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Center for Modern Torah Leadership



חרות ואחריות

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"Taking Responsibility for Torah"

## (ONLY) GERIM AND TOSHAVIM

By Rabbi Aryeh Klapper

Practical halakhic real estate law is mostly found in Mishnah and Talmud Tractate Bava Batra. Two major topics addressed there are inheritance and *chezkat shalosh shanim* = proof of ownership via three years of unchallenged use. These discussions assume that individual human beings can own land and alienate their ownership of land in ways roughly similar to their ownership of movable property.

Vayikra 25:23 offers a different perspective.

But the land must not be sold in perpetuity  
because the land is Mine  
because you are (only) *gerim* and *toshavim* with Me.

וְהָאֶרֶץ לֹא תִמָּכַר לְצִמְמֻת  
כִּי־לִי הָאֶרֶץ  
כִּי־גֵרִים וְתוֹשְׁבִים אַתֶּם עִמָּדִי:

*Ger* and *toshav* are legal terms of art which may have no direct translation. But they are contrasted elsewhere with *ezrach*, which may roughly be translated as "landed citizen". The point is that human beings reside on the land only because G-d suffers us to do so, not because we have rights. The ironic result is that tribal and familial ownership of land in Israel is permanent. "Sales" are actually rentals lasting at most until the Jubilee year, when all power and authority over land returns to its hereditary owners arising out an original apportionment.

Halakhic real estate law arising from this perspective can be found in the last chapter of Mishnah and Talmud Tractate Arakhin.

What sort of law is this? No one in the Talmud suggests that it "never was and never will be" and was intended exclusively for study. But the Talmud also has no memory of it having been applied in the post-Biblical era, and only the most tenuous evidence of it having been applied ever. The Talmudic conversation never strays far from *midrash halakha*, the derivation of law by directly interpreting the Bible.

This is different from other laws not practiced in the Talmudic era. For example, the laws of the Temple ritual are regularly informed and influenced by transmitted memories of how things were done in the Second Temple. But these

laws seem not to have been applied in the Second Temple period. That might have been because the I am also unaware of any attempt to create rabbinic-law facsimiles or memorials to these laws, or to use them as moral policy touchstones, even in the Land of Israel.

Vayikra 25 is also not framed as pure abstraction, or as pure transformation of values into law. The "land" cannot be sold in perpetuity, but houses in walled cities can be! But such houses are also not sold under the same terms as movables: the seller has the right to reverse the transaction within twelve months. Regarding that detail, the Mishnah suddenly doffs its hat and produces a rabbit:

Originally

(the buyer) would hide on the day the twelve months expired,  
so that the property would become absolutely his  
Hillel (the Elder) enacted that (the seller) deposit his moneys in  
an office,  
and then break down the door (of the house) and enter;  
whenever that (seller) wants –  
let him come take his money  
בראשונה  
היה נטמן יום שנים עשר חודש,  
כדי שיהא חלוט לו.  
התקין הלל - שיהא חולש מעותיו ללשכה,  
ויהא שובר את הדלת ונכנס;  
אימתי שירצה הלל –  
יבא ויטול את מעותיו.

Tosafot Arakhin 31b (cf. Sefer HaYashar Chiddushim 123 and Sefer Yereim 164) argues for taking this report at face value.

Here it implies that in the days of Hillel, who was during the  
Second Temple . . .  
they practiced the Jubilee,  
since (the Laws of) Houses in Walled Cities was practiced  
as we say on 29a  
that (the Laws of) Houses in Walled Cities are practiced only  
when the Jubilee is practiced . . .

הכא משמע דבימי הלל, שהיה בבית שני . . .  
היו נוהגין יובל,  
כיון דבתי ערי חומה היה נוהג,  
כדאמר בפירקין דלעיל (כט).  
דאין בתי ערי חומה אלא בזמן שהיובל נוהג . . .

According to Tosafot, the laws of the Jubilee were in Biblical force (or at least Hillel thought they were in force) during the Second Temple, meaning that all the laws of Vayikra 24 were in force, including those of real estate and of slavery.

An alternate possibility is that a rabbinic-law facsimile of the Laws of Walled Cities was in force. Talmud Gittin 36a makes a parallel suggestion to explain why Hillel needed to make the *pruzbul* decree to avoid having loans vacated by the Sabbatical Year.

This was true only of the Law of Walled Cities, not of the law regarding land sales. This may have been for the practical reason that it was impossible to confidently identify the genuine owners-by-descent from the original apportionment-by-lottery, and the Rabbis did not want to create competing perpetual deeds. But such issues can generally be finessed. So more likely the rabbis had no interest in imitating the Torah's system. Why not?

Here is a possibly radical suggestion. The Rabbis were unwilling to implement a system in Israel that would justify discrimination against Jews in the Diaspora.

We noted above that the Jubilee land law seems to be a highly ironic outcome of its ideology. Because G-d owns the land, and human beings live on it only as *gerim* and *toshavim*, only by His sufferance, the land becomes so attached to its human owners – so entailed – that it can never be alienated from them. Or another way of putting it: because we are not landed citizens, no one else gets to own land in our Land.

The Jubilee land law has potentially significant moral and practical advantages. For example, it could prevent multigenerational poverty and generally limit economic inequality, and those effects could in turn reduce the risk of political instability. It might also encourage greater environmental responsibility.

However, it seems evident to me that these advantages manifest only when the Jubilee system controls the vast majority of real estate in its political jurisdiction. That's why the Jubilee laws apply only when all the tribes, the primary unit of apportionment, are represented and identifiable among the Jewish population in Israel.

These advantages also manifest only among the landed citizenry. As the Torah itself often points out, the *Levi* and the *ger* are excluded (although the situation regarding converts will

be resolved when the Land is next reapportioned; see Chapter 8 of *Divine Will and Human Experience*).

Moreover, if our Jubilee system is intended as a moral model for the world, it follows that other societies should also establish systems by which all land is owned inalienably by hereditary citizens, to the exclusion of the *ger* and *toshav*. It also follows that people would not be allowed to double-dip by holding multiple citizenships. That would not be good for the Jews so long as we remain a primarily Diasporan community. That may be why the Biblical Jubilee laws apply only when (roughly) most Jews live in Israel, and I suggest it is a reason that the Rabbis did not enact their own version, assuming they had the authority and the capacity to implement it.

But I don't want to frame that decision as purely or even primarily self-interested. It is also a matter of justice – one may not treat *gerim* and *toshavim* less well than one would demand to be treated as a *ger* or *toshav*. (See Ohr HaChayyim to Genesis 23:4 and my [If Sarah our Foremother Had Died in Pittsburgh](#)).

One might suggest that with a somewhat autonomous Jewish community established in Judea, Chazal should not have been concerned per se about the economic or political circumstances of Diasporan Jewry (as opposed to being concerned in terms of Diasporan economic and political support for the Judean community). One might even argue that the clearer it is that Jews are outsiders in the Diaspora, the more they will come on aliyah, and so implementing a rabbinic Jubilee would lead to implementing a Biblical Jubilee! And yet Chazal chose otherwise.

Maybe they thought that in a non-Messianic era, the Jewish yishuv in Israel has the great merit of performing a specific mitzvah or mitzvot that can't ordinarily be performed elsewhere, but that other communities have other merits worth preserving. And/or maybe there were simply too many nonJews in Israel to make it morally or practically plausible that private charity could balance a fundamental structural disadvantage.

*Shabbat shalom!*

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