

# The Mitzvah of Living in the Land of Yisrael: Is it a Biblical Commandment?

Rabbi Kenneth Brander

This essay will briefly analyze the opinions of the Ramban (Nachmanides) and Rambam (Maimonides) as it relates to codifying living in the land of Israel as a Biblical commandment.

## The Opinion of Ramban

The Ramban codifies as one of the Biblical commandments the Mitzvah to inherit and settle the land of Israel:

*The fourth mitzvah that we were commanded [is] to conquer the land that God gave to Abraham, Isaac and Jacob, and not to abandon it to the hands of other nations or to emptiness.*

**Ramban, Commentary on Maimonides' Codification of Biblical Precepts**

מצוה רביעית שנצטוינו לרשת הארץ אשר נתן האל יתברך ויתעלה לאבותינו לאברהם ליצחק וליעקב ולא נעזבה ביד זולתינו מן האומות או לשממה. השגות הרמב"ן לספר המצוות שכחת העשין

The Ramban quotes the following verse as the source for this Mitzvah.

*And you shall dispossess of the land and dwell in it, because I have given you the land to possess it.*

**Bamidbar 33:53<sup>1</sup>**

והורשטם את הארץ וישבתם בה כי לכם נתתי את הארץ לרשת אתה: במדבר פרק לג פסוק נג

The Ramban brings a number of additional proofs for his opinion.

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<sup>1</sup> See also Nachmanides' commentary on this verse in the Torah

A person should always live in Eretz Yisrael, even in a city that is mostly inhabited by non-Jews, and not in the Diaspora, even in a city that is mostly inhabited by Jews. For all those that live in Eretz Yisrael are as if they have a G-d, and all those that live in the Diaspora are as if they have no G-d. As it says (Vayikra 25:38) "[I took you out of Mitzrayim] to give you the land of Cna'an to be a G-d for you". And anyone that lives in the Diaspora has no G-d? Rather, it means that anyone that lives in the Diaspora is as if he worships idols, and similarly by David it says (Shmuel I 26:19) "for they have driven me out this day that I should not cleave unto the inheritance of G-d, saying: Go, serve other gods." For who told David to worship other gods? Rather, it means that anyone that lives in the Diaspora is as if he worships idols.

### **Ketuvot 110b**

ת"ר: לעולם ידור אדם בא"י אפי' בעיר שרובה עובדי כוכבים, ואל ידור בחו"ל ואפילו בעיר שרובה ישראל, שכל הדר בארץ ישראל - דומה כמי שיש לו אלוה, וכל הדר בחוצה לארץ - דומה כמי שאין לו אלוה, שנא': (ויקרא כ"ה) לתת לכם את ארץ כנען להיות לכם לאלהים, וכל שאינו דר בארץ אין לו אלוה? אלא לומר לך: כל הדר בחו"ל - כאילו עובד עבודת כוכבים; וכן בדוד הוא אומר: (שמואל א' כ"ו) כי גרשוני היום מהסתפח בנחלת ה' לאמר לך עבוד אלהים אחרים, וכי מי אמר לו לדוד לך עבוד אלהים אחרים? אלא לומר לך: כל הדר בחו"ל - כאילו עובד עבודת כוכבים  
**מסכת כתובות דף קי:**

The Ramban quotes a story from the Sifri, in which R' Yehudah b. Beteira, R' Mattiah b. Cheres, R' Chananiah b. Achi, R' Yehoshua and R' Natan were leaving Eretz Yisrael. At one point, they remembered Eretz Yisrael, raised their eyes, started crying and tore their clothes, quoting the verse *And you shall dispossess of the land and dwell in it, because I have given you the land to possess it*. They said that "living in Eretz Yisrael is comparable to the observance of all other mitzvot combine".

Additional proofs are brought from *Ketubot* 110b as well. The Talmud states that if one spouse wishes to move to Israel and the other does not, the one wishing to emigrate can demand a divorce of the other.

Yet the Rambam in his *Sefer haMitzvot* does not count living in the land of Israel as one of the 613 Biblical commandments. Why?

## The Objections of the *Megilat Esther*

R. Isaac de Leon in his commentary, *Megilat Esther*, defends the Rambam for not codifying living in Israel as a mitzvah: In his defense of the Rambam, the *Megilat Esther* articulates the following position:

**Position:** The mitzvah of living in Eretz Yisrael was not given for all generations, rather it is a precept limited to those generations living before the exiles and during the Messianic era. The Rambam has 14 principles guiding which precepts are included in the list of 613. The third postulate is to only include commandments that are binding for all generations. Therefore it would not be fitting to include this precept of living in the land of Israel as a Biblical commandment.

The Megilat Esther brings a number of proofs to support the view that this is not a commandment for all generations:

1. Tosafot on *Ketuvot* 110b (s.v. *hu omer*) writes that the Talmud's statement permitting the forcing of a spouse to move to Eretz Yisrael does not apply today because of the danger of traveling to Israel. Tosafot continues with an additional reason, quoting Rabbeinu Chaim [haKohen] that there is no longer a mitzvah to live in Eretz Yisrael since we are unable to fulfill the *mitzvot ha'teluyot ba'aretz* (the agriculturally based commandments). It is for these reasons that the Rambam does not codify living in Israel as a mitzvah.

2.

<p><i>For Rav Yehuda said: Anyone that goes up from Bavel to Eretz Yisrael violates a positive commandment, as it says (Yirmeyahu 27:22) "They shall be carried to Bavel, and there shall they be, until the day that I remember them"</i></p> <p style="text-align: center;"><b>Ketuvot 110b</b></p>	<p>דאמר רב יהודה: כל העולה מבבל לארץ ישראל עובר בעשה, שנאמר: (ירמיהו כ"ז) בבלה יובאו ושמה יהיו עד יום פקדי אותם נאם ה'.</p> <p style="text-align: center;"><b>מסכת כתובות דף קי:</b></p>
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If living in the land of Israel is a binding Biblical commandment for all generations how is it possible for the prophet Yirmeyahu to articulate a perspective contrary to the Torah? This is another reason why the Rambam does not codify living in Israel as a commandment.

3.

<p><i>What are these three oaths? One is that the Jewish people should not go up [to Eretz Yisrael] in force (on mass), one is that G-d made the Jewish people swear not to rebel against the nations of the world (to settle the land), and one that G-d made the other nations swear not to persecute the Jewish people more than necessary.</i></p> <p style="text-align: center;"><b>Ketuvot 111a</b></p>	<p>ג' שבועות הללו למה? אחת, שלא יעלו ישראל בחומה; ואחת, שהשביע הקדוש ברוך הוא את ישראל שלא ימרדו באומות העולם; ואחת, שהשביע הקדוש ברוך הוא את העובדי כוכבים שלא ישתעבדו בהן בישראל יותר מדאי.</p> <p style="text-align: center;"><b>מסכת כתובות דף קיא.</b></p>
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From this statement in the Talmud it would seem that conquering and returning to Israel en masse is forbidden. The Megilat Esther questions how then is it possible for the Ramban to suggest that it is a Biblical commandment?

4. R. Isaac de Leon continues to suggest that all the statements of Chazal describing the importance of living in Eretz Yisrael are applicable in a time to when the Beit Hamikdash is functional. He also suggests the reason the rabbis cried and tore their clothes in the Sifri as quoted by the Ramban, is because that after the destruction of the Beit Hamikdash, they could no longer fulfill the mitzvah of living in Eretz Yisrael.

**Question:** Let us evaluate the comments of R. Isaac de Leon in his commentary *Megilat Esther*. Do these arguments offer a valid rationale for the omission of the mitzvah of living in the land of Israel from the Rambam's roster of biblical commandments?

## The Opinion in Tosafot of Rabbeinu Chaim

The use of Tosafot to suggest a reasoning for the Rambam's omission of living in Israel in his codification of biblical commandments can be challenged in a number of ways.

R. Joseph b. Moseh Trani in his *Teshuvot Maharit* (2:28) explains that there is a mistake in the opinion of Rabbeinu Chaim in Tosafot. Firstly, none of the codifiers of Jewish law among the Rishonim (Rabbinic personalities from the 10<sup>th</sup> -15<sup>th</sup> century) quote this opinion. Additionally, Rabbeinu Chaim in his responsa, explains the reason the commandment is no longer relevant is due to the dangers of travel not due to the inability to perform specific agricultural commandments. Further, the Mordechai (*Ketuvot* 313), the collector of the ideas of the Tosafists, and the *Shita Mekubetzet* (*Ketuvot* 110b, s.v. *hu omer*) also quote the opinion of Rabbeinu Chaim as found in his responsa, and not the reason found in Tosafot.

The Maharit continues, Rabbeinu Chaim's comments about not being able to fulfill the *mitzvot ha'teluyot ba'aretz* in our days is perplexing. He points out that one who wishes to fulfill the commandments can purchase a plot of land in Eretz Yisrael and fulfill all the agriculturally based commandments. Therefore, Maharit suggests that the opinion of Rabbeinu Chaim as quoted in Tosafot should not be relied as accurate and was the mistake of a student transcribing the opinion of his teacher.

The opinion of Tosafot that there is danger in the travel might suspend for that time period the responsibility to act upon the obligation of settling in the land, as danger suspends the majority of mitzvot. However, such reasoning is not sufficient for explaining the lack of codification of settling in the land as a Biblical commandment.

In R. Eisenstadt's collection of responsa on laws found in the *Shulchan Arukh* (*Pitchei Teshuvah, Even ha-Ezer* 75:6) he describes an incident in which three families wish to move to Eretz Yisrael with their families, and the Beit Din of their town wanted to prevent them from leaving because of the dangers of travel for the small children. However, it was determined that their plans could not be impeded and that the comments of Rabbeinu Chaim and Tosafot were viewed as non-binding.

Additionally we have clear evidence that in the early 1200's several Tosafists made aliyah, ignoring the position mentioned in the Tosafot (used by the Megilat Esther as a reason for the Rambam not including living in the land as a mitzvah). They include: R. Joseph of Clisson, R. Samson of Sens, and R. Yonatan ha-Kohen of Lunel. Some even suggest that the number of Rabbis who emigrated to Israel at that time was close to 300<sup>2</sup>. Even the great codifier of Jewish

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<sup>2</sup> See Kanarfogel, Ephraim. "The Aliyah of 'Three Hundred Rabbis' in 1211: Tosafists Attitudes toward Settling in the Land of Israel." *The Jewish Quarterly Review*, vol. 76, no. 3, (Jan. 1986). pp. 191-215.

law, the Tosafists R. Asher b. Jechiel, writes that the halakhah of forcing a spouse to move to Eretz Yisrael applies at all times.

Finally even if Rabbeinu Chaim's opinion is correct, it cannot be used to substantiate the position of the Rambam. For the Rambam, like the Rosh, clearly argues on Tosafot, as he codifies unconditionally (*Hilchot Ishut* 13:20) that a man may force his wife to move to Eretz Yisrael, and vice versa. Therefore this proof of the Megilat Esther can not be used to validate the position of the Rambam of not counting the mitzvah of living in Israel as a Biblical precept.

## The Prohibition of Moving from Bavel to Israel

R. Isaac de Leon claims that one observes from R. Yehuda's position in the Talmud that Yirmeyahu established a decree against moving from Bavel to Eretz Yisrael. Therefore it must be that the mitzva to live in Eretz Yisrael was not binding on all generations. Otherwise, how could a prophet, who may not add or detract from the precepts of the Torah, establish a decree impeding one from moving to Israel?

In the Pe'at haShulchan (*Hilchot Eretz Yisrael*, chapter 1) written by one of the distinguished students of the Vilna Gaon, R. Yisroel b. Shmuel Ashkenazi of Shklov discusses this opinion of R. Yehuda. He points out that the conclusion of the Talmud does not support R. Yehuda, since R' Zeira and many other tannaim and amoraim did move from Bavel to Eretz Yisrael, even after the destruction of the Beit Hamikdash<sup>3</sup>. The Rambam also does not endorse this component of R. Yehudah's opinion. As already indicated, the Rambam permits a spouse to force the other to move to Eretz Yisrael, regardless of their location in Diaspora. The Rambam (*Hilchot Melachim* 5:12) recognizes one dimension of R. Yehuda's position. During the period of time in which Bavel was the center of Diaspora Jewry he restricts leaving Bavel to settle in other locations in the Diaspora. However he explicitly permits one to leave Bavel to live in Israel<sup>4</sup>. Therefore this position of R. Yehudah cannot be used to substantiate a reason for the Rambam not including living in the land of Israel a Biblical precept.

## The Rabbis of the Sifri

R. Isaac de Leon writes that if the mitzvah of Yishuv Eretz Yisrael was still in place, the rabbis would not be crying since they could still fulfill that mitzvah of living in the land. It would seem from his understanding of the story that the rabbis remained outside of Eretz Yisrael. This is indeed the implication of the story as it is related in a secondary text, the Yalkut Shimoni (Re'e 12:885). However, in the Sifri (Devarim 12:29), the original source of the story, it seems that the rabbis did

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<sup>3</sup> The Gemara has a number of instances of rabbinic personalities moving from Bavel to Eretz Yisrael they include: R. Yirmiyah (*Ketuvot* 75a), R. Zeira (*ibid* 111a), R. Elazar Ben Pedat, R. Chiya Bar Gamda, and R. Asi (*ibid* 112b), R. Chiya Bar Abba (*Shabbat* 105b), R. Abba (*Brachot* 24b) and R. Kahana (*Baba Kama* 117a).

<sup>4</sup> One can speculate that the Rambam prohibited leaving Bavel to live in other Diaspora lands due to the fact that exile was a national tragedy for the Jewish people. In order to rebuild the national identity of the Jewish people, without a Temple at its epicenter, it was required to contain the surviving Jewish people in one place rather than being scattered among various lands.

not remain outside of Israel. Rather they tore their clothing upon their return to Eretz Yisrael proclaiming that living in the land is tantamount to observing all other mitzvot. Their tears were those of joy as they celebrated their ability to observe this unique commandment.

## The Three Oaths

Perhaps the most central point in the argument of the Megilat Esther is the three oaths related in the Talmud imposed by G-d. Two of the oaths fall on the Jewish people and one on the nations of the world. How is it possible for the Ramban to ignore this Talmudic discussion?

There are a number of approaches to defending the Ramban against these three oaths

R. Abraham Bornstein of Sochaczew writes (*Avnei Nezer* 454:50) that we do not accept these oaths as binding in halakhah, since none of the codifiers of Jewish law, including the Rambam, codify them in any context. In fact, the Rambam at the end of his Yemen Epistle writes that the Talmudic discussion regarding these oaths is to be considered a parable, and is not meant to be taken literally.

Similarly, R. Ezekiel Landau in his *Noda bi-Yehudah* (*Yoreh De'ah* vol. II, 161 & 205) warns that Talmudic text that is aggadic in nature is to be studied only homiletically and cannot be used extrapolate Jewish law from its homily.

Therefore, it becomes impossible to support R. Isaac de Leon's defense of the Rambam with a text that the Rambam himself interprets as non-halakhic.

However, in light of the fact that some might view these comments as halakhic in nature how does one reconcile this Talmudic discussion with the reality of the modern state of Israel?

The Marhasha<sup>5</sup> explains that the oaths are halakhic in nature but only binding when the nations of the world prohibit the Jewish people from conquering Eretz Yisrael. Rav Meir Simcha HaKohen of Dvinsk, the Or Sameach, writes that after the San Remo Conference of 1920, when Jewish sovereignty and settlement rights were recognized in Palestine, the mitzvah of Yishuv Eretz Yisrael once again became obligatory, and equal to all the other commandments combined.

R. Dovid Lebor of Yeshivat Sha'alvim once suggested to me another approach, based on a ruling in the Shulchan Arukh.

*If two people made an oath to do a certain thing, and one of them violated the oath, the other is exempt from the oath, and doesn't need hatara.*

**Shulchan Arukh Yoreh Deah 236:1**

שנים שנשבעו לעשות דבר אחד, ועבר אחד מהם על השבועה, השני פטור ואינו צריך התרה שולחן ערוך יורה דעה סימן רלו סעיף ו

<sup>5</sup> Maharsha suggests (*Ketubot* 111a s.v. *she'lo yalu yisrael*) that this is only in reference to rebuilding the walls of Jerusalem, such as when Nechemia needed to ask permission from Koresh to rebuild Jerusalem, but to simply live in Eretz Yisrael does not require any permission from the nations of the world.

R. Shabbetai ben Meir ha'Kohen in his commentary on the *Shulchan Arukh*, the *Nekudat Hakesef* (ad loc.), quotes Talmudic and Midrashic sources indicating that this law applies even when oaths are between Jews and Gentiles.

Therefore, since the nations of the world violated their oath of not persecuting the Jewish people more than necessary, as is evident from the Crusades, Inquisitions and the Holocaust, the Jewish people are also exempt from fulfilling their oaths and therefore these oaths have no halakhic significance.

Once again the Megilat Esther's suggestion that this Talmudic edict is the reason for the Rambam's lack of codification is not a valid rationale for its omission. How do we understand the position of the Rambam?

## Understanding the Opinion of the Rambam

While the Rambam does not count the mitzvah of Yishuv Eretz Yisrael formally among his 613 commandments it is difficult to suggest that the Rambam does not consider it to be a Biblical imperative. How can the Rambam codify laws such as: allowing a spouse to compel the other to move to Israel; stating that it is better to live in Israel in a city full of idol worshippers than to live in the Diaspora in a city full of Jews; that leaving Eretz Yisrael is like worshiping idols; and forbidding one to depart from Eretz Yisrael, unless it is to learn Torah, marry or escape persecution - if living in the land is not a Biblical obligation.

R. Abraham Bornstein of Sochaczew suggests (*Avnei Nezer*, 454:5-7) the reason for the difference between the Rambam and Ramban is based on different paradigms on how they codify the 613 biblical commandments.

According to Rambam, when there are two commandments, and one is an enabler of the other - only the enabler is listed as one of the 613 Biblical commandments. The *Avnei Nezer* cites as an example the Rambam's codification of commandments in regard to the building the Temple. With the purpose of the Temple to create a physical space to house the Aron, the vessel from which the presence of G-d emanates the Rambam only lists the construction of the Temple as a positive commandment (commandment 20). He does not list the construction of the Aron and its cover. For if the entire purpose of the Temple is to create a location for the Aron then only the commandment that is the conduit enabling the function of the other is to be formally listed as part of the 613. Similarly, the *Avnei Nezer* suggests that when it comes to listing commandments dealing with living and settling the land the Rambam only lists the commandment of conquering the land of Israel (commandment 187) as one of the 613. It is the conquering of the land that enables one to settle and live in Eretz Yisrael.

On the other hand, the Ramban's formulation is that when there are two commandments which are of substance, even if one enables the other, both are to be counted. Therefore the Ramban mandates (commentary on commandment 23 of Maimonides) that both the building of the Temple and the building of the Aron are to be counted as two separate commandments of the

613. Similarly, when dealing with the commandments relating to the land of Israel the Ramban does not just list the conquering of the land as a commandment but he also counts settling and living on the land as a separate Biblical commandment.

There is another explanation as to why the Rambam does not count living in the land of Israel as one of the 613 mitzvot.

*Even though I exiled you from the land, you shall be adorned with mitzvos, so that when you come back they should not be like new to you.*

**Sifri Devarim 43**

אף על פי שאני מגלה אתכם מן הארץ לחוצה לארץ  
היו מצויינים במצות שכשתחזרו לא יהו עליכם  
חדשים

**ספרי דברים פסקא מג ד"ה דבר אחר**

The Sifri indicates that the observance of commandments in the Diaspora are not of the same intensity as they are in Israel. This Sifri also mentioned in the commentary Rashi and Rabbenu Bahye ben Asher (Devarim 11:18) accentuates the special dimension to the celebration of mitzvot in Eretz Yisrael. This idea is also found in the Rashbam (Baba Batra 91a, s.v. *ein yotzin*) where he suggests that leaving Eretz Yisrael causes a tragic loss in the capacity to observe all commandments.

The Rambam in the 4<sup>th</sup> principle that guides his codification of the 613 commandments writes that any commandment that contains overarching ideals for all of Judaism is not listed as a separate commandment. According to the Sifri, living in the land of Israel is a mitzvah of this magnitude. It enables all other commandments to be observed with a greater purpose and an extra dimension. Therefore, despite all of the halakhic references in the Rambam's *Mishneh Torah* to the commandment of living in Israel, listing it as a distinct commandment would violate the 4<sup>th</sup> principle established by the Rambam in organizing his list of 613.

## Conclusion

We have reviewed the position of the Ramban regarding the mitzvah to live in the land of Israel. At first evaluation it seems that only the Ramban considers living in Israel a Biblical commandment. However, further reflection allows us to recognize that while the Rambam does not count living in the land of Israel as one of the 613 it is still part of his weltanschauung. Rather due to the structural tenets that determine which mitzvot are formally counted, the Biblical commandment of living in the land of Israel is not listed. Alternatively, it is not that the commandment is not ignored by the Rambam but rather its magnitude exceeds its being counted as just one of the 613 Biblical commandments.