, he is guilty of shedding his own blood."<sup>20</sup>

To understand why *Tosafos* and Rambam argue on whether one may give up his life when it is not warranted, we must understand their respective positions on the concept of *kedushah*.

The Torah verse that commands the *mitzvah* of *Kiddush HaShem*,<sup>21</sup> ונקדשתי, comes at the end of a section in the Torah that begins with the verse "You shall be holy"—*kedoshim tihiyu* (קדשים)<sup>22</sup>(תהיו)—and the two concepts are clearly linked.<sup>23</sup> The position

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<sup>16</sup> Thus the *mitzvah* only applies to Jews and not gentiles (*Hil. Melachim* 10:2, TB *Sanbedrin* 74b, TY 3:5) as it is the obligation to preserve the Jewish religion and the Yerushalmi learns it from the words בתוך בני ישראל. But see *Minchas Chinuch* 296 (beginning) discussing other opinions who believe it does apply to gentiles.

<sup>17</sup> See *Tosafos* to *Pesachmi* 53b.

<sup>18</sup> The *Chinuch* stipulates that only those on the highest level are able to do this.

<sup>19</sup> In the literature describing Ashkenazic Jewish communities sacrificing themselves and even slaughtering their children to avoid forced conversion during the Crusades, it is important to realize how different their halachic stance is from that of Rambam.

<sup>20</sup> כל מי שנאמר בו יעבור ואל ייהרג, ונהרג ולא עבר—הרי זה מתחייב בנפשו.

<sup>21</sup> *Vayikra* 22:32.

<sup>22</sup> *Vayikra* 19:2.

*Tosafos* takes with regard to *Kiddush HaShem* is consistent with the famous Ramban on *kedoshim tihiyu*,<sup>24</sup> that the concept of *kedushah* consists in going beyond what the Torah demands. Thus, while the basic halachos of *Kiddush HaShem* might demand only a limited type of resistance, the fuller fulfillment calls for a higher level of devotion. In contrast, Rambam<sup>25</sup> believes that *kedushah* resides in doing the will of G-d which lies in performing all the *mitzvos* of the Torah exactly as they are defined and not more.

Rambam actually begins his definition of *Kiddush HaShem*<sup>26</sup> in *Mishneh Torah* by stating (*Hilchos Yesodei HaTorah* 5:1): “How is it performed? Under duress, one must violate any *mitzvah* rather than be killed” following the Torah’s principle that the *mitzvos* were given to “live by”—*v’chai bahem* (וְחַי בָּהֶם). The simple reading of his words implies that in normal cases, by transgressing rather than dying for *mitzvos*, one is also engaging in *Kiddush HaShem*. Rambam believes that it is just as much a profanation of the name of G-d—*chillul HaShem* (חִלּוּל הַשֵּׁם)—to portray His will as demanding that human life be sacrificed when it is unwarranted as it is to refuse to give up one’s life when such a sacrifice is demanded.<sup>27</sup> According to Rambam, *kedushah* is not an extremist quality, but a balanced one like all the qualities (*middos*) of G-d, as the obligation to be holy is a part of the *mitzvah* to emulate G-d.<sup>28</sup>

<sup>23</sup> To be מקדש השם is to fulfill קדוש אף אתה קדוש שמי and to demonstrate שמי שמי בקרבנו and hence strengthen Israel in their mission in the world. We will explain this idea later in the essay.

<sup>24</sup> See his commentary on the Torah at the beginning of *Parashas Kedoshim*.

<sup>25</sup> *Sefer HaMitzvos, Shoresh* 4.

<sup>26</sup> Before explaining under which conditions one must forfeit his life.

<sup>27</sup> See also *Hilchos Shabbos* 2.

<sup>28</sup> See *Moreh Nevuchim* where Rambam quotes this verse for the concept of קדוש אף אתה קדוש שמי while in *Mishneh Torah* he explains קדוש אף אתה קדוש שמי. *Kedoshim tihiyu* is fundamental to the obligation of a Jew and in fact in *Sefer HaMitzvos* the *mitzvah* of *Kiddush HaShem* is immediately after *V’Halachta B’drachav*. Just as *kadosh* as a *middah* is in balance, so too *Kiddush HaShem* is in balance. *Kedoshim tihiyu* incorporates the requirement to be healthy and to not deprive oneself (*Shemonah Perakim*). See *Hilchos Shabbos* 2:3 where Rambam berates those who would not understand this concept. When Rambam speaks of משורת הדין it is in מעשיו—his dealings with others in monetary matters.

In *Iggeres HaShemad*, in response to the claim by some that there are other religions where more is demanded of practitioners than Judaism demands, Rambam notes that we dare not learn from other cultures what constitutes *Kiddush HaShem*, for if so “it would obligate us to say that since some idolaters sacrifice their children to their idols we should do likewise.”<sup>29</sup>

### ***Kiddush HaShem and the Fundamental Mitzvos***

The Talmud says that the reason one may not kill another so that an oppressor will spare his own life is because “Who says your blood is redder than another’s?” (מי יימר דדמה דידך סומק טפוי?). As we have noted, the *Baalei Tosafos*<sup>30</sup> contend that one can nevertheless allow himself to be used in a murder as long as he is passive, as one’s own life is equally worthwhile as another’s and the law therefore just demands passivity. Since both lives are equal, one’s obligation is merely to refrain from an act of murder, *maaseh retzichah* (מעשה רציחה)<sup>31</sup>

However, Rav Chaim Brisker notes that Rambam could not agree with this since he states that the married woman who is assaulted must resist even at the risk of her<sup>32</sup> life<sup>33</sup> and the requirement to give up one’s life is unrelated to whether one need do a *maaseh*.<sup>34</sup> He thus explains that the concept of “Who says your

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<sup>29</sup> והיה מתחייב מזה ההקש שנאמר שכשיהיה עובד ע"ז בנו ובתו באש לנעבד ק"ו שנשרף אנהנו עצמנו ובשרנו ובנינו בעבודת הקל.

<sup>30</sup> See *Tos. Sanhedrin* 74b d.h. *V'Ha*; *Pesachim* 25b d.h. *Af*; and *Hagabos Rambam, Hil. Yesodei HaTorah* 5:7.

<sup>31</sup> See section above: “Refraining or Resisting.”

<sup>32</sup> במה דברים אמורים, בזמן שהגוי מתכוון להנאת עצמו, כגון שאנסו לבנות לו ביתו בשבת או See the *Kesef Mishneh* who notes that Rambam decided like Rava rather than Abaye and thus does not use the logic of *karka olam*.

<sup>33</sup> *Kesuvos* 3b speaks of פרוצות וצנועות and implication is that there are cases where a woman would not need to resist. Perhaps according to Rambam resistance should be to the act, to demonstrate non-compliance but not to the point where a provocation for murder would be created when the act could not be stopped anyway.

<sup>34</sup> Dying for the three major sins—murder, *arayos* and *avodah zarah*—are exact parallels and should be governed by the same rules.

blood is redder?” teaches a principle that saving one person’s life—*pikuach nefesh* (פקוח נפש)—is not grounds for permitting murder of another. Whatever constitutes murder, whether an act is involved or not, is not permissible for *pikuach nefesh*.<sup>35</sup>

דכיון דשקולים הן ממילא אינה נדחית בפני פקו"נ ואין חלוק בין שב ואל תעשה למעשה בידים דלעולם אין בה דין דחיה (הל' יסודי התורה ה:א)

Since the two are equal, thus it (murder) is not pushed aside for the sake of *pikuach nefesh*, and it matters not whether one is passive or performs an act, there are no grounds for pushing aside [the prohibition].

Rav Chaim does not elaborate further on this point, but we can explain this principle with the understanding that even with regard to the three *mitzvos*<sup>36</sup> that must never be violated even at the forfeiture of one’s life, the reason this is so is because of the *mitzvah* of *Kiddush HaShem*. That is why the halachah pertaining to the requirement to sacrifice one’s life rather than violating these three *mitzvos* is brought at the very beginning of the chapter of *Kiddush HaShem* (chapter five of *Hilchos Yesodei HaTorah*).<sup>37</sup>

Those who disagree with Rambam follow the reasoning that violating *arayos* and *avodah zarah* is as bad as an act of murder,<sup>38</sup> and since doing the act is as bad as refraining from the act one must be passive.<sup>39</sup> In fact, Ramban<sup>40</sup> is explicit that the three *mitzvos* are not

<sup>35</sup> Even though indirect murder is not punishable by the death penalty, it is still prohibited under the אסור of רציחה.

<sup>36</sup> *Avodah zarah, giluy arayos, retzichah.*

<sup>37</sup> ב. במה דברים אמורים, בשאר מצוות—חוץ מעבודה זרה, וגילוי עריות, ושפיכות דמים. אבל שלוש עבירות אלו, אם יאמר לו עבור על אחת מהן או תיהרג, ייהרג ואל יעבור.

<sup>38</sup> For *arayos* the *Geonim* say it is כאלו הרגה and with *avodah zarah* one loses even their *olam haba*. Thus, one *shittas Tanna'im* is that one can kill a person to save him from an act of idol worship. Rambam himself expresses this basic idea with regard to curing oneself through these sins.

<sup>39</sup> We should also take note of the fact that the approach of the *Baalei Tosafos* rests upon the concept that submitting to an act of *arayos* is as bad as death. However, according to Rambam, this does not follow. These *halachos* are all governed by the principle of *Kiddush HaShem*. Israel’s commitment to *tznius* and abhorrence of *arayos* demands of them that they not submit even in the face of death but this does not mean the

related to *Kiddush HaShem*.<sup>41</sup> According to Ramban it is only *Kiddush HaShem* when one resists because of his fidelity to the laws of the Torah when being forced to transgress even a minor violation in public or in the time of *shemad*. But according to Rambam, this case as well is *Kiddush HaShem* as the concept is that one cannot engage in murder even to save his life<sup>42</sup> and then claim to represent G-d. Even when the oppressor acts for his own benefit (להנאת עצמו)<sup>43</sup> and even when no *maaseh* is called for, it is a *chillul HaShem* to conduct oneself so as to save one's own life at the expense of another.

On the other hand, there are some who contend that since (in agreement with Rambam) the three *mitzvos* are based on *Kiddush HaShem*, one must therefore only submit in public.<sup>44</sup> But according to Rambam himself, just as *kedoshim tihyu* applies in private, so, too, *Kiddush HaShem* can apply in private as well. Preserving the *Shem* within the individual is central to this commandment.<sup>45</sup>

### Preserving *Tabarah*

The Mishnah (*Terumos* 8:11) discusses whether one woman can be handed over to save multiple women from defilement. The preceding Mishnah raises a similar issue with regard to saving *terumah* from being made impure, *tameh* (טמא). With regard to purity—*tabaros* (טהרות)—the rule is to preserve as much *tabarah* as possible even though it means committing the positive act of handing over

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harm done to the person is a “fate worse than (or at least as bad as) death.”

<sup>40</sup> *Milchamos, Sanhedrin* 74a–b.

<sup>41</sup> Also *Ran* 74a and the Ramban are quoted by *Nimukei Yosef*.

<sup>42</sup> He explains that this is דבר שהדעת נוטה לו, natural law declares this concept.

<sup>43</sup> With no specific intent or concern that the Jew violate Jewish law.

<sup>44</sup> By contrast, the שלטי גבורים quotes a view (apparently one opinion in *Tosafos*) that even the three *aveiros* can be transgressed in private. Since some believe that עבודה זרה מאהבה ומיראה, a lesser form of idolatry, refers to fear of being murdered, this is a likely interpretation—only the application to murder is startling.

<sup>45</sup> This explains why Yosef, who bonded with G-d and did it all in his self-sufficient existence, embodied this as well (*Hilchos Yesodei HaTorah* 5:10).

the bread to be made *tamei* by the gentile.<sup>46</sup> But with regard to the women, the Mishnah legislates differently, and a single woman cannot be handed over to save the group. Although it is a logical principle to preserve as much *tabarah* as possible and the first part of the Mishnah reflects this, this concept is not extended to the case of women even if the woman to be sacrificed is not married<sup>47</sup> and even if not in the presence of ten Jews (*Hil. Yesodei HaTorah* 5:5). Based on our understanding, there is no contradiction between these two parts of the Mishnah since in the latter case the principle of *Kiddush HaShem* becomes operable. Indeed, the Mishnah's principle is that as much *kedushah* and *tabarah* as is possible must be preserved and in the case of the women the preservation of the most *kedushah* comes about by refusing to cooperate with the oppressors and acting for *Kiddush HaShem*.

*Chazal* utilize this concept as well, in ruling that the fugitive Sheva ben Bichri could not be handed over by the community leaders to save the lives of the rest of the city, unless he was indeed guilty of a capital crime. *Ramach* (*Hil. Yesodei HaTorah* 5:5) asks how this law can be rationalized. Our principle of “Who says your blood is redder?” would certainly dictate that since the alternative to handing over Sheva ben Bichri for execution is for the entire city—including Sheva—to be killed, then certainly we should hand him over. Should we not minimize deaths? *Kesef Mishneh* answers that apparently, though the Gemara presents this logic of “redder blood,” this is not the complete explanation. His words, like those of Rav Chaim Brisker, point to the same principle—murder, even the mere handing over of one to be murdered,<sup>48</sup> is not an option, because such an act is not permitted even for *pikuach nefesh*. *Kiddush HaShem* is not dependent on the preservation of the most life, but of the most *kedushah*. *Kiddush HaShem* is not defined as giving up

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<sup>46</sup> וכיכרות של תרומה בידו, ואמר לו הנוכרי, תן לי את אחת מהן ואטמאה, ואם לאו, הריני מטמא את כולן—רבי אליעזר אומר, יטמא את כולן, ואל ייתן לו את אחת מהן; רבי יהושע אומר, יניח לפניו אחת על הסלע. See *Hilchos Terumos* 12:6 that the halachah is like Rabbi Yehoshua.

<sup>47</sup> And thus it is not an issue of the three *mitzvos* and thus for הנאת עצמו there is no need to resist at the risk of death, if not in the presence of ten Jews.

<sup>48</sup> Not an act of murder.

one's life because of one's commitment to his faith, *Yabadus*, but rather preserving the values of *Yabadus* at the expense of one's life.<sup>49</sup>

### Elisha Baal Kenafayim and Rabbi Akiva

The Gemara says that there was a time when the observance of the *mitzvah* of *tefillin* was “weak in the hands of Israel” and in this context it presents the story of Elisha Baal Kenafayim (*Shabbos* 130a) who wore *tefillin* at the time of *shemad* but when spotted by a government enforcer fled and hid his *tefillin* in his fist. Upon being caught, he opened his hand and the *tefillin* had turned to the wings of a pigeon and he was saved. It is generally understood<sup>50</sup> that Elisha was a saint whom G-d saved with this miracle,<sup>51</sup> as there had been no need for him to have worn *tefillin* in the first place, since one need not endanger himself to perform a positive command. However, according to Rambam his removal of his *tefillin* in the face of danger<sup>52</sup> was sinful and in fact embodies this weakness that was present in Israel. *Tefillin* is the sign (אִוֶּת) of our covenant with G-d that we display to the world and at the crucial moment Elisha shirked his responsibility to publicize this *bris*. Rabbeinu Channanel<sup>53</sup> explains that *Chazal* bring his story not to praise him but to condemn him.<sup>54</sup>

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<sup>49</sup> According to the *Baalei Tosafos*, the issue of דחיית נפשות is governed by the rule of the equality of every life that dictates that one react with passivity and let nature take its course. This presented them with some difficulty in explaining why it would not be proper to hand over one's life to save many, and thus their reliance on refraining from a מעשה is crucial to their *shittah*. But according to Rambam that the principle is one of *Kiddush HaShem*, the nobility of the refusal to give up one's life to a cruel enemy even to save the many is readily understood.

<sup>50</sup> As the Rishonim we noted above contend, and thus his act was לפנים משורת הדין.

<sup>51</sup> See *Kesef Mishneh*, *Yesodei HaTorah* 5:3.

<sup>52</sup> According to some Rishonim he was model of גוף טהור while according to Rambam he was the opposite.

<sup>53</sup> Brought by *Tosafos*, *ibid*.

<sup>54</sup> The Gemara is contrasting Elisha's actions with regard to *tefillin* with Israel's conduct with regard to *avodah zarah* and *milah* whose importance they understood and for whose performance they were willing to die.

Rabbi Akiva was brought to execution for having taught Torah. In his last moments, the Talmud tells us, he recited *Krias Shema* “and accepted upon himself the yoke of Heaven” (*Berachos* 61b.) In this retelling *Chazal* wish to impart to us the relationship between *Yichud HaShem*<sup>55</sup> and *Kiddush HaShem*, as his willingness to die for *Kiddush HaShem* was evidence of what Rambam referred to in the *Sefer HaMitzvos*<sup>56</sup> as his “love of the Almighty and belief<sup>57</sup> in his unity” — אהבתו יתעלה והאמונה בייחודו. In *Hilchos Yesodei HaTorah* (chapter 5), Rambam treats *Kiddush HaShem* right after explaining *yichud* as it is the way in which one concretizes *yichud HaShem*.<sup>58</sup> Elisha’s fear, and a lack of what the Gemara (*Shabbos*, *ibid.*) refers to as a “pure body” caused him to remove his *tefillin*. The holy Rabbi Akiva embraced his mission<sup>59</sup> and reached a plane of existence that Rambam describes (*ibid.*, *halachah* 4) as: “There is none higher than it” — שאין מעלה על מעלתם.

### Healing with Sin

The Talmud (*Pesachim* 25ab) forbids a person to heal himself from a fatal disease by committing any of the three major sins. Elsewhere the Talmud (*Sanhedrin* 75a) adds, surprisingly, that even if one can be cured by having an inappropriate conversation with an unmarried girl, it is still forbidden, even though this does not qualify as *arayos*. *Rishonim*<sup>60</sup> note that even the first *halachah* is difficult to

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Though *tefillin* relates to the same *bris* as *milah*, they did not think it was important to advertise the *bris* in the face of their oppressors and at the expense of their lives. Perhaps the כנפי יונה represents an attitude in which he saw the *mitzvos* as his protection in contrast to the *midrash* of יהודי או צלוב.

<sup>55</sup> Many questions are asked by the *mefarshim* on why Rabbi Akiva would be saying *Krias Shema* at that time. They all become irrelevant when we understand that it was not a standard *Krias Shema* but the goal of that *mitzvah* which is of ייחודו.

<sup>56</sup> See the passage quoted in the opening paragraph of this essay.

<sup>57</sup> Perhaps the correct word is “knowledge of” rather than “belief in.”

<sup>58</sup> In *Sefer HaMitzvos* the *mitzvah* of *Shema* follows that of *Kiddush HaShem*.

<sup>59</sup> For a Jew there is no life without Torah. See the Gemara (*ibid.*) that he argues במקום היינו.

<sup>60</sup> See *Tos. Pesachim*, *ibid.*

understand as the example in the Talmud for *avodah zarah* healing is curing oneself with the wood from the *asheirah*, עצי אשרה, in which the violation is having benefit from *avodah zarah* which is only an auxiliary sin to *avodah zarah* and not punishable with the death penalty. Thus some Rishonim<sup>61</sup> deduce from these laws that even auxiliary sins, *abizraihu*, אבזורייהו, of the major sins cannot be violated to save one's life. So severe are these fundamental sins that anything related to them is also worthy of giving one's life for.

When Rambam (*Hilchos Yesodei HaTorah* 5:6) quotes these halachos, he gives no indication that these laws are indicative of a broader principle of *abizraihu*. In general, he explains that the punishment for any sin is commensurate with the severity of the prohibition<sup>62</sup> and thus auxiliary violations, carrying minor punishments, would not logically be comparable to the major sins themselves. Moreover, some Rishonim<sup>63</sup> understand that the healing that comes through the wood of the *asheirah* is a result of the *segulah*/supernatural qualities of the wood, and Rambam is of course in disagreement with the belief that there is any efficacy to *avodah zarah* or the superstitions related to it.<sup>64</sup> Clearly he must have had a different understanding of these laws and this understanding is found in *Shemos Rabbah*.

We learned. With all one may be healed by *avodah zarah*, uncovering *arayos*, and murder. How so? That if one tells a person to kill a person and you will be cured, don't heed him for it says (*Bereishis* 9:6) "He who spills the blood of a person, by a person shall his own blood be spilled" so how can one be cured by spilling blood? "How so via uncovering *arayos*?" If one tells you to commit sexual violations and you will be cured, do not heed him ... for all who touch a woman who is not his brings death to the world for it says (*Mishlei* 7:26) "for many bodies

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<sup>61</sup> See *Baal HaMaor*, *Sanhedrin*, (ibid); *Chinuch* 296; *Ran* (on *Rif Pesachim* 25a who explains this based on the *Yerushalmi*.

<sup>62</sup> See *Peirush HaMishnah* to *Avos* 2:1.

<sup>63</sup> See *Tosafos Pesachim* 25a. Even according to this view, the healing via *avodah zarah* is not itself an act of idol worship but is not permitted lest it lead to idol worship.

<sup>64</sup> See for example *Hilchos Avodah Zarah* 11.

she has felled” ... since she has these qualities, **how can she give life to the ill?** Thus one may not be cured with it. “How so with *avodah zarah*?” For if a Jewish man was sick and one tells him to go to a certain *avodah zarah* and be healed, it is prohibited to go ... **for there is no substance to them and they do not help at all** ... The Holy One Blessed Be He said “Since they are like an inanimate stone with no substance and others must watch it that it not be stolen how can it give life to the ill?” That is why it is prohibited to heal with anything from it.<sup>65</sup>

It is precisely because these sins cannot cure that they may not be engaged in to protect against fatal diseases. Of course, they appeared to have efficacy, otherwise people would not have used them. Faith healers are often effective, even if the faith is in an idol. Killing a hated enemy can cure actual physical symptoms created by psychological factors. A lovesick person can be cured from actual symptoms by sating his lust.<sup>66</sup> Sick minds can require sin to sustain their bodies. The Gemara (*Sanhedrin*, *ibid.*) explains that only after the destruction of the *Beis HaMikdash* did the situation arise that a

<sup>65</sup> שמו"ר יב:כא תנינן, בכל מתרפאין חוץ, מעבודת כוכבים וגילוי עריות ושפיכות דמים. כיצד? שאם יאמרו לו לאדם: בא והרוג את הנפש, ואתה מתרפא אל ישמע להן, שכן כתיב (בראשית ט, ו): שופך דם האדם באדם דמו ישפך, הואיל, וכל מי שהוא שופך דם האדם, באדם, דמו ישפך, היאך יכול החולה להתרפאות בשפיכות דמים?! גלוי עריות כיצד? אם יאמרו לו לאדם: עסוק בגלוי עריות ואתה מתרפא, לא ישמע להן, שאסור לו לאדם לעסוק בגלוי עריות. ... וכל מי שנוגע באשה שאינה שלו, מביא מיתה על עצמו, שנאמר (שם ז, כו): כי רבים חללים הפילה. וכתיב (שם ה, ה): רגליה יורדות מות שאול צעדיה יתמוכו, הואיל ויש בה כל המדות הללו, היאך יכולה היא ליתן חיים לחולה?! לכך אין מתרפאין בה עבודת כוכבים כיצד? שאם היה אדם מישראל חולה ויאמרו לו: לך אצל עבודת כוכבים פלונית ואתה מתרפא, אסור לילך, שכן הוא אומר (שמות כב, יט): זובח לאלהים יחרם בלתי לה' לבדו, והואיל שכל מי שעובד עבודת כוכבים יחרם, מוטב לו למות בחולי, ואל יעשה חרם בעולם הזה, ולא זה בלבד אסור, אלא כל דבר שהוא של עבודת כוכבים אסור להתרפאות בו. שאם יאמרו לו לאדם: טול ממה שמקטירין לעבודת כוכבים, או טול מן האשרה ועשה מהן קמיע והתרפא, אל תטול, שכן כתיב (דברים יג, יח): ולא ידבק בידך מאומה מן החרם, זו עבודת כוכבים. ואומר (שם ז, כו): ולא תביא תועבה אל ביתך והיית חרם כמוהו. למה? שאין בהם ממש, ואין מועילין כלום, שנאמר (ירמיה י, ה): אל תיראו מהם כי לא ירעו וגם היטב אין אותם. אמר הקדוש ברוך הוא: הואיל והיא כאבן דומם ואין בה ממש, ואחרים שומרים אותה, שלא יגנבו אותה, היאך יכולה היא ליתן חיים לחולה?! לכך אסור להתרפאות מכל אשר לה.

<sup>66</sup> Ramban in *Milchamos* to the eighth *perek* of *Sanhedrin* also brings this *midrash*.

man could die of lust. Rambam explains (*Yesodei HaTorah* 5:9): “Let him die rather than he be permitted to speak with her from behind a fence, so that the daughters of Israel not be *hefker*, lest this sort of conduct lead to *arayos*.” It is for the preservation of the values of Judaism that a Jew must give up his life.

### Halachic Ramifications

There are ramifications to Rambam’s position on *Kiddush HaShem* that would cause the *psak halachah* to differ from that of other Rishonim, and I will list some.

In the case of conjoined twins where one life can be saved if the other non-viable one is taken, some *poskim* look to the case of Sheva ben Bichri for guidance, where it is prohibited to actively give up one life in order to save the group. According to Rambam, since in this case the choice is not foisted on us by oppressors and thus *Kiddush HaShem* is not here a factor,<sup>67</sup> it is logical that preservation of the most life possible would be the operable principle.<sup>68</sup>

By contrast, in the case of the Cantonists where a quota of Jewish youth were drafted into a situation where their life was placed in great danger and performance of *mitzvos* was almost impossible, the principle of *Kiddush HaShem* would play a role. Some have argued based on the principle of *חייך קודמין*, that one has the right to put his own interests before that of others, as well as other halachic sources related to monetary matters, that one should be permitted to use his influence to save himself or others close to him at the expense of others who will subsequently be taken in his place.<sup>69</sup> But should we

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<sup>67</sup> See Arnold Enker, *Fundamentals of Jewish Criminal Law* (2007), chapter 7. For a different approach: Avraham Zucker, *Hakirah* 5.

<sup>68</sup> Nor is it comparable to where the murder is committed to cure via satisfying one’s anger.

<sup>69</sup> See Rabbi Yitzhak Grossman’s post <<http://seforim.blogspot.com/2008/05/hunted-bears-cantonists-and-nazi.html>> where he concludes that in the age of the Cantonists, it was permissible for the wealthy to use their influence to save their sons while it meant that the children of the poor would uniformly be taken. As this is really an issue of *נפשות* and *בטול* *הטל* it would seem to come under the category of *קדוש השם* and require that none try to gain advantage over another.

apply Rambam's principle of *Kiddush HaShem*, our perspective changes.

In the death camps of Europe, Rabbi Zvi Hersh Meisels was approached by a man who was able to save his own son, but it would have meant that another would be taken in his place, and he asked if he could do so. Rabbi Meisels was unable to give him a definitive answer.

But the father who asked decided, that because of the refusal of Rav Meisels to give a definitive answer the thing was prohibited, and said if so he was prepared to sacrifice his only son according to the Torah and the law, and he accepted this with love and happiness.<sup>70, 71</sup>

In the face of the impending Holocaust, some Rabbis escaped and lived to build thriving communities.<sup>72</sup> But it is the story of those who stayed to serve and comfort those who could not leave and who themselves perished and left no progeny that sustains our people and our religion. The stories of heroism displayed before *asarah m'Yisrael* are transmitted to future generations and remain in the consciousness of Israel until this day. This is the added importance of *Kiddush HaShem b'rabbim*.

Building the *Beis HaMikdash* is a central *mitzvah* to Judaism and incumbent upon the community as a whole.<sup>73</sup> Its centrality to Judaism explains why Israel's enemies built their place of worship on its place and to this day insist that Jews do not pray there. According to Rambam, when the oppressor wishes to uproot our ability to

<sup>70</sup> אולם האב השואל החליט מתוך סרבנותו של הרב מייזליש להשיב תשובה ברורה, שהדבר אסור, ואמר שאם כן הוא מוכן להקריב את בנו יחידו על פי התורה וההלכה, ושהוא מקבל את זה באהבה ובשמחה, וכך עשה וגם ככה קיים דבריו ולא פדה את בנו, והיה כל היום, יומא דראש השנה, הולך ומדבר לעצמו בשמחה שזוכה להקריב את בנו יחידו לה' כי אף שיש ביכולת בידו לפדותו עם כל זה אינו פודהו מחמת שרואה שהתורה לא התירה לו לעשות כזאת ויהיה חשוב לפני השי"ת כעקידת יצחק אבינו שהי' גם כן ביום ראש השנה (מקדשי השם, שער מחמדים ב).

<sup>71</sup> However, if an individual should volunteer to save another it would seem to be an act of saintliness and should be permitted. This is apparently the story of the brothers in Lud (see Rashi to *Pesachim* 60a and *Taanis* 18b) who did so and are considered with the מלכות.

<sup>72</sup> See *Hakirah*, vol. 9, "To Flee or to Stay."

<sup>73</sup> See *Sefer HaMitzvos, Aseh* 20.

perform a *mitzvah*, even an *Aseh*, it is incumbent on a Jew to resist, and the principle of *Kiddush HaShem* calls on him to act without fear.<sup>74</sup>

As we have seen, it is fundamental to the concept of *Kiddush HaShem* that one be willing to give up his life rather than kill another, as this is a demonstration of our moral values. Based on our understanding of Rambam, even without a *maaseh retzichah* one who is a cause for this murder engages in *chillul HaShem* that the Torah forbids. If indeed whether brain death is death is a case of doubt, ספק, it does not automatically follow that a Jew can place himself on a list for receiving an organ since for him it is *pikuach nefesh*, but rather it could be argued on the contrary that the complicity in taking another's life for one's own is *chillul HaShem* and it should follow that taking an organ while not being willing to give is a *chillul HaShem*.<sup>75</sup>

On the other hand, perhaps since the “redder blood” argument does not mean that all lives should be treated equally, but that merely one may not rely on *pikuach nefesh* to save his own life at the expense of others, it follows that one should be able to willingly sacrifice his life to save another. The willingness to give one's life to save another emulates the act of the Martyrs of Lud<sup>76</sup> (הרוגי לוד) who saved a group by sacrificing themselves. A similar calculation could be made that sacrificing one's minimal existence to grant another a full life, would be a *Kiddush HaShem*.<sup>77</sup>

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<sup>74</sup> The concept is most specifically stated for conflict with religions. That Jews discuss the future of the Temple Mount—that we do not claim it—is certainly a *chillul HaShem*. Certainly the building requires *Moshiach*, but preserving the place for the eventual building should be a pressing obligation on the community.

<sup>75</sup> A very similar argument based on Rambam's *shittah* as understood by Rav Chaim and explained by Rav Soloveitchik, *zt"l*, is presented by Rav Hershel Schacter, *shlita*, in *Assia* 7, pp. 188–206.

<sup>76</sup> See Rashi to *Pesachim* 50a and *Taanis* 18b. See *Divrei Yirmiyah*, *Hil. Yesodei HaTorah* 5:4.

<sup>77</sup> Especially since the brain-dead person is a *treifah*. Rav Schachter, in his article, also makes a similar point—but when we add the argument of *Kiddush HaShem* the argument is strengthened.

This *mitzvah* is specifically to show our dedication to Jewish values, G-d's values—to stand up against the world and not to adopt gentile values and curry favor with them. *Kiddush HaShem* is based on standing up against secular values when they contradict the Torah. Those Jews who fear that Rabbis who take strong public positions against homosexual “marriage” are creating a *chillul HaShem* since they oppose the “moral” values that are currently in vogue, are in error.

### Servant of *HaShem*

The colloquial usage of the term *Kiddush HaShem* is when an Orthodox Jew acts in such a way as to reflect well upon the Jewish people. This is based on the last halachah of the *perek* of *Kiddush HaShem*.

And so too if a *chacham* is exacting upon himself, and he speaks pleasantly to people, and relates well with them, and greets them with a smile, and takes abuse from them and does not return it, shows respect even to the smallest of them, and is trustworthy in his business affairs, does not spend much time with the activities that the ignorant engage in, and is constantly seen engaged in Torah study wrapped in *tzitzis* and crowned with *tefillin*, and conducts all his actions [with others] beyond the strict requirements of the law—and yet is not considered aloof [from the common people], nor an ascetic—so that it is found that all praise him and love him and wish to be like him. This is a *Kiddush HaShem* and of him Scripture says “And He said, ‘You are my servant Israel’ in whom I take pride.”<sup>78</sup>

<sup>78</sup> וכן אם דיקדק החכם על עצמו, והיה דיבורו בנחת עם הבריינות, ודעתו מעורבת עימהם, ומקבילין בסבר פנים יפות, ונעלב מהן ואינו עולבן, מכבד להן ואפילו למקילין לו, ונושא ונותן באמונה, ולא ירבה באריחות עמי הארץ וישיבתן, ולא ייראה תמיד אלא עוסק בתורה עטוף בציצית מוכתר בתפילין, ועושה בכל מעשיו לפני משורת הדין—והוא שלא יתרחק הרבה, ולא ישתומם הרבה—עד שיימצאו הכול מקלסין אותו ואוהבין אותו, ומתאוין למעשיו: הרי זה קידש את השם, ועליו הכתוב אומר "ויאמר לי, עבדי אתה—ישראל, אשר בך אתפאר" (ישעיהו מט, ג).

When a *talmid chacham*<sup>79</sup> acts in such a way as to reflect Jewish values, then Judaism is strengthened and Jewish values are strengthened. Moshe Rabbeinu captures the idea best in the blessing at the end of the Torah:

ט וְיִקְיָמְךָ יי לֹא לְעַם קְדוֹשׁ. כְּאֲשֶׁר נִשְׁבַּע-לְךָ: כִּי תִשְׁמֹר, אֶת-מִצְוֹת יי אֱלֹהֶיךָ.  
וְהִלַּכְתָּ בְּדַרְכָּיו. י וְרָאוּ כָּל-עַמֵּי הָאָרֶץ, כִּי שָׂם יי נִקְרָא עָלֶיךָ; וְיָרְאוּ. מִמֶּךָ

The L-rd will sustain you as a Holy nation as He swore to you, if you will keep the commandments of the L-rd your G-d and walk in His path. And all the nations of the earth will see that the name of G-d is called upon you and they will fear you.



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<sup>79</sup> All religious Jews have this halachah even in the most technical of ways.