

High-Handed Transgressions: Hillul Hashem as a Category

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הַנִּפְשׁ אֲשֶׁר תַּעֲשֶׂה בְּיַד רְמָה (במדבר טו:ל)

Rambam in *Moreh ha-Nevukhim*¹ 1:36 writes:²

Know that if you consider the whole of the Torah and all the books of the prophets, you will find that the expressions wrath, anger, and jealousy are exclusively used with reference to idolatry.

Rambam then proceeds to cite a relatively long list of proof texts and ends with the following comment:³

Expressions of this kind are too numerous to be counted. However if you trace them in all the books you will find that it is as we have said.

The problem is that this does not seem to hold up. We find the expressions of anger in several places where idolatry does not seem to be the obvious cause for that anger. Rav Kafieh in his notes *ad*

¹ All Hebrew quotes from MN are based on the Michael Schwartz edition available here <<http://press.tau.ac.il/perplexed/toc.asp>> and the English quotes are from the Shlomo Pines edition. The impetus for this article was a discussion I had with Rabbi Benzion Buchman regarding the terms *בנפש* and *להכעיס* used by Rambam in a variety of halakhot and the reference to Yehoyakim in *Hilkhot Teshuvah*, all quoted in this article. I wish to thank him for further discussions we had on the subject, his reading and comments on earlier versions of this article. I also wish to thank my son Alex for his input and Heshey Zelcer for his comments.

² דע שאם תתבונן בכל התורה ובכל ספרי הנביאים לא תמצא לשון חרון אף ולא לשון כעס ולא לשון קנאה אלא כלפי עבודה זרה דווקא. ולא תמצא שנקרא אויב ה' או צר או שונא אלא עובד עבודה זרה דווקא.

³ ביטויים אלה רבים מני ספור. אך כאשר תעקוב אחריהם בכל הספרים תמצאם.

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locum (note 4) points to two, one in *Shemot* 4:14 when Moshe was resisting going to Egypt to talk Pharaoh into releasing the Jewish people from slavery, and the other in *Be-Midbar* 12:9 when Miriam and Aharon criticized Moshe for leaving Zipporah.⁴ It is difficult to accept that these three great monotheists, leaders of the people, should be considered idolaters. Rav Kafieh comments that many⁵ convoluted attempts to resolve this Rambam sound hollow and the answer must be obvious but it escapes him. In this article I will attempt to resolve this difficulty based on Rambam's four novel categories of transgressions and an analysis of the fourth category.

Rambam's Fourth Category of Transgressions

In MN 3:41 Rambam discusses the various punishments the Torah orders for the different transgressions. He divides the Torah transgressions into four categories: אָנוּס, the compelled transgressor; שׁוֹגֵג, the inadvertent transgressor; מְזִיד, the deliberate transgressor; and עוֹשֵׂה בַיַּד רָמָה, one who transgresses in a high-handed manner.

Know that with regard to the perpetration of things forbidden by the Law there are four categories: the first being that of the compelled transgressor; the second that of the inadvertent transgressor; the third that of the deliberate transgressor; the fourth that of him who transgresses in a high-handed manner.⁶

The first three are well known to the student of the Gemara. If we were to ask any yeshiva student if he is familiar with these categories, the majority will be able to tell us what they mean, and some who are more advanced will even discuss the various nuances that fit each category. The fourth one however—the high-handed transgressor—will not be known as a category. I am not sure that a student of *Mishneh Torah* (MT) will realize that this is a separate category. In MT in the fifth chapter of *Hilkhot Yesodei ha-Torah*, at the

⁴ See my short article in *Hakirah* Volume 2 <<http://www.hakirah.org/Vol2Guttman.pdf>>.

⁵ See Afudi, Shem Tov, Avarbanel, Narboni, Ibn Kaspi ad locum. The other verses that are seen as problematic are *Shemot* 22:23 and *Iyov* 42:7.

⁶ דע שהעבירה על איסורי התורה מתחלקת לארבעה סוגים: הראשון האָנוּס, השני השׁוֹגֵג, השלישי המזיד והרביעי עושה ביד רמה.

end of the laws of *Kiddush and Hillul Hashem*, Rambam presents it as follows:

כל העובר מדעתו בלא אונס על אחת מכל מצוות האמורות בתורה, בשאט
בנפש להכעיס--הרי זה מחלל את השם; ולפיכך נאמר בשבועת שקר,
וחיללת את שם אלוהיך, אני ה.

One who transgresses deliberately without being compelled on any one amongst all the Mitzvot enumerated in the Torah, [doing it] with defiant alacrity⁷—he defiles the Name [of God]. That is why it says by [the transgression of] taking a false oath, “... profaning the name of your Lord, I am God.” (*MT Yesodei ha-Torah* 5:10)

It is not obvious that this Halakha is establishing a separate category. It is only when we read carefully that we realize that Rambam is telling us that transgressing “any one amongst all the Mitzvot enumerated in the Torah” with an attitude of defiance falls under the overarching rubric of *Hillul Hashem* rather than the specific act just committed. In other words, one may transgress on the same Mitzvah and if the attitude was one of “defiant alacrity” it takes on a new connotation—that of *Hillul Hashem*.

In *Sefer ha-Mitzvot* negative commandment 63 Rambam lists the prohibition of *Hillul Hashem* and divides it into three groupings, where the first two pertain to all and the last only to special individuals. The first group is the opposite of *Kiddush Hashem*. When there is an obligation to be *Mekadesh Hashem* and sacrifice one’s life rather than transgress a commandment and one opts not to do so, that person has transgressed on the negative commandment of *Hillul Hashem*. The second group is:

והחלק השני הכללי - גם כן שיעשה האדם עברה שאין בה תאוה ולא הנאה, אלא מראה במעשיו הזלזול וההפקרות - הרי גם זה מחלל שם שמים ולוקה, ולפיכך אמר: "ולא תשבעו בשמי לשקר וחיללת את שם אלוהיך" לפי שזה מראה על הזלזול בעניין זה, ואין הנאה גופנית בכך.

⁷ I translate בנפש, alacrity, based on the Targum in *Yehezkel* 36:5 who translates it בציפיה נפש. Arukh translates — alacrity—ציפיה. The other commentators translate it “with scorn” or “with contempt.”

The second part that applies to all, should a person transgress on a commandment while he has no compulsion to do so nor does he derive any gain [pleasure] from it. Doing so indicates disdain [for the Mitzvah] and anarchism. That too is considered a desecration of God's name and he is flogged.⁸ That is why it says, "Do not swear falsely in My name, profaning the name of your God," because that shows disdain in this matter without any physical gain.⁹

The proof text in *Sefer ha-Mitzvot* is expanded to include the beginning of the verse, which defines the act as swearing using God's name, unlike in MT where only the end of the verse is quoted. The association of *Hillul Hashem* to swearing using God's name is seen by Rambam as an example of a rebellious transgression, and he extends it to all transgressions done with this attitude, seeing this particular case as a mere example. In *Mitzvat Asseh* 7 Rambam lists the obligation to swear in God's name.

הציווי שנצטוונו להשבע בשמו יתעלה בזמן שנצטרך לכך לקיים איזה דבר או לשלול, לפי שיש בזה רוממות לו יתעלה וכבוד וגדולה.

That we were commanded to swear in His name whenever there is a need of [an oath] to confirm a matter or deny it because that brings exultation, glory and greatness to God.

Rambam, unlike other Rishonim,¹⁰ holds that there is a positive commandment to attach God's name to an oath, as a sign of respect and praise by associating truth with God, the ultimate Truth. There is an element of *Kiddush Hashem*, sanctifying God's name, in this Mitzvah.¹¹ Swearing falsely gratuitously is a *Hillul Hashem*. The

⁸ It is not clear what Rambam means with flogging. We do not find flogging for this attitude in MT. See below in note 26.

⁹ See also *Iggeret ha-Shmad* in *Iggrot ha-Rambam* R. Sheilat edition pp. 47-48.

¹⁰ See Ramban in his commentary on *Sefer ha-Mitzvot ad locum*.

¹¹ This Mitzvah is in addition to the 9th *Mitzvat Asseh* of *Kiddush Hashem*, which has only the first part—self-sacrifice when so obligated. I understand that the reason for this added Mitzvah is because swearing using God's name does not require a sacrifice on the part of the person doing the Mitzvah, but rather is a voluntary show of respect to God. It would therefore not fall under the rubric of a full-blown *Asseh* of *Kiddush Hashem*, which demands the ultimate sacrifice. It therefore needs its own

idea is that just as when one tells the truth, attaching God's name to the oath is a sign of devotion, so too the use of His name in a gratuitous lie is disrespect and desecration. In *Mitzvat Lo Ta'aseh* 61 Rambam lists the prohibition of not keeping an oath one makes to do or not do something in the future, or lying about something one did or did not do in the past, *shevuat bituy*.¹² This same verse ולא תשבע בשמי לשקר is the source for that prohibition. This kind of an oath is voluntary, as opposed to oaths that are used in court for evidentiary and monetary reasons, and does not afford any physical or monetary gain. Making that oath while associating it with God's name, which is a *Mitzvat Asseh* when true or kept, has an additional *Lo Ta'aseh*, *Hillul Hashem*, when it is not kept or untrue, because this kind of gratuitous oath, if made intentionally, is made only when one does not care and rebels against the whole concept of the Mitzvah and God who commanded it. That is based on the second part of the verse¹³ וחיללת את שם אלוהיך. Rambam does not see this as restricted to this particular Mitzvah, but rather believes that this Mitzvah serves as a prototype for all Mitzvot done with this attitude.

Definition of high-handedness

In *Hilkhot Avodah Zara* 2:4 Rambam adds high-handedness to the description of this type of act.¹⁴

Asseh. On the other hand, the negative commandment can cover a broader range including all aspects, such as when one does not give up his life when required to, and when one swears falsely or publicly acts in a fashion that desecrates God.

¹² האזהרה שהזהרנו שלא לעבור על שבועת ביטוי והוא אמרו יתעלה: "ולא תשבעו בשמי לשקר".

¹³ In *Hilkhot Shevuot* 1:3 we read: כגון--החליף--כגון נשבע על אחת מארבע מחלקות אלו והחליף--כגון שנשבע שלא יאכל ואכל, או שאכלתי והוא לא אכל--הרי זו שבועת שקר; ועל זה וכיוצא בו נאמר "לא תישבעו בשמי, לשקר".

Rambam uses only the first part of the verse while in *Hil. Yesodei ha-Torah* 5:10 quoted above he uses only the second part of the verse. There are two separate prohibitions in this verse where the second one is expanded to all Mitzvot. When one swears falsely he transgresses on both prohibitions; see Rambam *Hilkhot Shevuot* 12:1.

¹⁴ The beginning of the Halakha reads: וכן המינים מישראל, אינן כישראל לדבר מן הדברים. ואין מקבלין אותן בתשובה, לעולם--שנאמר "כל באיה, לא ישובון; ולא ישיגו, אורחות חיים". A Jewish *min* is different from the regular *min* in *Hilkhot*

והמינים, הם התרים אחר מחשבות ליבם בסכלות, בדברים שאמרנו, עד שנמצאו עוברים על גופי תורה להכעיס, בשאט בנפש ביד רמה; ואומרין, שאין בזה עון.

Minim are those that stupidly follow their mind on the matters we spoke about earlier¹⁵ until they transgress on basic laws defiantly, with alacrity, high-handedly saying that there is no sin in this.

In the context, high-handedness is seen when one publicizes this rebellious attitude—*saying that there is no sin in this*. High-handedness is also included in *Hilkhot Teshuvah* 3:11 amongst those that do not merit *Olam Haba*:

העושה עבירות ביד רמה כיהויקים: בין שעשה קלות, בין שעשה חמורות--אין לו חלק לעולם הבא; וזה הוא הנקרא מגלה פנים בתורה, מפני שהעז מצחו וגילה פניו ולא בוש מדברי תורה.

One who sins high-handedly like Yehoyakim, whether his sins were minor or major, does not have a part in *Olam Haba*. That person is referred to as one who uncovers a face in Torah, because he was impudent and uncovered his face, not being ashamed of the words of the Torah.

Teshuvah 3:7, as this case is listed there not in the *min* category but as a separate category. A Jew has Mitzvah obligations and should he transgress defiantly as the Halakha continues, he is a Jewish *min*. A *min* that denies the existence of God as in *Hilkhot Teshuvah* is denying a universal truth. That is not solely a Jewish matter. Indeed, at the end of the preceding Halakha 3:5 which introduces this one, Rambam explains that *Olam Haba* exists for both Jews and non-Jews. That tells us that the following Halakhot that discuss what behavior merits *Olam Haba* have to be read in this context and depending on the case would apply to one or the other or both. See also later in the article the quote from *Hilkhot Rotzeah*. Our case is therefore listed as a separate category in Halakha 7 of *Hilkhot Teshuvah* 3, והעושה עבירות ביד רמה בפרהסיה כיהויקים, and expanded upon in Halakha 11.

¹⁵ See Halakha 3 earlier: ואם יימשך כל אדם אחר מחשבות ליבו, נמצא מחריב את העולם; לפי קוצר דעתו. כיצד: פעמים יתור אחר עבודה זרה; ופעמים יחשוב בייחוד הבורא, שמא הוא שמא אינו, מה למעלה מה למטה, מה לפניו מה לאחור; ופעמים בנבואה, שמא היא אמת שמא אינה; ופעמים בתורה, שמא היא מן השמיים שמא אינה. ואינו יודע המידות שידון בהן עד שיידע האמת על בוריו, ונמצא יוצא לידי מינות.

A person that is arrogant and with impudence transgresses on either minor or major matters does not merit *Olam Haba*. Adding כיהויקים—using Yehoyakim as the example—defines high-handedness as acting publicly, thus expressing public defiance. In *Perush Ha-Mishnah*, *Avot* 3:14 Rambam explains the term “uncovering one’s face”¹⁶ referencing to *Yerushalmi*, *Pe’ah* 1:1 where it is defined as transgressing on Torah matters publicly as Yehoyakim the king of Yehuda did.¹⁷ One loses the merit of *Olam Haba* only when one shows public defiance and impudence, flaunting unlawful behavior. Private transgressions with a defiant attitude do not disqualify from *Olam Haba*. In *Hilkhot Rotzeah* 4:10 Rambam writes¹⁸

המינים, והם עובדי עבודה זרה מישראל, או העושה עבירות להכעיס¹⁹, אפילו אכל נבילה או לבש שעטנז להכעיס, הרי זה מין, והאפיקורוסין, והן שכופרין בתורה ובנבואה מישראל--מצוה להורגן.

The *minim*, those are Jewish²⁰ idol worshippers or one who transgresses defiantly, even if he were to eat a dead animal [that

¹⁶ Idiomatically a similar expression in English would be “in your face”—flaunting defiant behavior. In the traditional printed *Mishnayot* based on the Vilna edition (see Rav Kafieh’s note) of *Shas*, the term is מגלה פנים בתורה שלא כהלכה which connotes the wrong interpretation of a Halakha. Rambam’s edition does not have these last two words, and based on the *Yerushalmi* he has a different understanding of the term. A separate study of the occurrence of this term in various places in Bavli and *Yerushalmi* as well as in the *Rishonim* is warranted.

¹⁷ המגלה פנים בתורה זה שהוא אומר לא נתנה תורה מן השמים ולא כבר תניתה האומר אין תורה מן השמים תני רב חנניה מנתוניא קומי ר' מנא שהוא עובר על ד"ת בפרהסיא כגון יהויקים מלך יהודה וחבירו
For a description of Yehoyakim and his perversions see *Yirmiyahu* 22:13-28 and *Sanhedrin* 103a-b.

¹⁸ See also *Hilkhot Mamrim* 3:1

מי שאינו מאמין בתורה שבעל פה, אינו זקן ממרא האמור בתורה, אלא הרי הוא בכלל המינים, ומיתתו ביד כל אדם. [ב] מאחר שנתפרסם שהוא כופר בתורה שבעל פה--מורידין ולא מעלין, כשאר המינים והאפיקורוסין והאומרין אין תורה מן השמיים והמוסרים והמשומדים: כל אלו אינן בכלל ישראל, ואינן צריכין לא עדים ולא התראה ולא דיינין; אלא כל ההורג אחד מהן, עשה מצוה גדולה והסיר מכשול.

¹⁹ Rambam is not required to add high-handedness to this Halakha. Obviously the sinner must have transgressed publicly with defiance and said something to that effect for him to be known as such and thus qualify for the extra-judicial death sentence.

was not slaughtered halakhically] or wore *shaatnez* defiantly is a *min*, and the *apikorsim*, those are the Jewish ones that deny the Torah and prophecy, it is a Mitzvah to kill them.

Again we see that a transgression done with a defiant attitude is in a different category from the usual intentional transgression, as even minor infractions deserve the extra-judicial death sentence. This conforms to MN 3:41 we quoted earlier, where Rambam holds there are four categories of transgressions where the fourth one is when a transgression is done defiantly—high-handedly.

The Fourth Category as a Theological Transgression—Avodah Zara

As for him who transgresses in a high-handed manner, he is the deliberate transgressor who acts with impudence and audacity and makes his transgression known in public.²¹ Accordingly such a one does not transgress merely because of desire or because, on account of his evil character, he wishes to obtain things that are forbidden by the law, but rather in order to oppose and combat the law. Therefore it says of him, He reviles the Lord. He must indubitably be killed. Whoever acts in this manner does so only because of an opinion formed by him, in virtue of which he is opposed to the law. Because of this the traditional interpretation [of the just quoted verse] states: the scripture speaks about idolatry (TB *Keritot* 7b); for the latter is the opinion opposed to the foundation of the Law. For a star cannot ever be worshipped except by one who believes that it is eternal a parte ante, as we have explained several times in our compilations. (MN 3:41)

Rambam is referring to the verse in *Be-Midbar* 15:30

וְהַנִּפְשׁ אֲשֶׁר-תַּעֲשֶׂה בְיַד רָמָה, מִן-הָאֲזִזָּה וּמִן-הַגֵּר--אֶת-יְהוָה, הוּא מַגְדִּיר;
וְנִכְרְתָה הַנִּפְשׁ הַהוּא, מִקִּרְבַּ עַמּוֹה.

²⁰ See note 14 above.

²¹ This further supports my understanding that high-handedness means publicizing his rebellious attitude. Rambam is using the extreme example here, as the chapter is about penalties and this is an example of an extra-judicial penalty.

And the person who does it with a high hand, whether from the native or the sojourner—he reviles the Lord and that person shall be cut off from the midst of his people.

This verse is at the end of the law dictating the *ḥatat* offering brought for an inadvertent transgression—a *shogeg*. The rabbis point out that the Torah already dedicated the whole fourth chapter in *Va-Yikra*’ to detailing the different kinds of offerings that are required when someone transgresses errantly on one of the Mitzvot of the Torah. They also note that the details of the offerings in *Va-Yikra*’ are different. The rabbis tell us that the received traditional interpretation of the *parasha* explains that it is talking specifically about *avodah zara*: if one transgresses on a Mitzvah that deals with idolatry and does so inadvertently, a special *korban* is required. Our verse is placed at the end of that *parasha* and explains that should one worship idols purposefully he is considered as one who reviles God and an offering no longer absolves him. High-handed transgression of any law falls under the rubric of idolatry for rejecting and repudiating the Law and thus denying its divinity—rejecting an accepted truth mandated by Revelation—just as Creation is an accepted truth also mandated by Revelation. Both beliefs cannot be proven objectively, as Rambam explained in MN 2:25 regarding Creation, but are fundamental to Judaism and are based on Revelation documented by the Torah. Just as believing in the eternity of the spheres is at the core of idol worship, so too denial of the divinity of the Torah and its immutability is seen as idol worship. Using this rationale, Rambam extends this understanding to all transgressions done with an attitude of defiance.

To my mind, the same applies in the case of every transgression in which the wish to ruin and oppose the Law manifests itself. To my mind if an individual of Israel would eat meat with milk or wear [a garment] of mingled stuff [*shaatnez*] or round the corners of his head because he holds these proscriptions in slight esteem in view of an opinion of his that makes it evident that he does not believe in the truth of this legislation, he would in my opinion revile the Lord and ought to be put to death as an infidel, and not in order to punish him for his transgression—just as the inhabitants of a town led astray [*ir ha-nidahat*] are put to death as infidels and not in order to pun-

ish them for their transgressions; therefore their property is burned and does not belong to their heirs, as in the case of the others sentenced by the court of law.²²

The category of the high-handed transgressor consists of anyone who transgresses publicly any Mitzvah with defiance without any personal gain, because his transgression is seen not in the particular act but rather as a denial of truth by rejecting the Law. The punishment is no longer for the act but for the attitude he had while transgressing. He is not prosecuted in court but is killed extra-judicially as we see here and in *Hilkhot Rotzeah* above.²³ Rambam understands that the high-handed act applies to any Mitzvah. It is the attitude of defiance, which points to a rejection of the Torah and its divinity, that makes it into an act that reviles God, just like averring that idolatry is true, both beliefs dependent on the same Revelation. The act is no longer just a simple transgression but is a theological problem, a negation of truth,²⁴ a denial of the divinity and immutability of the Torah and its laws. The death sentence is not a simple punishment but, as in the extreme case of *Avodah Za-*

²² ואילו עושה ביד רמה הוא המזיד החצוף המעז-פנים העובר את עבירתו בפרהסיא. הרי הוא כמי שעובר, לא מתוך תאוותנות בלבד, או רק בגלל אופיו הרע, כדי להשיג מה שהתורה מנעה ממנו להשיגו, אלא כדי להתקומם נגד התורה ולהפגין עוינות כלפיה. לכן נאמר עליו: את ה' הוא מגדף (במדבר ט"ו, 30); והוא ייהרג בלי ספק. מי שעושה זאת אינו עושה זאת אלא על סמך דעה שיש לו שבה הוא יוצא נגד התורה. לכן בא הפירוש שנמסר במסורת: בעבודה זרה הכתוב מדבר, כי זאת הדעה העוינת ליסוד התורה, מפני שלעולם לא יעבוד לכוכב אלא מי שמאמין שהכוכב קדום, כמו שהבהרנו בחיבורינו כמה פעמים. כן הדין לדעתי באשר לכל עבירה הנראית כסותרת את התורה ועוינת לה. לדעתי, אילו אדם מיש'ראל אכל בשר בחלב או לבש שעטנז או גילה פאת ראש מתוך זלזול (באיסורים אלה) והקלה בערכם, מתוך דעה שממנה מתברר שאין הוא מאמין באמיתות הציווי הזה, הוא היה בעיני את ה' הוא מגדף (במדבר ט"ו, 30), ויש להרוג אותו לא הריגה של עונש, (אלא) בתור כופר, כאנשי עיר הנדחת, אשר נהרגים בתור כופרים, לא הריגה כעונש, ולכן שורפים את רכושם ואין הוא עובר אל יורשיהם כשאר הרוגי בית-דין.

²³ I would like to suggest that the extra-judicial death sentence is pronounced only when the full-blown high-handed attitude is present, namely when one publicizes his disdain for Mitzvot. Alacrity and defiance are the underlying attitudes that prompt this public rebellious display. The extra-judicial death penalty, however, applies only when the rebellion is publicized.

²⁴ See my article in *Hakirah* volume 6 <<http://www.hakirah.org/Vol 6 Guttman.pdf>>.

ra, the *ir ba-nidahat*, the city that worshipped idols, a preventative. It is to prevent the dissemination of and eradicate ideas that undermine the foundations of the Law. That is the meaning of “*and ought to be put to death as an infidel and not in order to punish him for his transgression.*” Rambam has thus expanded the prohibition of *avodah zara*, idolatry, to include theological errors that undermine the basic tenets and beliefs of Judaism.

I believe that Rambam conveys a similar idea in MN 1:36 when he says that

Know that if you consider the whole of the Torah and all the books of the prophets, you will find that the expressions wrath, anger, and jealousy are exclusively used with reference to idolatry.

Whenever these expressions are used there is an element of idolatry, whether open idolatry or an act that was done with an attitude akin to idolatry, namely a misconception that threatens the foundations of Judaism. This misconception, like *avodah zara*, undermines basic tenets that the Jewish religion rest upon. When Moshe refused to go to Egypt to liberate the Jewish people thereby resisting the prophetic experience he had, he denied a basic tenet of Judaism. Rambam in *Hilkhot Yesodei ha-Torah* 7:1 writes,

מיסודי הדת, לידע שהאל מנבא את בני האדם.

One of the foundations of the Law is that God prophesizes the human species.

When Miriam and Aharon questioned Moshe’s unique prophecy, they too erred theologically.²⁵ Miriam and Aharon denied

²⁵ In *Hilkhot Tume’at Tzara’at* 16:10 Rambam discusses Miriam’s transgression and defines it as denying Moshe’s special prophecy: ועל עניין זה הוא מזהיר בתורה ואומר "הישמר בנגע הצרעת . . . זכור, את אשר עשה ה' אלוהיך למרים, בדרך" (דברים כד, ה-ט): הרי הוא אומר התבוננו מה אירע למרים הנביאה, שדיברה באחיה שהיא גדולה ממנו בשנים, וגידלה אותו על ברכיה, וסיכנה בעצמה להצילו מן היס; והיא לא דיברה בגנותו, אלא טעת שהשוות אותו לשאר נביאים. והוא לא היה מקפיד על כל אלו הדברים, שנאמר "והאיש משה, עניו מאוד".

The comment that Moshe was humble is to confirm Rambam’s understanding that it was not the personal insult that caused the punishment

Moshe's special and unique prophecy, which undermined the divinity and immutability of the Torah. In *Hilkhot Teshuvah* 3:8 Rambam writes:

שלושה הן הנקראין אפיקורוסים: האומר שאין שם נבואה כלל, ואין שם מדע
שמגיע מהבורא ללב בני האדם; והמכחיש נבואתו של משה רבנו...

Three are referred to as *apikorsim*: One, who says that there is no prophecy and knowledge does not flow from the Creator to man's mind; one, who denies Moshe Rabbeinu's prophecy ...

They therefore incurred God's wrath.^{26 27}

but the theological problem of not differentiating his prophecy from that of other prophets.

²⁶ In *Sefer ha-Mitzvot, Lo Ta'asseh* 63 quoted above, Rambam says הרי גם זה מחלל שם שמים ולוקה—That too is considered a desecration of God's name and punished with flogging. In footnote 8 I touched on the difficulty commentators find with this sentence. Is this a special kind of flogging? See Or Sameach on Rambam *Yesodei ha-Torah* 5:10. I would like to suggest that the extra-judicial death sentence meted out on a defiant transgressor applies only when it is clear and he publicly declares his defiance. In that case that would be his only punishment. He will not be punished for the act itself, and if the act would call for punishment by flogging, it would be superseded by the death sentence. One who swears falsely while associating God's name does not automatically receive a death sentence. True, we see this act as one of defiance, but it is not a clear enough declaration of defiance to warrant the death penalty. That is why Rambam in *Sefer ha-Mitzvot* tells us that although the attitude suggested by this act is a *Hillul Hashem* and suggests that this person acted in defiance, it is not enough to warrant the death penalty. He is still subject to the regular punishment that the transgression warrants just as with swearing falsely; see *Hilkhot Shevuot* 12:1.

אף על פי שלוקה הנשבע לשוא או על שקר, וכן הנשבע שבועת העדות או שבועת הפיקדון ומביא קרבן—אין מתכפר להן עוון השבועה כולו, שנאמר "לא ינקה ה'" (שמות כו; דברים ה'); אין לזה ניקיון מדין שמיים עד שיפרע ממנו על השם הגדול שחילל, שנאמר "וחיללת את שם אלוהיך, אני ה'" (ויקרא יט, יב). לפיכך צריך אדם להזהר מעוון זה, יותר מכל העבירות.

That explains too why in *Hilkhot Yesodei ha-Torah* 5:10 Rambam does not mention any punishment in this particular case. He is talking only about the *Hillul Hashem* aspect of a gratuitous act and not about a publicly defiant transgressor.

²⁷ The idea connecting the two cases of leprosy, the ones of Moshe and Miriam, is probably based on *Midrash Shemot Raba* 3:17 see *Torah Shleimah*

Conclusion:

The negative commandment to refrain from *Hillul Hashem*, desecrating God's name, includes three aspects, one of which is a sub-type of idolatry—*avodah zara*. Any negative commandment that is transgressed with an attitude of defiance loses its particularity and falls under the rubric of *Hillul Hashem*. If it is done publicly, flaunting one's rebellion against the Torah and the Mitzvot, thus also rebelling against God who gave them, that person may be sentenced to an extra-judicial death penalty to avoid the spreading of anarchy in the Jewish community. The rebellious attitude is seen as a theological negation of the fundamental tenets of our religion, namely the divinity and immutability of the Torah, and therefore a denial of Moshe Rabbeinu's special prophecy, a misconception that undermines Jewish religion. Idolatry is based on the concept that the physical universe as we know it is eternal, and that the powers emanating from the spheres and stars are gods that demand that humankind worship them. The divinely revealed immutable Torah, the same revelation that commanded the Mitzvot, teaches that God willed the world into existence with great wisdom, thus overturning the basic tenet on which idolatry is built. Denying the Torah's divinity and immutability is a precursor of *avodah zara* and will undoubtedly lead to it. That misconception cannot be permitted to spread in the community and deserves God's wrath. ❧

on *Shemot* 4:6 #19 and see Rav Kasher's note there. See also Rashi *ad locum*.