YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

**The Covenant of the *Avot* and the Covenant of Sinai**

**By Rav Dr. Judah Goldberg**

[This shiur is part of Rav Goldberg’s VBM series ***Before Sinai: Jewish Values and Jewish Law***. The series (still ongoing) is [here](https://etzion.org.il/en/series/sinai-jewish-values-and-jewish-law-en).]

When we think of the obligations that are incumbent upon a Jew, we typically think in terms of the covenant established through Moshe at *Har Sinai* that commits us to the halakhic system. However, R. Joseph B. Soloveitchik repeatedly asserts that there is another, indeed earlier, covenant that binds a Jew: *Berit Avot* – the covenant established with our forefathers in the earliest stages of Jewish history, prior to the giving of formal law.[[1]](#footnote-1) This *shiur* will explore these two covenants and their relationship to each other.

**The Responsibilities of *Berit Avot***

B*erit Sinai*, of course, consists primarily of the halakhic system as we know it. But what are the obligations of *berit Avot*? R. Soloveitchik’s student, R. Walter Wurzburger, summarizes *berit Avot* as follows:

(1) experiencing a sense of kinship and solidarity with fellow Jews with whom we share a common “Covenant of Fate” as well as the awareness of a singular spiritual destiny and value system, and (2) acknowledging the unique and preeminent position of the Land of Israel as the central arena for the fulfillment of Jewish destiny. It should also be noted that, at times, Rabbi Soloveitchik expanded his analysis of the meaning of the Covenant of Abraham to include in it the additional extra-legal requirement (3) to strive for religious experiences, in which God is encountered.[[2]](#footnote-2)

At the same time that these two covenants are parallel, they also have very different features, starting with the ways they are described in the Torah. We will first analyze the Torah’s relation to each of these covenants and then attempt to characterize the unique nature of each:

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

Let us contrast 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).[[3]](#footnote-3)

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.[[4]](#footnote-4)

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**

In sharp contrast, though, the introductory “*im*” never appears in the context of the *Avot*. 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*.[[5]](#footnote-5)

*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.[[6]](#footnote-6) 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.[[7]](#footnote-7)

**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.

***Avot* vs. Sinai**

Let us now explore some practical ramifications of this key distinction:

***I) Laws are rigid. Values are flexible.***

*Halakha* establishes a legal system that provides the basic framework for all Jewish living. To this day, it is fairly unique among religious systems in its genuinely legal posture, evidenced in its mode of discussion and argumentation, its objectivity and independence from subjective religious experience and its elaborate hierarchies. It is meant to be dependable, predictable, interpretable and readily applicable, relatively independent of time and context.

*Halakha* only takes local factors into account when they have been predefined as legally relevant—such as significant monetary loss, threat to human dignity or extensive physical or emotional suffering—and thus already incorporated into the halakhic system. Even then, these factors are carefully circumscribed as they are fit into the clear halakhic hierarchy, along with all other purely legal considerations. This is exactly what allows *halakha* to be the backbone of Jewish society, with regard to both its civil and ritual functioning, and why it has proven to be so resilient over centuries and millennia. Especially in the modern era, its intransigence and its anachronisms, a source of scorn for more liberal religious strains, are almost a point of pride for its devoted adherents.

The values of *berit Avot* stand in contrast to the *halakhot* from Sinai. Values are characteristically context dependent. They express themselves through our actions, but they can be malleable in practice in the face of competing factors or extenuating circumstances. Laws are grounded in a concrete world and thus by definition must be inviolate; otherwise, they lose their meaning as “law.” Values, though, belong first and foremost to the theoretical realm of priorities and ideals, only secondarily guiding and informing specific choices. Therefore, a value can tolerate being temporarily trumped, as the value has not been trounced, only its application in this particular instance.

***Halakha* as Law after Sinai**

A wonderful demonstration of the distinction between the attitude of the *Avot* towards precepts and our own relation to the commandments of Sinai can be found in R. Chayyim of Volozhin’s *Nefesh Ha-chayyim*. Historically, R. Chayyim was responding to a certain, albeit limited, antinomian sentiment in the Hasidism of his day, which prioritized intention and devotion over meticulousness in performance of *mitzvot*,particularly with regard to their timing (Preamble to Section 4, ch. 4-8). Antinomians found support in the Talmudic concept of “*aveira li-shma*,” a transgression for Heaven’s sake, which receives approbation from *Chazal* (*Nazir* 23b) and which apparently legitimizes violating a law for the right spiritual goal.

R. Chayyim’s solution is to concede halfway to the *Chassidim*. He readily acknowledges that pure intention is both desirable and spiritually consequential in the transcendent realms (ch. 6) and that the rigidity of Mosaic law can sometimes hamper lofty spiritual aspirations. However, he sees no flexibility once *berit Sinai* has been established:

But ever since Moshe came and brought [the Torah] down to earth, “it is no longer in Heaven” (*Devarim* 30:12). Lest a great man whose intellectual reach is vast rationalize and say, “I, who perceives secrets and the reasons for the *mitzvot* in the transcendent forces and realms, see that it is fitting for me according to the nature of my soul, or for so-and-so according to his nature, to violate,” God forbid, “a certain mitzva or to neglect any detail of behavior and perform defectively even one fine detail of the Rabbinic ordinances, or change the time of its performance,” God forbid.

And for this did the Torah close, “No other prophet like Moshe has arisen” (*Devarim* 34:10); and as *Chazal* derived, “‘These are the *mitzvot* [that Hashem commanded through Moshe to *Benei Yisrael* at Mount Sinai]’ (*Vayikra* 27:34), that from that point on, no prophet may introduce innovations” (*Shabbat* 104a). (1:22)

R. Chayyim is defending the absolute inviolability of *berit Sinai*—in other words, its nature as law. Without regard for spiritual aims or metaphysical repercussions, the Jew is commanded to unquestioningly abide by God’s word. Thus, when King Chizkiyahu foresaw that his offspring was destined for evil and he therefore abstained from propagating, the prophet Yeshayahu admonished him, saying, “What have you to do with God’s secrets? What you are commanded you should have done, and what is fitting before the Holy One, blessed be He, He will do” (*Berakhot* 10a).

R. Chayyim does not directly challenge the Hasidic claim, echoed by contemporary critics of Orthodoxy, that meticulous halakhic practice can seem stifling, constraining or distracting. Rather, he contends that all other spiritual or teleological aims are subordinate to the primacy of *halakha*, which prioritizes “*ma’aseh*” (action) over “*machshava*” (thought).

**“*Aveira Li-shma*”**

Where, then, does R. Chayyim see room for “*aveira li-shma”* and other such constructs? In the world of the *Avot*, before the establishment of *berit Sinai*, “all of their actions, speech, thoughts and matters in the world were with complete devotion and purity of intention for the sake of Heaven, and they directed themselves Heavenward towards the restoration, elevation and unification of the higher spiritual worlds and forces.” However, adds R. Chayyim, they did so “**with whatever action was appropriate, and in the manner and at the time that was appropriate, not with set, rigid performances and *mitzvot* that constituted inviolable law**” (Preamble to Section 4, ch. 7).

According to R. Chayyim, the *Avot* had latitude to pursue their spiritual agendas as they saw fit, even deviating at times from what they knew would ultimately be Torah law. For even though the *Avot* generally practiced the future *mitzvot*,

not that they performed [them] out of obligation and that this was a halakhic requirement for them. Rather… they observed the Torah because they perceived with their superior intellect the restoration of the spiritual worlds and the order of the transcendental forces that they could repair with each and every mitzva. However, they also had permission to worship Him by other actions or means, besides for *mitzvot*, or even to transgress a mitzva, not in accordance with the Torah, when they understood that this certain action was necessary then for the restoration of the higher worlds.

With this thesis, R. Chayyim also resolves another difficulty raised by the Ramban. *Chazal* claim that the *Avot* observed all of the *mitzvot* prior to their formal commandment.[[8]](#footnote-8) But how then, asks the Ramban, “did Ya’akov erect a ritual monument[[9]](#footnote-9) and marry two sisters, and according to the Sages [actually] four, and Amram marry his aunt, and our Teacher Moshe erect twelve ritual monuments?” (commentary on *Bereishit* 26:5). The Ramban’s solutions are to either narrow the range of precepts that the *Avot* actually adhered to or to differentiate between their time in the Land of Israel, during which they observed all the commandments, and their time elsewhere.

R. Chayyim proposes a novel answer. The *Avot* observed all the *mitzvot*, except when they intuited that some higher spiritual purpose would be better achieved by other means—in other words, an “*aveira li-shma*.” Thus Ya’akov, for instance, discerned that “according to the nature of his soul, he could effect great repairs to the transcendent forces and worlds if he married these two sisters, Rachel and Leah.” Furthermore, “this is also one of the reasons why the Torah was not given to Noach or the holy *Avot*” (1:21). God specifically desired for His worship in its pre-Sinaitic phase to be unlegislated and flexible, in contrast to the more rigid form of worship that followed.[[10]](#footnote-10)

**Values after Sinai**

R. Chayyim, for his own purposes, relegates flexibility in God’s worship to a bygone era and does not reserve any place for it in a post-Sinai world. As he reiterates, “The truth is clear… that this kind of Divine service applied only before the Giving of the Torah. But ever since Moshe came and brought it down to earth, ‘it is no longer in Heaven’ (*Devarim* 30:12)” (Preamble to Section 4, ch. 7).[[11]](#footnote-11) However, based on his thesis, we can pose our own question: What happens to an aspect of the *Avot*’s worship—*berit Avot*—that is not later subsumed under *berit Sinai*?[[12]](#footnote-12) Though the legal force of Mosaic law overwhelms the more fluid values that preceded it, what about domains that *halakha* does not directly address?

Here we can claim that the post-Sinaitic Jew is bound by two different covenants, the covenantal *berit Avot* and the contractual *berit Sinai,* but that in non-overlapping areas, each retains its original form. Regarding obligations that stem for us primarily, if not exclusively, from *berit Avot*, perhaps their non-legal nature as values allows for a certain amount of flexibility and discretion. In a vacuum these values dominate, and we do not easily or flippantly override them. However, in the context of other spiritual pressures, perhaps the values of *berit Avot* can accommodate.

**Living in Israel: Law or Value?**

To use an example from contemporary Jewish life, let us consider *aliya*—moving from the Diaspora to Israel. Many native Israelis intuitively identify with the Ramban’s position that living in the land of Israel is subsumed under one of the 248 positive commandments given at Sinai.[[13]](#footnote-13) Therefore, they are mystified by their brethren in the Diaspora who may be exceedingly scrupulous regarding all other *halakhot*, yet seemingly ignore this particular mitzva. How could they regularly recite *Shema* at the appropriate times, adorn themselves with beautifully crafted *tefillin* and blow 100 shofar blasts on *Rosh Ha-shana*, but at the same time overlook “and you shall dwell in it” (*Bamidbar* 33:53)?

As for Diaspora Jewry, segments of it likely accept the Rambam’s omission of living in the land of Israel from his *Sefer Ha-mitzvot*, believing, if only subconsciously, that residing in Israel belongs more to the values of *berit Avot* than to the laws of *berit Sinai*. They do not discount the supreme importance, on both national and personal levels, of living in Israel and strengthening its Jewish presence. Rather, they see it as a value among values, deserving of serious consideration but also counterbalanced by competing concerns, such as wanting to stay close to family or to service and educate Jewish communities abroad. Still, many of these Diaspora Jews will decide to make *aliya* nonetheless (as did my family and I), not because they are persuaded by the Ramban’s arguments but because their allegiance to the legacy of Avraham and God’s vision for Jewish destiny ultimately outweighs other factors.[[14]](#footnote-14)

***II) Laws are hierarchical. Values are pluralistic.***

One of the hallmarks of *halakha*, among other legal systems, is its intricate hierarchy that brings order to the multitude of rules and obligations that comprise the law and helps adjudicate internal conflicts between them. The study of *halakha* seems to be almost preoccupied with the act of classification for its own sake, even before conflicting demands have been considered. Assessing a law as Biblical or rabbinic in origin, as a positive or negative commandment, as a “light” or “weighty” mitzva (see *Yoma* 85b) or as a ritual or interpersonal obligation is part of the basic investigation that almost any foray into *Torah she-be’al peh* entails.

These classifications, however, take on even greater significance when circumstances do not allow for the satisfaction of all halakhic demands, in which case a slew of rules for prioritization kicks in. For example: a positive commandment can override a negative commandment, but not one that carries a severe penalty (*Yevamot* 3b) or is itself coupled to a positive commandment (*Beitza* 8b); a frequent mitzva takes precedence over a less frequent mitzva (*Zevachim* 89a); a rabbinic law can demand inaction regarding a Biblical command (*Yevamot* 90b); and a transgressor receives the more severe of multiple punishments he faces (*Sanhedrin* 81a; *Ketubot* 36b). These are all rules that maintain a clear hierarchy of responsibilities in any given scenario. Indeed, in order to be relevant, it is the job of law to “make sense of itself” by negotiating multiple, competing interests into a concrete plan for action.

Values, in contrast, live comfortably side by side and do not easily line up by rank or severity. Furthermore, because values deeply inform judgment and action but do not directly impose specific duty upon the individual or community, there is nothing inherent in their nature that demands a clear solution to competing claims. The values remain fundamentally true in their original, pure form and, in a sense, are above frontal clashes, even as their devotee may feel pulled in different directions. For the very same reason that values can tolerate temporary, practical suspension, they also do not flinch when particular circumstances pit them against each other.

The hierarchical structure of *halakha* allows for easy formulae that dictate which rule will take precedence over another. Weighing different values, by comparison, is often a matter of comparing apples and oranges, which greatly complicates any effort to systematically decide which should prevail when. Regarding Jewish ethics, for instance, R. Walter Wurzburger writes that its “pluralistic nature… does not allow us to rely on a single criterion for the resolution of competing claims between various norms and values” (*Ethics of Responsibility*, 35). By their very nature, values defy simple, generalizable solutions to situations of conflict.

***III) Legal duties are objective. Responsibilities imposed by values are subjective.***

This conclusion follows from the first two assertions. Law determines clear obligations that are objective, universal and static. The classic symbol of this aspect of *halakha* is *shi’urim*, the objective measures that set the parameters of *mitzvot* (a *lulav* must be four handbreadths tall; one must consume an olive-sized quantity of *matza* at the *seder*; a woman is married through a monetary gift worth a *peruta*; etc.). Temperament, sensibility and circumstance cannot alter the size of an opening that disqualifies an *eiruv* or the volume of water necessary for a *mikveh*. Similarly, formal rules determine the objective criteria for exemption from a particular duty or for suspension or deferral of a law.

Of course, application of *halakha* relies upon human judgment (e.g., “Is this medical situation on Shabbat conceivably life-threatening?” “Is the *sukka* too hot for comfort?”), as with all systems of law. However, these judgments relate to predefined clauses in the law, rather than to a particular agenda. No matter how pressing the concern, the halakhic decisor must operate within recognized categories. Circumventing formal reasoning through direct apprehension of “God’s will” is incompatible with *halakha* as law.

Notably, even when the Torah speaks in the broad, sweeping language of values, as in “you shall love your neighbor as yourself” (*Vayikra* 19:18), “on the seventh day shall you rest” (*Shemot* 23:12) and “you shall do the right and the good” (*Devarim* 6:18), our Sages were quick to delineate specific duties that emerge from each of these commandments (see Rambam *Hilkhot Aveilut* 14:1; *Hilkhot Shabbat* 21:1; and *Hilkhot Shekheinim* 12:5 and *Hilkhot Malveh Ve-loveh* 22:16, respectively). This is not to suggest that our Sages thereby gutted the overarching nature of these commandments or that *halakha* never embraces broad, open-ended values. Rather, the point is that *halakha*’s strong tendency is to objectify wherever possible.

Values, on the other hand, resist constraining definition. They belong to the list of “things that have no measure” (*Pei’a* 1:1) at either end of the spectrum. They do not establish an absolute, minimal duty, nor is there any point at which one can say that he or she has definitively satisfied personal obligation. Regarding values, the individual can never escape exercising personal discretion in deciding when, how and to what degree.

Furthermore, because values are both flexible and pluralistic, they similarly call upon the individual to employ subjective reasoning in juggling multiple concerns and resolving arising conflicts. Regarding ethics, R. Wurzburger writes:

Since there is no hierarchy of values or principles that can provide definitive guidance in situations of ethical ambiguity, we have no choice but to rely on intuition to determine which of the conflicting *prima facie* obligations takes precedence. (*Ethics of Responsibility*, 35)

What R. Wurzburger writes of ethics is equally true for the other values of *berit Avot*. To return to our previous example: Who should make *aliya* and under which circumstances? Which conflicting values can reasonably take precedence over living in Israel, and which should be cast aside without too much thought? For those who view living in Israel as a law of *berit Sinai*, responsibility lies with halakhic authorities to articulate generalizable answers to these questions. If, however, we classify living in Israel as a value of *berit Avot*, we might purposely turn the issue over to individuals to process—with careful analysis and reflection, as well as with the input and guidance of scholars—for themselves.[[15]](#footnote-15)

**“Command His Children and His Household After Him…”**

Reliance on intuition, rather than on clear, revealed command, may actually be directly reflective of the *Avot*’s own functioning and thus particularly appropriate for their legacy. In an illuminating essay, R. Yoel Bin Nun cites the Rambam’s contrast in *Moreh Nevukhim* between the prophecy of Moshe Rabbeinu and those who preceded him. Moshe, according to the Rambam, was the first prophet to convey Divine messages to others. All previous prophets, including Avraham, were privy to personal insight but then shared it autonomously. So too with regard to directives – Moshe transmits God’s *mitzvot*, but Avraham does not: “Even when he was commanded to circumcise himself, his sons, and his slaves, he did so himself but did not prophetically call others to it.”

The Rambam then adds a cryptic proof: “Notice the Torah’s phrasing: ‘For I know him….’ (*Bereishit* 18:19). Thus it is clear that [Avraham] functioned through command alone” (2:39). What does the Rambam mean here? R. Bin Nun understands the Rambam to be referring to the continuation of the verse – “That he will command his children and his household after him.” In other words, Avraham is identified here as the source of command. He transmitted his own commands, rather than those of God. R. Bin Nun summarizes:

Avraham is chosen so that he will command; the source of command and authority in ‘*Torat Ha-Avot*’ is human – that is, Avraham and his followers after him[[16]](#footnote-16)… The commander here is not God, but Avraham, and therefore **the original source of authority in Israel is autonomy**(bold in original)and not heteronomy; in clear contrast to the prophecy of Moshe, where the commander is God.[[17]](#footnote-17)

While Moshe is charged with a mission, Avraham is chosen for a destiny. Moshe is given a plethora of concrete laws to bring to the people. By contrast, Avraham, armed with just a few core values and a single mitzva, must actively and ambitious chart a path for himself and for “his children and his household after him.” As R. Joseph B. Soloveitchik writes:

[God] did not demand absolute obedience and subordination [from Avraham]. All He solicited for was loyalty, devotion and friendship. He let Abraham find the ethical law, or “God’s way to do justice and judgment” (Bereishit 18:18). The nomad discerned his own non-imperativistic, fluid ethical code. Later God approved of these standards. (*Emergence of Ethical Man*, 156-157)

R. Bin Nun’s portrayal also echoes a metaphor of Chazal:

Rabbi Shimon said: “A father did not teach [Avraham], nor did he have a mentor, so from where did he learn the Torah? Rather, the Holy One, Blessed be He, arranged for his two kidneys[[18]](#footnote-18) to be like two teachers, and they would overflow and teach him Torah and wisdom. (Bereishit Rabba 61:1)

Though the subject matter here is Torah, the source is ultimately within. Unlike Moshe, who “received the Torah from Sinai” (Avot 1:1), Avraham had to intuit and discover it on his own. He then became the source of wisdom for subsequent generations, as the Tanchuma adds:

“Rabbi Levi said: Avraham learned the Torah on his own… and he would teach Torah to his children, as it says, “For I know him that he will command.” (*Vayigash*, 11)

Furthermore, even if he largely adhered to its technicalities, according to R. Chayyim of Volozhin, at least, he apparently exercised his own judgment in deciding when deviation was necessary and authorized his children to do the same.

If this analysis is correct, then we inherit two different modes of operation from our predecessors. As disciples of Moshe and participants in *berit Sinai*, we submit to an extensive legal code and its internal system of reasoning. As followers of Avraham and participants in *berit Avot*, we have the privilege and responsibility to search deeply within and cautiously employ our own intuitions, ever ready to answer before “God, investigator of the heart, tester of the kidneys” (*Yirmiyahu* 17:10).

**Responding to the Covenant**

Finally, it is important to note that flexibility and discretion in values is, to turn *Chazal*’s phrase on its head, a “leniency that leads to a stringency.” The same properties that lend flexibility to the values of *berit Avot* also make the possibilities for their implementation limitless. Because there is no concrete duty to be fulfilled, one can never walk away satisfied that all obligation has been dispensed with.

Thus, while values may appear “soft” relative to rigid, objective *halakhot*, they can also be much more demanding. Of the relationship between *halakha* and covenantal values, R. Wurzburger writes:

It should be borne in mind that meticulous observance of halakhic norms does not exhaust the meaning of Jewish piety. Halakhah merely provides the foundation; it is a necessary but not sufficient condition for the attainment of religious ideals. As Rabbi [Joseph B.] Soloveitchik put it, “Halakhah is not a ceiling but a floor.” (*Ethics of Responsibility*, 31-32)

In stressing *halakha* as a foundation, R. Wurzburger and R. Soloveitchik also highlight a further dimension of complementarity between *berit Avot* and *berit Sinai.* *Halakha* establishes universal minimal requirements while values raise the bar further, in context-dependent and subjective ways.

Moreover, it is here, perhaps, that personal, intuitive thinking becomes most important—not in determining where to pull up short, but in pushing each of us to reach further, try harder and aspire for more. Halakhic observance, first and foremost, demands obedience. The weight of its yoke has us constantly asking ourselves, “Have we met all of our obligations? Have we complied with all of its prohibitions?” The covenantal experience, on the other hand, calls for ambition, imagination, sensitivity and personal creativity. It challenges the Jew to constantly reflect, “What do the nuances of this situation call for? What can I contribute in this particular context?” Here, we are ever haunted by the words of the *midrash*:

Therefore each and every one should be saying, “When will my actions approach the actions of Avraham, Yitzchak and Ya’akov?”(*Tanna De-bei Eliyahu Rabba* 23)

1. See, for instance, *Kol Dodi Dofek: Listen—My Beloved Knocks*, trans. David Z. Gordon (New York, 2006), 51-89; *The Rav Speaks: Five Addresses on Israel, History, and the Jewish People*, trans. A. H. Rabinowitz (New York, 2002), 127-152; *Abraham’s Journey* (Jersey City, 2008), 201-204; and “Tzedaka: Brotherhood and Fellowship” in *Halakhic Morality*, 138-143, 161-164. For further background and discussion regarding this theme, see R. Reuven Ziegler, *Majesty and Humility: The Thought of Rabbi Joseph B. Soloveitchik* (Jerusalem, 2012), 283-289. [↑](#footnote-ref-1)
2. R. Walter Wurzburger, *Ethics of Responsibility* (Philadelphia, 1994), 15. [↑](#footnote-ref-2)
3. Also see verses 18, 21, 23 and 27. [↑](#footnote-ref-3)
4. 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-4)
5. See *Avot De-Rabbi Natan* 2, including textual variants; *Midrash Tanchuma*, *Ki Tissa,* 30. [↑](#footnote-ref-5)
6. 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 [here](https://www.etzion.org.il/en/shiur-03-components-berit-avot) 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. However, see R. Soloveitchik, *The Emergence of Ethical Man*, ed. Michael Berger (Jersey City, 2005), 155-157. [↑](#footnote-ref-6)
7. See R. Soloveitchik, *The Emergence of Ethical Man*, 154-155:

   There is no imposition of divine authority upon [Abraham]. Only a bilateral covenant, which binds both man and God, was concluded…. The divine imperative was presented to Abraham as an entreaty, or rather as counsel. It was always tied in with the great promise and vision, as if to say “The fulfillment of My norm, Abraham, will perpetuate our comradeship and make you great.” [↑](#footnote-ref-7)
8. *Kiddushin* 4:14 [↑](#footnote-ref-8)
9. Outlawed in *Devarim* 16:22. [↑](#footnote-ref-9)
10. R. Meir Dan Plotzki, citing a similar line of reasoning by the Maharal (see *Gur Aryeh* on *Breishit* 46:10), further distinguishes between different sets of laws for the *Avot* themselves. Regarding the future Sinaitic law, the *Avot* retained flexibility and could override it when necessary, in the Maharal’s view, through Divine inspiration. Universal Noahide law, on the other hand, pertained to the *Avot* as rigid law and had to be observed under all circumstances (*Keli Chemda*, *Vayigash* 2:3). Regarding Ya’akov’s marriages to two sisters under Noahide law, see Ramban, *Yevamot* 98a. [↑](#footnote-ref-10)
11. Also see R. Norman Lamm, *Torah Lishma—Torah for Torah’s Sake: In the Works of Rabbi Hayyim of Volozhin and his Contemporaries* (New York, 1989), 14-18, where he speculates that R. Chayyim was responding to Hasidic claims that *tzaddikim* retain something of the primordial pre-Sinaitic existence. Also see p. 44, n. 85. [↑](#footnote-ref-11)
12. Also see *Iggerot Ha-Ra’ayah*, #89. [↑](#footnote-ref-12)
13. Glosses to Rambam’s *Sefer Ha-mitzvot*, Omitted Positive Commandment #4. I deliberately say “subsumed” because the Ramban believes that the primary mitzva is collective conquest and settlement of the Land of Israel. [↑](#footnote-ref-13)
14. On a personal note, this last point crystallized in my mind when one of my non-Jewish colleagues asked me why we are moving to Israel. “Is it for religious reasons?” he probed. I hesitated, not sure of how to answer. By “religious” I knew he meant “halakhic,” wondering if I was moving to Israel for the same reason I pray three times a day and return home before sundown on Friday. I knew this was facetious, but at the same time I did not possess a language that could capture in what sense my identification with Jewish destiny is “religious.” *Berit Avot* fills this void. [↑](#footnote-ref-14)
15. The need for intuition, notes R. Wurzburger, is not unique to his theory of ethics but is shared by contemporary interpretations of *da’at Torah*. Both presume that “there are religiously significant issues that cannot be decided on the basis of purely formal halakhic reasoning” (*Ethics of Responsibility*, 31). In another context, he adds:

    What differentiates our approach to covenantal imperatives from the doctrine of *Da’at Torah* is the emphasis on the personal responsibility of the individual to make his own decisions in areas not subject to halakhic legislation or authority. One cannot abdicate one’s religious responsibility by claiming that halakhic authorities provide authoritative guidance in areas which ultimately have to be reserved for the individual’s exercise of his personal freedom. (“Covenantal Imperatives” in *Covenantal Imperatives: Essays By Walter S. Wurzburger on Jewish Law, Thought, and Community* [Jerusalem, 2008], 53) [↑](#footnote-ref-15)
16. Also see Bereishit 28:1. [↑](#footnote-ref-16)
17. R. Yoel Bin Nun, “*Nevu’at Ha-tefilla shel Avraham*,” in his *Pirkei Ha-Avot* (Alon Shevut, 2003), 82-83. Available online [here](http://files8.design-editor.com/92/9266067/UploadedFiles/95552BF7-02F4-827A-EE1B-92E2920E12FB.pdf). [↑](#footnote-ref-17)
18. Also see *Berakhot* 61a. [↑](#footnote-ref-18)