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**How Should *Shemita* (The Sabbatical Year)
be Observed in the State of Israel?⁽¹⁾**
(*Yoreh Deah* 331:19)
by Rabbi David Golinkin

Question: The year 5768 (2007-2008) is considered a *Shemita* (sabbatical) year. How should *Shemita* be observed in the State of Israel?

Responsum: According to biblical law, the Land of Israel must lie fallow during the Sabbatical year (Exodus 23:10-11; Leviticus 25:1-7). This means that farmers may not plant or reap their crops, sell their produce within Israel, or export their crops abroad. It also means that Israeli city dwellers may not do many of the tasks related to gardening during the year 5768.

In the year 5648 (1887-1888), about 120 years ago, many questions resurfaced after 1,500 years of exile, as a result of the First *Aliyah* from Eastern Europe, which began in 1882. Since then, a large number of responsa, articles and books, have been written on these important topics (see the Bibliography at the end of this responsum).

In this responsum, we will summarize the methods for observing *Shemita* in Israel today, describe the problems they entail and recommend a new solution to the problem.

I) The Current Methods Used by Israeli Farmers and Consumers

In general, two methods are used by Jewish farmers in the State of Israel: the *Hazon Ish's* method (see *Hazon Ish*, Kahana and Halevi) observed in Po'alei Agudat Israel settlements and Rabbi Kuk's method (see Kuk; Tukchinsky pp. 59 ff.; Zevin, pp. 112-127; Grunfeld, pp. 114-125, 177-229), observed by the religious *kibbutzim* and *moshavim*.

Both methods assume that *Shemita* in our time is a rabbinic prohibition. The *Hazon Ish* more or less observes the Talmudic law (for a summary, see Kahana, *Mitzvot Ha'aretz* and Halevi, pp. 308-328), including the prohibition of exporting produce from the *Shemita* year. However, he is lenient in certain areas: early sowing of winter crops before Rosh Hashanah not according to the correct planting cycle and growing vegetables in detached beds and in nutrient solutions (hydroponics). The latter methods solve the *Shemita* dilemma on a small scale, but cannot provide a solution for the entire State of Israel.

In addition, the farmers harvest the *Shemita* year's produce as "Rabbinic Court agents" and sell it to consumers through an *Otzar Bet Din* (Rabbinic Court Warehouse – see *Tosefta Shevi'it* 8:1, ed. Lieberman, p. 200). This legal fiction can help the individual farmer, but it will not solve the problem of agriculture in the State of Israel because produce distributed through an *Otzar Bet Din* retains the sanctity of *Shemita*, which means that: it may not be thrown in the garbage; it may not be eaten by non-Jews; food normally consumed by human beings cannot be fed to animals; it may not be sold; and it may not be exported abroad. Thus, if the State of Israel were to follow this method, Agrexco would go bankrupt and Israel would lose one billion dollars in agricultural exports every year.

The Po'alei Agudat Israel *kibbutzim* are supported by a "*Shemita* Foundation" during the *Shemita* year. Donations come mostly from abroad (see Berkovits, p. 97). In 1986, Kibbutz Hafetz Hayyim opened a "Water Park" as a substitute for agricultural work during the *Shemita* year (see *Post*).

As for consumers, most *Haredi* Jews buy their produce during the *Shemita* year from Arabs. If all Israeli Jews did this, Jewish agriculture in Israel would collapse (and cf. below).

An ancient *Beraita* defines the agricultural borders of the Land of Israel (see *Tosefta Shevi'it* 4:11, ed. Lieberman, p. 181 and parallels and Avi-Yonah); areas outside those borders were not required to observe *Shemita*, *Terumot* and Tithes. Since the Upper Galilee, Ashkelon and most of the Negev and Arava are outside of these borders, some Jews buy their produce during the *Shemita* year from Jewish farmers who live in these areas. Halakhically, this is legitimate, but logically it makes no sense whatsoever. It declares to our enemies and to the world that many parts of the State of Israel are not halakhically part of the State!

According to Rabbi Kuk's *heter mekhirah* method, the land and everything planted on it are sold to a non-Jew for a period of two years (so that the *Shemita* year is covertly included in the sale). It is thus permissible to buy and sell *Shemita* produce, since it belongs to a non-Jew. It is also possible to engage in work that is only rabbinically prohibited such as irrigating, weeding, fertilizing and removing stones. However, it is preferable to do even these tasks through non-Jews. On the other hand, the five kinds of activities that are prohibited by the Torah – sowing, pruning, reaping, harvesting grapes and plowing - are still prohibited during the *Shemita* year.

Historically, the Chief Rabbinate followed the *heter mekhirah*, but the current Ashkenazic Chief Rabbi, Rabbi Yonah Metzger, was put into office by Rabbi Yosef Sholom Elyashiv and his *Haredi* followers. Therefore, this year the *Heter Mekhirah* was performed as usual, but the Chief Rabbinate gave local rabbinic councils the right to ignore it and demand that supermarkets and restaurants in their towns will only receive *kashrut* certification if they buy all their produce from Arabs. Indeed, the local rabbinate of at least nine cities with over one million inhabitants immediately declared that this is exactly what they would do. The potential loss to Jewish farmers is estimated at 700 million to 2 billion shekels.

The rabbis of Tzohar, a group of liberal Orthodox rabbis, then threatened to set up rival *kashrut* supervision and certify all the food establishments who follow the *Heter Mekhirah*. Finally, on October 23, 2007, Israel's High Court of Justice invalidated Rabbi Metzger's decision; if the Rabbinate itself had performed the *Heter Mekhirah*, it could not claim that it is not legitimate! The Court ruled that the Chief Rabbinate must overrule any local rabbi opposed to the *Heter* and appoint in his place a rabbi who will follow the *Heter Mekhirah*.

II) Ideological Problems with These Methods

All of the methods described above are unsatisfactory since they contradict the entire purpose of Zionism.

Regarding the *Haredi* solution, did we find the State of Israel so that Israeli Jews should be supported by Diaspora Jews or buy their produce from Arabs? This solution fits the mind-set of the ultra-Orthodox community that devised it. They considered *Halukah* [the distribution of *zedakah* from abroad] acceptable, and if the Po'alei Agudat Israel settlements should need to live from handouts every seven years, there is

nothing distasteful about this. Rabbi Berkovits vehemently attacked this solution (p. 97):

To refrain from tilling the land and to maintain the viability of one's economy through financial support, mainly from non-*Sh'mitta*-observing Diaspora Jewry, is a confession that, in present conditions, the *Sh'mitta* law is not workable. Surely, it could not have been the intention of the Divine Lawgiver that the majority of the Jewish people should live in dispersion and the Sabbath of the land be observed through their charitable generosity.

Similarly opening a Water Park can solve the financial problems of one *kibbutz*. Is this a reasonable solution for the entire country?!

Rabbi Kuk's solution is even more surprising, since it originates precisely in the Religious Zionist camp. It turns out that the ultra-Orthodox leave the land in Jewish hands, while the Zionists sell the land of Israel to gentiles! It is faithful to the *letter* of the law but not to its *spirit*. That is, in order to observe the sabbatical laws in "the land that I assign *to you*" (Leviticus 25:2), "all the land, vegetation, plants, fruit trees, and all kinds of trees that we have in our holy Land of Israel" (this is the text of the document used today) is sold to an Arab dignitary for a period of two years! How strange! Rabbi Berkovits attacks this method in even stronger words (p. 97):

Even more objectionable is the solution of the Chief Rabbinate. Apart from the very questionable validity of the "sale", is it not a self-demeaning procedure to sell the entire agricultural area of the Jewish people in the State of Israel to non-Jews every seventh year – for this is what one would have to do if all of Israel were Torah-observant!... But to "sell" the land of Israel every seventh year is a farce that we should have been spared.

Some of the Religious *Kibbutz* leaders are also not satisfied with this solution. Meir Or, from Tirat Zvi, wrote over forty years ago (p. 152):

It is obviously distasteful to sell the land in Israel today, in the State of Israel. It would be commendable if the Sages of our generation were to use one of the other methods such as "*hefker* [a confiscation] by a Rabbinic Court is valid".

The religious Zionist thinker, Zuriel Admonit wrote back in 1960 (pp. 386-387):

A *heter* (permission) based on selling all the State of Israel's land grates on the ears and is distasteful... There have been various suggestions – already by the *Hazon Ish* ז"ל - to look for other ways

to permit... It is a pity that we did not follow them; in the future it will be necessary to strive towards their implementation...

The *heter mekhirah* (selling the Land of Israel to a non-Jew) not only grates on the ears; it undermines everything we have built in Israel over the last 120 years. Is that why we founded the Jewish National Fund? Is that why thousands of soldiers fell defending the land's holiness? In addition to all the *halakhic* problems involved in the *heter mekhirah* (see Grunfeld, pp. 177 ff. and Zevin, pp. 112 ff.), it makes a mockery of the entire Zionist enterprise. Besides, it is also a *Hillul Hashem* (a desecration of God's name) in the eyes of the secular public – in order to preserve the land's holiness it has to be sold to non-Jews once every seven years! We should recall that it was suggested for the first time in 5648 (1887-1888) when the Jewish settlement was a very small minority, and therefore it did not trouble them sell a few *moshavot* (colonies) to Arabs. In 5670 (1909-1910), when Rabbi Kuk supported the *heter mekhirah* in his book *Shabbat Ha'aretz*, he stressed that it was meant for a situation in which "the overwhelming majority of the Land of Israel is in the hands of gentiles as a result of our sins" (p. 121 and also p. 60). Today, this situation no longer exists and it is likely that Rabbi Kuk himself would oppose the *heter mekhirah*.

III) Times Have Changed

When we try to solve the *Shemita* dilemma in the State of Israel, we must remember one other major problem. The *Hazon Ish* completely ignored it, but Rabbi Kuk stressed it in his book *Shabbat Ha'aretz* (p. 61) and he used it as a *sneef* (auxiliary reason) for the *heter mekhirah*:

In ancient times, when the Jewish community in Israel was based primarily on tilling the land for food, the seventh year's holiness could be established according to the law without a *heter* since, in the end, all of the produce was left unclaimed in the fields, and this benefited the poor and it was close to the Torah's intention: "Let the needy among your people eat of it" (Exodus 23:11)... But in our days, when the Jewish community in Israel is based on selling the produce of the *moshavot*, and if this is prevented, their future livelihood and status will also be destroyed – in this situation it is certainly an obligation to institute the *heter mekhirah*...

In other words, the *mitzvah* of *Shemita* was intended for a simple agricultural society. Most Jews in the Land of Israel in biblical and Talmudic times grew the food they required. During the *Shemita* year, it was relatively easy to stop working the land and eat whatever grew on its

own. The crops in the field were left unclaimed, and the poor and the city dwellers could come and eat. If we lived in such a society today, we could probably observe the *mitzvah* of *Shemittah* as it was legislated. But, today, 95% of the country's inhabitants live in cities, far from food sources. If all the *kibbutzim* and *moshavim* observed *Shemittah* as it was legislated, a life-threatening situation would develop. In addition, at the present time, most of Israel's agricultural produce is destined for export. Agrexco – the Israel Agricultural Export Company – exports 4 billion shekels (1 billion dollars) of produce every year. If all the farmers were to observe the *mitzvah* of *Shemittah* according to biblical law, Israeli agriculture would collapse and this could bring disaster to the State of Israel.

IV) The Attitude of Rabbi Judah the Prince and the *Amoraim* to *Shemittah* ⁽²⁾

Before we suggest a *halakhic* solution for this dilemma, it is important for us to examine the attitude of the Sages to observing *Shemittah*. Those who support the observance of *Shemittah* in our times as it was legislated, claim that the Jewish people always observed the sabbatical laws when they lived on their land and that the Sages were very strict regarding the *Shemittah* laws (see, for example, Grunwald, pp. 109 ff., 233-235). This picture is not at all accurate. It seems that the Sages observed the *Shemittah* laws very scrupulously at the end of the Second Temple period and in the beginning of the *tannaitic* period; but a significant change took place starting with the period of Usha, after the Bar Kokhba revolt. The *Mekhilta* (to *Ki Tissa*, ed. Horowitz-Rabin, p. 343) states that at that time "the Sabbatical and the Jubilee years" were among the commandments "for which the Jewish people did not risk their lives" and therefore they "have not been preserved among them". *Tosefta Demai* (end of chapter 3, ed. Lieberman, p. 78) mentions the possibility of "an entire town that was [comprised] of those who eat the seventh-year produce" and in that time period they begin to mention those who are "suspected of seventh-year violation".

Rabbi Judah Hanassi [hereafter: Rabbi] was especially lenient regarding the *Shemittah* laws, introducing a series of enactments and changing the perception of the *Shemittah* year in Jewish law. According to the Sages, the Land of Israel has clear borders in which the *Shemittah* prohibitions must be observed (*Tosefta Shevi'it* 4:11, ed. Lieberman, p. 181 and parallels; Avi-Yonah). According to the *Tosefta* (*Ahilot* 18:4, ed. Zuckerman, p. 617), Rabbi exempted Ashkelon from tithes and from the *Shemittah* year. According to the Jerusalem Talmud (*Demai* 2:1, fol.

22c) "Rabbi permitted [produce sold in] Bet She'an [to be eaten without separating tithes], Rabbi permitted Caesarea, Rabbi permitted Beit Guvrin, Rabbi permitted Kfar Zemaḥ", and when people talked disrespectfully about him on account of this, he responded that these enactments were a "crown with which to adorn himself" (and cf. *Bavli Hullin* 6b-7a). Beyond this, Rabbi abolished some of the prohibitions connected to the *Shemitaḥ* year. Until his time, vegetables could be bought after the seventh year only when the time that was necessary for that vegetable to grow had elapsed. However, "Rabbi and his Court permitted the purchase of vegetables immediately after the *Shemitaḥ* year" (*Mishnah Shevi'it* 6:4; *Tosefta Shevi'it* 4:17, ed. Lieberman, p. 183 and parallels) even though these vegetables were surely planted during the *Shemitaḥ* year! Until Rabbi's days it was prohibited to import fruits from another country into the Land of Israel during the *Shemitaḥ* year and dry them, but Rabbi allowed importing figs and grapes from another country in order to dry them near the borders of the land of Israel (*Tosefta Shevi'it* 4:19, ed. Lieberman, p. 184).

Similarly, the Jerusalem Talmud (*Ta'anit* 3:1, fols. 66b-c) states that the *shofar* can be blown on a public fastday during the *Shemitaḥ* year "because of other peoples' livelihoods". Some Sages explained that the "other people" are non-Jews, but Rabbi Zeira agreed with Rabbi that it is possible to proclaim a day of public fasting during the *Shemitaḥ* year to pray for the livelihood of the Jews whom we suspect have violated the laws of *Shemitaḥ*! The *Talmud* continues: "A certain teacher was suspect concerning the *Shemitaḥ* fruits. They brought him before Rabbi, who said to them: 'what should this poor man do? He acts this way to keep himself alive!'"

Why did Rabbi rule in this way? Why was he so lenient regarding *Shemitaḥ* prohibitions? Professor Safrai suggests (p. 11) that this derives from Rabbi's general outlook. Until his days, they considered *Shemitaḥ* in our day when there is no Temple a *biblical* law (*Sifra Behar*, parashah 2). Rabbi gave a new interpretation: that it is a *rabbinic* law (see below, section V). This is the only way to understand Rabbi's effort to do away entirely with the *Shemitaḥ* prohibitions. The Jerusalem Talmud tells us (*Ta'anit*, Chapter 3, fol. 66c, at top = *Demai*, Chapter 1, fol. 22a): "Rabbi wanted to permit *Shemitaḥ*" but was not able to do so, apparently due to the opposition of Pinḥas ben Ya'ir, who was known as a pious man and was influential among the people. (Cf. Benovitz for a new explanation of this episode.)

Rabbi's tendency continued during the *Amoraic* period (Safrai, pp. 12-21). His son Rabban Gamliel and those who followed him, continued to limit the laws of *Shemitah*. The most famous example is that of Rabbi Yannai, Rabbi's pupil (a first generation Palestinian *amora*): "As Rabbi Yannai proclaimed: go and sow during the *Shemitah* year, because of *arnona* [a percentage of the crops paid as tax to the Romans] (*Sanhedrin* 26a).

In other words, due to the *arnona*, Rabbi Yannai ordered the people to go and sow during the *Shemitah* year, an activity which is forbidden according to biblical law. Rashi (*ibid.*) explains that he did so because *Shemitah* in his day was only a *rabbinic* prohibition. The Tosafists (*ibid.*) agree, but they add that even if *Shemitah* in his day had been a biblical prohibition, it would have been justified, because the Jerusalem Talmud says (in another context) that Rabbi Yannai did this "*mishum hayei nefesh*" ("because it was a question of life and death"). That is, it was life-threatening not to pay *arnona*.⁽³⁾

These sources and many others teach us that the late *tannaim* and the *amoraim* were very lenient regarding *Shemitah* prohibitions. They limited its boundaries, annulled part of its prohibitions, forgave those who were suspected of not observing it, and Rabbi even wanted to annul it completely – apparently because they saw how oppressive it was for the people to observe this *mitzvah*. If they did so in a simple agricultural society, how much the more so in a complex technological society! If sowing in the seventh year was allowed in order to pay taxes (and according to Rashi it was *not* a life-threatening situation), it is even more justified to allow this to ensure the livelihood of tens of thousands of Jewish farmers and in order to ensure the economic viability of the State of Israel! (cf. Zevin, p. 125).

Indeed, Rabbi Tuckechinsky (p. 65) even suggested that our situation today is even more severe than that of Rabbi Yannai's *arnona*, because at that time the problem was with extortionists and tax collectors, while today we are surrounded by enemies who wish to kill us. In another place (p. 125) he suggested that if, God forbid, there should be a drought or economic boycott, our rabbis will have to get together and announce that it is permitted to plough and to sow, as Rabbi Yannai did.

V) *Shemitah* in our Day – Biblical Law, Rabbinic Law or an Act of Piety?

The above-mentioned sources teach us of the Sages' general tendency to limit the *Shemitah* laws in our days, but this is not enough for us to rule in matters of Jewish law. In order to do so, we must discuss a few Talmudic passages and the opinions of the *poskim* (decisors).

A *baraita* in the Jerusalem Talmud (*Shevi'it* 10:3, fol. 39c) discusses *Shemitat kesafim* [monetary *Shemitah*] which is found in Deuteronomy 15:1-2:

We have learned: "And this is the manner of the release: every creditor shall release" (Deut. 15:2). Rabbi said: The two types of *Shemitah* (release) mentioned in this verse are the Sabbatical Year and the Jubilee Year. When the Jubilee Year was observed, the Sabbatical Year was observed according to the Torah. After the Jubilee Years ceased, the Sabbatical Year was observed [only] on rabbinic authority.

In other words, when there is a Jubilee Year, *Shemitah* is biblically ordained; when there is no Jubilee Year, *Shemitah* is rabbinic. It should be stressed that in the Jerusalem Talmud, no one disputes Rabbi. Thus, according to the Jerusalem Talmud, *Shemitah* in our day is a *rabbinic* commandment.

Rabbi's opinion is quoted by the Babylonian Talmud in two places: *Gittin* 36a and *Mo'ed Kattan* 2b-3a. In *Gittin*, they are discussing Hillel's *prozbul* enactment. The Talmud asks: How can Hillel make a *rabbinic* enactment [to circumvent the forgiving of monetary debts during *Shemitah*], if *Shemitah* is a *biblical* commandment? Abaye replies that Hillel was dealing with "the Sabbatical Year in our time, and agrees with the opinion of Rabbi". And he then quotes the above-mentioned *baraita* about the Jubilee year. In *Mo'ed Katan*, they ask how is it possible that the *Mishnah* permitted watering an irrigated field during the *Shemitah* year. Abaye responded again:

[Our Mishnah is speaking of] the *Shemitah* year in our time and it agrees with the opinion of Rabbi [that *Shemitah* in our day is a rabbinic prohibition]. Said Raba: you may even say [it voices] the view of the Sages [that *Shemitah* in our day is a biblical prohibition] – God forbade the principle types of labor, but not the derivative types of labor.

In other words, according to the Babylonian Talmud, there is a dispute between Rabbi and the Sages as to whether *Shemitah* in our day is biblical or rabbinic. Furthermore, we should stress that in both passages in the Babylonian Talmud the expression "in our day" is unusual: it

includes Hillel's time *before* the destruction of the Temple and Rabbi's time *after* the destruction of the Temple.

The *Rishonim* (early decisors, ca. 1000-1500 c.e.) explain these Talmudic passages in three ways:

a) There is a minority opinion among the *Rishonim* that *Shemittah* in our days is biblical. Rabbi Joseph Caro derived this from Maimonides (*Kesef Mishneh* to the Laws of *Shemittah* and Jubilee 4:25, 9:1, 10:9). However, this derivation is apparently incorrect (see Zevin, pp. 106-107, 110-111).

Nahmanides is one of the only *Rishonim* who rules explicitly like the Sages that the prohibition is *biblical* (*Sefer Hazekhut* on the Rif, *Gittin*, Chapter 4, ed. Vilna, fol. 18a), but in his commentary on the Torah (Leviticus 25:7, at the end) he is not certain about this and in his commentary to *Mo'ed Kattan* (3b) he rules that *Shemittah* in our day is a *rabbinic* prohibition. As a result, very few later authorities accept this approach.

b) Many *Rishonim* rule like Rabbi that *Shemittah* in Talmudic times was a *rabbinic* prohibition (Zevin, pp. 109-110; Grunfeld, p. 107). They rule thusly for two reasons: first of all, if *Shemittah* in the Second Temple period was *biblically* ordained, how did Hillel dare to make a *rabbinic* enactment against the Torah? Second of all, when there is no clear ruling in the Babylonian Talmud, one should rule like the Jerusalem Talmud, and no one disputes Rabbi there. However, there is still disagreement regarding *Shemittah* *after* Talmudic times. Many *Rishonim* ruled that *Shemittah* in their day was rabbinic, according to Rabbi's opinion in the *Gemara* (see Zevin and Grunfeld, *ibid.*).

c) However, many *Rishonim* maintained like the Ra'avad (on the Rif, *Gittin*, Chapter 4; 1120-1198) and Rabbi Zerahia Halevi, (*Sefer Haterumot, Sha'ar* 45, Part 1, fol. 203b ff.; Schepansky, pp. 205-209; Urbach; Kasher, 1958, p. 170; 1125-1186) that when Rabbi ruled that *Shemittah* was "rabbinic" he was referring to the Second Temple period and his own time, but *not* to the Middle Ages. In other words, after the destruction of the Temple, there was still a Supreme Rabbinic Court that maintained "a reminder of the Jubilee Year" – they blew the *shofar*, released slaves and returned inherited lands to their original owners. During that time period, which included Rabbi's time, *Shemittah*, as well as the Jubilee Year were rabbinically ordained. But later, when the Jubilee Year was annulled entirely, *Shemittah* was also annulled entirely

and today (i.e. in the Middle Ages) both agricultural *Shemita* and monetary *Shemita* are *middat hassidut* – acts of piety – and no more.

But if so many *Rishonim* agree with this opinion, why is it that most modern decisors beginning in the year 5648 (1887-1888) ruled that *Shemita* in our day is *rabbinic*? This is because they did not see most of the *Rishonim* who belonged to this school of thought. Rabbi Kuk and his contemporaries saw this opinion only in Rabbi Zerahia Halevi, the Ra'avad and as an opinion quoted by the Ran (R. Nissim Gerondi, Spain, d. 1380). Since the Ra'avad may have contradicted himself in another place, the modern rabbis decided that *Shemita* as an “act of piety” is a *da'at yahid*, the individual opinion of Rabbi Zerahia Halevi. Indeed, Rabbi Kuk and Rabbi Joseph Engel used this individual opinion as a *sneef* (auxiliary reason) in order to support the *heter mekhirah* (see Zevin, p. 125 and Rabbi Kuk, pp. 41-44).

However, today we know that Rabbi Zerahia's opinion was never an individual opinion! Rabbi Kasher proved in three fascinating articles that many rabbis in Provence and elsewhere considered *Shemita* in our day an act of piety (and cf. Zevin and Yosef). In addition to Rabbi Zerahia, the Ra'avad and the Ran, this opinion is mentioned or supported by R. Yitzhak ben Moshe of Vienna (*Or Zarua*, Part 4, *Avodah Zarah*, parag. 107 in the name of the Rashbam); R. Yitzhak ben Abba Mari (*Sefer Ha'ittur*, Prozbul, fol. 77d); R. Menahem Hameiri (in *Bet Habehirah* to *Gittin* 36b and to *Mo'ed Kattan* 2b and in *Magen Avot*, No. 15 = Schepansky, pp. 211-215); and R. Shlomo ben Shimon Duran, Responsa Rashbash, no. 258 in the name of *Hukot Hadayanim* who quoted *Halakhot Gedolot*, Rabbi Judah of Barcelona, Ba'al Ha'ittur and Rabbi Judah ben Rabbi Yakar, Nahmanides' teacher.

Kasher also stresses the opinion of the Me'iri and the Rashbash themselves. The Me'iri testifies in *Magen Avot* that "many of us, many of the Geonim and rabbis who are with us" agree with him that *Shemita* in our day is only an act of piety. The Rashbash also testifies that "many important authorities consider that it does not apply today even rabbinically". On this basis, Rabbi Kasher summarizes as follows (1966, p. 374):

If so, the question of agricultural *Shemita* in our day, takes on a totally different form, since it is not a question of an individual versus many, as we thought it was, but rather it is many versus many who actually observed this way in practice...

And subsequently he adds:

...However, there is a large group among the early Sages who considered that monetary *Shemittah* and agricultural *Shemittah* are one and the same, and neither of them applies in our day, not even rabbinically, but only as an act of piety... And this question is a dispute of many versus many and each place can act according to its custom (*ibid.*, p. 375).

Therefore, the opinions are evenly balanced: a large group of *Rishonim* ruled that *Shemittah* in our day is rabbinic and another large group (including most of the rabbis of Provence!) ruled that *Shemittah* in our day is an act of piety. Since the farmers of Israel are in a difficult financial situation ("*arnona*"), and since the *heter mekhirah* itself is very problematic as we explained above, and since the Talmudic Sages themselves were very lenient regarding *Shemittah* laws, it is preferable to follow the widespread opinion that *Shemittah* in our day is an act of piety and no more. And if you say: how is it possible to rule against Rabbi Kuk and his followers – we would say that they used this opinion as a *sneef* (auxiliary reason) to be lenient because they thought it was one individual rabbi versus the majority. If they had known that it was many versus many, it is very possible that they would have ruled like them in the first place and would not have put themselves into the difficult position of supporting the *heter mekhirah* (and cf. Rabbi Kasher, p. 375, at the bottom).

Finally, one should add another *sneef* that supports the more lenient position. Rabbi Kuk and others already pointed out that there is a major dispute among the *Rishonim* regarding the precise year in which *Shemittah* is observed. Even though we rule according to Maimonides, there is still a doubt whether the year 5768 is really a *Shemittah* year.⁽⁴⁾

VII) Practical *Halakhah*

Therefore, in our opinion, we should observe the laws of *Shemittah* today as an "act of piety". In other words, it is laudable to observe it as much as possible. However, farmers who cannot observe it due to financial pressure ("*arnona*") or because of pressing circumstances can sow and do all other necessary activities during the *Shemittah* year.

If possible, the following laws should be observed:

1. Sowing the winter crop before Rosh Hashanah.
2. Sowing grass and ornamental trees for gardens before Rosh Hashanah.

3. Whenever possible, avoid biblically forbidden work, such as sowing, pruning, harvesting and ploughing or one should try to do them in a different manner (for details see Halevi, p. 310 etc.)
4. Avoiding the planting or tending of ornamental gardens if they are not essential for preventing erosion during the rainy season.

It is also advisable to perform various symbolic and educational acts to enhance the awareness of the year 5768 as a *Shemita* Year:

1. Planning the agricultural cycle to fit the six years between two *Shemita* years (Admonit, p. 367).
2. Leave one field with a large sign as the "*Shemita* corner" (as Zevin p. 126 and Admonit, p. 367 suggest), in which all laws of *Shemita* will be observed.
3. Hold public study sessions of the laws of *Shemita* in the Mishnah, Maimonides and other sources (Admonit, p. 368).
4. In the final analysis, what is the purpose of *Shemita*? As it is written: "that the poor of thy people may eat" (Exodus 23:2). Today, almost no one fulfills the commandment's purpose as it appears in the Torah. Therefore, the religious kibbutzim started a special fund a few *Shemitot* ago, in order to donate some of the *Shemita* year profits to the poor. It would be most appropriate for all Jewish farmers in Israel to donate a percentage or a fixed amount of the *Shemita* year's profits to poor people. In this way, the original purpose of *Shemita* will be achieved.

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Jerusalem

16 Marheshvan 5768

Notes

1. This responsum was originally written in Hebrew in 1985 for Kibbutz Hanaton and was published in *Responsa of the Va'ad Halakhah of the Rabbinical Assembly of Israel* 1 (5746), pp. 37-45, also available with an English summary at www.responsafortoday.com. A preliminary translation of that version was prepared by Rabbi Diana Villa of the Schechter Rabbinical Seminary. I then rewrote the responsum and added bibliography in light of recent developments and controversies.
2. This section is based on Safrai, Berkowitz, Gilat and Feliks, pp. 424-446.
3. But see Feliks, pp. 339-353, for a different interpretation of the Rabbi Yanai episode.
4. See Kuk, *Responsa Mishpat Kohen*, no. 63; Zevin, pp. 85-93; and Grunfeld, pp. 183-192. For historical discussions of this question, see Wacholder, Tsafirir, Naveh, Stern, Friedman, Ta-Shema, and Sarna.

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