

Lo Tasur

The Origins and Parameters of *Mitzvos Derabanan*

Question: On one of the nights of Chanukah, my seven year old son asked me a good question. How can we say in our *bracha* that Hashem “commanded us to light the Chanukah lights?” After all, the event that it commemorates happened long after the Torah was given to Moshe. I assume a similar question would apply to other *mitzvos* which are *derabanan* (rabbinic) in origin, such as *megillah*, *hallel* and *netilas yadayim*. What is the answer to this question?

1. The Source

In the beginning of Hilchos Mamrim, the Rambam writes:

“The *Beis Din Hagadol* (Supreme Court of Torah Law) in Yerushalayim is the mainstay of the Oral Law, and they are the pillar of instruction, and from them law and justice go out to all of Israel. Regarding them the Torah commanded,¹ ‘According to the Torah that they teach you and the justice they say to you – you shall do.’ This is a positive commandment. Anyone who believes in Moshe Rabbeinu and his Torah is obligated to base his religious actions on them, and to rely on them.

“Anyone who does not act in accordance with their teaching violates a negative prohibition, as it says,² ‘Do not depart (*lo tasur*) from the matter which they tell you.’”

The Rambam proceeds to elucidate that these positive and negative commandments refer to all areas of instruction emanating from the *Beis Din Hagadol*, whether in the realm of oral traditions, Torah laws derived from the principles of *halachic* exposition, or decrees and enactments set up to protect against violating one of the Torah’s *mitzvos*. All of these fall under the rubric of the Torah’s command *lo tasur*.

The Rambam here makes specific mention of the *Beis Din Hagadol* in Yerushalayim. Elsewhere, however, both in the Sefer Hamitzvos³ and in his *minyan hamitzvos*,⁴ he states that this *mitzva* applies to the *Beis Din Hagadol* wherever it may be.⁵

¹ Devarim 17:11.

² Devarim *ibid*.

³ Positive *mitzva* 174.

⁴ The Rambam prefaced his Mishneh Torah with a *minyan hamitzvos* (a list of all the 613 *mitzvos*), accompanied by a brief description of each *mitzva*. See there positive *mitzva* 174.

⁵ See Rosh Hashanah 34a that the Central Sanhedrin relocated numerous times after the destruction of the *Beis Hamikdash*.

2. First Question of the Ramban

The Ramban, in his critical commentary to the *Sefer Hamitzvos*,⁶ discusses at length the above position of the Rambam, i.e., that all Rabbinic laws are covered by the Torah prohibition of *lo tasur*, and raises a number of questions.

The first relates to the way we deal with matters of *safek* (doubt). The answer depends on whether the doubt is regarding a Torah matter or a *derabanan* matter. The rule of thumb is: *safek de'oraisa – lechumra* (in a doubt concerning a Torah law we are stringent); *safek derabanan – lekula* (in a doubt concerning a Rabbinic law we are lenient). Now, asks the Ramban, if it is true that every *derabanan* law is backed by the Torah prohibition not to depart from the words of the Rabbis, then every doubt regarding a *derabanan* matter is by extension a doubt regarding a Torah matter. That is to say, *safek derabanan* is essentially a *safek de'oraisa*! If so, then why do we rule leniently in cases of *safek derabanan*? We should rule stringently, the same as every *safek de'oraisa*! The Ramban proceeds to enumerate other areas where we are more lenient with a *derabanan* than we are with a *de'oraisa*, and raises the same question on all of them: Given that every *derabanan* is really a *de'oraisa*, what room is there for leniency?

Based on this and other questions, the Ramban concludes that the Torah prohibition of *lo tasur* refers only to the words of the *Beis Din* which are said in interpretation or clarification of Torah law, but not to Rabbinic laws that were enacted as a protective fence for the Torah.

3. Defending the Rambam – Rashbatz

There are many commentators who explain the Rambam's position on this matter in the following way. Even if *in principle* every *derabanan* law should contain all the stringencies of Torah law, the Rabbis *themselves* stipulated from the outset that this should not be the case. They ruled that in a case of doubt one may be lenient. That is to say, in cases of doubt, the Rabbis never instituted their laws! This explanation is to be found in the writings of the Rashbatz⁷ and many others.

Why was this done? What was achieved by embedding these distinctions into the original formulation of the laws?

Rav Yaakov Tzvi Mecklenberg⁸ explains that this relates to a ruling of the Rambam elsewhere,⁹ that it is a violation of the Torah prohibition of *bal tosif*¹⁰ (not to add on to the Torah) to claim that a *derabanan* law is actually part of a *mitzva* from the Torah. In order to prevent confusion in

⁶ Commentary to the Rambam's *Sefer Hamitzvos*, *shoresh* 1.

⁷ *Zohar Harakia mitzva* 19. See Kuntresei Shiurim on *Kiddushin shiur* 24 sec. 2, who refers to the Gemara Brachos 25a, which discusses a Rabbinic prohibition explicitly in these terms: "In a case of certainty they [the Rabbis] decreed, in a case of doubt *they did not decree*."

⁸ *Haksav Ve'hakabalah* Devarim 4:1.

⁹ *Hilchos Mamrim* 2:9.

¹⁰ *Devarim* *ibid*.

this matter, the Rabbis made their laws visibly distinct from the original Torah laws by incorporating within them various lenient features.

The Drashos Haran¹¹ also understands the position of the Rambam along the lines of the Rashbatz, that from the outset the Rabbis did not formulate their laws to apply in situations of doubt. In explaining why this is so, he states very simply that the purpose of *derabanan* laws is to provide a protective fence around the Torah, and it was sufficient for them to achieve this goal by instituting the prohibition only in a case of certainty.

4. A Proof from Chanukah

A source that is cited by many as providing support for the Rambam is the well-known discussion in the Gemara¹² regarding the *bracha* we make over Chanukah lights, where we say, “Who sanctified us with His *mitzvos* and commanded us to light the Chanukah lights.” The Gemara asks, “Where did He command us?” The *mitzva* of Chanukah lights is *derabanan* in origin, commemorating the miraculous events in the days of the Maccabees! To this the Gemara responds, “*Lo tasur*.”

The simple reading of the Gemara seems to indicate very clearly that on the basis of the Torah’s commandment of *lo tasur* we are able to say that Hashem commanded us to light the *menorah*. This teaches us that even *mitzvos* which are *derabanan* in origin are backed by this *mitzva*.¹³

5. Further Questions from the Ramban

In the course of his comments on the Rambam, the Ramban directs our attention to a Gemara in Brachos which discusses the question as to whether a woman’s obligation in *bircas hamazon* is *de’oraisa* or *derabanan*. The Gemara asks, “What is the *nafka mina* (practical ramifications) of this question?” The Gemara responds that the *nafka mina* will be whether a woman can be *motzi* a man in *bircas hamazon*. If she is only obligated in the *mitzva* on a *derabanan* level, she cannot be *motzi* a man who is obligated on a *de’oraisa* level.

Now, says the Ramban, if indeed every *derabanan* law is actually a *de’oraisa* law, what is the meaning of the Gemara’s ruling? Even if a woman’s obligation to say *bircas hamazon* is *derabanan* in origin, it is *de’oraisa* in practice. Either way she should be able to be *motzi* a man! Rather, concludes the Ramban, it must be that a *derabanan* obligation does *not* become a *de’oraisa* obligation, and thus a woman could not be *motzi* a man unless she is obligated in *bircas hamazon* on a Torah level.

¹¹ *Drush* 5.

¹² Shabbos 23a.

¹³ The Ramban himself makes mention of this Gemara, see commentary to Sefer Hamitzvos loc cit for his response to this proof.

- Think carefully about the above proof of the Ramban. What would seem to be a potential response for the Rambam?

6. The *Mitzva of Lo Tasur*

At this point, we need to ask a fundamental question regarding the Rambam's understanding of the *mitzva* of *lo tasur*. In his view, when the Rabbis enact a law, that law is backed by the Torah, which means it becomes a Torah prohibition to deviate from it. For example, when the Rabbis instituted that a person must say *bircas hamazon* even after eating only a *kezayis* of bread, that then became a Torah obligation. But what is the Torah actually commanding the person to do? Not to say *bircas hamazon*, but to *listen to the Rabanan!*

There are *mitzvos* in the Torah where the focus and definition of the *mitzva* is not the act *per se*, but the relationship with the one who is the object of the *mitzva*. Thus, for example, there is a *mitzva* to obey the king and to honor one's parents. Any act that one does in fulfillment of these *mitzvos* is not considered to be a Torah-mandated act *in and of itself*, but rather a means through which to fulfill the *mitzvos* of obeying the king or honoring one's parents.

According to many commentators, the prohibition of *lo tasur* is to be understood as falling within this category of *mitzvos*. That is to say, the focus of the prohibition is not the act *per se*, but rather the violation of the instructions of the Sages who forbade it.¹⁴

In our discussion, even if a woman's *derabanan* obligation to say *bircas hamazon* would become a Torah obligation via *lo tasur*, nonetheless, the Torah *mitzva* in question would be that of *listening to the Rabbis*, not *saying bircas hamazon!* This would be the equivalent of her taking a *shevua* (oath) to say *bircas hamazon*. In that case, she would be bound by Torah law to say *bircas hamazon*, but purely as a fulfillment of her Torah obligation *to fulfill her shevua*. That is why the Gemara says that she cannot be *motzi* a man unless she is obligated in *the mitzva of bircas hamazon* on a Torah level.

This defining point is actually expressed by the Rambam himself, in the course of his discussion explaining how we can say *vetzivanu* (that Hashem commanded us) regarding *mitzvos* which are *derabanan*. The Rambam explains,¹⁵ "He sanctified us with His *mitzvos*, in that He commanded us through them to heed those who commanded us to read the *megillah* or to light Chanukah lights, and so too all other *mitzvos* which are from the Rabbis."

7. However...

The above analysis of the Rambam's position is not quite that straightforward. Let us consider the following ruling of his. In discussing the *sotah* waters that the Torah requires a woman

¹⁴ See Meshech Chochmah Devarim 17:11; see also Kiryat Sefer beginning of Hilchos Mamrim.

¹⁵ Hilchos Brachos 11:13.

suspected of adultery to drink, the Gemara¹⁶ states that the waters will only work to establish her guilt if her husband is himself free of infidelity. This is derived from the verse,¹⁷ “And the man shall be clean of sin, and the woman shall bear her sin.” This implies that the woman will only bear the consequences of drinking the water if her husband himself is free of sin. Regarding this *halacha*, the Rambam writes:¹⁸

Any man who has ever had forbidden physical relations at any point in his life, the waters will not test his wife’s status. Even if he had relations with his *arusa*¹⁹ before they were fully married, who is forbidden to him *mi’derabanan*, the waters will not test her, as it says, “And the man shall be clean of sin...”

- What is noteworthy about this ruling of the Rambam, in light of the above discussion?

The Rambam began by stating that the *sotah* waters will not work if the husband himself had any forbidden relations, for in that case he is no longer “clean of sin.” Now, it is quite clear that if he had sinned in another area, e.g., he ate non-kosher food, that would not prevent the waters from working. Although such a person is not “clean of sin,” nevertheless, it is specifically a sin in the area of physical relations which will present an obstruction to the effect of the *sotah* waters. We have stated, however, that although there is a Torah violation when one violates a *derabanan* law, that violation is of the prohibition of not listening to the Sages. The matter itself that the Sages forbade never became a Torah prohibition. Why, then, is one who has relations with his *arusa* considered by the Torah to have sinned in the area of physical relations? His sin is in the area of ignoring the Rabbis!

It appears from here that when the Rabbis forbid something, the Torah *does* relate to it as forbidden. If that is the case, then, coming back to our *bircas hamazon* situation, the question of the Ramban will return: Why is the woman who was commanded by the Rabbis to say *bircas hamazon* not considered to be commanded to do so by the Torah?

8. Ramban Revisited

Let us take a moment to discuss an aspect of this *sugya* which has thus far gone untreated, namely, the nature of *derabanan* laws according to the Ramban himself.

The Ramban has told us that he does not consider enactments of the Rabbis to fall within the parameters of the *mitzva* of *lo tasur*. If that is the case, then where *do* they derive from?

¹⁶ Sotah 28a.

¹⁷ Bamidbar 5:31.

¹⁸ Hilchos Sotah 2:8.

¹⁹ A woman who has undergone the first stage of marriage (*kiddushin*), but is not yet fully married (via entry into the *chuppah*).

Rav Elchanan Wasserman²⁰ explains the position of the Ramban by referring us to a verse in Yirmiyahu.²¹ There, the prophet talks about various heathen practices adopted by the Jewish People and describes them as things “which I neither commanded (*tzivisi*), nor spoke about (*dibarti*), nor desired (*ala al libi*).”

There is a most profound concept regarding our relationship to Hashem’s *mitzvos* in these words. There are certain things that He “commanded,” and there are other things that He “desired.” In any meaningful relationship, one who is devoted to the relationship listens to what the other person asks and tries to understand from there the full extent of what he really wants. Our relationship with Hashem is no different. It may be said that the role of the *derabanan* laws involves the art of fathoming Hashem’s will, based on His command as communicated to us in the Torah.

A classic example of this is the *derabanan* laws surrounding Shabbos. The Torah commands us not to do *melacha* on Shabbos and presents the reason – we should rest to commemorate Hashem’s “resting” after creating the world. Now, it is actually possible to heed all the Torah’s prohibitions regarding forbidden labor and still miss the point of Shabbos. Virtually all the aspects of Shabbos that mark it as a special day in our consciousness are *derabanan*: Shabbos candles, Shabbos meals, special prayers, not moving things which are set aside for *melacha*, not even talking about doing forbidden *melachos*. The *derabanan* laws allow us to make room for the message of Shabbos and use the day as Hashem intended it.

9. Children and *Mitzvos*

Rav Wasserman further asserts that though this idea was presented to explain the position of the Ramban, in reality, even the Rambam agrees with it. Proof of this is the fact that a child at a certain age reaches a stage called *gil chinuch* (the age of *mitzva* preparation). At this stage the child is obligated in (most) *mitzvos* on a *derabanan* level. Indeed, he may even be *motzi* an adult in *bircas hamazon* if the latter has only eaten enough to obligate himself on a *derabanan* level. What is the nature of this child’s obligation? *Derabanan mitzvos* are a function of the Torah’s *mitzva* of *lo tasur*, but a child is not yet obligated in the Torah’s *mitzvos*! It must be that all agree that there exists a level of obligation beyond the Torah’s commandment, namely, that of endeavoring to respond to Hashem’s will as understood by the Rabbis from the express commandments of the Torah, and this applies even to a minor.

10. Back to the Rambam

When we consider all of this, we may return and propose an explanation of the Rambam’s position. On the one hand, we note that if a woman is only obligated in *bircas hamazon mi’derabanan*, she cannot be *motzi* a man. This means that although there is a Torah *mitzva* to heed the Sages, this does not create a Torah *mitzva* for her to say *bircas hamazon*. On the other

²⁰ Kuntres Divrei Sofrim sec. 1.

²¹ 7:31.

hand, when a man has relations which are forbidden on a *derabanan* level, he is considered by *the Torah* to have done something wrong *in that area* of forbidden relations. How can this be?

It would seem that the resolution lies in the above discussion, distinguishing between Hashem's Will and His command. The only Torah command here is to heed the words of the Sages. This is why a woman cannot be *motzi* a man, for she is not commanded on a Torah level to say *bircas hamazon*, only to heed the Sages. When she says *bircas hamazon*, she is indeed fulfilling the *will* of the Torah with regard to *bircas hamazon*, but her *mitzva obligation* lies in the domain of *lo tasur*.

However, in the *sotah* case, where a man has had relations which are forbidden *mi'derabanan*: In terms of *lo tasur*, he will not be considered to have violated a Torah *prohibition* of improper relations. Nevertheless, violating *the will* of the Torah in that area, represented by a *derabanan* prohibition, results in this person being unable to be considered "clean of sin," even by the Torah!