

## **Diaspora-Israel Relations: A Study in Halakha and Contemporary Issues**

**Rabbi Michael Rosensweig**

Rosh Yeshiva, RIETS – Yeshiva University

**Delivered at the IPA Forum on Public Policy  
January, 1998**

I.

The relationship between Israel and the Jewish communities of the Diaspora is necessarily a complex one. In the Jewish world generally, and particularly in the complicated Jewish world of the late twentieth century, the ideal of a complementary interaction between Israel and the Diaspora frequently gives way to the reality of a competitive relationship, as the interests of each community often diverge.

To be sure, the agendas of Israel and the Diaspora overlap considerably. Each community confronts the fundamental crisis of quantitative and qualitative survival with a shared conviction that monumental problems can best be overcome by joint action and common strategy. Yet, there are important differences of orientation as well as specific concerns that divide the two communities. While the Israeli scene necessarily focuses on political and military security, the *kulturkampf* between religious and non-religious, and the implications and opportunities provided by the recent aliyah from the former Soviet Union, Diaspora Jewry struggles with the threat to cultural, religious and even physical survival posed by acculturation, intermarriage and to a lesser extent, anti-Semitism. The serious dilution of religious standards by non-Orthodox groups in the name of "pluralism" and the almost total lack of Jewish content and even Jewish identity among Diaspora Jews has reached crisis proportions in recent years.

The relationship between the State of Israel and Diaspora Jewry, particularly American Jewry, has grown simultaneously more and less interdependent, compounding the complexity. In the political sphere, this is demonstrated by the increasing entanglement of each community in the political processes and even elections of the other. The Bush-Clinton and Clinton-Dole electoral campaigns experienced unprecedented interference in this realm, as did the last two contests between Ma'arakh and Likud. Events that would have been unthinkable even in the recent past have become commonplace in the past decade: public fundraising for Israeli parties in America; the barely disguised political endorsement of the Labour party by former President Bush, the more subtle yet still evident support of Bill Clinton for Shimon Peres; the more overt tactics of A.I.P.A.C., etc.

The phenomenon of American Jewish leaders expressing public opposition to Israeli government policies relating to the Palestinian issue in particular, and the peace process generally, can be traced to the Begin- Carter era. It was then that the New York Times became a vehicle for public debate of these issues, damaging the facade of Jewish unity and wholesale support of the Israeli government vis a vis the non-Jewish

world. This development both highlights and further contributed to the dialectical increase in involvement and tension between the two communities. Ironically, with the advent of the Oslo accords, the political right and large segments of the religious community, many of whom previously criticized public dissent, began to avail itself of the "right" to publicly lobby against Israeli governmental policies. In the aftermath of the latest Israeli election, it is again the liberal faction of the Jewish world that has taken to "saving Israel from its own government", often by means of public statements and pressures. A recent editorial column in the New York Times, in which the author actually lists those charitable organizations "worthy of support" based on his own very liberal ideological and political agenda underscores this trend. The fact that there are surely distinctions to be made between an opposition to significant concrete risks that accompany a profound change in the military status quo and an aggressive advocacy of further concessions in the hope that they may yet ultimately facilitate peace, does not attenuate the obvious connection between these developments in terms of the independent spirit of Diaspora Jewry vis a vis Israel's national destiny.

In internal matters we witness a similar blurring of the lines between the two communities. The controversy over "Who is a Jew" is a case in point. An issue rooted in the status of Reform and Conservative halakhic deviations, a Diaspora problem primarily, has threatened more than once to topple the Israeli government, and has been a central component in coalition negotiations and agreements. This issue has come to a head in recent years and, remarkably, has even occasionally eclipsed the debate over the peace process. The threat by some Reform institutions to withhold financial support to Israel as a means of pressure in this and other matters pertaining to recognition ironically further accents the complex entanglement of each community in the affairs of the other.

The debate over the emigration of Soviet Jews a decade and a half ago further accentuated the different agendas and mentalities of the two communities, even as it highlighted their interconnection. Israeli government officials, concerned that those Soviet Jews who were using Israeli visas as a pretext to immigrate to the U.S. were jeopardizing the prospects of others who were really interested in aliyah, and motivated to direct as many Soviet emigrants as possible to Israel, sought the cooperation of the American Jewish leadership in restricting the emigration of those uninterested in aliyah. The battle that followed exposed many of the strains in the evolving relationship between the communities, as the Israeli government failed to impose their policies on an unwilling American Jewish community.

The Israel - Diaspora connection penetrates even fundamental issues of Jewish identification. Certainly, pride in and support for Israel is the primary basis for Jewish identification for the mass of acculturated American Jews. In some Jewish fund-raising circles there is an ironic concern that the American Jewish Federations will pay the financial price for a peace agreement between Israel and her neighbors, as the major rallying point for support of Jewish causes will have been undermined.

For all Jews, then, questions of the proper relationship between Israel and the Diaspora are extremely relevant. How much influence should Diaspora Jews attempt to exert in Israel's internal affairs, or in its quest for peace with its Arab neighbors? To what extent should Israeli interests and concerns dictate the agenda and policies of the Diaspora Jewish community? For halakhic Jews, the general guidelines of Israel- Diaspora interaction, if not always the specific details, are rooted in an halakhic perspective of the centrality of Erez Yisrael in the life of the Jew. It is this general perspective that must be identified, developed and analyzed as the basis for general policy guidelines in resolving these issues.

## II

The unique connection between the Jewish people and Erez Yisrael is as old as Jewish history itself. Each of the avot (forefathers) of our nation had a special link to the land. Considering that their lives are paradigmatic, the link demands at least brief attention. Avraham ("father of the nation"), discovered the Divine presence in the Diaspora. Yet, in his initial formal charge, he was asked to leave the security and comfort of his homeland in order to begin life anew in Erez Yisrael. It is there that his children were destined to develop into a great nation. The midrash, likens the difficulty of this request to abandon the past for an uncertain future in Israel to the ultimate test of Avraham's commitment, the demand that he sacrifice his only child, Yitzhak, on Mt. Moriah.<sup>[1]</sup>

Significantly, Yitzhak, the first native Jew, had an even more intensive connection with Erez Yisrael. He was forbidden under all circumstances to set foot outside of Erez Yisrael. Though in Rabbinic thought, Yitzhak represents the theme of "gevurah", a certain heroic extreme, the typological implications of his idealistic commitment, and the symbolism represented by his status as the first connecting link in the nation's chain, are not to be dismissed.

The relationship of Yaakov, the bearer of the quality of "tiferet", the most balanced and prominent of the avot, to Erez Yisrael is crucial. His Divinely bestowed name, Yisrael, establishes him not only as the biological father of the twelve tribes, but as the embodiment of the qualities, goals and aspirations of kelal yisrael throughout the generations. Thus, his complex connection to Erez Yisrael is particularly intriguing. His commitment to Erez Yisrael is such that when urged to leave the Land in order to protect himself from his vindictive brother, Yaakov hesitated and even returned to Be'er Sheva, the location where his father was forbidden to exit, in the hope that he, too, would be similarly proscribed.<sup>[2]</sup> Despite his reluctance, his sojourn in the Diaspora and experiences with Lavan were indispensable to his self-development as the future Yisrael. However, once his practical education was complete, it was equally crucial that he return to Erez Yisrael. Yaakov's life demonstrates that although Erez Yisrael remains the place of ultimate spiritual fulfillment and the aspiration of all Jews, there are circumstances which justify life in the Diaspora.<sup>[3]</sup> Moreover, the Diaspora experience occasionally plays an important role in religious development. Yet, it is important to note that, according to Ramban, while Yaakov did spend significant time in the Diaspora, his

own religious standards were affected by his habitat. Hence, only when residing within the confines of Erez Yisrael did the laws of the Torah, like the prohibition to marry two sisters, apply prior to mattan torah. Yaakov's link with Erez Yisrael, then, was complex, even dialectical.

Indeed, the different models provided by the avot have resonated throughout Jewish history. While there were Jews and whole communities, like Yitzhak, which cleaved to the sanctity of Erez Yisrael, there were more many more communities that developed outside of this ideal framework. Like Yaakov, many Jews maintained an ongoing relationship with Erez Yisrael, but not an exclusive one. Indeed, even when the option of life in Erez Yisrael was available, it was often bypassed. The generation of Ezra, in which only a fraction of Jews returned to resettle the land, is a case in point, as is our own era, in which the majority of Jews still choose to reside in the Diaspora though the opportunity to live in Israel is open to all.

A cursory survey of intellectual- cultural trends in Jewish history demonstrates that the contribution of the Diaspora frequently surpassed that of Erez Yisrael. The legacy of the Talmud Bavli; of the Geonic centers in the early medieval period; of the various medieval schools of Qayrawan, Spain, Ashkenaz and Provence; the scholarship of Italian Jewish communities in the sixteenth and seventeenth centuries; and the crucial contributions of Eastern European Jews from the sixteenth century until the Holocaust and of some of the Sephardic communities in Turkey, Morocco and the Arab lands during this same era unequivocally demonstrate the historical centrality of Diaspora Jewry. Indeed, even American Jewry, acknowledged to be relatively spiritually impoverished, has been blessed with halakhic leadership of the highest caliber in the past generation with such world-renowned and influential figures as R. Yosef Dov Soloveitchik, R. Moshe Feinstein, R. Aharon Kotler, and the Lubavetcher Rebbe, zikhronam lebrakhah. The impact of these gedolim on the world Jewish scene is undeniable. This brief sketch sufficiently negates the absurd claims and convoluted arguments of those Israeli revisionists who would minimize the significance of Jewish life outside of Erez Yisrael.

At the same time, it is absolutely crucial to note that even as certain Diaspora communities flourished religiously- intellectually, the conviction of impermanence and irregularity, the ideal of the centrality of Erez Yisrael expressed so vividly by R. Yehudah Halevi's famous metaphor likening Erez Yisrael to the heart of the Jewish body, the practical concern and special feeling of responsibility for its population<sup>[4]</sup>, and the aspiration and even yearning for return never waned.<sup>[5]</sup> It is necessary, then, to examine the role of Erez Yisrael in various halakhic contexts in order to appreciate the halakhic value accorded to it in the larger scheme of Jewish life.

### III

The Mishnah (Kidushin 36b) asserts that any halakhic obligation relating to the land and its produce is limited to the soil of Erez Yisrael. Included among this classification are such obligations as terumot, ma'asrot, the laws of shemitah etc. The exclusion of

Diaspora from these obligations is eminently reasonable as only the soil of Erez Yisrael was endowed with special sanctity- kedushat ha-aretz.

Upon examination, however, it becomes evident that there are several important halakhic categories that are linked with and some even completely restricted to Erez Yisrael, though they are completely unrelated to the soil or its produce. These broader applications of the uniqueness of Erez Yisrael require justification, as the categories in question appear to be equally relevant, at times even indispensable, for a maximal Jewish life in the Diaspora. Moreover, if a group of halakhot unrelated to the land and soil are nonetheless exclusive to Erez Yisrael, what distinguishes them from the vast majority of halakhic obligations and categories that apply in all geographic settings.<sup>[6]</sup> The question of criterion is the key to a proper evaluation of the interrelationship between Israel and the Diaspora.

In addition to the need to establish the conceptual basis for a highly select group of halakhot that are linked with Erez Yisrael, it is also important to note and confront the implications of apparent historical and geographic inconsistencies in the definition of Erez Yisrael as it relates to several of these issues. The Talmud records various views as to the initiation and endurance of kedushat ha-aretz. The soil of Erez Yisrael was endowed with kedushah by the conquest of Yehoshua. It was only at this point that obligations like terumot, ma'asrot, shmitah etc. were inaugurated. There is a general halakhic consensus that the destruction of the beit hamikdash negated the initial conquest, thereby terminating the sanctity of the land. Only in the era of Ezra when a relatively small group ascended from Babylonia and resettled Erez Yisrael was kedushat haarez restored. Halakhic authorities debate whether this second kedushah endured even past the destruction of the second temple. Rambam, for example, concludes that while the first kedushah of Yehoshua, brought about by conquest, was terminated, the kedushah of Ezra, associated with settlement, was enduring.<sup>[7]</sup> In any case, there existed a period of limbo between the termination of Yehoshua's kedushah and the onset of Ezra's second kedushah. Furthermore, Ezra's resettlement was less extensive than Yehoshua's original conquest. Hence, even after the period of Ezra, there remained a geographic discrepancy between the two kedushot. While these historical and geographic factors are reflected in treatments of soil-related mizvot like terumot, shmittah etc., they inexplicably appear to be largely ignored in the broader applications of mizvot Erez Yisrael. Only an analysis of the substance of these halakhot will yield the solution to this additional puzzle. It is to these specifics that we now turn our attention.

#### IV

The Talmud (Sanhedrin 11b; Berakhot 63b) establishes that the proclamation of a leap year should occur in Erez Yisrael. However, there is an exception to this rule if the most prominent halakhic authority resides in the Diaspora. Both the rule and the exception require clarification. Why is the determination of the calendar, a matter of national significance, limited to Erez Yisrael? If Erez Yisrael is, indeed, necessary for this

determination, how does the Diaspora location of the incomparable halakhic authority compensate for that requirement?

A further element demands clarification. Tosafot (Sanhedrin 11b) cites the Talmud Yerushalmi's contention that this exception can be demonstrated by the calendar proclamations of Yehezkel and others who resided outside of Erez Yisrael. Minhath Hinukh (no.4) emphatically challenges the validity of these proofs. He notes that Yehezkel etc. lived in the limbo period between the termination of the kedushat ha-arez initiated by Yehoshua, and the onset of Ezra's second sanctification of the soil of Erez Yisrael. How can the capacity to proclaim the leap year even in the Diaspora in an era in which there was an absence of kedushat ha-arez provide a basis for a similar application in a period in which kedushat ha-arez existed? The historical limbo, noted earlier, evidently does not alter this particular equation. Minhath Hinukh, himself, suggests that perhaps the basis for calendar proclamations is kedushat Yerushalayim, which according to Rambam (hil. Beit ha-Behirah 6:14-16) attained permanent status from the time of the first sanctification of Erez Yisrael due to its special quality. Thus, Talmud Yerushalmi's evidence from the period between the destruction of the first Beit ha-Mikdash and the time of Ezra is fully valid.

Rav Solovetichik zt"l suggested a different and more fundamental approach. He challenged the very assumption of Minhath Hinukh's critique. He argued that one should distinguish between two completely different notions of kedushat ha-arez. The entire Talmudic discussion about the first and second kedushot and their respective endurance only registers regarding issues involving the soil and produce of Erez Yisrael- terumot, ma'asrot, etc. With respect to these issues there truly was a limbo period between the termination of one and the onset of the other, and there are locations included in the original conquest of Erez Yisrael that were never reinvested with sanctity in the resettlement of Ezra. However, the enduring quality of the formal status of Erez Yisrael and its stature as a unique location endowed with special significance for all Jews-- was never at issue once Jews conquered the land in the time of Yehoshua. Inasmuch as proclamation of the leap year is completely unrelated to the sanctity of the soil, the absence of that sanctity in the limbo period between the destruction of the first Temple and the resettlement of Ezra is irrelevant to the role of Erez Yisrael in this context.

Rav Solovetichik noted that this concept is reflected in two other issues which would otherwise be plagued by problematic geographic applications of Erez Yisrael. An examination of these issues should further clarify not only this critical distinction, but should provide us with additional clues as to the criterion that underlies the unlikely limitation of certain halakhic institutions to Erez Yisrael.

'Eglah 'Arufah, the special process outlined in the Torah (end of parashat Shoftim) that follows the discovery of the corpse of an anonymous murder victim in the proximity of a Jewish community, in which, among other details, the city elders are obligated to proclaim their innocence in the matter is also mysteriously confined to Erez Yisrael. However, Rambam notes (hil. Rozeah 10:1) that this law does apply to the

other side of the Jordan River. Elsewhere, there are indications that this area, part of Yehoshua's original conquest, was not resettled in the time of Ezra.<sup>[8]</sup> Hence, an apparent geographic anomaly--paralleling the temporal discrepancy noted earlier--surfaces in this context. Rav Soloveitchik's distinction between the technical sanctity of the soil and the broader theme of Erez Yisrael's special stature resolves this dilemma, though the link between this process of 'Eglah Arufah and Erez Yisrael has yet to be clarified.

The Talmud (Sanhedrin 14a) establishes that semikhah, classic rabbinic ordination that enables judges to adjudicate penalties and capital crimes, may only be granted in Erez Yisrael.<sup>[9]</sup> Remarkably, the Talmud Bavli records no source for this mysterious exclusion of the Diaspora in a matter that is absolutely critical to the legal capacity and even autonomy of the Jewish court system.<sup>[10]</sup> The difficulty is compounded by the fact that the court system, once populated by semukhim (ordained judges) who received their ordination in Erez Yisrael, applies with equal force in the Diaspora. This point is made unequivocally in the Mishnah (Makkot 7a). Moreover, Rambam records the undisputed ruling that limits the granting of semikhah to Erez Yisrael and adds an important geographic note. (Hil. Sanhedrin 4:6) Once again, the boundaries of the original conquest are applied in a post-Ezra era! The classical Maimonidean commentators note this apparent anomaly and offer various explanations. Not surprisingly, Minhag Hinukh (no. 491 ), who equated the broad status of Erez Yisrael with the technical status of the sanctity of its soil in the context of calendar proclamations, is particularly troubled by Rambam's expansion of ordination to Yehoshua's boundaries. However, Radvaz cites the view of R. Ashtori ha-Parhi, a halakhist of the thirteenth century, who, like Rav Soloveitchik so many centuries later, distinguishes between the sanctity of the soil which dictates the status of the land's produce regarding issues of shmitah and terumot etc., and other halakhot that relate more broadly to the unique quality and status of Erez Yisrael. These issues, including such matters as semikhah, residence and burial in Erez Yisrael and others are not dependent on the technical sanctity of the soil, and therefore are not limited to the boundaries of Ezra's resettlement.

In his work, *Kaftor va-Fereh* (ch. 10), R. Ashtori ha-Parhi elaborates this distinction and traces the unique status of Erez Yisrael as a location to the covenant between God and Abraham. While the geographic discrepancy has been satisfactorily resolved by the compelling distinction developed by *Kaftor va-Fereh* and Rav Soloveitchik, the very restriction of these institutions to Erez Yisrael, even in its broader scope, remains a curiosity.

Another halakhic context reflects the same distinction between two notions of the uniqueness of Erez Yisrael, and provides us with yet another unanticipated instance of the centrality of Erez Yisrael. The Torah establishes that if the majority of the population violate a halakhic prohibition that mandates a korban because the Great Sanhedrin, the ultimate devisors of Jewish law, erred in their halakhic decision, one korban is brought for the entire community. However, if a majority did not fall prey to this error, each individual who did is obligated to provide his own sacrifice. The Talmud

(Horayot 3a) defines the majority population in connection with this halakhah not in terms of the overall world Jewish population but on the basis of those Jews who reside specifically in Erez Yisrael. The focus on the population of Erez Yisrael is itself intriguing, since the fate of Diaspora Jews are no less affected by the error, and considering that when a majority of Israeli Jews are involved, one korban suffices for all world Jewry! Again, the question of criterion comes to the fore.

Furthermore, in keeping with the previous pattern, the question of boundaries of Erez Yisrael resurfaces. Minhag Hinukh (no. 120) states with absolute conviction that while the verse cited by the Talmud refers specifically to the original boundaries of Erez Yisrael in the time of the first conquest, an adjustment of the borders to reflect the reality of the post-Ezra era would be necessary in the subsequent application of this halakhah. However, Rambam evidently does not acquiesce to such an adjustment. In his Commentary to the Mishneh in Horayot, he explicitly applies the distinction between the sanctity of the soil and the broader stature of Erez Yisrael eliminates this particular difficulty.

The notion that Erez Yisrael has significance that transcends the obligation and capacity to accomplish specific imperatives relating to its produce\soil emerges clearly in Ramban's writings. While some Tosafists appear to limit the obligation to live in Erez Yisrael to eras in which it is possible to implement mizvot hateluyot baarez (R. Hayim Cohen in Tosafot Ketubot 110b), Ramban (Critique of Sefer ha-Mizvot, 'esin, hashmatah no. 4) lists the obligation to settle in Erez Yisrael as one of the 613 commandments, and establishes the independence of this mizvah, as well.

In his commentary on the Torah, Ramban makes numerous references to the centrality of Erez Yisrael and to the special opportunity it provides for a more direct relationship between God and the Jewish people. He extensively develops the theme that only in Erez Yisrael can Jews avoid mediation in their avodat Hashem.<sup>[11]</sup>

It comes as no surprise, then, that we should be able to trace the disentanglement of the broader unique quality of Erez Yisrael from the technical issue of the sanctity of its soil to Ramban, as well. Commenting on an apparent discrepancy as to the status of Acre, Ramban distinguishes between kedushat karka which was lacking in Acre as it was not resettled in Ezra's era, and "hibat Erez Yisrael" which applies unconditionally to all locations that were originally included in Yehoshua's conquest.<sup>[12]</sup> Ramban's unshakeable conviction as to the unique quality of religious life in Erez Yisrael, as well as to the special opportunities it presents had important impact on subsequent halakhists, as well.<sup>[13]</sup> While Ramban's projection of Erez Yisrael's transcendent and intrinsic significance is often contrasted with Rambam's less dramatic perspective,<sup>[14]</sup> we note that our previous analysis of the role of Erez Yisrael in the contexts of semikhah and 'eglah 'arufah focused on the more moderate Rambam's stance.

Indeed, one of the most ambitious formulations of the central role of Erez Yisrael is to be found in one of the earliest Rabbinic texts, the Sifrei. This passage establishes the



ideal link between Erez Yisrael and all mizvot. Commenting on the verse in Ekev, Rashi and Ramban's version of the text include specific examples of tefillin and mezuzah.<sup>[15]</sup> Thus, the Sifrei feels compelled to justify the obligation to observe mizvot in the Diaspora, and characterizes this obligation as a guarantee that Jews will remain immersed in the mizvot so that they will be able to resume the ideal upon the return to Erez Yisrael! While some dismiss this statement as hyperbole, or reinterpret its meaning so that it bears a more moderate message,<sup>[16]</sup> it remains an important piece of the puzzle in the effort to decipher the precise role of Erez Yisrael in the general halakhic scheme.

The key to comprehending the selective centrality of Erez Yisrael is to be found in another Talmudic passage (Sanhedrin 43b). There, the Talmud asserts that 'arevut,' the legal responsibility of every Jew for the actions of his fellow, came about only when Jews crossed into Erez Yisrael. The crucial implication that emerges from this passage is that at that historic juncture the collective entity of kelal yisrael, even as it relates to individual behaviour, was born.<sup>[17]</sup> Erez Yisrael, the national headquarters of the Jewish people and the ideal setting in which Jewish life in all of its manifold facets could flourish, is indispensable to the national destiny and sense of community that distinguishes kelal yisrael as a nation.

Indeed, the formula of the Talmud in Horayot, cited previously explicitly and dramatically captures this theme, as it succinctly establishes that Jews can live in the Diaspora, achieve great accomplishments, and, as individuals and individual communities, they are surely obligated to observe the vast majority of the mizvot, the primary means of Jewish religious expression. However, in matters relating to national destiny, with regard to issues pertaining to the theme of collective responsibility or representation, or where ideal structures are essential, Erez Yisrael becomes an important ingredient, at times even a necessary condition. If the majority population of world Jewry violates a particular prohibition as a result of the inaccurate decision of the Great Sanhedrin, each individual stands on his own and brings a personal korban as long as the majority population in the national, collective headquarters, Erez Yisrael, did not err. Conversely, the violation of the majority of those residing in Erez Yisrael, as the embodiment of collective Jewry, determines that all Diaspora Jews in like circumstance are included in a single korban that is brought on behalf of the entire nation. While Erez Yisrael sets the tone, all Jews are perceived as full members of the collective.

V

If we now review those issues in which Erez Yisrael plays a central role, we may easily perceive the underlying pattern and common thread.

The calculation and fixing of the calendar is certainly a prerogative of great national significance. Its symbolic value in terms of control over time and timing transcends the substantive issues that it dictates. It is surely no coincidence that some of the great controversies of Jewish History-- between Karaim and Rabbanim, between R. Saadia and Aharon Ben Meir etc.-- have erupted over the control of the calendar, and through

it, the national community.<sup>[18]</sup> In explaining Rambam's view that the existence of the Great Sanhedrin was necessary for calculation by means of the viewing method, though, as Ramban notes in his critique of this doctrine, this body did not function in its formal judicial role once it was removed from the *lishkhat ha-gazit* in the Temple, an event that occurred well before the end of the period of visual calculation, Rav Soloveitchik *zt"l* has demonstrated that the real source of calendar authority resides with the totality of the nation. The function of the Great Sanhedrin in this context is not related to their formal judicial status, which was indeed undermined by their relocation outside the Temple, but to their unique capacity to represent the interests of the entire nation in this determination.<sup>[19]</sup> Indeed, the Talmud (*Bezah* 17a) notes that, in contrast to Shabbat, *kelal yisrael* is credited with the sanctity of other holidays precisely because they are fixed by calendar calculation which is the special prerogative of the entire people. Given this perspective, the centrality of Erez Yisrael as the preferred source of calendar decisions, and the focus on the broader theme and borders of Erez Yisrael rather than the narrower confines of *kedushat karka*, becomes compelling. Moreover, we can now appreciate the remaining qualification of this rule. Since the motif of Erez Yisrael in this context is linked to the national representation of *kelal yisrael*, the question of authentic, outstanding rabbinic leadership cannot be ignored. This factor, too, is critical in determining and embodying the interests of the entire nation, as the Torah perspective is an indispensable part of this equation. As noted, the role of rabbinic leadership in the form of the Great Sanhedrin was part of the initial process of visual *kiddush ha-Hodesh*. Thus, the circumstances in which Erez Yisrael is bereft of outstanding leadership- justifies an exception to the rule.

Perhaps more than any other law, *'Eglah 'Arufah* exemplifies the ideal of collective responsibility between all Jews, and the particular role of the community and its elders in addressing that responsibility. As the Talmud and midrash note (*Sotah* 48b), it is unthinkable that the elders of the city were directly involved in the death of the anonymous victim. Yet, the need to proclaim their innocence derives from a far more demanding standard of complicity and culpability. Specifically, they declare that they did not turn away the traveler and deny him the shelter and protection that could have prevented his ultimate fate? It seems obvious, however, that while the theme of broader responsibility is conveyed by these expressions, it is not limited to them. The underlying principle of *'Eglah 'Arufah* is that the elders of the city, by personal example and by means of their influence, shape the spiritual-moral climate in which they reside. They are broadly accountable for the moral standards that prevail in the community at large, as reflected in all that transpires therein. This ambitious conception of community obligation and corporate responsibility, the ultimate communal form of *arevut*, is workable only in the one location that embodies these demanding themes, Erez Yisrael.

Rabbinic ordination is the basis not only for the authority of individual judges, but ultimately for the entire network court structure that links lesser monetary courts composed of 3 judges, to 23- member courts with the capacity to adjudicate capital and penalty offenses (*kenasot*) and ultimately with the Great Sanhedrin of 71.<sup>[20]</sup> While the Mishnah (*Makkot* 7a) does establish that this structure is effective in the Diaspora, it is

the Erez Yisrael-root that enables the far-flung network to operate effectively.<sup>[21]</sup> There is no institution more essential to the autonomous, corporate-national life of the Jewish people than the court network. Its link to Erez Yisrael, thus, becomes self-evident. This is reflected in the need for a functioning Sanhedrin Hagadol at the foot of the Temple. It also underlies the need for semikhah, which provides judicial authority, to have its source in Erez Yisrael. Sefer ha-Hinukh (no. 491) even indicates that the obligation to appoint judges is limited to Erez Yisrael because semikhah can be granted only there. His critics all note that this formulation is highly problematic inasmuch as judges also adjudicate in the Diaspora. Probably Sefer ha-Hinukh intends to underscore that the court system in the Diaspora, while effective, cannot fully duplicate its function in a fully autonomous and communally demanding climate afforded by life in Erez Yisrael, the national headquarters of world Jewry. In contrast to Diaspora communities, the obligation to appoint judges in Erez Yisrael goes beyond the specific need to dispense justice when the need arises. The very presence of courts in communities projects the theme of justice as a central value, and exposes the community to the moral standards of its judges. Indeed, the Talmud differentiates between Erez Yisrael and Diaspora communities with respect to the scope of the obligation. While it is sufficient to set up courts in the broader jurisdiction in the Diaspora, it is necessary to establish a court presence in individual communities in Erez Yisrael.<sup>[22]</sup> The link between semikhah and Erez Yisrael probably accented for the author of Sefer ha-Hinukh the distinctive role of court appointment in Erez Yisrael, as well.

We have previously noted that Talmud Bavli does not cite a source for the limitation of semikhah to Erez Yisrael. Our analysis indicates, however, that the limitation is grounded in broader themes relating to the court system and the uniqueness of Erez Yisrael as the national headquarters of world Jewry, each of which is well documented.<sup>[23]</sup> Moreover, in this light, it should come as no surprise that Rambam, in another context (Perush ha-Mishnayot to Bekhorot 4:3), actually invokes the passage in Horayot regarding the communal sacrifice of Par Helem Davar Shel Zibbur as the foundation for this restriction of semikhah to Erez Yisrael! The two applications emerge as commonly based. Furthermore, Or Sameah (Sanhedrin 4:6), without citing Rambam's explicit comment, anticipates this link with Horayot 3b and even posits that this source, which explicitly includes the broader boundaries of Yehoshua's conquest, is the basis for Rambam's border expansion in the matter of semikhah!

There is a further element in Rambam's doctrine which reinforces the patterns previously developed. In a celebrated and controversial passage, Rambam proposed an alternative method of attaining semikhah after the uninterrupted chain of donors-recipients had been ruptured. He argued that the consensus of scholars in Erez Yisrael could re-institute semikhah.<sup>[24]</sup> This view again accents the theme of Erez Yisrael as the embodiment of the national -corporate interests of kelal yisrael. A consensus reached by its halakhic leadership compensates for a historical-chronological break in the chain of generations.

Many other institutions that are associated with the national destiny of *kelal yisrael*, like prophecy, also bear a special link to Erez Yisrael. The Talmud in B.B. 15a asserts that Anshei Knesset ha-Gedolah authored Sefer Yehezkel. Rashi and others indicate that Yehezkel, himself, could not have transmitted his prophetic experiences in written form inasmuch as he lived in the Diaspora. The fact that he lived in the historic era between the termination of Yehoshua's *kedushat karka* that resulted from the first Temple's destruction and the renewal of that *kedushah* at the time of Ezra is of no consequence, as we have previously demonstrated.

The special significance of residing in Erez Yisrael, and even in returning to the national homeland upon death, can also be more fully appreciated against this background. Ramban, Rashbaz, Kaftor va-Ferah and others have unequivocally demonstrated the independence of these themes from the narrower conception of *kedushat karka*.<sup>[25]</sup>

Moreover, while the vast majority of *mizvot* apply in the Diaspora, undeniably the themes of collective responsibility and national destiny which pervade many *halakhot* can be more fully appreciated in the environment of Erez Yisrael, in which these dimensions are enhanced. It is, thus, necessary for the Sifrei to urge that one remain immersed even in these motifs despite a measure of incongruity with Diaspora life.

## VI

We can now approach the biblical evidence armed with this perspective. Precisely because Avraham is the father of the nation, his first task was to establish his independence from his past life. The obligation to relocate in Erez Yisrael-- » conjuring up the formidable image of the *aqedah* challenge, was symptomatic of his commitment to a new national destiny -- Kaftor va-Ferah specifically accents this dimension in his presentation. Furthermore, Avraham's relocation to Erez Yisrael is undoubtedly consistent with his singular contribution as the exemplar of *hesed* and *arevut*, essential features of this new national and corporate destiny to be realized particularly in this special venue.

Yitzhak's link with Erez Yisrael intensified beyond Avraham's because he represents the pure extreme of an ideal spiritual life that can best be achieved in a unique setting that not only affords the opportunity for realization of all *mizvot*, but whose religious climate persistently accents the theme of national aspiration and the demanding standards of *arevut* and community life. Personal pressures could not outweigh an extreme idealistic commitment that would typologically serve as an important counterweight to more pragmatic considerations for Jews throughout the generations.

Yaakov - Yisrael captures the relationship with Erez Yisrael in all of its multifarious complexity. His experience demonstrates the viability of a productive and creative Jewish life in the Diaspora, even the desirability of such an experience under certain circumstances. Moreover, Yaakov's odyssey reflects the need to balance other values that occasionally justify compromising one ideal to safeguard others. Yaakov's

encounter with Lavan also accents the ability to maintain principles in less than ideal environments. At the same time, his initial reservations about leaving Erez Yisrael, his aspiration to return, his recognition that complacency regarding life in the Diaspora endangered his entire spiritual well-being, his decision to sacrifice in order to return constitute a definite blueprint for the entire nation for whom he was named. Ramban's aforementioned view of the halakhic consequences attendant upon Yaakov's respective status in the Diaspora and Erez Yisrael dramatically underscores the centrality of Erez Yisrael to all Jews regardless of their permanent address.

The fact that the experiences of the avot all took place well in advance of the onset of technical kedushat karka actually enhances their relevance. It is surely no coincidence that Ramban specifically invokes the avot in his initial presentation of the independent mizvah to settle in Erez Yisrael.

## VII

The halakhic evaluation of contemporary issues is an extremely complex process. It consists of two separate endeavors. It is necessary to gather the facts and assess their implications- short and long term. It is equally important to define the halakhic perspective as precisely as possible. Often each of these tasks is extremely complicated and does not allow for a monolithic conclusion. In such circumstances, one must be satisfied with the exercise of well-informed halakhic intuition rooted in facts and applied by general guidelines. Issues relating to Diaspora- Erez Yisrael relations obviously fall under this general category. While the general guidelines will not provide a specific monolithic approach, they do provide us with a halakhic framework with which to operate.

The national - corporate motif that is central to the role of Erez Yisrael in non-soil related halakhic issues dictates that Erez Yisrael be the focus of the unity and cooperation of world Jewry, not the source of friction and divisiveness that it often is. The export of Diaspora controversies like Who Is A Jew to Israel is doubly disturbing when one considers that beyond all the substantive damage, the national and unity theme of Erez Yisrael has been thoroughly subverted. While divisions do and will continue to exist, it is critical that an effort be made to de-emphasize these in favor of those areas in which a common front can be projected.

Furthermore, while there are some pressing issues that need to be confronted irrespective of the cost to Jewish unity, it is clearly counterproductive to press for official Knesset legislation on certain religious issues if the price of controversy, assessed in all of its halakhic dimensions, outweighs the value of victory. Unfortunately, however, one may not always have the luxury to strategically avoid even such issues once they have been officially placed on the public agenda and especially when other forces have formally introduced halakhically unacceptable alternatives. Moreover, Erez Yisrael's status as the national headquarters of all Jews magnifies the symbolic significance of standards that are adopted even by the secular Knesset. The Who is a Jew controversy exemplifies many of these developments. Certainly one may not acquiesce

to halakhically objectionable solutions simply in order to promote a dubious Jewish unity that has little in common with the ideal of *arevut* that characterizes the uniqueness of life in Erez Yisrael. When confrontation is deemed unavoidable, it is incumbent upon Torah Jews to assert halakhic principles unequivocally, albeit in a manner that minimizes divisiveness and brings honor to the specific cause, as well as to the broader values that motivate the decision to publicly contest the issue in question. Halakhic Jews must clearly convey that a decision to impose higher, more universally acceptable halakhic or moral standards ultimately also constitutes a long-term investment in the kind of Jewish corporate unity that underlies the significance of Israel in Jewish life.

To the extent that Erez Yisrael is a rallying point for world Jewry generally, and particularly in times of crisis, the halakhic theme of Erez Yisrael's uniqueness is accented. It is necessary, however, that Jews close ranks not only against external enemies, but unite in order to enhance the spiritual and economic plight of fellow Jews as well. Operation Exodus with its emphasis on both of these dimensions was a case in point. Erez Yisrael's centrality demanded that the Jewish population of the former Soviet Union ideally be directed to the State of Israel. The strengthening of the State, the need to ensure the continuing Jewish identification of this population, as well as the conviction that their best opportunity for a meaningful religious Jewish future lies with Erez Yisrael underlay efforts to encourage this *aliyah*. Clearly these pragmatic factors, all of which represented a national agenda, fully dovetailed with the halakhic perspective.

The need to accent that which binds rather than divides is critical within the orthodox community, as well. Too much has been made of relatively less significant debates on matters as the saying of *hallel* on Yom ha-Azmaut, with or without a *berakha*, half or whole, with *tahanun* or without etc. For that matter, the passions expressed over the terminology hardly seem to be worth fragmenting the orthodox world. I am not suggesting that that these are not symbolically and even halakhically important, nor am I suggesting that communities that feel strongly about the rectitude of their position should simply abandon their conviction for the sake of unity. However, I do think that the effort to find common formulae with a broader base of support should be made. Shifting the primary focus of Yom ha-Azmaut observance from ritual to Talmud Torah by dedicating the day to rigorous study and appreciation of the rich character and significance of Erez Yisrael reflected in Tanakh, halakhah, and history, would, in addition to the obvious substantive benefits, also promote the unity theme of Erez Yisrael itself by downplaying divisions and widening the day's appeal. The tendency that unfortunately prevails in all segments of the Jewish community to distinguish oneself by exaggerating differences in order to carve out clear niches and distinct identities is singularly inappropriate with respect to Erez Yisrael issues. Moreover, legitimate differences on these issues need to be put in proper perspective by all sides of the debate. More often than not, they pale into insignificance in light of the more urgent crises that we confront. The price paid for disunity needs to be offset by the value of the controversial issue. As part of the calculation, we need to evaluate not only the impact of fragmentation on other issues, but also to consider that the halakhic centrality of Erez Yisrael itself derives from its national-communal unifying character.

The role of Diaspora Jews in Israeli policy decisions and vice versa is subject to complex guidelines that emerge from the halakhic analysis engaged in previously. Certainly those who live in Erez Yisrael have a special status that is not equaled by Diaspora Jews. It does give the community in Erez Yisrael more clout in addressing not only their own destiny, but also in representing the interests of world Jewry, all other factors being equal. However, there are other factors to consider, as well. Though fixing the calendar, granting Semikhah and the single korban of Par Helem Dava shel Zibbur originate in Erez Yisrael, their impact is felt equally in the Diaspora, as we have noted. Morally-halakhically this dictates that the voice and interests of Diaspora Jews be calculated before decisions affecting national aspirations or destiny be taken. Moreover, the voice of outstanding Diaspora Rabbinic leaders need to be heard if a true national consensus is to emerge. If the most prominent national leaders are to be found in the Diaspora, the added clout of the community in Erez Yisrael may be neutralized. Evaluation of talent and leadership, then, constitutes another complicating factor.

The primacy of Erez Yisrael and its community, when applicable, is restricted to issues of national and collective import. In local or individual matters, the autonomy of each community should be respected. Of course, the line between national and local issues is often blurred, and part of the debate itself. The debate over the immigration of Soviet Jews to the U.S. over a decade ago, cited earlier, is a case in point. Some argued that rather than take the global Jewish perspective--what is best for the entire community--, one should relate to the individual perspective. Quite a few Jews with the opportunity to leave the oppressive Soviet countries might have balked if forced to relocate in Israel. Their rights as individuals militated against a restrictive policy.

The question of interference in domestic elections is another example of this complexity since domestic politics always have national and international repercussions. The need to weigh these variables defies easy classification.

In any case, clearly many issues relate to the specific needs of distinct communities. In our own situation, it is important that even as we educate that Erez Yisrael is central and represents an ideal we do not neglect the needs of the Diaspora communities in which we live, or undermine the ability to inspire students toward a flourishing Jewish life in these countries. An overemphasis on Erez Yisrael, subscribed to in some educational circles, that promotes mediocrity in Diaspora life, substantively or psychologically, is completely antithetical not only with other halakhic principles, but even with the very theme of Erez Yisrael's own centrality. It is best to follow the fruitful dialectical path of Yaakov Avinu - Yisrael.

---

## Notes

[1] Midrash Rabba, Bereshit 39:11.

[2] Midrash Rabbah, Bereshit 68:6; Ramban, Bereshit 28:17.»

[3] See A. Z. 13a, and Tosafot s.v. «LA4» «LA1».

[4] Sifrei on Devarim 15:6. This point in the hierarchy is omitted in the parallel passages in Mekhilta, parshat Mishpatim and B.M. 71a. » «LA1»

[5] See, also Berakhot 30a; Ketubbot 110b. »

[6] The formulation of Sifrei in the end of Ekev which characterizes the application of personal halakhic obligations in the Diaspora as a form of hinukh that will insure their proper implementation at the time when Jews return to Erez Yisrael looms larger in light of this problem. We shall later elaborate this theme. »

[7] Others conclude that even Ezra's kedushah was terminated. See for example, Rashi on Sanhedrin 26a; Sefer ha-Terumah, hilkhoh Erez Yisrael.

See Rambam's formulation in hil. Terumot 1:5 where he emphasizes this distinction, the philosophical implications of which are intriguing. A number of halakhists have suggested explanations. See, for example Radvaz ad loc.; Resp. Hatam Sofer, Y.D. 233,234, and Rav Soloveitchik in his essay Kol Dodi Dofek. Though Rambam concludes that the second kedushah remains intact, he nevertheless rules that terumot etc. are only rabbinic obligations in our era inasmuch as the condition of the arrival of all, or at least a large representation of kelal yisrael is lacking. He develops this theme in Terumot 1:26. Rambam's entire presentation, and his late introduction of this factor requires elaboration. See, for example, Resp. of Beit ha-Levi 3:1; Hidushei R. Hayim ha-Levi al ha-Rambam hil. Terumot 1:10 ;hil. Shemitah 12:16. The possibility that the presence of kelal yisrael plays a role not only in the implementation of these obligations, but in determining a full measure of kedushat haaretz, is of great consequence in establishing the relationship between the land and the nation. »

[8] See hil. Shemitah 4:28. Actually, Rabad is more explicit on this point than Rambam. We should note that Sifrei on Shoftim includes the area of ever hayarden. However, while that reference refers to the pesukim and the ideal boundaries of Erez Yisrael, Rambam's work should reflect the later reality. Thus, his citation of the Sifrei is striking.

[9] Classical semikhah was granted by a court of three judges (Mishnah Sanhedrin 2a), and it required the consent and participation of at least one who had attained this status, himself. According to Rambam (hil. Sanherin 4:3) the other two need not be semukhim, while Ramah demands that all three have attained this status. In any case, semikhah represents an unbroken chain of tradition and authority dating back to the time of Moshe and Yehoshua. We shall later make brief reference to Rambam's innovative and controversial suggestion of an alternative method of attaining this status. »

[10] Talmud Yerushalmi (Bikkurim 3:3) does cite a source for this exclusion based on the verse in Yehezkel ch. 5 This source, however, raises more questions than it resolves. What does the general theme of ideal have to do with granting rabbinic ordination?

[11] See, for example, Ramban's commentary on Vayikra 18:25. A general overview of Ramban's perspective can be gained from analyzing the various sections listed in the index of R. Chavel's edition of his commentary. See also the chapter on this theme in C. Enoch's, Ramban ke-Hoker u-Mekubal, pp. 141-159. Ramban's comprehensive view is of great significance to our topic, but it demands an extensive treatment not appropriate for this particular presentation.

[12] His comments appear in a hashmattah to his hiddushim on Gittin 2a.

[13] Several of the sections in Resp. of Rashba on matters dealt with in Ramban's Torah commentary. Ritba's adoption of Ramban's analysis of Acre (Gittin 2a) reflect this, as well. Of course,



some of Ramban's general orientation can be traced to R. Yehuda ha-Levi, who in his Kuzari and other writings projects the almost mystical centrality of Erez Yisrael in Judaism.

[14] The extensive discussion regarding Rambam's omission of settling in Erez Yisrael as one of the 613 commandments is a case in point. The contrast between Rambam's and Ramban's positions is sometimes characterized in terms of their respective rationalistic and mystical orientations. While this approach should not be summarily dismissed, it does not sufficiently take into account the halakhic nuances that stand at the core of these issues. The issue requires independent treatment.

[15] Neziv in his commentary to Sifrei discusses the different versions of the text.

[16] The Neziv, cited previously suggests the possibility that the reference is only to mizvot ha-teluyot ba-arez. The comments attributed to Gra in Kol Eliyahu are particularly striking as they reflect incredulity that this text can be accepted at face value.

[17] The impact of arevut as described in this way is particularly reflected in the explanation by some halakists that one can repeat a berakha on behalf of a fellow Jew who has not yet fulfilled his obligation on the basis of arevut not only because all Jews are connected, but because the fulfillment of even one who has previously engaged in the observance remains incomplete until every member of the Jewish collective has joined in the observance. See Rosh Hashana 29a.»

[18] See, also, the intriguing story related in Berakhot 63a-b.

[19] Rambam's view and Ramban's critique are found in Sefer ha-Mizvot, esin, no. 153. For Rav Soloveitchik's treatment of the issue, see Kovez Hiddushe Torah, pp. 47-65. This notion that the Great Sanhedrin functions occasionally as the representatives of the entire nation has other important applications as well. See, for example, Hiddushe ha-Griz al ha-Rambam hil. Sanhedrin 5:1 re. the appointment of a King. I have argued in Beit Yizhak vol. 21 that the convergence of both the judicial and national representation motifs is the basis for Sanhedrin's role.

[20] The precise connection between the different constituent components requires elaboration of its own.

[21] This view is strikingly dramatized by Ritba (Makkot 7a) who characterizes the operating mechanism of even those Diaspora courts that were populated by semukhim in terms of a form of representation of the authorities of Erez Yisrael. The Talmud (B.K. 84b) uses this expression with regard to judges lacking semikhah.

[22] Makkot 7a; Ramban, in his commentary to Shoftim discusses Rambam's position on this matter, and relates to some of these themes, as well. The status of establishing courts for Bnei Noah, a parallel theme, is relevant to this issue, as well. I hope to analyze the broader issue of Jewish and Gentile notions of law at length elsewhere.»

[23] This should also serve to explain the otherwise ambiguous Talmud Yerushalmi source cited previously.

[24] Rambam's view is expressed in hil. Sanhedrin 4:11 ; Perush ha-Mishnayot Sanhedrin 1:3 ; and Perush ha-Mishnayot Bekhorot 4:3. There are important subtleties that distinguish the presentations. I have analyzed these in the Beit Yizhak article alluded to previously.

[25] «FN1«RP»Tashbez vol 3 no.200 employs ever hayarden as a litmus test for many of these distinctions.»