YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**Halakha and Israeli History**

**Rav Aviad Tabory**

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**Relocating the US Embassy to Jerusalem**

**Historical Background**

The UN Partition Plan of 1947 envisioned Jerusalem as being under international control, but the War of Independence left the western half under Israeli control and the eastern half under Jordanian control. In December 1949, Prime Minister David Ben-Gurion made clear that Jerusalem would be the capital of the newborn State of Israel, on both the fifth and thirteenth of the month. In his statement on the latter, he declared:

From the establishment of the Provisional Government we made the peace, the security and the economic consolidation of Jerusalem our principal care. In the stress of war, when Jerusalem was under siege, we were compelled to establish the seat of Government in Tel Aviv. But for the State of Israel there has always been and always will be one capital only - Jerusalem the Eternal. Thus it was 3,000 years ago - and thus it will be, we believe, until the end of time.[[1]](#footnote-1)

On the twenty-sixth of that month, the Knesset formally convened in Jerusalem, and on 23 January 1950 it proclaimed that "Jerusalem was, and had always been, the capital of Israel” and called for the construction of a permanent parliament building there.

However, most countries did not accept this Israeli position and established their embassies in other Israeli cities.

**Recognition of Jerusalem by the US Congress**

On 23 October 1995, The Jerusalem Embassy Act was passed by the US [Congress](https://en.wikipedia.org/wiki/104th_United_States_Congress), taking effect on 8 November.

The Act recognized Jerusalem as the capital of the State of Israel and called for the relocation of the [Embassy of the United States in Israel](https://en.wikipedia.org/wiki/Embassy_of_the_United_States%2C_Jerusalem) from [Tel Aviv](https://en.wikipedia.org/wiki/Tel_Aviv) to [Jerusalem](https://en.wikipedia.org/wiki/Jerusalem) by 31 May 1999. However, the law allowed the president to invoke a six-month waiver of the application of the law and reissue the waiver every six months on grounds of "national security." Presidents [Clinton](https://en.wikipedia.org/wiki/Bill_Clinton), [Bush](https://en.wikipedia.org/wiki/George_W._Bush) and [Obama](https://en.wikipedia.org/wiki/Barack_Obama) repeatedly renewed the waiver, thus postponing the move.

Finally, on 23 February 2018, President Trump announced that the US Embassy would open in Jerusalem. The [Embassy](https://en.wikipedia.org/wiki/Embassy_of_the_United_States%2C_Jerusalem) officially relocated to Jerusalem on 14 May 2018, coinciding with the seventieth anniversary of the [Israeli Declaration of Independence](https://en.wikipedia.org/wiki/Israeli_Declaration_of_Independence).

What is the significance of this move? Some argue (cynically) that it is merely a political decision and has no religious meaning. In today’s *shiur,* we will discuss the question of whether the recognition of Jerusalem as the capital of the State of Israel has any religious or halakhic ramifications. Many of the ideas discussed here are based on my father Rav Binyamin Tabory’s [audio *shiurim*](https://kmtt.libsyn.com/size/5/?search=yom+yerushalayim)*,* which are available through the VBM. It is with his approval that I write this article.

**Jerusalem’s Dual Nature**

The great poet and kabbalist Rav Shelomo Ha-Levi Alkabetz, (c. 1500–1576) expresses his love and yearning to Jerusalem in his poem [*Lekha Dodi*](https://en.wikipedia.org/wiki/Lecha_Dodi), universally used by Jewish communities worldwide to welcome the holiness of Shabbat.

In the fourth stanza, he appropriates two biblical phrases to describe the two sides of this special city: “*Mikdash melekh, ir melukha*” — “Temple of the king, city of kingship.”

The Gemara teaches us that a coin existed in Jerusalem which mentioned the uniqueness of the city:[[2]](#footnote-2) on one side, it said *David u-Shelomo;* and on the other, *Yerushalayim ir ha-kodesh*.

***Mikdash Melekh***

The Temple (*Beit Ha-mikdash*) was built in Jerusalem, the First by King Shelomo and the Second by the returnees from Babylonian exile. The question which we will deal with is the following: does the Temple affect the city’s status, or are the Temple and Jerusalem two separate entities?

The Rambam understands that the *kedusha* (holiness) of the Land of Israel, established in the days of Yehoshua, is annulled at the time of the destruction of the First Temple. However, the Rambam argues that the original *kedusha* of the Temple remains intact, since its special status was created by God. Thus, even today, when the Temple is in ruins, there are restrictions on who may set foot upon the Temple Mount.

The Rambam based on the Talmud Yerushalmi, is of the opinion that the *kedusha* of the Temple “overflows” into the city itself; thus he claims that since the days of the First Temple, the *kedusha* of Jerusalem has remained intact.

Why do I say that the original consecration sanctified the Temple and Jerusalem for eternity, while in regard to the consecration of the remainder of the Land of Israel, in the context of the sabbatical year, tithes, and other similar laws, it did not sanctify it for eternity?

Because the sanctity of the Temple and Jerusalem stems from the Divine Presence, and the Divine Presence can never be nullified. Therefore, the verse (*Vayikra* 26:31) states: "I will lay waste to your sanctuaries." The Sages declared: "Even though they have been devastated, their sanctity remains” [[3]](#footnote-3).

This opinion of the Rambam has interesting halakhic ramifications, specifically regarding *mitzvot* that are connected to the Temple.

***Lulav* for Seven Days**

The Torah commands us to shake the *lulav* on the first day of Sukkot.[[4]](#footnote-4) However, in the Temple the mitzva is to shake the *lulav* all seven days.[[5]](#footnote-5)

Is there a biblical mitzva to shake the *lulav* in the rest of Jerusalem for all seven days? The Rambam’s opinion in this matter is unclear. In *Mishneh Torah*, he mentions the Temple only;[[6]](#footnote-6) however, in his *Commentary on the Mishna*, he argues that the Temple and Jerusalem share the same status.[[7]](#footnote-7)

The commentaries discuss the Rambam’s view on this matter. While Rav Manoach ben Yaakov (13th century) understands that the opinion mentioned in the Rambam’s *Commentary on the Mishna* is the correct one,[[8]](#footnote-8) Rav Soloveitchik endorses the opinion mentioned in *Mishneh Torah*.[[9]](#footnote-9)

Poskim debate the relevancy of this issue in our days.

Rav Yaakov Ettlinger (1798-1871) questions the status of this mitzva in the 19th century and concludes that, according to the Rambam, there is a biblical mitzva today to shake *lulav* in Jerusalem for a full week. He therefore suggests that people living in Jerusalem should take care that their Four Species are biblically kosher on all seven days.[[10]](#footnote-10)

In fact, there are people who, upon visiting the Old City of Jerusalem during Sukkot, accordingly shake the *lulav* again, thus fulfilling the biblical mitzva.

In his commentary on the Talmud, Rav Meir Simcha of Dvinsk (1843–1926) argues against this opinion.[[11]](#footnote-11)

***Ir Melukha***

Since the days of King David, Jerusalem has served as the capital of Israel. When David chooses Jerusalem as his capital, it seems that he is unaware that one day it will be the home of the Temple. His reasons seem to be pragmatic, to ensure that his capital “belongs” to all the people of Israel. He therefore chooses a location which does not belong solely to his tribe, Yehuda, as his former capital, Chevron, does.

Rav Herschel Schachter discusses the religious importance of Jerusalem as the capital of Davidic kingship.[[12]](#footnote-12) He explains that the king of Israel reflects divine kingship in this world. Thus, Jerusalem, the capital of King David, symbolizes the capital of God’s kingship in the world.

The Rambam’s ruling that “only a descendent of David may be appointed as king in Jerusalem[[13]](#footnote-13)” proves this theory, for only a king from the Davidic dynasty reflects divine kingship.

Rav Schachter then raises the question of whether the American government’s decision not to recognize Jerusalem as the Israeli capital (the book was printed in 2007) is justified or not. On the one hand, he argues that the government residing in Jerusalem today is not of the Davidic dynasty, and therefore Jerusalem cannot be recognized as the true capital of Israel. On the other hand, he suggests that this problem would only exist if the Israeli government is halakhically recognized as kingship*.*

**The Rebuilding of Jerusalem in the *Amida***

The idea that Jerusalem’s essence is to serve as the capital of Davidic kingship can be proven from our *tefillot* and *berakhot*.

The fourteenth blessing of the *Amida* is *Bonei Yerushalayim* ("Who rebuilds Jerusalem"), in which we ask God to rebuild Jerusalem and to [restore the kingship of David](https://en.wikipedia.org/wiki/Jewish_eschatology).

Notice that there are three main parts to the *berakha*:

1. Return in mercy to Jerusalem, Your city, and dwell therein as You have promised;
2. And rebuild it, soon in our days, as an everlasting edifice;
3. And speedily establish therein the throne of David Your servant. Blessed are You, Lord, Who rebuilds Jerusalem.

There are several questions which arise regarding this *berakha*.

Rav Yoel Sirkis questions the order of requests mentioned in the *berakha.*[[14]](#footnote-14) There is a rule that the concluding “Blessed are You…” must be similar in context to the preceding phrase. Therefore, the request, dealing with the throne of David, should not be recited at the end of the *berakha*.

He therefore justifies the Sephardic custom which changes the order and ends the *berakha* differently:

1. Return in mercy to Jerusalem, Your city, and dwell therein as You have promised;
2. Speedily establish therein the throne of David Your servant,
3. And rebuild it, soon in our days, as an everlasting edifice. Blessed are You, Lord, Who rebuilds Jerusalem.

However, the mention of the Davidic kingship in this *berakha* seems odd. Why is the throne of David mentioned here at all? The question becomes especially difficult when we turn to the next *berakha* of the *Amida,* which is solely dedicated to the restoration of the kingship of David!

The answer to both questions must be that although there is a *berakha* dedicated to the return of the Davidic dynasty, the mention of it in the *berakha* for the rebuilding of Jerusalem has to do with Jerusalem itself. We are not merely praying for houses, buildings and parks to be built in Jerusalem; rather, we pray that the house of King David will return to the city, for that surely is the real essence of the rebuilding of Jerusalem!

**The Rebuilding of Jerusalem in *Birkat Ha-mazon***

This same idea repeats itself in *Birkat Ha-mazon*. It is a biblical obligation to recite *berakhot* after eating a meal, although the text we recite was written by the rabbis. The Gemara quotes an opinion that claims that one must mention Davidic kingship as well.[[15]](#footnote-15) The Gemara seems to indicate that this is a biblical obligation. The obvious question is the following: what is the source in the Torah for this ruling?

Let us examine the verse in the Torah that teaches us *Birkat Ha-mazon*:

And you will eat and be sated, and you shall bless the Lord, your God, for the good land He has given you.[[16]](#footnote-16)

Each element has its parallel in the text.

1. **You shall bless the Lord, your God** — first *berakha*, *Ha-zan,* the blessing on the food
2. **Land He has given you** — second *berakha*, *Al Ha-aretz,* blessing on the Land of Israel
3. **For the good** *—* third *berakha*, *Bonei Ve-rachamav Yerushalayim,* as the Gemara explains that the good of the Land of Israel is Jerusalem.[[17]](#footnote-17)

However, the Gemara obligates one to mention the kingship of David; where is that in the Torah?

Here again the answer is that the rebuilding of Jerusalem **is** the return of Davidic kingship to the city.

**Tearing Clothes over the *Churban***

Rav Yosef Karo, basing his ruling on the Gemara, concludes that one who observes the *churban* of Judea must tear his or her garments.[[18]](#footnote-18)

He mentions three separate locations: the cities of Judea, the city of Jerusalem and the site of the Temple. On each of these locations, a separate tear must be made.

The Poskim maintain that *churban* is not necessarily a physical term describing destruction, but rather the lack of Jewish sovereignty.[[19]](#footnote-19) Based on this logic, Rav Schachter explains the custom today not to tear garments while observing the cities of Judea.[[20]](#footnote-20)

The logic of tearing one’s garments on the Temple seems to apply nowadays, since the reason is the physical *churban* of the Temple.

However, what is the reason for tearing garments on the destruction of Jerusalem? There are two options: the lack of Jerusalem’s being *ir melukha* or the lack of its being *mikdash melekh*.

If the main reason is the lack of Jewish sovereignty, then after 1967, it is possible that there is no obligation to tear garments. However, if the reason is based on the lack of the Temple, then even today we must tear our clothes over Jerusalem.

In today’s *shiur*, we have proven that the uniqueness of our capital city for three millennia has to do with its being the home of the *Beit Ha-mikdash* as well as the home of Davidic kingship.

It seems to me that although the USA’s recognition of Jerusalem as our country’s capital is not revolutionary, it is still significant for it has brought us, we hope, one step closer towards Jerusalem being the *ir melukha*.

1. Available at: https://www.knesset.gov.il/docs/eng/bengurion-jer.htm. [↑](#footnote-ref-1)
2. BT *Bava Kama* 97b. [↑](#footnote-ref-2)
3. *Hilkhot Beit Ha-bechira* 6:16 [↑](#footnote-ref-3)
4. *Vayikra* 23:40. [↑](#footnote-ref-4)
5. See Rashi on Mishna, BT *Sukka* 41a. [↑](#footnote-ref-5)
6. *Hilkhot Shofar, Sukka Ve-lulav* 7:13. [↑](#footnote-ref-6)
7. *Mishna Sukka* 3:10. [↑](#footnote-ref-7)
8. *Hilkhot Shofar, Sukka Ve-lulav* 2:8. [↑](#footnote-ref-8)
9. See *Harerei Kedem,* Vol.1, p. 248. [↑](#footnote-ref-9)
10. *Bikkurei Ya’akov* 658:1. [↑](#footnote-ref-10)
11. *Chiddushei Rabbeinu Meir Simcha,* Vol.1, p. 242. [↑](#footnote-ref-11)
12. *BeIkvei HaTzon* 33. [↑](#footnote-ref-12)
13. *Hilkhot Melakhim* 1:10. [↑](#footnote-ref-13)
14. *Bach, OC* 118. [↑](#footnote-ref-14)
15. BT *Berakhot* 48b. [↑](#footnote-ref-15)
16. *Devarim* 8:10. [↑](#footnote-ref-16)
17. BT *Berakhot* 48b. [↑](#footnote-ref-17)
18. *OC* 561:1-2. [↑](#footnote-ref-18)
19. See *Bach* on *Tur* ad loc. [↑](#footnote-ref-19)
20. *BeIkvei HaTzon* 18. [↑](#footnote-ref-20)