

Parsha Pearls

FROM THE WORDS OF THE GEDOLIM

Va'eschanan 5769

Do not make a covenant with them and do not give them a resting place. (7:2)

The Gemara (Avodah Zarah 20a) derives from this verse that it is forbidden to sell land to a gentile in Eretz Yisroel. The Rambam brings this as practical law in Hilchos Avodah Zarah 10:3, and the Shulchan Aruch brings it in Yoreh Deah 151:8. Nowhere is it stated that this law applied only during the time when the Jewish people ruled their own land. On the contrary, the Rambam says explicitly (10:6), "All these things were said only when Israel is in exile among the nations or the nations are in power over Israel..."

However, we know that during exile Hashem wants Eretz Yisroel to be in non-Jewish hands. He sent us into exile, and even prohibited us under oath from taking over Eretz Yisroel (Kesubos 111a). Certainly, then, if Jews already have, in violation of the Torah, gained sovereignty over the land, they should give up that sovereignty. How is this consistent with "lo sechanem" - the prohibition to sell the land?

The answer is that the prohibition only refers to sale of personal property, not transfer of political sovereignty. Jews can own land under a non-Jewish state just as well as they can under a Jewish state. Throughout the world, Jews own houses and land, and Eretz Yisroel under a non-Jewish government would be no exception. No one is asking anyone to sell any of their land.

But some ask: the Rambam (Hilchos Avodah Zarah 10:4) writes, "Why are we forbidden to sell them land? Because the Torah states that one may not give them a resting place in the land. If they do not have land then their residence will be temporary." If this is the reason for the prohibition to sell personal property, then it should certainly be forbidden to give away sovereignty, which would also allow them to have more of a "resting place in the land."

Let us take a moment to see how this Rambam has been understood by the poskim. The proponents of the temporary sale of land to a non-Jew in order to exempt it from Shmittah restrictions (heter mechirah) argue that it is unusual for the Rambam in the Mishnah Torah to offer the reason for a mitzvah. The Rambam presents the reason for this prohibition, they argue, because the prohibition applies only when the reason applies. Thus, since the sale for Shmittah is only temporary in nature and the non-Jew is not given the opportunity to reside permanently in Eretz Yisroel, the prohibition does not apply. But the Chazon Ish (Shvi'is 24:4) flatly rejects these arguments and writes, "The Torah was not given with these distinctions; any time one sells to a gentile he transgresses this prohibition, even if it seems to us that he is not taking up residence in it."

Thus according to the Chazon Ish, the reason given by the Rambam plays no role in determining halacha. One is forbidden to sell land even if it does not lead to non-Jews settling permanently, and by the same token one is

permitted to give away political sovereignty even if it does lead to non-Jews settling permanently. And even according to the proponents of heter mechirah, who understand the Rambam as taama dikra (a reason that modifies a law), we know that taama dikra can only work to limit the application of a prohibition; it cannot create a new prohibition. For example, Rabbi Shimon holds that when the Torah forbids taking the garment of a widow as collateral, it means only a poor widow (Bava Metzia 115a). But he does not use his reasoning to extend the prohibition to all poor people. Here too, limiting the prohibition to permanent sales and thus permitting the sale of land for Shmittah is one thing, but claiming that the prohibition applies to something that is not a sale at all is quite another thing.

Some Zionists bypass the entire issue of “lo sechanem” by saying that holding onto Eretz Yisroel and fighting for it is justified on the grounds that this is an obligatory war (milchemes mitzvah) to defend Jewish lives. They find support in the Rambam (Hilchos Melachim 5:1-2), who says that in an obligatory war the king may go to war without consulting the Sanhedrin, at any time he wishes. “And which wars are considered obligatory wars? The war against the seven Canaanite nations, the war against Amalek, and a war to defend the Jewish people from an enemy attack.” Furthermore, these people argue, even in our times, during exile, when we have no king or Sanhedrin at all, it is sometimes allowed for Jews to fight such a war. The Shulchan Aruch states in the laws of Shabbos, Orach Chaim 329:6: "If gentiles are besieging Jewish cities, if they are coming to take money, we may not violate Shabbos to fight them, but if they are coming to kill, or if they are coming without any stated purpose, then we may go out and fight them with weapons and violate Shabbos. And if the city is near the border, even if they come only to steal straw, we may violate Shabbos to fight them. Rema: Even if they have not yet come but are planning to come, we may prepare ourselves."

It can be proven that this law applies even during exile, because its source is in Eiruvim 45a, and there the Amoraim, who lived during exile, explain how it applies to their cities in Babylonia. Babylonia contained a large area that was full of Jewish cities and villages, and the city Nehardea was near the border of this area. If gentiles invaded Nehardea for any reason, say the Amoraim, it would be permitted to fight them on Shabbos because it is a border city.

But this argument misses two fundamental points: 1) The gentile nations who fight the Zionists are fighting because they wish to control the land instead of the Zionists. Thus the Zionists are fighting not to defend Jewish lives, but to defend their statehood and their political control of the land. Unlike the straw mentioned in Shulchan Aruch, statehood and political control over the land are forbidden to us under the Three Oaths, so it follows that any war fought to maintain that statehood is also a violation of the Oaths. 2) The Shulchan Aruch is talking about Jews fighting to defend their host country, a gentile country (such as Babylonia in the Gemara's case), against outside attackers. They are defending a Jewish city that is part of a non-Jewish country, and thus they are fighting not as Jews but as citizens of that country. In other cases, they are defending themselves against criminals in a non-Jewish country whose government would like to control crime. Thus they fight as a service and assistance to their government. But there is no permission for Jews during exile to fight on their own against the gentile nations among whom they live; that is a violation of the Oaths.

Those who do not have e-mail can now receive this sheet free every week by regular mail. To order write to the address below.



True Torah Jews
183 Wilson St. PMB 162
Brooklyn, NY 11211

For additional copies of this publication,
or to sponsor an issue,
PLEASE CALL 718-841-7053.