**YESHIVAT HAR ETZION**

**ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)**

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**THE PHILOSOPHY OF *SHEMITTA***

**By Rav Binyamin Zimmerman**

**Shiur #19: *Tishmetenna U-ntashtah* –
Relinquishing Ownership of Produce**

**Financial or Agricultural?**

In last week's lesson we analyzed *shemitta* as it is first introduced to us in the Torah in *Parashat Mishpatim*. We saw that it focuses on the social elements of *shemitta*, marking it as a year where the underprivileged will enjoy the benefits of the produce growing upon the land of landowners. One factor which we left for this week regards the proper definition of two elusive yet significant words in the passage, *tishmetenna u-ntashtah.* These words have been the source of some controversy, yet play a decisive role in determining the nature of *shemitta*, and especially regarding its portrayal in *Parashat Mishpatim*. The Torah states as follows:

And six years you shall sow your land and shall harvest its fruits. But [in] the seventh (*shevi'it*), you shall release it (*tishmetenna*) and let it lie *fallow* (*u-ntashtah*), and the poor of your nation will eat, and what they leave over the beasts of the field shall eat. So you shall do with your vineyard and with your olive grove. (*Shemot* 23:10-11)

The Torah clearly presents these two terms as a means of distinguishing between the six years that precede it, in which one is to sow and gather one's grain, and the seventh year in which none of these actions are to be performed. Yet the exact definition of these terms is unclear. The first term, *tishmetenna* has the same root as the word *shemitta*, but the imperative "*shamot*" only appears in reference to financial remission in *Parashat Re'eh*; otherwise, the seventh year is primarily referred to as *Shabbat ha-aretz*. This makes the lone mention of *tishmetenna* all the more important. In fact, some believe that here as well, the reference is to a financial release, *shemittat kesafim,* as ibn Ezra states explicitly: *tishmetenna* is a reference to the release of loans, while *u-ntashtah* refers to letting the land lie fallow, "as if it isn't his”(in his short commentary). Seforno explains:

*Tishmetenna* — this refers to the release of debts… *U-ntashtah —* abandon it so that the poor of your people may eat. Through the release of the soil, the poor will also be able to eat.

If so, debt relief is an essential part of the *shemitta* year, both naming and initially defining it. Moreover, the agricultural and the financial components are connected, as both indicate a serious deviation from normal conduct, combining to give *shevi’it* its unique flavor. The twin aspects of the *shemitta* year live side by side: *Shabbat ha-aretz*, the agricultural aspects of the year, and *shemitta*, the financial aspects associated with remitting debts.

According to this understanding, *Parashat Mishpatim* introduces us to two social concepts of the seventh year simultaneously, financial and agricultural: *tishmetenna* for loans, *u-ntashtah* for lands.

**Fully Agricultural**

However, this view is rejected by the majority of commentators. They explain that both terms refer to the agricultural elements of *shemitta* (as seen from the previous verse discussing the sowing and harvesting performed in the preceding six years), each in its own way: *tishmetenna* focuses on the ground, *u-ntashtah* on the produce.

For instance, Targum Yonatan explains that *tishmetenna* bans working the field, and *u*-*ntashtah* requires that one make the fruits *hefker* (ownerless).

Others explain the verse as referring to two obligations regarding the field. Rashi, in his second explanation, states:

*Tishmetenna* — from real work, such as plowing and sowing; *u-ntashtah —* and abandon it from fertilizing and hoeing.

This indicates a positive mitzva to refrain from work in the field which is not subsumed under the explicit negative prohibitions requiring that one refrain from sowing and harvesting in the standard manner, and according to Rabbi Akiva plowing as well.

The Ramban takes issue with the explanations of Rashi and the Ibn Ezra, noting that neither of their explanations are in line with the Sages’ understanding of the verses. He explains that the previous verse states that during the six years one plants and harvests the crops. Therefore, this verse states that the seventh year is different in both ways:

But the seventh year, *tishmetenna —* you must not sow your land; *u-ntashtah —* you must not gather in what grows on its own, but instead you are to leave it so that the poor of your people and the beasts of the field may eat the fruits of the tree and the produce of the vineyard.

Although according to these explanations the two terms refer to both the land and the fruits respectively, nevertheless they both limit the landowner's hold on "his" property.

Chizkuni *(v.* 10) explains that *shemitta* is mentioned here because the Torah allocates the produce of the seventh year to the poor and the underprivileged. Interestingly, Chizkuni cites a Midrashic source with an interesting caveat indicating a certain level of ownership even during *shemitta*:

In another verse, the Torah writes (*Vayikra* 25:6) "for you, your male servant, your female servant, your hired hands and your residents.” How may we reconcile this? Rather, when there is an abundance of produce, then everyone is entitled to eat from it; when there is scarcity, however, only you and your household are entitled to eat from it.

The *Mekhilta* notes the contradiction between the verses in *Parashat* *Mishpatim* and those in *Parashat* *Behar* regarding who is the real owner of the fruit during the *shemitta* year. *Parashat* *Mishpatim* understandably attributes no ownership to the actual owner; therefore, the *Mekhilta* explains that it is specifically when there is enough to go around that the owner must give up all his distinct ownership.

*Parashat Mishpatim* focuses on the social aspects of equality which *shemitta* provides; all are entitled to eat from the produce, all are given time to rest from their backbreaking work… yet as we saw pointed out by Alshikh in last lesson, there is a spiritual purpose to this rest, expressed through the *neshama yetera* provided, which enables the merger of physical and spiritual.

**Relinquishing Ownership**

Thus, most commentators understand that this verse mandates the relinquishment of ownership over produce from one’s fields and trees and making it *hefker,* abandoned and ownerless. According to this understanding, *tishmetenna* addresses the owners while *u-ntashtah* speaks of the land, alluding to *Shabbat ha-aretz* in *Parashat Behar.*

Let us consider the nature of this law. The Rambam in his *Sefer Ha-mitzvot* writes:

The 134th *mitzva* is that we are commanded to disown everything which the land produces during the *shemitta* year; to release everything which grows on our property for the use of any living creature. The source of this commandment is God's statement, "But in the seventh, you shall release it and let it lie fallow.

***Hefker = Shemitta***

In his *Mishneh Torah*, the Rambam refers to this act of making the produce *hefker*, relinquishing ownership over it, as an act of *shemitta* (using the term from the verse), explaining what violating it means:

It is a positive commandment to divest oneself from everything that the land produces in the Sabbatical year … Anyone who locks his vineyard or fences off his field in the sabbatical year has nullified a positive commandment. This also holds true if he gathers all his produce into his home. Instead, he should leave everything ownerless. Thus everyone has equal rights in every place, as [*ibid.*] states: "And the poor of your nation will eat." One may bring a small amount into one's home, just as one brings from ownerless property, e.g., five jugs of oil, fifteen jugs of wine.

The Rambam explains that any act of locking one's vineyard or actively preventing others from taking possession of one's fruits is a violation of this mitzva. In *Hilkhot Mattenot Aniyim* (6:5) the Rambam points out that produce which is ownerless, such as the produce of the seventh year, is not liable to the obligations of separating the gifts of *teruma* and the like (see also *Hilkhot Terumot* 2:9-12).

The Rambam elsewhere in *Sefer Ha-mitzvot* (Negative222-3) explains that two *halakhot* of *shemitta* mentioned in *Parashat Behar* are a direct outgrowth of the status of the produce of one's fields being *hefker*. There the Torah mentions among the prohibited agricultural activities of the *shemitta* year harvesting normally either that which grows directly from the ground or that which grows on trees. Then he explains the following:

The 222nd prohibition is that we are forbidden from harvesting in the normal way crops which the ground produces on its own during the seventh year*.*.. The intention of the verse is that one may not harvest in the same way one harvests grain during other years. One may only gather it as if it was ownerless…

Similarly, regarding harvesting fruits from trees, he states:

The 223rd prohibition is that we are forbidden from gathering in the normal manner fruit which trees produce during *shemitta.* We must make a change in order to demonstrate that it is consideredownerless.

This requirement of rendering the produce *hefker* is central to the identity of the *shemitta* year. The Chinnukh (84) points out that this requirement earns the year its appellation.

With this in mind, it behooves us to determine the nature of this obligation, its goal and purpose. What we will find is that the act of relinquishing one's hold on their property benefits others, while also transforming one's character and perspective on wealth.

**The Goals**

The Torah itself explicitly presents the rationale for this act of *shemitta*: “And the poor of your nation will eat.” The Zohar (*Vayikra* 108) explains that the poor are often limited in their means of mobility, and therefore logic dictates that during the *shemitta* year, despite the depletion of resources, they must largely remain where they are. Therefore, during the *shemitta* year, they are to be allowed to enjoy the crops. Although all may partake of these ownerless fruits, the primary benefit is to the poor who have nothing of their own (see Ralbag, *Vayikra* 25). Abarbanel (*Shemot* 23:10) notes that this social benefit of *shemitta* is somewhat present during the weekly Shabbat as well, as the underprivileged receive a day of rest too, as do one's animals.

Yet, besides these social *bein adam le-chavero* benefits, there are other goals as well, in the theological *bein adam la-Makom* and character-building *bein adam le-atzmo* realms.

Religiously, relinquishing one's hold on the land allows the owner to "remember that the land which brings forth its fruits yearly does not bring forth fruits through its own powers, but because there is a master over the land and over the land's owners…" (Chinnukh 84). Through this recognition, man also fortifies his *bitachon* in God, as man realizes that without "his," fields his survival and success are dependent upon the Almighty. Rabbeinu Bachya (*Vayikra* 25) adds that since the purpose of the *shemitta* year is to realize God's mastery over the land, one releases the hold on the land "in order to allow man to contemplate in his heart that God is the true owner and Master.”

The Shem Mi-Shmuel (*Vayikra* 25) notes that during the *shemitta* year is the ideal time for one to acknowledge God's true control and ownership by relinquishing one's hold on the land. The Keli Yakar (ibid.) states that the primary goal of relinquishing ownership is recognizing God’s possession, but once one already doing so, it is proper that it then be abandoned so that the poor can benefit from it.

**Whose Land?**

Rabbeinu Bachya (23:10) observes a distinction between the way in which the Torah phrases the obligations of *shemitta* (“your land”) as opposed to those of *yovel* (“the land”), as follows:

…The Torah uses direct language when speaking about either the Shabbat day or the Shabbat year, whereas when speaking of the jubilee year, it uses the third person, speaking in more general terms... Seeing that immediately after Shabbat one may resume work and immediately after the *shemitta* year the farmer may recommence his usual activities of plowing and sowing etc. the Torah used direct language as the farmer considers the land as his own. After the seventh year preceding the jubilee year, which is also a *shemitta* year, i.e. a year when he did not work his field, the farmer must not wait another year before he can again treat the land as if it were his own. That is why the Torah hints at this factor by using indirect language in speaking of the land in question. Even the manner in which the Torah describes the abandoning of the land during *shemitta*, “you shall release it (*tishmetenna*) and let it lie fallow (*u-ntashtah*)" indicates that the land has ceased to belong to the farmer during that year. The relationship between us and the land during the *shemitta* year is that whereas we abandon **it, it**does not abandon us. The reason is that once again we will resume our activities upon it demonstrating that it is ours. The same is not the case with the jubilee year, as many fields will return to owners who had previously been forced to sell them for one reason or another. It is therefore appropriate to speak of such land in the third person, i.e., not addressing a specific owner.

Rabbeinu Bachya's words are very understandable based on our analysis. When *yovel* comes, many individuals will lose possession of the fields they have purchased, and therefore, it is far easier to recognize that they are not the true owners of their fields. However, the same is not true with regard to *shemitta*. During the seventh year, man knows that he will return to his fields the following year, and he will even be charged with the task of working the land and harvesting its bounty. The land remains one's own, but man must fulfill *tishmetenna,* abandoning his claim to it and relinquishing his rights to its fruit. What might be the purpose in doing so?

Rav Hirsch (*Shemot* 23:10-11) explains that doing so will allow one to recognize who really is in control of the land. He states:

For six years you shall sow your land and treat it as your own property, but in the seventh year, *tishmetenna*, literally, you shall let the ground slip from your hand. You must neither plow it nor sow it. *U-ntashtah* – you must abandon whatever grows upon it; leave it alone; do not treat it as your own. The poor among your people, who at all other times are dependent on your goodwill, may now enjoy the produce of your land, without first having to ask your permission. And whatever they leave over shall be left for the beasts of the field…

By observing the mitzva of *shemitta,* an entire nation proclaims before the world that its land belongs to God, and that He is the land's one, sole true Master. In the seventh year, the nation refrains from exercising its rights of ownership and humbly returns its land to the Lord of all the earth. By doing so, the people acknowledge that they are strangers and sojourners on their own land, dwelling on it only by the grace of the Owner. Then the arrogance that causes men, secure on their own land, to become callous and harsh in dwelling with those without property, melts away, yielding to love and kindness toward the stranger and the poor. Even the wild animals, as God's creatures, are considered endowed with rights on God's earth, upon which all are to dwell together.

**The Nature of the Obligation**

In the practical realm, this mitzva means that all produce endowed with *kedushat shevi'it*, the holiness of the seventh year, is regarded as ownerless. For this reason, the Rambam (*Hilkhot Mattenot Aniyim* 6:5) notes that no *teruma* etc. is set aside during the *shemitta* year, as mentioned above. However, the rationale behind this law is subject to a very fascinating dispute between the Beit Yosef and the Mabbit, with ramifications for the important question of whether produce belonging to a non-Jew that grows in Israel during the seventh year is subject to *teruma* etc. What creates the *afkata*, the expropriation, the removal of the ownership? Is it the farmer or the Creator?

The Beit Yosef (Responsa *Avkat Rokhel*, section 24) understands that the mitzva is that every Jew must declare his or her produce ownerless during the seventh year, an obligation which obviously does not fall on non-Jews. This is known as *afkata de-gavra*, personal expropriation. Therefore, produce from non-Jewish land, even if processed by a Jew, will not be deemed ownerless and will carry an obligation of *teruma.*

The Mabbit (Responsa, vol. I, no. 11), however, argues, and explains that *shemitta* produce is ownerless by royal expropriation, *afkata de-malka,* for the King, God, has annulled private ownership of produce during the seventh year. Thus, by definition, all *shemitta* produce, even that of a non-Jew, is free from any *teruma* obligation. For this reason, he explains, the Rambam says that one violates the mitzva by fencing in the land. Essentially, the sin is trying to exhibit ownership over produce that God has already mandated not to be his.

The Minchat Chinnukh (84, s.v. *Ve-ani mistapek*) points out that this dispute has a number of ramifications. One might be whether each landowner must verbally declare his produce ownerless, as the Rambam implies above. This is certainly the ideal approach (see *Dinei Shevi’it, Degel Yerushalayim,* 14, 3). According to other authorities, however, this is unnecessary, and the only demand placed upon owners is to leave the gates to their property open in order to allow access to those who wish to enter, as the produce is by definition ownerless.

Rav Moshe Feinstein (Responsa *Iggerot Moshe, YD* III, 90) offers an interesting middle position. He understands that one is required to renounce ownership of one's produce, but even if one fails to do so, the Torah declares his produce ownerless in any case.

The various halakhic practicalities of these laws are beyond the purview of our discussion, including Rav Kook's requirement to obtain permission from others before entering their property to partake of their produce and the Chazon Ish's permission for owners worried about other property being stolen to leave a note stating that the owners will give produce to whomever he wants, etc. However, the rationale behind this dispute is very significant.

There are two common understandings provided of the *hefker* obligation, which might be dependent on whether the obligation is *afkata de-gavra*, a mitzva that falls upon each person to actively declare his *shemitta* produce ownerless, or *afkata de-malka*, requiring one to actively recognize that God has repudiated all private ownership of produce during *shemitta*. Rav Yosef Zvi Rimon explains this in the following manner:

The logic underlying the first approach is that when a person willingly declares his produce ownerless, he internalizes the message that the land and the produce growing on it do not belong to him.

On the other hand, the very act of repudiating title to produce can infuse a person with the sense that he is the owner, because only an owner can declare his produce ownerless. Thus, according to the second approach, it is precisely the Torah’s insistence that all produce is automatically regarded as ownerless during the *shemitta* year that will bring a person to internalize the message that “the land is Mine; for you are strangers and sojourners with Me” (*Vayikra* 25:23).

One might add that according to Rav Moshe Feinstein's middle position, both are true. God has at His disposal the means of repudiating ownership of produce for all those who fail to do so on their own. The *shemitta* year provides man with an obligation and an opportunity — *tishmetenna*— for inculcating all the messages we delineated above, as well as Rav Kook's.

Rav Kook writes (*Shabbat Ha-aretz*, Introduction):

There is no desecration of sanctity, expressed by the strict claims of private property, regarding anything that grows during this seventh year; the endless desire of wealth, which is stimulated by business and trade, will be forgotten, as *shemitta* food is “‘For food,’ and not for medicine, ‘for food,’ and not for business and trade.” A beneficent eye (and point of view) and deep appreciation will rest on all with the blessing of God in the fruit of the land, “‘For food,’ and not for loss.” Mankind will return to their healthy nature in a manner where they will not need healing for sicknesses, which mostly come on account of harming one's balance in life while distancing oneself from the pure spiritual nature of man: “‘For food,’ but not for an emollient; ‘for food,’ but not for perfume; ‘for food,’ but not for an emetic.” A holy and elevated spirit will be poured out on all of life, "It will be a year of complete rest for the land, a Sabbath to God" (*Vayikra* 25:4-5).

Man may achieve *ayin tova*, a beneficent point of view, realizing that not everything in life is about ownership and amassing wealth.

However, for those who fail to do so, God will actively show man at least some of *shemitta*‘s lessons, by showing who the King is and who is just a sojourner in the land.

Next lesson we hope to continue examining the Torah's discussion of *shemitta*, analyzing the possible mention in *Parashat Ki Tisa.*