

# CENTER FOR MODERN TORAH LEADERSHIP

Center for Modern Torah Leadership



חרות ואחריות

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"Taking Responsibility for Torah"

## CAN HALAKHAH BE A DESECRATION OF HASHEM'S NAME?

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וּשְׁמִרְתֶּם מִצְוֹתַי וְעִשִּׂיתֶם אֹתָם  
אֲנִי ה' :  
וְלֹא תַחֲלֹלוּ אֶת־שֵׁם קֹדְשִׁי וְנִקְדַּשְׁתִּי בְּתוֹךְ בְּנֵי יִשְׂרָאֵל  
אֲנִי ה' מִקְדָּשְׁכֶם :  
הַמוֹצִיא אֶתְכֶם מֵאֶרֶץ מִצְרַיִם לְהִיוֹת לָכֶם לֹא־לֵהִיִּם  
אֲנִי ה' :

*You must guard my commandments, and you must do them*

*I am Hashem;*

*And you must not desecrate My Holy Name, and I will be sanctified within  
Bnei Yisroel*

*I am Hashem Who sanctified you;*

*Who took you out of the Land of Mitzrayim in order to be G-d for you*

*I am Hashem*

Vayikra 22:31-33 can be read as a single Divine sentence, punctuated by self-identifying statements. We must keep His mitzvot, in order not to desecrate His Name, because He took us out of Egypt. On this reading, desecration and sanctification of His Name are merely functions of the other commandments, and have no independent substantive meaning. We sanctify by observing halakhah, and desecrate by violating halakhah. Similarly, the Exodus from Egypt is invoked only to ground G-d's authority, and to explain why the status of His Name can be tied to Jewish observance of the mitzvot. Furthermore, the phrase "within Bnei Yisroel" suggests that observance of Halakhah is a purely parochial concern.

The Halakhic tradition itself adopts a much broader and more nuanced understanding of the categories *Kiddush Hashem* and *Chillul Hashem*. Here are some of the variations the tradition introduces:

1) Under certain circumstances, there is an obligation of Kiddush Hashem to die rather than violate halakhah, even though generally the obligation to preserve life overrides halakhah.

2) For some purposes, Chillul Hashem is focused on Jews, and the obligation die requires a quorum of Jews (women count to this *minyan* according to most). For other purposes, the audience for Chillul and Kiddush Hashem specifically is nonJews. It is even possible to argue that the essential audience is always nonJews, and that a quorum is required because nonJews are more affected by Jews' willingness or unwillingness to sin in front of their coreligionists.

3) Kiddush and Chillul Hashem can be associated not only with halakhah but with Jewish identity, universal ethics, and display of proper character. (See for example Rambam Hilhot Yesodei HaTorah 5:11.) Public explicit denial of G-d's authority by Jews desecrates His Name, but so does paying tradesmen late even though you have the funds, or being quarrelsome, or standing by the letter of the law even when that violates its spirit.

Broadening the scope of Chillul Hashem beyond halakhah untethers verse 32 from verse 31. This is especially important according to the Midrash Lekach Tov, which sees *ushmartem mitzvotay* as a commandment to observe mitzvot without regard to whether one finds them rationally appealing. "These are my commandments, and you have no permission to challenge them = להרהר אחריהם."

By contrast, Yerushalmi Bava Kamma 4:3 suggests that sometimes the halakhah itself can be a *chillul Hashem*.

### מעשה

ששילח המלכות שני איסטרוטיוטות ללמוד תורה מרבן גמליאל  
ולמדו ממנו מקרא משנה תלמוד הלכות ואגדות  
ובסוף אמרו לו  
כל תורתכם נאה ומשובחת  
חוץ משני דברים הללו  
שאתם אומרים  
בת ישראל לא תיילד לעכו"ם אבל עכו"ם מיילדת לבת ישראל  
בת ישראל לא תניק בנה של עכו"ם אבל עכו"ם מניקה לבת ישראל  
ברשותה  
גזילו של ישראל אסור ושל עכו"ם מותר.  
באותו שעה גזר רבן גמליאל על גזילות עכו"ם שיהא אסור מפני חילול  
השם . . .

*A true story:*

*The (Roman) Empire sent two officials to learn Torah from Rabban Gamliel  
They learned from him Mishnah, Talmud, Halakhot and Aggadat.*

*At the end they said to him:*

*All your Torah is pleasant and praiseworthy*

*other than these two things*

*that you say*

*a Jewess must not midwife an idolatress, but an idolatress may midwife a*

*Jewess*

*a Jewess mustn't nurse the child of an idolatress, but an idolatress may nurse  
the child of a Jewess*

*in her space*

*An object robbed from a Jew is forbidden, but an object robbed from a Gentile is permitted*

*At that very time Rabban Gamliel decreed regarding the robbed objects of idolaters that they should be prohibited because of Chillul Hashem . . .*

One aspect of this text seems impenetrably mysterious. The Romans refer to “two things,” but in the excerpt above there are three, and the ellipses conceals a fourth. Nonetheless, it seems fair to say that Rabban Gamliel responded to one of the Romans’ complaints by altering the halakhah, but not to all of them. If Rabban Gamliel is reacting to the Roman perception, why the difference?

Yet both in reason and in text it cannot be that Rabban Gamliel stands for the proposition that the proper reaction to an outsider’s moral critique of halakhah is always to change the offending law. There must be a basis for distinction. Indeed, it might be accurate to say that sometimes Gentile objections to Halakhah *trigger* the obligation to die *al kiddush Hashem* rather than transgress the law, while in other circumstances the proper reaction is to change the law. Surely the difference in outcomes is not arbitrary!

The simplest explanation is that it depends on whether, when confronted by the critique, we decide that we agree with it. The mere fact that outsiders dislike our laws cannot compel change; but fear of showing weakness cannot prevent change in the face of moral critique.

The question then is why Rabban Gamliel found the Romans’ critique compelling in one case but not in the others.

One possibility is that the Romans’ other critiques were grounded in reciprocity rather than in objective right or wrong. They would have accepted a rule that required every nation to midwife or nurse its own mothers and babies, but they objected to allowing it only one way. Rabban Gamliel was not moved by pure claims of discrimination. If either result could be justified intrinsically, he was fine with having the results be asymmetrical between Jews and Gentiles.

This approach seems in stark contrast to Meiri, who claims that halakhah’s asymmetries are intended to mirror or compensate for discrimination against Jews in Gentile legal systems, and therefore do not apply to citizens of systems that give Jews equal rights. Note however that Meiri is commenting on the Bavli, which does not bring the midwifery and nursing cases.

Another possibility is that Rabban Gamliel thought the laws about midwifery and nursing were not intended to discriminate against Gentiles, but rather to avoid dangerous liability. The best of obstetric and pediatric care cannot prevent all deaths, and the deaths of Gentile mothers and babes under the most skilled and conscientious Jewish practitioners might have triggered pogroms. Allowing Jews to fence goods stolen from Gentiles, by contrast, had no aim but profit.

Yet a third possibility is that Rabban Gamliel saw *chillul Hashem* as a valid reason to prohibit what halakhah would otherwise permit, but not to permit what halakhah would otherwise forbid.

It is striking regardless that Rabban Gamliel reacted not to a critique of actual Jewish practice, but rather to a critique of the law *per se*. This suggests that the underlying issue of *chillul Hashem* is not so much the way that Jews are perceived by the world outside them, but rather by how Torah is perceived.

Yet it is also plainly the case that Torah cannot fold its hand in the face of moral censure or opprobrium. It seems reasonable to claim that those who enact laws against Judaism often find our laws immoral. Yet if they try to enforce their biases, we are likely to become obligated to become martyrs for the law as-is rather than change the law under pressure.

It is also striking that Rabban Gamliel did not claim that the Romans had misunderstood the law, or engage in other sorts of apologetics. He chose instead to explicitly override the law that irked them.

What seems to me the upshot here is that the Yerushalmi at least does not rule moral critiques of the halakhah out of bounds, and that we should be open to accepting moral critiques from any source. We should not claim that such critiques necessarily stem from a narrow vision and lack of broader halakhic context; rather, sometimes it is precisely the broad context that generates the sense that this particular law doesn’t fit well.

Openness to moral critique must not be either the result or the cause of a lack of overall moral confidence in the system. These are very legitimate concerns. But shutting ourselves off from moral critique carries equally serious risks. Our unwillingness to entertain and respond to moral criticism can cause others to lose their overall confidence in the system.