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THE MIZVAH OF "LO TASUR:" Limits and Applications

Accustomed as we generally are to democratic and contractual theory, we tend to view issues relating to authority, obedience and autonomy as functions of consent. Indeed, from such a philosophical perspective, a governing or legislative body cannot be considered just if it does not enjoy the affirmation of those whom it governs.

For the man of faith, however, obedience and authority are not as much predicated on consent as they are on profound belief in a God of creation, revelation and redemption. Such an individual perceives of God as a *mezaveh* who issues commands; always seeing himself as an "*eved lifnei ha-melekh*," a servant before The King.¹ For him, fulfillment of the divine will and the belief in reward and punishment are religious principles of faith. As such, the major thrust of religious inquiry is not to analyze the basis of obligation or authority, but rather to comprehend the scope and content of Torah Law.

The theological foundation of observance and allegiance, which is axiomatic regarding Torah Law, becomes somewhat more acute and complex concerning rabbinic decrees. The very mention of rabbinic authority raises numerous questions: In what sense does the Torah grant rights and power to religious leaders? What are the parameters and limitations of rabbinic authority? Which individuals or religious bodies are eligible to wield authority? Are rabbinic decisions binding even in error? The focus of this paper will be an analysis of these issues as they relate to the biblical prohibition of *lo tasur*.

The Torah (Deuteronomy 17:8-11) requires an individual faced with a question of law to seek rabbinic counsel and abide by its instruction:

If there be a thing too hard for thee in judgment, between blood and blood, between plea and plea, and between stroke and stroke, being words of strife within thy gates: then shalt thou arise, and go up into the place which the Eternal thy God shall choose. And thou shalt come unto the priests the Levites, and unto the judge that shall be in those days, and inquire; and they shall tell thee the words of judgment. And thou shalt do according to the word which they, of that place which the Eternal shall choose, shall tell thee; and thou shalt observe to do according to all that they teach thee. According

to the word of the law which they shall teach thee, and according to the judgment which they shall tell thee, thou shalt do; thou shalt not depart (*lo tasur*) from the word which they shall tell thee, to the right nor to the left.

The Rambam (*Hil. Mamrim* 1:1-2), qualifying this obligation, explains:

The Great Sanhedrin of Jerusalem is the root of the Oral Law. The members thereof are the pillars of instruction; out of them go forth statutes and judgments to all Israel. Scripture bids us to repose confidence in them, as it is said, "According to the law which they shall teach thee" (Deuteronomy 17:11). This is a positive commandment. Whoever believes in Moses, our teacher, and his Law is bound to follow their guidance in the practice of religion and to lean upon them.

Whoever does not act in accordance with their instruction transgresses a negative commandment, as it is said: "Thou shalt not depart from the word which they shall tell thee, to the right, nor to the left" (*ibid.*).

The opening phrase of the Rambam, "*bet din ha-gadol she-bi-yerushalayim*," seems to place two significant limitations on the scope of the prohibition of *lo tasur*. The term "*bet din ha-gadol*" restricts this injunction to the *Sanhedrin ha-gedolah*, the highest Jewish court, implying that decrees of a lower court are not governed by *lo tasur*. Furthermore, the term "*she-bi-yerushalayim*" limits this proscription to judgments issued by the Sanhedrin only when located in Jerusalem; namely in the *lishkat ha-gazit* on the Temple Mount. Accordingly, if the Sanhedrin were to convene outside that area, their instruction would not be subject to this prohibition.

These inferences are stated explicitly by R. Aryeh Leib Horowitz in his commentary on the Rambam's *Sefer ha-Mizvot*. He writes:

For that which the Rambam wrote in the *Mishneh Torah* and *Sefer ha-Mizvot*, that there is a positive biblical commandment and prohibition attached to all the preventive measures, decrees and enactments which the rabbis made, refers to the decrees, enactments and customs made by the *bet din ha-gadol* in Jerusalem. But that which was enacted by the *bet din ha-gadol* in Yavneh and Usha, outside of the *lishkat ha-gazit*, even though their enactments and decrees spread throughout Israel, does not carry with it the positive commandment of "according to the word of the law which they shall teach thee" or the prohibition of "thou shalt not depart from the Torah," but is rather only a rabbinic infraction.²

Although the position of the Rambam, limiting the prohibition of *lo tasur* to the Sanhedrin situated in the *lishkat ha-gazit*, is not explicit in the Talmud, it can perhaps be inferred from the guidelines set forth by the Torah concerning a *zaken mamre*, or rebellious elder. The *Sifri* states: " 'And thou shalt do according to the word which they shall tell thee . . .,' one

incurs the death penalty for transgressing the ruling of the *bet din ha-gadol* in Jerusalem, but one does not incur the death penalty for transgressing the ruling of the *bet din* of Yavneh.³ Hence, the Rambam extends the limitation of the Talmud regarding the capital offense of the *zaken mamre* and applies it generally to the proscription of *lo tasur*.

Although the phrase "*bet din ha-gadol she-bi-yerushalayim*" supports the claim of R. Horowitz limiting *lo tasur* to the Sanhedrin situated in the *lishkat ha-gazit*, the Rambam at the beginning of his *Mishneh Torah* curiously omits the geographic requirement of Jerusalem by stating that the obligation is, "to obey every *bet din ha-gadol* which will arise in Israel."⁴ This formulation, noted by the *Minhat Hinukh* (#496), implies that the instruction of any Sanhedrin, even one which convenes outside the Temple Mount, falls within the parameters of the prohibition of *lo tasur*.

This apparent extension of the prohibition of *lo tasur* to any *Sanhedrin gedolah* is perhaps based on a somewhat ambiguous phrase in the following *Sifri*: " 'And thou shalt come unto the priests, the Levites, and unto the judge that shall be in those days' (Deuteronomy 17:9): to include the *bet din* in Yavneh,"⁵ which Rabbenu Hillel (*ad. loc.*) interprets to mean, "that if the *bet din* in Yavneh ruled for them, they are obligated to follow their ruling." Similarly, the *Talmud Yerushalmi* (*Sanhedrin* 11:3) states: " 'And thou shalt come,' to include the *bet din* in Yavneh. R. Ze'ira says, regarding asking a question."

Hence, according to the *Sifri* and *Yerushalmi*, the prohibition of *lo tasur* applies even to the court of Yavneh, despite its location outside the Temple Mount. Accordingly, the phrase "from that place" in Deuteronomy 17:10 refers only to the enforcement of capital punishment but does not relate to the general biblical prohibition of *lo tasur*.

The *Sifri* states that: " 'and according to the judgment which they shall tell thee, thou shalt do' (Deuteronomy 17:11) is a positive commandment."⁶ Commenting on this obligation, the author of the *Sefer ha-Hinukh* (#495) presents a third view:

It is likewise included in the import of the precept to listen and act in every period and time according to the command of the judge, which means the great Torah scholar who will be among us in our generation. . . . If a person transgresses this and does not heed the counsel of the great men of Torah wisdom who are in that generation, in all that they teach and rule, he disobeys this positive precept; and his punishment will be very great, since this is the mighty pillar on which the Torah rests. The matter is known to anyone possessed of sense.

He reiterates this position in the next passage (#496) when discussing the prohibition of *lo tasur*: "As for the obligation given to us to obey the words of our ancient Sages, our great authorities in the wisdom of the Torah, and our judges in our generation, it is in effect everywhere, at every

time, for both men and women." The author of the *Sefer ha-Hinukh* maintains that the injunction of *lo tasur*, as well as the positive commandment of "and with regard to the judgement they shall render shall you do," are not linked exclusively to the Sanhedrin but extend as well to Torah scholars of each generation.

In summary, we find three distinct views regarding the governing bodies whose instruction fall within the parameters of *lo tasur*. First, the Rambam, who, according to the view of R. Aryeh Leib Horowitz, limits this prohibition only to the Great Sanhedrin on the Temple Mount. Second, the *Sifri*, *Yerushalmi*, and possibly the Rambam based on his formulation at the beginning of the *Mishneh Torah*, who extend *lo tasur* to any *Sanhedrin gedolah*, irrespective of its location. Finally, the author of the *Sefer ha-Hinukh* who applies this prohibition to the instruction of Torah scholars in any given generation.

Rabbi Yaakov Bezalel Zolty z"l suggested that the respective views of the Rambam (in the view of R. Horowitz), *Yerushalmi* and *Sefer ha-Hinukh* reflect a broader disagreement regarding the nature and status of the court of Yavneh.⁷ The Rambam maintains that although only three judges are needed to establish the new month, they must all be members of the Sanhedrin, the *bet din ha-gadol*.⁸ The Ramban, however, questions the halakhic and historical validity of this assertion:

The view of the Rambam is difficult, for he maintains that this *mizvah* can only be performed by the *bet din ha-gadol*, and only in Erez Yisrael; and it is well known that the *bet din ha-gadol* ceased from Erez Yisrael even before the destruction of the Temple for they did not have a *bet din ha-gadol*. . . . And from that time, there ceased all judgments dependent upon the *bet din ha-gadol*. And if so, they could not have sanctified the new moon from the period beginning forty years prior to the destruction of the Temple; and it is well known from many references in the Talmud that they did so until the period shortly before the close of the Talmud.⁹

If the procedure of *kiddush ha-hodesh* requires members of the Sanhedrin, argues the Ramban, this process would have perforce ended forty years prior to the destruction of the *bet ha-mikdash*, for at that time the Sanhedrin was exiled from the Temple Mount, thereby losing its formal status. The continued ceremony of this procedure in communities such as Yavneh, even after the destruction of the Holy Temple, clearly demonstrates that members of the Sanhedrin are not needed.

Rabbi Zolty claims that these two views center around the status of the *bet din* of Yavneh itself. The Rambam, he argues, maintains that the courts of Yavneh and Usha, although located outside Jerusalem, had the status of the Sanhedrin. The verse "from that place" (Deuteronomy 17:10), which requires the presence of the Sanhedrin on the Temple Mount, is limited only to capital punishment, but otherwise does not relate to the status

of the Sanhedrin generally. Accordingly, the Rambam who requires members of the Sanhedrin for *kiddush ha-hodesh* allows for this process to be performed by courts outside of Jerusalem as well.

The Ramban, however, explicitly states that no legislative body, irrespective of its size and the greatness of its members, has the authority of the Sanhedrin when located outside the Temple Mount. The verse "from that place" not only limits enforcement of capital punishment, but also governs and restricts the status of the Sanhedrin in *all* respects. Hence, the Ramban asserts that *kiddush ha-hodesh*, which was clearly performed by courts outside the Temple Mount, need not require members of the Sanhedrin.

The aforementioned *Sifri* and *Yerushalmi* indicate that the prohibition of *lo tasur* applies to the teachings of the court of Yavneh. Hence, according to the Rambam who seems to characterize the court of Yavneh as a Sanhedrin despite its location, the *Sifri* and *Yerushalmi* teach that the prohibition of *lo tasur* applies to any Sanhedrin, even one which convenes outside the Temple Mount. This view supports the formulation of the Rambam in his introduction to the *Mishneh Torah*. According to the Ramban, however, the court of Yavneh, because of its location, did not enjoy the authority and status of a Sanhedrin. Thus, the *Sifri* and *Yerushalmi*, by applying the prohibition of *lo tasur* to the court of Yavneh as well, must be extending this injunction beyond the formal Sanhedrin. The court of Yavneh is not cited because of any formal status it enjoyed but rather as an example of a governing body composed of *hakhmei ha-dor* which could function in any generation. This understanding of the *Sifri* and *Yerushalmi* (according to the Ramban) would support the position of the *Sefer ha-Hinukh* who extends the prohibition of *lo tasur* to "Torah scholars in every generation."

Hakhmei ha-Mesorah in general and the Sanhedrin in particular, function with respect to *hora'ah* on two distinct levels. Their first task is primarily explanatory, to interpret and elucidate Torah law. Such instructions are regarded as biblical in nature despite their dependence on Oral Tradition and rabbinic interpretation. Secondly, they are called upon to formulate and shape rabbinic law and tradition in order to safeguard and supplement Torah law.

Although the prohibition of *lo tasur* certainly governs the first of these two categories, i.e. rabbinic interpretation of Torah law, its application to newly formulated rabbinic decrees is questionable. The Rambam does clearly include rabbinic instruction and obligations within the scope of this prohibition:

Whether the direction given by them is with regard to matters that they learned by tradition—matters that form the content of the Oral Law—or with regard to rulings deduced by any of the hermeneutical rules by which the

Torah is interpreted—rulings which they approved—or with regard to measures devised by them to serve as a fence about the Law—measures designed to meet the needs of the times comprising decrees, ordinances, and customs; with regard to any of these three categories, obedience to the direction given by them is a positive command. Whoever disregards any of these, transgresses a negative command.¹⁰

Accordingly, each rabbinic law finds its source in the Torah proper, and therefore one who violates a rabbinic ordinance is, in fact, negating a biblical precept. Thus the Rambam (*Hil. Mamrim* 4:1) maintains that an individual may be declared a “rebellious elder” (*zaken mamre*) and punished by death for denying the authenticity and legitimacy even of a rabbinic decree:

If the elder dissents from a decision by the *bet din ha-gadol* with regard to a law, the wanton transgression of which entails the penalty of excision and the unwitting transgression a sin offering . . . he is culpable because he opposes their decision and acts or instructs others to act upon his decision. . . . Likewise, if he differs with them in regard to any decree issued by them regarding a matter the unwitting violation of which entails a sin offering and the wanton violation the penalty of excision, for instance, if he permits leaven to be eaten in the sixth hour on the fourteenth of Nissan, or prohibits the use of it in the fifth hour, he incurs the penalty of death. This applies also to similar cases.

The Ramban, however, opposes the application of *lo tasur* to rabbinic decrees, and limits this injunction only to rabbinic interpretations of Torah law. Thus, according to the Ramban, an individual can never be declared a “rebellious elder” for rejecting a basic precept of rabbinic law: “And from the law of the rebellious elder itself, the matter is clarified with a correct explanation, namely, that all which the Rambam thought and expanded in this regard is not true. Rather it is clear that he does not become a rebellious elder for transgressing a rabbinic law.”¹¹

Perhaps the most familiar of the arguments put forth by the Ramban is based on the many distinctions drawn in the Talmud between biblical and rabbinic laws. If rabbinic decrees are rooted in the biblical injunction of *lo tasur*, as the Rambam asserts, how then can one explain the talmudic principle (*Shabbat* 34a; *Bezah* 3b) of *sfeka de-orayta le-humra* and *sfeka de-rabbanan le-kula*? Is not every doubt concerning a rabbinic decree in essence a question of biblical law?

The Ramban himself suggests the following possible defense of the Rambam’s view:

And perhaps you will be obstinate and maintain that according to the view of the Rambam the principle declaring a blanket leniency with regard to rabbinic laws is a condition which they [i.e. the Sages] stipulated in the decrees and safeguards they made for the Torah as well as for their own (rabbinic) obliga-

tions that we should incline towards leniency in carrying them out in order to distinguish between that which is a biblical obligation and that which is rabbinic, even though we are biblically commanded to observe all of them.¹²

Thus, despite the biblical origin of rabbinic ordinances, our Sages deliberately established different guidelines for these precepts in order to distinguish them from explicit biblical obligations. The principle of *sfeka de-rabbanan le-kula* was built into the rabbinic decrees from the moment of their enactment.

A most fascinating position is advanced by R. Moshe di Trani who defends the Rambam's position as follows:

And I say that the intention of the Rambam is not that one who transgresses a rabbinic prohibition thereby transgresses the biblical obligation of "*al pi ha-Torah. . .*," and the prohibition of "*lo tasur.*" Rather, he has a positive obligation to acknowledge and believe that all they decree and enact must be done. . . . And also the prohibition of disagreeing with them on that which they rule, even regarding rabbinic safeguards . . . that is to say, whoever does not act in accordance with their ruling but rather disagrees with their basic ruling. . . . However, one who transgresses a rabbinic matter for his own enjoyment, benefit, or appetite, whether unintentionally or intentionally, transgresses the words of the Sages and is considered as one who breaches the fence and should be bitten by a snake. He does not however transgress a positive commandment or a prohibition, for were he to violate a biblical obligation, then all rabbinic words would have biblical status.¹³

According to this view, an individual's motivation would be the factor which would determine whether or not he violates the biblical prohibition of *lo tasur* by failing to comply with rabbinic teachings. If his action of rejecting rabbinic law is guided by desire or passion (*li-te'avon*), or if his laxity results from laziness or indifference, he would not be in violation of a biblical prohibition. If, however, his behavior results from a sense of rebelliousness, a denial of the basic authority of our Sages to formulate and institute such injunctions, he would then violate the prohibition of *lo tasur*. According to R. di Trani, the Rambam did not mean to suggest that each particular rabbinic obligation has a unique biblical status, but rather that there exists a general biblical obligation to pay heed to the teachings of our Sages (*lish-mo'a li-divrei hakhamim*) which one violates only if he denies the very basis of rabbinic authority.

This innovative approach, which interprets the prohibition of *lo tasur* as a collective injunction applying to rabbinic obligations only in a general sense, has its roots in the *Talmud Yerushalmi*. The Babylonian Talmud (*Sukkah* 4a) teaches that the biblical commandment of "the four species" applies only on the first day of Sukkot in areas outside the *bet ha-mikdash*. Our practice of taking the *lulav* on the remaining six days of the festival is

only rabbinic in origin. In this light, the following talmudic debate (*Sukkah* 46a) requires explanation: "R. Yehudah says in the name of Shmuel, [the obligation of] *lulav* is for seven days. R. Yehoshua b. Levi says, on the first day there is a *mizvah* of *lulav*; thereafter it is a *mizvat zekenim* (i.e. an obligation imposed by the elders)." According to Rashi, the issue in question is whether or not rabbinic obligations require a blessing. Samuel maintains that blessings are not only recited on biblical commandments but on rabbinic obligations as well. Therefore, the blessing over the four species ("*al netillat lulav*") must be recited all seven days of Sukkot. R. Joshua b. Levi, however, argues that blessings are limited only to biblical obligations, when one can positively acknowledge that God "commanded us" (*ve-zivanu*). Rabbinic commandments, however, do not warrant a blessing. Thus, a blessing is only recited on taking a *lulav* on the first day of Sukkot.¹⁴

The *Talmud Yerushalmi*, however, offers an alternative explanation. Both Samuel and R. Joshua b. Levi agree that rabbinic obligations require a blessing. They argue only regarding the language of the blessing. According to Samuel, the blessing of "*al netillat lulav*" is recited each day of Sukkot, despite the fact that the obligation of taking the *lulav* is only rabbinic on the last six days. R. Joshua b. Levi, however, maintains that only on the first day of Sukkot, when taking the *lulav* is a biblical obligation, can one correctly state: "who has sanctified us with His *mizvot* and commanded us about the taking of the *lulav*." On the remaining days of the festival, when this obligation is only rabbinic, a general blessing is recited: "who has sanctified us with His *mizvot* and commanded us about *mizvat zekenim*," underscoring the obligation to listen to the instructions of our Sages, as this blessing is to be recited when fulfilling other rabbinic obligations as well. According to this view, each rabbinic obligation, irrespective of its particular nature, does not possess a unique biblical identity and status, but rather falls within the general obligation of *lishmo'a li-divrei hakhamim*.¹⁵

In this sense, both R. Joshua b. Levi according to the *Talmud Yerushalmi* and the Rambam according to R. di Trani emphasize the collective nature and general application of the prohibition of *lo tasur* to rabbinic decrees. R. Elhanan Wasserman, however, cites the view of R. Hayyim Soloveitchik who argues that this very issue, whether the application of *lo tasur* to rabbinic instruction is to be understood in a collective or an individual sense, is itself the dispute between the Rambam and the Ramban:

And I heard from my master and teacher, Rabbi Hayyim Halevi (Soloveitchik), may the memory of the righteous be for a blessing, of Brisk, an explanation of the opinion of the Ramban. Although we were commanded at Sinai to adhere to the words of the Sages, and one who transgresses their words transgresses this commandment, that does not mean that they carry a particular prohibition of their own, but are included in a general biblical commandment not to violate their words. The Rambam, however, is of the opinion that each rabbinic law carries with it a particular and independent prohibition.¹⁶

According to R. Hayyim, even the Ramban acknowledges the application of *lo tasur* to rabbinic teaching. However, because the relationship between this prohibition and rabbinic decrees is the general one of "*mizvah lishmo'a li-divrei hakhamim*" in a collective sense, one cannot view particular rabbinic commandments as possessing a biblical status or character. Therefore, an individual who negates the instruction of the Sanhedrin regarding a rabbinic obligation cannot be considered a *zaken mamre*.

The Rambam, however, maintains that the prohibition of *lo tasur* relates uniquely and specifically to rabbinic obligations, endowing them with a biblical character. Hence, even if an elder will deny a rabbinic injunction, such as the prohibition of eating *hamez* during the sixth hour of the fourteenth day of Nissan, he is viewed as one who challenges the authority of the Sanhedrin regarding a prohibition which carries with it a punishment of *karet* and is therefore declared to be a *zaken mamre*.

Similarly, R. Isaac b. Sheshet argues that the commandment of sanctifying God's name, which requires an individual to sacrifice his life rather than transgress the prohibitions of adultery, idolatry and murder (*Sanhedrin* 75a), applies not only to biblical violations of these injunctions but extends to rabbinic elements of these commandments as well:

For regarding these three sins it makes no difference whether we are speaking of violating the prohibition itself or any trace of it, one cannot cure oneself with them at all . . . even if this does not involve a biblical violation . . . for regarding these three sins and anything even remotely related to them one cannot cure himself at all, even in a case of danger to life. [This is] unlike other rabbinic prohibitions such as *hamez* which was kept during Pesach or forbidden mixtures in a vineyard outside Erez Yisrael, where one can cure himself with them even from a not life-threatening illness.¹⁷

This position, as well as the above distinction between various rabbinic prohibitions, seem to support the particular and individual application of *lo tasur* to rabbinic obligations. For if *lo tasur* applied only to rabbinic obligations in the general sense of "*mizvah lishmo'a li-divrei hakhamim*," these rabbinic decrees would not necessarily possess the stringent character of their biblical counterparts.

A further illustration of this position can be found in the Rambam's view concerning an adulterous woman. A woman who is accused of adultery may, under certain conditions, drink "the bitter waters" in order to determine her guilt or innocence. The Talmud (*Sotah* 28a), however, based on the verse, "and the man shall be free of sin" (Numbers 5:31), states that this test will only prove effective if the husband himself is free from any such transgression. In elaborating on this condition, the Rambam (*Hil. Sotah* 2:8) comments: "If a man, after coming of age, indulges in any illicit intercourse, the water that causes the curse cannot test his wife. And [this is true] even if he has intercourse with his spouse while she is still in the house of his

father-in-law, which is forbidden [only] by Scribal Law."

The Rambam's inclusion of the rabbinic prohibition against having sexual relations with one's betrothed in one's father-in-law's house in the condition of "and the man shall be free of sin" confirms the application of the prohibition of *lo tasur* to rabbinic obligations as well. Thus, R. Wasserman cites R. Soloveitchik and writes: "The Rambam, however, is of the opinion that all rabbinic laws carry with them a separate prohibition, such as the prohibition of cohabiting with one's spouse while she is still in the house of his father-in-law, which is a biblical prohibition in the category of forbidden sexual relations (and for this reason the water cannot test his wife)."¹⁸ Hence, unlike R. di Trani who applies *lo tasur* to rabbinic decrees only generally, R. Soloveitchik maintains that the specific verse's general application of this prohibition is the very debate between the Rambam and the Ramban.

Recognizing the natural limitations and frailties of man, our Sages often discussed the validity of decisions rendered in error. Perhaps the most well known source dealing with this aspect of rabbinic authority is the *Sifri* cited by Rashi (Deuteronomy 17:11) which requires one to follow the Sages "even if they tell you your right is left and your left is right." It would seem that the *Sifri* teaches that rabbinic decisions are binding even when rendered in error; even when we are told, for example, that right is, in fact, left and vice versa, we are obligated to accept it. It must be noted, however, that our text of the *Sifri* differs from the citation of Rashi, obligating one to listen to the Sages "even if it appears to you" that what they consider to be right is really left and vice versa.¹⁹ The phrase "even if it appears to you" found in our text significantly modifies the meaning of the *Sifri*. Perhaps only in vague or ambiguous circumstances, when an individual *suspects* that an error has been committed, is he nonetheless obligated to abide by the court's decision. If, however, it is sufficiently clear that an error was committed, there is no obligation to abide by that decision.

Furthermore, the Mishnah (*Horayot* 1:1) teaches that if an individual commits a transgression, relying on the ruling of a court which he knew to be incorrect, he may not secure atonement for his act through the communal sacrifice (*par he'elam davar shel zibbur*) but is obligated to offer a personal one. Bothered by the fact that this individual offers his own sacrifice, Abaye asks: should not this person be regarded as one who sinned intentionally, in which case atonement is not secured by offering a sacrifice? The Talmud (*Horayot* 2b) answers that although he knew the court had committed an error, he is considered an individual who sinned unintentionally (*bi-shogeg*) for he incorrectly assumed that he was obligated to follow the decision of the court despite their mistake.

The Talmud *Yerushalmi* (*Horayot* 1:1) explains the ruling of this Mishnah as follows: "I might think that if they tell you the right is the left and the left is the right you must listen to them, therefore the Torah states,

‘to go to the right and to the left,’ only when they tell you that the right is the right and the left is the left.”

Similarly, the Rambam (*Hil. Shegagot* 13:5) rules:

Thus, if a court gave a ruling that it was permissible to eat all of the fat of the maw, and one of the congregation knew that the court had erred and that the fat of the maw was forbidden, yet he ate it because of their ruling, thinking that it was a duty to obey the court even though they had erred, he who eats it is liable to a fixed sin offering because of what he ate.

Hence, the *Yerushalmi* as well as the Rambam require a competent authority to abide by his own decision when convinced that the court has erred.

Although Rabbi David Zevi Hoffman claims that the *Sifri* and the *Yerushalmi* express two distinct and opposing views,²⁰ Rabbi Barukh Halevi Epstein attempts to reconcile this apparent contradiction. Basing himself on our version of the *Sifri*, he limits the statement of “that the right is left and the left is right” to a case when a qualified individual, although inclined to disagree with the decision of the court, acknowledges a certain degree of uncertainty. If, however, a competent authority is convinced that the court has erred, and is confident of the accuracy of his decision, he must follow his own conviction. In this case, we apply the statement of the *Yerushalmi* that he must follow them only when they say “that the right is right” and vice versa.²¹

The role of the *hakhmei ha-mesorah* in shaping our tradition is a unique one. Adherence to the biblical prohibition of *lo tasur*, which endows them with the necessary authority to forcefully interpret, supplement and safeguard Torah Law, ensures that our heritage and observance properly reflect “the words of the living God” (*divrei Elokim hayyim*).

NOTES

1. *Berakhot* 34a.
2. *Magenita Tava* on *Sefer ha-Mizvot*, Shores 1, #5. See also *Minhat Hinukh* #496.
3. *Sifri*, *Parshat Shofetim*. See too *Sanhedrin* 14b.
4. See the Rambam’s formulation of the 613 *mizvot* in his introduction to the *Mishneh Torah*, *Mizvat Aseh*, #174.
5. *Sifri*, *Parshat Shofetim*, *op. cit.*
6. *Ibid.*
7. See his *Mishnat Yavez*, *Hoshen Mishpat*, #6.
8. Rambam, *Sefer ha-Mizvot*, *Mizvat Aseh*, #153.
9. Commentary on the *Sefer ha-Mizvot*, *ad. loc.*
10. *Hil. Mamrim* 1:2; see *Sefer ha-Mizvot*, Shores 1, #1.
11. Commentary on the *Sefer ha-Mizvot*, *loc. cit.*

12. *Ibid.*
13. See his *Kiryat Sefer* commentary on the *Mishneh Torah*, *Hil. Mamrim* 1:1.
14. See Rashi, *Sukkah* 46a. s.v. *mizvah, yom, mi-kan*.
15. *Talmud Yerushalmi, Sukkah* 3:4.
16. See his *Kovez Shi'urim* II, *Kuntres Divrei Soferim* 1:32.
17. *She'elot u-Teshuvot Rivash*, #255.
18. *Kuntres Divrei Soferim*, *loc. cit.*
19. *Sifri, Parshat Shofetim*, *Piska* #11 and *Gaon of Vilna*, *ad. loc.*
20. See his *Melamed le-Ho'il*, #62.
21. See *Torah Temimah*, Deuteronomy 17:11.