# Hefker L'kulam: Torah and Shmitah (CBI)

Source Sheet by David Seidenberg

#### 1. מדרש תנחומא, במדבר ו":א' Amidrash Tanchuma, Bamidbar 6:1 ומדרש תנחומא, במדבר ו":א'

וַיִּדְבֵּר ה׳ אֶל מֹשֶׁה בְּמִדְבַּר סִינַי. וְלָמָה בְּמִדְבַּר סִינַי. מִכָּאן שָׁנוּ רַבּוֹתֵינוּ, בִּשְׁלֹשָׁה דְּכָרִים נִתְּנָה הַתּוֹרָה, בָּאֵשׁ וּיַמַּיִם וּבַמִּדְבָּר. בָּאֵשׁ, שֶׁנָּאֶמַר: וְהַר סִינַי עָשַׁן כָּלוֹ מִפְּנֵי אֲשֶׁר יָרַד עָלָיו ה' בָּאֵשׁ וַיַּעַל עֲשָׁנוֹ כְּעֶשֶׁן הַכִּבְשָׁן וְּהַבְּמָים וּבְמִּדְבָּר. בָּאֵשׁ, שֶׁנָּאֶמַר: וְחָב. שָׁנָאֵמַר: ה' בְּצֵאתְךְ מְשֹׁעִיר בְּצַעְדְּךְ וְגוֹ' (שופטים ה, ד). בְּמִדְבָּר, שֶׁנָּאֱמַר: בְּמִדְבַּר סִינִי לֵאמֹר. וְלְמָה נִתְּנָה בִּשְׁלֹשָׁה דְּבָרִים אֵלוּ. לוֹמַר לְךָ, מַה דְּבָרִים הַלָּלוּ חִנָּם לְכָל בָּאֵי עוֹלְם, שֶׁנֶּאֱמַר: הוֹי כָּל צָמֵא לְכוּ לַמֵּים וַאֲשֶׁר אֵין לוֹ כֶּסֶף לְכוּ לְכָל בָּאֵי עוֹלְם, שְׁבָּרוּ וַחָלַב (ישעיה נה, א).

(Numb. 1:1:) "Then YHVH spoke unto Moshe in the Sinai wilderness (bemidbar Sinai)." Why "in the Sinai wilderness"? From here our rabbis taught: The Torah was given through three things: through fire, through water, and through wilderness. Through fire, as it says (in Exod. 19:18), "Now all of Mount Sinai was smoking..." Through water, as it says (in Jud. 5:4), "YHVH, when You went forth from Seir... even the clouds dropped water." Through wilderness, as it says, "in the Sinai wilder-ness." And why was it given through these three things? Just as these are free (chinam) to all who come into the world, so too are the words of the Torah free to all who come into the world. Thus it said (in Is. 55:1), "Ho, all who are thirsty, come to the waters (of Torah); even if you have no money, come, get food, eat....without cost."

#### 2. מדרש תנחומא, במדבר ו':א' Amidrash Tanchuma, Bamidbar 6:1

בְּמִדְבַּר סִינֵי, לָמָה בְּמִדְבַּר סִינַי. אֶלָּא כָּל מִי שֶׁאֵינוֹ עוֹשֶׂה עַצְמוֹ הֶפְּקֵר כַּמִּדְבָּר, אֵינוֹ יָכֹל לִקְנוֹת אֶת הַתּוֹרָה. לְכַךְ נֵאֲמַר: בִּמִדְבַּר סִינַי.

"In the Sinai wilderness." Why "in the Sinai wilderness"? Because whoever does not make themself ownerless (*hefker*) like the wilderness cannot acquire the Torah. Therefore it says, "in the Sinai wilderness."

What is free and ownerless, open to all, is the only real possession in Torah one can acquire. This is like what Rashi says about Sabbatical year produce: when you set aside some of your grapevines for yourself, those are the grapes that you are **forbidden** to eat. Only the grapevines you declared ownerless are you free to eat from. Maharal further explains that hefker means not specifically given for the human species.

Lev 25:5: You shall not reap the aftergrowth of your harvest, and you shall not pick the grapes you had set aside [for yourself], [for] it shall be a sabbath of sabbaths, a year of rest, for the land.

## 3. רש"י על ויקרא כ"ה:ה' Rashi on Leviticus 25:5

(ב) **לא תקצור.** לְהְיוֹת מַחֲזִיק בּוֹ כִּשְׁאָר קָצִיר, אֶלָּא הֶפְּקֵר יִהְיֶה לַכֹּל: (ג) **נזירך.** שֶׁהְנָזַרְתָּ וְהִפְּרַשְׁתָּ בְנֵי אָדָם מֵהֶם וְלֹא הִפְּקַרְתָּם: (ד) **לא תבצר.** אוֹתָם אֵינָךְ בוֹצֵר, אֵלָּא מִן הַמְּפָקָר: (ספרא)

(2) You will not reap — to grab Shmitah produce (as your property), as you do other harvests, but it shall be free (hefker) to all. (3) [and your grapevines] set aside — that you barred and kept people away from them, not declaring them free/ownerless — (4) you will not gather to store — but you may gather from what is declared hefker.

## Tiferet Yisrael 26:5 מפארת ישראל כ"ו:ה' 4.

וביאור ענין זה, כי ראוי שתנתן התורה באלו שלשה, כי התורה אינה מתיחסת לאדם, כי האדם בעל גשם, ואילו התורה היא שכלית. ולפיכך אין לתורה התיחסות לאדם כלל, לריחוק מעלתה מן האדם, והיא מובדלת מן האדם. ולכך נתנה התורה באלו שלשה דברים, כי כל אלו דברים הם הפקר לעולם, וזה מורה שאינם מיוחדים לאדם.

(Maharal of Prague) The Torah is not related/relative to humanity, for humanity is materialistic, but the Torah is idealistic, intellectual... and is separated from humanity. Therefore the Torah was given through these three (fire, water, wilderness), for these things are forever irrevocably ownerless (*hefker*), which shows they are not specifically for (ownership by) people...

In Shmitah the principle is that rich and poor have the same rights and prohibitions -- the right to eat from any field and the prohibition against hoarding any food. We are also forbidden to hoard our Torah or to lord it over others through our learning. See Menachem Mendel of Vitebsk at the end.

#### א משנה פאה ו":א' 1:3 Mishnah Peah 6:1.

בֵּית שַׁמַּאי אוֹמְרִים, הֶפְּקֵר לָעֲנִיִּים, הֶפְּקֵר. וּבֵית הִלֵּל אוֹמְרִים, אֵינוֹ הֶפְקַר, עַד שֶׁיֻפְקַר אַף לָעֲשִׁירִים, כַּשִּׁמִטַּה.

Beit Shammai says: [That which is] made ownerless (*hefker*) only (for the sake of giving it) to the poor is indeed ownerless. Beit Hillel says: it is not ownerless unless it is even available (*yufkar*) to the rich, like in the Shmitah (sabbatical year).

In the Shmitah year, as Maimonides explains, every field becomes like the wilderness, hefker and open to all. All means to rich and poor, to Jew and non-Jew, but also, to human and animal, and to the wild animals -- just as the wilderness is by definition open to the wild animals, our human fields become like the wilderness.

#### 6. משנה תורה, הלכות שמיטה ויובל ז':א' Maimonides, Mishneh Torah, Shmitah 7:1

פֵּרוֹת שָׁבִיעִית אֵין אוֹכְלִין מֵהֶן אֶלָּא כָּל זְמַן שֶׁאוֹתוֹ הַמִּין מָצוּי בַּשָּׂדֶה שֶׁנֶּאֱמַר (ויקרא כה ז) "וְלִבְהֶמְתְּךְ וְלַחַיָּה אֲשֶׁר בְּאַרְצֶךְ תִּהְיֶה כָל תְּבוּאָתָהּ לֶאֱכל". כָּל זְמַן שֶׁחַיָּה אוֹכֶלֶת מִמִּין זֶה מִן הַשָּּדָה אַתָּה אוֹכֵל מִמַּה שֵּבָּבַּיִת. כַּלַה לַחַיָּה מִן הַשַּּדֶה חַיַּב לְבַעֵּר אוֹתוֹ הַמִּין מִן הַבַּיִת וְזֵהוּ בִּעוֹר שֵׁל פֵּרוֹת שִׁבִיעִית:

The fruits of the seventh year can only be eaten as long as that species can be found in the field, as it is stated (Leviticus 25:7) "And for your beast and for the wild animal that is in your land, all of its produce will be for food." The whole time wild animals can eat from this species in the field, one may eat what is in the home. When it has been finished (and none is left for) the wild animal in the field, one must remove that species from the home. And that is *biur* of the fruits of the seventh year.

## Midrash Tanchuma Buber, Chukat 49:1 "מנחומא בובר, חקת מ"ט:א' 7. תנחומא

ד"א למה ניתנה במדבר. שאילו ניתנה להם בארץ, היה השבט שניתנה בתחומו מדיין ואומר אני קודם בה, לכך ניתנה במדבר שיהו הכל שוין בה, ועוד למה ניתנה במדבר, כשם שמדבר לא נזרע ולא נעבד, כך המקבל דברי תורה פירקין ממנו עול מלכות ועול דרך ארץ, כשם שמדבר לא מעלה ארנונא, כך בני תורה בני חורין.

Why was it given in the wilderness? Because if it had been given in the land (of Canaan), the tribe in whose border it was given would...say: I come first in claiming it. For that reason it was given in the wilderness, where all would be equal (*shavin*) in claiming it. And why else was it given in the wilderness? Just as wilderness is not sown or cultivated, so are those who receive the words of Torah. They remove from them the yoke of government and of society. Just as a wilderness does not get levied; so the progeny of Torah are progeny of freedom (*b'nei chorin*).

#### 8. משנה תורה, הלכות שמיטה ויובל ד':כ"ד Wishneh Torah, Hilkhot Shmitah 4:24

מִצְוַת עֲשֵׂה לְהַשְׁמִיט כָּל מַה שֶׁתּוֹצִיא הָאָרֶץ בַּשְׁבִיעִית שֶׁנֶּאֲמַר (שמות כג יא) "וְהַשְּׁבִיעִת תִּשְׁמְטֶנָּה וּנְטַשְׁתָּהּ". וְכָל הַנּוֹעֵל כַּרְמוֹ אוֹ סָג שָּׁבִהוּ בַּשְּׁבִיעִית בִּטֵּל מִצְוַת עֲשֵׂה. וְכֵן אִם אָסַף כָּל פֵּרוֹתִיו לְתוֹךְ בֵּיתוֹ. אֶלָא יַפְקִיר הַכּּל וְיַד הַכּּל שָׁוִין בְּכָל מָקוֹם שֶׁנֶּאֱמַר (שמות כג יא) "וְאָכְלוּ אֶבְיֹנֵי עַמֶּךְ".

It is a positive commandment to release [ownership of] everything that comes out of the earth in the seventh year as it says, "and the seventh, you will release and forsake" (Exod 23:11). And one who locks up their vineyard or fences their field in the seventh year has nullified a positive commandment, and similarly if one gathers all their fruits into their house. Rather everything should be made ownerless and everyone's hand equal (*shavin* having equal claim) as it says, "the poor of your people will eat."

Nationalism and tribalism are contrary to the spirit of the Torah, which belongs to all humankind.

To become a wilderness in relation to the Torah also means to learn not for the sake of receiving the fruits of one's labor but for the sake of Torah itself. Like the wilderness and like the fields in the Shmitah year, to remain uncultivated, to let what grows grow naturally.

## 9. מדרש תנחומא, ויקהל ח':ב' 2:2 Midrash Tanchuma, Vayakhel 2:2

ְּוְלָמָה נִתְּנָה הַתּוֹרָה בַּמִּדְבָּר. לוֹמַר, מָה הַמִּדְבָּר מְפְקָר לְכָל בְּנֵי אָדָם, אַף דִּבְרֵי תוֹרָה מֻפְּקָרין לְכָל מִי שֶׁיִּרְצֶה לִלְמֹד. שֶׁלֹא יְהֵא אָדָם אוֹמֵר, אֲנִי בֶּן תּוֹרָה וְתוֹרָה נְתוּנָה לִי וְלַאֲבוֹתֵי וְאַתָּה וַאֲבוֹתֶיךּ לֹא הֱיִיתֶם בְּנֵי תוֹרָה אֶלָּא אֲבוֹתֶיךָ גַּרִים הָיוּ, לְכָךְ כְּתִיב: מוֹרָשָׁה קְהִלַּת יַעֲקֹב (דברים לג, ד), לְכָל מִי שֶׁמִּתְקַהֵּל בְּיַצְקֹב. אֲפִלוּ הַגֵּרִים שֶׁעוֹסְקִין בַּתּוֹרָה, שְׁקוּלִים הֵם כְּכֹהֵן גָּדוֹל, שֶׁנֶּאֱמַר: אֲשֶׁר יַצְשֶׂה אֹתָם הָאָדָם וָחַי בָּהֶם אֲנִי ה' אֱלֹהֵיכֶם (ויקרא יח, ה), כֹּהֵן וְלֵוִי וְיִשְּׂרָאֵל לֹא נֶאֱמַר אֶלָּא אָדָם. לְפִיכָךְ תּוֹרָה אַחַת וּמִשְׁפָּט אָחָד יִהְיֶה וְגוֹי (במדבר טו, טו).

Why was the law given in the wilderness? To teach us that just as the wilderness is freely open (*mufkar*) to all humanity, so the words of the law are free to all who desire to learn. So no one should say: "I am a student of Torah and Torah was given to me and my ancestors, while you and your ancestors were not... your ancestors were strangers"... Even outsiders who immerse in Torah are equal to the high priest, as it says, "Which if a person (*adam*) do, he shall live by them: I am the Lord" (Lev. 18:5). It doesn't say priest or Levite or Israelite but *person*. Thus, "One Torah and one law shall be (for you and for the stranger living with you)" (Num. 15:16).

The fundamental principle of Shmitah, and the fundamental fact about the giving of the Torah, is that all are made equal, all have equal right and access, all treat each other with equality. And this is the principle of Shekhinah as well.

Lev 25:6 And [the produce of] the Sabbath of the land shall be yours to eat for you, for your male and female slaves, and for your hired worker and stranger residing with you. 7 And for the domestic animal and for the wild animal

# Rashi on Leviticus 25:6 "ה:ו' כ"ה:ו' 10.

(א) והיתה שבת הארץ וגו'. אַעַ"פּ שֶׁאֲסַרְתִּים עָלֶיךָ, לֹא בַאֲכִילָה וְלֹא בַּהֲנָאָה אֲסַרְתִּים, אֶלָּא שָׁלֹא תִנְהֹג בְּהֶבָעַל הַבַּיַת, אֶלָּא הַכֹּל יִהְיוּ שָׁוִים בָּהּ, אַתָּה וּשְׂכִירְךְ וְתוֹשְׁבְךָ: (ב) שבת הארץ לכם לאכלה. מִן בְּשֶׁבוּת אַתָּה אוֹכֵל וְאִי אַתָּה אוֹכֵל מִן הַשָּׁמוּר (ספרא): (ג) לך ולעבדך ולאמתך. לְפִי שֶׁנֶאֱמַר וְאָכְלוּ הַשָּׁבוּת אַתָּה אוֹכֵל יִהְיוּ אֲסוּרִים בַּאֲכִילָה לְעֲשִׁירִים, תַּ"ל לְךְ וּלְעַבְדְּךְ וְלַאֲמָתֶךְ, הֲרֵי בְעָלִים וּעבדים וּשׁפּחוֹת אמוּרים כּאן (ספרא): (ד) ולשכירך ולתושבך. אף הגוֹים (שם):

(1) And the sabbath of the land will be [food for you] — you should not make use of them as a property owner would, but all must be equal (shavim) as regards (Shmitah produce) — you and your hired servant and your resident stranger. (2) [will be] food for you all — Only that which has rested (from ownership) and been declared free to all may you eat, but not that which has been horded/guarded by you. (3) for you and for your servants— Because it states (Exodus 23:11) "the needy of your people may eat", you might think the fruits are forbidden as food for the rich. So scripture teaches: "for you, and for your servant" — owners and servants are included (4) and for your resident stranger — Even non-Jews.

The acquisition of Torah is the opposite of the acquisition of property, and it teaches us about how to live in equality with others even with all our differences (Maharal), how to become interwoven with each other's lives and souls (Menachem Mendel of Vitebsk - last text). And this is the same thing that Shmitah teaches us. But the giving of the Torah in the wilderness, and making our fields like the wilderness in the Shmitah year, also teach us that an important way to do this is to become like the wilderness, open to all.

## Maharal of Prague, Tiferet Yisrael 16:8 "ז:ח' 16:8. תפארת ישראל ט"ז:ח'

כי אף בשאר הנמצאים אף שהם כולם מין אחד, יש בהם שנוי בדבר שאינו מגיע לעצמו, שזה גדול וזה קטון, לזה יש כח גדול, וזה אינו בעל כח. אבל הם שוים בדבר שמגיע לעצמו, ואין בהם שנוי. וכן נתן התורה אל הכלל ביחד, והוא השלמה אחת בכלל, מבלי תוספת ומבלי חסרון...

ודבר זה השלמת המין עד שיהיה הכל שוה, וכדכתיב (במד׳ טו:כט) "תורה אחת יהיה לכם וגו'". ומפני זה נתנה התורה במדבר (שמות יט, ב), שהוא מקום הפקר, שתהיה התורה השלמת מין האנושי בכלל.

Even though creatures may all be from one species, there are differences that don't reach their essence -- this one is big and that small, this one has great strength, and that one is not strong. But they are equal with respect to what reaches their essence... and so the Torah is given universally, together, and is the singular fulfillment of the collective, without extra and without lack (for any individual).

And this is the fulfillment of the species to the point that all will be equal, as it's written, "One Torah will there be for them all..." (Numb 15:20) And because of this the Torah was given in the wilderness, which is an ownerless place, for the Torah would be the fulfillment of the human species universally.

## Sanhedrin 49a מ"ט א:ט"ז. 12.

(מלכים א ב, לד) ויקבר בביתו במדבר אטו ביתו מדבר הוא אמר רב יהודה אמר רב כמדבר מה מדבר מופקר לכל אף ביתו של יואב מופקר לכל

The verse states that Yoav (David's general) "was buried in his own house, in the wilderness" (I Kings 2:34). The Gemara asks: Is that to say that his house was a wilderness? Rav Yehuda said that Rav said: like a wilderness; just as wilderness is freely open to all (mufkar lakol), so too, Yoav's house was freely open to all.

The lesson of Yoav's house is to be open to the vulnerable, as one must be if one is sensitive to Torah.

What are the connections to making oneself ownerless, making oneself naked, and making oneself as nothing, and separating oneself from everything, as we read below? How are they the same and how different? Is this the opposite of Yoav's house, which was open to all and included everyone?

## 13. במדבר רבה י"ט:כ"ו Bamidbar Rabbah 19:26

ַדָּבַר אָחֶר, בַּמִּדְבַּר, מִי מִקָיֵם אֶת הַתּוֹרַה, מִי שֶׁמֵשִׁים עַצְמוֹ כִּמִדְבַּר וּמַפְּלִיג עַצְמוֹ מָן הַכּּל.

Another interpretation, [why] "in the wilderness"? Who is the one who fulfills the Torah? One who makes themself like a wilderness and separates themself from everything. (Numb. 21:19)

## 21b:3 ב:ג' כוטה כ"א ב:ג' 14

וְרַבָּנֵן הַאי אֲנִי חָכְמָה מַאי עָבְדִי לֵיהּ מִיבְּעֵי לֵיהּ לְכִדְרַבִּי יוֹמֵי בְּרַבִּי חֲנִינָא דְּאָמַר רַבִּי יוֹמֵי בְּרַבִּי חֲנִינָא אֵין דִּבְרֵי תוֹרָה מִתְקַיְימִין אֶלָּא בְּמִי שֶׁמַּעֲמִיד עַצְמוֹ עָרוֹם עֲלֵיהֶן שֶׁנֶּאֱמַר אֲנִי חָכְמָה שָׁכַנְתִּי עָרְמָה אָמַר רַבִּי יוֹחָנַן אֵין דִּבָרֵי תוֹרָה מִתִקִיִּימִין אֶלָּא בִּמִי שֶׁמֵּשִׂים עַצְמוֹ כִּמִי שֵׁאֵינוֹ שֵׁנָּאֱמֵר וְהַחָּכְמָה מֵאַיִן תִּמָּצֵא

The Gemara asks: And the Rabbis, what do they do with this verse: "I, wisdom, dwell with cunning (arma)"? The Gemara answers: They require that verse in accord with what R. Yosi son of R. Chanina said: Words of Torah do not endure except in one who stands naked for them, as it says, "I, wisdom, dwelt naked (arma)" (Proverbs 8:12). R. Yochanan said: Words of Torah do not endure except in one who makes themself like nought, as it says: "From ayin (which can mean "from where" or "from nothing") can wisdom be found" (Job 28:12).

## Maharal of Prague, Derekh Chayim 5:23:11 ג'י"א. 15. דרך חיים ה':כ"ג:י"א

כי מדריגת התורה באמת הוא כח הגרים ביותר... כי כל כך מדריגת התורה עליונה כוללת הכל, עד שהכל משותפים בה...אף האומות. שלכך נתנה התורה במדבר במקום הפקר, עד שאפילו האומות שייכים אל התורה. וכל זה מפני מדריגת ומעלת התורה העליונה, שהיא על הכל והיא אל הכל... ומזה תראה כי הגירות בפרט מורה על מעלת התורה העליונה

For the level of the Torah is truly the most [connected to] the power of converts... for it includes all and all participate in it... For this is why the Torah was given in the wilderness, in a place unowned (*makom hefker*), so that even the nations are connected to the Torah. And this is because of the level and stature of the supernal Torah, which is above all and for all... [C] onversion in particular teaches us about the high stature of the supernal Torah.

## Menahem Mendel of Vitebsk, Pri HaAretz, Letters 10:2 "כרי הארץ, מכתבים י":כ' 16:2. פרי הארץ, מכתבים י

אין התורה מתקיימת אלא במי שמשים עצמו כמדבר הפקר לעניים ולעשירים בדעת ואינו גדול יותר מחבירו אדרבא בטל במציאות נגדו ובזה מתאחדי' ונכללי' זה בזה

The Torah is only established in one who makes themself like an open wilderness (*midbar hefker*) before those poor or rich in know-ledge, and who doesn't think of themself as greater than their friend. On the contrary, they should feel nullified in existence next to them, and through this they are united and included within each other.

Equality, mutuality, openness, humanism (loving the stranger as well as one loves the neighbor), sharing food with all the other species, sharing insights with each other, are what makes a society Jewish, a wilderness a place of revelation, a field a source of spiritual sustenance.

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