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BIKURIM AND SHEMITA: CONFLICT OR COEXISTENCE?

The Torah (Bamidbar 28:26) refers to the Yom Tov of Shavuot as “Yom HaBikurim.” The Mishna (*Bikurim* 1:3) states that Shavuot is the earliest time that one may bring the *bikurim*, the first fruits to the Beis HaMikdash. While we tend to focus on Shavuot as “*zman matan Toraseinu*,” the day in which the Torah was given, it is important to also highlight the *bikurim* theme of the holiday. For this reason, many have a custom to study the mishnayot of *Masechet Bikurim* on Shavuot.¹ By doing so, we gain a deeper appreciation for what Shavuot meant in the times of the Beis HaMikdash, and also apply the lessons learned from *bikurim* to our own lives.

This year is a shemita year — a year in which a Jewish landowner is forbidden to perform many acts of labor to benefit the land, and in which he is obliged to make the produce available to all who wish to partake of it. How does shemita affect the mitzvah of *bikurim*?² Is there still an obligation to bring the first fruits to

the Beis HaMikdash if they grew during the shemita year? On the one hand, we find throughout the *mishnayot* in *Seder Zeraim* that many of the *mitzvos hateluyos ba'aretz* (mitzvos dependent on the land) such as *terumos* and *maasros* do not apply during shemita. The Rambam, (*Hilchos Matnos Aniyim* 6:5) writes that this is because produce that is *hefker* (ownerless) is exempt from *terumos* and *maasros*. Since *peiros shevi'is* (produce that grew during shemita) are considered ownerless, it follows logically that they should likewise be exempt from *terumos* and *maasros*. Rashi (Shemos 23:11), based on the *Mechilta*, derives this exemption from a pasuk — *v'yisram tochal chayos hasadeh* (the leftovers from the poor shall go to the animals in the field): just as animals eat without tithing, so too the poor (and anyone else) who partake of the fruit are not obligated in *terumos* and *maasros*.³

Does this exemption apply to *bikurim*? Is *bikurim* similar to *terumos* and *maasros* and therefore not applicable

during shemita or is the mitzvah of *bikurim* somehow different? This question may partially hinge on the nature of the mitzvah of *bikurim*. Is the mitzvah of *bikurim* an obligation on the fruit itself or is it an obligation on the individual who owns the fruit? Indeed, Tosafos, *Bava Basra* 81a, d.h. *HaHu L'meutei*, raises this issue in questioning whether we can categorize *bikurim* as one of the *mitzvos hateluyos ba'aretz*.

Even assuming that the mitzva of *bikurim* is an obligation incumbent upon the individual, perhaps the mere fact that the halacha mandates that shemita produce be made available for others' consumption is sufficient reason to exempt the owner from the obligation to bring such fruit to the Beis Hamikdash.

The contours of this topic touch on numerous aspects relating to the respective mitzvos of *Bikurim* and shemita. Each of these aspects carries many additional details. This essay will present an overview of

several arguments that have been presented on both sides of this issue.⁴ The interested reader is encouraged to explore this vast and fascinating topic in greater depth, in the spirit of “*yishma chacham ve’yosif lekach*”.

The Juxtaposition of Bikurim and Shemita: Rashi’s “*Derasha*”

There is a pithy comment of Rashi in his commentary on Chumash that would seem, at first glance, to conclusively settle the matter of whether the mitzvah of *bikurim* applies during the shemita year.

Commenting on the pasuk in Parshas Mishpatim (Shemos 23:19) “*Reishis bikurei admascha*” (the choice first fruits of your land you shall bring ...), Rashi writes the following:

אף השביעית חייבת בבכורים לכך נאמר אף
כאן בכורי אדמתך.

Even fruits from the seventh year have an obligation of bikurim. That is why it says even here “the first fruits.”

Rashi is explaining the juxtaposition of the mitzvah of *bikurim* with the mitzvah of shemita mentioned several pesukim earlier. It is noteworthy, however, that while the *Mechilta* cites a similar *derasha* regarding the juxtaposition of Shabbos and *aliya laregel* with shemita (also cited by Rashi there), this “*derasha*” regarding *bikurim* applying during shemita does not appear in the *Mechilta* nor in any extant sources in Chazal. Yet, taken at face value, it unequivocally establishes (even while acknowledging that one might have thought otherwise) that the mitzvah of *bikurim* applies during shemita.

Maharal: The Impossibility of Expressing Thanks for Fruit Which is Deemed Ownerless

Much ink has been spilled either to

dismiss or to support the implication of the aforementioned comment of Rashi. The Maharal in *Gur Aryeh* goes so far as to suggest that these words must certainly be a *taus sofer*, a scribal error, in our manuscripts. His argument boils down to the following: If the fruit is deemed *hefker* (ownerless), how can the farmer thank Hashem for the first fruit of the land that Hashem gave him (*reishis p’ri ha’adamah asher nasata li*)? After all, Hashem didn’t give him those fruit; they don’t belong to him. Since this *derasha* does not appear anywhere in Chazal, and given that its conclusions are counterintuitive, the Maharal insists that it must certainly have crept into the manuscripts of Rashi in error.⁵

We might question Maharal’s assumption that the inability to recite “*reishis p’ri ha’adamah asher nasata li*” proves that the mitzvah of *bikurim* does not apply during shemita. After all, such would only preclude *mikra bikurim*, the declaration recited when bringing the *bikurim*, but not the bringing of the *bikurim*, which is an independent mitzvah. Indeed, the mishanayos in *Bikurim* list several cases where *bikurim* are to be brought without an accompanying recitation.

Perhaps the Maharal would counter that although there are isolated instances and particular seasons when *bikurim* are brought without a recitation, it would be illogical to assume that such would be true for the duration of an entire year. Therefore, if the mitzvah of *mikra bikurim* cannot be performed during shemita, it would follow that there is no obligation to bring *bikurim* altogether.⁶

Does Asher Nasata Li Refer to the Fruit or to the Land?

There are several ways to defend Rashi’s comments from the Maharal’s

critique. R. Efraim Zalman Margulies (*Shem Efraim* to Shemos 23:19) suggests that although the fruit of shemita is *hefker*, the land still belongs to the landowner. When the person bringing the *bikurim* recites “*ve’atah hinei haivasi es reishis p’ri ha’adamah asher nasata li Hashem*” (“And now I have brought the first fruits of the soil that you Hashem have given me”), do the words *asher nasata li* (“that you have given me”) refer to the immediate antecedent (*al shelefanav*) — the land? Or do they refer back to the previous antecedent (*shelifnei panav*) — the fruit of the land? The Maharal assumes the latter, but perhaps Rashi would maintain that these words modify the land, which does, in fact, belong to him.

Does the Farmer Retain Ownership of the Land on Which the Fruit Grows?

Upon further analysis, even if we interpret the words *asher nasata li* as referring to the land, this phrase might still pose a problem during shemita since the farmer’s ownership of the land is, to a degree, compromised. After all, he may not restrict access to outsiders who wish to enter his land to pick the fruit. As such, he lacks the full benefits of ownership of the land enjoyed by a normal landowner.⁷

Interestingly, the Taz in his commentary on Rashi, *Divrei Dovid* (Shemos 23:19), extends the Maharal’s logic to the farmer’s compromised ownership of the land. For this reason, argues the Taz, one is unable to say *ha’adama asher nasata li* during shemita because he doesn’t completely own the land.

Along similar lines, the *Ohr HaChaim* (Devarim 26:2) infers from the language of the pasuk “*asher Hashem Elokecha nosen lach*” — that which

Hashem gives you —that only when the land is being "given to us" by Hashem must you bring *bikurim*, and not during the year that Hashem retains the land for himself.

Must a Farmer Acquire the Fruits From Their State of Hefker and Bring Them as Bikurim?

R. Aryeh Pomeranchik (*Toras Zeraim*, p. 131), suggests that even if the fruit is *hefker*, the mitzva of *bikurim* would dictate that the landowner acquire the first fruits from their state of *hefker*, designate them as *bikurim*, and bring them to the Beis Hamikdash. He cites the ruling of the Rambam (*Hilchos Bikurim* 2:14) that if one purchases land together with first fruits that were already picked, the purchaser is obligated to bring those fruits as *bikurim*. R. Pomeranchik suggests that the same would apply if one acquired first fruits from *hefker* that grew from the land that one already owned. This is exactly what happens if one acquires *peiros shevi'is* from one's own land.

R. Chaim Kanievski (*Derech Emunah*, *Hilchos Bikurim* 2:14), notes a distinction between the Rambam's example and the case of one who acquires *peiros shevi'is* of first fruits that grew from his own land. The Rambam is dealing with a case where the original landowner was obligated in the mitzva of *bikurim* and then subsequently sold his land. As such, the obligation is passed on to the new landowner. However, during shemittah, the fruits which are deemed *hefker* never become obligated in the first place; hence, acquiring them from *hefker* would not change their status.⁸

Does the Hefker Status of Shemittah Produce Result Automatically?

Another consideration that bears on the issue of whether or not *bikurim*

applies during shemittah is the very nature of the *hefker* status that exists for shemittah produce.

The *Maharam Schick* (*Taryag Mitzvos* no. 81) highlights a seeming *machlokes* between R. Yosef Karo (the Beis Yosef) and Maharit (both of their *teshuvos* appear in in *Teshuvos Maharit* 1:42-43) regarding the mechanism through which *peiros shevi'is* become *hefker*. According to the Beis Yosef, they don't become *hefker* until the owner declares them to be *hefker*. According to the Maharit, they become *hefker* automatically (*afkata d'malka*). If *hefker* of shemittah requires the owner to actively declare the fruit as *hefker*, then without such an explicit declaration, it isn't *hefker* at all.

The Maharam Schick suggests that the Maharal's objections would only hold if we assume that the *hefker* status happens on its own. If, however, we adopt the view that the *hefker* does not happen unless the owner formally renounces his ownership of the fruit, then the Maharal's question on Rashi falls away. In fact, the fruit belongs to the landowner and it was given to him by Hashem. This would serve as sufficient basis for his obligation to offer them as *bikurim*. Additionally, he has a separate obligation to declare the rest of the produce as *hefker* to comply with the laws of *shemittah*.⁹

Can the Status of Bikurim take Effect on Shemittah Fruits Prior to Their Becoming Hefker?

Rav Tzvi Pesach Frank, *Har Tzvi*, *Zeraim* 2:45, suggests that even if we would assume that the *hefker* status is automatic, it may be possible to argue that the first fruits should be brought as *bikurim*. The obligation of *bikurim* sets in as soon as the fruit forms on the tree. The *hefker* status of the fruit doesn't set in until the fruit fully ripens.

As such, shemittah will not prevent the obligation of *bikurim* from setting in.¹⁰

A Novel Interpretation of Rashi: 6th Year Produce is Obligated in Bikurim During Shemittah

Revisiting the comments of Rashi mentioned above, it is worth noting that the *Chazon Ish* (*Orlah* 11:18) suggests that Rashi is not discussing fruit that grew during the shemittah year, but rather fruit that grew during the previous year but were not yet brought as *bikurim* to the Beis HaMikdash. One might have thought that because shemittah is not a year in which we celebrate the produce that we gather from the field, one should not bring *bikurim*. Rashi is teaching us that during the shemittah year, there is nevertheless an obligation to bring *bikurim* for fruits that grew in the previous year.

Bikurim and Shemittah: Two Sides of the Same Coin

According to the *Sefer HaChinuch*, the mitzva of *bikurim* and the mitzva of shemittah contain similar messages:

משרשי המצוה, כדי להעלות דבר השם יתברך על ראש שמחתנו, ונזכר ונדע כי מאתו ברוך הוא יגיעו לנו כל הברכות בעולם. על כן נצטוו להביא למשרתי ביתו ראשית הפרי המתבשל באילנות ומתוך הזכירה וקבלת מלכותו והודאתנו לפניו, כי הפרות ויתר כל הטובה מאתו יבאו, נהיה ראויים לברכה ויתברכו פרותינו.

It is from the roots of the commandment [that it is] in order to put the word of God, may He be blessed, "at the top of our joy," and that we remember and we know that it is from Him, blessed be He, that all of the blessings of the world come to us. Therefore, we were commanded to bring the first fruit that ripens in the trees to those that serve His house. And through the remembering and the acceptance of His kingdom and our

thanking in front of Him that the fruits and the rest of all of the good comes from Him, we will be fit for blessing and our fruits will be blessed.

Sefer HaChinuch no. 91

ולכן ציוה ברוך הוא להפקיר כל מה שתוציא הארץ בשנה זו מלבד השביתה בה, כדי שיזכור האדם כי הארץ שמוציאה אליו הפירות בכל שנה ושנה לא בכוחה וסגולתה. תוציא אותם, כי יש אדון עליה ועל אדוניה. וכשהוא חפץ הוא מצוה אליו להפקירם.

Therefore, He, blessed be He, did command to render ownerless all that the land produces in this year — in addition to resting during it (i.e. during the year) — so that a person will remember that the land which produces fruits for him every year does not produce them by its [own] might and virtue. For there is a Master over it and over its master - and when He wishes, He commands him (i.e. the master of the land) to render them (i.e. the fruit) ownerless.

Sefer HaChinuch no. 84

Even assuming that the mitzvah of *bikurim* does not apply during shemithah, we may suggest that its underlying message is being conveyed through the observance of the mitzvah of shemithah. During the shemithah year, we are more focused on Hashem being the ultimate provider and owner of everything that we possess.

We do not have to be farmers to incorporate the messages of *bikurim* and shemithah into our lives. Through learning about these mitzvos, we can absorb the message that Hashem is our provider and that everything we own really belongs to Him.

Endnotes

1. For those interested, 14 of my shiurim on Maseches Bikurim are available here: <https://www.yutorah.org/search/?s=bikurim&teacher=80002>.

2. For a fuller discussion on this topic, see R. Chaim Krauss' *P'ri Etz Chaim* no. 4, R. Chaim Kanievski's *Derech Emunah, Bikurim* 2:1, R. Kalman Kahana's *Cheker V'Iyun* Vol. I pp. 153-158 and R. Yosef Yitzchak Perlman article in *Imrei Chen* no. 46.

3. The *Turei Even*, *Rosh Hashanah* 15a, questions the need for the *derasha* cited by the *Mechilta*, since there already exists an exemption for ownerless produce from *terumos* and *maasros*. For a resolution to this question, see R. Elazar Menachem Man Shach, *Avi Ezri, Hilchos Shemithah V'Yovel* 4:24.

4. Another factor pertinent to our discussion is the concept that shemithah produce is not allowed to be wasted (“*le’achla velo le’sereifa*”). For this reason, the Gemara, *Bechoros* 12b, rules that an animal purchased with shemithah funds (and therefore retaining shemithah sanctity) cannot impart *kedushas bechor* to its offspring because the *bechor* stands to be sacrificed, and parts of it are destroyed. The Gemara also states that were it not for a special pasuk which teaches otherwise, there would have been no obligation of *challah* on dough that was made with shemithah flour. This is because *challah* that becomes *tamei* must be burnt, and one is not allowed to do so to shemithah produce. *Minchas Chinuch* no. 91, wonders whether this concern would extend to *bikurim*. Should *peiros shevi’is* be exempted from *bikurim* by virtue of the fact that if they would become *tamei* they would have to be destroyed? R. Krauss in *P'ri Etz Chaim* suggests that *bikurim* might not be comparable to *challah*. When the obligation of *challah* sets in, the dough is already subject to becoming *tamei* and therefore, the Gemara thought to exempt it completely. However, the obligation of *bikurim* sets in when it is still attached to the tree (see note 10) and cannot become *tamei*. While it may become *tamei* later and cause shemithah produce to go to waste, the concern for *tumah* is too far removed to eliminate the obligation of *bikurim* altogether.

5. It should be noted, however, that these comments of Rashi are cited without critique by the Tashbetz (2:247), who lived in the 14th century, much closer to Rashi's time. Thus, it is clear that the Tashbetz, for one, did not attribute them to a scribal error. Interestingly, the language of Rashi in *Yevamos* 74a, d.h. *venohagin*, might be made to imply that the mitzvah of *bikurim* does not apply to shemithah produce. However, that inference is not conclusive since Rashi's words relate also to *terumah* which most certainly does not apply during shemithah. See also Meiri to *Yevamos*

73a, whose language strongly implies that there is no mitzva of *bikurim* during shemithah.

6. Alternatively, the Maharal might distinguish between instances where one brings *bikurim* but cannot recite the required passages for a technical reason (i.e. the season lacks the full blown happiness, the land is partly on public property) and a situation where the gesture of expressing thanks for one's personal allotment — the *raison d'être* of the mitzva of *bikurim* — is unwarranted.

7. See the language of the Gemara, *Nedarim* 42b which implies that the land is also deemed *hefker* for purposes of allowing others to enter. See also Rambam *Hilchos Nedarim* 6:13.

8. There may be a more fundamental problem with comparing acquisition of *hefker* shemithah produce to purchasing a field containing fruit. Several acharonim (R. Shimon Shkop, *Sha'arei Yosher* 5:23, Maharil Diskin, *Kuntrus Acharon* no. 259, *Avi Ezri* op. cit.) suggest that shemithah produce does not have the status of classic *hefker*. It is in fact owned by all of klal Yisrael and the term *hefker* is used because the landowner must treat it as if it was *hefker*. If so, how could he thank Hashem for the produce he was given (as an individual) when it is technically still owned by all of klal Yisrael?

9. For further discussion of this question and other implications (i.e. whether produce not declared *hefker* would be obligated in *terumos* and *maasros* and whether this mitzva would not apply to women because it is time bound) see *Minchas Chinuch* no. 84. It should be further noted that the *machlokes* between the Beis Yosef and the Maharit may not entirely be based on the above issue. See, for example, *Mishnah Halachos* of R. Menashe Klein 4:216-217.

10. R. Krauss in the aforementioned *P'ri Etz Chaim* questions whether this is true. While one may designate the fruit once it forms, and at that point it is considered *mamon Kohan* (property of the Kohanim), it nevertheless may not have the status of *bikurim* until a later point in time, either after it is picked, after it enters Yerushalayim, or after it comes into the *Azarah*. It is worthwhile to note the comment of Rav Dovid Pardo, *Shoshanim L'Dovid* (quoted by *Tosafos Anshei Shem, Bikurim* 3:1) that the Mishna's description of placing a *gemi* (band) around the fruit while it is still on the tree is specifically referring to shemithah produce and its purpose is to alert people not to take those fruits as they have already assumed the status of *bikurim*.