

Man-Made Boundaries and Man-Made Holiness in the Jewish Tradition

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1. Holiness and Boundaries

According to Menachem Lorberbaum, central to the Jewish tradition "is the conceptualization of the land in terms of its holiness." In his view, this conceptualization plays a key role in determining the tradition's view on the making of boundaries. Unlike other traditions that view territory as merely "a functional substratum," in the Jewish tradition, territory – more accurately its own territory – is viewed as "an independent good." Thus, contends Lorberbaum, an inquiry into the connection between this Jewish, nonfunctionalist conception of the land and the attitude to the making of boundaries might enable us to make some general observations about the way nonfunctionalist conceptions of land govern reasoning about boundaries.

I am not sure, however, that this is the best conceptual framework for a discussion on the Jewish attitude to the making of boundaries. Let me start by presenting a different view on the Biblical perception of the land of Israel. According to Lorberbaum, in essence, the land is perceived as holy: "The land of Israel is the Holy Land." Yet, surprising as this might be for some readers, in the Bible the root Q-D-SH, which denotes holiness in Hebrew, never once refers to the land of Israel! In particular, the expression "the holy land" (*erets ha-godesh*) is nowhere to be found in the Bible. In the book of Isaiah (52:1), we find the term "city of holiness" referring to Jerusalem, but no reference to any land of holiness. The closest we can come to this is in the expression "holy ground" (*admat godesh*), yet this refers not to the land of Israel, but to the ground on which Moses stood before the burning bush.

How, then, is the land of Israel perceived in the Bible? Not as a holy land, but rather as a *good* land, good in the most mundane and non-spiritual meaning of the word:

For the Lord thy God bringeth thee into a good land, a land of brooks of water, of fountains and depths, springing forth in valleys and hills; a land of wheat and barley,

and vines and fig-trees and pomgranates; a land of olive-tree and honey; a land wherein thou shalt eat bread without scarceness, thou shalt not lack anything in it.¹

In fact, the promised land is so good that the Bible has to warn the children of Israel again and again not to let its superb physical and material conditions lead them astray from their religious-moral assigned destiny.² If there is any intrinsic holiness to the land, it is thus obscured from sight. According to the Biblical text, the good earth as encountered by the Israelites is more of an obstacle to a life of holiness than an inspiration to one.

Lorberbaum contends that the idea of the holy land is tightly connected to two other ideas – that of the promised land and that of the divine ownership of the world. Yet these are separate ideas – a land that is not holy can be promised, and a land that is holy might not be promised. As for the connection between ownership and holiness, here too I think we face different and logically independent ideas. The argument from divine ownership is based on a general moral-political argument to the effect that owners have a decisive say in how their property might be used. By this token, as God is the owner of the land of Israel, its inhabitants are forbidden to sell lands without reclaim,³ and they ought to regard their ownership as essentially limited and conditional. However one evaluates the validity of this argument,⁴ it is different from an argument based on holiness that seeks to derive normative implications from the intrinsically unique qualities of the land – namely, from its holiness. Contrary to Lorberbaum, then, I do not think that “the meaning of a holy land is that this land belongs to God”. The legal relation of ownership is far too weak to ground, let alone exhaust, the meaning of the idea of holiness (whether of the land or of any other object). To be sure, the term “holy” does appear in the laws about the Jubilee (“It shall be holy to you,”⁵), but it refers to the fiftieth year and not to the land, as Lorberbaum seems to argue.

I will say more about the argument from ownership in Section 2. But first let me complete my argument about the relation between holiness and the making of boundaries. Lorberbaum is well aware of the fact that what is meant by the holiness of the land is a matter of great dispute in Jewish philosophy. Some argue that it refers to an intrinsic quality of the land (a claim that seems to be consistent with Lorberbaum’s notion of a nonfunctionalist conception), while others argue that it is some sort of a relational quality (what we might call a functionalist conception).⁶ This disagreement casts doubt on attempts to characterize the tradition as accepting, more or less unequivocally, the idea about “the charismatic quality of the land” (Lorberbaum), and certainly on attempts to connect this conception of the land to the actual rules of Halakha.

To overcome these difficulties, Lorberbaum says that his discussion focuses “on normative utterances rather than on philosophical or ideological disquisitions”. Yet while I fully agree with this focus, I think it leads to

a different conclusion to that offered by Lorberbaum. On Lorberbaum’s view, “holiness does not only determine norms of behavior, it fixes boundaries too”. Yet the ideas set forth in the Talmud seem to entail the opposite view – namely, that the fixing of the borders determines holiness. I refer to a central Talmudic source,⁷ according to which the holiness of the land was determined for the first time by Joshua through his conquest (*hibush*) of the land, then nullified as a result of the land being lost to Babylon, and then re-established by Ezra, this time through his settlement (*chazakah*) of the land. According to most halakhic authorities, including Maimonides, while the first sanctification – by Joshua – was only temporary, the second – by Ezra – was to last forever, in spite of the subsequent devastation of the land and exile of its people by the Romans. What we see here is that human acts – in this case acts of conquest and of settlement – determine both the very holiness of the land as well as the precise boundaries of this holiness. This has significant halakhic implications because various agricultural laws – mainly the laws of *terumat u-mea isrot* (heave offerings and tithes; dues given to the priest and the poor) – apply only to the Holy Land, hence those parts of Israel conquered by Joshua, but not settled by Ezra, are exempt from these laws.

According to Maimonides, human acts such as conquest can determine not only the boundaries of holiness *within* the (promised) land of Israel, but, under well-defined circumstances, even the boundaries of holiness *outside* it. Maimonides says that if the king of Israel conquers lands outside the boundaries of Israel specified in the Torah, and if he does so after completing the conquest of the land within those specified boundaries, then the newly gained land will be “considered for all matters as the Land of Israel conquered by Joshua.”⁸ “For all matters” includes, of course, matters relating to the holiness of the land, such as the obligatory offerings of the first fruits to the priest and the poor. Thus, the making of *political* boundaries (via conquest) fixes the *sacred* boundaries too – the borders of the holy land – not the other way round.

A further illustration of this dependence of holiness upon human acts is the possibility of selling the land of Israel (or pieces of it) to non-Jews, and the implications of such a sale. According to the Talmud,⁹ Jews are not allowed to sell houses and fields in Israel to non-Jews. However, this prohibition is not absolute, and might be overridden by more urgent considerations. One such consideration that justifies violating this prohibition in the eyes of many contemporary Rabbis is the injunction not to allow the land to lie fallow in the seventh year (*shemita*). Observing this law became hard when Jews returned to work the land of Israel in the nineteenth century, and the Rabbis ruled that if the land of Israel is temporarily sold to a non-Jew before the seventh year, then the laws governing agricultural work in the seventh year are circumvented. Thus, by a human freely undertaken transaction of selling the land to non-Jews, the Jews who do so in effect

nullify its holiness, thereby exempting it from the laws of the seventh year. We must assume that this selling is legally valid, otherwise it could not do the trick of evading these laws.¹⁰

To sum up the difficulties in the assumption that the Jewish view on making boundaries is guided by its conceptualization of the land in terms of its holiness: First, the Bible never describes the land of Israel as holy. Second, the Talmud, which does refer to the holiness of the land, regards it as established – and also as overruled – by human acts, be they acts of conquest, settlement, or sale. Finally, discussing the question of boundaries through the prism of the notion of holiness creates the impression that the only arguments used in the halakhic tradition to justify claims about boundaries are arguments based on its holiness, which, if true, would make the tradition irrelevant to contested lands outside Israel and to international relations in general. I try to correct this impression in Section 3. But before I do so, let me say more about the notion of divine ownership and its relevance to the topic under discussion.

2. Ownership

I suggested earlier that the argument from divine ownership is different from the argument from holiness. What exactly does the former entail with regard to the right to the land and the making of boundaries? Lorberbaum shows that it is used in the Biblical laws of the Jubilee to restrict human ownership. But he also correctly notes that this is not the only way this idea is used in the tradition. Following Rashi's famous commentary to Genesis 1.1,¹¹ divine ownership is often referred to as grounds for the (assumed) unconditional right of the Jews to the land of Israel. For many Jews, these words of Rashi provide the definitive and final reply to any skeptical challenges about the right to the land or about the legitimacy of its boundaries. Non-Jews have no claim to this land because God, the owner of the entire world, has given it to the people of Israel. And since owners have the moral and legal power to transfer or share their ownership, this transaction is valid, and the people of Israel are thus the sole owners of the land.

If the land of Israel is so conceived – as the private property of the people – then a radical conclusion suggests itself – namely, that any non-Jew residing in Israel is a trespasser unless he or she gets special permission. It also seems to follow that non-Jews cannot really own any land in Israel, for the land is already owned; legally speaking, one cannot gain ownership over somebody else's property, be it an individual or a collective, unless this owner willingly relinquishes his property rights. Furthermore, if non-Jews use the land, they should pay the owners for its use. If these conclusions sound too extreme, let me quote from an article R. Ben-Zion Krieger published in 1987, the title of which is "Giving lands from Israel to non-Jews."¹² After explaining that the land of Israel belongs to the people of Israel forever, and that they never

gave up their divine right to the land, he quotes from R. Kook, who says that even if the people of Israel wanted to give up this property, they could not do so, because "with regard to the land of Israel and its relation to the people of Israel, there exists a supreme power, a divine power, that cannot be forfeited even on the owner's own will." R. Krieger then concludes by saying the following:

If governmental agents or individuals purchase with money lands in the areas in which they want to gain ownership, it is not their duty to do so but is really above the line of duty, just in order not to give an excuse to the nations of the world to say 'you are robbers, you both murdered and took possession.'

You can easily see how such an approach leads to an extreme right-wing position in contemporary Israel. On this model, the Palestinians are just guests in a land that belongs to somebody else, and, as a matter of principle, can have no territorial claims with regard to it. Their very raising of such claims is a case of *chutzpah*, of effrontery, of ingratitude toward the true owners of the land who graciously allow non-Jews to reside in it.

This understanding of the divine ownership argument has been prevalent in the last century among believers. Rashi's words can no doubt be read to support it, as can the whole Biblical epic of the people and its land; God promises the land to the children of Israel and allows them – in fact orders them – to capture it from the Canaanite nations inhabiting it. The idea of divine ownership can thus be interpreted in two opposing ways: as restricting human ownership ("you are but strangers resident with me,"¹³) and as strengthening it ("[God] gave it to them and of His own will He took it from them and gave it to us").¹⁴ Both are found in the divine ownership tradition, the former more prevalent in discussions on the political level.

Pointing out the existence of these two understandings does not mean that no arguments can be offered to prefer one over the other. I think Lorberbaum is right to emphasize the divine arbitrariness presupposed by the political-nationalist interpretation. I would add that this interpretation lends itself to a Euthyphro-like dilemma of the following form. The dilemma starts with a question about the moral-political right of the Jews to the land of Israel (in general, or regarding any specific border). As a reply, the notion of divine ownership is utilized, to the effect that God "of His own will gave it to them [the non-Jews residing in Israel] and of His own will took it from them and gave it to us."¹⁵ But now a dilemma presents itself: Is God's will to give the land to the people of Israel based on a (moral) reason or not? If it is, then this reason (whatever its content) suffices to justify the moral right, and the idea of ownership plays no real role in the argument. It would be God's justice that would underlie His parceling out of lands, not His unlimited power as owner. If, however, God's will is not based on reason, then it provides no moral answer to the question we started with. Though in some narrow legal sense the argument would establish that the land belongs

to the Jews, it would fall short of establishing anything close to the justice of their possession.

We seem to face here a deep tension between two religious intuitions, one emphasizing God's overall power and sovereignty, the other emphasizing God's justice and goodness. Elsewhere I have shown that by and large the Jewish tradition preferred the latter intuition, portraying God as rational and just rather than as an arbitrary ruler. In the realm of morality, this is expressed in the refusal to accept divine command theories of morality.¹⁶ Thus, I think Lorberbaum is right in suggesting that the tradition as a whole is more consistent with an interpretation of divine ownership that morally restrains human ownership and behavior than with an interpretation that relieves humans of some of their moral burdens.

3. Applying Universal Principles: The Principle of Conquest

As indicated earlier, I believe that the Jewish tradition has something to say not only about how the boundaries of the Holy Land are to be made but also about how boundaries in other countries are to be made. Furthermore, according to some Rabbis, the principles governing the making of boundaries in the international domain apply (at least partially) to the land of Israel too. The use of such principles became pertinent in the last century, when Jews were challenged to answer questions regarding the moral legitimacy of the Zionist project in general, and of Israel's boundaries (after 1948 or after 1967) in particular. As explained in the previous section, anyone truly troubled by the moral problematics here could not find solace in claims about divine arbitrariness. Hence, one would expect to find use of arguments of a more universalistic nature too, arguments that could be accepted by the non-Jew as well as by the disturbed conscience of the Jew. Within the halakhic tradition, such arguments would typically be formulated in terms of ideas found in classical sources. I would like to illustrate this point by looking at the use made of a Talmudic principle governing the political-territorial implications of conquest. This will show, first, how a Talmudic principle applies to all making and unmaking of boundaries, and second, what happens to the halakhic defense of the Jewish right to the land when it opens itself to universal principles.

What then is this Talmudic principle? In tractate *Hulin*, the Talmud seeks to solve the following problem. In Deuteronomy 2, God says to Moses that he ought not to wage war against the nations of Ammon and Moab "because I have given it unto the children of Lot for a possession." However, later we learn that both these nations, in fact, were conquered by the children of Israel. How so? The Talmud quotes a verse from Numbers 2 according to which Ammon and Moab were first conquered by Sihon, king of the Amorites. Through this conquest, the territories of Ammon and Moab became Emorite territory, and the original prohibition against taking the

possessions of the Ammonites and the Moabites was annulled. In the words of the Talmud: "Ammon and Moab were rendered clean [unto Israel] through Sihon."¹⁷ Similarly with the conquest of the Philistine lands, Abraham promised Abimelech that neither he nor his descendants would take Abimelech's land. How, then, were the children of Israel allowed to conquer this land? Because the nation of Kaphthorim did the work first and gained the land from the Philistines, thereby nullifying any claims the Philistines had regarding their land. As most commentators contend, what the Talmud states here is a general principle about the possessional implications of conquest – that any property gained by war is transferred to the ownership of the conquerors with no residue. I shall be referring to this principle as "the principle of conquest." It applies to the territory of the conquered nation, and *a fortiori* to other kinds of property. The sixteenth-century scholar David Ben Solomon Ibn Abi Zimra (known as Ha-Radbaz) offers the following explanation for this principle:

That is the way of kings to conquer territories one from the other and by doing so they take full possession of them, because if you do not say so, you will find no king who has possession in his kingdom, for all of their kingdom they take from others and they do so by war and that is their possession.¹⁸

This is a powerful argument. If conquest did not transfer ownership over territories and did not entitle the conquerors to bequeath the newly gained territory, then most nations (if not all of them) would face serious problems with their right to their lands. It is hard to find existing countries whose boundaries (at least some of them) were not made by conquest in one war or another. There is no need to weary the reader with examples.

Radbaz's reasoning clarifies the universal nature of the principle under discussion, which is also evident from the Talmudic source I just mentioned. In the Talmud, it helps establish the possessional implications of conquests by Gentiles of lands belonging (at the time of conquest) to Gentiles. Would this universal principle apply to conquests by Jews too? To the conquest of the land of Israel (by Jews or by non-Jews)?

As for the first question, regarding the conquest of territories (outside Israel) by Jews, the answer is probably in the affirmative. R. Shneur Zalman of Lyady, the founder of Chabad, mentions the principle of conquest in his halakhic work, *Shulchan a'ruah ha-yav*, and then refers in parenthesis to the Maimonidean law cited earlier,¹⁹ according to which the king of Israel can broaden the boundaries of the land of Israel via conquest.²⁰ Thus, according to Shneur Zalman, the rule about the results of conquest effected by the king of Israel is just a branch of a more general principle governing the implications of conquest in all nations.

The second question has two parts, one relating to the conquest of Israel by Jews, the other to its conquest by non-Jews. For obvious reasons, the first part has been more relevant in contemporary halakhic discussions about

the making and unmaking of Israel's boundaries. On the second part of this question, I have found nothing, but I offer some speculations in the closing lines of this chapter.

How, then, is the principle under discussion relevant to contemporary Israel? In 1937, Reuven Gafni published a full-length book about "our historical-legal right over the land of Israel."²¹ The book was honored by a preface from R. Abraham Isaac Kook, then the Chief Rabbi of Palestine, part of which I quoted earlier.²² In Chapter 7 of the book, Gafni argues that according to international law, as well as Jewish law, one gains possession over territory by conquest. This implies that the Jews have a right to the land of Israel for the following reason:

The conquest [of the land] in the last war [First World War] was by England who captured the land from the Ottoman empire to whom the land had belonged for centuries. According to the rules of war, the British could – if they so wished – annex this country and make it a colony of the Crown, or whatever they would like. [But] in the very days of the war they explicitly denied such an intention [to annex it to Britain] and chose a different option which was expressed in the Balfour Declaration, guaranteeing the establishment of a national home for the Jews in the land of Israel.²³

A similar argument was made several years later by R. Shaul Yisraeli, a central halakhic authority in religious-national circles. Yisraeli says that the owners of the land are those who gain possession over it in war, and in the case of Israel, those were the British. As the British, with the approval of the international community, agreed in 1947 to give the land to the Jews, "... the establishment of the state of Israel was carried out with the consent of the landowners and hence it is legal *from the Torah's point of view*."²⁴

The landowners in this citation are of course the British, not God, as in the simple ownership model. But now, on Yisraeli's view, what about those parts of Israel gained in 1948 that were not included in the UN partition? To this, Yisraeli answers that since the 1948 war was a defensive war, it falls into the category of a "permissible" war,²⁵ and therefore all of the territories occupied as its result were legitimate and fall under the principle of conquest.

The interesting point to note about these approaches is that they make the "Jewish" answer to the question under discussion depend on a general understanding of the moral and the political situation. In other words, to determine the point of view of the Torah, one must first determine what the facts of the matter regarding the relevant history are and what morality has to say given these facts. This comes out very clearly in the last source I would like to mention. This is an article from 1995 by R. Abraham Sherman.²⁶ After introducing the principle of conquest, Sherman shows that it does not apply automatically to any conquest, because when wars are unjust, then taking possession over property gained by them, be it real estate or other

property, would amount to simple robbery. Violence, then, is not the only circumstance when it comes to international relations. This implies that in order to use the principle of conquest to establish possession over the territories occupied in 1948 and in 1967, one must first demonstrate the morality of these wars, and Sherman tries to do so in a way similar to that taken by Yisraeli – indeed to that taken for years by mainstream Zionism – that they were defensive wars,²⁷ or in their words, wars necessary "to save Israel."

Sherman, as well as Yisraeli, add another proviso to the principle of conquest – that conquest transfers ownership only if the conquest was intended to do so in the first place. Hence, for example, regarding the 1982 war in Lebanon, Sherman argues that as Israel waged this war solely for self-defense, it did not thereby take possession over Lebanon and did not turn it into part of the land of Israel.²⁸

These provisos to the Talmudic principle of conquest would apply to its use on the international domain too. They mark an interesting development from a principle that grants a reward to successful aggression, irrespective of its moral justification, to a principle far more nuanced and sensitive to moral considerations. In the way Sherman summarizes the current understanding of the principle, it wholly depends on the justice of the war leading to conquest. This development is not too surprising: It is one thing to speculate in the abstract about what the Talmud says concerning the effects of the wars between Shihon and Moab. It is a different thing to apply these Talmudic ideas to real-life moral quandaries in contemporary Israel. The move toward a more moral formulation of the principle under discussion accords well with the general move toward moralization in Jewish law.²⁹

Yet, as hinted here, this turn to universal principles has its price. It exposes those who make it to possible criticism regarding their moral as well as their historical assumptions. As this exposure could become a fearful enterprise – maybe it will turn out that not all the wars were defensive, or maybe it will be shown that some particular instance of occupying territory was unjustified – a constant tension can be found in the literature between moral claims on the one hand and claims about an absolute right to the land grounded in divine ownership on the other.

Finally, let us return to the question regarding the application of the principle of conquest to the conquest of Israel by non-Jews. If the king of Israel were to conquer Greece, then, according to Maimonides, Greece would become part of the land of Israel, and the Greek people would lose any claims to it. On Shneur Zalman of Lyady's view, this is a result of the universal principle of conquest.³⁰ What about the opposite case, in which the Greek king conquered Israel? Would it then – according to Jewish law – become part of Greece? Can Jews lose their rights in Israel through war, just as other nations can lose theirs? I found no explicit discussion of these questions in the literature, probably because for most halakhists,

the answer to these questions would be an unequivocal "no." Nevertheless, I would like to suggest some speculations that might lead to a different answer. This answer might teach us something about the possibilities for moral interpretation within the tradition. It also encourages new reflection on the nature of the relation between the Jewish people and their land.

I start with a general claim. If the principle of conquest applied to the conquest of Greece by the Jews but not to the conquest of Israel by the Greeks, that would be a blatant case of injustice, which would run counter to the repeated emphasis in the Torah on the justice of its laws and the righteousness of God. Such discrimination between Jews and Gentiles would hardly be compatible with the injunction, "Justice, only justice shalt thou pursue,"³¹ and would definitely be inconsistent with the Torah's expectations that when the nations see the Jewish law, they will say "and what nation is there so great that has statutes and judgments so righteous as all this Torah."³² In other words, the perceived moral nature of the Torah encourages a fair and equal application of the principle outlined here. The motivation for such equal application derives not only from broad considerations of justice but from a Talmudic principle according to which "there is nothing which is allowed to Jews but prohibited to non-Jews."³³ Put simply, it is unfair that the Jews would have the power to gain ownership over territory in a way that would be blocked for non-Jews.

Let us assume then that an international court ruling according to halakha would grant the Greeks possession over the land of Israel in the imaginary scenario we are discussing. Would such ruling contradict the Biblical view about the eternal bond between the people of Israel and their land? I think not. As Lorberbaum reminds us, the entitlement of the Israelites to their land is contingent on their moral-religious behavior. This means that if they are "vomited out" of the land, to use the figurative language of Leviticus 18, they must have defiled the land by their sins, and no longer deserve it. In this respect, the Israelites are no different than other nations, whose residence in the land also depends on their behavior.³⁴ The Emorites, explains God to Abraham, will not lose their entitlement to the land until the fourth generation, "as their iniquity is not yet full."³⁵ Hence, when they do eventually lose the land, we must infer that their iniquity was full. The same with the children of Israel: If they lose the land through conquest of some other nation, their iniquity must be full. And if their iniquity is full, then, according to the Bible's moral-theological view, they have no right to reside in the land. If all this is correct, then an international court ruling according to Halakha might apply the principle of conquest in the case under discussion not only for moral reasons (fairness in applying the principle of conquest), but for theological ones too. Denying the political consequences of such conquest would amount to contravening the divine judgment on the iniquity that led to the loss of the land.

4. Summary

1. In the Biblical view, the right of nations to live within their promised boundaries depends on their moral and religious behavior. Sinful behavior is punished by exile, be the sinners Jews, Emorites, or Moabites. In that sense, on a moral-theological level, the making and unmaking of boundaries depends on proper behavior.

2. The boundaries of holiness also depend on human action, and are not just given once and forever. They are made by political actions such as conquest and settlement and unmade by actions such as exile and sale. Thus, holiness does not fix the boundaries of the Holy Land but the other way round.

3. That conquest makes the boundaries of the Holy Land can be seen (and at times has been seen) as an instance of a universal Talmudic principle to the effect that through conquest the conquerors gain ownership over the conquered territory. This principle applies to all acts of conquest, including that of the land of Israel, and has been utilized by contemporary Rabbis to justify Israel's right over territories gained by war.

4. The principle of conquest, whose power to transfer ownership seems to be unlimited in Talmudic sources, has been interpreted by later commentators as contingent on the justice of the war that led to the conquest. This moralization of the principle means that any use of the principle outlined to ground the making of boundaries would have to rely on moral arguments of a universal nature, thereby making the "Jewish" answer to questions about boundaries dependent on the general moral answer to them.

Notes to Chapter 3

1. Deut. 8:7-9. Cf. Numbers 16:13, Deuteronomy 33:28, Kings II 18:32.
2. See Deuteronomy 6:10-13, 8:11-18, and 32:13-15.
3. Leviticus 18: 25:23, and Lorberbaum's contribution to this volume.
4. For a critical analysis, see A. Sagi and D. Staman, *Religion and Morality*, (Amsterdam: Rodopi, 1995), Chapter 3.
5. Leviticus 25:12.
6. See Lorberbaum's contribution to this volume, n.13.
7. *Yevamot* 82b.
8. Laws concerning Kings and their Wars, 5:6, quoted by Lorberbaum in his Chapter 2 of this volume.
9. *BT Avoda Zara* 20a.
10. Would the land of Israel still belong to the Jewish people even after it was sold to a non-Jew prior to the seventh year? If it does, the relation here is clearly not one of private property. This can also be learned from the Biblical stories about the Patriarchs purchasing land in Israel. See especially Genesis 23:4, where Abraham explains to the Hittites that he is only "a stranger resident with them,"

and thus he pleads with them to sell to him "for the full price" (ibid., verse 9) a burying place for Sarah. And thus takes place after the land was already given to Abraham in Genesis 15. I say "given" rather than "promised," because that is explicitly the verb used there: "In that day the Lord made a covenant with Abram, saying: 'Unto thy seed *have I given* this land.'" According to the Midrash, the cause of the strife between the shepherds of Lot and those of Abraham was precisely the inability of Lot to grasp this point – namely, that the divine granting of the land cannot automatically to private property rights. The Midrash says that Lot's shepherds thought that, as the land was promised to Abraham, Abraham had the right to take his beasts to pasture wherever he wished, and as Lot would surely inherit him, he had a similar right. By contrast, Abraham's shepherds thought that such behavior counted as simple robbery (*Genesis Rabba* 41:5). On the general difficulties in understanding the political notion of territory in terms of private property, see Allan Buchanan's Chapter 12 in this volume.

11. Following the Midrash, *Genesis Rabba* 1:2.
12. R. Ben-Zion Krieger, "Giving lands from Israel to non-Jews" [in Hebrew], *Tehumin* 8 (1987), 323.
13. Leviticus 25:23.
14. Rashi to Gen. 1:1.
15. Rashi, ibid.
16. See Avi Sagi and Daniel Statman, "Divine Command Morality and the Jewish Tradition," *The Journal of Religious Ethics* 23 (1995), 49–68.
17. *Hain Gub.*
18. *Responsa*, part 3, 733.
19. See n7.
20. R. Shneur Zalman of Lyady, *Shulchan Aruch Ha-Rav*, Part V, Laws concerning the renunciation of property and the removing of the neighbour's landmark (*hefker vehassagat gevul*).
21. Reuven Gafni, *Our Historical-Legal Right Over the Land of Israel* [in Hebrew], 1937. See text near n12.
22. See text near n12.
23. Gafni, *Our Historical-Legal Right Over the Land of Israel*, 134.
24. S. Yisraeli, *Ereks Hemda* [in Hebrew] (Jerusalem: Mosad Harav Kook, 1988), 35. Emphasis mine.
25. See Maimonides, Laws concerning Kings and their Wars, 5:1.
26. R. Abraham Sherman, "The Halakic Validity of the Wars of Israel in Determining Sovereignty Over Areas in the Land of Israel" [in Hebrew], *Tehumin* 15 (1995), 23–30.
27. Ibid., 29.
28. Ibid.
29. See, for example, Leon Roth, "Moralization and Demoralization in Jewish Ethics," in his *Is There a Jewish Philosophy?* (London: The Littman Library of Jewish Civilization, 1999), 128–43; Judith Hauptman, *Rereading the Rabbis: A Woman's Voice* (Boulder, Colorado: Westview Press, 1998). I am not assuming that the tradition moves only in the direction of moralization, only that moralization is a dominant feature of it.
30. See n20.

31. Deuteronomy 16:20.
32. Deuteronomy 4:8.
33. BT Sanhedrin 59a.
34. Here again the principle governing the right to reside in the land of Israel can be seen as a branch of a universal principle applying to all lands – namely, that sinful behavior is punished with exile. Maybe the first illustration of this principle is the punishment of Cain, who, after defiling the land with his brother's blood, is "driven out from the face of the land" (*Genesis*, 4:14). See also Jeremiah 48–49 about the fate of the Moabites and the Ammonites, who will both be expelled from their lands as a result of their sins. It is also noteworthy that both of these nations are promised to return in the end of days back to their original territories (*Jeremiah*, 48:47 and 49:39). Thus the cycle of exile and return to a promised land is not unique to the Jewish people and the land of Israel. See Nahmanides, commentary to *Genesis* 1:1: "When a nation continues to sin it has to leave its place, and another nation then inherits its land. Thus has been the divine justice forever."
35. *Genesis* 12:16.