

Behar: “*Shemittah* and the challenge of its implementation in a modern Jewish state.”

Rabbi Dr. Jeffrey M Cohen

Our sidrah opens with a law pertaining to the land of Israel, which, at the time of the law’s promulgation in the desert, was but a projection for the future. This was the law of *Shemittah*, which requires that after every six years the land must be left fallow for the entirety of the following year (See Lev. 25:1-7). In a similar spirit, after the completion of seven of such seven-year cycles, the entirety of the fiftieth year, called *Yovel* (‘jubilee’), was also to be observed as a year of cessation of all work on the land (vv. 8-24). This meant that, for two consecutive years (49th and 50th), the land had to be left fallow. Notwithstanding the financial burden these institutions imposed on the poor farmers and their families, no work on the land was permitted and nothing was to be harvested. In our next sidrah, *bechukotai*, the fearful *Toch’chah*, (‘passage of rebuke’) foretells future periods of exile – enforced rest - from the land, which it links, as cause and effect, to the fact that the nation would be remiss in granting the land its due periods of prescribed rest (See Lev. 26:34-35).

The prophets and the rabbis who succeeded them all regularly inveighed against the nation for its neglect of the *Shemittah*. It was an institution that they revered as a powerful demonstration by man that, in the words of the psalmist, ‘the earth and all in it belongs to God; the world and all its inhabitants’ (Psalm 24:1).

The rationale of the institution was to prevent man from viewing himself as superman, as possessing the right to exploit the earth mercilessly, to drain it of its generative capacity, and

to pollute it. It was to make him aware of the ecological debt he owes to it for his own well-being and sustenance, and to the Lord who created it as the green and fruitful garden within which man acts out his life and through whose beauty and splendour he develops his inspiration, aesthetic sense, and creativity, his inner peace and sense of awe and wonderment, as well as the basic requirements of his life and livelihood.

Shemittah was also a counterbalance to materialism, teaching the farmer how to subsist on little, to experience something of the deprivation of the have-nots, and to be resourceful and innovative.

There are many laws relating to its observance, and an entire tractate of the Mishnah, *Sheviit*, is devoted to the institution. Allowing the land 'to enjoy its rest' (Lev. 26:34) was interpreted comprehensively to include the prohibitions of sowing, planting, pruning, even fertilizing; and the consumption of any produce obtained by any such activity during the Shemittah year was prohibited. Plants (other than perennials) and most vegetables may not be eaten since they required annual re-planting. Fruit is an exception since it takes a few years for trees to yield fruit after the initial planting, and they continue thereafter to produce fruit of their own accord.

As in so many situations, the sages were most sensitive to the plight of Jews when hostile forces made observance of the law a threat to their life and safety. Thus, when any invader imposed on them the duty of providing food for its army, the sages permitted them to sow during the Shemittah year the products and volume demanded of them.¹ Maimonides also

quotes a Geonic tradition that, ‘during the seventy years of the Babylonian exile, the Jews only observed Shemittah and not the Yovel.’

Leniency concerning the latter was justified by appealing to the biblical verse, ‘You shall proclaim freedom throughout the land *for all its inhabitants*’ (Lev. 25:10). The latter phrase was interpreted to imply that the Jubilee was only operative when all the original tribes were settled in Israel. Given that the tribes of Reuben, Gad, and half of Manasseh, obtained permission from Moses to remain on the east side of the Jordan, it was assumed that the Jubilee was not biblically mandated². We may assume that economic considerations weighed heavily on the minds of those who found such a creative solution to the problem!

Significantly, a passage in the Talmud relating to the observance of Shemittah also underscores the overriding priority that must be given to the security, safety and survival of the Jewish citizenry. It relates how, during the first two centuries of the Common Era, the Roman authorities displayed a measure of sympathy for the Jewish farmers’ plight, and the financial hardship they faced as a result of their observance of the regulations of the seventh year, to the extent that they drastically reduced the amount of tax the Jewish farmers had to pay. However, that concession was subsequently cancelled and the harsh penalties for non-payment of the tax were reinstated. Defaulters were arrested, sold as slaves at the market, and even executed.

Greatly alarmed and fearful for their lives, the farmers came as a delegation to R. Yannai, and related to him the terms of the new edict. Notwithstanding that they were dealing with a biblical institution, he responded courageously and categorically: *Puku v’ziru bishvi’it mishum arnona*, “Off you go, and sow your land in the seventh year, on account of the tax

imposition.”³ Yannai had no doubt in his mind that the safety of the Jews in their land, and the necessity to find a solution to a burning political and financial problem, took priority over all else.

Over the two millennia of the exile, the subject of Shemittah was confined to theoretical Talmudic study in yeshivot, given that, in the centuries following the destruction of the Temple and the devastation of Judea, Jews, were constrained to abandon farming. With the ascendancy of Christianity, and its recognition as the Roman Empire’s official religion, Jews became artisans, craftsmen, merchants, and moneylenders. (Christians were forbidden by their faith to borrow or lend money on interest, so they encouraged Jews to become moneylenders to help finance their businesses and wars. As far as Jews were concerned, the prohibition of usury was limited by biblical law to their dealings with fellow Jews.⁴)

In the modern period, when the first chalutzim returned to Israel and began to embrace agriculture in their settlements and small collective communities – with the establishment of the first kibbutz, Deganya Aleph in 1910 – it became difficult for them to eke out a livelihood from the soil, given their lack of knowledge and experience in that area and their primitive methods of production. For the religious farmers, this was exacerbated when it came to the cessation of work on the land every seven years to comply with the observance of Shemittah. When it came to the establishment of agricultural communities, this appeared to represent an insoluble barrier to their objective of living out their lives and pursuing their livelihoods to conform to the mitzvah of *Yishuv Eretz Yisrael*. According to their philosophy and values, this included the development of self-sufficient religious and egalitarian farming communities.

The illustrious halachist and first Ashkenazi Chief Rabbi of Mandate Palestine, Rabbi Abraham Isaac Kook (1865-1935), though immersed in mysticism, was preoccupied with finding practical halachic solutions to the manifold problems that Jews faced in modern society and that they would have to grapple with in a future Jewish state. He accordingly endorsed a solution to the problem of farming during Shemittah that had first been suggested in 1888 by three rabbis closely associated with the fledgling Zionist movement of Chovevei Tzion, and which had been accepted by the illustrious sage, Rabbi Yitzchak Elchanan Spector (1817-1896).

This solution, which was regarded by many as controversial, was influenced by the practice of selling chametz before Pesach to a non-Jew so that it might remain in one's possession throughout the festival. However, whereas the latter is given the unequivocal title of *mechirat chametz*, 'the sale of leaven,' when it came to the selling of Israeli land – the historical heritage of our people – to non-Jews – the millennial occupiers of the land – it was referred to as *heter mechirah*, literally, 'the concession of a sale.' The use of the term '*heter*' was likely employed because of its association with the Talmudic principle, *kocha d'hetera adif*, 'the attribution of authority to a lenient (in the sense of a compassionate) ruling is preferable. This principle is adduced nine times in the Babylonian Talmud,⁵ and was the motivation of the approach of the Hillel school as opposed to that of his colleague Shammai who maintained that the literal and full force of the law had to be applied under all circumstances.

Rav Kook's passionate belief that the return of Jews to Israel in his day constituted the fulfilment of the biblical prophecy and that it was consequently essential for a way to be found to enable work on the land to continue unimpeded and for economic hardship to be prevented.

This concession, of selling land to non-Jews for the duration of the Shemittah year, was supported by the Israeli Chief Rabbinate for some 60 years, while other authorities, uneasy with its halachic propriety, encouraged the development of other methods of avoiding the biblical prohibition. These included hydroponics – growing crops by using water-based mineral nutrient solutions in an artificial environment rather than being rooted in the ground. A drawback, however, was that not all kinds of fruit and vegetables could thrive by that production method.

With the dramatic increase of the influence of the Right Wing Charedi community which was unhappy with what they perceived as the legal fiction of selling the land to non-Jews, enormous pressure built up on the Chief Rabbinate to dispense with the loophole of *heter mechirah* for the Shemittah year of 2007-8. They were petitioned, in effect, to withhold kosher certification from food that relied on it, and to require dependency on the importation of grain, fruit, and vegetables grown abroad during the Shemittah year.

The prospects of bankruptcy facing many Israeli farmers were obvious! Without the Chief Rabbinate's certification, their produce would not be bought that year by shops, supermarkets, hotels, restaurants, schools, or institutions, servicing the religious community. It was also a blow to the religious Zionist sector, for whom the acceptance of the *heter*

mechirah was an ideological issue as a symbol of their middle-of-the-road approach to the application and adaptability of the halachah.

The Chief Rabbinate sought to extricate itself from this dilemma by attempting a compromise position as divisive as it was unsatisfactory, whereby it continued to certify the *heter* for those outlets that were content to accept it, while at the same time allowing regional rabbinates the freedom to withhold a kashrut certification from food produced under their jurisdiction which had made use of the *heter*. Talk about a postcode lottery!

NOTES

1. See Maimonides, *Hilchot Shemittah V'Yovel* 1:9.
2. Op. cit. 10:10.
3. Tal. *San.*26a.
4. See Deut, 23:21.
5. See Tal. *Ber.* 60a, Tal. *Eiruv.* 72b, *et al.*

Shabbat shalom,

Rabbi Jeffrey