

Recollections and Reconstruction of a Debate on the Nature of Kedushas Eretz Yisrael

By: DAVID NEUSTADTER and HAROLD NEUSTADTER

Abstract

In the winter of 1957 Rabbi Shlomo Goren visited New York and was invited by Rabbi Joseph B. Soloveitchik to give a *shiur* to his students at the Rabbi Isaac Elchonon Theological Seminary (RIETS). The *shiur* was about the nature of *kedushas Eretz Yisrael*, and the opinion presented by Rav Goren was one with which Rav Soloveitchik strongly disagreed. After the *shiur*, these two *gedolei hador* debated the issue providing the students with a live demonstration of a *machlokes l'shem Shamayim*. In this article we present Harold Neustadter's recollections of this event, and an attempt to reconstruct the basic ideas of the debate based on the writings of Rav Goren and of the Soloveitchik family.

Recollections (by Harold Neustadter, who was in Rav Soloveitchik's *semichah shiur* in 1957)

This is being written from a distance of over 60 years, yet the primary facts are still fresh in my mind. I have repeated this story to my children and numerous other people over the years. Recently it reached the ears of someone who suggested that it be written and shared with a larger audience. To be certain of the accuracy of my recollections, and where some details have become a bit hazy, I contacted and interviewed five others who were present at the time.¹

¹ Rabbis Aaron Brander, Barnett Liberman, Aharon Rakeffet, Mordechai Spigelman, and Yaakov Zev.

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For many years the Rav (the respectfully endearing title by which Rabbi Joseph B. Soloveitchik's students did, and still do, refer to him) lived in Boston and traveled to New York every Tuesday morning primarily to deliver *shiurim* and lectures. He gave two *shiurim* each Tuesday and Wednesday; a *Gemara shiur* in the morning for college students and a *Halachah shiur* in the afternoon for *semichah* candidates. This particular *shiur* was on Tuesday, the 17th of December 1957.² One o'clock was approaching and the classroom was filling. There had not been any indication that anything out of the ordinary would take place.

As usual, shortly before 1:00 p.m. the Rav entered the room and sat down. Everyone was ready for the *shiur* to start. Instead, in walked a bearded gentleman in an IDF (Israel Defense Forces) uniform. The Rav stood up, greeted the visitor, respectfully introduced him to the assembled students, and invited him to give a *shiur*—something quite without precedent. Then the Rav left his place at the front and took a seat among the students at the back of the room. We were all very impressed that we were being honored to hear a *shiur* from Rav Shlomo Goren, head of the Military Rabbinate of the Israel Defense Forces.

Rav Goren spoke, in Yiddish (the Rav's *shiur* always started in Yiddish, but generally switched to English fairly quickly), about the halachic consequences of the December 1956 Sinai war with Egypt (officially known in Israel as *Mivtza Kadesh*). He described how after the war he rode in a jeep around the perimeter of Sinai blowing a shofar and was *mekadesh* the newly acquired territory. He indicated that this act would have halachic consequences for those agricultural matters affected by *kedushas ha'aretz*. Having heard the Rav address this topic on various prior occasions, it was obvious to me that the Rav would not agree with much of what Rav Goren was saying. Indeed, the Rav soon interrupted with an objection. Rav Goren listened and explained away the concern. A short time later this recurred. Finally, the Rav interjected a third time, indicating that he had a further objection. However, this time, before the Rav could start explaining himself, Rav Goren cut him off saying some-

² I know that it was 1957 based on the years that the people who recall the events attended the *shiurim* in which they occurred. The precise date is based on an article from the *Jewish Telegraphic Agency* archives reporting that Rabbi Shlomo Goren spoke at the Maccabean festival dinner of the Jewish National Fund in New York on Wednesday night, December 18, 1957, (<https://www.jta.org/1957/12/19/archive/new-york-mayor-announces-he-may-revisit-israel-addresses-jnf-dinner>) together with the recollection of some of those present that the Rav made comments about the *shiur* the following day, which would mean that the *shiur* had to have taken place on a Tuesday.

thing to the effect of “I know what Reb Chaim [Brisker] asks and I have an answer.” From then on, the Rav sat silent and stony faced. Rav Goren’s *shiur* took less than an hour and when he left the room the Rav returned to his regularly scheduled *shiur*.

At the conclusion of the *shiur*, as I left the room, I was attracted to the sounds of a debate taking place across the hall in the *beis midrash*. It was the Rav and Rav Goren engaged in a heated follow-up, with arguments ranging all over *Shas*. Unfortunately, I had another commitment and was unable to stay for the conclusion of this direct encounter between two Torah giants.

While discussing my recollections of this event with Rabbi Aharon Rakeffet, it became apparent that Rav Goren actually gave his *shiur* twice, once in the morning to the undergraduates and again in the afternoon to the *semichah* students.³

There is general agreement among participants of both *shiurim* that at some point, either when Rav Goren left the room or at the start of the Rav’s *shiur* the next day (or possibly both), the Rav told us that we should ignore what we had heard from Rav Goren as it was incorrect.

The fundamental disagreement had to do with the nature of the *chazakah* (which according to the Rambam is the source of *kedushas Eretz Yisrael*) that we, *Am Yisrael* as a people, maintain over Eretz Yisrael. Rav Goren placed the emphasis on the physical presence of the nation (or at least part of it) in the land, while the Rav saw our *chazakah* as being maintained even if we were not in the land so long as we never relinquished our claim (i.e., we claimed it as ours in our daily prayers). The impression I took away was that each claimed his action was primary, and the actions of the other were at best secondary, in determining the halachic status of the land of Israel today.

Reconstruction (by David Neustadter, son of Harold Neustadter)⁵

Given my father’s recollection of the basic concept of the debate between the Rav and Rav Goren, but the lack of detail as to the arguments and sources, I have attempted to reconstruct the debate from published

³ The talk given to the Rav’s *Gemara* class is referenced briefly by Rav Tzvi (Hershel) Schachter, *Nefesh HaRav* (Jerusalem: Reishit Publishing House, 1994), p. 81, who was a classmate of Rabbi Rakeffet.

⁴ Rambam, *Mishneh Torah*, *Hilchos Terumah* 1:5 and *Hilchos Beis HaBechirah* 6:16.

⁵ With significant contributions by Harold Neustadter and Racheli Neustadter (daughter of David Neustadter).

material on the understandings of both the Rav and Rav Goren about the nature of *kedushas Eretz Yisrael*.

With regard to Rav Goren's opinion, it was rather straightforward. Rav Goren wrote an article titled "*Kedushas Eretz Yisrael Lignuloseba BaTorah*" in the journal *Machanayim* issue 31, published in December 1957. Upon reading this article, it was clear to my father that this was the *shiur* Rav Goren had given. In this article Rav Goren presents his opinion of the consequences of the Israeli army having captured the Sinai Desert on the halachic status of the captured territory with regard to *kedushas Eretz Yisrael*. He makes two assertions with which I believe the Rav would disagree: 1) that the *chazakah* referred to by the Rambam as the source of the everlasting *kedushah* that began in the time of Ezra means "settling the land," and 2) that both *kibbush* (conquering) and *chazakah* (settling the land) require a separate "*maaseh kiddush*" in order to cause *kedushas Eretz Yisrael* to take effect.

In support of his assertion that *kedushas Eretz Yisrael* requires a separate "*maaseh kiddush*" in addition to conquering or settling the land, Rav Goren brings the statement in the *Gemara* that in the time of Ezra certain regions in Eretz Yisrael were intentionally left without *kedushah* so that they would provide food for the poor during *Shemittah*.⁶ If the land was to provide food, it was obviously settled, and yet they were able to leave it without *kedushah*, which proves that settling the land does not automatically effect the *kedushah*.

As for the *Kesef Mishneh's* questions on the Rambam—1) Why should settling the land create a longer-lasting *kedushah* than conquering it? and 2) Why should settling the land without conquering it (as was done in the time of Ezra) create a longer-lasting *kedushah* than conquering and settling (as was done during the original conquest)⁷—Rav Goren does not provide answers to these questions in this article.

With regard to the Rav's understanding, there are multiple sources in the Rav's writings and those of his extended family that address the nature of *kedushas Eretz Yisrael* in general, and the difference between *kedushah rishonah* and *kedushah sheniyah* in particular.

The Rav gives three different explanations for why *kedushah sheniyah* is everlasting and *kedushah rishonah* was not, each within a *shiur* on a different topic. In *Yemei Zikaron*,⁸ he mentions *kedushas Eretz Yisrael* briefly within a discussion of the fact that things that come easily don't last and

⁶ *Chullin* 7a.

⁷ Rambam, *Mishneh Torah, Hilchos Beis HaBechirah* 6:16.

⁸ 196 ימי זיכרון, הרב יוסף דוב הלוי סולובייצ'יק, דפוס מאור ולך בע"מ, ירושלים 1996. p. 103.

things that one works hard to achieve last longer. He suggests that *kedushas Eretz Yisrael* is an example of this concept, and that *kedushah rishonah* lasted only until the *Churban* because it was achieved through miraculous victories over the inhabitants of the land, whereas *kedushah sheniyah* lasts forever because of the hardships and suffering of the people who resettled the land in the time of Ezra.

In *Al HaTeshuvah*, the Rav discusses the difference between *kedushah* through *kibbush* and *kedushah* through *chazakah* as a model for two different types of *teshuvah*. Here he points out that the Rambam says that *kedushah rishonah* was temporary and *kedushah sheniyah* is everlasting immediately after explaining that *kedushas Eretz Yisrael* (*kedushah rishonah*) is temporary, but *kedushas haMikdash* is everlasting because *kedushas haMikdash* comes from the *Shechinah*, and the *Shechinah* cannot be annulled. The Rav suggests that this juxtaposition is not coincidental. The Rambam is indicating that the reason that *kedushah sheniyah* is everlasting is because when Ezra came back to Eretz Yisrael they rebuilt the *Mikdash* first, and then spread out and settled the land, thereby applying *kedushas haMikdash* to the entire land, whereas *kedushah rishonah* was done before the *Mikdash* was built.⁹

In *Shiurim L'Zecher Abba Mari*, the Rav discusses *kedushas Eretz Yisrael* at length in a *shiur* about *kriyas haTorah*. He is discussing the multiple aspects of Torah, and in particular the focus of Ezra on *Torah shebe'al peh*. He suggests that *kedushah rishonah* is based on *kibbush Yehoshua* which was performed with the *Aron Kodesh* that is associated with *Torah shebichatan*, as opposed to *kedushah sheniyah* which was performed by the people settling the land, and the people represent *kedushas Torah shebe'al peh*. He suggests that this is why *kedushah sheniyah* is everlasting, because as long as *Am Yisrael* is learning *Torah shebe'al peh*, their *kedushah*, and therefore also the *kedushah sheniyah* of Eretz Yisrael, is maintained, even if they are not living in Eretz Yisrael.¹⁰

It is interesting to note that in both *Al HaTeshuvah* and *Shiurim L'Zecher Abba Mari* the Rav presents the default assumption that the term *chazakah* in the Rambam refers to settling the land, but then questions why settling the land should cause an everlasting *kedushah* when conquering the land does not (one of the *Kesef Mishneh's* questions), and proceeds to provide his alternative explanation. In none of these sources does the Rav provide any explanation as to why the Rambam would

⁹ 300–308. pp על התשובה, פינחס הכהן פלאי, דפוס אלפא, 1975.

¹⁰ שיעורים לזכר אבא מרי ז"ל, הרב יוסף דוב הלוי סלובייצ'יק, הוצאת מוסד הרב קוק, ירושלים, 2002, עמודים קפ"ט עד קצ"ה.

have used the term *chazakah* to refer to the concept that he suggests, which implies that he may not have actually thought that these explanations are what was meant by the Rambam.

In addition to these explanations found in the writings of the Rav, his son-in-law, Rav Aharon Lichtenstein, suggests a number of additional explanations in his book *Kedushas Aviv*. Rav Lichtenstein quotes the Radvaz as saying that the reason *kedushah sheniyah* lasts forever is because it was enacted verbally, and verbal *kedushah* is everlasting. Rav Lichtenstein also suggests the possibility that *kibbush* and *chazakah* bring about *kedushah* in entirely different ways; *kibbush* creates a situation in which *kedushah* exists on its own, whereas *chazakah* is an act of creating *kedushah*. *Kedushah* that exists on its own because of a certain situation only lasts as long as that situation lasts, but *kedushah* that is created by a deliberate action lasts forever. Lastly, Rav Lichtenstein proposes the possibility that the *kedushah rishonah* never really disappeared, it just became dormant, and was reawakened and strengthened by the *chazakah* in the time of Ezra.¹¹

Based on my father's recollection that the Rav claimed, in his debate with Rav Goren, that our daily prayers to return to Eretz Yisrael are what has maintained *kedushas Eretz Yisrael* throughout the exile, I would like to suggest yet another explanation based on aspects of some of the aforementioned explanations, but with a different understanding of the *chazakah* referred to by the Rambam.

The term *chazakah* with regard to land ownership has two distinct meanings in *halachah*. There is a *kinyan chazakah*, which creates ownership,¹² and there is a *chazakah*, such as *chezkas gimel shanim* and the objections thereto by the owner, which do not create ownership, but merely demonstrate or maintain a previously established ownership.¹³ Rav Goren's explanation of the *chazakah* referred to by the Rambam with reference to *kedushas Eretz Yisrael* seems to parallel *kinyan chazakah*. I would like to suggest that the Rav understood the *chazakah* referred to by the Rambam to be comparable to the other meaning of the word *chazakah*—demonstration and maintenance of a previously established ownership. Our daily prayers to return to Eretz Yisrael would therefore be similar to a property owner filing an official complaint about someone else using his land in order to maintain his ownership rights.

¹¹ 2017 הרב אהרן ליכטנשטיין, ספרי מגיד הוצאת קורן, ירושלים, pp. 306–314 and 334–337.

¹² *Kiddushin* 26a and Rambam, *Mishneh Torah, Hilchos Mechirah* 1:3.

¹³ *Bava Basra* 28a and Rambam, *Mishneh Torah, Hilchos To'en VeNit'an* 11:1–2.

I will present support for this understanding from the writings of Reb Chaim (the Rav's grandfather) and the Griz (the Rav's uncle), and I will explain how this understanding solves a number of difficulties in understanding the Rambam.

Reb Chaim on the nature of *kedushah sheniyah*

The *Gemara* in *Masechet Gittin*, in a discussion of the halachic status of Syria with regard to *kedushas Eretz Yisrael*, states that the status of Syria depends on whether *kibbush yachid* (a personal conquest, as opposed to a national conquest) is considered *kibbush* for the purpose of effecting *kedushas Eretz Yisrael*. This is because David Hamelech's conquest of Syria is considered to be *kibbush yachid*.¹⁴

Why should the status of Syria depend on the status of David Hamelech's conquest, if, at least according to the Rambam, the *kedushah* resulting from all First-Temple-period conquests was annulled at the time of the destruction of the First Temple, and the *kedushah* that exists today is a result of the reestablishment of the *kedushah* in the time of Ezra?

Reb Chaim suggests that the reason is because *kedushah sheniyah* (the reestablishment of the *kedushah* in the time of Ezra) can take effect only on areas that previously had a *kedushah rishonah* through *kibbush*. He claims that this is what the Rambam means by his distinction between *kedushah rishonah* and *kedushah sheniyah*, and that it is based on a *Yerushalmi*.^{15 16} This suggestion is difficult to explain if the *kedushah sheniyah* was based on settling the land, but can be easily understood if the *kedushah sheniyah* is based on making a claim that demonstrates and maintains a previously established ownership.

***Chazakah* according to Reb Chaim**

Reb Chaim does not explicitly explain his understanding of the term *chazakah* used by the Rambam in reference to *kedushah sheniyah*. However, he does claim that the Rambam's distinction between *kedushah rishonah* through *kibbush* and *kedushah sheniyah* through *chazakah* is based on the *Yerushalmi* that says that *kedushah sheniyah* was stronger than *kedushah rishonah* in part because it was effective even though they were not sovereign, but were under the rule of the Persian Empire.

¹⁴ *Gittin* 47a.

¹⁵ חידושי הגר"ח על הש"ס – גיטין מז. – בדין יש קנין לעכו"ם ודין סוריא בכיבוש שני.

¹⁶ ירושלמי מסכת שביעית פרק ו הלכה א, דף טו:

I would like to suggest two possible interpretations of Reb Chaim's understanding of the *Yerushalmi* based on two published versions of the *Chidushei HaGrach al HaShas*. Both interpretations conclude that the *chazakah* of *kedushah sheniyah* described by the Rambam refers to making a claim that demonstrates and maintains a previously established ownership, and therefore applies only to areas that previously had *kedushah*. They differ in why even though the original *kedushah* required *kibbush*, *chazakah* is not only sufficient to reestablish the *kedushah*, but the second *kedushah* established by *chazakah* is even stronger than the original *kedushah*.

The two published versions of the *Chidushei HaGrach al HaShas* have a slight but very significant difference in the wording of the critical line that explains Reb Chaim's understanding of the *Yerushalmi*. The more recently published editions¹⁷ read:

והנה בירושלמי שביעית, והטיבך והרבך מאבותיך הם לא היה עליהם עול מלכות, ואתם אף על פי שיש עליכם עול מלכות וכו' עיין שם. והיינו דנתחדש בזה דין מחודש בירושה שניה, ועיין ברמב"ם בפ"א מתרומות ה"ה שכתב בירושה ראשונה היתה ע"י כיבוש, וכיון שבטל הכיבוש בטלה הקדושה, אבל ירושה שניה היתה ע"י חזקה וחזקה אינה בטילה, ועיין במפרשים שלא הביאו מקור ויסוד לדברים אלו, ופשוט שמקורו מירושלמי זה, **דנתחדש דין מיוחד לקידוש וירושה שניה דא"צ לכיבוש, שהרי עול מלכות עליהם ולא שייך כלל כיבוש** (emphasis added), וכ"ז נאמר בהקרא דוהטיבך והרבך מאבותיך. ובאמת דבקרא זה אינו מפורש על איזה זמן נתחדש הדין. וצריך לומר דאינו תלוי כלל בזמן אלא הדין הנאמר בזה הוא דקדושה ראשונה צריך להיות דוקא ע"י כיבוש וקדושה שניה על אותה הארץ דינה בחזקה, ומשו"ה תלי הגמ' דין סוריא בדין כיבוש יחיד אי שמיה כיבוש, דאם שמיה כיבוש היה כבר בסוריא קדושה ראשונה ע"י כיבוש, וממילא דינה כשאר א"י הנאמר עליה דין קדושה וירושה שניה ע"י חזקה וממילא גם בימי עזרא דינה כא"י, אבל אם ל"ש כיבוש ונמצא דלא היה בה קדושה ראשונה עדיין וקדושתה צריכה להיות דוקא ע"י כיבוש הנה בירושה שניה של עזרא לא היה כיבוש דהיה עליהם עול מלכות. ולכן קדושתה אינה אלא מזרבנג, וזהו דתלי הגמ' דין סוריא בדין כיבוש יחיד אף שכיבשה עזרא.

English translation of emphasized sentence:

¹⁷ The Mishor edition published in Bnei Brak in 2008, as well as an earlier "stencil" edition published in Israel and available on the [אוצר החכמה](http://www.hachakma.com) website.

“A special law took effect for the second sanctification and inheritance that it does not require conquest since the burden of the kingdom was upon them and conquest was not relevant.”

This seems to maintain the implication of the wording of the *Yerushalmi* itself; that the foreign rule is simply an indication of the strength of *kedushah sheniyah*, since it must work without *kibbush* as there was obviously no *kibbush* possible under foreign rule. According to this explanation, the *Yerushalmi* is presenting a *chidush* of the Torah that *kedushas Eretz Yisrael* can be reinstated and maintained after having been lost due to foreign conquest even without a new *kibbush*. Accordingly, Reb Chaim does not provide an explanation of the mechanism by which this *kedushah sheniyah* works, or why it should work only in areas that previously had *kibbush*. It is simply a *chidush* of the Torah as implied by the *Yerushalmi*. As we indicated above, the suggestion that the *chazakah* of *kedushah sheniyah* described by the Rambam refers to making a claim that demonstrates and maintains a previously established ownership fits very nicely with Reb Chaim’s conclusion, but we should note that in this version, Reb Chaim does not say anything that directly indicates this understanding of *chazakah*.

There is an earlier published version¹⁸ of the *Chidushei HaGrach al HaShas* that has a slightly different version of this key phrase:

דנתחדש דין מיוחד לקידוש וירושה שניה דאין צורך לכיבוש שהרי עול
מלכות עליהם הלא שייך כבר קידוש.

A special law took effect for the second sanctification and inheritance that it does not require conquest since the burden of the kingdom was upon them and sanctity was already applicable.

This implies that the strength of the *kedushah sheniyah* evolves from a pre-existing *kedushah* and is related to being subject to a foreign sovereign ruler. This sentence can be understood to mean that the approval of the sovereign ruler is what enabled the re-establishment and continued maintenance of the previous *kedushah* without the need for a new *kibbush*. This understanding fits very nicely with the concept of *chazakah* meaning a claim to demonstrate or maintain a previously established ownership, which is based on ownership rights being recognized by society rather than simply imposed by force. According to this understand-

¹⁸ An earlier “stencil” edition available on the HebrewBooks website which, according to the HebrewBooks website, was published in 1953. See also the introduction to the Mishor edition which includes a history of the earlier published editions.

ing, the approval of the sovereign ruler is what provided the enhanced strength of the *kedushah sheniyah*.¹⁹

Accordingly, the *chidush* described by the *Yerushalmi* can be understood to be not a *chidush* of the Torah, but a *chidush* of society. Cyrus, who granted local autonomous rule to assorted national groups within his empire,²⁰ changed the definition of national land ownership, which effects *kedushas Eretz Yisrael*, from conquest to international recognition. This enabled the re-establishment of national land ownership, and thereby *kedushas Eretz Yisrael*, without conquest, as well as the maintenance of national land ownership and *kedushas Eretz Yisrael* despite foreign conquest.

This may have been the intention of the Tosafos Yom Tov who suggests the following understanding of the Rambam:

ו"ל לתרין, דסבירא ליה דכיבוש העכו"ם אתא ומבטל כיבוש ישראל,
משא"כ בחזקה שהחזיקו מיד מלך פרס שנתן להם רשיון להחזיק בה - לא
אתא כיבוש ומבטל לחזקה שהיתה מדעת הנותן.

And it seems to me we could answer, that he understands that the conquering by non-Jews cancels the conquering by the Jews, unlike the *chazakah* which was received from the hands of the Persian king who gave them permission to possess it—conquest cannot cancel possession which was with the approval of the giver.²¹

Whichever published version of Reb Chaim we rely on, and whichever understanding we adopt for why *kedushah sheniyah* can be effected

¹⁹ The paragraph in which this sentence is found has other phrases in it which fit better with one or the other of these interpretations, but are not conclusive. For instance, Reb Chaim explains that the new mechanism of *kiddush* in *kedushah sheniyah* is not unique to the time when *kedushah sheniyah* took place, but rather to the fact that it is the second *kiddush* after a previous conquest. This seems to fit better with the first interpretation, however, the second interpretation is also not time specific, as it would apply from the time of Cyrus and onwards. On the other hand, immediately after the sentence in question, Reb Chaim says "וכל זה נאמר בהקרא דוהטיבך...", implying that there was some significant content to what we learn from the *pasuk*. According to the first interpretation, all he has said is that conquest is not relevant when under a foreign ruler. That does not seem like a *chidush* worthy of "וכל זה". According to the second interpretation, however, he has suggested that the definition of land ownership which effects *kedushas Eretz Yisrael* has changed. That is a much more significant *chidush*, worthy of being referred to as "וכל זה".

²⁰ "Cyrus the Great," *New World Encyclopedia*.

²¹ התויו"ט בפירושו למשנה בעדיות פ"ה, ו

through *chazakah* instead of *kibbush*, Reb Chaim's statement that *kedushah sheniyah* can only take effect in areas that had a previous *kibbush* is consistent with the mechanism of *kedushah sheniyah* being a claim to the land based on the previous *kibbush*.

Comments by the Griz support this understanding of *chazakah*.

This understanding of Reb Chaim is strengthened by a footnote found in the Mishor version of *Chidushei HaGrach al HaShas* which quotes a comment of the Griz.²² The Griz comments that it does not make sense that we should need to assess for every place in Eretz Yisrael whether it has *kedushah rishonah* or *kedushah sheniyah*, but rather *kedushah sheniyah* was done with *chazakah* which applies equally to all places that had *kedushah rishonah* (except, presumably, for the regions described in the *Gemara* as being intentionally excluded). This suggestion is consistent with the continuation of the *Yerushalmi* quoted by Reb Chaim which explains a number of additional ways in which the *kedushah sheniyah* was stronger than the *kedushah rishonah*; because it was immediate and did not need to wait for the land to be conquered and divided, and because it took effect on each region immediately and did not need to wait for the entire land to be conquered. Both the comment of the Griz and the similar features of *kedushah sheniyah* in the *Yerushalmi* are consistent with the *kedushah sheniyah* being based on a claim to the land rather than the physical settling of the land. If the physical settling of the land were the source of *kedushah*, then it would not necessarily apply to all of the land that was conquered by the *olei Mitzrayim* and should not necessarily be immediate. However, if it is based on a claim to the land, these features make sense, as the claim can apply immediately to all of the land that was previously conquered.

The D'var Avraham may have understood the Rambam in this way.

The idea that the *chazakah* referred to by the Rambam as the mechanism of *kedushah sheniyah* is a claim to the land rather than settling the land may be what the *D'var Avraham*²³ meant in his explanation of the Rambam based on the *Meiri*. The *Meiri*²⁴ said that *kedushah sheniyah* was performed by "קדוש במאמר ובחזקה שמחזיקין בה בתורת ארץ ישראל". The

²² Fn. 60, at the bottom of p. 266. The footnote is a quote from the book מעשי גרי"ז by הרב חיים אהרן טורצ'ין, a student of the גרי"ז.

²³ דבר אברהם, חלק א' סימן י אות י

²⁴ בית הבחירה למאירי – מגילה ט: סוף ד"ה "זהו ביאור המשנה"

D'var Avraham suggests two possible explanations of what the *Meiri* meant, one of which he describes as:

ולפי זה מתבאר דמה שכתב הרמב"ם בקדושת עזרא שהיתה בחזקה אין הפירוש קנין חזקה דזה אינו מקדש כלל ואפילו אם היה מקדש היה בטל הכיבוש כשנלקחה הארץ מידם, אלא פירושו כמו שכתב המאירי ז"ל שמחזיקין אותה בתורת ארץ ישראל ... שהמאמר וההחזקה בתורת ארץ ישראל דא ודא אחת היא.

And according to this it is clear that when the Rambam wrote that *kedushas Ezra* was through *chazakah* he was not referring to *kinyan chazakah* because that does not create *kedushah*, and even if it did it would be annulled when the land was taken from them, but the explanation is like the *Meiri* wrote, that they consider the land to be “*Eretz Yisrael*” ... the “verbal confirmation” and the “*chazakah* as *Eretz Yisrael*” (mentioned by the *Meiri*) are one and the same.

This understanding of *chazakah* in the Rambam answers a number of open questions.

If the *kedushah sheniyah* comes from our claim to ownership rather than from actually settling the land, then it makes sense that we can choose to include or exclude any particular region, independent of whether we settle the region. This solves the problem that Rav Goren was addressing by suggesting that there is a need for a distinct *maaseh kiddush*. If our claim to the land is the source of the *kedushah*, then we can choose not to claim a specific region even though we did settle there, in order to provide food for the poor during *Shemittah*.

The *D'var Avraham* says this explicitly:

דקדושה שניה היתה רק מצד החזקה, והיינו כהמאירי שהחזיקו בה בתורת ארץ ישראל, ולכן המקומות שהשאירו לא קדשו.

since *kedushah sheniyah* was through *chazakah*, like the *Meiri* explained that they related to the land as “*Eretz Yisrael*,” and therefore the places that they left out did not get *kedushah*.

This understanding of *chazakah* also answers the *Kesef Mishneh*'s questions. The *Kesef Mishneh*'s first question is why does the *kedushah* based on *chazakah* not disappear when the *chazakah* disappears just like the *kedushah* based on *kibbush* disappears when the *kibbush* disappears. The answer is that the *kedushah* would disappear if and when the *chazakah* were to disappear, but the *chazakah* never disappeared because we can and have maintained the *chazakah* throughout the exile by praying daily for our return to *Eretz Yisrael*.

The *Kesef Mishneh*'s second question is why *chazakah* without *kibbush* (in the time of Ezra) is stronger than *kibbush* and *chazakah* together (at the time of the *olei Mitzrayim*). According to this explanation of *chazakah*, the *olei Mitzrayim* did not have a *chazakah* on the land either because the *chidush* of the Torah dictates that *kiddush* via *chazakah* only applies to a *kedushah sheniyah* once the *kedushah* based on *kibbush* is lost, or because at the time of the *olei Mitzrayim* there was no sovereign ruler or international community who recognized their right to the land.

In conclusion, the debate between Rav Goren and Rav Soloveitchik about whether the primary source of *kedushas Eretz Yisrael* is the physical settling of the land or the expression of ownership through our prayers to return to the land, may well depend on their interpretation of the word *chazakah* in the Rambam with respect to *kedushah sheniyah*. There are two meanings of the word *chazakah* with respect to land ownership; the creation of ownership (*kinyan chazakah*) and the demonstration or maintenance of a previously established ownership, and these correspond well with Rav Goren's and Rav Soloveitchik's understanding of *kedushas Eretz Yisrael*, respectively. As with most cases of *machlokes l'shem Shamayim*, the debate remains unresolved as we continue to both settle the land and pray for the completion of its redemption. ❧