

Ksharim



Lesson 9:

“...for the land is Mine” – laws governing the use of the land

1. Outline:

- a. A short survey of the agricultural mitzvot
- b. The sabbatical year (shmita) as a case study: study of the biblical sources and later interpretations
- c. Modern dilemmas and applications of shmita including a study of modern texts dealing with shmita by Rabbi A.Y. Kook and Rabbi David Golinkin
- d. The relevance of shmita today – a discussion of the agricultural, social, and moral relevance of shmita in modern society.
- e. A discussion of the different categories of laws given in the Torah for application upon arrival in Eretz Yisrael.

2. Introduction:

The Torah – given in the desert – contains a number of laws that restricted our freedom to exploit the land upon our entry into it. These include limits on when we may work the land, what we may sow and how we may harvest – and also taxation on the produce. Since these commandments are only binding on Jews living on their land in Eretz Yisrael, the tradition developed a special attachment to them – as long as we are living in exile, we are denied the opportunity to fulfill these mitzvot, so our religious life is incomplete. These laws therefore came to symbolize the specialness of the land, our connection to it, and our longing for it when we are in exile. Of the various land-based laws, the sabbatical year (shmita) is probably the best known example, and one whose restoration has generated interesting debates over the past century and a half, so we will examine it as a case study in this unit. This exploration will touch on questions about the nature of land ownership, about mechanisms of social justice, and about the relevance of biblical precepts in the post-biblical era.

3. Lesson Goals:

- a. To examine the question of who really “owns” the land, and the commitment of the people to the instructions they received for living in the land.
- b. To become acquainted with the different categories of “land-based” laws of the Torah and their conceptual basis
- c. To become familiar with the outline of sabbatical year observance and some of the understandings and dilemmas associated with it.
- d. To understand the significance and repercussions of the texts for society both then and now

4. Expanded Outline:

a. The agricultural laws

The Torah envisions Israel as a farming society living off the land and many of its laws relate to agriculture. The first order of the Mishnah, “Zra'im (Plantings)” is dedicated to these laws. Although there are some exceptions, (where specific laws were extended by the rabbis to those dwelling outside of the land) these agricultural laws are for the most part tied to the land and obligate only those living within the biblical borders. It is interesting to examine the biblical commandments and try to envision:

- how they were applied, if they were

- what must have been the major obstacles to their enforcement
- what is their rational, social basis, if they have one
- how they could be applied in a post-biblical, post-agricultural society
- what they tell us about the land and our relationship to it
- why they would be applicable only within the borders of the Eretz Yisrael

Sowing:

- Leviticus 19:19 Kilayim - the prohibition of planting or grafting two different types of crop plants together.

Harvesting:

- Leviticus 19:9-10 Leket - leaving produce that has fallen during harvest in the fields for the poor
- Deuteronomy 24:19 Shichecha - leaving the leftovers that were forgotten in the harvest for the poor
- Leviticus 19:9 Pe'ah - not reaping the edges or corners of the field so as to leave them for the poor

Taxes/gifts:

- Numbers 15:17-21 Terumah - gifts to the Cohanim amounting to 1/60 of the produce grown
- Leviticus 27:30-32, Deuteronomy 14:22-26- tithes to the Levites
- Leviticus 19:23-25 Orlah and Netah Revei - the prohibition of eating the fruit of a tree during its first three years of growth – and the commandment to eat the fruits of the fourth year in Jerusalem
- Deuteronomy 26:1-22 Bikkurim – bringing the first fruits of the harvest to Jerusalem
- Numbers 15:17-21 Challah – setting aside a portion of bread as it is baked, as a gift to God

b. The Sabbatical year

The Sabbatical and Jubilee years:

- Exodus 23:10-11
- Leviticus 25:1-23
- Deuteronomy 15:1-3

Discussion Questions:

- Why seven years? Does it make sense?
- How is the Sabbatical similar to – and different from – Shabbat?
- What seems to be the economic and social purpose of the commandment according to the biblical text?
- In what ways are these goals to be accomplished?
- Are these goals relevant for modern society? In Israel? In the United States?
- Was the land given to the people of Israel with a set of binding instructions? Is shmita one of them?
- How can a farmer who is economically dependent on his crops comply with the commandment of the sabbatical year?

- The Torah promises us “Follow my decrees and be careful to obey my laws, and you will live securely in the land. Then the land will yield its fruit, and you will eat your fill and live there securely” (Lev 25:18-19) What is the meaning of “live there securely” Materially? Militarily? Forever? What is the connection between observing the commandments of shmita and yovel (jubilee year – the 50th year - after 7 sabbatical cycles) and living securely in the land?
- What is the importance – and what are the difficulties - involved in returning the land to its original owners in the jubilee year (yovel)?
- “And when your brother shall become destitute with you:” what can we learn from this section about society’s relationship to the “poor and downtrodden”?
- Even if the possible economical and/or agricultural rationales for the sabbatical and jubilee laws are not convincing, or have become obsolete, can we find a more abstract, “theological” basis for these laws? Could they be telling us something about ownership? About the sanctity of the land? About limitations of our sovereignty? About obligations that transcend economic benefit?

c. Modern Applications of Shmita

With the coming of Zionism Jewish farmers returned to the Land of Israel to cultivate the land for the first time in hundreds of years. Some of the chalutzim and new agricultural communities were religious. With the coming of the sabbatical year these religious communities were faced with a difficult dilemma. Their religious beliefs obligated them to observe the shmita and forbade them to work their fledgling orchards and newly cultivated fields, but such observance would mean not only financial ruin but undo all the efforts of the past years spent in cultivating the land. With the approach of their first shmita the group of pioneers in Petach Tikvah sent a letter with the question to a known halachic authority in Europe, but as the months went by and Rosh Hashana approached they received no answer. Many despaired, and unwilling to see the ruin of all their efforts left the Moshava.

The difficulty, if not impossibility, of observing shmita in modern Israel and the catastrophic repercussions of such observance on the national economy (Israel is self-sufficient in produce and its agricultural exports are an important source of income and foreign currency) have led different rabbis to offer various halachic solutions. The official position of the chief rabbinate is to accept the “heter mechirah,” by means of which all agricultural land in Israel is “sold” to a non-Jew for the year; since the land is not owned by Jews, they are free to work it and benefit from it as they would in any other year. On the other hand, there are rabbis – and communities – who reject this legal fiction, and indeed refuse to eat any produce raised by Jews in Israel during the sabbatical year. And a third position argues that the law is simply not applicable in current historical circumstances.

The first chief rabbi of Israel, Rav Kook, defended the heter mechirah. Here is a loose translation of excerpts of his responsum:

Letter 287:

"My beloved and honored brothers: I feel a need to write to you regarding the observance of the approaching shmita. There is no need to tell you of the tremendous effort made by the learned rabbis to find a loophole to allow the survival of the Yishuv [the pre-state Jewish community in Israel] in accordance with the laws of the Torah by, in times of great need, allowing the "selling" the lands to non-Jews for the duration of shmita. There have been many G-d-fearing and learned scholars who have taken exception with this ruling; but like those who prohibit it, also those who allow it are acting for the sake of Heaven and the good of the land and the people...

The learned rabbis who decided thus (to allow the selling of the land) were determined and careful to avoid any infraction of Torah prohibitions. The permission (to sell the land) allows for a circumvention of all the issues which seem to be based only on rabbinic (as opposed to biblical) prohibitions - and because of the great need of the hour we are annulling them through this permissive ruling.

By acting in this way, which is needed for survival by most of the Yishuv, we are maintaining the form of the Torah commandment so that the mitzvah will not be forgotten by coming generations. And as the Yishuv in Israel develops and strengthens then the holiness of the seventh year will also be restored and allow peace and rest for the land and our people to nourish their souls and their dignity until the final redemption shines on Zion.

We urge people to abide by the details of the permission and act as instructed so that they will not violate the prohibitions of the Torah that are not included in the permission, and for which the sale does not apply - and thereby bring ruin to the land. Such irresponsible behavior will cause the rabbis to reject the permission and not endorse it at all, for they will not be able to bear that the permission that they allowed with care and trepidation is being used to ...trample the Torah's commandments. We, who appreciate how critical the survival of the Yishuv is, must ensure that the permission be respected fastidiously and be enacted by notable G-d-fearing scholars.

..... Therefore, any actions that can be put off until after shmita without causing great damage, such as new plantings or grafting, should be delayed (even though technically the "heter mechirah" allows them). Also, people must refrain from all work in those areas where the land was not leased from the government, which includes all cities and settlements which are not agriculturally based (e.g. private gardens). [Most agricultural land in Israel is leased from the government in 49 year leases – and thus is owned by the government, not the farmers – and thus the government can "sell" the land for the year]

And here are excerpts of the responsum of Rabbi David Golinkin, approved by the law committee of the Masorti (Conservative) Movement in Israel for Kibbutz Hannaton:

Question:

How are we, a recently established kibbutz, to observe the shmita year? Being a young agricultural community, we must now already plan next year's crops. We are also in the process of developing our public gardens, lawns and flowerbeds; this is not merely for our pleasure, but also in order to strengthen the ground, thus preventing erosion during the rainy season, which could damage our houses' sidewalks. Is it permissible to plant gardens and to build an irrigation system during the shmita year? To what extent may one water the ground during a shmita year? What is the argument in favor of observing the shmita year in our time, and is the fact that our kibbutz was established a mere two years ago of any relevance?

Responsum:

... Since the vast majority of Israeli society today lives in urban centers and far from agricultural areas, and since agricultural products are grown mainly for export, the shmita restrictions of ancient times which reflect a simple, small-scale agricultural society, cannot serve us appropriately in our time. Moreover, both methods used in Israel today owe their success to the vast, secular majority of Israeli farmers, who serve as a "shabbess goy" for the religious public. This is an unacceptable situation, especially for the Religious Zionist and Masorti populations.

An investigation of the Rishonim (Medieval rabbis) reveals that a large group of Rishonim - those of Provence - ruled that shmita in our day is neither biblical nor rabbinic but a midat hassidut, an act of piety. Therefore, we rule that the shmita year be observed as a midat hassidut, as follows:

1. Sowing the winter crop before Rosh Hashanah;
2. Sowing grass and trees for gardens before Rosh Hashanah;
3. Whenever possible, avoid Biblically forbidden work, such as sowing, pruning, harvesting and ploughing. However, if one must carry out any of these tasks, one should try to do them with a shinui, i.e by a different method than otherwise used;
4. Avoiding the planting or tending of gardens which are not otherwise required for preventing erosion during the rainy season.

It is also advisable to perform various symbolic and educational acts to enhance the awareness of the year being a shmita year, such as:

- Planning the agricultural cycle to fit the six years between two shmita years.
- Leave one field as a "shmita corner" where all the laws of shmita will be observed.
- Hold public study sessions of the laws of shmita in the Mishnah, Maimonides and other sources.
- One of the ultimate goals of the shmita year is "that the poor of thy people may eat" (Exodus 23:11). It would be most appropriate for the Kibbutz to donate a part of the shmita year's profits to indigent people.

Note: while there is extensive debate among the rabbis as to how to set the date of the sabbatical year in our times, a consensus has been reached. 5761 was a sabbatical year (2000-2001); the next will be 5768 (2007-8).

Discussion Questions:

- What do we do with the awkward symbolism (from a Zionist point of view) of selling the land to a non-Jew in order to “fulfill” Jewish law in the Jewish state?
- Is it advisable to declare shmita “a measure of piety” instead of a commandment – converting it into an option, not a law?
- Is it right to “give in” and retract a commandment because its observance is “too difficult”?
- Is shmita relevant or possible today? Could we invent other mitzvot that would fulfill its purposes but be more appropriate in a modern state?

d. Examining the religious, social, moral and agricultural meanings of shmita

1. In Leviticus 25:23 the Torah says: But the land must not be sold beyond reclaim, for the land is Mine; you are but strangers resident with Me.

This suggests that the sabbatical year comes to teach us a lesson on our relationship to the land: i.e., we don't own it, and we can't do with it whatever we want. We are here not by right but by God's favor, and we need a constant reminder of just who it belongs to, let us become arrogant and/or stingy. It might be interesting to discuss the concept of private ownership, public domain, commons, and other concepts relating to distribution of land – and of course the contrast between Gen. 1:28 and 2:15.

Note: under the Ottomans, 95% of the land area of Palestine was government owned land. During the Mandate period the areas claimed as privately owned increased significantly, but after 1948, the government of Israel took over all land that had been state land up to then (about 70%), lands purchased by the Jewish National Fund (about 10%), plus all private land abandoned by Arabs who left the country (about 10%). Today, the Israel Lands Authority owns 93% of the land in the country. It is forbidden by law to sell it; it may only be leased (the standard lease is 49 years).

2. Why are the land-based laws in fact restricted to Eretz Yisrael? If they are expressions of universal values, tools to create social justice, then why not observe them everywhere? What is it about Eretz Yisrael – and our relationship to it – that causes this whole category of laws to exist? Are they about social justice – and if so, then why aren't they state based instead of land-based? Or are they about recognizing our conditional status in the land – we are not the owners, we do not have complete freedom to exploit the land as we wish?
3. There are many who argue that the reason for the commandment of shmita was to allow the land to rest. It is agriculturally beneficial for fields to be allowed to lie fallow occasionally so as to renew themselves. Continuous planting and cultivating leads to a depletion of the minerals and fertility of the field; therefore the Bible ensured sustained production by demanding the land remain fallow for one year out of seven. As such they see the commandment of shmita as irrelevant today when the fertility of the fields can be maintained by crop rotation and fertilizers.

However if we see the mitzvah as carrying a social or theological rationale as discussed above, then the question becomes: is the vision of social justice intended by shmita relevant or desirable in today's society?

Discussion:

There are two ways a society can decrease the gap between the have and the have-nots. Society can legislate and obligate its members to participate in social or charitable causes. The mitzvot of shmita can be viewed as such an attempt. The people of Israel were commanded and obligated to observe shmita and turn their fields and produce into public domain so that the lines between the classes became blurred, at least for the duration, and all could partake of what was available. Not only were the poor able to take what they needed but the rich experienced what it was like not to have an insured income. Is such an experiment in social justice possible today? Even if not, can a society "force" charity and social justice (n.b., our use of the word "tzedaka" – "justice" – as the equivalent of "charity")? How? Taxation? Government-sponsored social services? What are the advantages and disadvantages of such a system?

Another approach is to leave charity and social justice to those who volunteer to do it. Only people who are themselves inclined and convinced of the importance of social justice and helping the weaker members of society can really help and fill real needs. Only grass roots movements are genuine and effective. A society can educate to social justice and encourage it but it cannot impose it. Is that true? What are the advantages and disadvantages of such a system? Which system is more likely to create a fairer or more egalitarian society?

Should the biblical heritage of the Jewish people play a role in setting social policy in the modern state of Israel?

e. Land-dependent laws and state-dependent laws

The above laws are generally referred to as "hamitzvot hatluyot ba'aretz" - laws dependent on the land; for the most part they relate specifically to the land, i.e., the soil itself.

As source #5 indicates, the rabbis saw living in Israel as a mitzvah opportunity – since only there could we fulfill all the mitzvot – and thus, they saw traveling abroad as a denial of these opportunities and hence a kind of spiritual impoverishment. In later rabbinic discussions there were those who took the position that we are commanded to immigrate to Israel so that we will be able to fulfill all these mitzvot – while others said that without sovereignty and the practical ability to fulfill all these mitzvot, immigration to Israel was actually increasing our sin quotient, because as long as we lived abroad we were not obligated by these mitzvot and hence were not sinning by ignoring them; but in Israel, we were obligated, and hence if we were unable to fulfill them, we were sinning.

In any case, there are many other laws in the Torah that are given in preparation for sovereignty in the land, for observance once we get there, that are not agriculturally based, but seem to define a set of social norms. For example:

- Exodus 23:32-33 – take over the land and make no alliances with the Canaanites
- Leviticus 19:33-34 – treatment of the stranger

- Deuteronomy 21 – the law of the red heifer

But beyond these specific examples, in general, we can see the Torah as not only a “user’s manual” for the land, but also as a blueprint for the state we are to establish once we get there: a religious establishment, a system of justice, family law, land ownership, economic relations, etc. While many of these are relevant no matter where we live, at the time they were given we were on our way to Israel, where we expected to set up a sovereign state – without any consideration being given that a time might come when we would live elsewhere, under others’ sovereignty. In large part, therefore, we can see them not as “land-dependent,” but as “state-dependent.” Thus, it is of interest to discuss what kind of society is delineated by these laws, and to think about the relevance of this ideal to the modern state of Israel. Here are some passages that can serve as the basis for such a discussion:

- Exodus 21-23
- Leviticus 19-20

Are there consistent values to be found behind these laws, or are they arbitrary commandments? Can we accept them? Are they obsolete? How could they be applied in a modern context? Should they inform the state of Israel today, or must they remain the province of individuals and/or voluntary communities?

Methodological musings:

The above is too much for one lesson; here are some suggested cuts through the material:

- a. An overview of agricultural laws, reviewing the various agricultural laws and trying to understand how they might have been observed and what are the values underlying them (subtopic 1)
- b. Focusing on shmita and its meanings (subtopics 2, 4)
- c. Focusing on shmita, and the debate over if and how to apply it in the present as a case study in modern Israel’s ambivalent relationship to its biblical roots (subtopic 2-3)
- d. Imagining the ideal state depicted in the Torah, and considering its relevance to the modern state (subtopic 5)

Sources: Articles and sites dealing with shmita observance today:

1. <http://chareidi.shemayisrael.com/TRMashmitta1.htm>

<http://chareidi.shemayisrael.com/TLDarain.htm>

<http://chareidi.shemayisrael.com/archives5759/shoftim/aorlo.htm>

These are articles from a chareidi (ultra-orthodox) site.

2. For a different outlook to possible reconciliation of halacha and modern Israeli economics and agriculture see Machon HaTorah Vaha-aretz <http://www.toraland.org.il/web/index.asp?f=1> unfortunately the site is only available in Hebrew. It is affiliated with the religious Zionist establishment. The center itself was located in Kush Katif (in Gaza) and specializes in researching the land-based mitzvot as applicable today.

3. On possible non-Jewish parallels: <http://www.jhom.com/index.htm>

4. Update from the Union of Orthodox Jewish Congregations (“OU” - the main kashrut supervision agency in the US)

The "OU" does not rely on the standard heter mechirah, whereby the Israeli government sells the entire country to non-Jews in order to remove the restrictions of shmita.

This year, the "OU" is certifying some parsley, coriander, cilantro, dill and paprika that were grown during shmita on the basis of a different method of sale. Each owner of the parcels of land on which the parsley was grown executed a personal sale to a non-Jew. A sum of money was paid for each property. The Israeli government, which controls all land transactions, issued legally-binding authorization for these specific sales. The sale was performed without a middleman, which obviates the concern of shaliach lidvar aveirah.

The Tzitz Eliezer (6:32) allows this method of sale, in counterdistinction to the general sale of the entire country. (See also Chazon Ish 10:6.) In addition, all melachos diorayso (labors forbidden by the Torah on shmita) were performed by non-Jews and the majority of the parsley was planted before the onset of the shmita year.

5. Midrash Sifrei Devarim 80

Once Rabbi Judah ben Baterah and Rabbi Matya ben Charash and Rabbi Chananiah the brother of Rabbi Joshua, and Rabbi Jonathan were traveling abroad, and arrived at Paltum, and remembered Eretz Yisrael – and their eyes filled and their tears flowed and they tore their clothes and read this passage [Deuteronomy 11:31-2] “When you have occupied [the land] and are settled in it, take care to observe all the laws and rules that I have set before you this day.” They said: [this is proof that] dwelling in Eretz Yisrael is as important as all the mitzvot in the Torah altogether.

6. On the historical and economic context of Shemittah:

<http://www.jhom.com/topics/seven/shmita.html>