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 Rabbi Jack Sable z”l and

Ambassador Yehuda Avner z”l

By Debbie and David Sable

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[Ed. note: This *shiur* picks up where the original “Before Sinai” series left off, in the middle of a series of *shiurim* about the Land of Israel. While the following *shiurim* are intended to stand on their own, the curious reader is invited to peruse earlier *shiurim*, available through the VBM archives, for greater context.] <https://etzion.org.il/en/topics/sinai-jewish-values-and-jewish-laws>]

**Shiur #26: The Land of Israel (9): *Yishuv Eretz Yisrael***

One of the undeniably distinctive features of modern Jewish life (regardless of one’s position on Zionism and the State) is the rehabilitation of Jewish communal life in the Land of Israel and the return of the Land to the center of Jewish consciousness and experience. Along with this dramatic historical development has come an awakening of previously dormant areas of Jewish analysis and inquiry, ranging from purely ritual domains to those that have obvious social, political and national dimensions. While both types of issues have stimulated scholarly activity and creativity, the latter category poses a particular challenge. On the one hand, the classic Jewish literature does not provide as obvious a context for analyzing, say, swapping land for peace in the Middle East or the responsibilities of Diaspora Jewry towards Israel as it does for the observance of tithes or *shemitta*. Nevertheless, the urgency of these complex problems and their profound implications for contemporary Jewish life demand a guiding framework that can facilitate discussion, deliberation and even active debate.

In *shiurim* [#16](http://vbm-torah.org/archive/sinai/16sinai.htm) and [#17](http://vbm-torah.org/archive/sinai/17sinai.htm), we explored the possible contribution of *berit Avot,* the covenant established with our forefathers long before the covenant at Sinai, to an understanding of resurgent Jewish sovereignty in the Land of Israel. In the following *shiurim*, as a culmination to the unit on the Land in *berit Avot*, we will address the relevance of *berit Avot* to our contemporary responsibilities vis-à-vis the Land itself. We begin with a study of *yishuv Eretz Yisrael* (settling the Land of Israel), followed by a consideration of its current implications at both the national and individual levels.

**The Mitzva of Settling the Land?**

Characteristically, any inquiry into Jewish responsibility starts with a perusal of rabbinic literature in order to identify the root obligation that drives a particular concern. Is this specific duty Biblical or rabbinic in origin? If it is Biblical, should it be counted independently as one of the 613 commandments, or is it somehow subsumed under an existing category? From which verse is this duty derived, and how does the verse influence our understanding of the obligation?

Astonishingly, the source material for a specific duty to settle and/or dwell in the Land of Israel is exceedingly sparse. While some areas of law have entire tractates of Talmud devoted to them, the central text for a mitzva of settling the Land of Israel is a passage by the Ramban in his glosses to the Rambam’s *Sefer Ha-mitzvot*. In his list of *mitzvot* that he believes were erroneously omitted by the Rambam, the Ramban includes:

The fourth mitzva: that we are commanded to possess the land that God, may He be blessed and upraised, gave to our forefathers, to Avraham, to Yitzchak and to Ya’akov; and we may not leave it in the hands of another nation or desolate.

The Ramban derives this obligation from the verse, “And you shall inherit the Land and dwell in it” (*Bamidbar* 33:53)[[1]](#footnote-2) and offers additional Biblical proofs that this represents a genuine mitzva, rather than “a destiny and promise.” He further labels military conquest of the Land a *milchemet mitzva* (“commanded war”). Finally, he also includes a personal duty to dwell in the Land of Israel under the same mitzva heading.

On the one hand, this particular ruling of the Ramban is celebrated in some circles and has even become a central underpinning of certain Religious Zionist ideologies.[[2]](#footnote-3) On the other hand, its uniqueness may actually undermine, to a certain degree, those same outlooks. If the existence of a discrete obligation to conquer and settle the Land of Israel is so obvious, why is it first described by the Ramban in the thirteenth century? What should we learn from the Rambam’s silence with respect to *yishuv Eretz Yisrael*, which is what prompts the Ramban’s comment in the first place? Is it possible that the Rambam believes that Jewish law is wholly neutral or indifferent with respect to dwelling in the Land of Israel?

In its most extreme form, this last proposition is untenable. In various contexts, the Rambam records multiple rulings by *Chazal* that clearly assign legal weight to *yishuv Eretz Yisrael*. For example, one who is purchasing a house owned by non-Jews in the Land of Israel may ask a non-Jew to prepare the contract on Shabbat. Even though it is rabbinically prohibited to ask a non-Jew to perform forbidden labor on Shabbat on behalf of a Jew, “for the sake of *yishuv Eretz Yisrael*, [*Chazal*] did not decree regarding this matter” (*Hilkhot Shabbat* 6:11).

Furthermore, a spouse who refuses to move to the Land of Israel forfeits his or her monetary claims in the marriage (*Hilkhot Ishut* 13:19-20); similarly, a Canaanite slave who wants to live, or remain living, in the Land of Israel gains rights against his owner (see *Hilkhot Avadim* 8:6-11). Finally, the Rambam’s choice to incorporate many of the dramatic statements of *Chazal* regarding dwelling in the Land of Israel into his *Mishneh Torah* (*Hilkhot Melakhim* 5:9-12) seemingly disqualifies any claim that his legal *magnum opus* is totally neutral regarding *yishuv Eretz Yisrael.*

Commentators offer multiple explanations for the Rambam’s position. R. Yitzchak Leon, in his *Megillat Esther* commentary on *Sefer Ha-mitzvot*, suggests that a mitzva to settle and dwell in the Land of Israel only existed in the time of the First Commonwealth but was suspended upon our exile. However, as R. Avraham Bornsztain observes (*Avnei Nezer, YD* 454:4), this line of thought does not account for the Rambam’s own stipulation in *Hilkhot Avadim*: “This law applies in all times, even now, when the Land is under non-Jewish control” (8:9).

Others presume that the Rambam would agree that there is a perpetual Biblical obligation of *yishuv Eretz Yisrael*, but that he would classify it as part of another mitzva. R. Bornsztain himself suggests that settling the Land of Israel is the goal of eliminating the seven Canaanite nations, and therefore it should not be counted independently in the list of 613 *mitzvot* (454:6). R. Shaul Yisraeli offers a different suggestion:

It seems with regard to this matter that we find in the Torah an obligation of gratitude for the Land in the Grace after Meals…. And it is obvious that the first condition of this gratefulness is that [the Jewish people] should not detest the Land and should rejoice in its inhabitation. For one who chooses to settle in other lands and who prefers them to the Land of Israel actively demonstrates that he detests God’s inheritance….

The conclusion is that the mitzva of dwelling in the Land of Israel is included in the Biblical mitzva of the blessing upon the Land in the Grace after Meals. This was also the sin of the spies, as it says in *Tehillim*, “They were disgusted with a coveted land; they did not trust His word” (106:24). (*Eretz Chemda*, Vol. 1, 1:5:9)

What these opinions have in common is the absolute conviction that living in the Land of Israel is an uncontestable, fundamental, timeless value in Judaism, even according to the Rambam. Starting with this assumption, they then embark on a search for a mitzva under which to subsume it.[[3]](#footnote-4) However, have all possible avenues been exhausted?

***Yishuv Eretz Yisrael* and *Berit Avot***

Regarding *yishuv Eretz Yisrael*, I share these opinions’ point of departure, but I suggest that we look in a different direction entirely. In response to the Ramban’s critique, they are determined to find a source for *yishuv Eretz Yisrael* within the 613 *mitzvot* of Sinai for the Rambam as well. But perhaps *berit Sinai* is not the only place to look! That the descendants of Avraham, collectively and individually, must continually aspire to settle and inhabit the Land of Israel throughout history is a basic tenet of God’s covenant with our forefathers. Indeed, perhaps it is compelling enough as such that *berit Sinai*, according to the Rambam, does not recapitulate that message in the form of an explicit command. To be sure, *berit Sinai* devotes many *mitzvot* to life in the Land of Israel, and reflections of the centrality of *yishuv Eretz Yisrael* appear in Halakha, as we described above. However, the fundamental driving force behind Jewish settlement of the Land remains the legacy of the *Avot*, rather than the legal framework of Sinai.

This approach emerges, I believe, from a published address by R. Ahron Soloveichik.[[4]](#footnote-5) In explaining *yishuv Eretz Yisrael* in the eyes of the Rambam, R. Soloveichik first relates narrowly to its omission from *Sefer Ha-mitzvot*. He suggests that the Rambam considers settlement of the Land of Israel to be only a *mitzva kiyyumit* (a voluntary mitzva), rather than a classic *mitzva chiyyuvit* (obligatory mitzva). Therefore, settling the Land does not qualify for the Rambam’s enumeration of the 613 *mitzvot*, even though “it is still a Biblical mitzva, and ‘it is equal to the entire Torah’ (*Sifrei*, *Devarim* 12:29)” (108).

Still, R. Soloveichik asks, how can the Torah call the sin of the spies a betrayal[[5]](#footnote-6) if the Jewish people merely failed to fulfill a *mitzva kiyyumit*? There must be, according to the Rambam, a different source of obligation to conquer and settle the Land. R. Soloveichik explains:

The obligations that the Jewish nation bears [towards the Land] **arise from the covenant that God forged with the nation of Israel regarding the Land of Israel**…. The meaning of a “Covenant of the Land” is a deal or contract between God and the Jewish nation regarding the Land of Israel and that places **mutual obligations upon the two parties to the covenant**, that is, God and the Jewish nation. Through the Covenant of the Land, God promised the Jewish people of all generations that they will possess and rule the Land of Israel. **However, the obligations imposed by the Covenant of the Land are not unilateral, but bilateral.** (112)

Aside from the *mitzvot* of Sinai, R. Soloveichik proposes, there is a “Covenant of the Land,” which expects the Jewish people, at the very least, to “relate to the Land of Israel as to a coveted land” and act accordingly. The Jews of the desert, however, “were disgusted with a coveted land” (*Tehillim* 106:24) and rejected it, and as such stood in breach of their covenant with God.

It seems that R. Soloveichik fundamentally agrees with R. Yisraeli’s characterization of *yishuv Eretz Yisrael* according to the Rambam, as well as his understanding of the sin of the spies. Inhabiting the Land of Israel is not a discrete obligation, but the most natural expression of a supreme, transcendent value — the role of the Land in our eternal destiny. As R. Soloveichik explains:

The Rambam may believe that the mitzva of “And you shall inherit the Land” is only a *mitzva kiyyumit*, but the Rambam agrees that the Jewish nation as a whole must be so devoted and dedicated in its connection to and longing for the Land of Israel that no hardship, necessary effort, pressure, or burden will impede the fulfillment of our longings for the Land of Israel. (113)

Conversely, the spies’ betrayal lay not in their plan to neglect a positive commandment,[[6]](#footnote-7) but in their rejection of God’s overarching plan for Jewish destiny.

However, whereas R. Yisraeli anchors this imperative in one of the *mitzvot* of *berit Sinai* *—* the obligation to recite the Grace after Meals — R. Soloveichik appeals to the “Covenant of the Land,” which he traces to *berit Avot*: “The Covenant of the Land was first forged between God and our father Avraham in the vision of *berit bein ha-betarim* (“Covenant of the Halves”), and *berit bein ha-betarim* was repeated to Yitzchak… and then to Ya’akov” (113). Furthermore, “this Covenant of the Land that God struck with the *Avot* was forged and established anew between God and the Jewish people as a whole through our teacher Moshe as their emissary,” but not at Sinai. Rather, the Covenant of the Land

was established between God and the Jewish people at the vision of the burning bush and at the beginning of [*Parashat*] *Va’era*, where the Torah says: “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 to you as an inheritance, I am God” (*Shemot* 6:8). (113)

These episodes represent neither legislative events for the Jewish people, of course, nor merely a review of God’s plans. Rather, according to R. Soloveichik, they reaffirm *berit Avot* as Jewish history is beginning to take shape. Through these revelations, “the Jewish nation in all generations became a party to the Covenant of the Land, with regard to all of the responsibilities and privileges embedded in it.”[[7]](#footnote-8)

Thus, even if the Rambam does not acknowledge an obligation of *yishuv Eretz Yisrael* imposed by *berit Sinai*, R. Soloveichik maintains, he recognizes a responsibility that flows from *berit Avot*. *Berit bein ha-betarim*, as we argued in [*shiur* #4](http://www.vbm-torah.org/archive/sinai/04sinai.htm), does not establish a unilateral promise from God to Avraham. Rather, it articulates a shared vision for Jewish destiny in the Land of Israel that demands our cooperation and our active participation. More broadly, *berit Avot* imposes tangible, perpetual obligations upon the Jewish people to conquer, settle, and inhabit the Land of Israel that *berit Sinai* neither codifies nor voids. We may not politely neglect the Land of Israel any more than we may relinquish our national identity or dismiss our ethical mandate. Thus the Jewish people may or may not have technically violated *berit Sinai* through the sin of the spies, but they most certainly spurned *berit Avot*, as so beautifully noted by none other than the Ramban. Explaining why Moshe did not appeal to the merit of the *Avot* after the sin of the spies, as he did after the sin of the Golden Calf, the Ramban writes:

For the Land was gifted to the *Avot*, and from them did [the Jewish people] inherit it. **But they were rebelling against their forefathers** **and were not interested in their gift, which the *Avot* favored so much.** How can [Moshe] say, “That You swore to [Avraham, Yitzchak and Yisrael]… and this entire land… I will give to your progeny” (*Shemot* 32:13), while they are saying, “We don’t want this gift”?! (Commentary on *Bamidbar* 14:17).

**Conclusion: Mitzva or Value?**

To summarize, though *yishuv Eretz Yisrael* is incontrovertibly a central principle in Judaism, its specific character is subject to question. The Ramban describes *yishuv Eretz Yisrael* as a distinct positive commandment, but the Rambam does not. Some scholars believe that the Rambam essentially agrees that *yishuv Eretz Yisrael* is a formal obligation and only differs with the Ramban on the technical issue of mitzva classification. Alternatively, R. Ahron Soloveichik contends that an obligation to settle the Land, according to the Rambam, emanates instead from the pre-Sinaitic “Covenant of the Land,” which, in our terms, belongs to *berit Avot.* Therefore, *yishuv Eretz Yisrael* does not appear in the Rambam’s *Sefer Ha-mitzvot*, which only enumerates the commandments given at Sinai.

Whether we formulate the obligation of *yishuv Eretz Yisrael* as a formal duty of *berit Sinai*, in keeping with the Ramban, or as a primary value of *berit Avot*, as we suggested for the Rambam, carries profound implications. As we highlighted in [shiur #5](http://www.vbm-torah.org/archive/sinai/05sinai.htm), legal obligations are discrete, definable and, in many cases, binary: one is either obligated or exempt. Values, on the other hand, are context-dependent and flexible, but also boundless. Thus the practical differences between these two approaches to *yishuv Eretz Yisrael* may cut both ways. On the one hand, the value of *yishuv* *Eretz Yisrael* as a value may, at times, seem weak in contrast to the rigidity of formal duty. On the other hand, it could just as easily impose practical demands that are far more exacting than that which the law would technically require.[[8]](#footnote-9)

In the next *shiur*, we will reflect upon the collective imperative to conquer and settle the Land of Israel, the primary mitzva the Ramban describes, and its specific consequences for modern political questions in Israel. In the following *shiur*, we will address the second half of the mitzva according to the Ramban — the personal obligation to dwell in the Land of Israel.

**Questions or Comments?**

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

1. The Ramban concisely repeats his position in his commentary on this verse. [↑](#footnote-ref-2)
2. See, for instance, R. Avraham Shapira, “*Hachzarat Shetachei Eretz Yisrael*,” *Morasha* 9 (1975), 15-21: “These words of the Ramban are the basis for all *aliya* throughout the generations. One cannot describe a movement of *aliya* to the Land without these words of the Ramban” (17). [↑](#footnote-ref-3)
3. Also see R. Yair Kahn, “*Leha’avir Gilulim min Ha-Aretz*,” *Alon Shevut* 145 (*Tammuz* 5755 [1995]), 22-23, in the name of R. Joseph B. Soloveitchik. An alternative approach is to presume a Biblical mitzva to settle the Land but explain why it does not meet the Rambam’s particular criteria for enumeration. See, for instance, *Responsa* *Tzitz Eliezer* 7:48:12 and R. Shlomo Goren, “*Ha-teshuva Ve-havidui*” in *Torat Ha-moadim* (Jerusalem, 2006), 42 in the name of R. Avraham Yitzchak Ha-Kohen Kook; R. Tzvi Yehuda Kook, “*Le-mitzvat Ha-Aretz*” in *Li-ntivot Yisrael*, Vol. 1 (Beit El, 2002), 161; and R. Nahum Eliezer Rabinovitch, “The Conquest of *Eretz Yisrael —* the View of Nachmanides and Maimonides” (Heb.), *Techumin* 5 (5744 [1984]), 184-186. [↑](#footnote-ref-4)
4. “*Yishuv Eretz Yisrael Ve-milchemet Mitzva Bi-zman Ha-zeh*,” *Or Ha-mizrach*, 19:2 (January, 1970), 106-114. The first half of this address is republished in *Parach Mateh Aharon*, *Ahava,* 139-148. [↑](#footnote-ref-5)
5. See *Devarim* 1:26 and 9:23. [↑](#footnote-ref-6)
6. The Ramban, however, adduces a proof for his position from the sin of the spies: “When [the Jewish people] did not want to ascend [into the Land]… it says, ‘You betrayed the mouth of Hashem, your God, and you did not believe Him, and you did not heed His voice;’ this teaches that [the preceding ‘Ascend and inherit the Land’ (*Devarim* 9:23)] was a commandment, not a destiny and promise” (Glosses to *Sefer Ha-mitzvot*). [↑](#footnote-ref-7)
7. Regarding *Shemot* 6:8, also see *shiurim* [#19](http://www.vbm-torah.org/archive/sinai/19sinai.htm) and [#20](http://www.vbm-torah.org/archive/sinai/20sinai.htm). [↑](#footnote-ref-8)
8. R. Nahum Eliezer Rabinovitch arrives at a similar conclusion regarding the Rambam’s understanding of *yishuv Eretz Yisrael*, though without reference to *berit Avot*. He calls *yishuv Eretz Yisrael* a “desired outcome” of the Torah that is not reducible to specific acts or requirements (“The Conquest of *Eretz Yisrael —* The View of Nachmanides and Maimonides,” 184-186). Thus, there is neither a floor nor a ceiling to our ongoing pursuit of *yishuv Eretz Yisrael.*

   Of course, these two conceptions of *yishuv Eretz Yisrael —* as a mitzva and as a value — are not mutually exclusive. The Ramban, for instance, could accept both, thereby championing a value of *yishuv Eretz Yisrael* even when the formal mitzva does not apply. [↑](#footnote-ref-9)