

- I. Introduction.** From the beginning of *Parshat Lech Lecha* through the rest of the *Chumash*, the Torah places heavy emphasis on the land of Israel. The stress on the importance of dwelling in *Eretz Yisrael* begins with the burning desire of our *Avot* to dwell in the land, continues with Moshe Rabbeinu begging God to allow him to enter the land, and culminates with the various commandments that are only relevant in the land of Israel. Since *Eretz Yisrael* seems to play such a crucial role in the psyche of the Jewish people we will dedicate this week's article to the topic of the mitzvah to dwell in the land of Israel. We will provide a basic overview of the source of this *mitzvah*, the nature of the *mitzvah*, and discuss various *heterim* to live in *Chutz La'aretz*.
- II. The Source of the Obligation to Live in *Eretz Yisrael*.** The Torah (*Bamidbar* 33:53), in the course of preparing the Jewish people to cross the Jordan into *Eretz Kna'an*, tells us that God commanded the Jews to "inherit the land, and dwell therein because I have given the land to you to inherit it". The *Ramban*, in his commentary on that verse, states that to his mind this is a positive Biblical commandment. If the Jewish people were to decide to conquer some other land they would be in violation of this positive commandment. The *gemara Ketubot* (110b) goes to great lengths to stress the importance of living in *Eretz Yisrael*. The *gemara* tells us that a one should make every possible effort to live in *Eretz Yisrael*, even in a neighborhood of non-Jews, and not to live in *Chutz La'aretz*, even in a mostly Jewish city.
- III. Counting Living in *Eretz Yisrael* in the *Minyan Ha'Mitzvot*.** As one would expect, the *Ramban* (*Hasagot* to *Sefer Ha'Mitzvot* of *Rambam:Mitzvat Asei* 4) does count the *mitzvah* of living in *Eretz Yisrael* among the 613 *mitzvot*. He cites many Talmudic and Midrashic sources that indicate the importance of this *mitzvah*. However, the *Rambam* does not count this *mitzvah* amongst his counting of the 613 *mitzvot* of the Torah. This startling omission is dealt with by the commentaries on the *Sefer Ha'Mitzvot* and many later authorities
- A. Megillat Esther.** The *Megillat Esther* (commentary to *Sefer Ha'Mitzvot* of *Rambam* written in the 17<sup>th</sup> century by Rabbi Isaac de Leon) writes that the *Rambam* omits this *mitzvah* because it is not a *mitzvah* that is relevant for all future generations. In the view of *Megillat Esther* this *mitzvah* was binding only while the *Beit Hamikdash* stood. Once the *Beit Hamikdash* was destroyed, the commandment lapsed. Many *poskim* take issue with this explanation of the *Megillat Esther* based on the fact that when the third *Beit Hamikdash* will be rebuilt, the *mitzvah* to live in *Eretz Yisrael* will certainly return. Although *Rambam* does not count those *mitzvot* that are not "noheg l'dorot", he does count *mitzvot* that are currently not binding, provided that they will be binding with the coming of *Mashiach*. In spite of the strong arguments against the *Megillat Esther*, Rabbi J. David Bleich (*Contemporary Halachic Problems* II p. 198) points out that the *Rambam* himself indicates elsewhere that there is no obligation to live in *Eretz Yisrael* nowadays. In *Hilchot Melachim* (5:7) the *Rambam* writes that "it is permissible to dwell anywhere in the entire world with the exception of the land of Egypt." The *Rambam*, by omitting any mention of *Eretz Yisrael*, seems to imply permission to establish residence in any land other than Egypt. (See *Contemporary Halachic Problems* *ibid.* for a fuller discussion of the nature of *mitzvat yishuv Eretz Yisrael*.)
- B. Avnei Nezer (Yoreh Deah 2:454).** The *Avnei Nezer* asserts that even according to the *Rambam* there is a biblical obligation to live in *Eretz Yisrael* today. He points to the fact that the *Rambam* also omits the obligation to construct the *Aron* and its cover (which the *Ramban* takes him to task for) despite the fact that these are clear obligations set forth in the Torah. The *Avnei Nezer* explains that these *mitzvot* are not counted independently because they are already included in the more general *mitzvah* to build the *Beit Hamikdash*. Similarly, he claims, the *mitzvah* of dwelling in *Eretz Yisrael* is not counted independently because it is included in the *mitzvah* to destroy the seven nations that inhabited *Eretz Yisrael*.
- C. Tashbetz.** Rabbi Shimon ben Tzemach Duran (*Teshuvot Tashbetz* 3:288) also believes that even the *Rambam* would require one to live in *Eretz Yisrael*. He explains that it is not counted as an independent *mitzvah* because it is a *mitzvah kolelet*, a general *mitzvah* that includes many other *mitzvot* (such as the obligation to separate *terumot* and *ma'asrot*).
- IV. The Importance of Living in *Eretz Yisrael*.** Regardless of whether there is a formal obligation to live in *Eretz Yisrael*, the *poskim* clearly indicate that dwelling in *Eretz Yisrael* is a very important and noble

thing to do. The Rambam (*Hilchot Melachim* 5:10-12) writes that “the sins of whoever lives in *Eretz Yisrael* are forgiven... Even if one walks four *amot* in *Eretz Yisrael* he is assured *olam haba* (the world to come)... A person should live in *Eretz Yisrael* even in a city where the majority are idolaters and not live outside of *Eretz Yisrael* even in a city in which the majority are Jews”. In a more concrete halachic vein the Rambam writes (*Hilchot Shabbat* 6:11) that one who purchases a home from a non-Jew in *Eretz Yisrael* may tell the non-Jew to write a contract for the house on Shabbat because the mitzvah of *yishuv Eretz Yisrael* overrides the prohibition of *amira l’akum* on Shabbat. *Tosafot* (*Gittin* 8b) point out that this special dispensation is only made for the mitzvah of *yishuv Eretz Yisrael* but would not be made for any other biblical commandment. Rabbi Bleich (*ibid.* page 199) points out that even if we were to maintain that there is no obligation to live in *Eretz Yisrael*, living in *Eretz Yisrael* carries with it great merit. This notion can be explained based on the gemara (*Ta’anit* 10a) which states that in *Eretz Yisrael* bounty flows directly from God himself. The *Avnei Nezer* (*Yoreh Deah* 2:454:14) explains that in other lands God grants His goodness via the medium of angels, but *Eretz Yisrael* is subject to the direct concern of God. In fact, when the Torah (*Bereishit* 37:8) tells us that Ya’akov was afraid of Eisav, the *Midrash* (*Bereishit Rabbah* 76:2) comments that he was afraid that Eisav would prevail due to the merit of living in *Eretz Yisrael* all of those years that Yakov was in *chutz la’aretz*. Thus we see the merit of dwelling in the land even before it achieved the status as the Jewish homeland and certainly before there was any commandment to live there.

**V. The Three Oaths.** One of the most popular arguments put forth by those who believe that there is no obligation to live in *Eretz Yisrael* nowadays is based on the gemara in *Ketubot* (111a). The gemara tells us that when the Jewish people were exiled, God forced three oaths upon mankind. First, the Jewish people swear not to retake *Eretz Yisrael* by force. Second, the Jewish people swear not to rebel against the nations of the world. Finally, the nations of the world swear not to oppress the Jews more than necessary. Based on the first of these three oaths many *gedolim* (including *Megillat Esther* cited above and more recently Rabbi Yoel Teitlebaum, the Rebbe of Satmar) have suggested that we are prohibited from trying to establish residence in *Eretz Yisrael* prior to the coming of *Mashiach*. There are many responses offered by the *poskim* to this claim. We will mention some of the refutations cited by Rabbi Bleich (*Contemporary Halachic Problems* volume 1 pages 14-16), Rabbi Shlomo Yosef Zevin (*Torah She’ba’al Peh* 5731), and Rabbi Herschel Schachter (*Journal of Halacha and Contemporary Society*, volume VIII pages 27-29).

**A.** The *Avnei Nezer* (*Yoreh Deah* 2:454:56) notes that we never find that the Jewish people assembled to accept this oath upon ourselves. As such, we are not halachically bound by this oath.

**B.** The *Maharal* (*Commentary to Agadot* *ibid.* and *Netzach Yisrael* 25) writes that these oaths were meant as a punishment rather than a binding obligation. Obviously we have the right to do whatever is in our power to end our punishment. See, however, *Minchat Elazar* who believes that we are not permitted to avoid a divinely ordained punishment (this argument is difficult to accept in light of the fact that one is encouraged to seek a cure for an illness even though the illness is a form of divine punishment for something).

**C.** Rabbi Zevin (*ibid.*) understands the three oaths as an agreement between the Jewish people and the nations of the world. As soon as either side violates their end of the deal the other side is no longer bound by the agreement. Since the nations of the world have consistently violated their oath not to persecute us excessively, we may take over *Eretz Yisrael* by force.

**D.** Rabbi Meir Simcha of D’vinsk (the author of *Ohr Sameach* and *Meshech Chachmah*) writes that these oaths are indeed binding to this very day, but the establishment of a state of Israel does not constitute a violation of the oath. The oath only requires is not to take over the land by force. When the Balfour Declaration was signed, we were given our land without the use of force.

**E.** Rabbi Herschel Schachter (*B’ikvei Hatzon* page 216) cites the *Steipler Gaon* who pointed out that even if retaking *Eretz Yisrael* was indeed a violation of the three oaths, who is to say that we must give the land back or that we can’t live there. The entire issue of the three oaths is only relevant to the original establishment of the State, but has no relevance to its continued existence.

**VI. Possible Reasons for a Heter to live in Chutz La’aretz.** We have discussed the importance of the mitzvah to live in *Eretz Yisrael*, and its binding nature according to the overwhelming majority of *Rishonim* (with the notable exception of the Rambam as understood by some authorities – see also *Tosafot* [*Ketubot* 110b]). In light of this, it is difficult to understand why throughout Jewish history many Torah observant Jews have lived in *Chutz La’aretz* without ever making a serious attempt to make

*aliyah*. We will summarize a number of approaches taken by the *poskim* to justify this practice. Some of these approaches are relevant today while others are clearly no longer relevant.

- A. Rav Moshe Feinstein (*Iggerot Moshe Even Ha'Ezer* 1:102) writes that the *mitzvah* to live in *Eretz Yisrael* is not an absolute obligation to live there. Rather, one who does live in *Eretz Yisrael* is in fulfillment of a *mitzvah*. This is why one who lives in *Eretz Yisrael* may not leave under normal circumstances, yet we find no explicit prohibition against living in *Chutz La'aretz*.
- B. Rabbeinu Chaim Cohen (cited in *Tosafot Ketubot* 110b) writes that because the trip is fraught with danger and the subsequent life in *Eretz Yisrael* will make it practically impossible to fulfill the *mitzvot* connected to the land, it is best not to live in *Eretz Yisrael*. *Avnei Nezer* (ibid.), writing in the 19<sup>th</sup> century, claims that the reasons cited by *Tosafot* are no longer applicable as both travel conditions and living conditions have drastically improved. If this was true over a hundred years ago, it is certainly true today.
- C. *Terumat Hadeshen* (2:88) writes that although it is a wonderful thing to live in *Eretz Yisrael*, one should not do so because sociological factors will lead to diminished piety and fear of God. This is certainly not true of the current sociological climate in many Israeli cities.
- D. Rabbi Herschel Schachter (*Journal of Halacha and Contemporary Society* 8:19) writes that many suggest that *talmidei chachamim* and leaders of communities should stay in *Chutz La'aretz* where their sphere of influence is the greatest.

**VII. Conclusion.** The issue of the *mitzvah* of *Yishuv Eretz Yisrael* is a very emotional and complex one that has generated an enormous amount of Rabbinic literature through the centuries. We have merely provided a basic outline of some of the major points relating to this issue. The reader is encouraged to investigate the matter further both by looking at the cited sources as well as reading other literature on the topic. (A fuller survey of all of these issues may be found in the most recent edition of *Beit Yitzchak* in an article published by Rabbi Shalom Rosner.) Regardless of one's personal approach to *Medinat Yisrael* and its halachic significance, *Eretz Yisrael* must play an important role in the hearts and minds of all Torah Jews.