"*Behar*: A controversial biblical institution"

Rabbi Dr Jeffrey M Cohen

Our sidrah opens with a law associated with the land of Israel, which, at the time of its promulgation in the desert, was but a projection for the future. This was the law of Shemittah, which requires that, after every six years, the land must be left fallow for the entirety of the following year (See Lev. 25:1-7). In similar spirit, after the completion of seven of such seven-year cycles, the fiftieth year, called *Yovel* ('the jubilee'), was also to be observed as a year of cessation of all work on the land (vv. 8-24). In the latter case, it meant that for two consecutive years the land had to be left fallow. Notwithstanding the financial burden these institutions imposed on the poor farmers and their families, no work on the land was to be permitted and nothing was to be harvested. In our next sidrah, *bechukotai*, the fearful *Toch'chah*, ('passage of rebuke') foretells future periods of exile – enforced rest - from the land, which it links, as cause and effect, to the fact that the nation would be remiss in granting the land its due rest through the observance of its periods of Shemittah (See Lev. 26:34-35).

The prophets and the rabbis who succeeded them all regularly inveighed against the nation for its neglect of the Shemittah. It was an institution that they clearly revered as a powerful demonstration by man that, in the words of the prophets, 'the earth and all in it belongs to God; the world and all its inhabitants' (Psalm 24:1).

The rationale of the institution was to prevent man viewing himself as superman, as 'owning' the earth, the handiwork of God; as possessing the right to drain it of every ounce

of its generative capacity; the right to pollute it or exploit it mercilessly. It was to make man aware of the ecological debt he owes to the earth and to the Lord who created it as the green and fruitful garden within which man acts out his life, and through whose beauty and splendour he develops his inspiration, aesthetic sense and creativity, his inner peace and sense of awe and wonderment, in addition to the basic physical requirements of his life and livelihood.

Shemittah was also a counterbalance to materialism. It taught the farmer how to subsist on little, how to experience something of the deprivation of the have-nots, how to be resourceful and innovative. It helped to strengthen the backbone of the nation and to inculcate a sense of sacrifice and faith, attributes that would serve it well when confronting hostile neighbours, as well as in the promotion of social welfare and equality.

There are many laws relating to the observance of the Shemittah year, and an entire tractate of the Mishnah, *Sheviit*, is devoted to the institution. Allowing the land 'to enjoy its rest' was interpreted comprehensively to include the prohibitions of sowing, planting, pruning, even fertilizing, and the consumption of any produce obtained by such activity during the Shemittah year. Plants (other than perennials) and most vegetables may not be eaten since they require annual re-planting, though fruit is an exception since it takes a few years for trees to yield fruit after the initial planting, and they continue thereafter to produce fruit of their accord.

As in so many situations, the sages were extremely sensitive to the plight of Jews when compelling outside forces made observance of the law a threat to their life and safety. Thus,

when any invader imposed on them the duty of providing food for its army, the sages permitted them to sow during the Shemittah year the particular products and amounts demanded of them (See *RaMbaM, Hilchot Shemittah V'Yovel* 1:9). Maimonides also quotes a Geonic tradition that, 'during the seventy years of the Babylonian exile the Jews only observed Shemittah and not the Yovel.' Leniency as regards the latter institution was justified with reference to the biblical verse, 'And you shall proclaim freedom throughout the land *for all its inhabitants'* (Lev. 25:10). The latter phrase was interpreted to imply that the Jubilee was only operative when all the original tribes were settled in Israel. Given that the tribes of Reuben, Gad and half of Manasseh obtained permission from Moses to remain on the east side of the Jordan, it was assumed that the Jubilee was not biblically mandated (*RaMbaM* 10:10). We may assume that economic considerations weighed heavily on the minds of those who found such a creative solution to the problem!

Significantly, a passage in the Talmud (*San.*26a), relating to the observance of Shemittah, also underscores the overriding priority that must be given to the security, safety, and survival of the Jewish citizenry. It relates how, during the first few centuries of the Common Era, the Roman authorities displayed a measure of sympathy for the Jewish farmers' plight, and the financial hardship they faced as a result of their observance of the regulations of the seventh year, so they drastically reduced the amount of tax the farmers had to pay for that year. However, during the period of the 3rd century sage, R. Yannai, a new Roman edict was issued cancelling all those concessions and reinstating the harsh penalties for non-payment of the tax. Defaulters were arrested, sold as slaves at the market, and even executed.

Greatly alarmed, and fearful for their lives, the farmers came as a delegation to R. Yannai, and related to him the terms of the new edict. Notwithstanding that they were dealing with a biblical institution, he responded courageously and categorically: *Puku v'ziru bishvi'it mishum arnona*, "Off you go, and sow your land in the seventh year, on account of the tax imposition" (*loc cit*.). Yannai had no doubt in his mind that the safety of the Jews in their land, and the necessity to find a solution to a burning political and financial problem, took priority over all else. Such a courageous and sensitive approach, taking account of the plight of the poorest in society, was also displayed in modern times and in the context of the identical situation of the Shemittah.

Throughout the two millennia of the exile, the subject of Shemittah was confined to theoretical Talmudic study in yeshivot, given that, after the destruction of the Temple and the devastation of Judea, Jews began to abandon farming in favour of becoming craftsmen, merchants, and – encouraged by Christians, forbidden by the church to lend money on interest – moneylenders.

It was with the return of the early chalutzim to the land and the earth in the early 20th century that the issue of shemittah was once again brought to the fore. Having done a spell of *sikkul avanim*, removing embedded stones and boulders from the hard earth of Kibbutz Lavi, in 1955, I can testify to the many problems that must have confronted those pioneers. Having come with no knowledge of agriculture and even less of business acumen, the challenge of one fallow year in seven to add to that of one Shabbat day every week, plus about ten days of festivals, was more than a step too far. Most came as refugees, with no

special skills and no other chance of finding work and free board and lodging. If the agricultural experiment failed, there was no alternative for them.

A solution to the problem of Shemittah was introduced in 1888 by three rabbis closely associated with the fledgling Zionist movement of Chovevei Tzion: Rabbis Yisroel Yehoshua Trunk of Kutno, Shmuel Mohilever of Bialystok, and Shmuel Zanvil of Warsaw. They presented their solution to the illustrious sage, Rabbi Yitzchak Elchanan Spector, and received his endorsement. It is popularly referred to as *heter mechirah*, 'the permissibility of selling' the land of Israel temporarily, for the duration of the Shemittah year, to non-Jews in the same way as our chametz is sold for the duration of Pesach and then bought back into our possession. It was stressed at the time by the innovators that they viewed their *heter* as an emergency measure for that particular Shemittah year only, 'to avoid the entire endeavour to settle the land being frustrated.' The *heter* was renewed again in subsequent Shemittah years, and it received the endorsement of the first Chief Rabbi of Mandate Palestine, Abraham Isaac HaKohen Kook, in 1910, subject to certain conditions, with every subsequent Chief Rabbi of Israel adding his support.

Modern farming technology has provided another solution for those who, for ideological reasons, are uneasy with the notion of selling the land of Israel to non-Jews, even if it involves a mere token sale. This mode of production is referred to as hydroponics, a process of growing flowers, herbs and vegetables above ground on stilts, and, instead of soil, using inert growing media such as sand, gravel, or liquid, with added nutrients. The negative side of this method is that it cannot provide anything like the volume of food produced by traditional farming.

It must be said, however, that the *heter mechirah* did have its opponents. These included such giants as the *Chazon Ish* (R. Avraham Karelitz: 1878 -1953) and the *Ridbaz* (R. Yaakov Wilovsky: 1845-1913). It seems that their opposition to the sale of land was not directed, however, at its halachic propriety, but rather on the basis that it conflicted with the biblical exhortation, *lo techonem,* 'Do not provide them [the surrounding nations] with any resting-place among you' (Deut. 7:2. See Tal. *Av. Zar*. 20a). This argument is countered, however, by those who argue that selling the land for one year actually achieves the very opposite effect, that of strengthening Jewish settlement by making farming a less financially hazardous enterprise.

Most of the Charedi community, as expected, do not recognise the *heter,* but rely during the Shemittah years on imported produce, primarily those obtained from Gaza. As, in the biblical period, that was part of Philistia, it is not perceived by them as Israel proper and accordingly subject to the prohibitions of Shemittah. The corollary of this is that they are content to put money into the pockets of those who support terrorism against their fellow Jews, while, at the same time, depriving their fellow Israeli farmers of a much-needed livelihood, and making it extremely difficult for religious farmers to observe the Torah law.

Shabbat shalom,

Rabbi Jeffrey