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**Before Sinai: Jewish Values and Jewish Law**

**By Rav Dr. Judah Goldberg**

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**Shiur #18: The Land of Israel (1): Definitions of the Land of Israel**

This *shiur* begins our examination of the second core principle of *berit Avot*, namely, commitment to the Land of Israel. From the outset, however, we are faced with a basic question: What do we mean by the “Land of Israel?” I don’t refer here to doubts about its geographic boundaries, but to questions about its status and its meaning as they pertain to various dimensions of Jewish experience. As we will see, there seem to be multiple, overlapping conceptions of the Land of Israel, which perhaps the categories of *berit Avot* and *berit Sinai* can help us elucidate.

**What is “The Land of Israel?”**

The Rambam offers a seemingly comprehensive definition of the Land of Israel, based on a number of different Talmudic sources, at the beginning of *Hilkhot Terumot*. First, he states a general principle: “The ‘Land of Israel’ mentioned in all places refers to the lands that a Jewish king or judge or prophet conquers with the consent of the majority of the Jewish people” (1:2). Interestingly, the Rambam does not mention here any particular geographic location, though he subsequently notes that this sweeping definition only applies after the entire “Land of Canaan” has already been conquered (1:3).

Later, the Rambam explains that the sanctified status accorded to the Land of Israel is reversible:

Anywhere that the immigrants from Egypt settled and that was sanctified with the original sanctification, once they were exiled, their sanctification is annulled; since the original sanctification occurred only through conquest, it sanctified for its time but not for the future. When Diaspora Jews [subsequently] returned and settled part of the land, they sanctified it with a second sanctification that lasts forever—for its time and for the future. (1:5)

Thus, the Rambam recognizes two different phases in the history of the Land of Israel, distinguished by their respective lasting power: The original designation, established through the founding of the First Commonwealth by Yehoshua, was nullified by its dissolution. However, the subsequent designation, established through the founding of the Second Commonwealth (which deliberately did not cover the entire geographic area of the original one), is permanent.[[1]](#footnote-1) In passing, we note that others disagree with each of these points. On the one hand, at least one *Tanna* (either R. Yishmael, son of R. Yosi or R. Elazar, son of R. Yosi) seems to believe that the original sanctification was permanent (*Arakhin* 32b).[[2]](#footnote-2) On the other hand, Rabbeinu Barukh, a Tosafist, maintains that the second sanctification was also annulled (*Sefer Ha-teruma*, *Hilkhot Eretz Yisrael*).

Finally, the Rambam summarizes his halakhic “map”:

Consequently, the entire world, with regard to *mitzvot* that are dependent upon the Land [of Israel] (*ha-teluyot ba-Aretz*), is divided into three parts: The Land of Israel, Syria, and ‘outside of the Land’ (*chutza la-Aretz*); and the Land of Israel is divided into two: Everywhere that the immigrants from Babylonia settled is one part, and the rest, that only the immigrants from Egypt settled, is the second part. (1:6)

For the rest of *Hilkhot Terumot* and most of *Sefer Zera’im*, the “first part,” defined as the territory of the Second Commonwealth, is the operative “Land of Israel.” As the Rambam explains elsewhere, “It is holy in our day, even though the Land has been taken from us, and is obligated in the Sabbatical year and in tithes, according to the principles we explained in *Hilkhot Teruma*” (*Hilkhot Beit Ha-bechira* 6:16).

**The Problem**

These definitions, however, leave us with a number of questions. The first arises not from textual difficulty, but from naïve reflection. If we strictly read the rabbinic criteria for territory that is subject to the *mitzvot* of the Land of Israel, it sounds as if the “Land of Israel” is not a place, but a concept. Moreover, sometimes there is a Land of Israel and sometimes not! As *mori ve-rabbi* R. Aharon Lichtenstein formulates the problem:

What was the status of the Land during the Babylonian Exile? Was it simply identical with Iceland’s or Manchuria’s? Or, to put the same question differently: What of areas settled by Joshua and during the First Commonwealth but not during the Second? Are they now simply part of *hutz* *la-aretz*, their past dead and forgotten? (“Brother Daniel and the Jewish Fraternity,” *Leaves of Faith: The World of Jewish Living*, 65-66)

Could it be that from the perspective of Jewish law, “the Land of Israel” only existed from the days of Yehoshua’s conquest until the destruction of the First Temple, only to be revived again upon the subsequent return to Zion? What of the time period before, including the days of the *Avot*, and what of our present day, according to Rabbeinu Barukh, who holds that the second sanctification was nullified as well (according to Biblical law)?[[3]](#footnote-3)

Scouring the rabbinic tradition, on the one hand, confirms our contrary intuitions, but on the other, further compounds our confusion. Consider, for instance, the Rambam’s ruling regarding *semikha*, the original ordination that was practiced until the Talmudic period. Regarding the Talmud’s ruling that *semikha* can only occur in the Land of Israel (*Sanhedrin* 14a), the Rambam explains, “The entire Land of Israel that the immigrants from Egypt settled is fit for *semikha*” (*Hilkhot Sanhedrin* 4:6). The Rambam thus confirms for us that parts of the land that were conquered by Yehoshua but never subsequently resettled still retain some aspects of the “Land of Israel.” Although they are not subject to the classic *mitzvot* of the land (*ha-teluyot ba-Aretz*), such as *teruma* and tithes, they are still considered part of the Land of Israel for other purposes, such as *semikha*.

While answering one problem, however, the Rambam’s position invites another. If the original sanctification, as the Rambam relates, was indeed abrogated, what does it matter that a particular area was historically considered part of the Land of Israel at one point? As that very definition is dynamic, the borders have now moved, and the full range of *mitzvot* that characterize life in Israel no longer apply. The grapes and olives that grow in this “historical” Land of Israel are no different from Florida grapefruit or Hawaiian pineapples. They cannot aspire to become *teruma*, nor will they ever be taken to Yerushalayim as *ma’aser sheini*. So why can ordination, which is also restricted to the Land of Israel, take place in that territory?

Clearly, we are working with multiple definitions of the Land of Israel, which require further elaboration. Furthermore, if the Rambam is distinguishing between different types of *mitzvot* that apply only in the Land, we need to understand what characterizes each category.

***Kaftor Va-ferach***

At least two early commentators note the issues we have described. R. Ishtori Ha-Parchi, the author of *Kaftor Va-ferach*, dedicates a long chapter (10) to enumerating the unique properties, both metaphysical and halakhic, of the Land of Israel. He begins the chapter with a discussion of *semikha* and notes the Rambam’s ruling regarding the areas that were not resettled during the Second Commonwealth. Even though these areas are exempt from laws that pertain to the Sabbatical year and to produce which may not have been tithed (*demai*), R. Ishtori concludes that, “regarding everything except similar matters [to the Sabbatical year and *demai*],” areas settled during the First Commonwealth only and areas settled during the Second Commonwealth “are equivalent” (Jerusalem, 2004, p. 174).[[4]](#footnote-4)

Towards the end of the chapter, he uses an almost polemical tone in arguing that the *mitzvot* that apply to the produce of Israel are the exception, not the rule.[[5]](#footnote-5) Regarding other properties of the Land of Israel:

Today, there is no difference and no separation and no distinction at all between what the immigrants from Egypt conquered and what the immigrants from Babylonia conquered, for there is nothing [that applies] in one that does not in the other, regarding sanctity and uniqueness, except for the obligation in *terumot* and tithes and the like. (p. 252)

How then, according to R. Ishtori, should we interpret the multiple rabbinic texts that speak about first and second sanctifications? He explains that “the sanctity of the Land and its uniqueness are from the time of its granting to the holy *Avot*, not just from the time of conquest alone” (p. 247). If so, the terms “first sanctification” and “second sanctification” should not be taken literally as acts of new designation, but rather as rededications of what was already holy (p. 257).

In summary, R. Ishtori takes a radical stance. Since the time of the *Avot*, there never has been and never will be any fluctuations in the “holiness” of the Land of Israel. What changes over time is only the obligation of the Land’s produce in *terumot*, tithes, and other *mitzvot ha-teluyot ba-Aretz*, which depends on other, specific criteria that are independent of the Land’s underlying sanctity.

**Tashbetz**

R. Shimon b. Tzemach Duran (Tashbetz) proposes a similar distinction to that of R. Ishtori, but with regard to different geographical areas. He differentiates between *mitzvot* that are linked to the produce of the soil of Israel (*chovat karka*), such as *teruma*, tithes, first fruits (*bikkurim*), the *omer* offering on Pesach, and the two loaves of Shavuot, on the one hand; and special properties of the Land that stem from the Divine Presence, such as atonement for those who live there or are interred there, the affection that the Land generates, its suitability for prophecy, and its curative properties for infertility, on the other (*Sefer Ha-Tashbetz* 3:198, 200). In the Tashbetz’s discussion, the geographical area in question is the eastern bank of the Jordan River, which was captured by Moshe Rabbeinu and settled by the tribes of Reuven and Gad.[[6]](#footnote-6) The Tashbetz summarizes:

They are two separate concepts—the sanctity of the Divine Presence and the sanctity regarding *mitzvot*. The sanctity of the Divine Presence is specific only for the western bank of the Jordan, but the sanctity of the *mitzvot* [is present] both in [the western bank] and [the eastern bank]. (3:200)

**Summary**

Both the Tashbetz and R. Ishtori recognize multiple aspects of the Land of Israel that do not completely overlap. However, their discussions differ in several important respects. First, as they are addressing different geographic areas, they come to opposite conclusions. Whereas R. Ishtori argues for an expansive sanctity of the Land that transcends the boundaries of the area obligated in *mitzvot ha-teluyot ba-Aretz*, the Tashbetz extends obligation in *mitzvot ha-teluyot ba-Aretz* to areas that are not endowed with the sanctity of the Divine Presence. Combining their two positions yields a map of the Land of Israel that resembles a Venn diagram: The eastern bank of the Jordan can be obligated in *mitzvot ha-teluyot ba-Aretz* but does not have inherent sanctity. Areas west of the Jordan that were conquered only by Yehoshua have sanctity but are not currently obligated in *mitzvot ha-teluyot ba-Aretz*. Territory west of the Jordan that was settled during the Second Commonwealth as well has both properties.

Second, whereas R. Ishtori distinguishes between the Land’s sanctity and some other, undefined property that obligates it in *mitzvot ha-teluyot ba-Aretz*, the Tashbetz speaks of two different “sanctities.” The Tashbetz’s terms preserve the plain meaning of the “original sanctification” and the “second sanctification,” as they refer to “the sanctity regarding *mitzvot*,” though perhaps not that of the Divine Presence.

Third, the Tashbetz introduces the term “sanctity of the Divine Presence.” Whether or not this is identical to the “sanctity” and “uniqueness” of which R. Ishtori speaks is subject to further examination.

**The Brisker Tradition**

The topic of divergent definitions of the Land of Israel was picked up again in earnest by multiple figures in the Brisker tradition (founded by R. Chayyim Soloveitchik of Brisk). In a brief passage, R. Moshe Soloveichik (a son of R. Chayyim) notes that according to the Rambam, both *semikha* and *egla arufa* (the beheading of a calf to atone for an unwitnessed murder) are practiced in areas that were not sanctified by the second sanctification (*Chiddushei Ha-Gram Ha-Levi*, end of *Hilkhot Shemita Ve-yovel*). His son, R. Joseph B. Soloveitchik, elaborates further, differentiating between “the sanctity of the Land” and “the title (*cheftza*) of the Land of Israel.” While the Land’s sanctity is dependent on a formal process of sanctification, its title as “the Land of Israel” is strictly monetary, deriving from its possession by the entire Jewish people (“*be-hilkhot* *dinei mammonot vi-zechiyyat kol Yisrael*”; *Iggerot Ha-Grid Ha-Levi*, beginning of *Hilkhot Melakhim*, 2).

Another son, R. Ahron Soloveichik, adds that this understanding brings new meaning to the very term “Land of Israel”: “Therefore it was called the ‘Land of Israel,’ that is, the property of the people of Israel” (*Parach Mateh Aharon*, *Sefer Ahava*, 178). Whereas “the Land of Israel” as a descriptor of sanctity might refer to the land consecrated for the people of Israel or possibly through them, “the Land of Israel” as a geographical entity refers to the land owned by the people of Israel. Furthermore, the title of “the Land of Israel” does not fluctuate, as does its holiness. The sanctity of the land can be annulled under certain circumstances, as it was upon dissolution of the First Commonwealth. Once the Jewish people have taken collective possession of the Land of Israel, however, it remains under their title forever; hence the Rambam’s extension of several laws to the areas settled only by the immigrants from Egypt.

Still, what connects these laws, such as *semikha* and *egla arufa*, to the Land of Israel at all? If they are not contingent upon the land’s sanctity, what restricts their relevance specifically to the Land of Israel? R. Joseph B. Soloveitchik explains that these laws are indeed not connected to the Land per se, but rather to the status that the Jewish people achieve when they dwell inside the Land (*The Rav Speaks: Five Addresses on Israel, History, and the Jewish People*, 144-145).

R. Lichtenstein, his student, elaborates further. The laws under discussion are all obligations that fall upon the collective community of Israel, rather than upon individuals. Only in, and through, the Land of Israel—that is, the expansive territory owned by the children of Israel, including areas that may currently lack sanctity—do the people of Israel coalesce into a unified nation. The Talmud deduces this from a verse: “‘All of Israel with [King Shlomo]—agreat assembly [*kahal*]from Levo-Chamat to the river of Egypt…’ (*Melakhim* I 8:65): These are called ‘*kahal*,’ but those [outside of the aforementioned borders] are not called ‘*kahal*’” (*Horayot* 3a).[[7]](#footnote-7) Therefore, only in the Land of Israel do laws pertaining to the nation as a whole become possible.[[8]](#footnote-8)

Thus, we see a reciprocal relationship between the Jewish nation and its land. On the one hand, collective possession by the people of Israel defines the Land of Israel, independent of the formal sanctity that obligates territory in *mitzvot ha-teluyot ba-Aretz*. In turn, though, this “political” Land of Israel affords the Jewish people its national existence. Only the Land can transform them from a collection of individuals into a single, organic whole that becomes charged with pursuing a national mission.[[9]](#footnote-9)

**The Land of the Temple**

I once heard from R. Lichtenstein that R. Soloveitchik noted yet another dimension of the Land of Israel.[[10]](#footnote-10) The Rambam rules that even though the original sanctification of the Land of Israel was nullified, the original sanctification of the Temple and Yerushalayim lasts forever, “for the sanctity of the Temple and Yerushalayim is because of the Divine Presence, and the Divine Presence is never annulled” (*Hilkhot Beit Ha-bechira* 6:16). However, the Rambam’s position leaves us with a historical anomaly. During the years of the Babylonian exile that followed the destruction of the first Temple, the Temple site and Yerushalayim around it retained their sanctity, whereas the Land of Israel did not. Could it be that the Divine Presence inhabited a barren hilltop in an “ordinary” land, bereft of any holiness? Could we imagine the sanctity of the Temple persisting “outside” of the sanctified Land of Israel?

To answer this question, R. Soloveitchik proposed that the entire Land of Israel, too, is invested with the formal sanctity of the Divine Presence. Aside from being the territory that is obligated in *teruma* and tithes, the Land of Israel is also the land in which the concept of a Temple is possible. In other words, the sanctity of the Divine Presence does not begin at the Temple gates or even at the walls of Yerushalayim, but permeates the entire land. Furthermore, this sanctity persisted—just like that of the Temple itself—during the period of exile, even though the “original sanctification” of the Land that obligated it in *mitzvot ha-teluyot ba-Aretz* was nullified. As “the Divine Presence is never annulled,” this dimension of the Land’s sanctity is immutable.

As support for his argument, R. Soloveitchik cited *Keilim* 1:6-9, which follows the increasing levels of holiness as one penetrates further and further inside the Temple.[[11]](#footnote-11) Where is the starting point for the *Mishna*? “The Land of Israel is holier than all other lands” (1:6). The first step towards the Holy of Holies, the *Mishna* explains, occurs when one crosses into the Land of Israel.

The proof for this reading of the *mishna* is found in its continuation: “What is its holiness? That we bring from it the *omer* offering, the first fruits[[12]](#footnote-12) and the two loaves [of Shavuot]—that which we do not bring from all other lands.” Strikingly, in reflecting upon the unique properties of the Land of Israel, the *mishna* omits mention of *teruma*, tithes and the like. In contrast, what do the *omer*, the first fruits, and the two loaves share in common? They all constitute offerings to the Temple.[[13]](#footnote-13) That they must come from the produce of the Land of Israel demonstrates that the land is uniquely connected to the Temple and shares something of its sanctity.

**Conclusion**

We began this *shiur* with a seemingly innocuous question: What is the Land of Israel? By this point, we have gathered so many divergent perspectives on the Land of Israel that we struggle to make sense of them all. For example, R. Ishtori attributes the Land’s sanctity to its election at the time of *Avot*, yet the Rambam in *Hilkhot Terumot* does not mention the *Avot*, but rather the conquest at the time of Yehoshua and the resettlement by Ezra. Are the land promised to the *Avot* and the land conquered by the immigrants from Egypt one concept or two?

Furthermore, beyond the sanctity associated with *mitzvot ha-teluyot ba-Aretz*, R. Soloveitchik described, on the one hand, the “title” of the Land of Israel, and, on the other hand, the sanctity of the Divine Presence in the Land of Israel. I once asked R. Lichtenstein about the relationship between these two concepts, and I recall him answering that he, too, was uncertain about it. In relating to the title of the Land of Israel, R. Moshe Soloveichik and R. Joseph B. Soloveitchik presume that it applies to the eastern bank of the Jordan.[[14]](#footnote-14) However, the Tashbetz specifically excluded the eastern bank from areas endowed with “the sanctity of the Divine Presence.” Are these scholars arguing, or should their positions be reconciled by distinguishing between the two concepts? Finally, is the Tashbetz’s “sanctity of the Divine Presence” synonymous with R. Soloveitchik’s sanctity of the Temple, or are these, too, separate concepts?

In the following *shi’urim*, we will attempt to provide some general framework for these multiple conceptions of the Land of Israel, primarily through the prism of *berit Avot* and *berit Sinai.*

**Questions or Comments?**

Please email me directly with your feedback at [judahlgoldberg@gmail.com](mailto:judahlgoldberg@gmail.com)!

1. The Rambam further explains the basis for this distinction in *Hilkhot Beit Ha-bechira* 6:16. [↑](#footnote-ref-1)
2. Also see *Tosafot* *Bava Batra* 56a, Ramban *Gittin* 2a and *Teshuvot Ha-Rid* *siman* 11. [↑](#footnote-ref-2)
3. Also see *Chiddushei Rabbeinu Crescas* on *Gittin* (erroneously attributed to the Ritva) 2a: “According to the opinion… that the second sanctification sanctified [the Land] for its time but not for the future, today, when the Land is desolate, could it be that [since] it is not holy, affection [for the Land] is also gone? This is certainly not reasonable.” [↑](#footnote-ref-3)
4. Also see Ramban and Rabbeinu Crescas *Gittin* 2a, regarding dwelling in the Land of Israel, Ramban *Ta’anit* 22b and Radvaz on *Hilkhot Sanhedrin* 4:6. [↑](#footnote-ref-4)
5. R. Ishtori writes, “Furthermore, I want to elaborate on this point, lest someone tell me that ‘this is dependent on that,’ meaning that there is no obligation of donations [of *teruma* and tithes] in [areas settled by the immigrants from Egypt only], and so the uniqueness of the Land does not apply there, as [it does in areas of] the second conquest” (p. 252). Later, he comments, “All that I have fought with regard to this issue is for the reason I have mentioned, lest someone tell me that ‘this is dependent on that’” (p. 259). [↑](#footnote-ref-5)
6. See *Devarim* 3:8-17. [↑](#footnote-ref-6)
7. Also see Rambam, Commentary on the *Mishna*, *Bekhorot* 4:3, and Responsa *Avnei Nezer*, *Orach Chayyim*, 314. [↑](#footnote-ref-7)
8. “*Be-inyan Semikha Be-Eretz Yisrael U-vechutz La-Aretz*,” *Beit Yitzchak* 8 (5719 [1959]), 92-94; available at http://www.yutorah.org/lectures/lecture.cfm/794896/Rabbi\_Dr-\_Aharon\_Lichtenstein. *Mori ve-rabbi* R. Hershel Schachter quotes this idea from R. Soloveitchik himself (*Nefesh Ha-Rav*, 80). [↑](#footnote-ref-8)
9. Also see R. Reuven Taragin, “*Kedushat Makom: Yachasah La-Shekhina U-leYisrael*,” *Sefer Ha-yovel Li-Yeshivat Har Etzion* (5758[1998]), 195f. R. Lichtenstein further notes that the effect on national existence may be one, but not necessarily the exclusive, ramification of the “title” of the Land of Israel. Other laws that are not tied to the sanctity of the land may similar apply to the entire territory of the First Commonwealth, even though they are not specifically national responsibilities (94). [↑](#footnote-ref-9)
10. Also see *Nefesh Ha-Rav*, 76-79. [↑](#footnote-ref-10)
11. Thus the Rambam quotes these *mishnayot* in *Hilkhot Beit Ha-bechira* 7:12-22. [↑](#footnote-ref-11)
12. The Vilna Gaon erases “the first fruits” from the *mishna*. See his glosses in the Vilna ed., as well as his commentary *Eliyahu Rabba*. We will return to this point in future *shiurim*. [↑](#footnote-ref-12)
13. Also see *Mishna Acharona*. [↑](#footnote-ref-13)
14. See Rambam *Hilkhot Rotzei’ach U-shmirat Nefesh* 10:1. [↑](#footnote-ref-14)