

The Mitzvah Of Yishuv Eretz Yisrael

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After the destruction of the first Temple, the prophet Yirmiyahu bewailed the neglect into which the land of Israel had fallen: "She is Zion; there is no one who inquires after her."¹ The Talmud understood this neglect to include an intellectual dimension, namely, a laxity in the study of laws pertaining to Eretz Yisrael. Therefore the Rabbis derived from the verse an obligation to delve into the halachot of Eretz Yisrael; "From this we infer that Zion ought to be inquired after."² This paper is one attempt at "inquiring after Zion".

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Interestingly, the mitzvah of *Yishuv Eretz Yisrael* — living in the land of Israel — is discussed in the *Even HaEzer* section of the *Shulchan Aruch*,³ (and even there), merely as a tangential issue arising from a mishna in *ketubot*. The Mishna⁴ rules that should one partner in a marriage desire to move to Israel while the other opposes the move to the point of divorce, it is the spouse who wants to go who is considered justified in his claim, and the other one is guilty of breaking up the marriage. In practical terms this means that if the wife be the recalcitrant partner, she need not be paid the sum to which her *Ketubah* entitles her in the event of

1. Jer. 30:17

2. *Rosh Hashana* 30a

3. Chap. 75 sec. 3-5

4. *Ketubot* 110b

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divorce or the death of her husband.⁵ If the husband refuses to move, he must divorce his wife, if she so wishes, and pay her the amount of her *Ketubah*. In the Gemara⁶ it is clear that the halacha sides with the partner who wishes to go because it is he who is conforming to the mitzvah of *Yishuv Eretz Yisrael*.

The Mitzvah — Biblical or Rabbinic

But if *Yishuv Eretz Yisrael* is a mitzvah, what is its biblical source? The Ramban, on two occasions,⁷ points to the same verse⁸: "Conquer the land and dwell therein." The first phrase is understood by Ramban as obligating the Jewish community collectively to take control of the government of Israel, and "not leave it in the hands of another."⁹ The second phrase, "and dwell therein," legislates a positive commandment for each individual to live in the land of Israel, even if the land is under foreign domination. These two mitzvot, according to Ramban, are applicable throughout history and are as relevant to our generation as to the generation led by Yeshoshua Bin Nun, who first entered Israel.

But it is Rambam's view on the issue that has most puzzled the later commentators. For although the Rambam in *Mishneh Torah* includes the various statements of the Gemara regarding living in Eretz Yisrael¹⁰, he nonetheless omits both *Kibush Eretz Yisrael*

5. This penalty is imposed upon a woman only when she is responsible for the breaking up of her marriage. Thus, for example, if she is lax in her own personal observance of mitzvot, and her husband decides to divorce her, he must pay her *Ketubah*, for her personal religiosity is not said to bear on the state of her marriage. If, however, she refuses to observe the laws of family purity, and thus renders normal conjugal relations impossible, she is deemed to have failed in her marital duty, and loses her *Ketubah*. So, too, if she makes and violates her vows she loses her *Ketubah*, for the Talmud cites this particular transgression as the cause of the death of a couple's young children; thus her sin reflects a serious neglect of her duty to raise a family.

6. *ibid*

7. Commentary to Bamidbar 33:55; *Hashmatot* to Rambam's *Sefer HaMitzvot*, Positive Commandment no. 4

8. Bamidbar 33:55

9. Ramban's own words, *Hashmatot* to *Sefer HaMitzvot*, *ibid*.

10. See *Ishut* 13:19, *Melakhim* 5:12.

(conquering the land) and *Yishuv Eretz Yisrael* (living in the land) from his enumeration of the 613 mitzvot. Does his silence mean that he does not consider living in Israel to be a mitzvah? Or perhaps while considering it a mitzvah, Rambam refrained from counting it among the 613 due to some other reason peculiar to his methodology in selecting the mitzvot to be counted.

Some commentators¹¹ suggest that the Rambam considers *Yishuv HaAretz* to be a mitzvah, but only on a rabbinic level, with the verse cited by Ramban operative only during the original conquest of Israel.¹² If this is indeed the Rambam's position, then there would actually be no change in our attitude towards the observance of the mitzvah, for we are as scrupulous in our observance of rabbinic mitzvot as in those which are divinely ordained.

When Rabbi Avraham of Sochatshov, author of *Respona Avnei Nezer*, was asked whether *Yishuv HaAretz* is a mitzvah today, and if so, why the great Chassidic Rebbeim of Europe never moved to Israel, he replied in a long *Teshuva* (responsum) in which he analyzed the Rambam's approach. In fact, suggests the *Avnei Nezer*, even the Rambam agrees that living in Eretz Yisrael is a biblical commandment in force in all periods in history. His failure to count it in his listing of mitzvot is due to an extraneous technical reason. Whenever the Torah lists two mitzvot, with one designed to lead up to and facilitate the performance of the other, Rambam regards the listing of both as unnecessary repetition¹⁴, and only lists

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11. *S'dei Hemed Ma'arekhet Eretz Yisrael* in the name of *Knesses HaGedolah* to *Yoreh Deah* 239; also *Ar'ah DeRabanan* quoting respona of R. David B. Zimri (Radvaz).
 12. The Rambam would then be following the very rule he laid down in the first part of his *Sefer HaMitzvot* (*Shoresh* 3) of not counting as a mitzvah anything of a temporary nature—*Hora'at Sha'ah*.
 13. *Yoreh Deah* Vol. 2, no. 454
 14. See *Sefer HaMitzvot, Shoresh* 9, where the Rambam rules that the same commandment, though repeated several times in the Torah, is counted only once. Thus, for eating the *sheretz putita*, the Rambam prescribes many punishments of lashes not because the prohibition of *sheretz* is repeated many times, but because there is a separate command not to eat a *sheretz* that flies, nor one that crawls, nor one that swims, etc. and the *putita* combines all the characteristics, and thus, all the different prohibitions.

the first of the two. For that reason, once the Rambam counts the mitzvah of building the Tabernacle¹⁵ (whose purpose was to house the ark of the Law,) he sees no need to list the mitzvah of building the ark itself.¹⁶ And similarly, once he enumerated the mitzvah of destroying the nations who impeded the Jewish conquest and settlement of Israel ("*Hachareim Tacharimeim*,"¹⁷) he no longer finds it necessary to count the actual conquest and settlement as separate mitzvot. Both of the above opinions agree that *Yishuv Eretz Yisrael* is a mitzvah according to the Rambam, and only differ as to whether its nature is biblical or rabbinic.

Rabbi Isaac de Leon in his commentary *Megillat Esther* on the Rambam's *Sefer HaMitzvot*¹⁸ opens the door to the most radical interpretation of the Rambam, by explaining that Rambam's failure to mention *Kibush* (conquest) and *Yishuv* (dwelling) Eretz Yisrael indicates his view that they do not constitute mitzvot today. For, *Megillat Esther* explains, these mitzvot applied only in the days of Moshe, Joshua and David, before the Jewish nation was exiled, and they will resume only in the days of the *Moshiach* when the Jews will be returned to their land. So limited are these two commandments in their time of fulfillment, that Rambam saw fit not to count them among the *Taryag* (613) mitzvot. The *Minchat Elazar* wholeheartedly supports this understanding of the Rambam, which posits that *Yishuv HaAretz* is no longer a mitzvah today.

The overwhelming majority of *Acharonim*, however, reject the explanation of the *Megillat Esther* on several grounds. Firstly, the *Avnei Nezer* points out that the Rambam himself counts the sacrificial rites as mitzvot, although these could only take place in the Temple. Clearly the fact that a mitzvah cannot be performed at certain times in Jewish history in no way diminishes its status as a mitzvah. The only time Rambam denies a commandment mitzvah status is when the command was issued as a one-time occurrence, as

15. *Shemot* 25:8; *Sefer HaMitzvot*, Positive Commandment no. 20

16. *Shemot* 25:10

17. *Devarim* 20:17; *Sefer HaMitzvot*, Positive Commandment no. 187

18. Commenting on Ramban's *Hashmatot*, Positive Commandment no. 4

for example, when Moses was ordered to "raise his staff and stretch out his arm over the sea"¹⁹ to part the waters. Such commands constitute *hora'at Sha'ah*,²⁰ and the Rambam follows his own rule²¹ in not counting them as independent mitzvot.

Furthermore, the contention of the *Megillat Esther* that in the days of Messiah a new mitzvah, heretofore non-existent for centuries, will be added to our observance, runs counter to a basic tenet of Judaism. We believe that the commandments of the Torah are eternal and will not be altered even in Messianic times.²² This belief in the immutability of Torah forms part of Rambam's own thirteen principles of faith. In view of the difficulties inherent in the approach of the *Megillat Esther*, most *Acharonim* conclude that *Yishuv Eretz Yisrael* constitutes a mitzvah according to both Ramban and Rambam.

Exceptions and Exemptions

Rabbenu Chaim Cohen in *Tosafot*²³ cites two reasons why the mitzvah of *Yishuv HaAretz* should not apply in his times. First, the journey and subsequent life in Israel are fraught with danger; furthermore, poverty and other difficulties will make it impossible to observe the mitzvot connected to the land and lead to the violation of those mitzvot. The *Avnei Nezer*²⁴ dismisses both reasons, saying that they simply are no longer true. Neither danger nor hardship are severe enough to excuse one from *mitzvat Yishuv HaAretz*. If conditions were not a hindrance when the *Avnei Nezer* penned his responsum some ninety years ago, surely now they are no problem.

19. *Shemot* 14:16, 26

20. See note 12 above.

21. *Sefer HaMitzvot, Shoresh* 3.

22. The only law to be altered in the future was specified clearly in the Torah: When G-d expands the borders of Israel to include the territories of the Kini, Kenizi and Kadmoni nations, three more cities of refuge will be added to the six already existing (*Devarim* 19:9)

23. *Ketubot* 110b, beginning *Vihee Omeret*.

24. See note 13 above. See also *Pitchei Teshuva* to *Even HaEzer* 75:3 who cites *Responsa* of Maharit that the words of *Tosafot* were written by an erring student.

In *Baba Bathra*²⁵ the Gemara lists poverty as grounds exemption from the mitzvah. One who cannot make a comfortable living in Israel is not required to live there in penury. This rationale is cited by the *Pitchei Teshuva*²⁶ and many other *Poskim*, including Rabbi Shlomo Kluger²⁷ and the *S'dei Chemed*.²⁸ In fact, as we shall see, the *Avnei Nezer* builds upon it his elaborate responsum explaining why *Yishuv HaAretz* was often neglected by Jewish leaders. It must be stressed, however, that a comfortable life in Israel does not mean a life with every luxury available in the Diaspora. Even if one's standard of living drops in Israel, it is not grounds for exemption unless the new style of life is indeed intolerable.

In tractate *Avodah Zarah*,²⁹ permission is granted to leave Israel in order to learn Torah or to marry. Although both Torah and prospective spouses are readily available in Israel, the Gemara recognizes that cases may arise where a person feels he can only lead a normal life learning from a particular Rabbi or married to a particular person who resides outside Israel. The *Tosafot*³⁰ present two opinions as to whether exemption from *Yishuv HaAretz* is limited to cases of these two important mitzvot — Talmud Torah and marriage — or extends to any mitzvah which one can only perform in *Chutz LaAretz* (outside the Land).

The common denominator of these cases is the opportunity to lead a normal life. One is not expected to live in Israel under abnormal and unbearable conditions. If living in Israel means a life of poverty, or a life devoid of the Torah or companionship of one's choice, then the obligation falls away.

Put differently, it may be said that Eretz Yisrael, being the *land* chosen and sanctified by *Hashem* is the natural and proper place for Jews, the *people* chosen and sanctified by Him. For individual

25. 91a.

26. to *Even HaEzer* 75:3

27. Responsa *HaElef Lekha Shlomo*, *Even HaEzer* no. 118-120

28. *Ma'arekhet Eretz Yisrael* — Vol. 5 p. 11, sec. 9.

29. 13a

30. *Ibid*, beginning *Lilmod Torah*.

Jews there may be extenuating circumstances, such as those outlined above, in which it becomes clear that their place is not in Israel. Based on this rationale, it has been suggested³¹ that the greatest scholars and leaders of the diaspora may be permitted, or even obligated, to remain in *Chutz LaAretz*. Since their sphere of influence is in *Galut*, and it is there that they will have the most beneficial effect in disseminating Torah, we cannot say that their place must be in Israel.

*Avnei Nezer*³² seeks further justification for the failure of giants of Chassidut to immigrate to Israel in fulfillment of the mitzvah. He finds that, given the nature and purpose of the mitzvah, these Chassidic leaders could not possibly have fulfilled it in their circumstances. To fully understand this point, we must first examine the nature of *Mitzvat Yishuv HaAretz* as conceived by the *Avnei Nezer*.

The Nature of the mitzvah

Eretz Yisrael is described in the Torah as "the land upon which the eyes of *Hashem* are always turned."³³ The Talmud³⁴ interprets this added attention paid by G-d to Israel as denoting an extra measure of Divine Providence, or *Hashgacha P'ratit*, bestowed by G-d only upon Israel and its inhabitants. One manifestation of this special *Hashgacha* is the apportionment of rain, but it is really an all-around more intimate relationship that exists between *Hashem* and His people living in the Land of Israel. This relationship is spelled out by the statement of the *Talmud*³⁵ that outside Israel a person receives his livelihood from G-d through an angel, but in Israel the sustenance is provided directly by G-d himself. It is for this reason that Eretz Yisrael is called "The King's palace"³⁶, for although certainly G-d's dominion extends to the entire universe,

31. This was told to me by the Aschkanazi Chief Rabbi Avrohom Shapiro.

32. see note 13 above.

33. Devarim 11:12

34. *Ta'anit* 10a

35. *ibid.*

36. See "*Eim Habonim Smeicha*," Jerusalem 5743 p. 157

"*Melo chol ha'aretz kevodo*"³⁷ there exists a unique, more personal connection to G-d in His chosen land.³⁸

In light of this aspect of Eretz Yisrael, the *Avnei Nezer* redefines the mitzvah of *Yishuv Ha'Aretz*. The Torah did not command us simply to be physically present in the land of Israel. Rather, it required us to crave a closer personal relationship with *Hashem*, one endowed with more *Hashgacha P'ratit*. We are commanded to strive to live in Israel so that all our sustenance should come directly from G-d and not through any intermediary. When we live and work in Israel, our livelihood emanates from the hand of G-d.

Precisely for this reason, explains *Avnei Nezer*, most Chassidic giants did not attempt to live in Eretz Yisrael. Having no source of income in Israel, these Rabbis would have been forced to subsist off of funds sent them by Chassidim from *outside Israel*. Thus even in Israel, their livelihood would have come from the diaspora, through the agency of an intermediary angel. They would not have fulfilled the purpose of *Yishuv Ha'Aretz*, they would not have achieved closeness to *Hashem* through directly receiving sustenance, for that only happens when one finds a means of support from the land itself.³⁹

37. Isaiah 6:3

38. Thus, even as there are gradations in the amount of Divine Protection afforded people, so too the amount of *Hashgacha* varies depending upon location. Among people, the *Tzaddik* will be both protected more and held accountable for more minor transgressions than will the average Jew, and the average Jew, in turn, is more clearly watched over than the wicked. And among lands, Israel is more closely supervised than *Chutz La'Aretz*.

In supporting his point, the *Avnei Nezer* cites the Midrashic story of how Jacob, upon returning to Israel from Laban's house, gathered all his material goods into one pile, and presented them to Esau, in exchange for Esau's burial rights in *Me'arat HaMakhpelah*. On that occasion Jacob declared, "the possessions of *Chutz La'Aretz* are not worth my having." The *Avnei Nezer* explains this statement to refer to the superiority of goods gained in Israel, directly from *Hashem*, over those acquired while in *Chutz La'Aretz*, in a more indirect manner. Only with the former does one fulfill *Mitzvat Yishuv Ha'Aretz*.

In a similar vein a Talmudic dictum of *Ketubot* 110b is explained: "He who lives in Israel is like one who has a G-d, and he who lives outside of Israel is like one who has none." In Israel, "the palace of the King," endowed with greater *hashgacha*, one is truly more closely associated with G-d.

39. Of course then it was much more difficult to derive a source of income from

The view of the *Avnei Nezer* as to the nature of *Mitzvat Yishuv HaAretz* is not, however, universally accepted. Another possibility is evident from the Gemara in *Sotah*,⁴⁰ which asks why Moshe Rabbeinu so yearned to enter Israel. Could it have been merely "to eat from its fruits and be satiated from its goodness"? the Gemara queries rhetorically. The Gemara does not offer the obvious answer, that *Yishuv HaAretz* was certainly a mitzvah in that generation, and Moshe, craving a mitzvah as a miser craves gold⁴¹, longed to fulfill yet another. Apparently taking into account the fact that the mitzvah exists, the Gemara wants to know the *nature* of this mitzvah that Moshe was so eager to acquire. Thus it

within the land. Today, in addition to its being easier to earn a living, the mere transferral of funds from outside of Israel to Israel helps the economy, and in that way achieves a partial fulfillment of *Mitzvat Yishuv Ha'Aretz*.

The *Avnei Nezer* further explains a story recounted in *Ketubot* 110b-111a. The Talmudic sage Rabbi Zeira decided to emigrate from Babylonia to Israel, and therefore made a point of avoiding the presence of Rabbi Yehuda, who had forbidden the return to Israel from Bavel. Rabbi Yehuda derived his position from a verse in Jeremiah (27:22) referring to the vessels of the Temple during the time of the Babylonian exile: "They will be brought to Babylonia, and there they will remain, until the day on which I remember you..." Rabbi Yehuda understood this verse to refer not only to vessels, but also people, and not only to the first exile, but also the second. Thus he derived a special law prohibiting by implication any return from Bavel. But how may a prophet introduce a new law, and especially one which contradicts the biblical command to live in Israel? The *Avnei Nezer* resolves this difficulty based on *Berakhot* 57a. There Rabbi Zeira states that he didn't attempt the move to Israel until he saw barley in a dream. Barley is taken to be an auspicious token, because its Hebrew word — *Se'orah* — is reminiscent of a verse in Isaiah (6:7) which speaks of atonement: "*VeSar Avonekha* —" "Your sin has been removed." Only when Rabbi Zeira received a sign of his righteousness in a dream, did he attempt to return from Bavel. This leads the *Avnei Nezer* to suggest that in Rabbi Zeira's view Jeremiah never forbade returning from Bavel; he said only that people who will return will not succeed in settling, and will have to leave again. There is no mitzvah of *Yishuv Ha'Aretz*, says the *Avnei Nezer*, unless one will have a *Klitah Tovah* — a successful absorption process. Therefore Rabbi Zeira did not think at first that he would be able to fulfill the mitzvah — surely the land would vomit him out because of his sins. Only when he had his encouraging dream did he realize that he was pure from sin and assured of a successful absorption in Israel. He acted accordingly.

40. 14a

41. See *Makkot* 10a in expounding *Kohelet* 5:9.

answers that many mitzvot can only be fulfilled in the land of Israel, and Moshe desired the opportunity to fulfill all the mitzvot linked to the land. The implication clearly is that the purpose of *Yishuv HaAretz* is to afford a person the chance of performing the mitzvot *HaTeluyot BaAretz*,⁴² the commandments which can only be performed in Israel.

Tosafot in *Gittin*⁴³ appear to share this view. They propose a contradiction between Talmudic texts as to whether the city Acco is part of Eretz Yisrael and conclude that in the days of Ezra only half of the city received the sanctification of the land (*Kedusha Shniya*), with the accompanying obligations of tithes. Therefore only that half is part of Israel and is included in *mitzvat Yishuv HaAretz*. Tosafot clearly equate the obligation to fulfill the mitzvot *HaTeluyot BaAretz* with the mitzvah of *Yishuv Eretz Yisrael*.

The Ritva⁴⁴, however avoids Tosafot's question entirely by rejecting their premise. The Tosafot were forced into their position when faced by one Talmudic source⁴⁵ that denied to Acco *Kedushat Eretz Yisrael* and another text⁴⁶ which established it a mitzvah to live in Acco. By assuming that the mitzvah of living in Israel can exist only concurrently with (and because of) *Kedushat HaAretz*, the Tosafot had to conclude that the two sources were discussing different halves of the city. The Ritva, however, denies the concept that living in Acco being a mitzvah necessarily implies that the city had *Kedushat HaAretz* as well as *Mitzvot HaTelyuot BaAretz*. By divorcing the two issues, Ritva rejects the theory that the purpose of *Yishuv Eretz Yisrael* is the fulfillment of the mitzvot linked to the Land, saying that even were no such mitzvot to exist, one would still have to dwell in Eretz Yisrael, for it is the land chosen and beloved by G-d. Thus the Ritva's opinion would appear to concur with that of the *Avnei Nezer* that residence in Israel deepens the intimacy of one's relationship with G-d.

42. The *Avnei Nezer's* alternate way of explaining this Gemarah will be discussed later.

43. 2a, beginning *VeAshkelon*.

44. to *Gittin* 2a

45. Mishna, *Gittin* 2a

46. *Gittin* 76b

Based on the Ritva and the *Avnei Nezer*, we can suggest a novel interpretation of another statement made by the Gemara in *Ketubot*.⁴⁷ "It is preferable to live in Eretz Yisrael, even in a city where most of the inhabitants are non-Jews, than to live outside of Israel, even in a city where most of the inhabitants are Jewish." Ostensibly the Gemara means that although living in a city inhabited predominantly by non-Jews entails a degree of discomfort, one must bear the discomfort cheerfully for the sake of fulfilling the mitzvah of *Yishuv Eretz Yisrael*. In light of the Ritva and *Avnei Nezer* however, a new interpretation becomes possible.

The Tosafot elsewhere in *Ketubot*⁴⁸ state that although a city in Israel surrounded by a wall since the days of Yehoshua Bin Nun is endowed with added sanctity and, consequently, additional laws⁴⁹, nevertheless, when the city is inhabited by a majority of non-Jews, its special laws no longer apply. No source is cited by Tosafot for this statement, and many later commentators are baffled as to the origin of Tosafot's rule. Rabbi Menachem Ziemba⁵⁰, however, cites the *Biur HaGra* to *Hilchot Purim*,⁵¹ where the Gaon of Vilna traces this law to the Jerusalem Talmud of *Megillah*.⁵² There the Yerushalmi says that a walled city inhabited by a majority of non-Jews is considered to be in a state of ruin — *BeChurbana* — and therefore loses its special sanctity and accompanying laws.

This may explain as well our original Gemara: One might have claimed that just as a city which is surrounded by a wall loses its special status when the majority of its population is non-Jewish, so too, any city in Eretz Yisrael should lose its sanctity of the land of Israel when the majority of its population is non-Jewish, and since it would no longer have *Mitzvot HaTeluyot BaAretz*, there would be no mitzvah to live in such a city. This presumption the Gemara

47. 110b

48. 45b, beginning *Al Petah Beit Din*.

49. See Mishna *Keilim* 1:7.

50. *Otzar Ha Sifrei* (Introduction to *Sifra Zute*), Pg. 53.

51. *Orach Chayim* 688 sub sec. 2.

52. 1:1

comes to refute, saying that while that might have been so were the sole purpose of *Yishuv HaAretz* the fulfillment of *Mitzvot HaTeluyot BaAretz*, in fact there is a different purpose to the mitzvah. That purpose is, as formulated by the Ritva and *Avnei Nezer*, to become closer to G-d in His land, and is independent of *Kedushat HaAretz*.

Yet one obvious question on the approach of the Ritva and *Avnei Nezer* presents itself. If the purpose and nature of *Yishuv HaAretz* is to come closer to *Hashem*, why doesn't the Gemara in *Sotah*⁵³ say so explicitly when it asks why Moshe Rabenu desired to enter the land? Instead of answering that Moshe wanted to fulfill the mitzvot which can only be done in the Land, the Gemara should have replied that he wanted to attain a more intimate relationship with G-d. To this, the Ritva and *Avnei Nezer* would answer that for Moshe Rabenu, with whom G-d communicated "face to face"⁵⁴, a closer relationship would have been impossible. Therefore, the Gemara asks, if the purpose of *Yishuv HaAretz* is closeness to *Hashem*, and Moshe had nothing more to gain in that area, why did he so desire to enter Israel? And the answer is given that there exists a *second* attraction to living in Israel, namely the opportunity to fulfill the *Mitzvot HaTeluyot BaAretz*.⁵⁵

How to Fulfill the Mitzvah

Having ascertained the existence of a mitzvah to live in Israel, we can examine the parameters of the mitzvah. The *Magen Avraham*⁵⁶ presents two opinions as to whether one fulfills *Mitzvat Yishuv HaAretz* even partially by visiting Israel. The position that even a visit constitutes a partial fulfillment of the mitzvah is based

53. 14a

54. Devarim 34:10, also Bamidbar 12:8.

55. Along these lines it is said of the Ba'al Shem Tov that although he lived outside of Israel, he did not sit in a Sukkah on Shmini Atzeret, thus following the Israeli custom because a Tzaddik is said to be on a level corresponding to Eretz Yisrael, even in Chutz La'Aretz.

56. *Orach Chaim* (248:15). See also *Piskei Teshuvah*, vol. 2, 73-74 where he suggests a distinction between visiting for *less than* thirty days, or for less than twelve months, as opposed to visiting for a longer time period. His distinctions are based on the Gemara *Baba Bathra* (7b, 8a).

upon the statement of the Gemara⁵⁷ that one who merely walks four cubits in Israel attains atonement for his sins. Rabbi Bezalel Zolti,⁵⁸ the late Chief Rabbi of Jerusalem, suggested that this issue hinges upon a dispute between the Rambam and Ravad.⁵⁹

One interpretation given by the Gemara⁶⁰ to the biblical prohibition of "*Lo Tichanem*"⁶¹ is that we may not allow non-Jews to live in Israel. The Rambam and Ravad disagree whether the prohibition includes visits and tours made by non-Jews in Israel. Rav Zolti assumed that the nature of the prohibition *Lo Tichanem* is that whatever we Jews are commanded to do in the mitzvah of *Yishuv HaAretz*, we are forbidden to allow a non-Jew to do. Thus, if we may not allow a non-Jew even to visit Israel, it may be inferred that we ourselves can partially fulfill the mitzvah of dwelling in the Land by visiting Israel.

A man who wishes to live in Israel despite the objections of his wife must have pure motives, writes Rabbi Shlomo Kluger.⁶² Ordinarily we are guided by the Talmudic dictum⁶³: "One should always engage in Torah and mitzvot (even) for impure motives (*Shelo Lishma*) for out of impure motives he will eventually reach pure motives." Yet we find occasional exceptions to this rule. The Mishna in *Avot*,⁶⁴ for example, rules that those who occupy themselves with work for the community (*Tzibbur*) should do so only if their motives are pure (*LeShem Shamayim*). In other words, the Mishna ordains that in activities not explicitly required by the Torah — i.e. the writing of a *sefer*, staging of a demonstration, engaging in communal work — if one voluntarily gets involved, it must be for unclouded motives. A *sefer* should be written to enlighten others and prevent Torah from being forgotten, not in

57. *Ketubot* 111a. See also *Pnei Yehoshua*, *ibid*, that such assurances always presuppose the good intentions and *Teshuva* of the individual.

58. Heard in a public shiur in Jerusalem.

59. *Hilkhot Avodat Kohavim* 10:6

60. *Avodah Zarah* 20a.

61. *Devarim* 7:2

62. Responsa *HaElef Lekha Shlomo, Even HaEzer* 119.

63. *Pesachim* 50b and many other places.

64. 2:2

order to enhance the reputation of its author. Demonstrations and communal work must be done strictly for noble purposes. Similarly, on the rare occasions when the Torah permits performing a sin *Lishma*⁶⁵, the license is limited to those with pure intentions.

Rabbi Shlomo Kluger groups *Yishuv HaAretz* in the same category, ruling that a man may divorce his wife without paying the amount of her *Ketubah* only if his reason for wanting to live in Israel is to fulfill *Mitzvat Yishuv HaAretz*. Accordingly, Rabbi Kluger disqualified the claim of a man who insisted on moving to Israel not for the sake of the mitzvah but in order to better his financial prospects. This approach to *Mitzvat Yishuv HaAretz* is quite unique.

Limitations

Opposition to the modern return to Zion has often based itself upon the now famous Talmudic passage of the *Shalosh Shevuot*,⁶⁶ "The Three Oaths."

ג' שבועות הללו למה אחת שלא יעלו ישראל בחומה ואחת
שהשביע הקב"ה את ישראל שלא ימרדו באומות העולם ואחת
שהשביע הקב"ה את העובדי כוכבים שלא ישתעבדו בהן בישראל
יותר מדי

What are these three oaths? One, that the Jews should not go up (to take the land) by force, and one that G-d made the Jews swear that they would not rebel against the nations of the world, and one that G-d made the nations swear that they would not enslave the Jews too much.

In expounding the verse "I have made you swear, O daughter of Jerusalem," the Gemara relates that the Almighty administered three oaths to the Jewish people. The time and nature of these oaths are not clear, but one of them entailed a commitment on the part of the Jews not to return and conquer Israel by force. Many *Gedolim* in Europe took this to forbid any attempt at reestablishing the State of Israel before Messianic times. Numerous refutations have been

65. *Horiyot* 10b and elsewhere. Regarding writing *Chidushei Torah shelo leshma*, see Responsa *Meshiv Davar*, *Orach Chayim* 14.

66. *Ketubot* 111a based on *Shir HaShirim* 2:7, 3:5.

offered to counter such an interpretation of the Gemara. Firstly, it is noted that this passage, whatever its true meaning may be, is not cited by Rambam or the *Shulchan Aruch*, and is therefore not halachically binding upon us. "*Ein Lemadim Min Hagaddah*".

Beyond that, the Maharal of Prague⁶⁷ demonstrates that the term *shevuah* in its Scriptural use need not mean literally an oath. Equating *shevuah* with *brit*, the Maharal points out that *brit* need not always connote a formal covenant between two parties. If it were always to be taken literally, how could G-d be described as entering into a *brit* with salt⁶⁸ and bugs⁶⁹? Rather *brit* and *shevuah* indicate an unchanging fact of life, a strong tendency implanted by G-d in nature.⁷⁰ Thus, the Maharal explains that G-d never actually administered an oath to the Jewish people; He merely told us that a return to Zion would be impractical because by the laws of nature such a return would not work out. Any attempt at return, then, is not forbidden, but discouraged as futile. Should an attempt succeed, it clearly has triumphed over nature and is not in defiance of G-d's will.

Others suggest that the prohibition was against taking the land *by force*. In view of the Balfour Declaration, the Partition Plan and other actions taken by the world community in recognition of the State of Israel, it is clear that the nations of the world voluntarily allowed us to return to Israel; our entry was not one of force.

Finally, it is pointed out⁷¹ that the same Talmudic passage records that the Jews were not the only ones to swear. G-d concurrently elicited an oath from the nations of the world not to be overzealous in persecuting the exiled Jews. Two thousand years of relentless oppression bear witness to the fact that the nations

67. *Sefer Netzach Yisroel* Ch. 24 see Essay by Rabbi Shlomo Aviner, on the Topic, Noam vol. 20, sec. 13.

68. See *Sifrei* to Bamidbar 18:19; also quoted by Rashi to Vayikrah 2:13.

69. See *Nidah* 58b

70. See Rambam to Bereishit 6:18-19, who develops the concept of *brit* denoting something unconditional holding true regardless of future developments.

71. Rav Meir Simcha of Dvinsk, quoted in Rav Menachem Mendel Kasher's *HaTekufah HaGedolah*, p. 174.

have failed to uphold their obligations under the *Shalosh Shevout*. Consequently, we should no longer be bound by ours.

The *Minchat Elazar*⁷² argues further that since the expulsion from our land was intended as a punishment, we are not permitted to avoid G-d's wrath by ending the exile, and must await redemption in the diaspora, at a time of G-d's choosing.

The foundations of this argument are very shaky. Surely Judaism does not forbid the attempt to avoid or curtail a punishment from G-d. Often sickness is a punishment inflicted on a person for his sins, and yet the Torah explicitly grants us license to seek a medical cure — "*VeRapo Yerapei*"⁷³ — from which we adduce the permission granted a physician to heal.⁷⁴

Moreover, who is to say that the period of punishment has not elapsed? The very fact that an opportunity exists to return is proof that G-d no longer wishes to punish us. What further notification is necessary?

In fact, failure on our part to recognize that the period of exile has ended can only be unwise and even dangerous. The Talmud⁷⁵ tells us that each time the Jewish people was exiled, the *Shechina*, G-d's Spirit, followed them, and thus it too was in exile — *Shechinta BeGaluta*. The significance of G-d's being in exile can best be understood by analogy to another law in the Talmud involving exile.

A person who kills accidentally is required by the Torah to flee to a city of refuge and reside there until the death of the High Priest.⁷⁶ At the same time, even while in exile, he is not expected to live a life of privation and hardship. From the phrase "and he shall live there"⁷⁷ the Rabbis derive that the exiled man is to be provided with everything he needs to live a completely normal life.⁷⁸ As Torah study is an essential element of life, the Mishna rules that

72. Vol. V No. 12.

73. Shemot 21:19

74. *Bava Kamma* 85a

75. *Megillah* 29a

76. See *Bamidbar* 35, *Devarim* 4:41-9, 19

77. *Devarim* 4:42

78. *Makkot* 10a

"when a student is exiled, his teacher is exiled with him."⁷⁹ The Rebbi is required to open a Yeshiva and provide Torah atmosphere for his exiled student. It is in this manner that G-d accompanied us into exile; being Master and Teacher of the Jewish people, He followed his students into exile to provide them with spiritual guidance and Divine protection.

But how long must the teacher remain in exile? Certainly when the High Priest dies and the student may return home, the teacher may return as well. And even if the student himself, having grown accustomed to his new surrounding, desires to remain, that need not hinder his Rebbi from returning. Similarly, with the period of our exile at an end, G-d is free to return to His land, even should we choose to tarry. He need no longer reside in exile for our benefit. The prospect of continuing live in *Galut*, with G-d's special protection removed, is frightening.

Finally, if we persist in staying in *Galut* even when our punishment is over, we will be following the dangerous precedent set by the *Eved Nirtza*. A Hebrew slave who grows to enjoy the conditions of his servitude and refuses to go free at the end of his six year term is made to undergo a *retziah* ceremony involving the piercing of his upper ear, after which he remains a slave until the Jubilee year.⁸⁰ One interpretation given to explain the symbolism of piercing the ear is based upon the assumption that the slave was originally sold as a thief, who, when apprehended, had no money with which to pay back his victim. "The ear which heard at Sinai 'Thou shalt not steal,' and yet (its owner) went out and stole deserves to be pierced."⁸¹ On this explanation Rabbi Yehoshua Lein Diskin⁸² asks why, if the piercing is a punishment for the theft, is it not carried out immediately, but only after six years of servitude?

79. Ibid.

80. Shemot 21:5-6, Devarim 15:16-17

81. *Mekhilta*, quoted by Rashi to Shemot 21:6. Rashi also cites the rationale in a case of man who sold himself: "The ear which heard 'for unto Me are the children of Israel slaves' and yet (its owner) went out and acquired a master deserves to be pierced."

82. *Chidushai Maril Diskin* beginning of *Parshat Mishpotim*.

He answers that the true punishment for the theft is being sold into service for six years; no other punishment is ordinarily called for. But this particular thief, by displaying reluctance to go free after the six years are up, demonstrates that for him the servitude never constituted a punishment in the first place. On the contrary, he revels in his new surroundings: "I love my master, my wife and children; I shall not go free."⁸³ For such a man, to whom the punishment of the Torah means nothing, the Torah prescribes an additional punishment — the piercing of the ear.

One can argue that our presence in exile was a punishment, and, with our renewed access to Israel, that punishment is over. G-d forbid that we should sit back and willingly accept surroundings that are, essentially, meant as a punishment. G-d forbid that, by refusing to recognize the nature of one punishment, we bring upon ourselves another.

A National Obligation

Until now we have dealt with *Mitzvat Yishuv Eretz Yisrael* as derived, according to the Ramban, from the end of the verse "Conquer the land and dwell therein." But, as noted above, a separate mitzvah of the entire nation (*Tzibbur*) to conquer Eretz Yisrael is learned by the Ramban from the first part of the verse. This mitzvah, too, is conspicuously missing from the Rambam's enumeration of the 613 mitzvot. Moreover, the Rambam in his *Yad HaChazaka* doesn't even enumerate *Mitzvat Yishuv HaAretz*. Here, then, there are more grounds for claiming that Rambam felt the mitzvah to be applicable only when the Jews first entered Eretz Yisrael.

It is generally assumed, however, based on a Yerushalmi,⁸⁴ that this Mitzvah also applies throughout history, as the Ramban writes. The Yerushalmi offers a novel interpretation of a law cited in *Masechet Gittin*. The Gamara in *Gittin*⁸⁵ permits asking a non-Jew on the Sabbath to write and sign the document necessary to

83. Shemot 21:5

84. *Moed Katan* Ch. 2 Halacha 4.

85. 8b

purchase a house in Israel from its non-Jewish owner. Commentators speculate what precisely was the mitzvah involved which made possible the suspension of the rabbinic prohibition of *Amirah LeNachri*, (asking a Gentile to do work on Sabbath). The *Tashbets*⁸⁶ suggests that it is *Yishuv Eretz Yisrael*, settling in the land, that takes precedence over *Amira LeNachri*. The Ramban⁸⁷ and Rivash⁸⁸, however, suggests that it is the mitzvah of *Kibush Eretz Yisrael*, conquering it, which carries the day. The Ramban writes that since *Kibush HaAretz* is incumbent upon *Klal Yisrael* (the Jewish people) as a whole, it is classified as a *Mitzvah D'Rabim* (of the many) and, unlike ordinary mitzvot, a mitzvah *D'Rabim* is of a higher priority than the prohibition of *Amira LeNachri*.

The Yerushalmi supports the Rivash in saying that *Kibush HaAretz* was the underlying reason for the law and supports the Ramban in classifying *Kibush HaAretz* as a mitzvah for all generations. In explaining why one may instruct the non-Jew to violate Shabbat in order to buy a home in Israel, the Yerushalmi comments, "For Jericho, too, was conquered on the Sabbath". Clearly the point being made is that buying a house from non-Jewish hands constitutes a partial conquering of the land of Israel. For a genuine and complete mitzvah of *Kibush HaAretz* such as the conquering of Jericho by Yehoshua Bin Nun, even biblical prohibitions are eased on Shabbat. For a partial fulfillment of *Kibush HaAretz*, only rabbinic laws, such as *Amirah LeNachri*, are waived. Thus without needing to classify *Kibush HaAretz* as a mitzvah *D'Rabim*, the Yerushalmi posits that this mitzvah falls in the same category as *Kidush HaHodesh*⁹⁰ and sacrificing public *Korbanot* whose time of sacrifice is specified.⁹¹ All of these mitzvot, by their very nature, take precedence over Shabbat. Moreover, since the law of the Gemara in *Gittin* did not only apply to a particular

86. Responsum 21. See *Mishne Halachot* (R' Menashe Klein)

87. *Chidushum* to Shabbat (130b) vol. 3, p. 251.

88. Responsum no. 101

90. Mishna *Rosh Hashana* 22a

91. Pesachim 66a

period in history, it is clear that mitzvat *Kibbush HaAretz*, according to the Yerushalmi, applies equally to all times.

Conquering Israel by force clearly involves a fair amount of danger. One might have claimed that since *Pikuach Nefesh* (preserving Jewish life) takes precedence over most mitzvot of the Torah, one need not participate in *Kibbush HaAretz* because of the element of life-threatening danger. The *Minchat Chinuch*⁹², however, dispels any such thinking by pointing out that this mitzvah, by its nature, incorporates danger. Nevertheless, it was still commanded to the Jewish people. Any commandment which has danger woven into its very fabric cannot be suspended for considerations of *Pikuach Nefesh*. (Of course this presupposes that the *Kibbush* accomplished will be real and lasting. Only if military experts feel that waging war would be essential to secure or protect the safety of the State and its citizens would the mitzvah apply, despite the accompanying loss of life.)

Rabbi Meir Simcha of Dvinsk, the *Meshech Chochma*,⁹³ cites the words of the famous Midrash⁹⁴ that the Jews merited redemption from Egypt because throughout their exile and enslavement they preserved their names, their language, and their unique dress. In explaining the significance of these seemingly trifling mitzvot, Rabbi Meir Simcha writes that although all mitzvot are equally important in the eyes of Jewish law and must all be observed, from an historical perspective some take on added significance. Thus, outside of Israel, it became historically very important that Jews retain their Hebrew names, tongue, and dress in order to combat the powerful forces of assimilation. In this manner, every period of history has its own mitzvot of the hour. Today, when every Jew settling in Israel contributes measurably to the security and economy of the State, and to the Jews in it, *Yishuv Eretz Yisrael* may indeed be called a mitzvah of the hour.

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92. Mitzvah 425.

93. To Parshat Bechukotai on the Pasuk **וְאַף גַּם זֹאת בְּאֶרֶץ אוֹיְבֵיהֶם**.

94. *Vayikra Rabba* (32,5)