

Underlying Torah Principles of Property and Ownership

By Rabbi Dovid Markel

Abstract: This article will discuss the question of why G-d forced the Jewish people to accept the Torah. The methodology will be to investigate the workings of ownership to understand how the transfer of property is possible and to try to understand whether we own ourselves. With the proper perspective on these matters the many questions will hopefully be clarified.

The giving of the Torah to the Israelites, not only was the inauguration of the Jewish people as a nation, giving them **the** starring role in G-d's world, but more so, the continuance of the world's existence was entirely dependent on their acceptance of the Torah.

G-d created the world over a period of six days. Each day He saw His work and declared it to be good¹. Regarding the sixth day, the verse states²: "And G-d saw all that He had made, and behold it was very good, and it was evening and it was morning, **the** sixth day." Whereas regarding each of the other days, the verses state that it was simply "a...day," here the verse alters its language and says it was "**The** sixth day." Basing himself on Talmud and Midrash, Rashi³ explains that this is because the creation is intrinsically linked to the sixth day of Sivan—the day on which the Torah was given to Israel⁴:

"Scripture added the letter "Hey" on the sixth [day], at the completion of the Creation, to tell us that He stipulated with them, ["You were created] on condition that Israel will accept the Five Books of Torah."⁵ Another explanation for "**The** sixth day": They [the works of creation] were all suspended until the "sixth day," referring to the sixth day of Sivan, which was prepared for the giving of the Torah.⁶

¹ Whereas on Monday there is no declaration that His work was good, on Tuesday it is said twice. Rashi (Bereishis 1:7) explains that one of these declarations was for the completion of His work of the second day: "Because the work involving the water was not completed until the third day, although He commenced it on the second day, and an unfinished thing is not full and good; and on the third day, when He completed the work involving the water and He commenced and completed yet another work, He repeated that "it was good" twice (sic): once for the completion of the work of the second day and once for the completion of the work of the [third] day."

² Bereishis, 1:31

³ *Ibid*

⁴ This is also expressed in the Talmud, Shabbos 88a based on the verse (Tehilim 56:9) "You caused sentence to be heard from Heaven; The earth feared, and was tranquil." If it feared, why was it tranquil, and if it was tranquil, why did it fear? At first it feared, yet subsequently it was tranquil." Through the Israelites accepting the Torah it caused the world to be tranquil.

⁵ Tanchuma, Bereishis 1. The numerical value of the "hey" is five.

⁶ Talmud, Shabbos 88a. The "hey" is the definite article, alluding to the well-known sixth day, the sixth day of Sivan, when the Torah was given.

The Torah tells us concerning the acceptance of the Torah:⁷

And he took the Book of the Covenant and read it within the hearing of the people, and they said, “All that the Lord has spoken we will do and we will hear.”

This declaration was so awesome that the Talmud states about it:⁸

“Rabbi Simla lectured: When the Israelites gave precedence to ‘we will do’ over ‘we will hear,’ six hundred thousand ministering angels came and set two crowns upon the head of each man of Israel, one as a reward for ‘we will do,’ and the other as a reward for ‘we will hear’... Rabbi Eleazar said: When the Israelites gave precedence to ‘we will do’ over ‘we will hear,’ a Heavenly Voice went forth and exclaimed to them, “Who revealed to this secret, which is employed by the Ministering Angels, to my children?”

Notwithstanding the Israelites acceptance of the Torah on their own accord, the Talmud states that afterwards, when HaShem gave them the Torah, He gave it with an ultimatum:⁹

“And they stood under the mount¹⁰”: Rabbi Avdimi ben Chama ben Chasa said: “This teaches that the Holy One, blessed be He, overturned the mountain on them like an [inverted] cask¹¹, and said to them, ‘If you accept the Torah, all is well; but if not, there shall be your burial.’”

It seems that, in essence, HaShem forced the Jewish people to accept the Torah on penalty of death though they had already committed to accept it of their own accord.

Besides the fact that it is strange that He would force Israel to accept the Torah, what makes it all the stranger, is that the coercion seems to have been without point or purpose. Hadn't they already accepted Torah wholeheartedly, of their own free will, without force or compulsion?¹² Why was compulsion necessary?

⁷ *Shemos 24:6.*

⁸ *Shabbos 88a*

⁹ *Talmud, Shabbos 88a.* See *Shemos (19:8 and 24:17)* that the Israelites made the declaration “we will do and we will hear” on the second day of Sivan but were compelled to accept the Torah on the sixth day of Sivan.

¹⁰ *Shemos 19:17* “And Moshe brought forth the people out of the camp to meet G-d; and they stood under the mount.” The simple explanation is as Rashi states that they stood “at the foot of the mountain.” The Talmud is adding a Medrashic explanation.

¹¹ See *Torah Ohr, Megilat Esther, 98d* that explains that they were coerced by love, which is compared to a mountain. Being that they were overcome with love to G-d, they were, so to speak, forced to accept the commandments.

¹² Interestingly, the Talmud there states that were it not for later reaccepting the Torah during the time of the Purim story, there would be a strong protest against the Torah, as it was something that the Israelites were coerced into accepting: “R. Acha ben Yaakov observed: This furnishes a strong protest against the Torah. Said Raba, yet even so, they re-accepted it in the days of Ahasverosh, for it is written (*Esther 9:27*), [the Jews] confirmed, and took upon them. [i.e.,] they confirmed what they had accepted long before.”

This being the case, why indeed did G-d force Israel to accept Torah when they already accepted it of their own accord?¹³

Now, whereas many commentators have explained the reason **why** G-d forced the Israelites to accept the Torah, here we will specifically investigate how it was moral, so to speak, for G-d to do so. Do we not generally view the use of force as being negative and immoral in that it abrogates the freewill of the one being forced, which is so central to human existence?^{14 15}

G-d and His world

In order to solve this question of Divine coercion and the seeming abrogation of freewill, we must preface with another curious statement concerning G-d's ownership of His world. In *Ethics of Our Fathers* it states,¹⁶

“The Holy One, blessed be He, acquired five possessions in His world and these are them: Torah is one possession, heaven and the earth is one possession, Avraham is one possession, Israel is one possession, and the Holy Temple is one possession.”

Two things are peculiar about this statement:

a) Since G-d is the Creator of the world and the world depends on Him for its very existence, what need is there for Him to acquire it or anything within it? It already belongs to Him!

¹³ Other commentators have asked and answered this question as well. Tosafot, Shabbos 88a explains that the reason that G-d forced them to accept it was lest they change their minds when they see the awesome fires atop Mt. Sinai. Maharsha there explains that their acceptance in their statement was not binding as they did not swear nor authenticate the deal. They were therefore again forced to accept the Torah. Medrash Tanchuma, Noach suggests that the Israelites only accepted the written law but not the oral law. Iyun Yosef (Shabbos 88a) suggest that the Israelites only accepted to keep the Torah when things were pleasant for them but not in exile. The Bal Shem Tov (*Kesser Shem Tov*, Sec. 47) explained that the reason was so that an individual should learn Torah though he is in a situation that he is disinterested. (See *Torah's Menachim, Ma'amarim Melukatim*, Vol. 3 Pg. 345 that explains the correlation between the explanation postulated by the Bal Shem Tov and the general manner that is explained in this essay.)

¹⁴ See *Shulchan Aruch, Admur HaZaken, Laws of Bodily Damage, Sec. 4* “That it is permitted to hit ones children who are minors, even not to educate them in Torah and Mitzvos but to teach them *derecho erez*, (usually translated as business, though it literally is defined as the way of the land and can mean manners,) Since he has their good in mind, and this good is his responsibility as they are under his jurisdiction. The same is true for an orphan under his jurisdiction.” The question though that we are analyzing is what brought us under G-d's jurisdiction to begin with. Obviously G-d has the “right” to punish for violating the ethical imperatives of civilization that are expressed in the code of the seven commandments given to mankind, but concerning accepting extra laws which bring under his jurisdiction why does He have that right. To put in other words: though a person had the right to hit an “orphan under his jurisdiction,” he obviously cannot hit him to force him to accept that very jurisdiction.

¹⁵ The basic assumption of this article is that G-d works with man according to the same ethical principles that He imparted to us. This is based on the verse (Tehillim 147:19) “He tells His words to Yaakov, His statutes and His judgments to Israel.” This is explained in the medrash (Shemos Rabba, 30:9) to mean “that what He does, He tells Israel to do.” I.E. that he follows His own commandments.

¹⁶ *Avos 6:10*.

b) Doesn't this Mishna in Ethics of our Fathers run contrary to the verse in Tehillim,¹⁷ "The Earth and the fullness thereof are HaShem's?" Acquisition involves the transference of property from one domain to another. If "The earth and the fullness thereof" were already within G-d's domain, how does He acquire it?

On this verse Rashi comments that when it states that the earth belongs to HaShem, this is referring specifically to "The land of Israel." This statement begs a question. It seems to imply that the rest of the world is not G-d's property! But, how could this be? After all, He is the Creator and everything depends upon Him always for its existence; therefore nothing exists outside of His domain.

To understand this, we must preface with an understanding of the mechanism of property and ownership.

Self-ownership

Much of the way we conduct our lives revolves around the premise of ownership. However, we rarely stop to consider the fundamental underpinnings of property and ownership. Is ownership an arbitrary assignment applied to items under our control, and is therefore superimposed over the natural, ownerless condition of the world, or is ownership a natural extension of the world?

In our day to day lives we often take or give possession of things, without thought of how acquisition takes place or the conceptual underpinnings of property and ownership in general.

A common question tackled by many secular philosophers over the centuries, has been whether the matter of property and ownership is something that is beneficial to mankind or the opposite.¹⁸ In this regard, Torah strongly supports the matter of ownership as being valid, necessary and positive.

The Divine prohibition against stealing is part and parcel of the Noahide commandments¹⁹—the foundational principles of all civilization—and is predicated on the concept of property and ownership.²⁰ This is echoed in the commandments of the Torah given at Mount Sinai that are specific to Jews. Moreover, the matter of ownership is so important, that the prohibition against

¹⁷ 24:1.

¹⁸ Plato (Republic, Book V) famously held the belief that individual ownership is detrimental to the greater good as it creates disparate goals and said "that "children, wives, and property ought to be held in common." His student, Aristotle (Politics, 1263a) believed that these distinct goals bring about more good than evil, saying: "[W]hen everyone has a distinct interest, men will not complain of one another, and they will make more progress, because everyone will be attending to his own business."

¹⁹ Talmud, Sanhedrin 56a

²⁰ See Medrash Tanchuma, Noach 18 that G-d only sealed the fate of the generation of the flood when they disrespected these basic laws of ownership and stole land and livestock from one another.

stealing is included as one of the overarching commandments of the Decalogue given directly by G-d to the Jewish people;²¹ “Thou shalt not steal.”

Our primary focus here will be the Torah’s perspective on ownership. However, to understand it and how it is unique relative to secular notions of ownership and property, let us preface by understanding some secular viewpoints on the subject.

One of the major theories describing ownership²² was postulated by John Locke in the late 1600’s. He posited that ownership of the product of one’s labor is an extension of self-ownership.²³ He states:

“Though the earth and all inferior creatures are common to all men, yet every man has property in his own person. This nobody has any right to but himself.”

Through this, he attempts to explain that acquisition of property in general, is an outgrowth of self-ownership. Since a person *owns* himself and owns his own decisions, therefore, by extension he owns the product of his labor, which is an extension thereof, as he states:²⁴

“The Labor of his Body and the Work of his Hands, we may say, are properly his. Whatsoever then he removes out of the State that Nature has provided and left it in, he has mixed his Labor with and joined to it something that is his own, and thereby makes it his Property. It being by him removed from the common state Nature placed it in, it has by this labor something annexed to it that excludes the common right of other Men.”

²¹ Vayikra, 19:11. See Rashi there that “This is an admonition against someone stealing money, while “You shall not steal (לא תגנב)” in the Ten Commandments is an admonition against stealing people [i.e., kidnapping]. [This is] a matter derived from its context [namely, “You shall not murder,” “You shall not commit adultery,” each of which is] a capital crime, [which is the case of kidnapping but not of stealing money].” See as well Talmud, Sanhedrin 86a.

²² There are other secular philosophies which posit that ownerships is indeed not an element of natural law, but is merely legislated by society. See, for example, David Hume, *A Treatise of Human Nature*, p. 491 “Our property is nothing but those goods, whose constant possession is established by the laws of society; that is, by the laws of justice. Those, therefore, who make use of the words property, or right, or obligation, before they have explained the origin of justice, or even make use of them in that explication, are guilty of a very gross fallacy, and can never reason upon any solid foundation. A man’s property is some object related to him. This relation is not natural, but moral, and founded on justice.” See as well Jean-Jacques Rousseau, *Discourse on Inequality*, 1754 who said: “The first man who, having fenced in a piece of land, said, ‘This is mine,’ and found people naïve enough to believe him, that man was the true founder of civil society. From how many crimes, wars, and murders, from how many horrors and misfortunes might not any one have saved mankind, by pulling up the stakes, or filling up the ditch, and crying to his fellows: Beware of listening to this impostor; you are undone if you once forget that the fruits of the earth belong to us all, and the earth itself to nobody.” From the fact though, that Torah forbids stealing for both Jew and gentile and was ultimately the cause of the Decalogue (see Medrash Tanchuma, Noach 18), it is abundantly clear that the laws of ownership are intrinsic to the very fabric of the existence of the world and civilization.

²³ Locke, *Two Treatises of Civil Government* (London: J. M. Dent & Sons, Ltd., 1924 [first published 1690]), Book 2, V. Par. 27. See Harris, J. W. 1996. *Property and Justice*. (Oxford University Press.) p. 189 that it is a common belief within Classical Liberalism that because one owns themselves they own their actions and the products of those actions.

²⁴ *Ibid.*

Essentially, he is saying that because a person has ownership over his own identity, he can thereby also take possession of those things that he has impressed his identity upon. In other words, though the *self* and ownership are two distinct and separate matters, in that there is the obtainer and the thing obtained, it is specifically “consciousness of self” that makes ownership possible.

While Torah may concur with some of Locke’s hypothesis that acquisition of ownership is the impression of one’s identity upon objects outside of himself, or that a person has *rights* to his own person, his idea of *self-ownership* is somewhat flawed and weak.²⁵

For though, on the surface, it seems rational to say that because of my self-awareness and free will I have acquisition of myself, nevertheless, how can the self acquire the self? For acquisition to take place there must be three distinct things; the one making the acquisition, the thing being acquired and the act of acquisition. Here however, no distinction exists between the acquirer and the acquired. Therefore, there can be no act of acquisition.

Although the owner possesses all his personal qualities, talents and character traits, he cannot be said to “own” his identity as a “possession”, because just as he cannot separate himself from himself, neither can he join himself to himself. Therefore, though through his consciousness and labor he is able to annex the world around him and bring it into his domain, nonetheless, the concept of ownership cannot apply to himself.

This being the case, though (based on Locke) we often assume that freedom and self-ownership is intrinsic to our identity, the logic that Locke employed to argue this remains unconvincing²⁶.

A person cannot at once be himself and his “property”. It would therefore be accurate if a person were to say, “I possess everything ‘about’ myself—except for myself!” This is because one’s essential self cannot be an acquisition.

To further explain, let us use a different paradigm: If a person truly owned himself, he would technically be able to sell himself into slavery. However, in fact, this is impossible. Whereas a

²⁵ See *Shulchan Aruch, Admur HaZaken, Laws of bodily Damage, Sec. 4* that a person cannot give permission to another individual to cause him bodily harm as “a person has no jurisdiction on his body to damage it.” See as well *RaDvaZ, Hilchos Sanhedri, Ch. 8* that “A person’s soul does not belong to him but rather belongs to G-d.”

²⁶ Some (Wolf, Jonathan “*Robert Nozick: Property, Justice, and the Minimal State* Pg. 8ff) have employed Emanuel Kant’s categorical principle (*foundations*, pg. 47; 4:287) to describe self-ownership which stated that one is to: “Act so that you treat humanity, whether in your own person or in that of another, always as an end and never as a means only.” This would express that man is an end and not a means which essentially would mean that he is an owner and cannot be owned. While this may be true how one is to “act” if they are in doubt of an ethical code or when it is impossible to find one, it does not prove that ethical imperative in its own right. So while it seems just claim that individuals own their *bodies, talents, abilities, labor*, and by extension the produce of said talents etc. the person “themselves” are not those talents etc. but their soul and consciousness. While one consciousness takes is conscious of said talents etc. and therefore owns them, it is paradoxical to say that the consciousness is conscious of its essential self and soul.

person can indeed sell his “labor” and “talents” into indentured servitude, he cannot actually sell himself²⁷. This is because he cannot separate himself from himself.

Being that he freely initiates the sale and makes the transfer from one domain to the other, there always remains an element of himself, his essential identity, which he cannot sell. That is, he cannot transfer his identity to the other person. So though it is possible for a person to transfer his property, labor and talents to another, he nonetheless is incapable of selling his essential identity.

As explained, this is because there are three distinct components to every transaction, (a) the seller, (b) that which is being sold and (c) the buyer who takes possession; and as explained, for the sale to take hold, that which is being sold, and the seller, must be distinct from each other. Therefore, if a person sells himself, there always remains a part of himself, his essential identity that remains unsold.

Ironically, two points come out of this:

(a) While I own everything about myself, such as my characteristics, talents and labor, nevertheless, I do not own my essential identity. This is because ownership is associated with consciously taking possession of something. However, a person cannot *consciously* take possession of his own *consciousness*. This is because though a person can know his qualities and characteristics and possess them, his essential identity remains a mystery, even to himself! Though the one who is conscious is the source of ownership and can therefore be an “owner”, he cannot at once be the owner and the owned. Therefore it must be said that a person’s essential identity—while being the source of all his ownership—is not owned.

(b) The only way for this core identity to be acquired is through *force*, in which the one taking possession takes it without the consent of a giver. This is because—as explained above—the essential core identity cannot be given. It is therefore self-understood that it can only be acquired by force. As explained, when a person willingly gives himself to another, there always remains a part of himself that is not given—his essential identity. Thus it can only be acquired by force—without the consent of a giver. Whereas usually this would be considered unethical, in truth, this

²⁷ See Vayikra (25:39-55) the various laws of slave that sells himself into slavery that A) there are certain duties that the owner cannot place on the slave in addition to laws of how he is to be treated. B) He is not selling himself forever. The verses (Vayikra 25:42, 25:55) imply that the reason is that the essential element of the individual is not part of this sale (nor cannot it be), but remains under the jurisdiction of G-d. See further in this essay that this essential identity which cannot be sold is the very element that G-d took possession of at the giving of the Torah. Concerning a non-Jewish slave as well, Rambam (Laws of Slavery, 9:5) points out that when a non-Jew sells himself to another non-Jew, he *only* sells him his *labor* but *not* his *body*. While Rambam there states that when a non-Jew sells himself to a Jew, the Jew does own his person, which would imply that a person can sell their essential identity it truth this is not the case. This is because as expressed by Rambam (Laws of Slavery, 8:19) that the master must force the slave to immerse to become a slave and if the slave immersed on his own volition the slave goes free. (Compare this point to what will be explained later in the essay concerning G-d and Israel.)

is not the case, because as explained above, the essential identity remains ownerless and can be taken.²⁸

Interestingly, there is a Halachic ramification to the above distinction of how much of one's self a person is capable of willingly surrendering. Though Torah law permits a person to sell himself into servitude, there is a practical difference between whether he was sold by the courts or sold himself.

Concerning the differences between the two, the Talmud states:²⁹

He who sells himself, his master cannot give him a Canaanite bondmaid; if he was sold by the *Beis Din* (the rabbinical court), his master can give him a Canaanite bondmaid.

Clearly a greater level of dominion is achieved by a master who has acquired his slave by force of the courts than the dominion achieved by a master who acquired a slave through the volition of the slave. This is so for the reason stated above.

When a person sells himself into slavery, he retains a degree of self-identity that is not transferable in the sale. For this reason his master has less dominion over him than if he is sold against his will.³⁰

²⁸ While the fact that one cannot force an individual to be your slave seems to negate this logic, this is not the case. The reason is because each individual is made of two distinct elements, their consciousness and their essential identity. Because of this consciousness they are the owners of their talents, skills and labor. Because they are the rightful owner it cannot be taken against their will. However, once a person either from his own volition or through another mean forfeits the consciousness level of their identity, the rest of their identity is free for the taking. See John Locke, *Two Treatises of Civil Government* (London: J. M. Dent & Sons, Ltd., 1924 [first published 1690]), Book 2, IV. Par. 24 that expresses this point concerning freedom and slavery that "This freedom from absolute, arbitrary power, is so necessary to, and closely joined with a man's preservation, that he cannot part with it, but by what forfeits his preservation and life together: for a man, not having the power of his own life, cannot, by compact, or his own consent, enslave himself to any one, nor put himself under the absolute, arbitrary power of another, to take away his life, when he please... Indeed, having by his fault forfeited his own life, by some act that deserves death; he, to whom he has forfeited it, may (when he has him in his power) delay to take it, and make use of him to his own service..." He too expresses the point (albeit in a slightly different manner) that while possible to give of one's conscious identity one cannot give their essential life, which can only be taken when one's life is forfeited. See as well Rambam, *Laws of Slavery*, 9:2 the halachic parameters of how a person can come to acquire a slave.

²⁹ *Kiddushin*, 14b. The Talmud enumerates various distinctions. We have included one which is pertinent to the discussion at hand. See *Toras Menachem, Ma'amarim Melukatim* Pg. 356 FN 28, which makes this distinction. See as well Rambam, *Laws of Slaves*, Ch. 3 for a detailed discussion of these laws.

³⁰ Interestingly, John Locke, *Two Treatises of Civil Government* (London: J. M. Dent & Sons, Ltd., 1924 [first published 1690]), Book 2, IV. Par. 24, makes a similar remark pertaining to various forms of slavery in his statement: "I confess we find among the Jews, as well as other nations, that men did sell themselves; but it is plain, this was only to drudgery, not to slavery: for, it is evident, the person sold was not under an absolute, arbitrary, despotical power: for the master could not have power to kill him, at any time, whom, at a certain time, he was obliged to let go free out of his service; and the master of such a servant was so far from having an arbitrary power over his life, that he could not, at pleasure, so much as maim him, but the loss of an eye, or tooth, set him free, (Exod. xxi.) While he was mistaken to a certain degree in stating, that the "loss of an eye etc." pertains to this type of slave, as this truly only applies to a heathen slave, and was further mistaken in the premise as to *why* a person cannot sell himself into slavery, he nevertheless makes the point that slavery in its true form is only in a situation

Ownership

In order to more clearly understand why G-d forced the Israelites to receive the Torah and why He is said to only own five things in His world, it will be pertinent to give a brief synopsis of how Judaism views the concept of ownership.

Whereas according to some secular philosophers, ownership is an arbitrary societal designation and has no depth beyond that, Judaism views ownership through a dramatically different lens.

Through appreciating the spiritual dimension of ownership, we can more clearly understand what in essence it is. This may be understood through an interesting Talmudic discussion:

The Talmud³¹ discusses the matter of acquiring an object which is resting in the immediate vicinity of the person. Though usually it is necessary to do some physical act of taking possession of an object, the rabbis instituted that under certain conditions, objects may be acquired by virtue of their being within the spatial sphere of the acquirer³²:

“Resh Lakish said in the name of Abba Kohen Bardala: “A man's four cubits acquire [property] for him everywhere.³³ For what reason? — The Rabbis instituted [this law] in order that people might not be led to quarrelling.”

While indeed this type of acquisition is rabbinical in nature, it nonetheless is not arbitrary, as it has an underlying philosophical mechanism that effects the acquisition.³⁴

where the slave is *forced* into slavery on punishment of death (as we will see further). He establishes this idea as follows: “Indeed, having by his fault forfeited his own life, by some act that deserves death; he, to whom he has forfeited it, may (when he has him in his power) delay to take it, and make use of him to his service, and he does him no injury by it: for, whenever he finds the hardship of his slavery outweigh the value of his life, it is in his power, by resisting the will of his master, to draw on himself the death he desires.” He states that the only situation where a person can become a slave is when their lives are essentially forfeited to begin with. While he has a mistaken notion that the owner may execute his slave if he so chooses, he nevertheless, expresses an important point.

³¹ *Bava Metziah, 10a.*

³² Generally a person can acquire an object in the various manners described by Rambam, Laws of Sale, Chapter’s 1-8.

³³ See there 10b, that although Reish Lakish stated that he acquires it “everywhere,” there are nevertheless exceptions: “R. Sheshes said: The Rabbis instituted [the law of the four cubits] in regard to a side-street, which is not crowded, [but] in regard to a high road, which may be crowded, the Rabbis did not institute [this law]. But does it not say ‘everywhere?’ — [The term] ‘everywhere’ is to include the [ground on both] sides of the high road.” However, a marriage and divorce document can be acquired in this manner even in the public domain. See *Beis Shmuel, Even HaEzer 30:5.*

³⁴ See *Avnei Meluim, Sec. 30* that the mechanism that they enacted this law was not that they arbitrarily gave them the object although they did not enact a proper method to acquire it, but that because *hefker bes din hefker* (Talmud, Yevamos, 89b) the courts are able to relinquish ownership of the public domain and transfer it to this individual. Essentially then, they gave the four cubit feet around the individual and subsequently he acquires objects in it in the same way that a person acquires object in his courtyard. See however *Chidushei Ramban* that disagrees with this logic. Concerning the parameters of *hefker bes din hefker*, See *ktzos Hachoschen 235:4 Nesivos HaMishpat 235:13.*

In Chassidic thought,³⁵ it is explained that this type of acquisition is effective because the soul of a person is expressed in the space immediately surrounding him:

“The explanation, however, is that one’s *Yechidah*³⁶ radiates and extends throughout his four cubits; therefore, they [his four cubits] can acquire objects for him without either his declaration or knowledge, because on the level of *Yechidah*, knowledge and intelligence are immaterial.”

Conceptually, the idea of ownership—as expressed in the above quote—is the superimposition of one’s identity upon an object that is separate from him. In essence, when a person expresses his soul, ego and consciousness upon an object, he takes ownership of it.

In the case of acquisition through one’s four cubits however, a person can even acquire the object when he is not conscious of it. This is because in this type of acquisition, the essential identity of the soul, the *Yechidah*, which transcends consciousness, is present. However, generally speaking, ownership is specifically the idea of imposing one’s ego and consciousness upon the world around us.

This is expressed in the following law:³⁷

“According to Scriptural law there are three types of people whose purchase cannot be considered to be a valid purchase, nor is their sale a valid sale: a deaf mute, a mentally incapable or emotionally disturbed person, and a minor. Our Sages, however, ordained that a deaf mute and a minor may buy and sell in order to guarantee their livelihood.”

Being that the very essence of ownership is predicated on the ego, awareness and self-identity, a person who is cognitively impaired or has a diminished state of consciousness cannot—according to Scriptural law—acquire objects in the world around him.³⁸

Ownership then, is not an arbitrary societal convention, but is rather the act of bringing the world around us into our domain, so much so, that our very souls become superimposed—so to speak—on the objects in our possession³⁹.

³⁵ *Kuntras Inyana Shel Toras HaChassidus, Sec. 20*. See there that explains that due to this reasoning there is actually an advantage to this type of acquisition. For, although one can only acquire an article in one’s courtyard when one has knowledge that it is there (Rambam, *Laws of stealing and lost objects, 17:8*) in this instance the individual acquires the object although he had no knowledge of it. (*Shulchan Aruch, Choshen Mishpat, 248:1*)

³⁶ Essential level of their soul.

³⁷ *Rambam, Laws of Sale 29:1*.

³⁸ In a similar vein, a person cannot transfer ownership that does not yet exist. See *Rambam, Laws of Sale 22:1*: “A person cannot transfer ownership over an article that has not yet come into existence. This applies with regard to a sale, with regard to a present or with regard to the disposition of an oral will. What is implied? If a person states: ‘What my field will produce is sold to you,’ ‘What this tree will grow is given to you,’ ‘Give so and so the offspring that this animal bears,’ the recipient does not acquire anything.” The reason being, that one cannot place their ego or consciousness on an entity that does not yet exist.

³⁹ See as well *Reshimos HaYoman*, Pg. 175 and 246 that when Rabbi Shneur Zalman of Liadi was escaping Napoleon he instructed his followers to take all his belongings with him. When he realized that he had forgotten a slipper he

G-d's Ownership

According to all the above, we can now understand the seeming contradictions posed above:⁴⁰ How is it possible that on one hand, G-d is the Creator of the world and therefore nothing is outside of His domain, and on the other hand, He “acquired five acquisitions in His world?”

The entire universe and everything therein was created by the Almighty, and indeed is being created by Him at every moment. Therefore technically, all existence is His possession. However, being that the nature of the world is to conceal, rather than to reveal G-dliness, the world cannot truly be classified as a possession of G-d. This is because—as said above—the fundamental concept of ownership is that the identity of the owner is manifest in the object that he owns.

The very word for world in Hebrew is *olam*, which shares the same three letter root as the word *he'elem*—which means “concealment”.⁴¹ The natural state of the world is that it conceals, rather than reveals and expresses G-dliness. Therefore, it cannot truly be referred to as G-d's possession.

Although the ultimate *purpose* of the world for G-dliness to be revealed in the world, so that it too can express G-dliness, nonetheless, this is achieved through *transformation* rather than acquisition. In order for the world to become a G-dly place, one must nullify the ego that is naturally expressed in worldliness and transform the object into one that expresses G-dliness.

However, concerning the five possessions enumerated in Ethics of our Fathers, G-d only needed to acquire them in order for them to express G-dliness—because they are more naturally in tune with G-d and thus express G-dliness.⁴² It is therefore understood why these five are enumerated

instructed one of his students to travel there—even on Shabbos—to fetch it. He then instructed that they burn down his house. When Napoleon arrived he adamantly searched for some belonging of Rabbi Shneur Zalman, offering to pay anyone who supplies him with some object and threatening to kill anyone who tricks him. While it seems strange that Napoleon would go to such lengths for an object and Rabbi Shneur Zalman would go to great lengths as well to make sure that he does not get one, it can be understood through what is explained in *Reshimos HaYoman* Pg. 368 that Rabbi Shneur Zalman considered Napoleon to be a sorcerer. Being that a person's soul is somehow supplanted on objects in a person's possession, when a sorcerer has some object of the person he wishes to curse, he is able to affect that individual's soul. See as well *Torah's Menachem*, Vol. 36 Pg. 322

⁴⁰ See *Likutei Sichos*, Vol. 35. Pg. 39ff.

⁴¹ *Likutei Torah, Shelach 37d*.

⁴² These five objects are more finely in tune with G-dliness, in the sense that even when they are corporeal, they nevertheless express G-dliness. The Torah: Concerning the Torah the Talmud (Berachos, 22a) states, “Words of Torah are not susceptible to uncleanness...as it says, ‘Is not My word like as fire?’ Just as fire is not susceptible to uncleanness, so too, words of Torah are not susceptible of uncleanness.” This expresses, that even when the Torah is in this physical world it expresses G-dliness. The Jewish People: To prove that the Jewish People are G-d's possession the Mishnah employs the verse (Tehillim 16:3), “To the holy who are upon earth, the noble ones, in whom is all My delight.” This expresses, that even when they are “upon earth” they are G-dly. The *Beis HaMikdash*: is a domain that is entirely expressive of G-dliness as the verse (Shemos, 15:17) states, “The base for Your *dwelling* that you, G-d, have achieved; the *Sanctuary*, O L-rd, that Your hands have established.” Heaven and Earth: are expressive of G-dliness based on the statement of the Jerusalem Talmud (Berachos 1:1) that though they have existed for thousands of years, they are strong like the day of their creation. Avraham: Is called an acquisition of G-d as he was unique as he expressed G-dliness in a world that was antithetical to G-dliness.

as having been acquired by G-d; for although the entire world was created by Him, it nonetheless is not naturally expressive of Him, but was created to be transformed by man and be brought it into *G-d's* domain.

Not so regarding the Torah, the heavens and the earth, Avraham, the Jewish people, and the Holy Temple, all of which directly express G-dliness.

Divine Coercion

At the beginning of this article the question was posed: If the Jewish people had already accepted the Torah willingly when they declared, “We will do and we will hear,” why did G-d find it necessary—and morally justified—to force them to re-accept it by overturning the mountain over them and saying, “If you accept the Torah, it is well; but if not, there shall be your burial?”

This now may be answered according to what was explained above:

When the Israelites declared, “We will do and we will hear”, they gave over the deepest levels of their being that a person is capable of giving to another. They surrendered their identity to HaShem’s will, in a way that completely surpasses reason.

However, though a person is capable of giving over manifestations of their identity, it is not possible for him to give over his essential self. This is because, as explained above, in order to give, the giver must be separate from the thing given. In other words, no matter how much of himself the giver gives, his essential self (the identity that decides to give), has not been given.

However, HaShem desires that our entire identity should *literally* be His possession and thus an expression of G-d—not just levels of *manifestation* of our identity, but even the essential self of our soul.⁴³

When our essential identity is G-d’s possession in a way of ownership, this means that our essential identity is expressive of G-dliness, not only the part of our identity that we gave over to him of our own accord.

In order for the essence of our identity to be HaShem’s, He Himself needed to take it without consent, because our essential identity is not something that we are capable of giving. Being that Israel had already given over the conscious levels of their identity to G-d, the only thing that remained was their essential self.

⁴³ The Jewish People are referred to as the possession of G-d as Talmud (Kiddushin 82a) states in reference to a Jew’s service to G-d: “I was created to serve my Possessor.” This is also stated in the Torah (Vayikra, 25:55) in reference to why the Israelites cannot be slaves to another Jew for more than a certain period of time because, “For the children of Israel are servants to Me; they are My servants, whom I took out of the land of Egypt. I am the Lord, your G-d.” On this the Medrash (Torah’s Kohanim, 25:85) states “My contract came before.” [And thus, when the Jubilee arrives, the servant must be released and revert to being God’s servant rather than man’s.]”

Because G-d wanted that the very life and essence of our soul be connected to G-dliness, He needed to connect the essence of our *life* with the Torah. He thus forced us to accept His Torah on penalty of *death*, for by doing so he took the essence of our soul, as His possession.

Thus the purpose of this coercion is solely so that our entire identity should be expressive of G-d—both the conscious part of ourselves, which we willingly gave over to G-d of our own free will, and our essential soul, which we are incapable of giving and therefore must be *taken* by G-d. We therefore see that not only was this forced taking not immoral, but on the contrary, it brought about the greatest possible good.

This is expressed in Chassidic thought as follows:⁴⁴

“The submission of prefacing “We will do” to “We will hear,” is that *Israel* accepted the yoke of Heaven upon themselves. Therefore, although this obedience of accepting the yoke of Heaven was (not only pertaining to action, to do all that he is commanded, but also) in his essential identity - that his entire identity should be that he is a servant of the King, King of Kings, the Holy One blessed be He - nevertheless, because this acceptance of the yoke of Heaven comes from the person, that **he** accepted upon himself to be G-d’s servant, the person’s identity is blended in this nullification, whereas true nullification is when the nullification comes from the master.”

Only when we’ve done all we can do and then take the passive role, in which G-d takes us, can it be said that our essential identity becomes nullified and expressive of G-dliness.⁴⁵

The Lesson

A person is made up of two parts, the essence of his soul and the manifestation and expression of his identity.

Just as at the giving of the Torah the Jewish people submitted themselves to G-d, whereas their essential identity became His possession through G-d taking acquisition, the same principle applies to us.

The essence of the Jewish soul is expressive of G-d, not by choice, but because it essentially is G-dly. This being the case, there is nothing that a Jew to do can do to sever Himself completely from G-d.

⁴⁴ Rani VeSimchi, 5727. *Torah’s Menachem, Sefer HaMa-amorim Melukatim*, Vol. 3. Pg. 357

⁴⁵ According to the above can possible be explained another interesting Halacha. The verse (Devarim, 24:1) states concerning marriage, “When a man takes a wife etc.” From the fact that the act of marriage is placed on the man and is termed “taking,” the Talmud

It is because of this that throughout history even the most ignorant or nonobservant of Jews almost universally chose death, rather than to renounce their faith.⁴⁶

“Therefore even the most worthless of the worthless and the transgressors of Israel, in the majority of cases sacrifice their lives for the sanctity of G-d's Name and suffer harsh torture rather than deny the one G-d, although they may be boors, illiterate and ignorant of G-d's greatness. [For] whatever little knowledge they do possess, they do not delve into at all, [and so] they do not give up their lives by reason of any knowledge and contemplation of G-d. Rather, [they choose martyrdom] without any knowledge and reflection, but as if it were absolutely impossible to renounce the one G-d; and without any reason or hesitation whatever”.

However, though on a subconscious level a Jew is always connected to G-d, he must still nonetheless strive to bind his conscious identity to G-d as well.

⁴⁶ Tanya, Ch. 18