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**Before Sinai: Jewish Values and Jewish Law**

**By Rav Dr. Judah Goldberg**

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**Shiur #04: *Avot* and *Sinai*: Two Different Types of *Beritot***

The previous *shiur* ended with a question: If *berit Avot* is a bilateral covenant that imposes responsibilities on both the descendants of Avraham as well as, in a certain sense, on God, why is the Biblical text not more explicit about this? Why do the Torah’s descriptions of *berit Avot* focus upon God’s commitments while barely hinting at the obligations of the *Avot*?

***Berit Sinai*: Reward and Punishment**

To sharpen the question, let us contrast other passages of blessing from later in Torah with those directed at the *Avot*. After the Exodus from Egypt, the Jewish people reach the location known as *Mara* shortly after the splitting of the Red Sea. There, God “placed for them a statute and an ordinance” (*Shemot* 15:25). The subsequent verse adds the following:

He said, “If (“*im*”) you will heed Hashem your God diligently, doing what is upright in His sight, listening to His commandments and keeping all His laws, then I will not bring upon you any of the diseases that I brought upon the Egyptians, for I am Hashem your healer.

They key word for our purposes is the introductory “*im*,” “if.” God makes a clear condition: **If** we keep His word, etc.—if we do our part—**then** He pledges to spare us from the plagues that befell the Egyptians.

The context of this verse is also significant. Inasmuch as it follows the giving of laws at *Mara*, we could say that it constitutes a mini-*berit* between God and the Jewish people: the issuance of laws, followed by a clear, conditional statement about the responsibilities of both parties towards those laws.

This form repeats itself several times in Torah. For example, immediately prior to the giving of laws at *Har Sinai*, God conveys to the Jewish people, “Now then, **if** you will obey Me faithfully and keep My covenant, you shall be My treasured possession among all peoples” (*Shemot* 19:5). Notice again the introductory “if,” as well as the implied “then.”

In later passages the Torah spells out the converse clause as well. The blessings and curses of *Vayikra* 26 include both formulations. The blessings open:“**If** you walk in My statutes, and keep My commandments, and do them; I will give you rain in due season…” (3-4). However, upon completing the blessings, the Torah then switches directions: “And **if** you will not listen to Me and will not perform all of these commands, and **if** you shall despise My statutes and **if** your soul abhor My judgments...” (14).[[1]](#footnote-1)

This double formulation repeats itself in *Devarim* 7:12 and 8:19-20, promising bounty for following the law and disaster for abandoning it, as well as in *Devarim* 11:26-28:

Behold, I set before you this day a blessing and a curse; the blessing, in the case that you listen to the commandments of *Hashem* your God, which I command you this day; and the curse, **if** you do not listen to the commandments of *Hashem* your God.[[2]](#footnote-2)

Later, in the most expansive presentation of blessings and curses in Torah (*Devarim* 28), we find the same, dual formulation. First, the positive:

And it shall be, **if** you listen to the voice of *Hashem* your God, to observe and to do all His commandments which I command you this day... all these blessings will come upon you and overtake you. (1-2)

Then, the negative:

But it shall be, **if** you do not listen to the voice of *Hashem* your God, to observe to do all His commandments and statutes which I command you this day, all these curses will come upon you and overtake you. (15)

Finally, the closing verse of *Devarim* 28 stamps both sets of blessings and curses with a label: “These are the words of the ***berit*** which God commanded Moshe to make with *Benei Yisrael* in the land of Mo’av, besides the ***berit*** which he made with them in Chorev” (69); the earlier *berit* that this verse alludes to is the one described in *Vayikra* 26 (see verse 46 there). Regarding the laws of Moshe, then, this is the quintessential *berit*—a statement of bilateral responsibilities, specifying both the privileges of maintaining the agreement and the consequences of its breach.

***Berit Avot*: Pledges and Promises**

Looking back from the very end of the Torah to the beginning, *berit Avot* now stands in even sharper relief. Simply, the introductory “*im*” never appears in the context of the *Avot*. As we outlined in the previous shiur, while the *Avot* assume certain responsibilities as part of their covenant, at no point does God make his blessings directly contingent upon their actions or the actions of their descendants. Nonetheless, the Torah also labels their covenant a *berit*, most explicitly when invoking it when later *beritot* have been violated (see *Vayikra* 26:42).

Furthermore, *berit Avot*, with its missing quid pro quo, stands in contrast not only to God’s later *beritot* with the Jewish people but also to the *beritot* that each of the *Avot* themselves established with their neighbors. Each of them enters an agreement that the Torah terms a “*berit*” and that contains the familiar, conditional “*im*” (see *Bereishit* 21:23, 27; 26:28-29; and 31:44-52; also see 34:15-17). Why, then, does God deliberately avoid this form in His covenants with the *Avot*?

**Contracts vs. Covenants**

The answer, I believe, highlights a key distinction between *berit Sinai* and *berit Avot*. **At the heart of *berit Sinai* lie laws; at the heart of *berit Avot* lie values.** *Berit Sinai* takes the form of a contract. Fixed expectations are set, rigid conditions are stipulated, and pre-specified penalties are comprehensively described. It closely resembles, in fact, the inter-human *beritot* of *Sefer Bereishit*, which represent classic contractual agreements. Two parties identify a common interest, even though they may each approach it from a different vantage point. They need not embrace a common, shared vision, and they may maintain neutral or even adversarial stances towards each other.

The contract may hope for or even encourage greater, mutual participation, but it does not count on it, or at the very least it anticipates fluctuations over time and thus protects each party in the event of respectful distance, whether transient or fixed. The contract sets a floor, though not a ceiling, for the relationship—which is exactly why its terms are so specific and its penalties so harsh.

Indeed, *Chazal* likened the *luchot* of *Har Sinai* to a *ketuba*, the marriage document that specifies the minimal requirements of a marriage but by no means sets an upper limit on what a couple can aspire for. Thus, Moshe, who wanted to avoid the mandatory punishment that worship of the golden calf would carry, “voided” the contract by tearing it up—in this case shattering the *luchot*.[[3]](#footnote-3)

*Berit Avot*, in contrast, constitutes what we would more appropriately term a “covenant,” in its most literal sense. A covenant denotes not merely an agreement, but a union of sorts between the participants. They bond around a common vision, a shared purpose which inspires their mission. The covenant certainly imposes obligations upon each party, but these obligations emerge naturally from the core principles that the participants jointly embrace, rather than from formal stipulations introduced by each side. **Whereas a contract sets terms, a covenant determines expectations.**

Furthermore, a covenant may not necessarily outline specific penalties for misbehavior; rather, **the consequence of deviance is the failure of the covenant itself** (though not necessarily its dissolution). If a brotherhood betrays itself, the main crime is not the transgression of a particular rule but the weakening of the essential bonds that hold it together.

So it is, too, with a covenant between people and God. *Berit Avot* has no conditions or stipulations, but instead a set of shared values through which God invites the *Avot* into a joint endeavor.[[4]](#footnote-4) In place of a quid pro quo, God reveals His vision for a unique and distinct nation, nestled in the Land of Canaan and enjoying an intimate relationship with His presence that dwells there. This nation is to be founded upon supreme righteousness and justice and committed to spreading that message to the world. Throughout *Sefer Bereishit*, God’s promises are not rewards for specific achievements but, rather, natural consequences that follow from the “buy-in” of the *Avot*,which they demonstrate through bonding with Canaan, protecting their unique ethnic identity by avoiding absorption into the local population, committing to His exclusive worship and pursuing and transmitting righteousness and justice at every turn. When God does voice a request, it is usually coupled with a restatement of the overarching vision, as the former is simply an outgrowth of the latter.

**A Contract and a Covenant Together**

Of course, contracts and covenants can complement each other. Two parties who unite with common purpose may nonetheless choose to reinforce their relationship by articulating specific, contractual terms that both give further depth and structure to their arrangement and also raise the stakes for the participants. A classic example drawn from American history is the complementary roles of the Declaration of Independence and the U.S. Constitution. The Declaration of Independence, as implied by its name, puts forward the main principles that compelled the original colonies to separate from the English and around which they coalesced into a new, single entity. The Constitution, on the other hand, provides the concrete rules of governance that hold the country together, even if, on any given day, the Declaration of Independence may echo only faintly.

Closer to home, the *ketuba*, with its detailed obligations and specified monetary commitments, does not in any way dilute the power of the original aspiration for marriage of “they shall become one flesh” (*Bereishit* 2:24). To the contrary, it grounds sweeping vision in real and definite terms, ensuring that pure intention translates into mundane responsibility and that all players have “skin in the game.”

The same holds true for the dual covenants of *berit Avot* and *berit Sinai*. Alone, *berit Avot* gives powerful but vague direction, full of energy but short on content. *Berit Sinai*, on the other hand, embodied by the corpus of *halakha* as we know it, is comprehensively detailed but can easily lose its animating force without other input. Together, they produce the full grandeur of the total Jewish experience, where letter and spirit, obedience to law and historical consciousness interweave.

***Berit Bein Ha-betarim***

With this understanding of *berit Avot* in mind, let us turn our attention to one specific element, the momentous “*berit bein ha-betarim*” (covenant between the parts). Regarding that event the Torah states: “On that day God forged a covenant with Avraham, saying, ‘To your progeny have I given this land’” (*Bereishit* 15:18). This verse appears innocuous enough until we consider it in light of our observations above. God’s commitment in the *berit bein ha-betarim* is quite prominent, but what does Avraham offer in return? What does God ask of him that makes him deserving of this meta-historic promise?

Perhaps we can suggest that indeed, **Avraham does nothing but enter into the covenant with God**! That is, Avraham embraces the destiny imposed upon his children, including all of the servitude and suffering that awaits them. He neither bargains with God, as he does preceding the destruction of Sedom, nor does he attempt to walk away from the deal. The formation of the *berit* describes not so much God’s gifting of Canaan to the Jewish people as it does a joint enterprise that lifts Jewish history out of the mundane context of geopolitics and places it on a uniquely charted course that **must** end in God’s chosen land.[[5]](#footnote-5)

In the moment Avraham remains silent, but the need for his and his children’s genuine participation in this covenant over time should not be underestimated. With regard to his grandchildren in particular, the Torah highlights their divergent responses to *berit bein ha-betarim*. Esav, for example, decides to transfer his family out of his ancestral homeland and settle instead in *Har Se’ir*:

Esav took his wives, and his sons, and his daughters, and all the persons of his home, and his cattle, and all his animals, and all his belongings that he acquired in the Land of Canaan, and he went to another land [“*eretz*”] away from [“*mippenei*”] his brother Yaakov; for their possessions were too many for them to live together, and the land of their dwelling could not support them because of their livestock. (*Bereishit* 36:6-7)

The text seems to indicate that Esav departs for pragmatic reasons, but Rashi, expanding upon *Midrash Rabba*, offers a different reason:

A homiletic reading: “[‘*Mippenei*’] his brother Yaakov,” **because**[[6]](#footnote-6) of the bill of debt of the decree of “for your children will be foreigners” (*Bereishit* 15:13) that was thrust upon the progeny of Yitzchak. He said, “I will go for myself from here, I want no part neither in the gift—that this land was given to [Yitzchak]—nor in paying the bill.”

According to Rashi, Esav wasn’t running away from his brother, but away from the destiny that awaited the progeny of Avraham, of which he wanted no part. Instead, he chose to settle in a new land that would allow him to plant roots immediately, without any latent period or exile.[[7]](#footnote-7)

After elaborating upon Esav’s flourishing in *Har Se’ir* and contrasting it with the fortunes of *Benei* *Yisrael* at the time,[[8]](#footnote-8) the Torah then turns its attention to Yaakov: “And Yaakov lived in the land of his father’s dwelling, in the Land of Canaan” (*Bereishit* 37:1). Multiple commentators read this verse as a specific contrast to the previous verses about Esav. While the Rashbam and the Chizkuni suggest that it highlights Yaakov’s **entitlement** to the Land of Canaan through his purchase of the birthright (*Bereishit* 25:33), the Ramban links this verse, too, to the *berit bein ha-betarim*:

The meaning of “And Yaakov lived in the land of his father’s dwelling” is that [the Torah] had said that the chiefs of Esav dwelt “in the land of their **possession**” (*Bereishit* 36:43) – that is to say, the land which they took for themselves permanently – but Yaakov dwelt as a foreigner, just like his father, in a land which was not their own but which belonged to the Canaanites. The purpose is to relate that they elected to dwell in the Chosen Land, and that in them was fulfilled, “Your seed will be foreigners in a land that is not theirs” (*Bereishit* 15:13), but not in Esav, for Yaakov alone shall be called their “seed.”[[9]](#footnote-9)

Furthermore, Yaakov’s active participation in the covenant finds expression not only in his willingness to remain an outsider in Canaan, but also in the narrative that immediately follows – the sale of Yosef and the descent to Egypt. This point emerges most powerfully from Yehoshua’s succinct summary of early Jewish history:

I took your father Avraham from beyond the River, and led him throughout all the Land of Canaan, and multiplied his seed, and gave him Yitzchak. And I gave to Yitzchak Yaakov and Esav; and I gave to Esav *Har Se’ir*, to inherit it; and Yaakov and his children went down to Egypt. (*Yehoshua* 24:3-4)

Yehoshua, too, specifically contrasts Esav’s path with that of his brother Yaakov, not with regard to Yaakov’s living in Canaan but with regard to his exile. Moreover, these verses contain a grammatical anomaly: Whereas God is the subject throughout these verses, He does not describe how He led Yaakov to Egypt, but instead states that Yaakov “went down.” It seems that Yaakov did not remain a passive object in the unfolding of Jewish history but understood and embraced his destiny as the grandchild of Avraham. A medieval commentary of unknown authorship to the *Haggada* (in which the verses from *Yehoshua* appear) picks up on this very point: “‘And Yaakov and his children went down to Egypt’ **to accept the foreignness** that was decreed upon our forefather Avraham in the *berit bein ha-betarim*.”[[10]](#footnote-10)

Thus the second half of *sefer* *Bereishit* tells the tale of two brothers, one of whom ran away from their destiny and the other of whom embraced it. Esav’s resettling in *Har Se’ir* represents not just a rejection of Canaan but a betrayal of God’s covenant; thus *Chazal* label Esav a “*Yisrael mumar*,” an apostate Jew (*Kiddushin* 18a). Meanwhile, Yaakov demonstrated great courage and faith by staying committed to the covenant with Avraham, both through his settling in Canaan and his early departure into exile.

What was true for Yaakov has been true for his descendants as well. *Berit bein ha-betarim*, both at its inception and throughout history, has been anything but a unilateral promise. Whether through Yaakov’s descent to Egypt, the return to Zion in the days of Ezra, stubborn resistance to assimilation during centuries of exile or the modern resettlement of the Land of Israel, Jews have been actively responding to God’s call to “step outside” with Him at every turn. Reflecting its covenantal, rather than contractual, nature, they have done so out of a deeply ingrained collective identity that wordlessly compels them forward, rather than out of explicit fulfillment of a particular duty.

As with our forefathers, the circuitous path that leads to our ultimate destination has often been hidden from us. And yet we have persisted, armed with the simple but profound faith that the *Haggada* articulates in bridging between the passage from *Yehoshua* and its mention of *berit bein ha-betarim*: “Blessed is He who keeps His promise to Israel, Blessed is He.”

**For Further Analysis:**

1. The Torah’s preamble to *berit bein ha-betarim* (*Bereishit* 15:1-8) contains several puzzling verses. In verses 2-3, Avraham seems to doubt God’s promise that he will one day bear children. After God reassures Avraham, verse 6 states, “and he believed in God, and he considered it for him a generosity” (see Rashi and Ramban regarding the ambiguous pronouns). Finally, regarding Canaan Avraham asks, “through what will I know that I will inherit it?” (8; see *Nedarim* 32a). The classic commentaries offer various approaches to this narrative. Can the general approach to *berit bein ha-betarim* presented above shed any further light upon it?

2a. We have suggested here that Esav was not necessarily excluded from God’s covenant with Avraham by fate but that he actively betrayed and rejected it; hence his designation in *Kiddushin* as an apostate, rather than as a non-Jew. Does this mean that an alternative existed—that Esav could have chosen to remain part of the covenant? *Nedarim* 31a and *Sanhedrin* 59b, on the other hand, base Esav’s exclusion from “the seed of Avraham” on the word “*ve-Yitzchak*” (“in Yitzchak”) (*Bereishit* 21:12). They understand from this word that only part of Yitzchak’s progeny was destined to inherit this designation (also see Rambam *Nedarim* 9:21 and Radak and Ramban on *Bereishit* 28:3-8). This suggests that Esav’s exclusion was predetermined and not merely a function of his choices. Can these sources be reconciled?

2b. If Esav indeed left the covenant by choice, can we distinguish between different periods of his life – before and after leaving Canaan? The Torah hints at this, perhaps, by separately listing “the children of Esav that were born to him in the Land of Canaan” (*Bereishit* 36:5) and “the progeny of Esav, forefather of Edom, in *Har Se’ir*” (36:9). Might these two groups have different statuses?

1. Also see verses 18, 21, 23 and 27. [↑](#footnote-ref-1)
2. Also see *Devarim* 11:13-21 (“And it shall be **if** you listen to My commandments…”), which has made its way into our daily liturgy as the second paragraph of *Shema*. Also see *Devarim* 11:22-25 and 30:15-20. [↑](#footnote-ref-2)
3. See *Avot De-Rabbi Natan* 2, including textual variants; *Midrash Tanchuma*, *Ki Tissa,* 30. [↑](#footnote-ref-3)
4. The lead-up to the destruction of Sedom, in which God invites Avraham into a dialogue about justice, further underscores the degree of partnership that *berit Avot* proposes. God essentially declares that He will not proceed without consulting Avraham, for “Avraham shall surely become a great and mighty nation,” founded upon righteousness and justice, “and all the nations of the earth shall be blessed through him” (*Bereishit* 18:17-19; see the previous shiur for an extended analysis of verse 19). Pursuit of justice no longer belongs to God alone (as it did during the Flood story, in which God’s absolute and exclusive dominion is emphasized [see *Tehillim* 29:10]), but instead has become a joint venture that He, as it were, now shares with Avraham. Avraham perceives God as an engaging partner, ready for discourse and open to negotiation. This episode contrasts sharply with the binding of Yitzchak, just a few chapters later (*Bereishit* 22), in which Avraham silently follows God’s command without a word of protest. There, Avraham experiences God as a resolute, inscrutable Commander, who rules supremely over humanity and whose orders are not open to questioning. [↑](#footnote-ref-4)
5. Perhaps this is the intention of *Chazal*’s homiletic rendering of “He took him outside” (*Bereishit* 15:5) as “He said to him, ‘Leave your astrological fortune behind’” (*Nedarim* 32a, quoted by Rashi). God was telling Avraham that his destiny lay **outside** of recognized, natural (astrological or historical) patterns. [↑](#footnote-ref-5)
6. The *midrash* is invoking a play on words. “*Mippenei*” can mean “from before,” its literal translation, or it can mean “because,” as in the closing of verse 7, “because of their livestock (“*mippenei mikneihem*”). In verse 6 “*mippenei*” means “from before” his brother Yaakov, as Onkelos renders it (“*min kadam*”), but the *midrash* offers various interpretations based on a translation as “because.” [↑](#footnote-ref-6)
7. Verse 6 states that Esav “went to another land [‘*eretz*’].” The Ramban claims that “*eretz*” refers to the Land of *Se’ir*, where Esav had already established ties (see *Bereishit* 32:4). Onkelos and Rashi, in contrast, translate “*eretz*” as **any** land. Esav, in other words, was headed **anywhere** but Canaan. [↑](#footnote-ref-7)
8. “These are the kings who reigned in the land of Edom **before any king reigned for *Benei Yisrael***” (*Bereishit* 36:31). [↑](#footnote-ref-8)
9. Also see Rabbeinu Bechaye. The Ramban’s interpretation resolves two further problems that other commentaries to this verse contend with: 1) The preceding, lengthy description of Esav’s kingdom (see Rashi); 2) the dual language of “the land of his father’s dwelling” and “the Land of Canaan” (see Radak, Chizkuni and Seforno). According to the Ramban, the Torah is contrasting not only Esav’s decision to settle in *Har Se’ir* with Yaakov’s decision to settle in Canaan, but also Esav’s early flourishing with Yaakov’s delayed rise to power. Also, for the Ramban it is clear why the text emphasizes that Yaakov, through his living in Canaan, was following in his father’s footsteps. “The land of his father’s dwelling” relates more to a particular experience than it does to a geographic location. [↑](#footnote-ref-9)
10. *Perush Kadmon*,printed in *Haggada shel Pesach Torat Chayyim* (Jerusalem, 1998). His commentary to the earlier part of the quote from *Yehoshua* parallels the Ramban’s remarks above:

    [Esav] will not have a portion with Yaakov, as it states, “He went to another land away from his brother Yaakov” (*Bereishit* 36:6), for he rejected the decree and the foreignness. This was not true for Yaakov, as it states, “And Yaakov lived in the land of his father’s dwelling,” (*Bereishit* 37:1) to tell you **that he accepted the foreignness***.*

    Also see the commentary of R. Shimon b. Tzemach Duran (*Tashbetz*) to the *Haggada*. Notably, from the quote from *Yehoshua*, the *Haggada* transitions to *berit bein ha-betarim*, further reinforcing the connection between the two. [↑](#footnote-ref-10)