



Maimonides and the Obligation to Live in the Land of Israel
By David Silverberg

Parashat Masei tells of *Benei Yisrael's* preparations for their imminent arrival in the Land of Israel, including God's admonition that they must completely capture and settle the Promised Land: "And you shall take possession of the land and settle it" (33:53). Nachmanides, in his commentary to this verse, famously asserts that the Torah here introduces a *mitzvat aseï* – a Biblical imperative – to capture and reside in *Eretz Yisrael*. Consistent with this approach, in his critique of Maimonides' listing of the six hundred and thirteen *mitzvot*, Nachmanides charges that Maimonides erroneously omitted the obligation to occupy and live in the Land of Israel. Acting on his conviction, Nachmanides, towards the end of his life, migrated from Spain to Palestine where he worked to renew Jewish life there.

This week's discussion will explore Maimonides' position on this topic, assessing the various approaches that have been taken in understanding his view. Over the last century and a half, the issue of whether there exists such an obligation, and, if so, whether it practically applies even nowadays, has (for obvious reasons) received much attention in halakhic literature. We must emphasize that our discussion is by no means intended to serve as a comprehensive analysis of the issue, or to establish an authoritative, halakhic ruling. Our purpose here is merely to survey the positions taken by later scholars in attempting to determine Maimonides' stance on this issue.

The *Megilat Ester*

The work entitled *Megilat Ester* – not to be confused, of course, with the "Scroll of Ester" that tells the Purim story – was written by a scholar named Rabbi Yitzchak De Leon to defend Maimonides' *Sefer Ha-mitzvot* from the challenges posed by Nachmanides. Commenting on Nachmanides' insistence that living in *Eretz Yisrael* be listed as one of the commandments, the *Megilat Ester* counters that Maimonides denied that such an obligation exists, and proceeds to cite proofs to this position. According to the *Megilat Ester*, the Jews were obligated to reside in the Land of Israel only until their banishment from the Land, at which point this *mitzva* became obsolete, and remains so until the Messianic era. Since Maimonides includes in his list of *mitzvot* only those commands which apply eternally (as he establishes in the third of the fourteen principles enumerated in the introduction to *Sefer Ha-mitzvot*), he could not include living in *Eretz Yisrael* within his listing.

The *Megilat Ester* draws evidence to this position – which he attributes to Maimonides – from two passages in the Talmud which suggest that not only does the Torah not obligate Jews to live in the Land, under certain circumstances they are forbidden from doing so. In Masekhet Ketubot (111a), the Talmud mentions an oath which God imposed upon the Jewish people "*she-lo ya'alu ba-choma*" – meaning, that they will not forcefully return to *Eretz Yisrael*. Seemingly, we are enjoined to remain in exile until God summons us back – a command that would be hard to accept if the Torah obligates *Benei Yisrael* to live in the Land of Israel. Just several lines earlier (Ketubot 110b-111a), the Talmud cites Rav Yehuda's remark that one may not migrate from Babylonia to *Eretz Yisrael*. Invoking a verse in the Book of Yirmiyahu (27:22), "They shall be brought to Babylonia, and there shall they remain," Rav Yehuda claims that Jews must remain in Babylonia and not endeavor to return to their ancestral homeland. This passage, too, appears to negate the possibility of a Torah obligation to reside in *Eretz Yisrael*.

Finally, the *Megilat Ester* seeks to prove his stance from a passage in the *Sifrei*, which, ironically enough, Nachmanides had invoked as evidence for an obligation to dwell in *Eretz Yisrael*. The *Sifrei* tells of a group of scholars who left *Eretz Yisrael* and, at some point after crossing the border, experienced a nostalgic longing for the Land. They wept, rent their garments, and recalled the

verse, "you shall inherit it and dwell in it, and ensure to perform..." They then added, "Living in *Eretz Yisrael* is equivalent to all the *mitzvot* combined!" While this account seemingly confirms Nachmanides' position, the *Megilat Ester* contends that to the contrary, it proves that these scholars – distraught as they were over their departure – nevertheless indeed took leave of *Eretz Yisrael*. Why, he asks, did they simply weep and rend their garments, rather than actually returning? Undoubtedly, the *Megilat Ester* argues, they lamented their inability to dwell in the Land because the obligation did not apply during their lifetime, after the Temple's destruction.

Refuting the *Megilat Ester*

Though the position of the *Megilat Ester* was embraced by some authorities, most famously by the leaders of the Munkatch and Satmar sects of Chassidim, who vehemently opposed the foundations of the Zionist movement on theological grounds, several other scholars resoundingly rejected his claims. The legendary Chassidic master and halakhic decisor Rabbi Avraham of Sochatchov, in his work of responsa *Avnei Neizer*, devotes a very lengthy essay (Y.D. 454) to this issue, and advances a different approach in understanding Maimonides' position. His most obvious and compelling argument, perhaps, is that the temporary suspension of an obligation during the post-Temple era does not warrant its omission from Maimonides' listing of the commandments. This list includes all commandments that apply permanently, even those whose performance is practically impeded by the absence of a *Beit Ha-mikdash*. Any *mitzva* that requires a standing and functional Temple is nevertheless clearly deemed eternally binding and worthy of inclusion in Maimonides' list of commandments. The suspension of its practical applicability results from a technicality, and does not undermine its eternal nature. Thus, just as Maimonides includes in *Sefer Ha-mitzvot* all the obligations and prohibitions concerning the sacrificial order, ritual purification, and other Temple-dependent laws, so should he have included residence in the Land, even if its practical relevance hinges on the *Beit Ha-mikdash*.

This argument, in effect, negates both pieces of Talmudic evidence advanced by the *Megilat Ester*. Even should we concede that during the period of exile the Jewish people must not initiate a return to Zion, Maimonides should have still included a *mitzva* to live in the Land. For the *Megilat Ester* explicitly acknowledges that the obligation will take effect anew with *Mashiach's* arrival; if so, even if we are temporarily barred from settling the Land, this temporary ban would not account for Maimonides' omission of this *mitzva* from his listing.

In truth, these two Talmudic passages in any event hardly lend support to the *Megilat Ester's* understanding of Maimonides' position. As for the "oath" imposed upon the Jewish people, forbidding them from initiating a return, it should be noted that Maimonides makes no mention of such a prohibition anywhere in his writings. Presumably, he felt – for one reason or another – that this "oath" is of no practical, halakhic relevance. The *Avnei Neizer* notes that never did the Jewish people assemble for the purpose of taking such an oath. Undoubtedly, then, the Talmud refers to a mystical idea involving an "oath" taken by the Jewish soul before descending to earth – a notion that clearly has no bearing on normative Halakha. What more, the Maharal of Prague, in his commentary to this passage in Masekhet Ketubot, asserts (possibly to address the obvious point observed by the *Avnei Neizer*) that the Talmud does not refer at all to an actual "oath." Instead, he interprets the Gemara allegorically, as speaking of a divine decree against the Jewish people condemning them to such consistent persecution that it would appear as if they promised on oath never to rebuild their homeland. Needless to say, this grim reality predicted by the Sages of the Talmud (which, tragically, has proven itself correct over the centuries) by no means demands that the Jewish people make no effort to improve their condition or move to the Land of Israel.

Proceeding to the earlier passage, citing Rav Yehuda's comment prohibiting one to relocate from Babylonia to *Eretz Yisrael*, several writers insisted that Halakha does not accept this position. Rabbi Yisrael of Saklov, a famous disciple of the Vilna Gaon who led one of the earliest movements among European Jewry to migrate to *Eretz Yisrael*, observes in his *Pe'at Ha-shulchan* (1:14) that many *Amora'im* indeed traveled from Babylonia to Israel, in opposition to Rav Yehuda's ruling. Evidently, Rav Yehuda's position did not earn widespread acceptance. This claim is made as well by Rabbi Yaakov Emden, in his commentary to the *siddur* (*Beit Yaakov*, p. 13a). We might add that Maimonides himself appears to reject Rav Yehuda's position. Towards the end of *Mishneh Torah*

(Hilkhot Melakhim 5:12), he invokes the verse that served as the basis for Rav Yehuda's ruling – "They shall be brought to Babylonia, and there they shall remain" – to arrive at an entirely different prohibition. He writes, "Just as it is forbidden to leave from *Eretz Yisrael* to outside the Land, so it is forbidden to leave from Babylonia to other lands, as it says, "They shall be brought to Babylonia, and there they shall remain." Clearly, then, Maimonides did not accept Rav Yehuda's position as normative Halakha. This verse does not forbid relocating from Babylonia to Israel, but rather draws an equation of sorts between Babylonia and Israel, which one may not leave to live elsewhere.

The *Avnei Neizer* compellingly refutes the *Megilat Ester's* final proof, as well, which he attempted to draw from the account recorded in the *Sifrei*. The *Avnei Neizer* demonstrates beyond doubt that the *Megilat Ester* did not consult the actual text of the *Sifrei*, which explicitly mentions that the sages indeed returned to *Eretz Yisrael* after recalling the *mitzva* to live in the Land. If anything, then, this narrative would lend strong support to Nachmanides' position, that there indeed exists a *mitzva* to reside in *Eretz Yisrael*, and it appears difficult to attribute to Maimonides the contrary position.

Moreover, evidence may be drawn that Maimonides acknowledged an obligation to dwell in *Eretz Yisrael*. For one thing, in discussing the laws of Shabbat (*Mishneh Torah*, Hilkhot Shabbat 6:11), he codifies the Talmud's ruling (Bava Kama 80b) allowing a Jew to commission a gentile scribe to write a deed of purchase on a house in *Eretz Yisrael*. Although the Sages generally forbid instructing a gentile to perform on Shabbat activity forbidden for a Jew, they waived this prohibition in the situation of land purchases in the Land of Israel, due to the importance of *yishuv ha-aretz* (settling the Land). This ruling convincingly demonstrates that Maimonides recognized a *mitzva* to settle the Land. Even more significantly, later in *Mishneh Torah*, Maimonides very emphatically extols the value of residing in *Eretz Yisrael*. He mentions that "the greatest scholars would kiss the boundaries of *Eretz Yisrael*, kiss its stones and roll in it dust" (Hilkhot Melakhim 5:10), and cites the Talmud's promise that "whoever dwells in the Land of Israel – his sins are forgiven" (*ibid.*, 5:11). In the next paragraph (5:12), Maimonides writes explicitly, "A person should always reside in the Land of Israel, even in a city of mostly gentiles, rather than living outside the Land, even in a city of mostly Jews." Maimonides quite clearly affirmed the importance of living in *Eretz Yisrael*, and appears to apply this value even in his time, centuries after the Temple's destruction. The *Megilat Ester's* position, then, seems very difficult to attribute to Maimonides.

Of course, the question then returns as to why Maimonides omitted this *mitzva* from his listing of the commandments. If, as we have shown, he acknowledges such a *mitzva*, why does he not include it among the two hundred and forty *mitzvot asei* (positive commandments)?

We will present here four approaches taken to reconcile Maimonides' apparent recognition of an obligation to reside in *Eretz Yisrael* with his decision to omit this *mitzva* from his list of the six hundred and thirteen Biblical commands.

1) The *Avnei Neizer*

The *Avnei Neizer*, in the aforementioned responsum, contends that Maimonides does, in fact, include this obligation in his list of *mitzvot*. After all, Maimonides lists the obligation to destroy the seven iniquitous Canaanite nations who inhabited the Land before *Benei Yisrael's* initial conquest (*mitzvat asei* 187), a campaign intended primarily for the purpose of Israel's settlement in the Land in place of the Canaanites. In essence, these two commands are one and the same: the Torah demands that *Benei Yisrael* settle the Promised Land, and to that end they are obliged to dispossess its former inhabitants. The *Avnei Neizer* cleverly associates this debate between Maimonides and Nachmanides to a different argument between them, regarding the *mitzva* to build an *aron* (ark). Whereas Nachmanides identifies this obligation as an independent *mitzva* (critique to *Sefer Ha-mitzvot, asei* 33), Maimonides lists only the general obligation to construct a Temple (*asei* 20). The *Avnei Neizer* contends that both scholars accept the premise that God obligated the construction of a Temple to serve as the "residence" of His representative presence, symbolized by the ark. Maimonides, however, customarily lists as a separate *mitzva* only the means by which the end is to be achieved, and therefore includes only the building of the Temple – and not the fashioning of the ark – as one of the six hundred and thirteen commandments. Nachmanides, by contrast, believes in including both the means and the ends, and therefore insists that the fashioning of the ark also earns inclusion as an independent

mitzva. Similarly, the *Avnei Neizer* argues, Maimonides declined to list dwelling in the Land as a separate *mitzva* because he already listed the means toward achieving that end – the banishment of the Canaanite peoples. Nachmanides, by contrast, true to form, argues for counting also the final objective, namely, *Benei Yisrael's* residence in their homeland.

The 20th-century scholar Rabbi Yisrael Zev Mintzberg, who authored an entire work devoted to the issue of whether living in *Eretz Yisrael* constitutes a *mitzva* (*Kuntras Yishuv Eretz Yisrael*), challenged the *Avnei Neizer's* approach to explain Maimonides' view. Rabbi Mintzberg argues, quite simply, that had Maimonides combined the dispossession of the Canaanites and residence in the Land into a single *mitzva*, he would have specified the latter, rather than the former. Since residence in the Land constitutes the desired goal, and the conquest but the prerequisite stage, Maimonides should have highlighted the desired result – that the Jewish people live in their land – rather than the practical means by which this objective is facilitated.

We might raise a more compelling refutation against the *Avnei Neizer's* theory. In presenting the obligation to dispossess the seven Canaanite nations (in *Sefer Ha-mitzvot*), Maimonides states explicitly the underlying reason behind this *mitzva*: "It [the Torah] explained to us in many verses the reason for this – so that we do not learn from their conduct." The implication, of course, is that had the Canaanite culture and influence not posed such a grave religious threat to *Benei Yisrael*, the Torah would not have mandated their elimination. This obligation serves not to "make room" for the Israelites in the land of Canaan, but rather to eradicate the memory of the corrupt culture of paganism and immorality championed by the Canaanite nations. Thus, it seems difficult to believe that this *mitzva* is intended primarily to facilitate residence in *Eretz Yisrael*, as the *Avnei Neizer* argued.

2) *Mitzvot Ha-teluyot Ba-aretz*

Among the more popular explanations suggested for the omission of this *mitzva* from Maimonides' list asserts that residing in *Eretz Yisrael* is included under the *mitzvot ha-teluyot ba-aretz* – those commands which apply only in *Eretz Yisrael*. Since Maimonides already lists these many imperatives individually as *mitzvot*, he had no need to list as well the obligation to dwell in the Land, which, quite obviously, is a precondition for the fulfillment of the Israel-dependent obligations. Since these *mitzvot* presuppose residence in the Land, their inclusion in Maimonides' list *ipso facto* subsumes that obligation, as well. (One early source that proposes this theory is Rabbi Chayim Falagi's *Nishmat Kol Chai*, Y.D. 48.)

A Talmudic passage may provide some basis for this perspective, viewing the *mitzva* to reside in the Land as but a precondition of the *mitzvot ha-teluyot ba-aretz*. In *Masekhet Sota* (14a), the Gemara raises the question as to why Moshe, in the Book of Devarim (3:23-25), pleaded for permission to enter *Eretz Yisrael*. Surely, the Talmud contends, Moshe had no interest in the Land's luscious fruits or other luxuries. The Gemara concludes that Moshe longed to enter *Eretz Yisrael* so that he could have the opportunity to perform the many commandments that obtain only in the Land. At first glance, this entire discussion denies the independent, intrinsic status of *yishuv ha-aretz*. If, as Nachmanides asserts, residing in the Land constitutes an independent obligation, the Gemara would have no reason to attribute Moshe's petitions to his desire to fulfill the Israel-dependent laws. Apparently, then, we must conclude that dwelling in the Land bears religious value only insofar as it facilitates performance of the *mitzvot ha-teluyot ba-aretz*.

Many writers, however, have refuted this proof, arguing that it does not necessarily relegate *yishuv ha-aretz* to the status of prerequisite for the Land's agricultural laws. The *Meshekh Chokhma* (beginning of Parashat Re'ei), for example, suggests that Moshe already fulfilled the obligation to live in *Eretz Yisrael* by having resided in the East Bank of the Jordan River, the territory that the Israelites had captured during Moshe's lifetime. Moshe allocated this territory as the permanent holding of two-and-a-half tribes, who undoubtedly fulfilled the *mitzva* of *yishuv ha-aretz* through their residence in that region. Hence, the *Meshekh Chokhma* argues, Moshe did not have to cross the Jordan to fulfill this *mitzva*. Many of the agricultural laws, however, would take effect only after the nation's successful conquest and distribution of the Land, and he thus longed to enter *Eretz Yisrael* proper so that he could fulfill these *mitzvot*. This Talmudic passage, then, does not necessarily indicate that residing in the land constitutes merely the requisite means for fulfilling the *mitzvot ha-teluyot ba-aretz*, rather than an independent value.

In truth, it is questionable whether we can attribute this perspective to Maimonides in any event. In extolling *yishuv ha-aretz* in Hilkhoh Melakhim (5:9-12), Maimonides makes no mention at all of the agricultural lands applicable only in the Land. He appears to portray residence in the Land as an intrinsic, self-contained value, irrespective of the other *mitzvot* it serves to facilitate. The question, then, returns, why did he choose not to include this *mitzva* in his list of Biblical commands?

3) *Mitzva Kolelet*

Others have contended that *yishuv ha-aretz* cannot be assigned a specific entry within the listing of *mitzvot* because of its all-encompassing nature. Maimonides introduces his *Sefer Ha-mitzvot* with a list of fourteen principles governing his system of enumerating the Torah's commands. The fourth principle dictates that generic exhortations to obey the Torah must not be afforded independent status as *mitzvot*. These admonitions are intended to encourage observance of the commands, and should therefore not be confused for commands themselves. Accordingly, some scholars have argued that *yishuv ha-aretz*, in Maimonides' view, constitutes such a fundamental Torah value, that it cannot be "relegated" to the status of merely a single command among six hundred and thirteen.

This approach was developed at length by Rabbi Yisachar Shlomo Teichtal, in his work *Eim Ha-banim Semeicha*, which he authored while hiding from the Nazis in Hungary during the years 1942-1943. (Rabbi Teichtal was ultimately captured, and he perished on a train en route to the Mauthausen concentration camp in Germany.) Rabbi Teichtal cites from an earlier work, *Yeshivat Eretz Yisrael* by Rabbi Yonah Dov Blumberg, who speaks of residence in the Land of Israel as "the sum-total of all other *mitzvot*," a precept that "encompasses the entire Torah." Rabbi Blumberg cites in this context Maimonides' remarks concerning the institution of *kiddush ha-chodesh* – the formal declaration of new months (*Sefer Ha-mitzvot*, *asei* 153) – where he establishes that authority over this process is entrusted specifically to the *Sanhedrin* (head rabbinical court) in *Eretz Yisrael*. Maimonides emphasizes that the decisions and calculations of Diaspora Jewry – including its leading rabbinical scholars – are of no consequence in establishing the Jewish calendar. (He refers here to the time when new months were determined based on the sighting of the new moon.) In this context, Maimonides writes, "Let us, suppose, for example, that there would be no Jews living in *Eretz Yisrael* – God forbid that He should do such a thing, for He has promised not to destroy the remnants of the nation completely... our calculations would not help us at all." Rabbi Blumberg observes that Maimonides interrupts his legal presentation with an emotional outburst – "God forbid that He should do such a thing..." This interjection demonstrates that Maimonides – in Rabbi Blumberg's words – "shuddered out of awe and fear of Hashem" upon the mere thought of an *Eretz Yisrael* without any Jewish presence. Rabbi Teichtal further notes that Maimonides here equates such a reality with complete destruction of the "remnants of the nation." Seemingly, then, the Jewish people's presence in its homeland is of such critical importance in Maimonides' thought, that their absence amounts to their complete disappearance, which we are guaranteed will never occur.

Accordingly, these writers attribute to *yishuv ha-aretz* such paramount importance that it transcends inclusion in *Sefer Ha-mitzvot*. It is, if you will, much more than just a *mitzva*; it embodies the Jewish people's destiny and ideal state of being. It thus meets the criterion of a *mitzva kolelet*, an all-embracing *mitzva*, which cannot earn inclusion in the listing of specific Biblical commands. This approach is often cited in the name of Rabbi Avraham Yitzchak Kook, as well.

However, Rabbi Yehuda Henkin (contemporary), in an article on this subject published in the scholarly journal *Noam* (vol. 24, 5742-1982), argues that residence in *Eretz Yisrael*, all-encompassing as it may be, does not qualify for inclusion in the *mitzva kolelet* category. A quick survey of the verses cited by Maimonides to demonstrate this concept reveals an important common feature: they admonish in a very general sense, without calling for any particular act or mode of conduct. The term "*mitzva kolelet*," Rabbi Henkin claims, refers to warnings to abide by preexisting commands, that do not introduce an obligation to follow a particular course of action. *Yishuv ha-aretz*, by contrast, clearly entails a very specific requirement – to either relocate to or remain in the Land of Israel. Even if we accept the premise that this obligation comprises a fundamental tenet that encompasses more than a specific imperative, we cannot ignore the particular requirement involved. We cannot,

therefore, grant it the status of a *mitzva kolelet* and thus invoke Maimonides' fourth rule as the basis for his decision to omit *yishuv ha-aretz* from his listing of the commandments.

4) A Rabbinic Obligation

Perhaps due to the difficulties latent within all the aforementioned approaches, many writers preferred ascribing to Maimonides a different perspective, viewing residence in the Land of Israel as an obligation enacted by the Rabbis. As far as Torah law is concerned, one may establish residence outside the Land, despite the resultant inability to perform the many laws applicable only in *Eretz Yisrael* and the inherent importance of settling the Land. The Sages, however, acting upon the immense value of residence in *Eretz Yisrael*, established a specific *mitzva* to this effect, as Maimonides codifies in *Hilkhos Melakhim*. One early source that adopts this approach is the "Rashbash" (Rabbi Shlomo Ben Shimon Duran, Algiers, 15th century; responsa, 2). Other scholars who attribute this view to Maimonides include Rabbi Chayim Palagi (*Nishmat Kol Chai*, *ibid.*), Rabbi Yisrael of Saklov (*Pe'at Ha-shulchan*, *ibid.*), and Rabbi Yehuda Henkin (*Noam*, *ibid.*).

There are several advantages to this approach. First and foremost, it explains why Maimonides never provides a Biblical source for this *mitzva*; he viewed it as a *mitzva* legislated by the Sages, rather than a Biblical imperative. Furthermore, it justifies the exceptional situations in which Halakha permits leaving *Eretz Yisrael*. As Maimonides codifies (*Hilkhos Melakhim* 5:9), one may settle in the Diaspora if he cannot find adequate employment in *Eretz Yisrael*. (He adds, however, that it constitutes a "measure of piety" to remain in *Eretz Yisrael* even under harsh economic conditions.) Clearly, Torah prohibitions are not suspended due to financial considerations, except in life-threatening situations. Seemingly, then, Maimonides viewed the *mitzva* to reside in the Land as a lower-level obligation, which can give way to overriding concerns.

It should be noted that this position does not contradict Maimonides' remarks mentioned earlier, equating the lack of a Jewish presence in *Eretz Yisrael* with the nation's disappearance. On the national level, *Eretz Yisrael* may, indeed, as Rabbi Teichtal eloquently argued, constitute a central pillar of our people's existence and national and religious identity. Nevertheless, Maimonides perhaps felt that this axiom does not translate into a specific, personal, Torah obligation to reside in Israel. Rather, residence in the Land constitutes an overarching Torah value which *Chazal* formulated into a specific *mitzva*.

In summary, we encountered five positions with regard to Maimonides' position towards residence in *Eretz Yisrael*:

1) The *Megilat Ester* argued that Maimonides does not include this obligation in his listing of the commandments because it does not obtain after the Temple's destruction, until the period of *Mashiach*.

2) The *Avnei Neizer* contended that this *mitzva* is included under another *mitzva* which Maimonides indeed mentions in his list – the obligation to destroy the seven Canaanite nations.

3) Others felt that the agricultural *mitzvot* applicable specifically in *Eretz Yisrael* necessarily entail residence in the Land, and thus *yishuv ha-aretz* does not warrant an independent entry in Maimonides' listing.

4) Rabbi Teichtal developed the theory that *yishuv ha-aretz* constitutes a fundamental tenet of the Jewish faith and therefore cannot be relegated to merely one among hundreds of Torah obligations.

5) Finally, several scholars held that Maimonides saw residence in Israel as a rabbinically ordained *mitzva*. While it likely constitutes an overarching Torah value, *yishuv ha-aretz* was formalized into a specific *mitzva* only through the process of rabbinic enactment.