**From a Territorial Jurisdiction to a Universal Jurisdiction: A Legal-Theological Study of a Tannaitic Transition**

Benjamin Porat

# Introduction

A legal system may be prone to limit its jurisdiction, so that its laws will apply exclusively only within its territory, that is, within the bounds of its kingdom or state. Upon crossing the state’s border, the citizen passes from the control of one local legal system, to that of a different regional system. In a territorial conception of law, the borders of a state and the borders of its law overlap with one another. In an alternate conception, a legal system may opt to apply its laws universally, so that its citizens will be bound to them in any place geographical borders. This is a universal conception of law, in geographical terms. A universal theory of law may even take a step further and claim its laws are binding not only on its own citizens, everywhere, but on all humanity, anywhere they are. In this conception, the universality of the law is not merely geographical, but also personal.

In our times, legal systems generally tend to apply their laws – both in civil and criminal realms - territorially. There are exceptions to this rule, for severe criminal acts such as crimes against humanity, so that a given state may judge the criminal though the crime took place outside its borders, and without any direct connection to it. The premise is, that committing a crime against humanity is so severe in nature, that it is not appropriate its domain be confined to spatial borders, rather the individual who violates it must be brought to trial wherever he may be. The jurisdictional realm for crimes against human then is universal.[[1]](#footnote-1)

Needless to mention, in modern legal systems offenses which are of a universal nature are the exceptions, and include a very limited group of crimes that are particularly severe. However, theoretically, one might imagine a legal system that applies its jurisdiction universally, on a broad group of crimes, perhaps even on them all. And by contrast, one might imagine the opposite possibility of a legal system that will not recognize universal jurisdiction at all, rather only territorial jurisdiction. The tension between the territorial and universal conceptions of law touches one of the fundamental issues in jurisprudence. If we ask ourselves which of the two systems of law, the territorial or the universal, is more characteristic of a religious system, the intuitive answer, in all probability, will be the universal system. The territorial conception endows law with a relative value. Its instructions are relevant in set places, and not in others, where other legal systems operate. By contrast, the universal theory grants the law an absolute character; its truth is applicable in every location.

Indeed, the historical roots of the modern view that crimes against humanity involve international jurisdiction are based in two main grounds. The first is the tradition of “Natural Law,” in which law’s authority stems from its being an expression of moral and rational principles, that are eternal, and universal. Natural Law is based, by its very definition, on the idea of universal jurisdiction.[[2]](#footnote-2) The second ground is religious monotheistic traditions, which place faith in a single deity, whose sovereignty fills the world, and whose decrees know no political bounds. Therefore, “In the three monotheistic faiths of Judaism, Christianity, and Islam, full sovereignty rests with the Creator, and transgressions of the Creator's norms confer the power to enforce by the religious community, irrespective of any limitations in space or time.” [[3]](#footnote-3)

Closer observation reveals however that in this regard the relationships between law and religion are more complex than they appear at first glance. A religious conception of law may at times actually lead to the idea of a territorial application of the law. It is within this complex framework that I wish to explore anew the difference between the biblical conception of law, and the conception of law found in the writings of the mishnaic sages. I will claim that the Torah conceives of law in territorial terms, as meant to be implemented only in the land of Israel. In contrast, the sages of the mishna grasp law as intended by its very nature to be binding on each Jewish individual, universally, wherever he may be, without territorial limitations. The transition from biblical law to the rabbinic idea of the law is, *inter alia*, a transition from a religious-territorial conception of law, to a religious-universal conception of law.[[4]](#footnote-4)

Naturally, several exceptions might be found, since there are a few biblical mitzvoth which are universal, and a few territorial *mitzvot* in the Mishna. However, as will be seen, these exceptions do not displace the transition depicted in the article, rather on the contrary, they actually reinforce it, and render it more profound.[[5]](#footnote-5) The explanation for this transition, as I will suggest further along in the article, is to be found in a change concerning the relationships between the individual and his God. The conceptual shift in the scope of legal jurisdiction - from its territorial application to its universal application - is related to a parallel theological transition, from the conception of a God actively present in the land of Israel, as understood in the Bible, to the notion of a God that is not actively present in any given land, but rather exists beyond spatial bounds, as conceived by the sages. The legal transition and the theological transition are then parallel to one another, and a close consideration of the relations between them might shed new light on the religious nature of Jewish law in it various eras, and on the changing conceptions of law that stem from it.

1. **The Biblical Conception of the Law: A Territorial Jurisdiction**

A close look at the Torah reveals that the *mitzvoth* it sets out are intended to apply in the land of Israel. The legal system the Torah depicts is territorial in nature.[[6]](#footnote-6) If we adopt the terminology developed later by the sages, based on a literal reading of scripture, the *mitzvoth*, in their entirety, are “*mitzvot* contingent upon the land.” Though part of the *mitzvot* were already implemented during the journey in the desert phase, it was part of the preparation towards entering the land.[[7]](#footnote-7)

As we will see later on, this idea reaches the height of its expression in Deuteronomy, in the form of explicit pronouncements that all of the *mitzvot* have a close affinity to the land of Israel. Though other books of the Pentateuch do not include such concrete and detailed statements, the premise of the linkage between the *mitzvot* and the land is alluded to, and finds plenty of expression. For instance, the Torah specifically hinges the implementation of certain *mitzvot* upon entry into the land. The *mitzvah* of the pascal lamb is accompanied by the words, “And when you enter the land that the Lord will give you, as He has promised, you shall observe this rite,” (Ex. 12:25). The same holds true for the *mitzvot* of matzah, and the prohibition of hametz, which open with the words, “So when the Lord has brought you into the land of the Canaanites…you shall observe in this month the following practice,” (Ex. 13:5). The mitzvah to sanctify first-born animals commences with, “And when the Lord has brought you into the land of the Canaanites,” (Ex.13:11) and perhaps the *mitzvah* of tefillin is included along with it as well, as it appears in the same set of verses.

Additional *mitzvot* introduced in a similar fashion include leprosy of the home,[[8]](#footnote-8) gleanings (*leket* and *pe-ah*);[[9]](#footnote-9) fruit of young trees (*orlah)*;[[10]](#footnote-10) new produce (*omer)*; new crops/first sheaves (*tevu-ah hadasha*);[[11]](#footnote-11) sabbatical year (*shmitta*);[[12]](#footnote-12) meal offerings (*minhot*) and libations (*nesachim*);[[13]](#footnote-13) appointment of kings;[[14]](#footnote-14) first fruits (*bikurim*).[[15]](#footnote-15) The stipulation (determination) that these *mitzvot* apply from the moment the Israelites enter the land apparently means they apply only in the land, and not outside of it. [[16]](#footnote-16) It is difficult to identify a common denominator for these *mitzvot*, which are not necessarily related to land, or agriculture. [[17]](#footnote-17) There are other mitzvoth for which the Torah promises longevity in the land of Israel as a reward for their fulfillment, for example, the mitzvah of honoring one’s parents reads, “Honor your father and your mother, that you may long endure on the land that the Lord your God is assigning to you,” (Ex. 20:12). [[18]](#footnote-18)Similarly, following the mitzvah of the Jubilee and the prohibition of fraud, the Torah promises (Lev. 25:18-19), “You shall observe My laws and faithfully keep My rules, that you may live upon the land in security; the land shall yield its fruit and you shall eat your fill, and you shall live upon it in security.”

After delineating the mitzvoth of tefillin (phylacteries) and mezzuzot, Deuteronomy pledges, “Therefore impress these My words upon your very heart: bind them as a sign on your hand and let them serve as a -symbol on your forehead, and teach them to your children—reciting them when you stay at home and when you are away, when you lie down and when you get up; and inscribe them on the doorposts of your house and on your gates—to the end that you and your children may endure, in the land that the Lord swore to your fathers to assign to them, as long as there is a heaven over the earth, (Deut. 11:18-21).”[[19]](#footnote-19) This blessing, which is valueless for those living outside of the land, signifies the tight bond between law and territory.[[20]](#footnote-20)

Deuteronomy includes mitzvoth that are accompanied by a similar blessing, though of a different hue, promising the Israelites that as a reward for their fulfillment they will merit entering the land, and taking possession of it. For example, “And now, O Israel, give heed to the laws and rules that I am instructing you to observe, so that you may live to enter and occupy the land that the Lord, the God of your fathers, is giving you.” (Deut. 4:1); “You shall faithfully observe all the Instruction that I enjoin upon you today, that you may thrive and increase and be able to possess the land that the Lord promised on oath to your fathers,” (Deut. 8:1). This blessing teaches of mitzvoth already implemented while in the desert, which precede entry into the land, and rather mark a condition for it. Thus, this form of blessing endows the mitzvah with a territorial quality. This blessing, which accentuates the mitzvoth as being essential for entering the land, may shed light on the choice to set the delivery of the Torah at Mount Sinai prior to entering the land, and as (in) preparation for it. [[21]](#footnote-21)

Other given mitzvoth include an implicit premise that they are intended to be applied in the land of Israel. For instance, the law obliging the ‘accidental killer’ to escape to a sheltered city can only be implemented in the land of Israel.[[22]](#footnote-22)The law prohibiting the oppression of foreigners is described by Leviticus as applying in the land, “When a stranger resides with you in your land, you shall not wrong him,” (Lev. 19:33). The prohibition of castrating animals is described in a similar way, “You shall not offer to the Lord anything [with its testes] bruised or crushed or torn or cut. You shall have no such practices in your own land,” (Lev. 22:24). [[23]](#footnote-23)Several chapters on, the prohibition of forming idols is described in a comparable way, “You shall not make idols for yourselves, or set up for yourselves carved images or pillars, or place figured stones in your land to worship upon, for I the Lord am your God,” (Lev. 26:1).

It goes without saying that Needless to say that the complex of mitzvoth delineated in Lev. 25 – the sabbatical year, the jubilee, fraud (within the jubilee framework/setting) with regard to the land under the law of the Jubilee), the redemption of homes, fields, and slaves - all characterize (are all characteristic of) life in the land of Israel. In fact, many mitzvoth are described as applying “in all your dwellings” [[24]](#footnote-24) ("בכל מושבותיכם"), and it stands to reason the Torah here means in the land of Israel, as in the verse, “When you come into the land of your habitations,” (Num. 15:2). [[25]](#footnote-25) While such hints are scattered throughout the books of Exodus, Leviticus, and Numbers, it will later be demonstrated that Deuteronomy is particularly laden with mitzvoth whose details imply a dependence on the land. Albeit, the Torah does not explicitly state that leaving the boundaries of the land of Israel brings about an exemption from fulfilling the mitzvoth. Rather, it is inferred from the way it portrays, several times, the punishment of exile Israel will experience should they rebel against God’s word, and breach His commands. Moreover, the very fact that the consequence for violating the mitzvoth is that *the land* spews out its inhabitants already alludes to the law’s territorial nature. [[26]](#footnote-26)

Beyond this, when one considers the description of Israel’s repentance process during exile, one finds it includes a confession of sins, and a return to God, but lacking is mention of a return to keeping mitzvoth while outside of the land. The following is the manner Leviticus lends to the return to God in exile, “But you shall perish among the nations; and the land of your enemies shall consume you. Those of you who survive shall be heartsick over their iniquity in the land of your enemies; more, they shall be heartsick over the iniquities of their fathers; and they shall confess their iniquity and the iniquity of their fathers, in that they trespassed against Me, yea, were hostile to Me. When I, in turn, have been hostile to them and have removed them into the land of their enemies, then at last shall their obdurate heart humble itself, and they shall atone for their iniquity,” (Lev. 26:38-41). In Deuteronomy, the matter finds sharper expression, as exile is described as a place in which the Israelites are expected to worship foreign gods, “The Lord will scatter you among the peoples, and only a scant few of you shall be left among the nations to which the Lord will drive you. There you will serve man-made gods of wood and stone, that cannot see or hear or eat or smell,” (Deut. 4:27-28). [[27]](#footnote-27)And note, the verses describe idolatry as part of the state of exile, not necessarily as a transgression. [[28]](#footnote-28)

Here as well the process of returning to God is described in terms of seeking/pursuing seeking / pursuing God, and complying with His voice, without mention of resuming mitzvoth while in exile, “But if you search there for the Lord your God, you will find Him, if only you seek Him with all your heart and soul—when you are in distress because all these things have befallen you and, in the end, return to the Lord your God and obey Him,” (Deut. 4:29-30). Towards the end of Deuteronomy there is a more detailed description of Israel’s return to the land from exile, and there it is emphasized that the resumption of fulfilling mitzvoth is a consequence of returning to the land, (rather than a preceding phase for it carried out in exile):

When all these things befall you—the blessing and the curse that I have set before you—and you take them to heart amidst the various nations to which the Lord your God has banished you, and you return to the Lord your God, and you and your children heed His command with all your heart and soul, just as I enjoin upon you this day, then the Lord your God will restore your fortunes and take you back in love. He will bring you together again from all the peoples where the Lord your God has scattered you. Even if your outcasts are at the ends of the world, from there the Lord your God will gather you, from there He will fetch you. And the Lord your God will bring you to the land that your fathers possessed, and you shall possess it; and He will make you more prosperous and more numerous than your fathers.

Then the Lord your God will open up your heart and the hearts of your offspring to love the Lord your God with all your heart and soul, in order that you may live. The Lord your God will inflict all those curses upon the enemies and foes who persecuted you. You, however, will again heed the Lord and obey all His commandments that I enjoin upon you this day. And the Lord your God will grant you abounding prosperity in all your undertakings, in the issue of your womb, the offspring of your cattle, and the produce of your soil. For the Lord will again delight in your well-being, as He did in that of your fathers, since you will be heeding the Lord your God and keeping His commandments and laws that are recorded in this book of the Teaching—once you return to the Lord your God with all your heart and soul, (Deut. 30: 1-10).

The truth is, with regard to Deuteronomy, there is no need to go as far as exile descriptions to perceive the tight connection between the corpus of mitzvoth, and the land of Israel. This is because Deuteronomy specifically sets out, time after time, that the mitzvoth in their entirety are intended to be fulfilled in Israel. As illustrations, “See, I have imparted to you laws and rules, as the Lord my God has commanded me, for you to abide by in the land that you are about to enter and occupy,” (Deut. 4:5); “But you remain here with Me, and I will give you the whole Instruction—the laws and the rules—that you shall impart to them, for them to observe in the land that I am giving them to possess,”(Deut. 5:27); “And this is the Instruction—the laws and the rules—that the Lord your God has commanded [me] to impart to you, to be observed in the land that you are about to cross into and possess, (Deut. 6:1); “These are the laws and rules that you must carefully observe in the land that the Lord, God of your fathers, is giving you to possess, as long as you live on earth,” (Deut. 12:1). [[29]](#footnote-29)

In this framework, many mitzvoth in Deuteronomy can be noted which include an emphasis that they apply in the land of Israel. For instance, the mitzvah to lend to the poor and aid him is tied to the land of Israel, “If, however, there is a needy person among you, one of your kinsmen in any of your settlements in the land that the Lord your God is giving you, do not harden your heart and shut your hand against your needy kinsman…For there will never cease to be needy ones in your land, which is why I command you: open your hand to the poor and needy kinsman in your land. (Deut. 15: 7-11). The command to appoint judges and officers, that is, to establish a legal system, is also described as a mitzvah linked to the land of Israel, “You shall appoint magistrates and officials for your tribes, in all the settlements that the Lord your God is giving you, and they shall govern the people with due justice,” (Deut. 16:18)[[30]](#footnote-30)

The prohibition of encroaching on another’s property is related to the land of Israel, “You shall not move your countryman’s landmarks, set up by previous generations, in the property that will be allotted to you in the land that the Lord your God is giving you to possess,” (Deut. 19:14). The mitzvah of the decapitated calf (*eglah arufa*) too is described in connection to the land, “If, in the land that the Lord your God is assigning you to possess, someone slain is found lying in the open,” (Deut. 21:1). Even the prohibition against oppressing workers is qualified to the land of Israel, “You shall not abuse a needy and destitute laborer, whether a fellow countryman or a stranger in one of the communities of your land,” (Deut. 24:14).[[31]](#footnote-31) The extent to which Deuteronomy stresses the territorial nature of the law invites contemplation. In general, Deuteronomy’s theological approach is typified as transcendental and relatively abstract, as according to it God’s abode is in the heavens, rather than on earth. [[32]](#footnote-32) As an illustration, in Deuteronomy God Himself does not reside in the Temple, [[33]](#footnote-33) rather His name alone does. [[34]](#footnote-34)Moreover, Deuteronomy tends to focus on the rational element of the mitzvoth, which renders them understandable and appreciable to other nations. [[35]](#footnote-35) Based on its combination of features - transcendentalism and rationality - one might expect that Deuteronomy would endorse a universal conception of law, which diminishes the mitzvoth’s contingency upon the land, and lends the mitzvoth an essence unqualified to a given territory. However, Deuteronomy most accentuates the territorial nature of the mitzvoth and their limitation to the land of Israel, [[36]](#footnote-36)demonstrating that a territorial conception of law is not necessarily connected to a tangible notion of the deity, just as a universal theory of law is not axiomatically tied to an abstract conception of the deity. What stands at the basis of the Torah’s territorial theory of law, according to which its commands apply exclusively in the land of Israel? The idea is certainly not predicated on a monolatrist theory, in which God’s powers are qualified to the land of Israel, and He is forced to limit His mitzvoth to this land, since beyond it other deities have jurisdiction. [[37]](#footnote-37)

Throughout the Torah it is well established that God’s power spreads over the entire world, and reigns over other deities, as is evident in formative narratives, such as the Flood, Sodom and Gomorrah, and as arises from descriptions of God, as “Creator of heaven and earth,” (Gen. 14:19; 22) and “Judge of all earth” (Gen. 18:25). [[38]](#footnote-38)God’s sovereignty spans over the entire world, and yet He chooses to confine His laws to the land of Israel. [[39]](#footnote-39) The grounds the Torah provides for the implementation of God’s mitzvoth in the land of Israel specifically, is God’s active presence in the land, a theme that appears (recurs) in various books of the Torah, albeit with different notes of stress. Several verses justify the commandments’ dependence on the land with the warning not to defile the land of Israel. Leviticus, for example anchors the prohibition of incest and other forbidden relations in a duty not to contaminate the land, lest it disgorge its inhabitants, “Do not defile yourselves in any of those ways, for it is by such that the nations that I am casting out before you defiled themselves. Thus, the land became defiled; and I called it to account for its iniquity, and the land spewed out its inhabitants. But you must keep My laws and My rules, and you must not do any of those abhorrent things, neither the citizen nor the stranger who resides among you,” (Lev. 18:24-26). [[40]](#footnote-40) Numbers ascribes the obligation to punish a murderer, and not lighten his sentence, to the holiness of the land where God dwells, “You shall not pollute the land in which you live; for blood pollutes the land, and the land can have no expiation for blood that is shed on it, except by the blood of him who shed it. You shall not defile the land in which you live, in which I Myself abide, for I the Lord abide among the Israelite people,” (Num.35:33-34). [[41]](#footnote-41)

Deuteronomy grounds the territorial nature of the mitzvoth on the special relation God accords to the land of Israel (Deut. 11:8-12):

Keep, therefore, all the Instruction that I enjoin upon you today, so that you may have the strength to enter and take possession of the land that you are about to cross into and possess, and that you may long endure upon the soil that the Lord swore to your fathers to assign to them and to their heirs, a land flowing with milk and honey. For the land that you are about to enter and possess is not like the land of Egypt from which you have come. There the grain you sowed had to be watered by your own labors, like a vegetable garden; but the land you are about to cross into and possess, a land of hills and valleys, soaks up its water from the rains of heaven. It is a land which the Lord your God looks after, on which the Lord your God always keeps His eye, from year’s beginning to year’s end.

Naturally, there are some differences among the various reasons we have included. However, their commonality is God’s active presence in the land of Israel, be it in the form of His dwelling in it, or in His constant care for it. These rationales express, each in their own way, the understanding that in a place of God’s active and intense presence, one must keep His laws.

Apparently, the Torah includes a covert, and complementary rational for the affinity between the mitzvoth and the land, which is the idea that the mitzvoth are, in a sense, the constitution of a kingdom, with God as its Monarch/Sovereign. As several scholars have observed, the Torah does not base the duty to fulfill mitzvoth only on general, universal, and un-historic grounds alone, such as their being an expression of the Creator’s will, or an embodiment of Divine wisdom, but rather in historic and particular reasons, as being the laws of the God Who redeems Israel, and Who bequeaths them the land. An illustration is found at the start of the Ten Commandments, “I the Lord am your God who brought you out of the land of Egypt, the house of bondage,” (Ex. 20:2; Deut. 5:6) [[42]](#footnote-42)From this perspective, Israel’s duty to fulfill God’s mitzvoth is akin to subjects’ obligation to conform to their king’s law. Through the mitzvoth Israel become God’s kingdom, “Now then, if you will obey Me faithfully and keep My covenant, you shall be My treasured possession among all the peoples. Indeed, all the earth is Mine,” (Ex. 19:6). In light of this, it is clear why the mitzvoth are connected with territorial borders, as they are the kingdom’s borders. Brague noted this point, perceiving the mitzvoth as the territorial laws of the land of God, binding on all those who enter His land: “The aim of the commandments is not to impose obedience but to provide an entry into the divine mores. Entering into the land of God is also, by that token, entering into the intimacy of the One who lives there.”[[43]](#footnote-43)

A most clear-cut expression of this concept is found in the Book of Kings. Following Shomron’s exile by the King of Assyria, residents are brought in from Babylon and other regions to replace the exiled population. As the new residents are unacquainted with the local law, they are punished with lions. In consequence, the King of Assyria sends a Priest to instruct them on “Law of the God of the land,” (II Kings 17:24-28):

The king of Assyria brought [people] from Babylon, Cuthah, Avva, Hamath, and Sepharvaim, and he settled them in the towns of Samaria in place of the Israelites; they took possession of Samaria and dwelt in its towns. When they first settled there, they did not worship the Lord; so the Lord sent lions against them which killed some of them. They said to the king of Assyria: “The nations which you deported and resettled in the towns of Samaria do not know the rules of the God of the land; therefore He has let lions loose against them which are killing them—for they do not know the rules of the God of the land.”

The king of Assyria gave an order: “Send there one of the priests whom you have deported; let him go and dwell there, and let him teach them the practices of the God of the land.” So one of the priests whom they had exiled from Samaria came and settled in Bethel; he taught them how to worship the Lord.

God’s laws are described as local law, “Law of the God of the land,” which apply to all inhabitants in its region.[[44]](#footnote-44) We then learn that the mitzvoth set out in the Torah mark a territorial legal system, which is intended to apply in the land of Israel. Josephus was accurate in describing the mitzvoth as “the legal constitution of your state.”[[45]](#footnote-45) In relation to ritual acts Yehezkel Kaufmann wrote, “The early cult is entirely restricted to the sanctified territory of Israel (except for the desert cult, performed in a kind of portable sacred area). Outside it there is no sacrifice and no festival, but only impure ground where idols are worshiped. The Israelite who enters a foreign land is removed from the holiness of YHWH; his very food is impure; he has, as it were, no alternative but to worship other gods.”[[46]](#footnote-46) This analysis rings true for the entire system of mitzvoth[[47]](#footnote-47)

# The Territorial Conception of the Mishna’s Sages

The Mishna’s sages have a different conception of the law’s application. According to the Tannaim, Torah laws apply universally to Jews, whether in the land of Israel, or outside of it. The exception to this is a limited group of “mitzvoth contingent upon the land” which apply in the land of Israel alone. It is widely accepted that the Tannaim’s key innovation in this context is coining an official category of mitzvoth contingent upon the land, which was not previously recognized in such a manner. [[48]](#footnote-48) However, in my claim the establishment (formulation) of this category was preceded by a more fundamental innovation, which is the Sages’ determination that the vast majority of mitzvoth apply both in the land of Israel and outside of it. It is only on the basis of this essential innovation that the second, which comes in its wake, can be properly understood, the defining of a very qualified set of mitzvoth that are contingent upon the land. Truth be told, the Tannaim were not the first to apply the Torah’s laws outside of the land of Israel as well. In Scripture’s later books, which refer to the period following the first temple’s destruction, Jewish life abroad is portrayed as involving fulfilling the Torah and its mitzvoth. For instance, according to Haman, who lives in Shushan, the capital, “There is a certain people, scattered and dispersed among the other peoples in all the provinces of your realm, whose laws are different from those of any other people and who do not obey the king’s laws,” (Esth. 3:8). [[49]](#footnote-49) And of Daniel, in Babylon, it is said, Daniel resolved not to defile himself with the king’s food or the wine he drank, so he sought permission of the chief officer not to defile himself,” (Dan. 1:8). [[50]](#footnote-50)

Ezekiel’s description of the exiled Jews in Babylon who fulfill the mitzvoth is particularly interesting (is of particular interest). Ezekiel is well aware of the question as to why one ought to keep mitzvoth outside the land of Israel, and to this purpose he responds that although the Israelites in Babylon are far from their land, God is yet close to them in their exile, and serves them as a little (diminished sanctity) sanctuary (Ezek. 11:14-16):

Then the word of the Lord came to me: “O mortal, [I will save] your brothers, your brothers, the men of your kindred, all of that very House of Israel to whom the inhabitants of Jerusalem say, ‘Keep far from the Lord; the land has been given as a heritage to us.’ Say then: Thus said the Lord God: I have indeed removed them far among the nations and have scattered them among the countries, and I have become to them a diminished sanctity in the countries whither they have gone.[[51]](#footnote-51)

The dilemma as to whether God’s orders are confined to the land of Israel alone, or whether they accompany an individual upon leaving it, is, in a sense, the axis of the Book of Jonah. Throughout the story Jonah discovers that when he tries to escape to Tarshish and evade God’s command, it does not leave him, but rather accompanies him wherever he goes, even outside the land’s borders. [[52]](#footnote-52) Later on, in Second Temple literature, one finds evidence concerning fulfilling the mitzvoth abroad, as is evident in the writings of both Philo[[53]](#footnote-53) and Josephus. [[54]](#footnote-54) keeping mitzvoth. In Philo life outside the land of Israel involves keeping mitzvoth, [[55]](#footnote-55) which is evident as well from the works of Philo and Josephus.

Therefore, the very idea of fulfilling mitzvoth abroad is not an innovation of the Tannaim. Still, the Mishna does innovate two fundamental issues in this context. The first is the explicit categorical determination that the majority of mitzvoth apply whether in the land of Israel or abroad, with a minority applying in the land alone. Until the sages of the Mishna, there was not such a clear-cut categorical distinction. [[56]](#footnote-56)The second is the Tannaim’s exegetical work on verses that, at face value, instruct otherwise, that is, that all the mitzvoth are contingent upon the land.

The well-known source in this regard is the Mishna that distinguishes between two classes of mitzvoth (MKed. 1:9):

Every precept which especially applies to the soil of Israel is obligatory only within the land of Israel, but those which do not especially apply to that land are obligatory in and out of the land of Israel, except the precept of *orlah* and diverse kinds (*kilayim*). R. Eleazar said, "Also the prohibition to eat of the new corn." [[57]](#footnote-57)

There has been much scholarly discussion on the exceptions that appear at the end of the Mishna. It is the categorical innovation in the Mishna’s beginning, however, that is important for this study. This Mishna, which is considered early, [[58]](#footnote-58) differentiates between two groups of mitzvoth. The first class is mitzvoth contingent upon the land, which do not apply outside of it. The second group, described in the negative, are mitzvoth that are not contingent upon the land, and apply both in the land of Israel and outside of it. In parallel sources the second category is termed, “mitzvoth of the body” [[59]](#footnote-59) that is, mitzvoth tied to the individual himself, with no regard for his location. The Mishna does not specify which of the two categories is the principal one, however, it would seem that mitzvoth incumbent on the person (*mitzvot ha-guf*) mark the main class, and the mitzvoth contingent upon the land, the minor group. This line of thinking is supported by the Mishna, which opens with the first class, of mitzvoth not contingent upon the land, as it, apparently, is the primary category[[60]](#footnote-60). According to this Mishna, the criterion that distinguishes between mitzvoth that are contingent upon the land, and mitzvoth that are not contingent upon the land, is the content of the mitzvah. A mitzvah with a dominant component relating to (the) soil, such as separating tithes for the poor, will apply exclusively in the land of Israel. A mitzvah with no dominant component relating to (the) soil, such as putting on phylacteries (tefillin), will also apply abroad. [[61]](#footnote-61)

It is essential to address the significance of the sages’ innovation in creating the category of mitzvoth contingent upon the land. The innovation is not merely of a qualitative aspect, so while the Torah hinges all the mitzvoth on the land, the sages tie only a minority of mitzvoth to the land. Their innovation is of a qualitative nature. The Torah appends all the mitzvoth to the land of Israel, because of the Legislator’s affinity for it. The Sages, on the other hand, link mitzvoth to the land of Israel on the basis of their content. Therefore, only mitzvoth that are connected to the land, in terms of their content, are perceived as being contingent upon the land. In other words, while the Torah presents a territorial conception of the law, which applies to inhabitants of the land of Israel, the Sages present a universal theory of law, which is binding on all Jews, wherever they may be.

As Shemesh has demonstrated, in Tannaitic literature there is an alternate view, (according to) in which the distinction between mitzvoth that are dependent upon the land, and those that are not, is based on (the) Scripture’s language (rather than on the mitzvah’s content): Mitzvoth the Torah introduces with the phrase, “when you enter the land” are classified as contingent upon the land, while mitzvoth without such an introduction are classified as mitzvoth that are not contingent upon the land. [[62]](#footnote-62)Undoubtedly, the difference between the Mishna’s approach, and the view Shemesh reconstructed is substantial. Still, it is no less important to mind their common feature: The premise that most mitzvoth apply universally and are binding outside of the land of Israel, with the exception of a small group of mitzvoth that apply exclusively in the land of Israel.

As mentioned, this fundamental distinction is by no means self-evident, nor does it stem from a literal reading of Torah verses, rather it is a conceptual innovation of the Tannaim. Further still, it transcends distinctions between various Tannaitic academies, which were only divided over how precisely to define the group of mitzvoth contingent upon the land. The sages were well aware that the Torah verses allow for a different reading, in which *all* the mitzvoth, apply exclusively in the land of Israel. This is apparent from their exegetical struggle with such possible readings. In the Sifre’s commentary for Deut. 12:1 we find:

“These are the laws and rules that you must carefully observe in the land that the Lord, God of your fathers, is giving you to possess, as long as you live on earth.”

‘In the land’ – One might think that all the commandments are to be observed also outside the Land of Israel; hence Scripture specifies ’to do in the land’.

Again, one might think that all the commandments are to be observed only in the Land of Israel; hence Scripture goes on to say, ‘All the days that ye live upon the earth’. After extending, Scripture limits. We learn this from that which is said further in this matter. What is said further in the matter? ‘Ye shall surely destroy all the places’: Just as the prohibition of idolatry, a commandment incumbent upon the person and not dependent upon the land, is observed both in the Holy Land and outside of it, so also all other commandments incumbent upon the person and not dependent on the Holy Land, are to be observed both in the Holy Land and outside of it. On the other hand, those dependent on the Holy Land are to be observed only in that land, except ‘orlah’ and diverse kinds. R. Eliezer adds new crops. [[63]](#footnote-63)

This midrash is well aware that the primary meaning of the expression, “to fulfill in the land” which appears in the verse is fulfillment of the mitzvoth in the land of Israel specifically. The author of the midrash is ‘rescued’ from this conclusion by means of the verse’s ending, “[so long] as you are living on earth,” which he interprets as referring to the entire world. The apparent dualism found in the verse enables him to establish the distinction between two categories of mitzvoth, mitzvoth incumbent on the person and mitzvoth contingent upon the land. [[64]](#footnote-64)

Similar to this rabbinic exegesis, there are additional rabbinic commentaries (exegesis) that use interpretation to neutralize the meaning of verses indicating the mitzvoth apply in the land of Israel alone. For several mitzvoth in which the Torah specifies, “when you come into the land” there appears a format in the rabbinic exegesis which flips the verse’s meaning, so that entering the land becomes a reward for fulfilling the mitzvoth, rather than a condition for it. For instance, the mitzvah of sanctifying the first born opens with the words, “And when God will bring you into the land of the Canaanites,” (Ex. 13:11). The following is the Mekh. De-Rashbi’s commentary (exegesis) on the verse:

‘When’ – ‘When’ means immediately.

‘God will bring you’ – Keep the mitzvah at hand, as for its reward you will enter the land[[65]](#footnote-65)

In contrast with the verse’s literal meaning, which indicates this particular mitzvah applies upon entry into the land, according to the Mekhilta it applies immediately, in the desert, [[66]](#footnote-66) while entering the land is a reward for fulfilling it, and in any case, not a precondition for the mitzvah. In this manner, the midrash severs the dependence of the mitzvah on the land. [[67]](#footnote-67)

As we have seen, a close look at the Torah’s verses reveals that there are mitzvoth which include various features connecting them to the land of Israel. When the Tannaim wished to interpret these mitzvoth, they had to contend with those features, and reinterpret them. An illustration is found with the mitzvah to appoint judges and officers. The Torah commands, “You shall appoint magistrates and officials for your tribes, in all the settlements that the Lord your God is giving you, and they shall govern the people with due justice” (Deut. 16:18), meaning the mitzvah of establishing a legal system applies in the land of Israel. The sages, however, presume the duty to establish a legal system applies outside of the land as well, and therefore they interpret the verse in the following way:

[The mitzvah of] Sanhedrin applies in the land and outside of the land, as it is written ‘such will be your law of procedure throughout the ages in all your settlements’ – in the land and outside the land. Why then does it say ‘you shall appoint judges and magistrates at all your gates?’ Rather in the land of Israel they (courts) are established in each and every city and outside the land they are established for each district. [[68]](#footnote-68)

The Tosefta presumes that the duty to establish a legal system is not contingent upon on the land, rather it applies everywhere. [[69]](#footnote-69) At the same time, however, the Tosefta is keenly aware that when literally, the verse means otherwise, and ties the duty to appoint judges specifically to the land of Israel. It therefore interprets the tie as meaning that within the land of Israel judges must be appointed for each and every city, while outside of the land it is sufficient to appoint them for districts.

These characteristic interpretive moves express the sages’ bent to sever the connection between the majority of the mitzvoth with the land of Israel, and (d:to) transform them into mitzvoth that by their very nature apply everywhere. Still, at the sidelines of Tannaitic literature there are traces of secondary voices, that preserve the Torah’s orientation which hinges (d: the implementation of) the entire complex of mitzvoth on the land of Israel specifically. The best known among these secondary voices is the following midrash from the Sifre: [[70]](#footnote-70)

Another interpretation: ‘And ye shall perish quickly … therefore shall ye lay up these my words’: Even though I am about to exile you from the Land [of Israel] to a foreign land, you must continue to be marked there by the commandments, so that when you return they will not be new to you. A parable: A king of flesh and blood grew angry with his wife sent her back to her father’s house, saying to her, “Be sure to continue wearing your jewelry, so that whenever you return, it will not be new to you”. Thus, also the Holy One said to Israel, “My children, you must continue to be marked by the commandments, so that when you return they will not be new to you.” Hence, Jeremiah says ‘set thee up waymarker’ – that is to say, commandments by which Israel is marked.[[71]](#footnote-71)

While this midrash ultimately shares the prevailing view among the Tannaim, that mitzvoth do apply abroad as well, it lends their implementation an entirely different meaning. In the midrash’s explanation, the entire complex of the mitzvoth were indeed intended to apply in the land of Israel alone, while fulfilling them abroad is only post factum, to prevent them from being forgotten until the nation returns to its land. [[72]](#footnote-72) The midrash accomplishes this through a reading of the chain of verses describing first the exile (“you will quickly perish”) and next the mitzvoth (“impress these My words”), as expressing a special duty to fulfill mitzvoth in exile as well. [[73]](#footnote-73)

1. **Law, Theology, and Breaking the Limits of Spatial Boundaries**

The sages of the Mishna found it significant to establish that the majority of mitzvoth apply both in the land of Israel and outside of it. The sages were aware of the possibility of reading the Torah’s verses literally, as imparting the mitzvoth apply only in the land, and yet they prioritize the interpretation which renders mitzvoth binding even outside the land. [[74]](#footnote-74) Why? There is no doubt that part of their motivation stems from the fact that in their era many Jews were already scattered abroad through various exiles, and extending the scope of the mitzvoth’s application to include abroad, ensured their continued connection to the Jewish world. This is especially relevant in light of what we have seen previously that this orientation is not new, and is found already in Biblical works related to the period of the First Temple exile, such as Ezekiel, Daniel and Esther. However, I believe this explanation is insufficient. An analysis of the sources discussed above reveals that the Tannaitic endeavor to establish the category ‘mitzvot of the body’ which are independent of the land, stems from the inner Rabbinic discourse in the land of Israel, and should not to be contextualized as providing solutions for the spiritual needs of Jews abroad. [[75]](#footnote-75) Therefore, it is essential to understand the determination that mitzvoth apply both in the land of Israel and outside of it within the framework of the Tannaim’s inner conceptions of the meaning of the mitzvoth and of law.

The Tannaim’s stance certainly doesn’t not stem from want of recognizing the significance of the land, and its holiness. The sages recognized the land’s sanctity with regard to various laws, as in the following Mishna:

Ten are sanctified. The land of Israel sanctified among all lands. And what is its sanctity? One brings from it new produce, first fruits, and the two loaves which are not brought from any other land. [[76]](#footnote-76)

The sages also glorify the land, establishing that, “Living in the land of Israel is equivalent to all the mitzvoth in the Torah.” [[77]](#footnote-77) The sages, who value the land’s sanctity, find it relevant to particular mitzvoth that are connected with the land, but not to the entire system of mitzvoth. What then stands at the basis of the sages’ categorical determination that the majority of mitzvot are ‘mitzvot of the body’ and apply equally both in the land of Israel and outside of it? [[78]](#footnote-78) I suggest that in this regard theology and law are interwoven, and that the sages’ expansive conception of the law’s jurisdiction, as being devoid of spatial boundaries, is connected with their broader conception of God, as existing beyond borders of place. [[79]](#footnote-79)The sages’ perception of God as existing, categorically, beyond all boundaries of space is conspicuous in a particular appellation for God that develops in the Tannaitic era. Distinctive from what was customary until their time, the sages begin to refer to God as “The Place.” So, for example, of a person to be praised, one says, “May people like you become many, people who do the will of the Omnipresent in Israel,”[[80]](#footnote-80) and about a person to be admonished, “Evil before the Omnipresent.”[[81]](#footnote-81) This appellation is particularly characteristic of Tannaitic literature. [[82]](#footnote-82)

What is the meaning of referring to God as “The Place?” Seemingly, in its origin the appellation related to God as “God of the Place,” perhaps of the Temple. [[83]](#footnote-83) At a certain stage the appellation changed through metonymy from “God of the Place” to “The Place” itself. [[84]](#footnote-84) While initially the appellation “The Place” may have signified a dimension of intimate closeness to God, it seems, that with time it came to represent aspects of distance and transcendence. [[85]](#footnote-85) The following Tannaitic tradition explaining it is God Who defines the terms of space, and is neither defined, nor limited by it, is of particular importance for this study, “Rabbi Yossi ben Halafta said, how do we know whether God is the place of the world, or whether the world is His place? From what’s written, ‘See there is a place with me’ (Exod. 33:21) meaning God is the place of the world, and the world is not His place. The midrash articulates that God is not subject to spatial demarcations, rather exists beyond them. Later, the Amoraim tied this idea to God’s appellation, ‘The Place:’ “Rav Hunah said in the name of Rav Ami: Why do we call designate God as ‘Place?’ Since He is the place of the world.” [[86]](#footnote-86)

It is important to stress that the claim here is not merely that God exiles from the land together with the Israelites, to foreign lands, [[87]](#footnote-87)as we saw in Ezekiel (11:16), “I have become to them a diminished sanctity in the countries whither they have gone.” (NJPS) (Contra: Yet have I been to them as a little sanctuary in the countries where they are come.”JPS). The contention here is far more radical, and according to it, God exists beyond physical boundaries. To Baer, this abstract conception of God stems from the sages’ encounter with Hellenistic wisdom. [[88]](#footnote-88)Philo, for instance, interprets the verse, “He came upon a certain place” (Gen. 28:11): “God Himself is called a Place, by reason of His containing things, and being contained by nothing whatever, and being a place for all to flee into, and because He Himself the space which holds Him; for He is that which He Himself has occupied, and naught encloses Him but Himself. I, mark you, am not a place, but in a place; and each thing likewise that exists; for that which is contained is different from that which contains it, and the Deity, being contained by nothing, is of necessity Itself Its own place.”[[89]](#footnote-89)

It is possible that rise of this conception was due not only to the influence of Greek Wisdom, but also to the sages’ experience of God’s concealed countenance (God’s hidden face - *hester panim*) which colored their religious consciousness. If the Torah depicts a constant state of God’s revelation to the Israelites in the land, and concealment as a temporary punishment, [[90]](#footnote-90) the sages experience the concealment - the end of prophecy, [[91]](#footnote-91)the diminution in miracles, [[92]](#footnote-92) and the fading of the Temple - as the given state of their religious existence. As for instance, the following Tannaitic midrash illustrates:

Said R. Jonathan, “For three and a half years the Presence of God stayed on the mount of Olives, declaring thre time a day, saying, *Return wandering children, I shall heal your backslidings* (Jer. 3:22)[[93]](#footnote-93).

The continuous experience of God’s concealment, and absence of revelation in the land of Israel necessitated the formulation of an alternate religious enterprises, one which emphasized activities such as Torah study, [[94]](#footnote-94) and prayer. [[95]](#footnote-95) When God no longer actively reveals Himself in the land of Israel, His hidden and abstract presence throughout the world becomes intensified, and from this flows the alternate conception in which the individual stands in God’s presence in every place he is[[96]](#footnote-96) and is therefore bound to fulfill the mitzvoth outside of the land’s borders as well. In this regard I suggest a linkage between the development of the Tannaitic conception regarding God’s existence beyond spatial borders and their development of the doctrine that God’s mitzvoth are not limited to any given region, but rather apply both in the land of Israel and outside of it.

One of the implications of both the conceptions that God exists beyond confines of space, and that the obligation of mitzvoth applies wherever the individual resides, is that fulfilling the law and the mitzvoth becomes a personal affair of the individual, rather than a national or state law. The mitzvoth are no longer a feature of a political society, but (rather) are transformed into a matter of the life of the individual. This notion is reflected in the term used to designate the vast majority of mitzvoth, “mitzvoth of the body which accentuates the affinity between the mitzvoth and the individual. Even the expressions “between man and God,” and “between man and man” [[97]](#footnote-97) convey the mitzvoth as a duty of the individual. As such, they are not limited to any given place, but rather are binding on the individual wherever he may be.

Before concluding, it is important to distinguish between two aspects of the universality of mitzvoth in Tannaitic thought. The first aspect, which I dealt with throughout the course of this article, is the application of mitzvoth on the Jew wherever he is, whether in the land of Israel or outside of it. The second aspect is the application of several particular mitzvoth, the seven Noachide laws, on every human in every place. Here the universality is not merely geographical in nature, but personal. The second aspect of universality may be reminiscent, to a certain degree, of Natural Law. [[98]](#footnote-98)However, the first aspect dealt with throughout the course of the article, which characterizes the majority of mitzvoth certainly is not connected to the concept of Natural Law, as its universality does not stem from any relation between the mitzvoth and human nature, but from the dissemination of God, the Legislator, in every place.

Intuitively, is seems that the processes discussed over the course of this article – the transition from a territorial conception of mitzvot to their universal conception, and from a theological notion that stresses the active presence of God in the land to a notion of His presence existing beyond spatial borders – are connected to an addition process occurring in that period, the transition from a *Judean* identity, to the identity of a *Jew*.[[99]](#footnote-99)While the term *Judean* is land-state oriented, the term *Jew* is religion oriented. The parallelization, however, requires/demands further elaboration, which is beyond the scope of this study.

# V. Summary

While Torah law conveys a territorial conception, in which law applies within set geo-political borders, Rabbinic law reflects a universal conception, in which law is binding on every Jew, without boundaries of location, whether in the land of Israel or outside of it. While Torah law presumes that mitzvoth are “Law of the God of the Land,” a form of state law with political features, the sages advance the conception that mitzvoth are “mitzvoth incumbent on the person,” a matter “between man and God,” and “between man and man,” the duty of the individual who stands before his God. While the Torah’s territorial conception suits the religious experience of the active presence of God in the land of Israel (Divine revelation, God’s revealed face/countenance), the universal conception of Rabbinic law is adapted to an absence of God’s active presence in the land of Israel (Divine concealment, God’s hidden face), and of His covert presence in every place.

Often the transition from Biblical Law to Rabbinic Law is described as a move from law grounded in revelation and prophecy to a wisdom-based law. This depiction may lend the impression, that Rabbinic law is characterized by a narrowing, or ebbing of its religious character.[[100]](#footnote-100) The transition described in this article demonstrates that in certain aspects the opposite occurs, so that the sages’ more abstract theology, which perceives God as existing beyond spatial boundaries leads to a legal conception that is more religiously intense. According to the sages, Divine law knows no boundaries, and accompanies the individual to every place He dwells in (where God dwells, or where the individual goes? If latter, perhaps, ‘in every (which) place he resides.’)

1. M. CHERIF BASSIOUNI, *CRIMES AGAINST HUMANITY: HISTORICAL EVOLUTION AND CONTEMPORARY APPLICATION* 279 (2014). [↑](#footnote-ref-1)
2. Hugo Grotius (1583-1685) is a prominent figure in this context, as one of the foremost central developers of both the ideas of Natural Law and International Law. [↑](#footnote-ref-2)
3. M. Cherif Bassiouni, *Universal Jurisdiction for International Crimes: Historical Perspective and Contemporary Practice,* 42 VA. J. INT’L. L. 81, 97 (2001). See as well Eric Engle, *Universal Human Rights: A Generational History*, 12 Ann. Surv. Int'l & Comp. L. 219 (2006). Further on in the course of the article I will discuss the ideological differences between the two historical roots, and their implications. [↑](#footnote-ref-3)
4. This description is, to a certain extent, contrary to the general way in which some researcher describe the transition from Biblical law to Rabbinic law, see text accompanying note 47. [↑](#footnote-ref-4)
5. For a comprehensive analysis of the tension between the territorial and universal applications of the law in Jewish Law see Hila Ben Eliyahu, *The Legal Thought of Rabbi David Ibn Zimra*, PhD diss. The Hebrew University of Jerusalem (2013). [↑](#footnote-ref-5)
6. Needless to say, within the Biblical sphere the legal system is inclusive of all mitzvoth, without distinguishing (with no distinctions drawn) between ritual law, that is, between an individual and God (for instance, the mitzvah of Shabbat, or Passover), and social law, which is between man and man (for instance, the prohibition of encroachment, or the duty to appoint judges). See Moshe Greenberg, “Some Postulates of Biblical Criminal Law,” Yehezkel Kaufmann Jubilee Volume (1960) 18, 22. [↑](#footnote-ref-6)
7. See also JAN JOOSTEN, *PEOPLE AND LAND IN THE HOLINESS CODE: AN EXEGETICAL STUDY OF THE IDEATIONAL FRAMEWORK OF THE LAW IN LEVITICUS* *17-26* 13 (1996). [↑](#footnote-ref-7)
8. “When you enter the land of Canaan that I give you as a possession, and I inflict an eruptive plague upon a house in the land you possess,” (Lev. 14:34). [↑](#footnote-ref-8)
9. “When you reap the harvest of your land, you shall not reap all the way to the edges of your field, or gather the gleanings of your harvest,” (Lev. 19:9). See as well Lev. 23:22. [↑](#footnote-ref-9)
10. “When you enter the land and plant any tree for food, you shall regard its fruit as forbidden, etc.” (Lev. 19:23). [↑](#footnote-ref-10)
11. “When you enter the land that I am giving to you and you reap its harvest, etc.,” (Lev. 23:10). [↑](#footnote-ref-11)
12. “When you enter the land that I assign you, the land shall observe a Sabbath of the Lord,” (Lev. 25:2). [↑](#footnote-ref-12)
13. “When you enter the land that I am giving you to settle in,” (Num. 15:2). [↑](#footnote-ref-13)
14. “If, after you have entered the land that the Lord your God has assigned to you, and taken possession of it and settled in it, etc.,” (Deut. 17:14). [↑](#footnote-ref-14)
15. “When you enter the land that the Lord your God is giving you as a heritage, and you possess it and settle in it,” (Deut. 26:1). [↑](#footnote-ref-15)
16. However, theoretically it is possible to interpret that these mitzvoth come into effect when the Israelites enter the land, and remain in effect even if they are exiled (see SHMUEL SAFRAI, *IN TIMES OF TEMPLE AND MISHNA: STUDIES IN JEWISH HISTORY* 628 (1982). Yet, this interpretation is less likely in light of the overall context of the verses, as explained later on. [↑](#footnote-ref-16)
17. ZE-EV SAFRAI, *SEEKING OUT THE LAND: THE LAND OF ISRAEL TRADITIONS IN ANCIENT JEWISH, CHRISTIAN AND SAMARATIN LITERATURE (200 BCE – 400 CE)* 94 (2018). [↑](#footnote-ref-17)
18. In Deut. 5:16 as well. [↑](#footnote-ref-18)
19. Indeed, these verses appear following a warning that should the Israelites fail to fulfill the commandments, they will be exiled from the land, “Take care not to be lured away to serve other gods and bow to them. For the Lord’s anger will flare up against you, and He will shut up the skies so that there will be no rain and the ground will not yield its produce; and you will soon perish from the good land that the Lord is assigning to you,” (Deut. 11:16-17). One might argue that here the Torah commands (the nation/Israelites) to keep the *mitzvot* (while) in exile. However, understood literally, the verses that follow the warning signify that the Israelites must fulfill the mitzvoth while in Israel so that they won’t be exiled (and not that they are to keep the mitzvoth after being exiled from the land). For the Rabbinic interpretation of these verses see note 71. See also Aharon Shemesh, *The Term Mitzvah ha-Teluyah ba-Aretz* 16 SIDRA: A JOURNAL FOR THE STUDY OF RABBINIC LITERATURE 166 n. 37 (2000). [↑](#footnote-ref-19)
20. Here too it is possible to theorize that the duty to fulfill these mitzvoth applies outside of Israel as well, though the reward for their satisfaction occurs in Israel alone. However, intuitively it seems the precise reward for fulfilling the mitzvoth bears evidence of their connection with the land. [↑](#footnote-ref-20)
21. See Philo’s third reason for the delivery of the Torah in the desert rather than in the land, “Moses did not think it good that they should just take their portions and settle in cities and then go in quest of laws to regulate their civic life, but rather should first provide themselves with the rules for that life and gain practice in all that would surely enable the communities to steer their course in safety, and then settle down to follow from the first the principles of justice lying ready for their use, in harmony and fellowship of spirit and render to every man his due,” Special Laws, The Decalogue §14 (*PHILO WITH AN ENGLISH TRANSLATION* vol. 7 11-13 (trans. F.H. Colson 1929-1962).

    The choice of Mount Sinai might bear additional meanings, such as being a desert which is a neutral place, ‘No Man’s Land.’ See JON LEVINSON, *SINAI AND ZION: AN ENTRY INTO THE JEWISH BIBLE* 19 (1985).

    As for the meaning the Sages attribute to the delivery of the Torah at Sinai, see note 61. [↑](#footnote-ref-21)
22. Ex. 21:13; Num. 35; Deut. 4:41-43. [↑](#footnote-ref-22)
23. On the issue of whether this prohibition applies to all animals generally, or whether it is particular to animals intended for sacrifice see JACOB MILGROM, *LEVITICUS 17:22: A NEW TRANSLATION WITH INTRODUCTION AND COMMENTARY* 1879 (2000). [↑](#footnote-ref-23)
24. For example, “It shall be a Sabbath of the Lord throughout your dwelling,” (Lev. 23:3). See as well, Ex. 12:20; Ex. 35:3; Lev. 3:17; Lev. 7:26; Lev. 23:14; Lev. 23:17; Lev. 23:21; Lev. 23:31; Num. 35:29. [↑](#footnote-ref-24)
25. For more on this point, and on the difference between the expressions, “in all your dwellings” and “in (at) your gates” see MOSHE WEINFELD, *DEUTERONOMY AND THE DEUTERNOMIC SCHOOL*, 229 n.2 (1992). The sages, on the other hand, expound (construe), “‘In all your dwellings:’ In the land and outside of it,” (Sifra Emor, Parasha 10, chap. 11:11). The sages’ approach will be discussed in detail further on. [↑](#footnote-ref-25)
26. For example, “You shall faithfully observe all My laws and all My regulations, lest the land to which I bring you to settle in spew you out,” (Lev. 20:22). [↑](#footnote-ref-26)
27. And as well, “The Lord will scatter you among all the peoples from one end of the earth to the other, and there you shall serve other gods, wood and stone, whom neither you nor your ancestors have experienced,” (Deut. 28: 64). [↑](#footnote-ref-27)
28. This description is particularly conspicuous when David tells Saul that the exile imposed on him means leaving God’s estate, which entails a transition to idolatry, “For they have driven me out today, so that I cannot have a share in the Lord’s possession, but am told, ‘Go and worship other gods,’” (1 Sam. 26:19). On this Kaufmann wrote, “This service [of foreign gods in exile] is a religious punishment, a ruthless expulsion from the realm of God’s sanctity,” (YEHEZKEL KAUFMANN, *THE RELIGION OF ISRAEL FROM ITS BEGINNINGS TO THE BABYLONIAN EXILE* 129 (trans. Moshe Greenberg 1960). [↑](#footnote-ref-28)
29. Compare Shemesh, 165. As we will see shortly, also the Sifre was clearly aware of this interpretive possibility when he wonders, “Again, one might think that all the commandments are to be observed only in the Land of Israel; hence scripture goes on to say., etc.” *SIFRE: A TANNAITIC COMMENTARY ON THE BOOK OF DEUTERONOMY* 114-115 (trans. Reuven Hammer 1986). Therefore, it is difficult to accept Shmuel Sifrai’s contention that, “In Moses’ Torah only few mitzvoth are expressly connected with the land of Israel,” and all the more so Ze-ev Safrai’s perspective, according to which, “In the Bible itself there is no restriction of certain commandments to the Land of Israel,” *SEEKING OUT*, 86. [↑](#footnote-ref-29)
30. See as well Deut. 16:20, “Justice, justice shall you pursue, that you may thrive and occupy the land that the Lord your God is giving you.” [↑](#footnote-ref-30)
31. This if the words “that are in your land” are understood as applying broadly to the prohibition of oppressing workers. However, is possible to interpret the words as relating to “the foreigner” alone, limiting only the prohibition protecting the foreign worker to the land of Israel. The Tosafists were sensitive to the interpretive option that the command is qualified to the borders of Israel, and therefore comment on the words “in your land:” “And we do not implement them [the words] to exclude outside of the land, as it [the mitzvah] is a mitzvah incumbent on the person (*hovat guf*) and not contingent upon the land (*hovat ha-aretz*),” (Tosfot BM 111b, ‘All that are in your land’). [↑](#footnote-ref-31)
32. For instance, “Look down from Your holy abode, from heaven, and bless Your people Israel and the soil You have given us, a land flowing with milk and honey, as You swore to our fathers,” (Deut. 26:15). For an elaborated/detailed discussion see MOSHE WEINFELD, *DEUTERONOMY AND THE DEUTERONOMIC SCHOOL* 191(1992). [↑](#footnote-ref-32)
33. For example, “And let them make Me a sanctuary that I may dwell among them,” (Ex. 25:8); “I will establish My abode in your midst,” (Lev. 26:11). [↑](#footnote-ref-33)
34. “At the place where the Lord your God will choose to establish His name,” (Deut. 16:11). And similarly, Deut. 12:11; Deut. 14:23; Deut. 16:2; Deut. 16:6; Deut. 26:2. [↑](#footnote-ref-34)
35. "Observe them faithfully, for that will be proof of your wisdom and discernment to other peoples, who on hearing of all these laws will say, “Surely, that great nation is a wise and discerning people,” (Deut. 4:6). [↑](#footnote-ref-35)
36. The Torah’s territorial conception of law involves an additional element that I will only mention here briefly. One of the implications of the Torah’s notion that its law applies territorially is that it is binding not only on Israelites, but, to a certain extent, on the land’s other inhabitants as well. The scope of the mitzvoth’s application to Gentiles living in the land is not identical among the Pentateuch’s books. See Moshe Weinfeld, “The Turning Point in the Conception of Divinity and Ritual in Deuteronomy,” 30 *TARBIZ* 1, 8 (1961); Moshe Weinfeld, *Nochri, THE BIBLICAL ENCYCLOPAEDIA* (Heb.) 5 866-867 (1965). [↑](#footnote-ref-36)
37. See Safrai, *SEEKING OUT* 116, who considers that a monotheistic conception necessitates a universal theory of law, as a territorial theory of law stems from a pagan notion. [↑](#footnote-ref-37)
38. Compare as well God’s promise to Jacob, “Remember, I am with you: I will protect you wherever you go and will bring you back to this land. I will not leave you until I have done what I have promised you,”

    (Gen. 28:15). [↑](#footnote-ref-38)
39. See the distinction Kaufmann draws between the universalism of God’s (the Deity’s) sovereignty and the universalism of God’s grace, “Since monotheism asserts that there is but one creator and ruler of the universe, it is perforce universalistic…But there is no inner necessity that compels it to distribute the favor of the one God equally among all men… The distinction discussed above between holy and impure land is the territorial counterpart of this division (*THE RELIGION OF ISRAEL* 128). Thus, while YHWH governs and manifests his activity everywhere – in Sodom, Shinar, Egypt, Nineveh and Tarshish – the area of his sanctity is restricted to the boundaries of the land of Israel…The early cult is entirely restricted to the sanctified territory of Israel,”*,* 127-128.

    See Remi Brague as well, “The god of Israel is not the god of the land of Canaan, and that land is not the land of god in the sense that the god is “part of the landscape” as the Greek gods are “the gods of Greece”, as Schiller put it. YHWH is a “floating” god who settles in a territory with his people,” *THE LAW OF GOD: THE PHILOSOPHICAL HISTORY OF AN IDEA* 59 (2007). [↑](#footnote-ref-39)
40. See Joosten, *PEOPLE AND LAND* 147. [↑](#footnote-ref-40)
41. A similar rationale appears in Deuteronomy, in the context of the prohibition for a husband to readmit his ex-wife after she has been with another man, “Then the first husband who divorced her shall not take her to wife again, since she has been defiled—for that would be abhorrent to the Lord. You must not bring sin upon the land that the Lord your God is giving you as a heritage,” (Deut. 24:4). However, Deuteronomy does not warn not to ‘defile’(contaminate) the land, but rather not to “bring sin upon the land,” a focus typical of Deuteronomy’s abstract theology. [↑](#footnote-ref-41)
42. See JON LEVENSON, *SINAI AND ZION: AN ENTRY INTO THE JEWISH BIBLE* 42 (1985); CHRISITNE HAYES, *WHAT’S DIVINE ABOUT DIVINE LAW? EARLY PERSPECTIVES* 42 (2015). [↑](#footnote-ref-42)
43. Brague, *THE LAW OF GOD* 58 (2007). [↑](#footnote-ref-43)
44. It is worth considering/examining the narrative of Na-aman’s leprosy in this context (2 Kings 5), which raises the question of the linkage between worship of God and territory. On this see Nili Wazanam, *Ahaz and the Altar from Damascus (2 Kings 16:10-16): Literary, Theological, and Historical-Political Considerations,* *IN SEARCH FOR ARAM AND ISRAEL: POLITICS, CULTURE AND IDENTITY* 379, 386 (Omer Sergu et al. eds. 2016). [↑](#footnote-ref-44)
45. *JEWISH ANTIQUITES: BOOK FOUR* §292 617 (trans. and eds. T.E. Page et al. 1930). In §196 Josephus also refers to the mitzvoth as a ‘constitution,’ 569. [↑](#footnote-ref-45)
46. Kaufmann, *RELIGION OF ISRAEL* 128. See Joosten as well, *PEOPLE AND LAND* 1*.*  [↑](#footnote-ref-46)
47. For the complete picture, it is important to address the following exception. The few mitzvoth that appear in the opening chapters of Genesis are not limited to a particular region, rather they are intended to apply throughout the entire world. For instance, when God commands Noah and his sons, “Whoever sheds the blood of man, by man shall his blood be shed, for in His image did God make man,” (Gen. 9:6) it is evident from the context that this mitzvah is universal. Truly, there is no reason to ascribe these verses to a stance that is incompatible with the territorial approach that pervades the rest of the Torah, as these mitzvoth are given to humanity as a whole, before the Israelite nation came into being. [↑](#footnote-ref-47)
48. Safrai, *SEEKING OUT THE LAND* 92. Also see Shmuel Safrai *IN TIMES OF TEMPLE AND MISHNA*, vol. 2 628. [↑](#footnote-ref-48)
49. The word ‘*dat*’ here serves in its capacity of meaning “law.” See Avraham Melamed, *Dat: From Law to Religion, the Transformation of a Formative Term” in Law as Religion, Religion as Law* (forthcoming). [↑](#footnote-ref-49)
50. Therefore, one cannot reasonably accept Ze-ev Safrai’s claim, “Needless to say, there is no practical evidence in the Bible of the observance or non-observance of the commandments outside the Land,” *SEEKING OUT THE LAND* 86. [↑](#footnote-ref-50)
51. The relation between mitzvoth and the land in the Book of Ezekiel requires further consideration (see for example Ezek. 20), which is beyond the scope of this article. [↑](#footnote-ref-51)
52. See YAIR ZAKOVITCH and AVIGDOR SHINAN, *SEFER YONAH: PERUSH YISRAELI HADASH* 28 (2015).

    “In light of the author’s belief in the cosmic dominion of YHWH this can only mean that Jonah flees, not to the land where other gods rule, but away from the area of divine revelation. He hopes that in the land of the nations the hand of YHWH will not come upon him, and thus he will be freed of his task. Again, there are two realms: that of “the presence of YHWH” and that of the idol worshipers…The worship of YHWH, God of the world, is for this monotheistic writer the heritage of Israel only, and can be performed only in its proper place – the land of Israel, (Kaufmann, *RELIGION OF ISRAEL,* 128-129). [↑](#footnote-ref-52)
53. See SAFRAI, *SEEKING OUT THE LAND* 87, and W.D. DAVIES, *THE GOSPEL AND THE LAND: EARLY CHRISTIANTIY AND JEWISH TERRITORIAL DOCTRINE* 121 (1974); ISAIAH M. GAFNI, *LAND, CENTER AND DIASPORA: JEWISH CONSTRUCTS IN LATE ANTIQUITY* 29 (1997); Isaac Heinemann, *The Relationship between the Jewish People and Their Land in Hellenistic-Jewish Literature*, 14 ZION 1 (1948). For further discussion on the land of Israel’s status in Philo see, Betsy Halpern Amaru, *Land Theology in Philo and Josephus* 65 *THE LAND OF ISRAEL: JEWISH PERSPECTIVES* (ed. Lawrence Hoffman 1986). Michael Avioz, “Josephus’ Land Theology: A Reappraisal,” *GIFT OF THE LAND AND THE FATE OF THE CAANANITES IN JEWISH THOUGHT* 36-49 (Katell Berthelot et al. eds., 2014). [↑](#footnote-ref-53)
54. For an illustration see *ANTIQUITIES OF THE JEWS BOOK FOURTEEN* §245 579-581 (transl. Ralph Marcus 1943). There, Josephus describes the practice of Jews abroad “to observe their Sabbaths, perform their native rites or manage their produce in accordance with their custom.” The approach of sectarian writings to the relationship between the mitzvoth and the land of Israel is not fully clear, and warrants its own discussion. On one hand, there is hardly any direct mention of the dependence of particular mitzvoth on the land (Safrai, *SEEKING OUT THE LAND*, 90). An exception is a brief reference to fruit of young trees (*orlah*) in *MIQSAT MA-ASSE HA-TORAH* (B: 62-62), “And concerning [the fruits of] the trees for food planted in the Land of Israel: they are to be dealt with like first fruits belonging to the priests.” On the other hand, there are sources that allude to an affinity with the land. For instance, in The Temple Scroll, “and you shall not set up a pillar [which I hate, and a fi]gured sto[ne] you shall [no]t make in all your land to [b]ow down to it. And you shall not sacrifice to me an ox or a sheep,” Column 52 lines 2-4, (*THE TEMPLE SCROLL* 2 232 (ed. and trans. Yigal Yadin 1983); “If there is found among you, within any of your towns which I give you, a man or woman who does evil in my sight, in transgressing my covenant, and has gone and served other gods and worshipped them, or the sun or the moon, or any of the host of heaven,” (Column 55 lines 15-18, *ibid* 249); “When you come into the land which I give you, you shall not learn to follow the abominable practices of those nations. There shall not be found among you any one who burns his son or his daughter, as an offering, anyone who practices divination, a soothsayer, or an augur, or a sorcerer, or a charmer, or a medium, or wizards or a necromancer. For they are an abomination to me, all who do these; and because of these abominable practices I am driving them out before you,” Column 70 lines 16-20 (*ibid* 413-415).

    The name of the composition known as “The Damascus Covenant” evidently raises the question as to whether it implies the view that mitzvoth are to be fulfilled outside the land. “Damascus,” however, seems to be an appellation for Qumran, See Lawrence Schiffman, *The Damascus Covenant and the Scroll of Regulations* (Heb.) *MEGILOT KUMRAN: MEVO-OT U-MEHKARIM* 275, 279 (Menahem Kister et al eds., 2009), following, Robert North, *The Damascus of Qumran Geography*, 87 PALESTINE EXPLORATION QUARTERLY 34 (1955). [↑](#footnote-ref-54)
55. [↑](#footnote-ref-55)
56. Compare with Safrai, *SEEKING OUT THE LAND* 92. [↑](#footnote-ref-56)
57. MKed. 1:9 according to the Kaufman manuscript.

    THIS IS THE TRANSLATION YEDIDA INCLUDED FOR THE MANUSCRIPT/MISHNAH (*Eighteen Treatises from the Mishna*, by D. A. Sola and M. J. Raphall, [1843], at sacred-texts.com) [↑](#footnote-ref-57)
58. J.N. EPSTEIN, *INTRODUCTIONS TO TANNAITTIC LITERATURE: MISHNA, TOSEFTA AND HALAKHIC MIDRASH* (Heb.) 52 (1957). For an alternate view see S. Safrai, *IN TIMES OF TEMPLE AND MISHNA* vol. 2 628. [↑](#footnote-ref-58)
59. Sifre Devarim Piska 44, 97 (*SIFRE: A TANNAITIC COMMENTARY*), “The sole similarity between them [tefillin and Torah study] is that they are both commandments incumbent upon the person and not dependent upon the Land (of Israel), and must be performed both in the Land (of Israel) and outside of it.” And as well, Sifre Devarim, 59, “Just as the prohibition of idolatry, a commandment incumbent upon the person and not dependent on the land, is observed both in the Holy Land and outside of it, so also all other commandments incumbent upon the person and not dependent on the Holy Land, are to be observed both in the Holy Land and outside of it,” 115 (*SIFRE: A TANNAITIC COMMENTARY*). [↑](#footnote-ref-59)
60. The opposite order is found in the printed editions of the Mishna, which open with mitzvoth contingent upon the land, and conclude with mitzvoth that are not contingent upon the land. The order appearing in the Kaufman manuscript is supported by other manuscripts of the Mishna, (see Shemesh 151 n. 1). [↑](#footnote-ref-60)
61. Applying this criterion is not always easy, and self-evident. For instance, it is accepted to classify the mitzvah of fixing a mezuzah to a doorpost as a mitzvah that is not contingent upon the land, and applies abroad as well. Yet it is unclear why a house is not viewed as an object connected to land, and assigned to the category of mitzvoth contingent upon the land (like the mitzvah regarding leprosy of the home). See Safrai on this point as well, *SEEKING OUT THE LAND* 95. [↑](#footnote-ref-61)
62. Shemesh 155. See also, *HIDUSHEI HA-RITZAD*, vol. 2 Jerusalem 190 (1983). This dualism later reveals itself in the Bavli (Ked. 37a), which presents two possibilities for distinguishing between mitzvoth that are contingent upon the land, and those that are not. In the first possibility, “a contingent (mitzvah) mentions entry [into the land], and one that is not contingent does not mention entry [into the land].” According to the second possibility, a contingent mitzvah is a “duty dependent on the land,” while one not contingent on the land is a “duty incumbent on the person.”

    Yet even the distinction made on the basis of the Torah’s language is not devoid of ambiguity. There are mitzvoth that mention the phrase “when you enter the land,” and yet it was clear to the sages that they aren’t contingent upon the land (see BKed. 37a, “*Tefillin* (phylacteries) and first-born animals in which “entering” is written, are customary whether in the land or abroad,”). While other mitzvoth don’t mention the phrase “when you enter the land” and yet it was apparent to the sages that they are contingent upon the land (see Tosfot Ked. 37a, ‘*Harei*:’ “And yet diverse kinds[in which] “entering” is not written, we still find in the Mishna it is contingent on the land,”). Another example involves tithes (Deut. 14:22), “You shall set aside every year a tenth part of all the yield of your sowing that is brought from the field,” and still the sages of the Midrash Tannaim expounded, “‘You shall set aside a tenth part,’ [lit. “tithe you shall tithe”] to include the produce of gentiles, or [to impart] it applies abroad as well. We say, “all tithes from the land,” (Lev. 27:30), Scripture came and hinged all tithes on the land.” See Safrai on this point as well, *SEEKING OUT* 95. [↑](#footnote-ref-62)
63. Sifre, Piska 59 114-115 (*SIFRE: A TANNAITIC COMMENTARY*). [↑](#footnote-ref-63)
64. A similar midrash appears in the Yerushalmi (PT chap. 1 hal. 9, 71c), however in it the principle that the majority of mitzvoth apply abroad is anchored in the circumstance (matter) that after Deuteronomy 11 describes the exile (“The Lord’s anger will flare up against you…and you will soon perish from the good land”) it follows with the mitzvah of applying tefillin. For the significance of this derash see note 51. [↑](#footnote-ref-64)
65. Translated from *MEK. DE-RASHBI* 42 (Epstein-Melamed eds.). [↑](#footnote-ref-65)
66. On this Shemesh writes (appendix, 177), “‘Immediately’ is not at the time of the command (that is, in the desert), rather immediately with the nation’s entry into the land.” However, Menahem Kahana’s determination seems more reasonable, “‘Immediately’ means now - in the desert,” 306 *Prefaces for a New Publication of Sifre Ba-Midbar*, PhD diss. The Hebrew University of Jerusalem (1981). See Kahana’s theory about a possible political context for this derash, and others similar to it (Kahana, “‘When you will enter the land:’ The Tannaim’s Dispute and a Viable Compromise,” (Heb.) 81 *TARBITZ*  143 (2010). [↑](#footnote-ref-66)
67. This format appears over ten times in the midrashim of R’Akivah’s academy (Mekh. De-Rashbi, Sifri Zuta, and Sifri Devarim): Passover (Mekh. De Rashbi 13, 5 Epstein-Melamed 38); First-born animals (*ibid* 13, 11 42); Appointment of Kings (Sifre Devarim 156, Finkelstein 208); The Prohibition of Soothsaying and Magic (Sifre Devarim 170 Finkelstein 217); Sheltered Cities (Sifre Devarim 184 Finkelstein 225); First fruits (Sifre Devarim 297 Finkelstein 36). Some of the midrashim include a different variation, “Take upon yourself [the mitzvah] even before you enter the land…as for its merit you will enter the land.” This variation appears for the issues of libations (Sifre Zuta 9 Horowitz edition 280); Separating Hallah (Sifre Zutah 9, Horowitz edit. 283); Sheltered Cities (Sifre Zutah 35, Horowitz edit. 331); Blessings and Curses on Mount Gerizim and Mount Eival (Sifre Devarim 55 122). Parallel interpretations are not found in Torat Cohanim on the series of “when you enter the land” verses: Leprosy of the Home (14: 34); Fruit of young trees(19:23); New Crops (23:10); Sabbatical Year (25:2). Instead, the midrash there actually stresses the connection to the land: “‘When you enter,’ perhaps when they enter the Jordan valley? For this Scripture says, ‘to the special land.’ Perhaps from when they entered Ammon and Moab? For this Scripture says, ‘which He gave to you,’ to you and not Ammon and Moab.” The difference in the type of drasha applied stems from the difference between mitzvoth that are contingent on the land and those that are incumbent on the person. For a comprehensive discussion see Shemesh 162. [↑](#footnote-ref-67)
68. TSan. 3:10. See as well Midrash Tanna-im for Deut. 16:18, (Yerushalmi) PT Macc. 1:8. [↑](#footnote-ref-68)
69. To this must be added the sages’ interpretation of the expression “in all your dwellings” as relating to any place Jews reside, whether in the land or outside of it. See note 25. [↑](#footnote-ref-69)
70. Sifre Devarim, Ekev, par. 43. See also EYAL BEN ELIYAHU, *BETWEEN BORDERS: THE BOUNDARIES OF ERETZ-ISRAEL IN THE CONSCIOUSNESS OF THE JEWISH PEOPLE IN THE TIME OF THE SECOND TEMPLE AND IN THE MISHNAH AND TALMUD PERIOD* 154 (2013). The Midrash on the verse, “Erect markers” appears several additional times in Rabbinic literature, however reviewing them is beyond the scope of this article. [↑](#footnote-ref-70)
71. *SIFRE: A TANNAITIC COMMENTARY* 114-115. [↑](#footnote-ref-71)
72. This midrash circulated later as well through many commentators, the famous among them being Nahmanides, who used the midrash to build a complete and comprehensive ideological approach (see Nahmanides’ commentaries on: Gen. 24:3; Gen. 26:5; Lev. 18:25; Deut. 4:5; Deut. 11:18; Deut. 31:16; Derasha for Rosh ha-Shanna, p. 250. For a survey see Aviezer Ravitzky, “‘Erect markers:’ The Circulation of an Idea,” *THE LAND OF ISRAEL IN JEWISH CONTEMPLATION OF THE MEDEIVAL AGES* 1(eds. Aviezer Ravitzky et al. 1991). [↑](#footnote-ref-72)
73. This is by no means the necessary interpretation of the verses, since, at face value, their intent is to warn the Israelites not to breach the mitzvoth otherwise they will be exiled from the land, and therefore they are commanded to keep the mitzvoth **in order** not to be exiled: “Take care not to be lured away to serve other gods and bow to them. For the Lord’s anger will flare up against you, and He will shut up the skies so that there will be no rain and the ground will not yield its produce; and you will soon perish from the good land that the Lord is assigning to you. Therefore impress these My words upon your very heart: bind them as a sign on your hand and let them serve as a -symbol on your forehead, and teach them to your children—reciting them when you stay at home and when you are away, when you lie down and when you get up; and inscribe them on the doorposts of your house and on your gates— to the end that you and your children may endure, in the land that the Lord swore to your fathers to assign to them, as long as there is a heaven over the earth,” (Deut. 11:16-21). [↑](#footnote-ref-73)
74. In this article, I claim that the Sages innovated the category ‘mitzvoth incumbent on the person’ which are binding on a Jew universally, outside of the land as well, in contrast with Biblical law which conceives of the mitzvoth as territorial. The other aspect of this claim is that the sages exempted the gentiles altogether from keeping mitzvoth (apart from the seven Noahide laws, which I will discuss further on). Compare, ADI OPHIR and ISHAY ROZEN-ZVI, *GOY: ISRAEL’S OTHER AND THE BIRTH OF THE GENTILE* (2018). [↑](#footnote-ref-74)
75. The Sages certainly relate to the wish of Jews abroad to participate in fulfilling mitzvoth. See for example M Hal. 4:10-11. Nonetheless, it is difficult to see this as the key component of their determination that the majority of mitzvoth are binding both in the land or outside of it. [↑](#footnote-ref-75)
76. M Kil. 1:6. For the Sages’ awareness of the “impurity of gentile lands” see, for instance, Tosefta Parah 3:5. On this point see Safrai, *SEEKING OUT THE LAND* 79. [↑](#footnote-ref-76)
77. Sifre Devarim Parashat Re-eh, Parasha 80. See Kahana, *The Virtue of Residing in the Land of Israel in Sifri Devarim,* 62 TARBITZ 4 501 (1992). [↑](#footnote-ref-77)
78. Needless to say, the Sages’ very bent to classify mitzvoth into various categories (mitzvoth between man and God contra mitzvoth between man and man; positive commands contra prohibitions; monetary law contra capital law) is not sufficient to explain their choice to establish a distinction between mitzvot contingent upon the land, and mitzvoth incumbent on the person especially when this distinction veers from the literal meaning of Torah verses. [↑](#footnote-ref-78)
79. My argument is not of causal relations between theology and law, rather of a correlation between the two. I do not claim that the abstract conception of a God existing beyond spatial borders gave rise to the legal concept of universal law, nor that the legal conception gave rise to the theological understanding. My more modest claim is that the theological and legal conceptions correspond to one another. [↑](#footnote-ref-79)
80. Tosefta Nazir 4:7. *THE TOSEFTA* vol. 1 823 (trans. Jacob Neusner, 2002). [↑](#footnote-ref-80)
81. M Eduyot 5:6. [↑](#footnote-ref-81)
82. As we will see further on, it is found as well in Philo’s writings. [↑](#footnote-ref-82)
83. NAFTALI HERZ TUR-SINAI, *HA-LASHON VE-HA-SEFER: BA-AYOT YESSOD BE-MADA HA-LASHON U-BE-MEKOROTEHA HA-SAFRUTIYIM* (2nd ed.) vol. 1 337 (1957). [↑](#footnote-ref-83)
84. In similarity to God’s appellation “The Heavens” (for instance Tosefta Sotah 5:12 (Lieberman ed.), “One who says to her husband, “The Heavens are between you and I”), a metonymy for “God of the Heavens.” [↑](#footnote-ref-84)
85. In Urbach’s view, “Just as ‘Heaven’ is a metonym for ‘the God of heaven,’ so is also *Makom*, [literally, ‘Place’] used metonymically and refers to the god who reveals Himself in whatever place He wishes; this epithet thus expresses God’s nearness…in all the accounts of the reciprocal realtions between Israel and God and in the dialogues between God and individuals or the people of Israel, the dominant epithet is ‘Omnipresent,’ even as ‘Heaven’ expresses God’s farness and withdrawal from man,” EPHRAIM ELIMELECH URBACH, *THE SAGES: THEIR CONCEPTS AND BELIEFS,* 72 (trans. Israel Abrahams 1987). By contrast, to Baer, “‘Place’ as a name for God means a place beyond the senses, inclusive of all existence in the world above,” (Yitzhak Baer, *Exploring the Doctrine of the End of Days*, (Heb.) 23-24 ZION 3, 3 (1958). [↑](#footnote-ref-85)
86. Gen. Rabbah 68:8. A similar tradition ascribed to the Tanna R’Hananya ben Akashya appears in the Yerushalmi. See Shlomo Weider, *A Segment from the Yerushalmi from the Budapest Genizah*, (Heb.) 17 TARBITZ 129, 135 (1945); Shaul Lieberman, *Corrections to the Yerushalmi*, (Heb.) 5 TARBITZ 97, 109 (1933); SHAUL LIEBERMAN, *THE YERUSALMI’S LAWS TO MAIMONIDES* (Heb.) 67 (1947). Needless to say, for the current study it is unimportant that this explanation does not reflect the original meaning of the appellation “The Place” when it was created, rather it reflects the sages’ perspective while acquainted with the appellation in its broader use. [↑](#footnote-ref-86)
87. See, for instance, Mek. De RY, Bo-Masechta de-Pisha, Chap. 14: “To every place Israel has been exiled, the Divine Presence (Spirit) has exiled with them.” [↑](#footnote-ref-87)
88. Baer, *Exploring the Doctrine of the End of Days,* 34, “One may say the term “Place” was conceived as an appellation for God when our ancients (the Sages) first encountered Hellenistic wisdom. This appellation marks one of the first signs of contact between Israel’s religious intuition with the Western abstract method of thinking.” [↑](#footnote-ref-88)
89. On Dreams: Book One §63-64, *PHILO IN ELEVEN VOLUMES* vol. 5 329 (trans. F.H. Colson & G.H. Whitaker 1934). See Philo as well On Flight and Finding §75, “For here He uses the word “place,” not a space entirely filled by a body, but symbolically of God Himself, since He contains and is not contained, and because He is the Refuge for the whole universe,” 51 (*ibid*). [↑](#footnote-ref-89)
90. As in Deut. 31:17-18, “Then My anger will flare up against them, and I will abandon them and hide My countenance from them…Yet I will keep My countenance hidden on that day.” [↑](#footnote-ref-90)
91. See Urbach, *When Did Prophecy End?* (Heb.) *FROM THE WORLD OF THE SAGES: COLLECTED STUDIES* 9 (1987). [↑](#footnote-ref-91)
92. On the tendency of diminishing miracles in the sages’ world see Urbach, ‘Magic and Miracles,’ in *THE SAGES: THEIR CONCEPTS AND BELIEFS* 97, 103. See 114-15 for Urbach’s discussion on “the rationalization that served the aim to restrict miraculous acts in the present.” [↑](#footnote-ref-92)
93. *PESIQTA DE RAB KAHANA* Pisqa 13 12, 3a vol. 1 229 (trans. Jacob Neusner, 1987). For an elaboration see Urbach, ‘*Shehina*-The Presence of God in the World,’ in *THE SAGES: THEIR CONCEPTS AND BELIEFS* 37, 54. [↑](#footnote-ref-93)
94. MOSHE HALBERTAL, *PEOPLE OF THE BOOK: CANON, LEARNING AND AUTHORITY,* 94 (1997). [↑](#footnote-ref-94)
95. HANANEL MACK, *PRAYER AND PRAYERS* (Heb.) 106, (2008). [↑](#footnote-ref-95)
96. This notion finds later expression, as a paraphrase on the Sages’ midrash that was described above, “And why is His name called ‘Place?’ Rather in every place where the righteous are found, there He is found with them, as it is written [Ex. 20:24], “In every place where (that) I will mention My name (Name),” Pirkei de-Rabbi Eliezer, Chap. 35 82a.” [↑](#footnote-ref-96)
97. M Yom. 8:9. [↑](#footnote-ref-97)
98. In contemporary literature, there is an ongoing debate as to whether the seven Noachide laws reflect the idea of Natural Law. On one hand, it seems they apply to every individual in every place. On the other, they seem to be duties dependent on a commanding authority, rather than laws apparent from contemplation of the nature of humans. See for example, DAVID NOVAK, *NATURAL LAW IN JUDAISM* (1998); CHRISTINE HAYES, *WHAT’S DIVINE ABOUT DIVINE LAW? EARLY PERSPECTIVES* (2017); MARVIN FOX, “Maimonides and Aquinas on Natural Law*,*” *INTERPRETING MAIMONIDES: STUDIES IN METHODOLOGY, METAPHYSICS AND MORAL PHILOSOPHY* 124 (1990). [↑](#footnote-ref-98)
99. On this see DANIEL R. SCHWARTZ, *JUDEANS AND JEWS: FOUR FACES OF DICHTOMY IN ANCIENT JEWISH HISTORY* (2014). As for instance, “the Second Temple period was witness to the rise of a religiously oriented Judaism, which (wherever it was found) was essentially diasporan in orientation, and that it is appropriate to use “Jews” to refer to those characterized by such an orientation, in contrast to those characterized by land-state and nature-centered orientation, for who “Judeans” is more appropriate,” (ibid, 91). See as well SHAYE J. D. COHEN *THE BEGINNINGS OF JEWISHNESS: BOUNDRIES, VARIETIES, UNCERTAINTIES* (1999); Steve Mason, *Jews, Judeans, Judaizing, Judaism: Problems of Categorization in Ancient History,* 38 JOURNAL FOR THE STUDY OF JUDAISM 457 (2007); Daniel Boyarin, *Rethinking Jewish Christianity: An argument for Dismantling a Dubious Category,* 99 JEWISH QUARTERLY REVIEW 7 (2009); Seth Schwartz, *How Many Judaisms Were There? A Critique of Neusner and Smith on Definition, and Mason and Boyarin on Categorization,* 2 JOURNAL OF ANCIENT JUDAISM 221 (2011); JOHN J. COLLINS, *THE INVENTION OF JUDAISM: TORAH AND JEWISH IDENTITY FROM DEUTERONOMY TO PAUL (2017).*  [↑](#footnote-ref-99)
100. Ben-Menahem examined Talmudic law through a series of set parameters, and concluded, based on most, that, “Talmudic law manifests a secular bent” (Hanina Ben-Menahem, *Is Talmudic Law a Religious Legal System? A Provisional Analysis*, 24 (2) JOURNAL OF LAW AND RELIGION 379, 390 (2008). Examples of the parameters include: Accessibility to sanctified texts; the selection of officials based on their acquired skills; judges as subject to error; rejecting the reliance on miracles in decision-making. According to Ben-Menahem, the central religious feature of Talmudic law is the extensive authority given to judges to deviate from the law. [↑](#footnote-ref-100)