

HALACHIC AND HASHKAFIC ISSUES IN CONTEMPORARY SOCIETY

226 - SHEMITA 5782: PART 2 - HISTORICAL BACKGROUND OU ISRAEL CENTER - SUMMER 2021

- In Part 1 we examined some of the foundational principles of Shemita - the Torah verses, the negative and positive mitzvot, Tosefet Shevi'it, the prohibited types of work - Torah and Rabbinic, and we also started a discussion about the nature of *kedushat shevi'it*.
- In this shiur, we will look at a more historical perspective: how the mitzva of Shemita takes effect after the Churban, and how the modern conversation about Shemita developed over the last 150 years.

A] SHEMITA BEFORE THE FIRST TEMPLE

1. דָּבַר אֶל-בְּנֵי יִשְׂרָאֵל וְאָמַרְתָּ אֲלֵהֶם כִּי תֵבְאוּ אֶל-הָאָרֶץ אֲשֶׁר אֲנִי נֹתֵן לָכֶם וְשָׁבַתָּה הָאָרֶץ שְׁבַת לָהּ.

ויקרא כה:ב

Shemita only came into effect after the Jewish people entered Eretz Yisrael.

2. כָּל-הַמְּקוֹם אֲשֶׁר תִּדְרֹךְ כַּף-רַגְלֶיךָ בּוֹ לָכֶם יְהִי מִן-הַמִּדְבָּר וְהַלְבָּנוֹן מִן-הַנְּהַר נְהַר-פָּרָת וְעַד הַיַּם הָאֲחֵרֹן יְהִי גְבֻלְכֶם.

דברים יא:כד

The Torah defines the boundaries of Eretz Yisrael by reference to actual conquest (kaf raglechem) not technical borders.

3. שֵׁשׁ שָׁנִים תִּזְרַע שְׂדֵךְ וּשְׁשׁ שָׁנִים תִּזְמַר כְּרֶמֶץ וְאִסַּפְתָּ אֶת-תְּבוּאָתָהּ: וּבִשְׁנָה הַשְּׁבִיעִית שְׁבַת שְׂבָתוֹן יְהִי לָאָרֶץ שְׁבַת לָהּ שְׂדֵךְ לֹא תִזְרַע וְכְרֶמֶץ לֹא תִזְמַר.

ויקרא כה:ג-ד

Shemita is also dependant on personal ownership of the fields.

4. (ח) וְסִפַּרְתָּ לָךְ שִׁבְעַת שָׁנִים שִׁבְעַת שָׁנִים וְהָיָה לָךְ יָמֵי שִׁבְעַת שְׁבָתוֹת הַשָּׁנִים תִּשַׁע וְאַרְבָּעִים שָׁנָה: (ו) וְקִדְשָׁתָם אֶת שְׁנַת הַחֲמִשִּׁים שָׁנָה וְקִרְאתָם דְּרוֹר בְּאָרֶץ לְכָל-יֹשְׁבֵיהָ יוֹבֵל הוּא תְהִיָּה לָכֶם וְשְׁבָתָם אִישׁ אֶל-אֲחֵזְתּוֹ וְאִישׁ אֶל-מִשְׁפַּחְתּוֹ תֵּשֵׁבוּ.

ויקרא כה:ח, י

Shemita is part of a larger 50 year cycle of Yovel, which is expressed to relate to ALL inhabitants of the Land.

5. וּמֵאִמְתַּי הִתְחִילוּ לִמְנוֹתָ: מֵאַחַר אַרְבַּע עָשָׂר שָׁנָה מִשְׁנַכְנְסוּ לָאָרֶץ שְׁנֵאָמַר (ויקרא כה:ג) שֵׁשׁ שָׁנִים תִּזְרַע שְׂדֵךְ וּשְׁשׁ שָׁנִים תִּזְמַר כְּרֶמֶץ - עַד שִׁיְהִיָּה כָּל אֶחָד מִכִּיר אֶת אֶרְצוֹ. וְשִׁבְעַת שָׁנִים עָשׂוּ בְּכַבוֹשׁ הָאָרֶץ וְשִׁבְעַת שָׁנִים בְּחִלּוֹק. וּמְנוֹ שִׁבְעַת שְׁמֹטוֹת וְקִדְשׁוֹ שְׁנַת הַחֲמִשִּׁים שֶׁהִיא שְׁנַת אַרְבַּע וְשִׁשִּׁים מִשְׁנַכְנְסוּ לָאָרֶץ.

רמב"ם הלכות שמיטה ויובל פרק י הלכה ב

The Shemita and Yovel cycle therefore started 14 years after Yehoshua and the Jewish people entered the Land. There were 7 years of public conquest, 7 years of division of the Land into private ownership and then the count started. So the first Yovel year was 64 years after they entered the Land.

B] SHEMITA DURING THE FIRST AND SECOND TEMPLE

6. דַּתְנִיָּא: מִשְׁגֵּלוֹ שְׁבַת רַאוּבֵן וְשְׁבַת גַּד וְחֻצֵי שְׁבַת הַמְּנַשֶּׁה בְּטֵלוּ יוֹבֵלוֹת. שְׁנֵאָמַר: וְקִרְאתָם דְּרוֹר בְּאָרֶץ לְכָל-יֹשְׁבֵיהָ - בְּזִמְנֵי שְׁבַת יוֹשְׁבֵיהָ עֲלֶיהָ וְלֹא בְּזִמְנֵי שְׁבַת מִקְצָתָהּ. יִכּוֹל הוּא עֲלֶיהָ וְהוּן מְעוֹרְבִין - שְׁבַת בְּנִימִין בִּיהוּדָה וְשְׁבַת יְהוּדָה בְּבִנְיָמִין - יְהִי יוֹבֵל נוֹהֵג: תִּלְמוּד לומֵר: לְכָל יוֹשְׁבֵיהָ - בְּזִמְנֵי שִׁוְשְׁבִיהָ כְּתִיקוֹנָהּ וְלֹא בְּזִמְנֵי שְׁהָן מְעוֹרְבִין!

ערכין לב:

Yovel is only in effect when the 12 Tribes¹ are present in the Land and living in their respective territories. As such, once the first of the Tribes were exiled, well before the end of the 1st Temple Yovel ceased to apply.

7. שְׁבַע עָשָׂר יוֹבְלִים מִנוּ יִשְׂרָאֵל מִשְׁנִכְנְסוּ לְאֶרֶץ וְעַד שְׁנִיָּאוּ. וְשָׁנָה שְׁנִיָּאוּ בָּהּ שְׁחָרַב הַבַּיִת בְּרֵאשׁוֹנָה מוֹצָאֵי שְׁבִיעֵית הַיְּתָה וְשָׁנַת שֵׁשׁ וְשָׁלְשִׁים בְּיוֹבֵל הַיְּתָה. שְׁאַרְבַּע מֵאוֹת שָׁנָה וְעֶשֶׂר שָׁנִים עָמַד בֵּית רֵאשׁוֹן. כִּיּוֹן שְׁחָרַב הַבַּיִת בָּטַל מִנֵּן זֶה. מִשְׁבֻּטָּלָה נִשְׁאַרָה הָאֶרֶץ חֲרָבָה שְׁבַעִים שָׁנָה וְנִבְנָה בֵּית שְׁנִי. וְאַרְבַּע מֵאוֹת וְעֶשְׂרִים שָׁנָה עָמַד. וּבְשָׁנָה הַשְּׁבִיעֵית מִבְּנִינוּ עָלָה עֲזָרָא וְהִיא הַבִּיָּאָה הַשְּׁנִיָּה. וּמִשָּׁנָה זֹאת הִתְחִילוּ לִמְנוֹת מִנֵּן אַחַר. וְעִשׂוּ שָׁנַת י"ג לְבִנְיָן בֵּית שְׁנִי שְׁמִטָּה. וּמִנוּ שְׁבַע שְׁמִטוֹת וְקִדְּשׁוּ שָׁנַת הַחֲמִשִּׁים. אִף עַל פִּי שְׁלֹא הַיְּתָה שָׁם יוֹבֵל בְּבֵית שְׁנִי מוֹנִין הִיוּ אוֹתוֹ כְּדִי לְקַדֵּשׁ שְׁמִטוֹת.

רמב"ם הלכות שמיטה ויובל פרק י הלכה ג

The Rambam understands that the Jewish people counted Shemita and Yovel during the 1st Temple period 49+1, 49+1 etc. Once the Temple was destroyed and during the 70 years of Galut Bavel, they did not count at all. Once Ezra returned to Eretz Yisrael they considered that to be 'Year 1' and resumed the count - still 49+1, 49+1 etc. Even though the halacha of the Yovel year no longer applied, they still counted the 50th Year as a nominal Yovel so as to keep the count accurate.

8. א"ר נחמן בר יצחק: מנו יובלות לקדש שמיטין. הניחא לרבנן דאמרי: שנת חמשים אינה מן המנין, אלא לרבי יהודה דאמר: שנת חמשים עולה לכאן ולכאן, למה לוי בשמיטין סגיא?

ערכין לב:

Chazal explain that the Rambam's counting system of 49+1 (even when the Yovel did not apply) is actually only one opinion - that of the Rabbanan. Rabbi Yehuda understood that Yovel was NEVER a separate 50th year, but rather Yovel was concurrently the first year of the next 49 count. As such the count was always 49, 49, 49, 49 etc.

C] THE SHEMITA COUNT TODAY

- The Rambam continues the count of 49+1, 49+1 even after the Churban

9. ולפי חשבון זה שנה זו שהיא שנת אלף ומאה ושבע (1107) לחרבו, שהיא שנת שמונים ושבעה ואלף וארבע מאות (1487²) למנין שטרות, שהיא שנת שש ושלשים ותשע מאות וארבעת אלפים (4936) לציירה - היא שנת שמיטה והיא שנת אחת ועשרים מן היובל.

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According to this calculation, the Rambam identifies the year of his writing this text - 1176CE³ - as a Shemita year.

10. ה אָבֵל כָּל הַגְּאוּנִים אָמְרוּ שְׁמִטָּתָהּ הִיא בִּידֵיהֶם אִישׁ מִפִּי אִישׁ שְׁלֹא מִנוּ בְּאוֹתוֹ הַשְּׁבַעִים שָׁנָה שְׁבִין חֲרָבָן בֵּית רֵאשׁוֹן וּבִנְיָן בֵּית שְׁנִי אֵלָּא שְׁמִטוֹת בְּלִבָּד בְּלֹא יוֹבֵל. וְכֵן מִשְׁחָרַב בְּאַחֲרוֹנָה לֹא מִנוּ שָׁנַת הַחֲמִשִּׁים אֵלָּא שְׁבַע שְׁבַע בְּלִבָּד מִתְחִלַּת שָׁנַת הַחֲרָבָן. וְכֵן עוֹלָה בְּגִמְרָא עֲבֻדָּה זָרָה חֲשׁבוֹן זֶה שְׁהוּא קִבְּלָה. וְשָׁנַת הַשְּׁמִטָּה יְדוּעָה הִיא וּמִפְּרִסְמַת אֶצֶל הַגְּאוּנִים וְאִנְשֵׁי אֶרֶץ יִשְׂרָאֵל. וְכֵלְן לֹא מִנוּ אֵלָּא לְשָׁנֵי חֲרָבָן מִשְׁלִיכִין אוֹתוֹן שְׁבַע שְׁבַע. וְלִפִּי חֲשׁבוֹן זֶה תְּהִי שָׁנָה זֹאת שְׁהִיא שָׁנַת שְׁבַע וּמֵאָה וְאַלְף לְחֲרָבָן (1107) מוֹצָאֵי שְׁבִיעֵית. וְעַל זֶה אָנוּ סוֹמְכִין. וְכִפִּי הַחֲשָׁבוֹן זֶה אָנוּ מוֹרִין לְעֵנָן מַעֲשָׂרוֹת וְשְׁבִיעֵית וְהַשְּׁמִטָּה כְּסָפִים שֶׁהַקְּבָלָה וְהַמַּעֲשָׂה עֲמוּדִים גְּדוּלִים בְּהוֹרָאָה וּבְהוֹרָאָה רְאוּי לְהַתְּלוֹת:

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Nevertheless, the Rambam rules in practice that we rely on a different dating system of the Geonim which understands that, during periods of Churban (Galut Bavel and our present Galut) we DO NOT count Yovel years, but simply Shemita years - 7,7,7 etc. According to this system, the Rambam identifies the year of his writing this text - 1176 CE - as the year following Shemita year!!

- We see from here a number of fundamental differences as to the correct way to count the Shemita cycle today. We follow the psak of the Geonim, according to whom 1175 CE was a Shemita year and 2022 CE (847 years later) will also be a Shemita year⁴.
- According to the traditional count, this Shemita 5782, is the 279th Shemita since the destruction of the Second Temple.

1. This does not mean literally all the Jews. The commentators discuss whether a majority is needed, or whether even a minority representation of all the tribes will suffice

2. Minyan Shtarot was a standard dating system in the medieval period. According to this system the count begins with the founding of the Seleucid monarchy, following the battle of Gaza (autumn 312 BCE), which is officially regarded as the date of the founding of the empire. Many nations, including the Jews, regarded the following year, 311 BCE, as the beginning of that the new era.

3. This date also gives us some insight into the Rambam's writing and editing of the Mishne Torah. In his Introduction to the Mishne Torah, the Rambam mentions the date of the composition of the work as 4937, and in Hilchot Kiddush HaChodesh 11:16, he speaks of the date 4938. Thus it is apparent that he worked on the text for several years.

4. Nevertheless according to the dating system of the Rabbanan in the Gemara, Shemita should have been in 2018 CE and, according to R. Yehuda in 2021 CE - see <https://sites.google.com/site/yovelgeulah/chapter-1>.

D] IS SHEMITA TODAY MIN HATORAH OR MIDERABBANAN?

11. תנן: משקין בית השלחין במועד ובשביעית. שביעית, בין למאן דאמר משום זורע, ובין למאן דאמר משום חורש - זריעה וחרישה בשביעית מי שריי? - אמר אביי: בשביעית בזמן הזה (רש"י - דרזנו), ורבי היא (רש"י - דאמר דכוח מדרזנו, ומילתא דפסידא - שריי דרזנו). רבא אמר: אפילו תימא רבנן (רש"י - דפליגי עליה דרזני, ואמרי דשביעית בזמן הזה דאורייתא), אבות אסור רחמנא, תולדות לא אסור רחמנא. דכתיב (ויקרא כה:ד) **וּבְשָׁנָה הַשְּׁבִיעִית שְׁבַת שְׁבַתוֹן יִהְיֶה לְאֶרֶץ שְׁבַת לָהּ שְׁדָד לֹא תִזְרַע וְגו'.** מכדי, זמירה בכלל זריעה ובצירה בכלל קצירה, למאי הלכתא כתבינהו רחמנא? למימרא: דאהני תולדות - מיחייב, אחרוניתא - לא מיחייב.

מועד קטן ב:

There is a debate between the Amoraim and the Tannaim as to whether Shemita applies today on a deoraita or derabbanan basis. According to Rabbi Yehuda HaNasi, Shemita is inextricably linked to Yovel. As such, since Yovel does not apply today, Shemita cannot have Torah effect. It remains in force however on a derabbanan level so that the concept will not be forgotten. According to the Rabbanan, Shemita remains in full Torah force today.

12. ובזמן שהיובל נוהג - נוהג דין עבד עברי, ודין בתי ערי חומה. ודין שדה חרמים ודין שדה אֶחָזָה. ומקבלין גר תושב ונוהגת שביעית בארץ והשמטת כספים בכל מקום מן התורה. ובזמן שאין היובל נוהג אינו נוהג אחד מפל אלו חוץ משביעית בארץ, והשמטת כספים בכל מקום מדבריהם כמו שבארנו.

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13. ובזמן שאין היובל נוהג אינו נוהג עבד עברי, ולא בתי ערי חומה, ולא שדה אחוזה, ולא שדה חרמים, ואין מקבלין גר תושב, ונהגת שביעית בארץ מדבריהם וכל השמטת כספים בכל מקום מדבריהם כמו שבארנו.

רמב"ם שם גרסת פרנקל

The Rambam's ruling is not totally clear. In one girsa there is a possible indication that Shemita is still a Torah law today. In the other girsa, he explicitly rules leniently that all Shemita today is rabbinic.

14. וכיון שעלה עזרא וקדשה לא קדשה בכבוש אלא בתזקה שהחזיקו בה. ולפיכך כל מקום שהחזיקו בה עולי בבל ונתקדש בקדשת עזרא השנה הוא מקדש היום, ואף על פי שנלקח הארץ ממנו. ותיב בשביעית ובמעשרות על הדרך שבארנו בהלכות תרומה

רמב"ם הלכות בית הבחירה פרק ו הלכה טז

Elsewhere the Rambam rules that the original kedusha of Eretz Yisrael created by the conquest of Yehoshua was later removed during the Babylonian exile. When Ezra returned to rebuild the Land during the Second Temple period, the new kedusha was lesser in area - they did not occupy the same area of the Land as before, and also in nature - 'chazaka' rather than 'kibbush'. The Rambam links the current status of Shemita to that of Terumot.

15. התרומה בזמן הזה ואפלו במקום שהחזיקו עולי בבל ואפלו בימי עזרא אינה מן התורה אלא מדבריהן. שאין לך תרומה של תורה אלא בארץ ישראל בלבד ובזמן שכל ישראל שם שנאמר (ויקרא כה:ב) **כִּי תבאו - ביאת כלכם כשהיו בירשה ראשונה וכמו שהו עתידין לחזור בירשה שלישית.** לא כשהיו בירשה שנה שהיתה בימי עזרא שהיתה ביאת מקצתו. ולפיכך לא חיבה אונן מן התורה. וכן יראה לי שהוא הדין במעשרות שאין חיבין בזמן הזה אלא מדבריהם כתרומה

רמב"ם הלכות תרומות פרק א הלכה כו

Rambam is very clear that Terumot today are only obligated on a Rabbinic level since most of the Jewish people are not living in Israel.⁵

- So according to the Rambam there are **two** good reasons why Shemita today is derabbanan: (i) it is linked Yovel and Yovel no longer applies; and (ii) the kedusha of the land today stems from a minority occupation since Ezra.
- Other Rishonim disagree on this issue, as follows:-
Shemita is Rabbinic:- Rambam, Rashi, Rashba, Ritva, Ran, Yad Rama, Tur and other Rishonim.
Shemita is Deoraita:- Ramban and Rosh
- There is also a view - held by the Ra'avad, Meiri and Ba'al HaMaor - that Shemita today is even **less** than a Rabbinic mitzvah, and is observed as a 'middat chassidut'.

Many Acharonim and modern day poskim have ruled that Shemita today is Rabbinic, as in the following (non-exclusive) list:-
Rabbinic:- Bach, Sema, Avnei Nezer, Rav Kook, Chazon Ish, R. Chaim Ozer Grodzinsky, R. Eliezer Waldenberg, R. Ovadia Yosef
Deoraita:- Beit Halevi, Netziv⁶

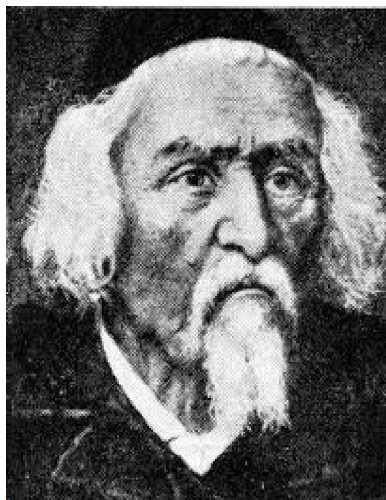
5. See <https://rabbimanning.com/wp-content/uploads/2019/10/Implications-of-the-Majority-of-Jews-Living-in-Israel.pdf>

6. See Kuntrus Dvar HaShmita - Shu't Mashiv Davar 2:56

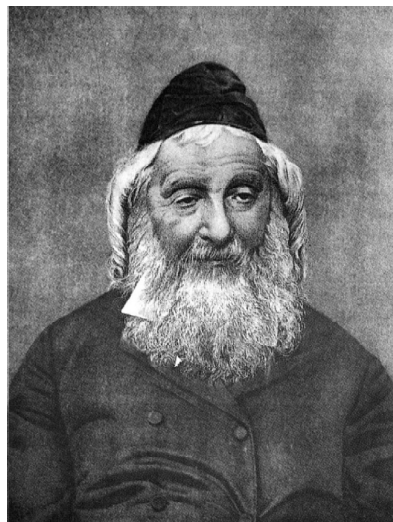
E] THE NEW YISHUV IN ERETZ YISRAEL

E1] SHEMITA 5635 - 1874/5

- Until 1867, non-Moslems were not permitted to purchase land in Ottoman Palestine. In 1870, the French Alliance Israélite Universelle founded an agricultural school called Mikve Yisrael. It was not run on observant lines and some religious leaders (such as R. Eliyahu Guttmacher⁷) already warned in 1874 that the non-observance of Shemita was a major problem.



The Beit Halevi



The Netziv

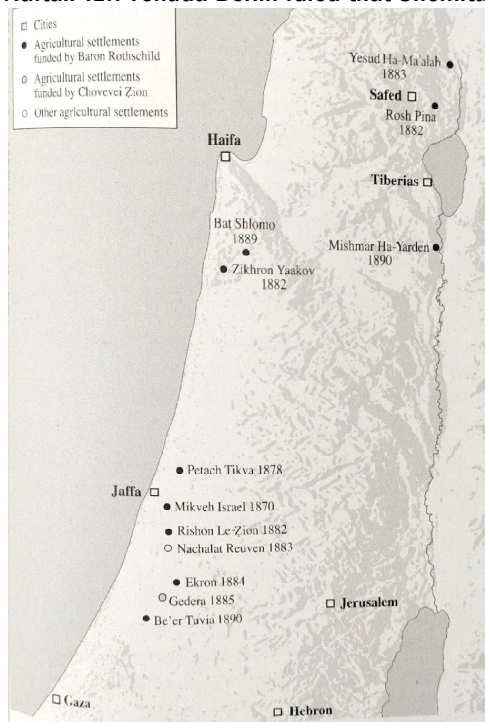
- As we saw above, both the Beit Halevi - R. Yosef Dov Soloveitchik and the Netziv - R. Naftali Tzvi Yehuda Berlin ruled that Shemita today is deOraita

FIRST ALIYAH 1882-1904 (partial list)

- 1878 - PETACH TIKVA
- 1882 - ROSH PINA, RISHON LEZION, ZICHRON YA'AKOV
- 1883 - MAZKERET BATYA, NES TZIONA
- 1887 - GEDERA
- 1890 - REHOVOT
- 1891 - HADERA
- 1896 - METULA
- 1903 - K FAR SABA, ATLIT

SECOND ALIYAH 1904 - 1914

- 1905 TEL HAI
- 1908 KINNERET
- 1909 DEGANIA (FIRST KIBBUTZ)
- 1911 BEN SHEMEN



E2] SHEMITA 5642 - 1881/2

- Petach Tikva now founded (in 1878) by Orthodox Jews from the Old Yishuv. There was also a small older Jewish agricultural settlement at Motza.
- Malarial swamps caused the abandonment of Petach Tikva by most residents (who founded the nearby town of Yehud). With the Rothschild's assistance, the swamps were drained in 1883 and the yishuv resettled.
- Those who stayed followed the strict psak of Rav Shmuel Salant (of the Old Yishuv in Yerushalayim) and did not carry out any forbidden agricultural work during the Shemita year.
- Eliezer Ben-Yehuda, secular and atheist early Zionist leader, initially supported the strict observance of Shemita, hoping that his support could encourage the ultra-Orthodox community to side with him in a more Zionist agenda.



Eliezer Ben-Yehuda

7. 1796-1874 - Rabbi of Graetz in Poland and supporter of R. Tzvi Hirsch Kalischer's fundraising to support institutions in Eretz Yisrael. To download more source sheets and audio shiurim visit www.rabbimanning.com

E3] SHEMITA 5649 - 1888/9⁸

• Chovevei Zion had been founded in 1882. Stimulated by increased persecution of Jews in Russia, it quickly developed branches in the US and Europe. It was dedicated to renewed Jewish national identity and active agricultural settlement in Palestine. For the first time, it gained support in some religious circles, particularly from Rabbi Shmuel Mohilever (1824-1898), who is often regarded as one of the earliest pioneers of Religious Zionism. Rabbi Mohilever ran Chovevei Zion in the 1880's together with its secular founder, Leon Pinsker, before forming the religious wing of the movement - Mizrahi (an abbreviation of 'Mercaz Ruchani') in 1893. Chovevei Zion was eventually absorbed into the Zionist Congress in the early 20C.



Rabbi Shmuel Mohilever

• Rabbi Mohilever had convinced Baron Edmond de Rothschild to invest heavily in new Jewish settlements in Eretz Yisrael, in particular Mazkeret Batya/Ekron. Baron de Rothschild wanted his investment to thrive, which of course meant the working of the land and NOT leaving it idle. He met with Rabbi Shmuel Salant (1816-1909) in 1888 to discuss the observance of Shemita in his new settlements. Initially, it was thought that Rothschild agreed with R. Salant that Shemita must be strictly observed (although they spoke haltingly through an interpreter!)

• In Oct 1888 Rothschild sent a delegation to Rav Salant to see if there were any halachic solutions to the problems of Shemita. He was told that there were none, and also received the same answer from Rabbi Yehoshua Leib Diskin of the Old Yishuv. Rothschild was very disturbed and upset for a number of reasons:

- the potential ruin of the settlements and loss of his investment, and concern that the settlers would demand large financial bail-outs to maintain the settlements through the inactive Shemita year.

- proof to others who opposed his investment in Palestine and claimed that it was impossible to resettle the Land.

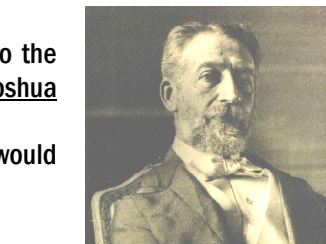
- a clash with the Baron's own philosophy of Judaism - that Torah would not stand in the way of basic survival.

- a desire to break away from the 'dependency model' of the Old Yishuv, where the Jewish community was systemically financially dependant on support from Jewish communities in the Diaspora.

- personal pride - he was indignant at being 'taken for a ride' by 'chutzpadik' farmers who took his money and then announced their inability to work for a whole year for 'religious reasons'.

• Baron de Rothschild turned to his own religious mentor, Chief Rabbi of Paris Rabbi Zaddok Kahn, who himself turned to one of the leading Rabbis in Lithuania - Rav Yitzchak Elchanan Spector.

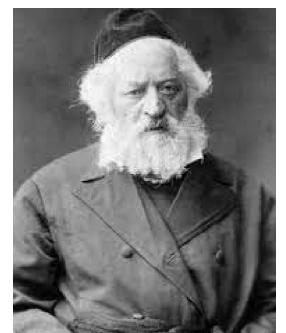
• Rabbi Spector then created the Heter Mechira to allow working the land. The relevant land would be sold to a non-Jew. Work would then be permitted on the land by Jews BUT ONLY melachot which were themselves Rabbinic in nature. Rav Spector soon made the Heter stricter and only allowed work on the land by non-Jews. Many of these important halachic distinctions were (willfully) blurred by Rothschild's administrators.



Baron Edmond de Rothschild



Rabbi Yitzchak Elchanan Spector



• The Heter relied on a number of major halachic assumptions:-

- That the entire status of Shemita today is Rabbinic.

- That the sale of land in Eretz Yisrael will actually be effective to remove the sanctity of the Land so as to allow work (and not just the sanctity of the produce, to allow export).

- That the sale of land in Eretz Yisrael is halachically permitted in any event and is not a breach of 'Lo Techanem'.

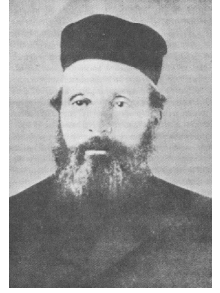
• The Heter also relied heavily on the precedent of a much older teshuva of the Shemen HaMor - Rav Mordechai Robbiyo - a 17C posek in Chevron who permitted the sale of a vineyard to a non-Jew for 2 years over Shemita. Rav Spector considered this rare teshuva so critical that he sent someone to Berlin to bring back a copy!



Rabbi Zaddok Kahn

8. Much of the information in this section is taken from an extremely interesting and well-researched account of the early Shemita years - *Rebels in the Holy Land*, by Sam Finkel, particularly Chapter 20.

• The Heter was opposed by other leading Lithuanian rabbis, including Rav Naftali Zvi Yehuda Berlin - the Netziv, Rav Yosef Dov Soloveitchik - the Beit HaLevi, Rav Eliezer Gordon, Rav Yechiel Michel Epstein - the Aruch HaShulchan. Even the esteemed Rabbi Spector was not beyond criticism.



Rabbi Eliezer Gordon

• At the same time, Chovevei Zion had approached three other leading Eastern European rabbinic authorities - Rav Mohilever, Rav Yisrael Trunk of Kutna and Rav Shmuel Klapfisch of Warsaw. They proposed a heter similar to that of Rav Spector but were more lenient - even allowing rabbinically prohibited work by Jews who could not afford non-Jewish labor. However, they also expressed it to be subject to the approval of Rav Spector and also stated that any Shemita labor would also have to be sanctioned by the Jerusalem Rabbinical court of the Old Yishuv (which opposed the entire Heter!). Pressure by maskilim within Chovevei Zion on the rabbis in the organization made the mainstream Orthodox rabbinate even more suspicious of the movement.

• The Baron staunchly supported the Heter and initially demanded that his settlements follow it. Following rabbinic pressure, he eventually gave farmers the option of keeping Shemita fully but made financial assistance conditional on relying on the Heter Mechira!



Rabbi Yechiel Michel Epstein

• The Old Yishuv were horrified by what they saw as a legal loophole and felt let down by the Baron. They attributed the Heter to a combination of (i) the encouragement of the Baron's anti-religious land administrators; (ii) pressure from what they saw as maskilim in Chovevei Zion, which they regarded with suspicion and (iii) the work of anti-religious Jewish nationalists. Eliezer ben Yehuda came out in favor of the Heter and reacted very negatively to the intransigence of the Old Yishuv. He declared Rabbi Salant the chief 'enemy of the New Yishuv'. The battle-lines were drawn!

• Many farmers had not actually seen the original wording of the Heter by R. Spector and were (justifiably) mistrustful of the Baron's administrators who gave the impression that all work was permitted. Different translations were made which did not accurately communicate the Heter. R. Spector was unaware of how the Heter was being used to coerce farmers.

• In the end many farmers (including religious farmers in Zichron Yaakov and Nes Tziona) relied on the Heter, although some (including most in Mazkeret Batya) did not, siding with the Old Yishuv Jerusalem Rabbinic and against Rothschild. Many of the latter were attacked by the maskilim as being 'lazy schnorrers'. Ironically, the workers of the non-orthodox yishuv in Gedera (encouraged by their mentor Rabbi Yechiel Michel Pines) decided to observe Shemita strictly. They were roundly criticized by the non-religious leadership of Chovevei Zion - particular Leon Pinsker - and returned to work in the middle of the Shemita year.



Rabbi Shmuel Salant

• The Baron's administrators placed enormous pressure on the farmer to capitulate. In response, the Old Yishuv issues a proclamation '*Kol me-Heichal*' appealing to Jews around the world to support the farmers who observed Shemita fully. It was very careful NOT to criticize the Baron himself.

• R. Shimshon Rafael Hirsch and R. Azriel Hildersheimer gave strong support for the Shemita observant farmers in late December 1888 and encouraged their communities to donate funds. This was the last communal act of R. Hirsch before his death on 31 December 1888.

• Some of the farmers travelled internationally to raise funds to support Shemita observance. In many places they were greeted with derision and accused of being lazy and ungrateful to the Baron!

• In the end, the Shemita year produced bumper crops for those who worked the land but conditions close to starvation for those who did not. Ben Yehuda was jubilant and railed against the Old Yishuv. The Old Yishuv now saw Chovevei Zion as the enemy of Torah

• Rothschild was left enraged and very angry with R. Mohilever, whom he blamed for the breakdown of the yishuvim during Shemita.

E4] SHEMITA 5656 - 1895/6⁹

• By now there were many more settlements and the Baron had a firmer hold on the farmers. In the years since the previous Shemita, many had been broken by other disputes with the Baron and his local administrators. Some had been forcefully evicted using the violent Turkish police.

• The expectation was that most farmers would follow the Heter.

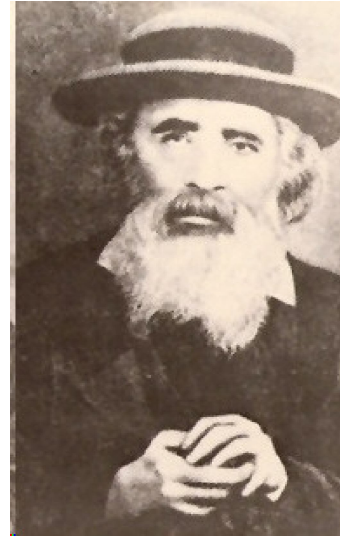
9. Much information about this Shemita and all the early issues of Shemita in the New Yishuv can be found in *Sefer HaShemita* by Rav Yechiel Michel Tukachinsky - Mossad HaRav 1993 pp 59-62

• Rabbi Naftali Hertz Halevi, Chief Rabbi of Yaffo, who had been involved in the 1888 Shemita controversy, but had ultimately not implemented the Heter, now lobbied the Old Yishuv rabbis to look again at the Heter.

• Some of the Old Yishuv Rabbis now felt that the best option was to allow a limited Heter Mechira. Rav Shmuel Salant was said to have (orally) agreed with this (although others dispute this) and Rabbi Yehoshua Leib Diskin (1818-1898) of the Old Yishuv approved a limited application of the Heter. The main change related to the sale of the Land and issues of Lo Techanem. Rather than selling the Land itself temporarily, the trees with soil around them were sold, but absolutely. R. Diskin also insisted that it was a temporary accommodation only and must be revisited each Shemita. R. Naftali Hertz asked R. Spector in Europe if he would modify the Heter on this basis, but he refused and stuck to the same position he had taken in 1888. He felt that a temporary sale of the Land was preferable to the permanent sale of the trees.



Aderet - Rabbi Eliyahu David Teomim



Rabbi Yehoshua Leib Diskin

E5] SHEMITA 5663 - 1902/3

• By now Rav Diskin had passed away and leadership in the Old Yishuv had largely passed to the Aderet - Rabbi Eliyahu David Rabinowitz-Teomim (1843-1905) (father-in-law of Rav Kook - who was still in Europe at this time). Rav Shmuel Salant (now very old) was still officially head of the Old Yishuv.

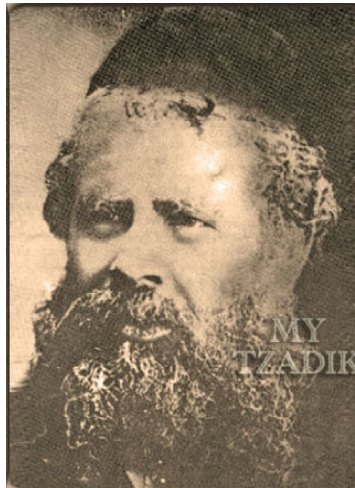
• Again after lobbying by Rav Naftali Hertz (who died that year) the Aderet¹⁰ (reluctantly) agreed after consultation with Rav Shmuel Salant to endorse the Heter as permitted by Rav Diskin in 1895.

E6] SHEMITA 5670 - 1909/10

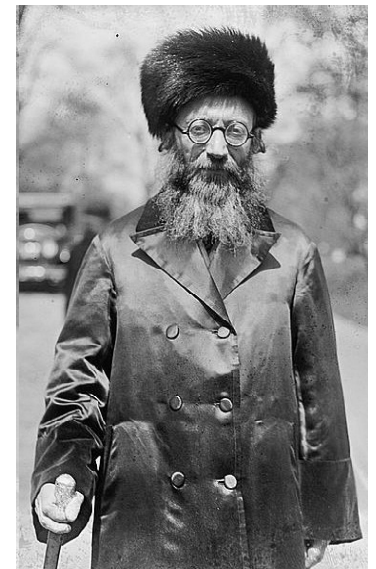
• Some important new rabbinic leaders were now in place. Rav Shmuel Salant, the Aderet and Rav Naftali Hertz of Yaffo had now passed away. The new rabbi of Yaffo was Rabbi Avraham Yitzchak HaCohen Kook (1865-1935). The new Rabbi of Zefat was Rabbi Yaakov Dovid Wilovsky (1845-1913) - the Ridvaz.

• The Second Aliyah was now well underway and many of the new agricultural settlements were entirely non-religious.

• In 1909 the Ridvaz turned to Rav Kook with a proposal to visit the Baron and convince him to support total observance of Shemita without reliance on the Heter. Rav Kook refused and insisted that his first priority was to support the Heter and only then to assist farmers who wished not to rely on it. The Heter was upgraded and now involved a combination of sale of the Land and also of the trees.



Rabbi Yaakov Dovid Wilovsky



Rabbi Avraham Yitzchak Kook

• The Old Yishuv Rabbis totally opposed and boycotted the Heter this time and a major battle developed with the workers in the New Yishuv who rallied behind Rav Kook and called the Old Yishuv Rabbis 'cruel' for preferring the produce of Arabs over the success of the Jewish farmers. Both the Ridvaz and Rav Kook wrote sefarim to back up their halachic positions - Pe'at HaShulchan by the Ridvaz and Shabbat Ha'Aretz by Rav Kook.

• Rav Kook backed the Heter as formulated by Rav Spector - sale of the actual Land for 2 years - with some minor adjustments. He was also keen to stress that this was a temporary measure to be readdressed every Shemita. He also supported and raised money for those farmers who did not wish to rely on the Heter.

10. Interestingly, both the Aderet and Rav Kook had initially opposed the Heter when they were still in Russia.

• While insisting on the validity of the Heter - “with respect to the Heter itself, I see no grounds whatsoever for doubt”¹¹ - he stressed the fact that the Heter was permitted only because of great need and he supported those who wished to be machmir and the drive to find other halachically acceptable solutions¹².

• In this vein, Rav Kook also suggested for the first time the introduction of an ‘Otzer Beit Din’, whereby produce would be collectively harvested by a Beit Din and the individual farmers have no private ownership. They are paid a flat rate for the work and not for the specific produce. The idea was warmly welcomed by some (including Rav Chaim Berlin) but not by the Ridvaz. It’s not clear whether the idea was taken up significantly at the time (we know of one prominent farmer who signed up in Rechovot and entered into an Otzar Beit Din contract signed by some of the leading Rabbis of the Old Yishuv, including Rav Berlin and Rav Sonnenfeld.) The concept fell into disuse until the 1940’s when the Chazon Ish revived the idea.



Rabbi Chaim Berlin

- Even with the Heter, Rav Kook only permitted work by non-Jews or, if necessary, by Jews in a manner that would be a Rabbinic melacha only.
- Rav Mohilever actually allowed a more permissive Heter, which would enable Jews to perform Torah melacha, but this was opposed by Rav Kook.
- Rav Kook drew very heavy criticism from both sides! The Old Yishuv accused him of siding with the non-religious settlers of the New Yishuv. Those same settlers accused Rav Kook of being overly strict and not permitting the full working of the Land.

E7] SHEMITA 5677 - 1916/17

• The sha’at hadechak - pressing need - of the financial situation of the Yishuv which had prompted Rav Kook to support the Heter in 1910 was even MORE pressing in 1917 - in the middle of WW1! There were massive food shortages, the Ottomans required the fields to be worked to produce food and then the British invaded Palestine in late 1917. Rav Kook continued to support the Heter, although was stranded in Europe for this Shemita year.

E8] SHEMITA 5684 - 1923/24

• By now, Rav Kook was back in Eretz Yisrael, now as the first Ashkenazi Chief Rabbi! He continued to support the Heter and the Old Yishuv continued to oppose it.

E9] SHEMITA 5691 - 1930/31

- Rav Kook’s last Shemita (he died in 1935).

E10] SHEMITA 5698 - 1937/38

• The Chazon Ish - Rav Avraham Yeshiya Karelitz (1878-1953) had arrived in Eretz Yisrael in 1933. Almost immediately he began to campaign on the issue of Shemita. In 1937 he published the section of his monumental work - Chazon Ish - on the halachot of Shemita. Whilst he was more lenient than Rav Kook on many aspects of hilchot Shemita, he vigorously opposed the Heter and helped to set up Keren HaShemita - to support religious farmers who did not work the fields at all for Shemita year.



The Chazon Ish

E11] SHEMITA 5705 - 1944/45

- The Chazon Ish, undisputed leader of the Charedi community in Israel, continued to campaign against the Heter.
- The idea of the Otzer Beit Din was revived by the Chazon Ish.

11. Mishpat Kohen 71 p 126

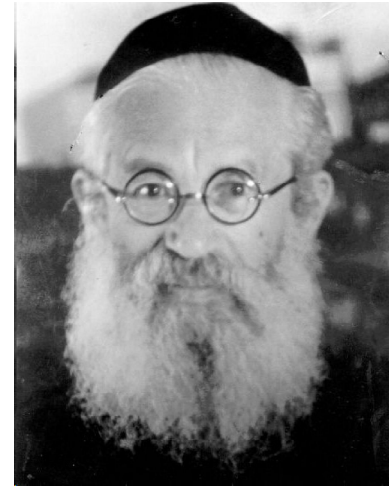
12. See Mishpat Kohen 3 and 61

E12] SHEMITA 5712 - 1951/52

The Brisker Rov

Rabbi Isaac Herzog

• First Shemita after the foundation of the State. The Ashkenazi Chief Rabbi, Rav Yitzchak Herzog, was initially reluctant to continue with the Heter, as previously formulated. He suggested an alternative proposal - for each farmer to make a declaration before 3 people that his land was hefker. However, in the end, that proposal was dropped and Rav Herzog issued a letter together with Rav Tzvi Pesach Frank and Rav Benzion Uziel which stated as follows:



“With all the joy and praise to the Rock and Redeemer of Israel that we have merited His salvation and the spark of the light of redemption, as well as the rebirth of Jewish sovereignty in part of our holy land, we have not yet reached the end of salvation and blessing as this shemita year approaches, and due to the sha’at hadechak (emergency situation) and the urgent need to facilitate the ingathering of the exiles and the absorption of refugees from the lands of their oppression, we still need to provide the heter mechira as a hora’at sha’a (temporary order)....”

- Many farmers were new immigrants who had just begun to work the land.
- The Chazon Ish and the Brisker Rav continued to oppose the Heter completely and raised funds to assist farmers. However, Otzar Beit Din was further strengthened.

We will skip for now the Shemita years of 5719, 5726, 5733, 5740, 5747, 5754 and 5761

E13] SHEMITA 5768 - 2007/08

- A number of important stringencies were introduced to the Heter to make the sale more watertight and halachically binding.
- Nevertheless, controversially, the Chief Rabbinate broke with its previous unlimited support of the Heter and decided to grant autonomy to the local rabbinates to decide on policies of Shemita. As a result, several local rabbis, including the rabbis of Herzliya, Petah Tikva, Bat Yam, Afula and Ashdod, announced that they would not provide kosher supervision to restaurants, markets and other food-serving venues selling produce grown according to Heter mechira.
- The Israel Supreme Court, however, ordered the Chief Rabbinate to rescind its ruling and to devise a single national ruling.
- This Shemita also saw the re-launch of a third mainstream options - Otzar Ha’Aretz, which is based on Otzar beit Din.

E14] SHEMITA 5775 - 2014/15

- Further stringencies were been introduced by the Rabbanut to the Heter to make the sale more watertight.
- For the first time, the sale was been effected with a ‘Ger Toshav’ and not an Arab. The Chief Rabbis initiated a special ceremony to sell the land to a Ukranian Israeli (who is not Jewish but has a Jewish grandfather). A Ger Toshav must keep the 7 Mitzvot Bnei Noach and may halachically acquire land in Eretz Yisrael.
- The Charedi authorities refused to recognize Heter Mechira at all. They were also reluctant to use Otzar Beit Din since it introduces issues of *kedushat shevi’it*. They therefore opted for what was called ‘Shemita Lechumra’, which basically means *yevul nochri*. Many objected to the label ‘Shemita Lechumra’ as it implies a higher level of halachic observance, when in fact in some areas it takes a much more lenient approach!
- The Rabbanut Yerushalayim issued two levels of hechsher for Shemita - (i) regular Shemita which goes along with the regular Rabbanut Hechsher and (ii) what they called ‘Shemita Kehilchata’, which goes along with the ‘Mehadrin’ and ‘Mehuderet’¹³ hechsher. The guidelines for the two levels of Rabbanut Shemita hechsher are set out in the teudah below. In brief they are as follows:-

13. The Mehuderet hechsher issued by the Jerusalem Rabbanut falls between the regular and Mehadrin hechsher (but closer to the Mehadrin). It differs from Mehadrin mainly with respect to the origins of the red meat (not chicken). A Mehadrin hechsher uses a recognized high level Bedatz hashgacha for red meat. Mehuderet uses regular Rabbanut red meat or ‘Glatt/Chalok’ meat from chu’l.

