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## WILL DEMOGRAPHICS CHANGE HALACHA?

Between 2007 and 2018, the percentage of world Jewry located in Israel rose from 41% to 45%.<sup>1</sup> With demographic trends indicating that by 2029 (perhaps much sooner)<sup>2</sup> a majority of Jews will be living in Israel, some may question whether the obligation to tithe one's produce—to separate *terumot* and *ma'asrot*—will soon change from its current status as a Rabbinic obligation to a Biblical obligation.

The background necessary to understand this question consists primarily of two concepts. The first is whether the land

of Israel retains a level of holiness today that triggers a Biblical obligation of tithing. The Talmud<sup>3</sup> records that Joshua sanctified the land, giving all agricultural commandments (*mitzvot teluyot b'aretz*) the status of a Biblical obligation. There is a debate whether this Biblical status was eternal or not. Most opinions hold it was nullified with the destruction of the First Temple, but that Ezra renewed the sanctification upon the return of the exiled Jews to rebuild the Second Temple.<sup>4</sup> The Talmud further debates whether Ezra's sanctification was eternal or whether it, too, was nullified with the

destruction of the Second Temple. For our purposes, to reduce a complicated Talmudic debate, those who hold the holiness of the land remains in force until this day hold that tithing remains a Biblical obligation even today,<sup>5</sup> while those who hold that the land's holiness was nullified regard the obligation as Rabbinic.<sup>6</sup> Maimonides, however, whose opinion we will focus on since it was later codified by the Shulchan Aruch, paves the way for a third approach<sup>7</sup>. He sides with the view that Ezra's sanctification remains, yet rules that tithing is Rabbinic due to the lack of “ביאת כולכם”—a phrase

1 Sergio DellaPergola. “World Jewish Population, 2018,” in Arnold Dashefsky and Ira M. Sheskin. (Editors) The American Jewish Year Book, 2018, Volume 118 (2018) (Dordrecht: Springer) pp. 361–452.

2 As the study cited did not use a strictly halachic definition concerning who is a Jew, there is ample reason to believe that this benchmark will be reached in the next year or two, as there are likely more non-halachic Jews in the Diaspora reported as Jews in this survey than there are in Israel.

3 Shevuot 16a

4 Rambam H. Beit HaBechira 6:16, Ra'avad H. Terumot 3:13, Tur/Shulchan Aruch 331:1

5 Tosafot Yevamot 82b, Ra'avad H. Terumot 1:26

6 Rashi and Meiri Sanhedrin 26a

7 H. Terumot 1:26

representing the second concept, to which we now turn.

Regarding the commandment of separating *challa*, the Torah states "בבאכם אל הארץ" "When you (*plural*) come to the Land." The Talmud<sup>8</sup> expounds, —"בבאכם" —"בביאת כולכם אמרתי ולא בביאת מקצתכם"—"all of you, not some of you," that is, *challa* only applies on a Biblical level when *all* Jews come to Israel. Therefore, all would agree—even if one holds that Ezra's sanctification was eternal—that separating *challa* is of a Rabbinical nature so long as not all Jews are living in Israel. Maimonides' ruling is innovative because he extends this condition from *challa* to tithing *terumot uma'asrot*. Therefore, despite ruling that Ezra's sanctification remains until this day, he maintains the obligation of tithing is not Biblical since this second condition of all Jews being in Israel remains unfulfilled. He emphasizes that even in the Second Temple era the obligation was rabbinic, since not all Jews returned with Ezra.

Given our understanding of Maimonides, presumably this *halacha* will not change until all Jews are in Israel. However, there is a debate on how to understand the requirement of "ביאת כולכם"—does it require *all* Jews to be in the land of Israel? Or does it simply require a majority? The *Sefer HaChinuch*<sup>9</sup> and the *Ritva*<sup>10</sup> hold that only a majority is required and the *Chazon Ish* implies this as well<sup>11</sup>. On this basis, one can suggest that when a majority of Jews are in Israel the nature of the obligation will in fact turn Biblical. Nonetheless, this appears to be the minority opinion and, importantly, it is not clear whether Maimonides and *Shulchan Aruch* would themselves subscribe to that understanding.

Moreover, even if we accept the opinion

that only a majority is required, the matter remains unresolved. There remains a question that emerges from Maimonides' opinion which demands explanation. Namely, if he holds Ezra's sanctification was eternal and the land of Israel has an elevated level of holiness to this day, why is "ביאת כולכם" necessary? How does all (or most) Jews being in Israel change anything? R' Chaim Soloveitchik understands that this requirement signifies a fundamental difference in the land's holiness<sup>12</sup>. Yes, it was sanctified by Ezra and constantly maintains a state of holiness; nonetheless, it does not achieve its ultimate level of holiness

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## The what gives the land of Israel its ultimate holiness is the Jewish people's physical presence in the land.

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until the Jews are in the land itself. Some commandments require this ultimate level of holiness and *terumot uma'asrot* is one of them. *Torat Ha'Aretz*<sup>13</sup> builds on this understanding of Maimonides, suggesting that since this level of holiness was lacking in Ezra's time as well, Ezra's sanctification did not take hold with regards to *terumot uma'asrot*. Thus, in order for *terumot uma'asrot* to regain a Biblical status once again, there would need to be what Maimonides calls

"קדושה שלישית" "The third sanctification." Regardless of how many Jews live in Israel, this is something which will only take place with the coming of *Mashiach*.<sup>14</sup>

To end on a philosophical note, what R' Chaim's understanding means, in essence, is that what gives the land of Israel its ultimate holiness is the Jewish people's physical presence in the land. Thus, while there are a number of valid reasons why any given individual may not be able to make *aliyah* at the present time, the thought that "I'll go when *Mashiach* comes, once the Temple is rebuilt and all the holiness is restored" ought not be part of one's thought process. Rather, we should feel empowered by the thought that the *aliyah* of every Jew brings the land one step closer to its ultimate level of holiness. May we merit to see Jewish communities in Israel continue to flourish and to see the day when *terumot uma'asrot* become a Biblical obligation once again!

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8 Ketubot 25b

9 Mitzva 385

10 Ketubot 25b

11 Shevi'it 21:5

12 H. Shemitta v' Yovel 12:16

13 Vol. 2, 3a-3b. See there for further discussion and additional proofs.

14In a personal communication, R. Reichenberg, S'gan Rosh Beit Hamidrash Emunat Ish (a Kollel exclusively dedicated to learning and research regarding mitzvot teluyot b'aretz) mentioned that he views this opinion as legitimate consideration vis-à-vis the question of what the psak (ruling) would be should we reach the benchmark of a majority of Jews in Israel.