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

**By Rav Dr. Judah Goldberg**

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**Shiur #19: The Land of Israel (2): The Land of Israel and *Berit Avot***

In the [last *shiur*](http://vbm-torah.org/archive/sinai/18sinai.htm), we surveyed the multiple definitions that scholars use for the Land of Israel in order to explain a variety of inconsistent phenomena. In summary, some aspects of the Land’s unique status were lost upon exile, but others were not; and some properties restricted to the Land of Israel apply to a broader conception of the Land that includes conquered areas east of the Jordan, whereas others do not. Proposed concepts that accent different dimensions of the Land include the sanctity of the Land, the “title” of the Land of Israel and the sanctity that emanates from the Divine Presence.

While each principle successfully addresses a particular phenomenon, we still lack an overarching framework that organizes these divergent perspectives and explains their relation to each other. Perhaps the dual covenants of *berit Avot* and *berit Sinai* may be helpful in this regard. That the Land of Israel figures prominently in each of these covenants is obvious to any casual reader of *Chumash*. Building upon that basis, I propose that the concepts of *berit Avot* and *berit Sinai* may help account for the overlapping but distinct approaches to the Land of Israel that we find in halakhic literature.

**Echoes of *Berit Avot* in the Land of Israel**

Earlier *shiurim* described the centrality of the Land of Israel to *berit Avot*[[1]](#footnote-1) and noted extra-halakhic duties that result from that relationship.[[2]](#footnote-2) Essentially, the Land of Israel embodies two different ideas in *Sefer Bereishit*:

1. A homeland for the Jewish people and the locus of its future destiny.
2. A place uniquely endowed with Divine presence, where God is most accessible to human seekers. This point is specifically emphasized by the Ramban.[[3]](#footnote-3)

Charged by these two concepts, our forefathers were deeply devoted to the Land of Israel. They resided within her and yearned for her when absent. More, they invested in her and saw themselves as laying the groundwork for her future inhabitation by their progeny.

As such, regarding the Land of Israel in particular, we can reformulate the original question we posed regarding *berit Avot* more generally: Are there lasting effects to the efforts and activities of our forefathers? Does the covenant forged around the Land with our *Avot* have permanent ramifications for us, or was it simply a pre-cursor to the covenant of Sinai—at which point “Torah was given and *halakha* innovated” (*Shabbat* 135a-b)—and the historical events that followed it?

**Possession by the *Avot***

In several places the Talmud makes the striking claim that our collective hold on the Land of Israel is rooted in God’s original covenant with the *Avot*.[[4]](#footnote-4) For example, Rabbi Elazar notes that the Jews were commanded to destroy *asheirot* (trees worshipped by the Canaanites) when they entered the Land of Israel, even though “it was [already] an inheritance for them from their forefathers,” and the Canaanites should not have been able to designate trees that were not in their possession for pagan worship (*Avoda Zara* 53b). Rashi explains, “For to Avraham was it said, ‘For to you’”—literally—“‘I will give [the Land]’ (*Bereishit* 13:17).”[[5]](#footnote-5)

Rabbi Yosi says that “when [the Jews] entered [the Land], they inherited it retroactively, for Rav Huna said in the name of Rabbi Shmuel, son of Nachman, ‘[the Torah] does not say, ‘To your progeny I will give [the Land],’ rather, ‘To your progeny I have given’ (*Bereishit* 15:18)—already given’” (*Yerushalmi Challa* 2:1). From the beginning of the verse that Rashi cites above—“Rise and walk in the land, its length and its width” (*Bereishit* 13:17)—Rabbi Eliezer learns that one may take ownership of land simply by walking through it. Apparently, through his travels Avraham took possession, in some sense, of the Land of Israel (*Bava Batra* 100a).[[6]](#footnote-6)

In a different vein, Rabbeinu Chananel finds a reference to possession by the *Avot* in yet another context. From the Torah’s statement that following exile, “Hashem your God will bring you to the land that your forefathers (*avotekha*) possessed, and you will possess it” (*Devarim* 30:5), Rabbi Yosi derives that there was a “first possession” and a “second possession” only that sanctified the Land. Subsequently, no further sanctification is necessary (*Seder Olam Rabba* 30; *Yevamot* 82b). Most commentators presume that the “first possession” and “second possession” refer to Yehoshua’s conquest and Ezra’s resettlement, respectively. Rabbeinu Chananel, however, explains that “the first possession” was that of Avraham, Yitzchak and Ya’akov (he reads “*Avotekha*” with a capital “*aleph*,” so to speak), and the second was that of Yehoshua (*Tosafot Yevamot* 82b). According to Rabbeinu Chananel, the *Avot*’s dwelling in the Land of Israel did not merely anticipate the Land’s future settlement by the Jewish people but itself constituted an original, historical “possession.”

***Berit Avot* and the Title of the Land of Israel**

We can perhaps refine our understanding of the role of the *Avot* regarding the Land of Israel by considering why other commentators might reject Rabbeinu Chananel’s position. While *Tosafot* raise a particular textual difficulty, perhaps their more general issue is that Rabbi Yosi, according to their reading, is describing a first and second sanctification.[[7]](#footnote-7) The main problem with assuming that the *Avot* were involved in sanctification is that it is mixing apples and oranges! Sanctification, in its technical, halakhic sense, is seemingly a function of *berit Sinai*. It is a formal, legal concept that is measured in discrete units and carries specific halakhic significance, such as obligation in *mitzvot ha-teluyot ba-Aretz*. While the *Avot* were undoubtedly “holy,” it is anachronistic to imagine them imbuing the Land of Israel with formal sanctity.

In contrast, the Talmudic sources that were presented earlier all speak of **possession** of the land. Indeed, they all relate to precisely that aspect of the Land of Israel that the *Avot*, by the simplest reading of *Chumash*, were engaged in—the charting of a future destiny for the Jewish nation in the context of the Land of Israel. The *Avot* were not necessarily empowered to designate territory as the sanctified Land of Israel whose produce can aspire to be *teruma* or *ma’aser sheini*. However, their covenant with God—*berit Avot*—both allowed them and mandated them to take the first steps toward collective possession of the Land of Canaan as the future homeland of the people of Israel.

Furthermore, if we honor this distinction, then perhaps the *Avot*’s possession of the Land was not only consequential for the pre-Sinaitic period but serves as the basis for the Jewish title to the Land of Israel forever after. In other words, **the dual aspects of the sanctity of the Land of Israel (“*kedushat* *Eretz Yisrael*”) and the title of the Land of Israel (“*shem Eretz Yisrael*”) are rooted in two different covenants**. The formal sanctity of the Land of Israel is a property that the covenant of Sinai introduces (like the sanctity of Jewishness [*kedushat Yisrael*] itself), with all of its attendant ramifications, and that only Yehoshua’s post-Sinai conquest can initiate. However, the title of the Land of Israel as the designated homeland for the people of Israel originates in God’s covenant with the *Avot*, **as does its ability to transform the Jewish nation into a unified “*kahal*,”** which assumes the responsibilities of national destiny. Only in and through the Land of Israel can we gain our full national identity, for in the context of *berit Avot*, land and people are inextricably bound.

This dimension of the Land of Israel as the locus of national destiny is not merely anticipated by *berit Avot*, but is launched by the *Avot* themselves and predates the Revelation at Sinai. Similarly, the consequences of their covenant are not engulfed by *berit Sinai* but persist independently. Thus, the sanctity of the Land may expire, but its title, reflective of its unique status in *berit Avot* as the place of meta-historical Jewish destiny, will never pass.[[8]](#footnote-8)

Returning briefly to the position of Rabbeinu Chananel, perhaps even he agrees that the *Avot* did not sanctify the Land. The *beraita* describes a first and second “possession,” but not necessarily a first and second “sanctification.” The first possession did not sanctify the land, but at most laid the groundwork for the second possession, which permanently sanctified the land.[[9]](#footnote-9)

**The Land of Israel and the Immigrants from Egypt**

If, as we have claimed, the “title” of the Land of Israel originates in God’s covenant with the *Avot*, why do they not figure more prominently in halakhic discussions of the boundaries of the Land of Israel? Following the Mishna,[[10]](#footnote-10) the Rambam almost always speaks of the borders set by “the immigrants from Egypt” and those set by the “immigrants from Babylonia,”[[11]](#footnote-11) rather than of those promised to Avraham.[[12]](#footnote-12) What significance lies specifically in the conquest by the “immigrants from Egypt”?[[13]](#footnote-13)

We can consider three possible responses to this question:

1. It is actually the first conquest by Yehoshua and not *berit Avot* that endows territory with the title of the Land of Israel (in other words, rejection of the interpretation above). Thus R. Joseph B. Soloveitchik, who in one context emphasizes the actual possession of the Land in monetary terms by the People of Israel, points to the first conquest and settlement as the factors that gave the Land its title as the Land of Israel.[[14]](#footnote-14)
2. The title of the Land of Israel includes, but is not limited to, the territory conquered by the immigrants from Egypt. Thus R. Ahron Soloveichik suggests that:

The title of the Land of Israel can be assigned in two ways: 1) Through God’s gifting of the Land to the *Avot*, even before Yehoshua conquered it. Already then it became the Land of Israel, property of the people of Israel. This is the principle that “the Land of Israel is held by us from our forefathers” (*Bava Batra* 119a). 2) Through conquest by the Jewish people, from the principle that “Every place on which your foot treads shall be yours” (*Devarim* 11:24).[[15]](#footnote-15) Through Jewish conquest we can transform areas outside the Land into the collective property of the people of Israel, and it will be included in the title “the Land of Israel.” (*Parach Mateh Aharon*, *Sefer Ahava*, 179)[[16]](#footnote-16)

Thus, the boundaries of the immigrants from Egypt are only mentioned to be inclusive of conquered areas that were not promised to the *Avot*.[[17]](#footnote-17) Areas that *berit Avot* grants to the Jewish people did not require any further action to gain the title of the Land of Israel.

However, in order to fit with the Rambam’s exclusive references to the borders of the immigrants of Egypt, R. Ahron Soloveichik would have to assume that they conquered the entire territory given to the *Avot*, in addition to further conquests. This proposition requires further, careful examination.[[18]](#footnote-18)

1. The significance of the “immigrants of Egypt” lies not in their own conquest, but in their fulfillment of God’s covenant with Avraham, namely, *berit bein ha-betarim*. Thus the title of the Land of Israel is indeed rooted in *berit Avot*, but perhaps requires its concretization in practice.

**The Exodus and the Land of Israel**

Briefly contrasting these three approaches will highlight the differences between them. Approaches #2 and #3 seek to root the concept of “title of the Land of Israel” in *berit Avot*. According to approach #1, *berit Avot* is not directly relevant.

Approaches #1 and #2 would clearly extend the title of the Land of Israel to areas not promised to Avraham. What would approach #3 say? I would suggest that it need not differ on this point. An expansive country centered around the Land of Canaan[[19]](#footnote-19) is well within the vision of *berit Avot* for a homeland for Jewish destiny and therefore could be seen as part of its fruition.

Approaches #1 and #3 will insist upon actual conquest by the immigrants of Egypt in order to assign the title of the Land of Israel to specific territory. Areas given to the *Avot* but not conquered (if they exist) would have the title of the Land of Israel according to approach #2, but not according to the others.

However, approaches #1 and #3 will differ with regard to what significance the conquest by the immigrants of Egypt carries. While according to approach #1, it is their actual conquest and settlement which bestows the title of the Land of Israel upon a given area, approach #3 maintains that it is not their conquest, but their embodiment of God’s covenant to the *Avot* that confers this title.

This last point may seem like hair-splitting, but it leads us to consider a further possibility: Might approach #3 (unlike approach #1) assign relevance vis-à-vis the Land of Israel to the generation of the Exodus **independent** of the actual conquest of the Land?

This odd suggestion finds expression in *Bava Batra* 117a, regarding the initial partition of the Land of Israel in the days of Yehoshua. A *beraita* records a dispute whether parcels of land were distributed, in principle, to “those who left Egypt” or to “those who entered the Land.” While the generation that left Egypt, of course, did not take hold of the land in practice, as they all perished in the desert, the first opinion maintains that they nevertheless assumed ownership of it. The subsequent generation, which actually entered the Land, was not privy to its own distribution but inherited lots from the previous one.

The *Gemara* learns this surprising concept from God’s statement to Moshe while still in Egypt: “And I shall bring you to the land that I raised My hand to give it to Avraham, to Yitzchak and to Ya’akov and **I have given it** (*ve-natati*)[[20]](#footnote-20) to you as an inheritance (*morasha*), I am God” (*Shemot* 6:8). The *Gemara* deduces that God is actually bequeathing the land through this verse and further notes that “to those who departed from Egypt was [the Torah] speaking.” In other words, the Jews took possession of the Land of Israel at the time of the Exodus, even before they conquered it!

Furthermore, lest we think that this possession was not literal but was only a construct through which to determine the distribution of land, the *Gemara* cites a further ramification: “Rabba said, ‘The Land of Israel is [considered] held’” by the generation of the Exodus, so that a first-born in the subsequent generation inherited a double-portion, which he could not have from merely potential assets (119a).[[21]](#footnote-21) Of course, the generation of the Exodus did not receive the land out of nowhere. From the word “inheritance” (*morasha*), the *Gemara* learns, “It is an inheritance for you from your forefathers” (119b).

**Summary**

In summary, the formal sanctity of the Land of Israel and its title as the Land of the people of Israel each correspond to a different covenant. Whereas the Land’s sanctity is a function of *berit Sinai*, its title derives from *berit Avot*, which first designated the Land of Israel as the future homeland for the Jewish people.

Furthermore, we can delineate at least three stages to the Jewish people’s possession of the Land of Israel as their national homeland (separate from its halakhic sanctification):

1. Possession by the *Avot*
2. Inheritance by the generation of the Exodus, even prior to their departure from Egypt or to the Revelation at Sinai[[22]](#footnote-22)
3. Actual conquest by the subsequent generation, the “immigrants from Egypt”

The *Gemara* states explicitly that the second stage is predicated upon the first. While the *Gemara* relates specifically to the mechanism of ownership—inheritance from the *Avot*—we can similarly explain the **rationale** behind possession at the time of the Exodus. The **reason** that the people of the Exodus took hold of the Land of Israel is that they represent a stage in the culmination of Jewish destiny as told to the *Avot*. We can perhaps interpret the third stage in a similar vein.

**Conclusion**

We close with some further questions:

1. How should we make sense of the *Gemara*’s odd claim that the generation of the Exodus took possession of the Land of Israel even prior to the actual Exodus? What is the relationship between our emancipation from slavery and our acquisition of the Land of Israel?
2. While the Jewish right to the Land of Israel is rooted in God’s covenant with the *Avot*, according to our analysis, it is only later, through our national possession in practice that the Land fully evolves into the Jewish homeland; hence the Rambam’s consistent references to the territories conquered by the immigrants from Egypt. Therefore, areas that were promised to the *Avot* but were never settled—if they indeed exist—would not bear the title of the Land of Israel with regard to ordination and other laws discussed in the previous *shiur*. According to the Rambam, then, does the “Land of the *Avot*”—either promised to or actually possessed by the *Avot*—have any lasting significance at all?
3. How does “the sanctity of the Divine Presence” in the Land of Israel relate to the categories delineated above?

Future *shiurim* will address each of these issues.

**Questions or Comments?**

Please email me directly with your feedback at [judahlgoldberg@gmail.com](mailto:judahlgoldberg@gmail.com)!

1. See [*shiur* #3](http://www.vbm-torah.org/archive/sinai/03sinai.htm). [↑](#footnote-ref-1)
2. See [*shiur* #7](http://www.vbm-torah.org/archive/sinai/07sinai.htm). [↑](#footnote-ref-2)
3. See commentary on *Bereishit* 12:1, 19:5, 24:3, 26:5 and 28:21. [↑](#footnote-ref-3)
4. Also see *Parashat Derakhim* by R. Yehuda Rosanes (author of the *Mishneh La-melekh*), sermon #9. [↑](#footnote-ref-4)
5. Also see Me’iri. [↑](#footnote-ref-5)
6. See Ritva, who claims that even the Sages, who argue with Rabbi Eliezer, believe that Avraham took possession of the Land of Israel. However, they maintain that the mechanism for his acquisition of the Land was either through Divine declaration or through an assertion of control (*chazaka*), rather than through mere walking. [↑](#footnote-ref-6)
7. See *Seder Olam Rabba* 30 and *Arakhin* 32b. [↑](#footnote-ref-7)
8. R. Joseph B. Soloveitchik himself connects his father’s concept of the title of the Land of Israel to *berit Avot*, but with a different formulation:

   *Eglah arupha*, ordination and the sanctification of the new moon, which have no connection with the territory of *Eretz Yisrael*, and are bound exclusively to the name *Eretz Yisrael*, are grounded in the principle that we have explained above, namely, that the Jew outside *Eretz Yisrael* lacks the sanctity of the covenant of the Patriarchs.” (*The Rav Speaks: Five Addresses on Israel, History, and the Jewish People*, 145)

   Here, we are suggesting that the restriction of these *mitzvot* to the political Land of Israel is not because of additional sanctity that stems from *berit Avot*, but because of the status of *kahal*, which is rooted in *berit Avot*. [↑](#footnote-ref-8)
9. Notably, *Tosafot* only challenge Rabbeinu Chananel from other sources that suggest that Rabbi Yosi believes the first sanctification was annulled. Perhaps they, too, understand Rabbeinu Chananel’s claim in this limited fashion. [↑](#footnote-ref-9)
10. See *Shevi’it* 6:1. [↑](#footnote-ref-10)
11. See *Hilkhot Terumot* 1:2-8, *Hilkhot Bikkurim* 5:8, *Hilkhot Shemita Ve-yovel* 4:26 and *Hilkhot Sanhedrin* 4:6. Also see *Hilkhot Ma’aser* 13:4 and *Hilkhot Shemita Ve-yovel* 4:28. [↑](#footnote-ref-11)
12. However, see *Hilkhot Shemita Ve-yovel* 13:11. [↑](#footnote-ref-12)
13. Some scholars claim that the borders of the immigrants from Egypt simply reflect the boundaries of the Land specified in *Bamidbar* 34:1-15. However, R. Shlomo Zalman Auerbach notes that the Rambam never references the Torah’s boundaries. The Rambam, it seems, “thinks that the borders of the conquest of the immigrants from Egypt are not connected at all to the borders of the Land that are written in the Torah, and it is possible that they are lesser or greater” (*Ma’adanei Eretz* *Terumot* 1:7:1). [↑](#footnote-ref-13)
14. *Iggerot Ha-Grid Ha-Levi*, beginning of *Hilkhot Melakhim*, 2. R. Soloveitchik specifically distinguishes between the Jewish people’s relationship to the Land before conquest, which was “only the right of inheritance” (*zekhiyyat yerusha gereida*) bequeathed by the *Avot*, versus the “possession and settlement” that the immigrants from Egypt achieved. [↑](#footnote-ref-14)
15. See *Sifrei* *Devarim* 51, as well as Ramban’s commentary to this verse and Rambam *Hilkhot Terumot* 1:2. R. Ahron Soloveichik presumes that if these territories can be endowed with the sanctity of the Land of Israel, they will certainly possess the title of the Land of Israel as well. [↑](#footnote-ref-15)
16. Also see *mori ve-rabbi* R. Aharon Lichtenstein’s depiction of the “title” of the Land of Israel: “We need only know whether the area in question is part of the country of Eretz Yisrael, and for this the fact of previous sanctity, perhaps even the bare fact that this territory is part of the area covenanted to Abraham, is sufficient” (“Brother Daniel and the Jewish Fraternity,” *Leaves of Faith: The World of Jewish Living*, 66). [↑](#footnote-ref-16)
17. It should be noted that the boundaries of the immigrants from Egypt that appear in the Rambam do not seem to include any areas outside of the Land of Canaan (*Hilkhot Terumot* 1:7). The most glaring omission is the eastern bank of the Jordan, which was conquered by Moshe Rabbeinu himself yet seems to sit outside of the borders of the immigrants from Egypt (also see *Hilkhot Shemita Ve-yovel* 4:28). Even R. Ahron Soloveichik observes that the two routes to gaining the title of the Land of Israel are not equivalent: “The title of the Land of Israel that derives from the gift to the *Avot* is greater than the title of the Land of Israel that applies because of conquest” (180). [↑](#footnote-ref-17)
18. See, for instance, Rambam *Hilkhot* *Terumot* 1:3 and *Ma’adanei Eretz* *Terumot* 1:7:1, as well as “*Eretz Yisrael*” in *Encyclopedia Talmudit*, vol. 2, 205-213.

    R. Shlomo Fisher (*Beit Yishai* 1:2:1) further distinguishes between the land that was promised to the *Avot* and the land of which they actually took possession. Though God’s promise spans “from the river of Egypt to the great river, the Euphrates river” (*Bereishit* 15:18), Avraham only took hold of the more limited boundaries of Canaan through his traveling “its length and its width” (*Bereishit* 13:17). Perhaps, then, the title of the Land of Israel only applies to territory held by the *Avot*, but not to that which was merely promised to them. [↑](#footnote-ref-18)
19. See Rambam *Hilkhot Terumot* 1:3. [↑](#footnote-ref-19)
20. In Biblical Hebrew, tense can be ambiguous. Thus “*ve-natati*” can be read either as “I shall give” or “I have given.” While the former is the simpler reading of the verse (and is therefore adopted by Onkelos), the *Gemara* is homiletically adopting the latter. See Rashbam 119a, s.v. *muchzeket*. [↑](#footnote-ref-20)
21. According to the Ramah, the novelty in Rabba’s position lies mainly in limiting the law of potential assets, rather than in emphasizing the degree of ownership in the Land of Israel. The silence of other commentators, however, suggests that they take “held” literally, so that no creativity regarding potential assets is necessary. [↑](#footnote-ref-21)
22. Though the *Gemara* cites a dissenting opinion that the Land was distributed “to those who entered,” the Me’iri rules against it. Furthermore, the Ramah notes that even the dissenting opinion agrees that the Land, fundamentally, was bequeathed to the generation of the Exodus. The only point of contention is how to figure the appropriate distribution for each individual. [↑](#footnote-ref-22)