YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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

**By Rav Dr. Judah Goldberg**

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Dedicated in memory of Rabbanit Bracha Kapach z”l, who passed away Tuesday in Jerusalem at the age of 90, winner of the Israel Prize for her lifetime of charitable work and acts of kindness.

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**Shiur #07: Independence of *Berit Avot* and Its Interaction with *Berit Sinai –* Part 2**

 In the previous *shiur*, we addressed a particular critique of our thesis: Perhaps the responsibilities of *berit Avot* applied to the *Avot* and their followers but not to us, as *berit Sinai* superseded all prior frameworks for Jewish duty. In particular, the Rambam stresses in his Commentary on the *Mishna* (*Chulin* 7:6) that all halakhic obligation today emanates from Sinai and not from prior commandments. Shouldn’t this mean that *berit Avot*, at least regarding the responsibilities it imposes, is obsolete?

 So far, we have examined some of the Rambam’s rulings regarding Jewish peoplehood and demonstrated how they necessarily imply the existence of extra-halakhic values that are not subsumed by the halakhic system. In searching for an appropriate framework for these values, we traced them back to *berit Avot*. We will now attempt to do the same regarding the other two core components of *berit Avot*, namely, commitment to the Land of Israel and pursuit of the ethical life.

**Leaving the Land of Israel**

Interestingly, though the Rambam never records a particular duty to reside in the Land of Israel, he does write that “it is always forbidden to depart from the Land of Israel to outside lands,” except to pursue particular goals, such as to learn Torah or to engage in commerce. Furthermore, one may not dwell outside of the Land of Israel indefinitely, except in the dire circumstance of a severe famine. The Rambam then adds:

Even though it is permitted to leave, it is not pious behavior, for behold, Machlon and Kilyon were two giants of their generation, and they left out of great distress, and they incurred destruction from God.[[1]](#footnote-1) (*Hilkhot Melakhim* 5:9)

Yet again, we encounter a situation where the Rambam seems to be referencing an extra-halakhic value. By every halakhic measure, “it is permitted to leave,” and yet something evokes hesitation, so much so that the Rambam cites a historical example of premature death as a warning.

 Furthermore, as with our previous examples, there is nothing obvious in the Tannaitic source for the Rambam’s ruling that forces this interpretation (*Tosefta* *Avoda Zara* 5:2 [Vilna ed.], cited in *Bava Batra* 91a). In fact, the *Lechem Mishneh* notes that according to the simplest reading of the *Tosefta*, Machlon and Kilyon were punished specifically because their departure was **not** halakhically sanctioned! “If so,” he asks, “how can [the Rambam] conclude that ‘even though it is permitted to leave, it is not pious behavior’?”[[2]](#footnote-2) This difficulty aside, apparently the Rambam could have interpreted the *Tosefta* as teaching a halakhic principle rather than an extra-halakhic one, but he deliberately chose not to. For him, the *Tosefta* contains a value that transcends the law; but what is that value, and what is its source?

The answer, I believe, lies in the following *halakha* in the Rambam. He continues, “The greatest of the Sages used to kiss the boundaries of the Land of Israel and kiss its stones and roll in its dust” (5:10). The source text for their practice is not a legal verse from the Torah, but a descriptive one from *Tehillim*: “For Your servants yearn for her stones, and her dust they cherish” (102:15). Taken together, these two *halakhot* express a powerful “*chibbat ha-aretz*” (affection for the Land) that transcends the Land of Israel’s narrow, halakhic status. A Jew is not obligated to remain in the Land in times of great hardship or to literally roll in its dust, but genuine, natural attachment to it may compel him or her to do so anyway.[[3]](#footnote-3)

What is the exact nature of this *chibbat ha-aretz*? Admittedly, the rabbinic sayings that the Rambam quotes in the subsequent *halakhot* (5:11-12) primarily focus upon the Land of Israel’s spiritual properties as a place of intense Divine presence, rather than upon its identity as the Jewish homeland and its central role in our historical destiny. Either way, though, it is clear that the concept of *chibbat ha-aretz* predates the giving of the Torah and relates to something more primal than the formal sanctity ascribed to the Land by Jewish law. Thus, in recording the practice of transporting the dead to the Land of Israel for burial, the Rambam adds, “Go and learn from our father Ya’akov and Yosef the Righteous One” (5:11). Similarly, in explaining that when “you are not in the Land of Canaan, it is as if I am not your God,” the *Tosefta* (*Avoda Zara* 5:2 [Vilna ed.]) cites Ya’akov, who says that only when he will return home to the Land of Israel, “Then the Lord will be my God” (*Bereishit* 28:21).[[4]](#footnote-4)

In summary, the Rambam’s ruling regarding leaving the Land of Israel contains both halakhic and non-halakhic elements. While he does not elaborate, the extra-halakhic value seems to be *chibbat ha-aretz*, which reaches back to our earliest days*.* Furthermore, if this affection relates not only to the Land of Israel’s primacy in our national identity but also (if not exclusively) to its unique connection to the Divine, then it actually constitutes an expression of two of the four components of *berit Avot*, namely, attachment to the Land of Israel and pursuit of a deep and personal relationship with God.[[5]](#footnote-5)

**The Mitzva of *Tzedaka***

 In each of the previous two cases, the Rambam alludes to extra-halakhic values without specifying their nature, and, through a citation by the Vilna Gaon and our own speculation, respectively, we connected them to *berit Avot*. Regarding the mitzva of *tzedaka*, however, the Rambam leaves no room for doubt.

 In *Hilkhot Matenot Aniyim*, the Rambam presents the mitzva of *tzedaka* twice. First, in Chapter 7 he writes:

It is a positive commandment to give charity to the poor in accordance with what is appropriate for the poor person, if the donor is capable, as it states, “You shall certainly open your hand to him” (*Devarim* 15:8). (7:1)

This is a stereotypical opening statement for *Mishneh Torah*, in which the Rambam classifies the commandment (positive or negative), provides a basic definition, and quotes the source in *Torah she-bikhtav*.[[6]](#footnote-6)

However, three chapters later the Rambam reintroduces the mitzva of *tzedaka* with a strikingly different formulation:

We are obligated to be meticulous with the mitzva of charity more than with all [other] positive commandments, because charity is a mark of the righteous descendants of our father Avraham, as it states, “For I have known him, in order that he may command...” (*Bereishit* 18:19). (10:1)

Several things stand out about this *halakha*. First, the Rambam’s normative claim is remarkable. As we explained with regard to intermarriage, the *halakha*’s classification of duties speaks for itself. In contrast to negative commandments, which are organized into an elaborate hierarchy based on punishment, all positive commandments are of equal legal weight so that “you should be meticulous about a ‘light’ mitzva as about a ‘weighty’ one, for you do not know the rewards of the *mitzvot*” (*Avot* 2:1; Rambam ‘s Commentary on the *Mishna*).

Furthermore, explains the Rambam, this saying is the basis for the principle that “one who is engaged in a mitzva is exempt from another mitzva” (*ha-osek be-mitzva patur min ha-mitzva*), of which exemption from *tzedaka* is a prime example in the Talmud (*Bava Kama* 56b). In other words, from the vantage point of Jewish law, the obligation of *tzedaka* does not stand out from that of any other positive commandment, and it is therefore subject to the same exemptions.[[7]](#footnote-7) On what basis, then, can the Rambam assert that the obligation of *tzedaka* demands more from us than all other positive commandments?

The Rambam’s proof-text is quite telling. In contrast to the earlier *halakha*, in which he recruited a verse from *Parashat Re’eh*, here he proves his point by citing a verse from *Parashat Vayera*—in fact, one of the central texts for *berit Avot* as it appears in *Sefer* *Bereishit*. The Rambam only quotes the first part of the verse, but its significance for his claim lies in its continuation:

For I have known him in order that **he may command his children and his household after him, that they may keep the way of God to do righteousness [“*tzedaka*”] and justice**, so that God may bring upon Avraham that which He has spoken of him. (*Bereishit* 18:19)

Regarding *tzedaka*, this verse tells us two things: 1) It is a signature characteristic of Avraham; and 2) he not only pursues *tzedaka* himself but will pass on this legacy to his children and followers. The correlative is that specifically through *tzedaka*, Avraham’s descendants assume his mantle and carry forward his mission. Conversely, one who is callous to those in need and neglects the responsibilities of charity weakens his bond to his forefathers and erodes his identity as part of “the progeny of Avraham.” As the Rambam elaborates in the following *halakha*, “Anyone who is callous and does not show mercy, there is reason to doubt his lineage, for callousness is found only amongst the gentiles, as it states, ‘They are cruel and will not show compassion’ (*Yirmiyahu* 50:42)” (10:2).[[8]](#footnote-8)

 Returning to the previous *halakha*, we find here a parallel to the construct that the Rambam articulated regarding intermarriage, only here he explicitly invokes the legacy of Avraham. As with the prohibition against marrying gentiles or slaves, the commandment to give *tzedaka* is treated differently by *berit Avot* and by *berit Sinai.* From the perspective of *berit Sinai*, *tzedaka* is but one positive commandment among many, subject to the same exemptions and no more demanding of our attention than any other. From the perspective of *berit Avot*, however, *tzedaka* is our preeminent, defining feature that overshadows practically all other duties. Here the Rambam has the right to demand meticulousness with *tzedaka* “more than with all [other] positive commandments,” as engagement in *tzedaka* is not just a religious duty but a true family heritage.

**Obligation in *Mitzvot* According to the Rambam**

Having demonstrated convincingly that the Rambam does not erase all duties that emanate from the pre-Sinaitic phase of Jewish history, how should we understand his contention that “everything from which we abstain or that we perform today, we do so only because of God’s commandment through Moshe, not because God commanded so to prophets who preceded him” (Commentary to the *Mishna*, *Chulin* 7:6)? To answer this question, we need to take note of the fact that the Rambam is discussing “commandments.” Regarding the legal duties of halakhic living specifically, the Rambam writes that they derive solely from the experience of Sinai, which superseded all previous sources of obligation.

In other words, *berit Sinai,* the basis for our halakhic system, is exactly what its name suggests—a covenant whose binding force flows exclusively from Moshe’s receiving of the Torah at Sinai. *Mitzvot* given to Adam, Noach or Avraham have no impact on this self-sufficient system at all. But this does not mean that other covenants, whose role is not to impose more rules but to articulate values, cannot coexist alongside it. Thus, the obligation towards all 613 commandments, including the mitzva of *tzedaka* and the prohibition against intermarriage, comes from Sinai alone, but the values of Jewish peoplehood, the Land of Israel and justice and righteousness live on as our inheritance from Avraham.

**The Merging of Two Covenants**

 On the one hand, multiple rulings of the Rambam, grounded in rabbinic sources, establish the independence of *berit Avot* from *berit Sinai*. Despite the comprehensiveness of the halakhic system, it makes no attempt to crowd out or swallow up a distinct source of values and broad duties. At the same time, *berit Avot* and *berit Sinai* do not exist in total isolation from one another. Rather, the ultimate aspiration of each is to inform and influence the other. *Halakha* recognizes, incorporates and reflects the fundamental values of *berit Avot* while simultaneously giving direction and providing context to those core values themselves. In the words of R. Soloveitchik, “The Covenant of Sinai completed the Covenant of Egypt[[9]](#footnote-9)… Together they became a distinct covenantal unit” (*Kol Dodi Dofek: Listen—My Beloved Knocks*, 73).

 A final quote from the Rambam can demonstrate this point. At the conclusion of *Hilkhot Avadim*, the Rambam addresses a central question regarding the entire phenomenon of Canaanite slaves: Are there boundaries to what their Jewish masters may demand of them? The Rambam rules, “It is permissible to work a Canaanite slave hard” (9:8). However, he continues:

**Although this is the law**, [it reflects] the attribute of piety and the ways of wisdom for a person to be merciful and pursue justice; and he should not overburden his slave and not distress him; and he should provide him food and drink from every food and every drink. The early Sages would give a slave [a portion] from every dish that they themselves would eat and would serve the food of their animals and slaves before their own. Behold, it says, “Like the eyes of male slaves to the hand of their masters, like the eyes of a female slave to the hand of her mistress” (*Tehillim* 123:2). Similarly, [a master] should not denigrate [a slave], neither physically nor verbally; for work did the Torah appoint them, not for humiliation. And he should not shout or express anger excessively; rather, he should speak with [his slave] gently and listen to his complaints. This appears explicitly with regard to Iyov’s positive ways in which he took pride: “Did I shun justice for my male and female slaves in their disputes with me?... For Who made me in [my mother’s] belly made him, and One formed us both in the womb” (*Iyov* 31:13, 15).[[10]](#footnote-10) (9:8)

Again, the Rambam is contrasting the formal law with other values—in his words, “the attribute of piety and the ways of wisdom.” He draws upon the models of Iyov and the early Sages to illustrate recommended attitudes and behavior, and he quotes a simile from *Tehillim* to highlight the extraordinary sensitivity that one ought to have for a slave’s vulnerability.

 The Rambam then provides further impetus to strive for a standard beyond the formal law:

Callousness and brazenness are found only in the uncircumcised gentiles.[[11]](#footnote-11) But the descendants of our father Avraham—namely, [*Benei*] *Yisrael,* **whom the Holy One, blessed be He, endowed with the goodness of the Torah and commanded them in righteous statutes and laws**—they are merciful towards all. (9:8)

The Rambam invokes the legacy of Avraham to explain what should drive an aspiration for beneficence beyond what is mandated by the formal law, just as he did with regard to *tzedaka*.[[12]](#footnote-12) Here, however, the Rambam adds something. The tradition of Avraham does not stand alone in its original, raw state but has been further cultivated by the “the goodness of the Torah” and “righteous statutes and laws.” Our basic responsibility towards *berit Avot* was not altered by the events of Sinai, but our ability to respond to it and to implement its vision has been dramatically enriched by the contents of Jewish law.

 The reverse relationship is true as well. The *halakhot* of Sinai do not merely respect *berit Avot* but actually incorporate its concerns and reflect its ambitions. The tempting dichotomy of *berit Sinai* as a religious covenant and *berit Avot* as a national one is imprecise, as *berit Sinai* embraces the broad visions for peoplehood, land and righteousness that lie at the heart of *berit Avot* and weaves them into its complex of concrete, formal laws.

**Conclusion**

Our task, then, is to scour the halakhic tradition for reflections of the values of *berit Avot*. We will read the rabbinic literature carefully and analyze its laws with conceptual rigor. We will begin with the value of Jewish peoplehood by considering the multitude of laws that govern its makeup, its integrity and movement in and out of it, then move on to the other components of *berit Avot*.

Hopefully, our understanding of *berit Avot* and our interpretation of *berit Sinai* will emerge mutually enriched. We will defy the stereotypes of *halakha* as preoccupied with formal ritual and of Jewish values as necessarily vague and shallow. We will explore *halakha* for its full, multifaceted splendor, and we will redeem *berit Avot* through the range, depth and nuance of the *halakha*.

**Questions or Comments?**

Please email me directly with your feedback at judahlgoldberg@gmail.com!

1. See *Rut* 1:1-5. [↑](#footnote-ref-1)
2. The *Lechem Mishneh* answers that even if the departure of Machlon and Kilyon was indeed prohibited, the Rambam learns from their disproportionate punishment that leaving the Land would be frowned upon even when technically permitted. Of course, this does not alter the essential difficulty with the Rambam. The implication, from both the case of Machlon and Kilyon as well as from the Rambam’s general recommendation, is that there is some extra-halakhic value at play. [↑](#footnote-ref-2)
3. By contrast, Rashbam (*Bava Batra* 91a) explains that the problem with leaving the Land of Israel is that “he exempts himself from the *mitzvot*,” echoing *Sota* 14a, which states that Moshe desired to enter the Land in order to perform its unique *mitzvot*. In that case, leaving the Land of Israel is actually an affront to *berit Sinai*.However, the context of the original *Tosefta* points in the direction of the Rambam’s position. [↑](#footnote-ref-3)
4. See Ramban on that verse, as well as on *Bereishit* 24:3 and *Vayikra* 18:25. [↑](#footnote-ref-4)
5. Whether this *chibbat ha-aretz* is only about spiritual ends or is also about attachment to the Land “for its own sake” as the Jewish homeland is open to question. A simple reading of *Sefer* *Bereishit* does not suggest that Ya’akov and Yosef desired to be buried in the Land to Israel for personal, spiritual reasons. Rather, particularly in Yosef’s case, the request seems to express a more basic desire to be connected to national destiny, something of which Yosef was robbed in his lifetime. Also see *Ketubot* 111a, which makes clear that neither Ya’akov nor Yosef needed the spiritual atonement provided by burial in Israel, though the alternative motivation stated—to avoid travel at the time of the Resurrection—is of uncertain nature. Similarly, visceral affection for the dirt and rocks of the Land of Israel could be reflective of either appreciation of the Land as a home for the Divine presence or of love for the Land as the focal point of our national existence. [↑](#footnote-ref-5)
6. Compare, for example, to *Hilkhot Tefilla* 1:1, *Hilkhot Ta’aniyot* 1:1 and *Hilkhot Shechita* 1:1. [↑](#footnote-ref-6)
7. Based on the continuation of the *mishna*, the Rambam adds that one can discern increased reward for some *mitzvot*, based on either the punishment of *kareit* for non-observance (of circumcision and of *korban Pesach*) or their being coupled to negative commandments (such as observing Shabbat or building a fence around one’s roof). However, this does not influence the uniform legal weight of all positive commandments, including *korban Pesach*, which is also subject to the principle of *ha-osek be-mitzva* (see *Sukka* 25b). [↑](#footnote-ref-7)
8. Also see *Hilkhot Issurei Bi’a* 19:17. [↑](#footnote-ref-8)
9. Synonymous with *berit Avot*—[see footnote #6 in the previous *shiur*](http://www.vbm-torah.org/archive/sinai/06sinai.htm). [↑](#footnote-ref-9)
10. The translation of verse 15 follows Rashi and Ibn Ezra. For a different reading, see *Metzudat David*. [↑](#footnote-ref-10)
11. The Rambam uses this term to refer to all gentiles, regardless of circumcision status. See *Hilkhot Nedarim* 9:22. [↑](#footnote-ref-11)
12. The Rambam continues, “And similarly, with regard to the attributes of the Holy One, blessed be He, which He commanded us to emulate, it says ‘His mercy is upon all His works’ (*Tehillim* 145:9).” On the one hand, the Rambam is referencing the Sinaitic commandment of “you shall walk in His ways” (*Devarim* 28:9). However, for the Rambam, this mitzva itself is rooted in the ethical legacy of Avraham. See *Hilkhot De’ot* 1:5-7. [↑](#footnote-ref-12)