

HALACHIC AND HASHKAFIC ISSUES IN CONTEMPORARY SOCIETY

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- The controversial and often painful question of whether it is permitted or advisable to give away parts of Eretz Yisrael to achieve a desired peace in the Land has been an 'agenda' item at different times in Jewish and modern Israeli history¹.
- Beginning with the Peel Commission Partition Plan of 1937, the Roshei Yeshiva of Merkaz HaRav - R. Yaakov Moshe Charlop, R. Tzvi Yehuda Kook, R. Avraham Shapira and others - have vociferously opposed any proposal to divide the Land as clearly in breach of the Torah. The Lubavitcher Rebbe also firmly pronounced his opposition to any exchange of Israeli land for peace. Nevertheless, at the time of the Peel Partition Plan, R. Chaim Ozer Grodinsky and R. Zvi Pesach Frank² ruled that it was permitted to accept the Peel Plan. In later decades, R. Ovadia Yosef and R. Yosef Dov Soloveitchik argued that halacha does permit in principle a deal of Land for peace.
- It is important to separate the different types of consideration: - halachic, hashkafic, political and security/military.
- This shiur will not focus on the political or security considerations, although these are immensely important. In every peace treaty entered into between enemies, the central question is always whether the enemy can be trusted. But of particular concern in the modern debate is the question who can be trusted in our own camp to make wise and sensible political and security decisions? Can the security establishment truly make assessments and recommendations which are devoid of political agendas? Israel is a country where many military leaders go on to political careers. How do their political views sway their security priorities?
- The focus below will be on the halachic and hashkafic issues, although these are complex and, as with many such issues, the Torah presents a multivalent approach. Again, the line between hashkafa and politics can also be blurred and this may not always be a bad thing. If we wish Torah values to be applied on a macro level to the challenges of the State of Israel, it is hardly surprising that lines can be unclear. Some rabbinical figures also have official (and unofficial) political positions in Israel. How do their political perspectives impact on their halachic and especially hashkafic approaches³?

A] THE VALUE OF ERETZ YISRAEL

1. ר' חייא בר גמרא מייגנדר בעפרה, שנאמר: (תהלים קב:טו) **כִּי־רָצוּ עַבְדֶּיךָ אֶת־אֲבֹנֶיהָ וְאֶת־עַפְרָהּ יִחַנְנוּ.**

כתובות ק"ב:

*The relationship of the Jewish people to Eretz Yisrael is one of commitment and love!*⁴

2. מעשה ברבי יהודה בן בתירא ורבי מתיא בן חרש ורבי חנינא בן אחי רבי יהושע ורבי יהושע ורבי יונתן - שהיו יוצאין חוצה לארץ והגיעו לפלטוס וזכרו את ארץ ישראל. זקפו עיניהן וזקפו עיניהן וקראו את המקרא וירשת וישבת בה ושמרתם לעשות ועיי דברים יאלא-לב: ... וירשתם אותה וישבתם בה: ושמרתם לעשות את כל החקים ואת המשפטים. **אמרו ישיבת ארץ ישראל שקולה כנגד כל המצות שבתורה.** ומעשה ברבי אלעזר בן שמוע ורבי יוחנן הסנדלר - שהיו הולכין לנציבין אצל רבי יהודה בן בתירא ללמוד ממנו תורה והגיעו לצידון וזכרו את ארץ ישראל וזקפו עיניהם וזקפו עיניהם וקראו את המקרא וירשת וישבת בה ושמרתם לעשות את החקים האלה, **אמרו ישיבת ארץ ישראל שקולה כנגד כל המצות שבתורה חזרו ובאו להם למקומן.**

ילקוט שמעוני תורה פרשת ראה [רמז תתפה]

There are multiple accounts of great Rabbis who needed to leave Eretz Yisrael, even temporarily and for permitted reasons such as to learn Torah, and yet were unable to tear themselves away from the Land. The mitzva of living in Eretz Yisrael is of equal value to all the other mitzvot put together.

1. In Part 2 we will be'H look at some of the historical precedents.
2. See Techumin 9:293-295 and Techumin 9:276-277.
3. See also <https://www.koltorah.org/halachah/exchanging-the-land-for-peace-by-rabbi-chaim-jachter>; <https://www.koltorah.org/halachah/exchanging-land-for-peace-part-ii-by-rabbi-howard-jachter> and <https://www.koltorah.org/halachah/exchanging-land-for-peace-part-iii-by-rabbi-howard-jachter>
4. It is noteworthy that the halachic mechanism by which a man marries a woman is learnt by Chazal from the mechanism whereby Avraham made his first acquisition of a plot in Eretz Yisrael for a fortune of money to bury his beloved wife. The symbolism of love, value and commitment is extremely strong

3. הדא הוא דכתיב, (ירמיהו ט:א) מִי־יִתְנֶנֶי בַמֶּדְבָר מְלוֹן אֶרְחִים. אמר הקדוש ברוך הוא הלואי יהוון בני עמי כמו שהיו במדבר שהיו מלינין עלי, ודכוותיה (וחזקאל לז:יז) בָּיִת יִשְׂרָאֵל לְשִׁבְיָם עַל־אֲדָמָתָם וַיִּטְמְאוּ אוֹתָהּ. אמר הקדוש ברוך הוא הלואי יהוון בני עמי בארץ ישראל אף על פי שמטמאין אותה

ילקוט שמעוני איכה רמו תתלח

The Midrash states that it is better for the Jews to be in Eretz Yisrael, even if they do not keep the mitzvot!

4. הכל מעלין (ר' עוזדיה מצרטנורה) - את כל בני ציתו אדם כופה לעלות עמו לירושלים) לארץ ישראל ואין הכל מוציאין. הכל מעלין לירושלם ואין הכל מוציאין

משנה מסכת כתובות פרק יג

The Mishna deals with mitzva of living in Eretz Yisrael when discussing the obligations of marriage and the ketuba. If one spouse wishes live in Israel or in Jerusalem, they can force the other to move there. If the other refuses, they are considered to be guilty of having broken the marriage. Similarly, neither spouse can insist that the family leave Israel or Jerusalem.⁵

5. (ישעיהו מ"ב) נָתַן נְשָׁמָה לְעַם עֲלִיָּה וְרוּחַ לְהִלְכִים בָּהּ ... רוח להולכים בה - א"ר ירמיה בר אבא א"ר יוחנן: כל המהלך ארבע אמות בארץ ישראל - מובטח לו שהוא בן העולם הבא.

כתובות קיא.

Chazal learn that someone who walks 4 amot in Eretz Yisrael will merit Olam Haba.

6. והעולה לארץ ישראל, אם נזדמנה לו שיירא אפילו בערב שבת, כיון דדבר מצוה הוא, יכול לפרוש. (מגן אברהם - דוקא ע"ד להתיישב. וי"א אפי" ע"מ להחזיר כיון דאפילו מהלך ד"א צא"י מצוה היא)

שולחן ערוך אורח חיים הלכות שבת סימן רמח סעיף ד ומגן אברהם סימן רמח ס"ק טו

The Magen Avraham rules that this is also the fulfillment of a mitzva.

7. ת"ר: לעולם ידור אדם בא"י אפ"י בעיר שרובה עובדי כוכבים, ואל ידור בחו"ל ואפילו בעיר שרובה ישראל. שכל הדר בארץ ישראל - דומה כמי שיש לו אלוה, וכל הדר בחוצה לארץ - דומה כמי שאין לו אלוה, שנא': (ויקרא כה:לח) לְתַתּ לְכֶם אֶת־אֲרָץ כְּנָעַן לְהִיּוֹת לְכֶם לְאֱלֹהִים. וכל שאינו דר בארץ אין לו אלוה!! אלא לומר לך: כל הדר בחו"ל - כאילו עובד עבודת כוכבים.

כתובות קי

Chazal made the statement that if a person lives in chu'l it is as if they worshipped avoda zara!

8. טעמו מצוהר לפי שצח"ל אפשר שיטה לבו שהעולם מתנהג עפ"י המזלות ח"ו. משא"כ מי שדר בארץ ישראל שיהא צלתי לה' לצדו כדכתיב (דברים יא:יב) אֶרֶץ אֲשֶׁר [ה' אֱלֹהֶיךָ דִּרְשׁ אֹתָהּ סְמִיד] עֵינֵי ה' אֱלֹהֶיךָ צִפּ מִרְשֵׁית הַשָּׁנָה וְעַד אַחֲרֵית הַשָּׁנָה. וא"כ ודאי אין צלצו אלא אחד - שאין לו להשען כ"א על אצונו שצשמים ותיקון כל העבודות לשם המיוחד.

פני יהושע שם

The Pnei Yehoshua explains that in Eretz Yisrael a person can feel the direct hashgacha of God in the world⁶ - the 'eyes' of God (i.e. his hashgacha) are on the Land constantly. However, in chu'l a person feels that God is far more removed - controlling the world through the mazalot and the angels.

9. (דברים יא:יז) וְאֲבִדְתֶם מִהַרְהָ, וְשָׁמַתֶם אֶת־דְּבַרֵי אֱלֹהֵי וּגו'. אף על פי שאני מגלה אתכם מן הארץ לחוצה לארץ היו מצויינים במצות - שכשתחזרו לא יהו עליכם חדשים.

ספרי דברים פרשת עקב פיסקא מג

Mitzvot are binding in chu'l so that we will know what to do when we get back to Eretz Yisrael. Any mitzva in chu'l is 'low voltage'.

5. The actual practical halacha is **more complicated than this** - ask a she'ela if relevant!

6. See Ta'anit 10a and Avnei Nezer YD 2:454:14.

B] ERETZ YISRAEL - FOREVER A CONTESTED LAND

10. מדד הקדוש ברוך הוא כל הארצות ולא מצא ארץ שראויה לינתן לישראל אלא ארץ ישראל הה"ד (חבוקוק ג:יג) עַמְד וְיִמְדָּד אֶרֶץ רָאָה [וַיִּתֵּן גוֹלִים]. רב אמר דמן של כנענים התיר וממונן התיר. דמן התיר (דברים כ:טו) לֹא תִחַיֶּה כָּל-נִשְׁמָה. ממונן התיר שנאמר (דברים כ:יד) וְאֶכְלֶתְךָ אֶת-שָׁלַל אֵיבֶיךָ.

יִקְרָא רֵבָה (וילנא) פֵּרֶשֶׁת שְׁמִינִי פֵּרֶשֶׁת יֵג סִימֵן ב

Chazal understood that there is NO land for the Jewish people other than Eretz Yisrael and that, in order to keep this Land, we have to be prepared to fight for it.

11. תניא, רבי שמעון בן יוחאי אומר: שלש מתנות טובות נתן הקדוש ברוך הוא לישראל, וכולן לא נתנן אלא על ידי יסורין. אלו הן: תורה, וארץ ישראל, והעולם הבא. ארץ ישראל - דכתיב (דברים ח:ה) כִּי פָּאֲשֶׁר יִיָּסֵר אִישׁ אֶת-בְּנוֹ ה' אֱלֹהֶיךָ מִיִּסְרֶךָ. וכתיב בתריה: (דברים ח:יג) כִּי ה' אֱלֹהֶיךָ מְבִיאֲךָ אֶל-אֶרֶץ טוֹבָה

ברכות ה.

Eretz Yisrael can only be acquired and retained through hardships.

12. (ירמיהו ג:יט) וְאֶתְּנֶלְךָ אֶרֶץ חֲמֹדָה - ארץ שהיתה טובה וכל מלכי עולם נתאוו לה. כתיב (יהושע יב:ט) מֶלֶךְ יִרְיָחוֹ אֶחָד מֶלֶךְ הָעֵיזָר אֲשֶׁר-מִצְדָּ בֵּית-אֵל אֶחָד. ואין בין יריחו לעי אלא ג' מילין, והוא אמר מלך יריחו! אלא כל מי שהוא קונה חוצה לארץ ולא היה קונה בארץ ישראל, לא היה נקרא מלך. למה? שהיו מתאווים לארץ ישראל.

מדרש תנחומא (בובר) פֵּרֶשֶׁת מִשְׁפָּטִים י

It is also a Land which will be constantly contested by other nations that wish to be connected to it.

13. (בראשית לג:יט) וַיִּקְּנוּ אֶת-חֵלְקֵת הַשְּׂדֵה אֲשֶׁר נָטָה-שָׁם אֶהֱלֹו וגו' בְּמַעֲהָ קִשְׁיָטָה. א"ר יודן בר סימון זה אחד משלשה מקומות שאין אומות העולם יכולין להונות את ישראל לומר גזולים הן בידכם ואלו הן: מערת המכפלה, ובית המקדש, וקבורתו של יוסף. מערת המכפלה, דכתיב (בראשית כג:טו) וַיִּשְׁמַע אַבְרָהָם אֶל-עֶפְרוֹן וַיִּשְׁקַל אַבְרָהָם לְעֶפְרוֹן. בית המקדש דכתיב (דברי הימים א כא:כה) וַיִּתֵּן דָּוִד לְאַרְגָּן בְּמִקְוֵם [נְשָׁקֶיךָ זָהָב מְשָׁקֶל שֵׁשׁ מֵאוֹת]. וקבורתו של יוסף (בראשית לג:יט) וַיִּקְּנוּ אֶת-חֵלְקֵת הַשְּׂדֵה - יעקב קנה שכם.

בראשית רבה פרשה עט:ז

More specifically, the other nations do not want the Jewish people to have the Land! The Midrash connects three places in Eretz Yisrael which our forefathers bought for a very high price⁷ - Avraham bought the Cave of Machpela in Chevron, Yaakov bought the burial plot of Yosef in Shechem and David bought the site of the Beit Hamikdash. In these three places at least, say Chazal, the other nations of the world have no legitimate grounds to dispute our ownership. In fact, these are today among the most hotly disputed locations!! It seems clear that Chazal saw this coming and wished to call out the lies and hypocrisy of the non-Jewish world when it comes to the Land of Israel.

C] IS THERE A MITZVA TO CONQUER AND SETTLE THE LAND?**C1] THE TORAH VERSES**

14. (נא) דְּבַר אֶל-בְּנֵי יִשְׂרָאֵל וְאָמַרְתָּ אֲלֵהֶם כִּי אַתֶּם עֹבְרִים אֶת-הַיַּרְדֵּן אֶל-אֶרֶץ כְּנָעַן: (נב) וְהוֹרִשְׁתֶּם אֶת-כָּל-יֹשְׁבֵי הָאָרֶץ מִפְּנֵיכֶם וְאֵבְדוּתְכֶם אֶת כָּל-מִשְׁכְּלֵיכֶם וְאֵת כָּל-צִלְמֵי מִסְכַּתְכֶם תִּאבְדוּ וְאֵת כָּל-בְּמוֹתְכֶם תִּשְׁמִידוּ: (נג) וְהוֹרִשְׁתֶּם אֶת-הָאָרֶץ וַיִּשְׁבְּתֶם בָּהּ כִּי לָכֵן נָתַתִּי אֶת-הָאָרֶץ לְרִשְׁתָּ אֹתָהּ:

במדבר לג:נא-נג

The Torah states that we will [must?] conquer Eretz Yisrael and settle in it. What is the nature of this statement - a promise? a recommendation? a mitzva?

7. R. Shmuel Mohilever observed that this teaches us that there is no price too high to pay even for a small part of Eretz Yisrael.

15. (נג) והורשתם את הארץ וישבתם בה כי לכם נתתי את הארץ לרשת אתה - על דעתי זו מלכות עשה היא. ילוח אותם שישבו בארץ ויירשו אותה כי הוא נתנה להם, ולא ימאסו בנחלת ה'. ואלו יעלה על דעתם ללכת ולכבוש ארץ שנער או ארץ אשור וזולתן ולהתישב שם, יעזרו על מלכות ה'. ומה שהפליגו רבותינו (כתובות ק"י) במלכות הישיבה בארץ ישראל ושחזור ללא ממנה, וידונו כמורדת האשה שאינה רוצה לעלות עם בעלה לארץ ישראל, וכן האיש, בכאן נלעוונו במלכות הזו, כי הכתוב הזה היא מלכות עשה. ויחזיר המלכות הזו במקומות רבים - **באו וישבו את הארץ** (דברים ח:ט). אבל רש"י פירש, והורשתם את הארץ - והורשתם אותה מיושביה ... ומה שפירשנו הוא העיקר!

רמב"ן במדבר שם

The Ramban understands that this is actually a mitzva, not simply a promise by God of future success. The mitzva requires us to conquer Eretz Yisrael and live in it, and not to chose another land as the Jewish homeland. Nevertheless, the Ramban understands that Rashi's pshat is the primary one.

16. (נג) והורשתם את הארץ - והורשתם אותה מיושביה ואז וישבתם בה - תוכלו להתקיים בה. ואם לאו, לא תוכלו להתקיים בה

רש"י במדבר לג:נג

Rashi understands that the pshat focus of the verse is as a warning. If we wish to settle in the Land we must ensure that we conquer it and become the main population dwelling there.

17. (נה) ואם לא תורישו את יושבי הארץ מפניכם והיה אשר תותירו מהם לשפים בעיניכם ולצנינים בצדיכם וצרו אתכם על הארץ אשר אתם יושבים בה: (נו) והיה כאשר דמיתו לעשות להם אעשה להם.

במדבר לג:נה-נו

Rashi is clearly focusing on the continuation of the verses - if we do not become the dominant population in the Land, those people who are left will become 'barbs in our eyes and thorns in our sides'. They will not be an existential threat, but will cause trouble and harass us.

• Rashi's understands⁸ that we may NOT offer any peace to the 7 nations, who may not be allowed to remain in the Land. However, the Rambam⁹ does not agree, and insists on a option of peaceful co-existence even with the 7 nations.

18. **א** אין עושין מלחמה עם אדם בעולם עד שקוראין לו שלום. אחד מלחמת הרשות ואחד מלחמת מצוה. שנאמר (דברים כ"ג) כי תקרב אל עיר להלחם עליה וקראת אליה לשלום. אם השלימו וקבלו שבע מצות שנצטוו בני נח עליהן אין הורגין מהן נשמה והרי הן למס. שנאמר (דברים כ"א) יהיו לך למס ועבדוך. ... והעבדות שיקבלו הוא שיהיו נבזים ושפלים למטה ולא ירימו ראש בישראל אלא יהיו כבוגשים תחת ידם. ... **ד** ואם לא השלימו או שהשלימו ולא קבלו שבע מצות. עושין עמהם מלחמה

רמבם הלכות מלכים פרק ו הלכה א, ד

According to the Rambam, all of the peoples living in Eretz Yisrael when we return to settle there must be offered terms of peace. No one need ever be dispossessed or expelled unless they choose to fight.

• If so, how are the Jewish people to become the dominant population? Only if they return en masse to live in the Land¹⁰!

19. All the trembling and fear for the geographical integrity of the State of Israel, all the suggestions of our enemies which are directed at territorial concessions by the State of Israel, and all of the brazen demands of the Arabs for boundary changes are based on only one fact: the Jews have not populated the Negev and established hundreds of settlements there. Had the Negev been settled with hundreds of thousands of Jews, even Nasser would never have dreamed of the possibility of rending it from the State of Israel. Wide and unpopulated expanses constantly and perpetually endanger the tranquility of the State. ... We are terribly guilty for this gross negligence. American Jewry could have certainly accelerated the process ... Among the Jews of America, Orthodox Jews bear the most blame for the slow pace of the conquest of the Land through settlement. It was for us, the loyalists of Judaism, to heed the call of the Beloved more acutely, and to respond to it immediately with extraordinary effort. Let us publicly and frankly confess: we complain about certain Israeli leaders and their attitude toward the values of our tradition and religious practice. The complaints are justified. We have serious charges against the secular leadership of the Land of Israel. However, are only they to be blamed, and are we as faultless and pure as the heavenly angels?

Rav Yosef B Soloveitchik, Kol Dodi Dofek Chap 5

8. See Rashi on Devarim (20:10).

9. This is also the position of the Ramban.

10. We will see in more detail below the Rambam's position on the mitzva of yishuv ha'Aretz.

C2] THE POSITION OF THE RAMBAN

20. מצוה רביעית: שנצטוונו לרשת הארץ אשר נתן האל יתברך ויתעלה לאבותינו לאברהם ליצחק וליעקב. ולא נעזבה ביד זולתנו מן האומות או לשממה. והוא אמרו להם וְהוֹרַשְׁתֶּם אֶת-הָאָרֶץ וְיָשַׁבְתֶּם-בָּהּ ואמר עוד (דברים ט"בג) וּבְשִׁלְחָהּ ה' אֶתְכֶם מִקְדוֹשׁ בְּרִנֵּי לְאֹמֹר עָלֵינוּ וְרָשׁוּ אֶת-הָאָרֶץ אֲשֶׁר נָתַתִּי לָכֶם. וכאשר לא אבו לעלות במאמר הזה כתוב (שם) וְתִמְלֹוּ אֶת-פִּי ה' אֱלֹהֵיכֶם וְלֹא הֶאֱמַנְתֶּם לֹו וְלֹא שָׁמַעְתֶּם בְּקוֹלוֹ. הוראה שהיתה מצוה לא יעוד והבטחה. וזו היא שהחכמים קורין אותה מלחמת מצוה. שנצטוונו בכיבושה ובישיבתה. הרי נצטוונו בכיבוש בכל הדורות.

ואומר אני כי המצוה שהחכמים מפליגין בה והיא דירת ארץ ישראל עד שאמרו ... שכל היוצא ממנה ודר בחוצה לארץ יהא בעיניך כעובד עבודה זרה ... אם כן היא מצות עשה לדורות מתחייב כל יחיד ממנו ואפילו בזמן גלות כידוע בתלמוד במקומות הרבה.

השגות הרמב"ן לספר המצוות שכתב העשין

The Rambam does **not** count the mitzva of living in Eretz Yisrael in his list of the 613 Mitzvot. The Ramban disagrees and rules that the mitzva is a **Torah mitzva** comprising two parts:

(i) a mitzva incumbent on the Jewish people as a whole to conquer the land and not to leave any part of it under foreign rule or desolate; and (ii) a mitzva on each individual¹¹ to live in Israel¹².

- This is also the position of other Rishonim¹³.

C3] THE POSITION OF THE RAMBAN

- As we saw above, the Rambam does NOT include within the 613 a mitzva to conquer and settle the Land¹⁴.

21. ומוותר לשכון בכל העולם חוץ מארץ מצרים

יא אמרו חכמים כל השוכן בארץ ישראל עונותיו מחולין אפילו הלך בה ארבע אמות זוכה לחיי העולם הבא. וכן הקבור בה נתכפר לו, וכאילו המקום שהוא בו מזבח כפרה ואינו דומה קולטתו מחיים לקולטתו אחר מותו, ואעפ"כ גדולי החכמים היו מוליכים מתייהם לשם, צא ולמד מיעקב אבינו ויוסף הצדיק.

יב לעולם ידור אדם בארץ ישראל אפילו בעיר שרובה עכו"ם ואל ידור בחוצה לארץ ואפילו בעיר שרובה ישראל, שכל היוצא לחוצה לארץ כאילו עובד ע"ז

רמב"ם הלכות מלכים פרק ה

Yet, in the Mishne Torah, the Rambam praises living in Eretz Yisrael in the highest possible manner, and rules that one should live there. How does this fit with his not counting the mitzvah in the 613?

- A number of approaches have been suggest to explain this position of the Rambam, including:
 - (i) R. Shlomo Goren¹⁵ understood that the Rambam DOES rule that living in Eretz Yisrael is a Torah mitzva, but does not include it in the 613 since it is fundamental to ALL other mitzvot. As a meta-mitzva, it cannot be counted as 'just one' of the mitzvot.
 - (ii) Others¹⁶ understand that the Rambam agrees the mitzva is min haTorah, but is just not included separately in the 613 since it comes under the rubric of the mitzvah to remove the dominance of the 7 nations¹⁷.
 - (iii) Some commentators¹⁸ understand from the fact that the Rambam does not included Yishuv Eretz Yisrael in the 613 mitzvot that the he understands the mitzva to be Rabbinic.
 - (iv) Some contemporary poskim¹⁹ have explained that the Rambam regards living in Eretz Yisrael as a *mitzva kiyumit* which fulfills a Torah mitzva, but not a *mitzva chiyuvit* - ie not a binding obligation, and therefore not included in the 613.
 - (v) R. Shaul Yisraeli²⁰ explains there is an obligation to settle the Land only when it can be conquered by a Jewish army but not where the non-Jewish authorities give permission. He nevertheless understands it to be a mitzva today.
 - (vi) Others understand that the Rambam regards living in Eretz Yisrael as highly meritorious, but not actually a mitzva.

11. There are many halachic and hashkafic factors which impact on the specific obligation on a Jew to move to Israel. An analysis of this can be found at:

<http://rabbimanning.com/wp-content/uploads/2016/05/Is-there-a-Mitzva-to-Live-in-Eretz-Yisrael4.pdf> and

<http://rabbimanning.com/wp-content/uploads/2016/05/Is-there-a-Mitzva-to-Live-in-Eretz-Yisrael1.mp3>

12. Some authorities understand that even the Ramban rules that the mitzva to live in the Land applies only at a time when we have 'inherited' the Land as a nation (see R. Shlomo Kluger Elef Lecha Shlomo 106).

13. See Shu't Tashbatz 3:288, Shu't Rasbash 2, Kuzari 2:23-24.

14. He may explain the relevant Torah verses as Rashi does - see above.

15. Chovat Ha'aliyah le'Eretz Yisrael p9.

16. Shu't Tashbatz 3:288 and later Avnei Nezer Yoreh Deah Vol. 2, no. 454:5-7 and 457:5. The Avnei Nezer (ibid sections 23-27) accepts the validity of the 3 Oaths as binding on the Jewish people as a whole, but not on specific individuals who merit to settle the Land. They would still be fulfilling the mitzva of settling in Eretz Yisrael but only if they were worthy. He actually posits that an unworthy individual who moves to live in Eretz Yisrael is not fulfilling any mitzva! However the Avnei Nezer also rules (ibid section 56) that if the non-Jewish authorities give permission to the Jews to live in Eretz Yisrael, then the 3 Oaths will be considered as annulled.

17. One of the overarching principles of the Rambam in counting the 613 mitzvot is that he does not count details of a general mitzva - a *mitzva kollelet* - as themselves constituting separate mitzvot.

18. S' dei Hemed Ma' arekhet Eretz Yisrael, in the name of Knesset HaGedolah to YD 239:33; also Ar' ah DeRabanan quoting responsa of the Radvaz.

19. This was the position of R. Aharon Soloveitchik (Or HaMizrach, Tevet 5730, Torah Shebe'al Peh #12 p 43-44 and #16 p 88) and also of R. Moshe Feinstein (Igrot Moshe EH 1:102)

20. Eretz Chemda pp 22 and 24-5.

D1] COMMUNAL OBLIGATION & THE 3 OATHS

25. The obligation not to allow any part of the Land of Israel to remain in the hands of a gentile nation or to remain desolate cannot be fulfilled by any particular individual but devolves upon the entire people of Israel as a community. Similarly, that aspect of the commandment which calls upon the people of Israel to conquer the Land of Israel must be understood as constituting a communal obligation. Since, as a people, Israel is in exile and the dispersion is the product of Divine decree, it is entirely reasonable that those obligations concerning inheritance and settlement of the Land of Israel which are incumbent upon the community be suspended during the period of exile. Thus, even according to the opinion of Ramban, there exists no obligation to wage war for the purpose of reclaiming the Land of Israel. The 'three oaths' serve to forbid military reconquest during the period of exile The distinction is that of a communal obligation versus a personal obligation. "And you shall inherit the land" constitutes a communal obligation which is suspended for the period of the exile; "and you shall dwell therein" constitutes a personal obligation fully binding in every age.

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- This approach of Rabbi Bleich assumes (i) the ability to split the obligation (according to Ramban) into separate individual and communal obligations; and (ii) the continued relevance of the 3 Oaths. Both of these are hotly disputed by other commentators!

D2] HALACHIC WARS - MITZVA OR RESHUT

26. Military activity for the conquest of sacred territory is precluded not only by virtue of the 'three oaths' but also because, in our day, the halachic prerequisites of war cannot be satisfied. Although war as a means of self-defense is sanctioned by Halakhah, a war of aggression, even for purposes of restoring Jewish sovereignty over the Land of Israel is not. With the exception of a milhemet mitsvah or obligatory war mandated by Divine commandment, no war may be undertaken other than at the behest of a king with the prior approval of the Sanhedrin and even then, only upon consultation of the Urim ve-Tumim.

In our era, all three elements are obviously lacking. It may, however, be the case that a monarch, in the literal sense of the term, is not required for this purpose Similarly, some contemporary authorities argue that the requirement for approval of the Sanhedrin is also not absolute in nature. Nevertheless, there is no gainsaying the fact, that the Urim ve-Tumim are required for purposes of engaging in war. Hence, in our day, there is no possibility of waging a war of aggression for purposes of reclaiming Eretz Yisrael without violating the strictures of Halakhah.

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- Rabbi Bleich understands that our recent wars to reclaim parts of Eretz Yisrael were NOT milchamot mitzva²⁶ and would thus require the support of the king, Sanhedrin and Urim ve-Tumim. Since none of these are available, such a war is halachically unjustifiable.
- Others strongly object to this analysis. Aside from the question of whether the State of Israel has the halachic status of a 'melech' and whether the agreement of the people²⁷ is as effective as that of the Sanhedrin, Rabbi Bleich's assumption that a war to secure the borders of the Land is NOT a milchemet mitzva is also hotly contested and may indeed now be a minority position. (We will be'H look at other contemporary voices in the next shiur.)

D3] PIKUACH NEFESH, WAR AND SETTLEMENT

- Almost all mitzvot are set aside in the presence of danger to life. Does this also apply to milchemet mitzva - to go to war?

27. להרוג ז' עממים מארץ כנען ונורג מלוא ז' כל איש ישראלי הן אנשים וגוים כמבואר בש"ס דמלחמות מלוא אפי' כלא מחופתה וכו'. וכתב הרב המחבר ועובר ע"ז וזא לידו ויכול להורגו מזלי שיסתכן דדבר וכו'. ול"ע - נהי דכל המלוא נדחים מפני הסכנה מ"מ מלוא ז' דהתורה ליתיה ללחום עמהם וידוע דהתורה לא תסמוך דיניה על הנס, כמבואר ברמב"ן, ודרך העולם נהרגים משני הצדדים צעת מלחמה. א"כ חזינו דהתורה גזרה ללחום עמהם אף דהוא סכנה. א"כ דחוייה סכנה במקום הזה ומלוא להרוג אותו אף שיסתכן. ול"ע:

מנחת חינוך פרשת ואתחנן מצוה תכה

The Minchat Chinuch²⁸ understands that the very nature of war is dangerous to life! As such, when that war is itself a mitzva, it cannot be set aside in the face of pikuach nefesh!

26. The definition of 'milchemet mitzva' is complex and goes beyond the ambit of this shiur. Essentially, a milchemet mitzva is defined as any war for the defence of the Jewish Yishuv in Israel. It may well include preemptive strikes and also military operations against any country which has been in a prior confrontation with Israel which has not been resolved. See <https://torahmitzion.org/learn/holy-war/andhttps://www.herzog.ac.il/wp-content/uploads/2019/03/Neuman-on-milchemet-mitzva.pdf>

27. We looked in the previous shiur at the question of who is halachically included in 'We, the people'.

28. This position was also supported by the Netziv (Meromei Sade 17) and the Brisker Rov.

- The combination of the positions of the Ramban (above) and the Minchat Chinuch leads to a very clear halachic opposition to any form of 'Land for Peace'.
- However, other poskim reject this analysis. Some poskim reject the position of the Minchat Chinuch and rule that pikuach nefesh and minimizing risk to the lives of Jewish people DOES override the mitzva of kibush ha'aretz²⁹.
- Some poskim understand that EVEN the Ramban does not apply the mitzva of conquering the Land today, only of settling the Land³⁰.
- Some poskim point out the machloket between the Ramban and the Rambam on this issue and question how today's rabbis can put lives at risk by ruling according to the Ramban when this is not clearly the halacha³¹!

28. Nevertheless, it is only reasonable to suppose that there exist certain limitations with regard to the nature of the risk which must be accepted. It may not be necessary to place one's life in danger under any and all circumstances. While acceptance of the danger inherent in a battlefield situation may be mandatory, a clear distinction must be drawn between acceptable risks and risks which are tantamount to a suicide mission. The obligation to participate in obligatory wars may not require an individual to place himself in a situation in which it is a certainty that his life will be forfeit. Moreover, it is reasonable to assume that the obligation to wage war is an obligation to engage in battle only when the anticipated gain is commensurate with the loss which may reasonably be anticipated.
The obligation with regard to participation in an obligatory war is not to be equated with the obligation to sanctify the Divine Name. Persons called upon to commit a transgression publicly in response to a demand for renunciation of Jewish teaching and practice are under obligation to accept martyrdom no matter how many people may be involved. Under such circumstances, there exists an obligation to sanctify the Divine Name even if this would require martyrdom for all of Israel. There are no grounds for positing a similar requirement with regard to the fulfillment of the obligation involved in waging a mandatory war. War, even when obligatory, is presumably to be undertaken to accordance with the usual procedures and risks of warfare. However, in a situation in which a military campaign must be waged against overwhelming odds without any reasonable expectation of success, purposeless sacrifice of life is not demanded. War cannot be equated with sanctification of the Divine Name. The latter is an end in itself; the former is a means, not an end.

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29. Insofar as the personal or individual obligation with regard to dwelling in the Land of Israel is concerned, even according to the opinion of Ramban, no individual is required to place his life in jeopardy in order to fulfill this precept. The mitzvah concerning settlement in the Land of Israel which devolves upon the individual, as distinct from the communal obligation with regard to conquest of the Land, demands no more of the individual than does the fulfillment of any other commandment. A person is relieved of his obligation with regard to performance of mitzvot if such performance necessitates placing his life in danger.

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30. On the basis of this analysis, there is, in our day, no obligation to wage war for conquest of Eretz Yisrael or for retention of sanctified territories, even according to the opinion of Ramban. Moreover, were such an obligation to exist it would not require futile military action. Thus there is no question that, at least under certain circumstances, refusal to engage in military action in order to retain the liberated territories can certainly be justified, even in accordance with the position of Ramban. Delineation of a precise set of conditions which would constitute an unacceptable and unjustifiable risk is a matter requiring military and political expertise.

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E] LO TECHANEM - NOT ALLOWING NON-JEWISH SETTLEMENT OF THE LAND

31. וַיִּתְּנֶם ה' אֱלֹקֵיךָ לְפָנֶיךָ וְהִפִּיתָם הַחַרֵּם תִּחְרִים אֹתָם לֹא תִכְרַת לָהֶם בְּרִית וְלֹא תִחַנְּמָם

דברים ז'ב

The Torah prohibits entering into treaties with non-Jewish nations in Eretz Yisrael and also 'lo techanem'.

29. We will see in Part 2 that this was the position of Rav Soloveitchik.

30. See Pe'at HaShulchan by R. Yisrael of Shklov (Eretz Yisrael early 19C), Hilchot Eretz Yisrael 1:3.

31. This was the position of R. Yehuda Amital - Alon Shevut 100:34-62.

32. אמר רבי יוסי בר חנינא דאמר קרא: לא תחנם - לא תתן להם חנייה בקרקע

עבודה זרה יט:

Chazal understand that this means not to give non-Jewish nations a 'chanaya' - a fixed dwelling in the Land.

33. ג אין מוכרין להם בתים וּשְׁדוֹת בְּאֶרֶץ יִשְׂרָאֵל וּמִשְׁכִּירִין לָהֶם בְּתִים בְּאֶרֶץ יִשְׂרָאֵל וּבִלְבָד שֶׁלֹּא יַעֲשׂוּ שְׂכונָה וְאִין שְׂכונָה פְּחוֹת מִשְׁלֶשָׁה. וְאִין מִשְׁכִּירִין לָהֶם שְׁדוֹת. וּמִתֵּר לְמִכֹּר לָהֶם בְּתִים וּשְׁדוֹת בְּחוּצָה לְאֶרֶץ מִפְּנֵי שְׂאִינָה אֲרֻצְנָה: ד' וּמִפְּנֵי מָה אִין מוֹכְרִין לָהֶן שְׁנַאֲמַר (דְּבָרִים ז:ב) וְלֹא תִחְנַם - לֹא תִתֵּן לָהֶם חֲנִיָּה בְּקִרְקַע שְׂאִים לֹא יִהְיֶה לָהֶם קִרְקַע יִשְׁבְּתוֹן יִשְׁבֵּת עֲרָאֵי הִיא.

רמב"ם הלכות עבודה זרה פרק י

The Rambam rules this halacha and, unusually, explains the rationale for the mitzva - to strengthen the Yishuv.

- A key question here is whether the inclusion of the rationale for the mitzva means that this will impact on the application of the halacha. In other words, is every sale/gift of land to a non-Jew in Eretz Yisrael prohibited per se, or will it be permitted if the result is an overall strengthening of the Yishuv.
- One application is in Shemita. Is it permitted to sell a field to a non-Jew for the Shemita year (Heter Mechira) so that it can continue to be worked and contribute to the ongoing strength of the Yishuv?
- If the halachic issue depends on the overall strengthening/weakening of the Yishuv, then the prohibition may not depend on a technical sale. Any action which weakens the Jewish Yishuv over Eretz Yisrael would be prohibited, even absent an actual sale.
- Also, some commentators³² rule that this prohibition ONLY applies when selling land to idolators. It would NOT therefore apply when selling/giving land in Eretz Yisrael to Moslems!

34. Whether or not restoration of Arab sovereignty over portions of Judea and Samaria involves transgression of *lo tehonem*, it may be argued, is directly contingent upon precisely the same question regarding the nature of this prohibition. It should be stressed that transfer of national sovereignty does not constitute a "sale" in the usual sense of the term. Cession of territory by one sovereign state to another does not infringe upon the property rights of the citizens of any country who may own property in the area ceded by one country to another. However, political sovereignty assuredly carries with it an element of domiciliary permanence. There is no question that if a certain geographic area is under the rule and administration of a Jewish government, the permanence of Jewish inhabitation is enhanced and that the reverse is the case when the administration and the political authority is vested in a non-Jewish government. Thus, although restoration of Arab sovereignty does not constitute a violation of *lo techanem* if that prohibition is understood as a ban solely against "sale" of real estate to non-Jews, it does constitute such a violation if understood as a general ban against any action which serves to enhance the permanence of non-Jewish domicile.

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35. These comments are of course predicated upon the assumption that return of territory within a disputed area will not require any Jew to divest himself of title to land acquired. Alienation of real estate within the boundaries of the Land of Israel in favor of a non-Jew would obviously constitute a violation of *lo techanem*. It should be clearly established within the political framework of any peace settlement that Jews would enjoy the right to own land in any portion of Erets Yisrael whether or not the territory in question is within the political domain of a Jewish state. A Jew must be permitted to own land on the West Bank or even in Jordan itself, just as Arabs may, and do, own land within the boundaries of the State of Israel. Hence the question of actual sale of real estate should not arise in the context of current diplomatic negotiations. The sole question to be resolved is whether or not political sovereignty may be transferred without violation of a biblical prohibition.

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- Rabbi Bleich is clear that if any Jew is required to give up their property as part of any return of Land, this would be a prohibition of *lo techanem*. It is now clear that it would NOT be possible for a Jew to continue to own land in any Arab entity.
- Furthermore, it could be a prohibition of *lo techanem* simply to transfer sovereignty, as Rabbi Bleich sets out in the following source.

32. This is the position of the Bach - CM 249:2. who is quoted by R. Ovadia Yosef (Techumin 10:34-47). R. Yosef also rules that this prohibition does not apply in the face of pikuach nefesh - see below.

36. According to the numerous authorities, who maintain that the prohibition against transfer of real property to non-Jews does not encompass every sale of property, but extends only to such sales which serve to enhance permanence of dwelling, it would appear that any action which accomplishes this result would be forbidden, even if the action in question does not involve an actual "sale" of real estate. Hence, according to these authorities, transfer of political sovereignty would, in itself, constitute a violation of the prohibition of *lo techanem*. It must be remembered that the prohibition against granting permanence of domicile to non-Jews in the Land of Israel is in no way contingent upon the obligation concerning Jewish settlement in Eretz Yisrael. Even if, in our day, there exists no binding commandment with regard to establishing residence in the Land of Israel, the negative prohibition of *lo techanem* is eternally binding.This is a consideration which cannot lightly be dismissed and must be carefully weighed in considering possible return of territory.

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- However, a KEY issue is that of pikuach nefesh! *Lo Techanem* does not override the potential threat to Jewish life. As such, he concludes that the transfer of any part of Eretz Yisrael would only be halachically justifiable if it were judged to ultimately be a move which will save and not cost Jewish life.

37. It must, of course, be added that this prohibition is no different from any other and hence is suspended for purposes of preservation of life. Accordingly, if Jewish lives hang in the balance, the sale of a parcel of land of the return of territory may well be warranted. Yet in the absence of a state of danger, the prohibition remains fully in force. Assuredly, return of territory cannot be countenanced in a situation in which the return of land may, in itself, contribute to increased danger by rendering the military situation even more precarious. There is no question that, under such circumstances, Jews do not have the right to return even the smallest piece of land within the boundaries of Eretz Yisrael in order to gain political or economic advantages which are not based upon considerations of security. This, in the final analysis, constitutes the most crucial element in the analysis of the problem. The issue may be reduced to the question of whether or not return of occupied territories is indeed vital for the preservation of the safety and security of the inhabitants of the Land of Israel. Should territorial concessions prove to be warranted and necessary they will yet be unrelated to the ultimate, divinely vouchsafed destiny of Israel. Considerations of security may mandate such concessions, but to no believing Jew will they afford occasion for rejoicing.

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- Finally, Israel has accepted UNSC Resolution 242³³ which calls upon Israel to exchange territories (without specific definition) captured in the 1967 war in exchange for peace with its Arab neighbors. Security Council resolutions constitute international law. Would this have any application in halacha under the principle of *Dina deMalchuta Dina*? This may depend on whether giving away land is in direct breach of Torah law, in which case *Dina deMalchuta* would not apply.

- Halacha DOES requires us to honor international treaties even if they contradict Torah principles, due to concern for *Chillul Hashem*. We see this with Yehoshua's acceptance of the treaty with the Givonim despite its inconsistency with halacha.³⁴

- This brings us back to our first comments at the start of the sheet. Who is qualified, or can be trusted, to make such a call!? Rabbi Bleich wrote his essay in 1979³⁵ in the days immediately after the Camp David Accords between Israel and Egypt and the prospect of peace with Egypt in exchange for the return of the Sinai. So much has changed over the last 42 years with two Lebanon Wars, the failed Oslo Accords, unilateral withdrawal from Gaza and thousands of rockets from Gaza and Lebanon.

- Clearly, if the political and security analysis is that Land for Peace will NOT save Jewish life in the long term but, on the contrary cost Jewish life, there would be no starting point for the halachic/hashkafic discussion and it would be clearly prohibited.

- Pikuach nefesh must also be weighed in a broader context. Note that R. Yaakov Kaminetzky's refused to allow a ransom to be paid to release R. Yitzchak Hunter when he was hijacked by Arab terrorists on an airplane in 1970. He ruled that, since Israel had been in a state of war with these terrorists since 1948, such a payment may save lives in the short term, but would aid the enemy war effort and cost Jewish lives in the longer term!

- In the final part next week we will see a number of important precedents in our classic sources concerning giving away Land for peace. We will also hear many of the contemporary voices on both sides of this debate over the last 50 years.

33. There have been subsequent UNSC resolutions such as 465 (1980) and 2334 (2016) relating to Israeli's activity within the 1967 borders, which Israel has NOT accepted.

34. See Rambam Hilchot Melachim 6:3 and 6:5.

35. It was published in the Summer 1979 issue (18.1) of Tradition Journal.