

Rambam's Missing Mitzvah—Settling the Land of Israel

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In listing the mitzvos that he feels Rambam had overlooked in his *Sefer HaMitzvos*, Ramban counts the positive command of settling the land of Israel, לרשת הארץ ולשבת בה, as a positive commandment, *mitzvas aseh*.¹

שנצטוינו לרשת הארץ אשר נתן הא-ל יתעלה לאבותינו לאברהם ליצחק וליעקב ולא נעזבה ביד זולתנו מן האומות או לשממה, והוא אמרו להם והורשתם את הארץ וישבתם בה כי לכם נתתי את הארץ לרשת אותה והתנחלתם את הארץ אשר נשבעתי לאבותיכם...ואומר אני כי המצוה שחכמים מפליגים בה והוא דירת ארץ ישראל עד שאמרו כתובות (דף קי:): כל היוצא ממנה ודר בחוצה לארץ יהא בעיניך כעובד ע"ז שנאמר כי גרשוני היום מהסתפח בנחלת ה' לאמר לך עבוד אלהים אחרים, וזולת זה הפלגות גדולות שאמרו בה, הכל הוא ממצות עשה הוא שנצטוינו לרשת הארץ לשבת בה, א"כ היא מצות עשה לדורות מתחייב כל אחד ממנו ואפילו בזמן גלות כידוע בתלמוד במקומות הרבה.

We were commanded to conquer (inherit) the land that G-d, may He be exalted, gave to our forefathers, Avraham, Yitzchak and Yaakov, and not leave it in the hands of any other nation or leave it desolate, and this is what He said to them, "Inherit the land and settle in it because I have given it to you to inherit it, and you should inherit the land that I swore to your fathers"...And I say that the mitzvah that the *Chachamim* are expansive about, "living in the land," to the extent that they say (*Kesuvos* 110b) that anyone who leaves it and dwells outside of the land should be viewed as an idol worshipper, as it says "you have expelled me today from grazing in the inheritance of G-d, saying go worship other gods," and other extreme statements that they make about it, is all part of this positive command to inherit the land and dwell in it. Thus it is a *mitzvas aseh* for all generations in which all people are obligated, even during our exile as is known from many places in the Talmud.

¹ *Mitzvas Aseh* 4.

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Ramban's mitzvah contains two parts—conquering the land and dwelling in it. His main evidence with regard to conquest is from the Torah's text, while he brings Talmudic texts to make the case that the mitzvah incorporates living in the land as well.

Conquering the Land

Rambam would respond to the evidence of the *mikra* by interpreting these verses as the command to the Jewish people to conquer the land at the time of their first arrival under Yehoshua. Rambam counts the conquest of the seven Canaanite nations as an independent mitzvah, which he characterizes as the defeat of the essence of *avodah zarah*, but he does not refer to the conquest of Eretz Yisrael *per se* as a מלחמת מצוה.²

As Ramban emphasizes conquest, it would seem that he has a vision of Jewish re-conquest of Eretz Yisrael from its occupiers. Though we might assume that he has מלחמת משיח in mind, he does not stipulate that this will be done by Mashiach—it is rather a mitzvah on the *tzibbur*. Interestingly, Ramban faults the Jewish people for not having built the Beis HaMikdash before the appointment of a king,³ and just like the obligation to build the Mikdash does not demand waiting for a king, so too the mitzvah of reconquering the land does not depend on Melech HaMashiach.

Rambam, on the other hand, never speaks of the re-conquest of Eretz Yisrael. He explains that קדושה ראשונה of Eretz Yisrael was nullified (בטל) because it was accomplished by conquest, and thus when this conquest was reversed the קדושה of the land was nullified. But קדושה שנייה was via settlement and this was never nullified. He describes this settlement as being מחזיק in the land, and hence it is the synergy of the people of Israel and their land that creates a קדושת הארץ that is eternal.

כל שהחזיקו עולי מצריים, ונתקדש קדושה ראשונה, כיון שגלו, בטלה קדושתן. שקדושה ראשונה לפי שהייתה מפני הכיבוש בלבד, קידשה לשעתה ולא קידשה לעתיד לבוא. כיון שעלו בני הגולה, והחזיקו במקצת הארץ, קידשה קדושה שנייה העומדת לעולם, לשעתה ולעתיד לבוא.⁴

² *Hilchos Melachim* 5:1; *Sefer HaMitzvos, Aseh* 187. *Arnei Nezer (Yoreh Deah 454)* says that Rambam replaces *Yishuv Eretz Yisrael* with this mitzvah, as it refers to conquest of the land. But in fact, Rambam is very specific that this mitzvah refers to the destruction of the seven Canaanite nations who he says comprise עיקר ע"ז. He writes that David HaMelech completed this mitzvah.

³ *Ramban al HaTorah, Bamidbar* 16:21–22.

⁴ *Hilchos Terumah* 1:5ff. Also see *Hilchos Beis HaBechirah* 6:16:

All of the lands that [the Jews] who ascended from Egypt took possession of were sanctified in the first consecration [of the land]. When they were exiled, that sanctity was nullified. [The rationale is that] the initial consecration came about because of the conquest. [Hence,] its consecration was effective for the time [it was under their rule], but not for all time. When, by contrast, the descendants of the exiles ascended [from Babylon] and took possession of a portion of the land, they consecrated it a second time. [This consecration] is perpetuated forever, for that time and for all time.

Thus it follows directly that conquest would not be a mitzvah, as it is not necessary for קדושת הארץ. Rambam's position on conquest and settlement seems somewhat prescient in that the modern country of Israel came into being via settlement. The wars that were fought were defensive wars of survival after the "world" recognized the Jewish people's settlement of the land.⁵

The famous explanation of *Megillas Esther* (on *Sefer HaMitzvos*) for Rambam's omission of this mitzvah is that the mitzvah does not apply after Israel went into exile until *Yemos HaMashiach*⁶ and he supports this thesis by citing the "three oaths," *shalosh shevuos*, recorded in the Gemara⁷ as precluding Israel from taking the land by force. Others, such as the *Or Sameach*,⁸ have noted that even if we take this as a halachic statement,⁹

אבל חיוב הארץ בשביעית ובמעשרות, אינו אלא מפני שהוא כיבוש רבים; וכיון שנלקחה הארץ מידיהם, בטל הכיבוש ונפטרה מן התורה מן המעשרות ומן השביעית, שהרי אינה ארץ ישראל. וכיון שעלה עזרא וקידשה, לא קידשה בכיבוש אלא בחזקה שהחזיקו בה; ולפיכך כל מקום שהחזיקו בו עולי בבל, ונתקדש בקדושת עזרא השנייה, הרי הוא מקודש היום, ואף על פי שנלקחה הארץ ממנו, וחייב בשביעית ובמעשרות, על הדרך שביארנו בהלכות תרומה

⁵ Rambam does not say that wars should not be initiated; he merely does not speak of it in the context of *Yishuv HaAretz*. Perhaps this would require a *Beis Din*.

⁶ He quotes the Tosafist Rav Chaim Kohen in *Kesuvos* as saying the mitzvah no longer applies since we can no longer fulfill the mitzvos of the land, but this single Tosafist is the only source for this view. The Maharit (2:28) claims this is not an authentic part of *Tosafos* and others bring evidence to that effect as well. In any event, no other Rishon has contended this.

⁷ TB *Kesuvos* 110–111.

⁸ אוצר הארץ דף פב.

⁹ See Rav Aviner's booklet "שלא יעלה" who quotes the many answers by *Gedolei Yisrael* to the objections raised against Modern Zionism. Of course it is an Agadic statement which Rambam quotes in *Iggeres Teiman* and treats as such, and cannot be used as a basis to forbid even conquest of the land. Ramban calls for

Israel's settlement of the land and the subsequent recognition of its sovereignty is in conformity with this Gemara. Subsequent wars were all defensive, and defensive wars are *milchemes mitzva*¹⁰ in which all of Israel are obligated to participate.

קדושת הארץ

The second *kiddush* of the land—that of Ezra—was done via settlement, and the קדושת הארץ has never left the land that was settled by Israel in those days. The *kiddush* was limited, in that it only applied to part of the land, and we can surmise that it spreads further as Israel's settlement spreads to other lands within the territory promised to Avraham.¹¹ Ezra's settlement was also limited in that it did not even reinstitute *terumah* as a *mitzva d'oraisa*. Rambam explains that this would wait until the *Biah Shelishis* (*Hil. Terumah* 1:26) which will be that of the entire nation, *Bias Kulchem*:

התרומה בזמן הזה, ואפילו במקום שהחזיקו עולי בבל, ואפילו בימי עזרא—אינה מן התורה, אלא מדבריהם, שאין לך תרומה של תורה אלא בארץ ישראל ובזמן שיהיו כל ישראל שם, שנאמר "כי תבואו" (ויקרא כה,ב), ביאת כולכם כשהיו בירושה ראשונה וכמו שהן עתידין לחזור בירושה שלישית; לא כשהיו בירושה שנייה שהייתה בימי עזרא, שהייתה ביאת מקצתן, ולפיכך לא חייבה אותן מן התורה. וכן יראה לי שהוא הדין במעשרות, שאין חייבין בהן בזמן הזה אלא מדבריהם כתרומה.¹²

In the present era, even in the areas settled by the Jews who ascended from Babylonia, even those [settled] in the era of Ezra, [the obliga-

this conquest and no Rishon ever suggests that this would be forbidden. Nevertheless, the Gemara needs to be understood to give us guidance on what our attitude should be towards conquest and settlement.

¹⁰ See *Hilchos Melachim* 5:1.

¹¹ Rashba (*Chullin* 6b) writes that parts of the land were not נתקדש because, מפני שלא היו ישראל בכבוש שני מצוים שם כל כך והיו מקומות רחוקים מעיקר מקומות היישוב של כבוש. This would seem to indicate that further settlement would expand וקידוש האמור בארץ אינו בתודות Meiri (*Megillah* 10b) writes as follows: קדושת הארץ ושיר שאין קידוש תודות ושיר אלא בתוספת העיר והעזרות, אלא קידוש במאמר ובחזקה שמחזיקין בה בתורת ארץ ישראל, אבל קדושה שבימי עזרא קדשה לעתיד לענין שאין צריכה עוד קידוש. See *Kesef Mishneh* and Radvaz, *Hil. Terumos* 1:5. See *Dvar Avraham* (1:10, *Anaf* 2 os 1) and *Mikdash Dovid* (*Zeraim* 55:1) who deal with what confers the קדושה.

¹² *Hilchos Terumos* 1:26. Some conflate the obligation in *terumah* with the requirement of the division of the land amongst the *shevatim* that is a prerequisite for the laws of *yovel*. But that is based on another *mikra* and is a separate stage in the Messianic period. See *Hilchos Shemittah V'Yovel* 10:8.

tion to separate] *terumah* does not have the status of a Scriptural commandment, merely that of a Rabbinic decree. [The rationale is that] the Scriptural [commandment to separate] *terumah* applies only in Eretz Yisrael and only when the entire Jewish people are located there. [This is derived from the phrase] “When you enter...” [Implied is that] the entire [Jewish people] must enter [the land], as they did when they took possession of the land originally and as will happen in the future when they take possession of the land a third time. In contrast, the second time [the people] took possession of the land, in the time of Ezra, only a portion entered. Hence, they were not obligated according to Scriptural Law. Similarly, it appears to me that the same concept applies with regard to the tithes. In the present era, this obligation [as well] has the status of a Rabbinic decree like *terumah*.

This requirement logically is fulfilled with a majority of Jews, *rubo k'kulo*, and has perhaps been numerically reached in recent days. Even if one were to argue that more than the majority of Jews is necessary for this to be considered *Bias Kulchem*,¹³ it would still seem that this has been reached, as today almost all practicing Jews are at least part-time residents of Eretz Yisrael and deeply involved in it in some way. Thus, it is possible that we are living in the period of *Biah Shelishis* with the reinstatement of the obligation of *terumah d'oraisa*.

Rambam's stance that *Yishuv HaAretz* is primary in its *kedushah* is consistent with what he says in the *Sefer HaMitzvos* with regard to *Kiddush HaChodesh*. There he contends that the sanctification of the new month is accomplished by the acknowledgement of the new moon by the Jews in Eretz Yisrael. He states that there never was a time in Eretz Yisrael without continuous settlement, for had it been so then the Jewish calendar would have become inoperative.

ובכאן שורש גדול מאד משרשי האמונה לא ידעו ולא יתבונן במקומו אלא מי שדעתו עמוקה. וזה שהיונתנו היום בחוצה לארץ מונים במלאכת העבור שבידינו ואומרים שזה היום ראש חדש וזה היום יום טוב לא מפני חשבוננו נקבעהו יום טוב בשום פנים, אלא מפני שבית דין¹⁴ שבארץ ישראל כבר קבעוהו זה היום ראש חודש או יום טוב. ומפני אמרם שזה היום ראש חדש או יום טוב יהיה ראש חדש או יום טוב, בין שהיתה פעולתם זאת בחשבון או בראיה. כמו שבא בפירוש (ספר) אמור פ"י) אלה מועדי י"י אשר תקראו אותם אין לי מועדות אלא אלו, כלומר שיאמרו הם שהם מועדות, אפילו שוגגין אפילו אנוסין אפילו מוטעין, כמו שבאתנו

¹³ The standard can't logically be every living Jew, as Rambam allows us to live outside the land and it is hardly practical to expect every single person to live inside the land.

¹⁴ Some *girsas* mistakenly have *Beis Din HaGadol*.

הקבלה. ואנחנו אמנם נחשב היום כדי שנדע היום שקבעו הם ר"ל בני ארץ ישראל בו ר"ח כי במלאכה הזאת בעצמה מונין וקובעין היום, לא בראיה. ועל קביעתם נסמוך. לא על חשבוננו. אבל חשבוננו הוא לגלויי מילתא. והבין זה מאד. ואני אוסיף לך באור. אילו איפשר דרך משל שבני ארץ ישראל יעדרו מארץ ישראל, חלילה לא-ל מעשות זאת כי הוא הבטיח שלא ימחה אותות האומה מכל וכל, ולא יהיה שם בית דין ולא יהיה בחוצה לארץ בית דין שנסמך בארץ, הנה חשבוננו זה לא יועילנו אז כלום בשום פנים. לפי שאין לנו רשות שנחשב בחוצה לארץ ונעבר שנים ונקבע חדשים אלא בתנאים הנזכרים כמו שבארנו. כי מציון תצא תורה ודבר י"י מירושלים (ישעי' ב, מיכה ד). וכשיתבונן מי שיש לו שכל שלם לשונות התלמוד בכוונה הזאת יתבאר לו כל מה שאמרנוהו ביאור אין ספק בו.¹⁵

There is a very important principle upon which the Torah's perspective on this subject is based, which is only understood and fully realized by those who delve deeply into the Torah, as follows. This that we outside Eretz Yisrael use our system to make calculations, and we declare that "this day is the first of the month," and "this day is a holiday," does not in any way mean that *we* are making this day based on *our* calculations. Rather, it is because the *Beis Din* in Eretz Yisrael has already established that the day is a holiday or Rosh Chodesh. The day becomes a holiday or Rosh Chodesh upon *their* declaration, regardless of whether they based their actions on calculations or testimony.

This [that the *Beis Din* in Eretz Yisrael has absolute authority] is known to us through the verse, "[Speak to the Israelites and tell them, 'These are the holidays] that you shall designate.'" Our Sages explain, "These are the only holidays." The meaning of this statement, as passed down in the Oral Tradition: whatever they [i.e. the *Beis Din*] designate as holidays are considered holidays, even if they made an error, were forced [into making a declaration], or were misled.

The calculations which we make today are only to know which day they established in Eretz Yisrael, since they use the exact same system to make calculations and to determine the day—not testimony. Therefore, we are really basing ourselves on *their* determination, rather than our own calculations, which are only used to reveal [what they already determined previously]. One must clearly understand this. I will give some additional explanation: Let us assume, for example, that there would be no Jewish inhabitants in Eretz Yisrael (G-d forbid such a thing, since He has already promised that He will never completely wipe out or uproot the Jewish nation); that there would be no *Beis Din* there, nor a *Beis Din* outside Eretz Yisrael which had been ordained in Eretz Yisrael. In such a case, our

¹⁵ *Mitzvas Aseh* 153.

calculations would be totally futile, since we who dwell outside Eretz Yisrael may not make the calculations, nor declare leap years nor establish the months without the conditions mentioned above, “For from Zion shall go forth the Torah, and the word of the L-rd from Jerusalem.” A person who fully understands the words of the Talmud in this subject will, upon meditation, undoubtedly agree with the abovementioned.

In *Mishneh Torah*, Rambam writes:

זה שאנו מחשבין בזמן הזה כל אחד ואחד בעירו ואומרין שראש חודש יום פלוני, ויום טוב ביום פלוני, לא בחשבון שלנו אנו קובעין ולא עליו אנו סומכין, שאין מעברין שנים וקובעין חודשים בחוצה לארץ; ואין אנו סומכין אלא על חשבון בני ארץ ישראל וקביעתם. וזה שאנו מחשבין, לגלות הדבר בלבד: כיון שאנו יודעין שעל חשבון זה הן סומכין, אנו מחשבין לידע יום שקבעו בו בני ארץ ישראל איזה יום הוא; ובקביעת בני ארץ ישראל אותו הוא שיהיה ראש חודש או יום טוב, לא מפני חשבון שאנו מחשבין.¹⁶

The calculations that we follow in the present era, every individual in his community, to ascertain which day is Rosh Chodesh and which day is Rosh Hashanah, do not determine [the calendar], nor do we rely on these calculations. For we do not institute leap years or establish the monthly calendar in the diaspora. We rely on the calculations of the inhabitants of Eretz Yisrael and their establishment of the calendar. The reason we make calculations is merely for the sake of information. For we know that the inhabitants of Eretz Yisrael rely on the same calendar. Thus, our calculations are intended to determine the day that the inhabitants of Eretz Yisrael establish as Rosh Chodesh or a festival. For it is the establishment of the calendar by the inhabitants of Eretz Yisrael that establishes a day as Rosh Chodesh or a festival, not our calculations of the calendar.

The *kedushah* of *Yamim Tovim* is dependent on *Bnei Yisrael* and their allegiance to the land. This is the concept of *Mekadesh Yisrael V’Hazmanim*, that the *kedushas zmanim* is dependent on *kedushas Yisrael*.¹⁷

On the whole, Rambam’s positions suggest a gradual progression towards *yemos haMashiach*.¹⁸ Rambam (*Hilchos Terumah* 1:26) speaks of the

¹⁶ *Hilchos Kiddush HaChodesh* 5:13.

¹⁷ See *Igros Ha-Grid*, pp. 264–265. The Rav explains that since there were still *Yamim Tovim* during the 70 years of *Galus Bavel* we cannot equate the status of the land for קדוש החדש with קדושת הארץ for counting *shemittah*.

¹⁸ This is even more evident in his discussions in *Hilchos Melachim* (*perek* 10–11) of the return of prophecy and the Sanhedrin before the arrival of Mashiach and of the fact that one need not be certain who the Mashiach is, and thus Rabbi Akiva

ultimate *yerushah shelishis*, but settlement of the land and *kedushas HaAretz* was ongoing—albeit with periods of growth and decline—from the days of Ezra and on. It reached a low point with the *Churban HaBayis* and the defeat of Bar Kochva, but the people never forsook their home. It was destined from the days of Ezra to eventually reach the stage of *Bias Kulchem* which elevates *kedushas HaAretz* so that the Torah obligations of *terumah* and *maaser* return. Later, when the *shvatim* are *meyuchas* by Mashiach¹⁹ and the tribes can return to their individual states, conditions will arise for the return of *shemittah v'yovel*.²⁰ Sometime during this period the Beis HaMikdash will be rebuilt by Melech HaMashiach.

Thus, while we understand why Rambam has no mitzvah of conquest, the question of why there is no mitzvah of *Yishuv* becomes even stronger. Should not a Jew be obligated to return to the land and hence strengthen its *kedushah*?

Uniqueness of the Land

In order to address this issue we must note that Ramban could not fathom that the Torah would not have a mitzvah of living in the land. He interprets the Sifri to say that our obligation in mitzvos of the Torah is primarily only in Eretz Yisrael and we perform them in *galus* only to prepare us for their actual fulfillment in Eretz Yisrael. Torah life is a higher existence and this existence can only happen in the land where G-d's *Hashgachah* is direct. This position, which he reiterates many times based on the Sifri, is central to his thought:

הענין הזה אמרו בספרי (עקב מג) ואבדתם מהרה (דברים יא יז) אף על פי שאני מגלה אתכם מן הארץ לחוצה לארץ, היו מצויינין במצות שכשתחזרו לא יהו עליכם חדשים. משל לאדון שכעס על אשתו ושלחה לבית אביה. אמר לה, הוי מתקשטת תכשיטים שכשתחזרי לא יהיו עליך חדשים. וכן אמר ירמיה (לא כ) הציבי לך ציונים, אלו המצות שישראל מצוינין בהם. והנה הכתוב שאמר (דברים יא יז-יח) ואבדתם מהרה ושמתם את דברי אלה וגו' אינו מחייב בגלות אלא בחובת הגוף כתפילין ומזוזות ופירשו בהן כדי שלא יהו חדשים עלינו כשנחזור לארץ, כי עיקר כל המצות ליושבים בארץ ה' ולפיכך אמרו בספרי (ראה פ) וירשתם אותה וישבתם בה ושמרתם לעשות (דברים יא לא-לב), ישיבת ארץ ישראל שקולה כנגד כל המצות שבתורה, וכך הוא בתוספתא דע"ז (פ"ה ה"ב).²¹

mistook Bar Kochva for Mashiach. We will only be certain who Mashiach is when he builds the Beis HaMikdash. See רבנו משה אמת ותורתו אמת והם בדאים by Yitzhak Gold in *Hakirah* 10.

¹⁹ *Hilchos Melachim* 11:1, 12:3.

²⁰ See *Hilchos Shemittah V'Yovel* 10:8.

²¹ *Ramban al HaTorah, Vayikra* 18:25.

And about this matter they said in the Sifri (*Ekev* 43), ‘And you will quickly be destroyed’ (Deuteronomy 11:17)—even though I exile you from the land to outside of the land, be outstanding with the commandments, so that when you return, they will not be new to you. There is an allegory of a master that became angry with his wife and sent her to her father’s house. He said to her, ‘Wear your adornments so, when you return, they will not be new to you.’ And so [too], Yirmiyah said (Jeremiah 31:20), ‘Set up markers (*tzuyunim*) for yourself—these are the commandments that Israel will be outstanding (*metzuyanim*) with them. And behold the verse that stated (Deuteronomy 11:17–18), “And you will quickly be destroyed [...] And you shall place these words, etc.” is, in exile, only obligating personal obligations, like *tefillin* and *mezuzos*. And they explained about them, [that they are] in order that they not be new for us when we return to the land, since the essence of all of the commandments is for those that are dwelling in the land of the L-rd. And therefore they said in Sifri (*Re’eb* 80), “And you shall possess it and you shall dwell in it. And you will guard to keep” (Deuteronomy 11:31–32) —dwelling in the land of Israel is equal to all of the [other] commandments in the Torah.

Rambam does not ascribe to Ramban’s concept that mitzvos apply fully only in Eretz Yisrael. The purpose of mitzvos is for *sblemus banefesh* and *sblemus baguf*.²² This *sblemus* can be reached in any place but in fact in *chutz laAretz* we need these mitzvos even more. As we have explained elsewhere,²³ Rambam would interpret the Sifri to be speaking about certain specific mitzvos²⁴ such as *tefillin* and *mezuzah* that are described as **ציונים**, i.e., external signs of nationhood. Outside of the land it is possible to fulfill the mitzvos of the religion of Israel, but it is not fully possible to fulfill the mitzvos related to the *nation* of Israel. Nevertheless, the need to perform these mitzvos should obligate us to live in our land even according to Rambam. Moreover, as we asked at the onset, should there not be an obligation to contribute to *kedushas HaAretz* by living there?

Although Rambam does not count a mitzvah of *Yishuv HaAretz*, he waxes poetic in describing the merit of living in Eretz Yisrael—even to the extent of saying **עוונותי מחולין**, that one’s sins are forgiven.²⁵

²² See *Moreh HaNevuchim* 3:27. This refers to perfection of the body and emotions and of the intellect.

²³ See *Rambam & Redemption*, pp. 88–89.

²⁴ Those mitzvos in the *parashah* of *Shema*

²⁵ Interestingly, there is somewhat of a parallel between Ramban’s refusal to count *tefillah* as a mitzvah and Rambam’s omission of **ישבת ארץ ישראל**. Each speaks of

גדולי החכמים היו מנשקין על תחומי ארץ ישראל, ומנשקין אבניה, ומתגלגלין על עפרה; וכן הוא אומר "כי רצו עבדיך, את אבניה; ואת עפרה יחוננו" (תהילים קב, טו). אמרו חכמים, כל השוכן בארץ ישראל, עוונותיו מחולין, שנאמר "ובל יאמר שכן, חליתי; העם היושב בה, נשוא עוון" (ישעיהו לג, כד). אפילו הלך בה ארבע אמות, זוכה לחיי העולם הבא. וכל הקבור בה, נתכפר לו, וכאילו המקום שהוא בו מזבח כפרה, שנאמר "וכיפר אדמתו עמו" (דברים לב, מג). ובפורענות הוא אומר "על אדמה טמאה תמות" (עמוס ז, יז). ואינו דומה קולטתו מחיים, למי שקולטתו לאחר מיתה. ואף על פי כן גדולי החכמים היו מוליכין את מתיהן לשם; צא ולמד מיעקב אבינו, ויוסף הצדיק.

Great Sages would kiss the borders of Eretz Yisrael, kiss its stones, and roll in its dust. Similarly, Psalms 102:15 declares: "Behold, your servants hold her stones dear and cherish her dust." The Sages commented: "Whoever dwells in Eretz Yisrael will have his sins forgiven, as Isaiah 33:24 states: "The inhabitant shall not say "I am sick. The people who dwell there shall be forgiven their sins." Even one who walks four cubits there will merit the world to come and one who is buried there receives atonement as if the place in which he is buried is an altar of atonement, as Deuteronomy 32:43 states: "His land will atone for His people." In contrast, the prophet, Amos [7:17, used the expression] "You shall die in an impure land" as a prophecy of retribution. There is no comparison between the merit of a person who lives in Eretz Yisrael and ultimately, is buried there and one whose body is brought there after his death. Nevertheless, great Sages would bring their dead there. Take an example from our Patriarch, Jacob, and Joseph, the righteous.

But from what does this merit come? According to Ramban, the land innately differs from other lands, there is something in the land's spiritual DNA—but for Rambam, the rationalist, who measures everything by the merit of one's actions—what is it about this land that brings us such rewards for even walking there?²⁶ This land is unique for it is the land of our forefathers, the land in which they lived and in which they were buried. It is the land of our history. Thus, even being buried in Eretz Yisrael alongside our ancestors and connecting oneself to one's nation brings one

the profound merit of these actions while refusing to count it as a mitzvah. See *Hakirah* 24 for the explanation of Ramban's omission.

²⁶ Rambam explains that once all of historic Israel is conquered, then all the lands subsequently conquered have the laws of Eretz Yisrael as well. This would be strong support for the fact that there is nothing intrinsically different about this land. Others therefore argue that the equation with historic Israel is only for mitzvos like *terumah*, but not regarding *kedushah*.

kapparah.²⁷ Even more importantly, it is the land that G-d has given us and that we are charged with making into a country according to His design, as detailed in the Torah.²⁸

Some bring evidence to Ramban's contention that living in Eretz Yisrael is a mitzvah from the law that either spouse can force the other to move to Eretz Yisrael.²⁹ But this is not evidence, for either spouse can also force the other to move to a different neighborhood for spiritual reasons.³⁰ The *zechus* of living in the land is the motivating factor for this halachah. Likewise, Ramban's evidence from the tears the Rabbis shed upon leaving the land is no proof that it is to be counted as a mitzvah. They cried upon abandoning the *zechus* of living in the land.

To Ramban, the uniqueness of Eretz Yisrael is a function of *hashgachah* being unique there³¹ and of the supernatural element within the land itself, as the Torah implies, אֶרֶץ, אֲשֶׁר יְהוָה אֱלֹהֵי יִשְׂרָאֵל דָּרַשׁ אֹתָהּ: תָּמִיד, אֶרֶץ יְהוָה אֱלֹהֵי יִשְׂרָאֵל בָּהּ--מְרֻשָּׁתָהּ שְׁנָה, וְעַד אֲחֵרִית שְׁנָה (דְּבָרִים י"ב). Ramban would interpret this as being related to the *kedushah* arising from the people living in the land that G-d has given them and bound them to. Still, no obligation to live there is mandated. Ramban writes that one may live anywhere in the world.³² Why?

Mitzvos upon Entering the Land

Though Rambam counts no mitzvah to live in the land, there are mitzvos related to the settlement of the land that Rambam does count. The Torah ends with the people on the cusp of entering the land and being commanded to conquer it, and the premise of the Torah and its Taryag Mitzvos is that they are given to the people of Israel to be performed in their land. Rambam begins *Hilchos Melachim* with the statement that Israel was commanded in three mitzvos upon entering the land.

²⁷ The Rabbis fined *Levi'im* for not returning to Eretz Yisrael, implying they had an obligation to do so, but nevertheless the Gemara speaks of allowing *meyuchasim* to stay in Bavel and it was even prohibited to leave Bavel for other lands (*Hilchos Melachim* 5:12). According to Rav Yehudah, this included even returning to Eretz Yisrael at that time but according to Rambam it means "all other lands" as this would further the dispersion and dilute the Torah center in Bavel. There seems almost to be a competition between the two lands; so too with regard to Talmud Bavli and Yerushalmi. But in general, Rambam quotes the halachah that one may live in any place on earth, except the land of Egypt.

²⁸ See the next section.

²⁹ *Kesuvos* 110b; *Hilchos Isbus* 13:19.

³⁰ *Hilchos Isbus*, *ibid*.

³¹ See *Ramban al HaTorah*, *ibid*.

³² Except Egypt, *Hilchos Melachim* 5:7.

שלוש מצוות נצטוו ישראל בשעת כניסתן לארץ: למנות להם מלך שנאמר "שום תשים עליך מלך" (דברים יז, טו), ולהכרית זרעו של עמלק שנאמר "תמחה את זכר עמלק" (דברים כה, יט), ולבנות להם בית הבחירה שנאמר "לשכנו תדרשו, ובאת שמה" (דברים יב, ה). מינוי מלך קודם למלחמת עמלק, שנאמר "אותי שלה ה' למשוךך למלך...ועתה לך והכית את עמלק" (ראה שמואל א טו, א-ג). והכרתת זרע עמלק קודמת לבניין הבית, שנאמר "ויהי, כי ישב המלך בביתו; וה' הניח לו מסביב, מכל אויביו. ויאמר המלך, אל נתן הנביא, ראה...אנוכי יושב בבית ארזים וצרון, האל-ים, יושב, בתוך היריעה" (שמואל ב ז, א-ב).

Israel was commanded to fulfill three mitzvos upon entering the Promised Land: 'To choose a king, as Deuteronomy 17:15 states: 'Appoint a king over yourselves;' to wipe out the descendants of Amalek, as Deuteronomy 25:19 states: 'Erase the memory of Amalek;' to build G-d's Chosen House, as Deuteronomy 12:5 states: 'Seek out His Presence and go there.' The appointment of a king should precede the war against Amalek. This is evident from Samuel's charge to King Saul (I Samuel 15: 1-3): 'God sent me to anoint you as king ... Now, go and smite Amalek.' Amalek's seed should be annihilated before the construction of the Temple, as II Samuel 7:1-2 states: 'And it came to pass, when the king dwelled in his palace, and G-d gave him peace from all his enemies who surrounded him, the king said to Nathan, the prophet: 'Look! I am dwelling in a house of cedar...but the ark of G-d dwells within curtains.'

The three mitzvos are to appoint a *melech*, i.e., establish a government; destroy Amalek, i.e., those who attack them and threaten their security³³; and build the Beis HaMikdash.³⁴ These were all commands to the people, and although the appointment of the government would be the first step in organizing the nation to fulfill the other two mitzvos, Rambam is nevertheless explicit that all three mitzvos are incumbent on the *tzibbur*,³⁵ not

³³ Rambam brings as proof מכל אויביו ויה' הניח לו.

³⁴ Even though the mitzvah of *Mikdash* based on the *mikra* of *מקדש לי ועשו* is in *Hilchos Beis HaBechirah*, it is here based on *לשכנו תדרשו*.

³⁵ *Sefer HaMitzvos*, at the end of the *Mitzvos Aseh*. Ramban (*Ramban al HaTorah, Bamidbar* 16:21-22) says the sin of Israel which was the reason for the plague in the days of David was that Israel did not build the *Mikdash* independently all the years since the first conquest. The people need not have waited for a king. It would seem that Ramban would disagree and that the means for fulfilling the latter two mitzvos was the first, appointing a king. Nevertheless, Ramban would agree with Ramban's premise that these mitzvos are obligations on the nation, with each individual expected to do his part.

the king. The individual must contribute what he is able towards a goal that can only be accomplished by the nation as a whole.

Of course, appointing a *melech* has guidelines,³⁶ and a democratically-elected, non-observant prime minister, not necessarily descended from David and Shlomo,³⁷ violates the Torah rules of selection. But while Rambam explains that such leaders will not establish permanent governments, nevertheless it would seem that in the establishment of an imperfect *malchus* there is still a fulfillment of this mitzvah. Rambam opens *Hilchos Chanukah* with the historic reason for the establishment of the Yom Tov:

בבית שני כשמלכו יוון, גזרו גזירות על ישראל, וביטלו דתם, ולא הניחו אותם לעסוק בתורה ובמצוות; ופשטו ידם בממונם, ובבנותיהם; ונכנסו להיכל, ופרצו בו פרוצות, וטימאו הטהרות. וצר להם לישראל מאוד מפניהם, ולחצום לחץ גדול, עד שריחם עליהם אלו-הי אבותינו, והושיעם מידם. וגברו בני השמונאי הכוהנים הגדולים, והרגום והושיעו ישראל מידם; והעמידו מלך מן הכוהנים, ו**חזרה מלכות לישראל יתר על מאתיים שנה, עד החורבן השני**. וכשגברו ישראל על אויביהם ואיבדום, בחמישה ועשרים בחודש כסליו היה. ונכנסו להיכל, ולא מצאו שמן טהור אלא פך אחד; ולא היה בו להדליק אלא יום אחד בלבד, והדליקו ממנו נרות המערכה שמונה ימים--עד שכתשו זיתים, והוציאו שמן טהור. ומפני זה התקינו חכמים שבאותו הדור, שיהיו שמונת הימים האלו שתחילתן מלילי חמישה ועשרים בכסליו, ימי שמחה והלל; ומדליקין בהן הנרות בערב על פתחי הבתים, בכל לילה ולילה משמונת הלילות. וימים אלו, הן הנקראין חנוכה. והן אסורין בספד ותענית, כימי הפורים; והדלקת הנרות בהן, מצוה מדברי סופרים כקריאת המגילה.

In [the era of] the Second Temple, the Greek kingdom issued decrees against the Jewish people, [attempting to] nullify their faith and refusing to allow them to observe the Torah and its commandments. They extended their hands against their property and their daughters; they entered the Sanctuary, wrought havoc within, and made the sacraments impure. The Jews suffered great difficulties from them, for they oppressed them greatly until the G-d of our ancestors had mercy upon them, delivered them from their hand, and saved them. The sons of the Hasmoneans, the High Priests, overcame [them], slew them, and saved the Jews from their hand. They appointed a king from the priests, and sovereignty returned to Israel for more than 200 years, until the destruction of the Second Temple. When the Jews overcame their enemies and destroyed them, they entered the Sanctuary; this was on the twenty-fifth of Kislev. They could not find any pure oil in the Sanctuary, with the exception of a single cruse. It contained enough oil to burn for merely one day. They lit

³⁶ *Hilchos Melachim, perek 1.*

³⁷ See, for example, the twelfth of Rambam's 13 *Ikkarim*.

the arrangement of candles from it for eight days until they could crush olives and produce pure oil. Accordingly, the Sages of that generation ordained that these eight days, which begin from the twenty-fifth of Kislev, should be commemorated to be days of happiness and praise [of G-d]. Candles should be lit in the evening at the entrance to the houses on each and every one of these eight nights to publicize and reveal the miracle.

Chanukah was instituted, at least in part, because of the reinstatement of the Jewish government under kings who were *Kobanim*, and though they were not of the House of David nor selected by a *Navi*, *Chazal* still celebrated and commemorated the renewed autonomy of Israel in their land.³⁸ One of the purposes of a *melech* is to “unite the people,”³⁹ and establishing a central government is the first step in the fulfillment of uniting the people. Rambam’s language in *Iggeres Teiman*, as pointed out by Rav Yitzchak Shilat in his notes, is also worth noting. Rambam talks about the low point Israel will be in before the *Geulah* of Mashiach. “The nations of the world will think that this people will never have *malchus*, nor a form of autonomy (ממשלה), or any salvation from their present state.” Rambam defines two levels lower than *malchus* and his words perhaps provide a hint about the means for the development toward the final stage of *malchus*.⁴⁰

With regard to destroying Amalek, we have described Amalek as those who attack Israel. Besides the fact that this is how the Torah presents them, this is based on Rambam’s own explanation⁴¹ for why this mitzvah precedes building the Beis HaMikdash:

³⁸ According to Rambam and some Talmudic sources, it is specifically prohibited to appoint a *Kohen* as king, even on a temporary basis, but Rambam never quotes such a halachah. It is possible Rambam sees no special prohibition on *Kobanim*, but their reign was still not ideal. We should also note the *shittah* of Abarbanel that the ideal is a democratically elected leader, but we are not relying on his opinion to state that the appointment of the Israeli government is a קיום in establishing the king, as our goal is to explain *shittas haRambam*.

³⁹ One of the reasons for a king Rambam gives in *Sefer HaMitzvos*, *Aseh* 173. See *shoresh* 10 in *Sefer HaMitzvos*, that prerequisites (*hakdamos*) for mitzvos are not counted as mitzvos. For example, the mitzvah is for the *Lechem HaPanim* to be on the *shulchan* in the *Mikdash*, and preparing the *lechem* is not counted as a mitzvah. Still, it would seem that it is a part of the mitzvah.

⁴⁰ See Yitzhak Gold’s article in *Hakirah* 10 where he defends R. Shilat’s explanation of Rambam’s view that the *Geulah* would be gradual. Despite the author personally being a follower of the Satmar Rebbe, he clearly demonstrates Rambam’s position was different.

⁴¹ And that of *Sanhedrin* 20b. See סמ"ג קס"ג who says based on the *mikra* brought that all other enemies have to be destroyed, then Amalek, and then the Beis

והכרתת זרע עמלק קודמת לבניין הבית, שנאמר "ויהי, כי ישב המלך בביתו; וה'
הניח לו מסביב, מכל אויביו. ויאמר המלך, אל נתן הנביא, ראה...אנוכי יושב בבית
ארזים...

Rav Soloveitchik⁴² quotes this understanding of Amalek, as those who seek the destruction of the Jewish people even if they are not biological descendants of Amalek, in the name of his father, and suggests this is Rambam's source for counting *עזרת ישראל מצר שבה עליהם*, "saving Israel from an enemy who rises against them," as a category of *milchemes mitzvah*. Rambam is very clear⁴³ that while the war against the seven Canaanite nations was completed by David HaMelech, the war against Amalek will continue until *Melech HaMashiach* completes it. Amalek exists and has yet to be destroyed and eventually will be. Rambam explains that the war against the Canaanites was a battle against ע"ז עיקר, "the essence of idol worship," and this fight has been won. The seven nations and what they stood for have been destroyed. In *Iggeres Teiman*,⁴⁴ Rambam describes the eternal battle of attempted annihilation waged against Israel, first by Amalek and others who attempted physical annihilation, and then by the Greeks and Romans who attempted spiritual annihilation. In later generations, different approaches were taken by Christians and Moslems. While Rambam does not explicitly call these later enemies of the Jewish people Amalek, he clearly describes them as their heirs, and hence we can look at our defensive wars against them as an extension of *milchemes Amalek*.⁴⁵

HaMikdash can be rebuilt. The *Aruch HaShulchan HaAsid* also notes that we see from the fact that the defeat of Amalek must precede the building of the Beis HaMikdash that the spiritual battle must be completed first. He then stops himself fearing that he is lapsing into דרוש, yet this cannot be avoided. Even the Briskers were forced to admit it.

⁴² In a footnote in the 10th section of *Kol Dodi Dofek*.

⁴³ *Mitzvas Aseh* 187. Despite his absolute clarity on this point, I have seen him misquoted. The fact that in the *Moreh*, Rambam explains that the Torah details the lineage of Amalek to make clear that only a part of Esau is to be destroyed, is no evidence for the exclusively biological definition of Amalek. Rambam's point is that the war against Amalek is not a war against Esau. Esau symbolically represents secular civilization. They are not our arch-enemy.

⁴⁴ See *Rambam & Redemption*, pp. 74–80.

⁴⁵ This would be part of Rambam's category of דברי סופרים. As only an extension, it is not subject to all the details of the essential mitzvah, such as that of actually physically killing these people. Perhaps since the mitzvah is extended to those who try to destroy our spiritual values, the reciprocal mitzvah of their annihilation is to defeat their ideals. A good example of a comparable mitzvah is *lav* 57, בל תשחית. Rambam explains in the *Sefer HaMitzvos* that the explicit prohibition

The Rogatchover⁴⁶ also takes this approach, describing Amalek as those who deny G-d's *Hashgachah*.⁴⁷

These three mitzvos are linked, and their composite results in the creation of a theocracy with the *Mikdash* as its capital. As the source for the mitzvah of building the Beis HaMikdash in *Hilchos Melachim*, Rambam quotes *לשכנו תדרשו ובאת שמה*. He had detailed this mitzvah in *Hilchos Beis HaBechirah* based on *ועשו לי מקדש*, “make for Me a holy place,” so his repetition of the mitzvah here demonstrates that there is a second aspect to this mitzvah. The earlier description is of building a structure where *avodah* will be performed. But here in *Hilchos Melachim* the mitzvah becomes the final step in building the nation of Israel – establishing the spiritual center for *Medinas Yisrael*.⁴⁸

in the Torah of cutting down trees during war includes all forms of destruction and there is *מלקות* in all cases. But in *Mishneh Torah* he qualifies that except for fruit trees, the *מלקות* are only *מכות מרדות דרבנן* which causes many commentaries to question whether this extension is Rabbinic or *Mi'd'oraisa*. In fact it is of Torah origin, but subject to a lower level of punishment because the Torah does not mention it explicitly, and it is of an auxiliary nature. Rambam applies this principle in many cases and this is the case with regard to Amalek. As we noted earlier, the *drush* that Aruch HaShulchan does not want to taint pure halachic methodology need not be avoided. The essence of *lomdus* is conceptualization and this ideally should grow from *פשוטו של מקרא*. The Torah presents Amalek as the enemy who attacks Israel for no reason. He is defined as *לא ירא אלקים*. The Torah singles him out as the eternal enemy of G-d: *מלחמה לה' בעמלק מדור דור*. The halachah pertaining to *Amalek* should follow his conceptualization in the Torah.

⁴⁶ In his commentary on the *Chumash* on *parashas Beshalach*.

⁴⁷ He says this apparently based on the words *לא ירא אלקים*. We can add that Rambam in *Sefer HaMitzvos* refers to the seven Canaanite nations that must be destroyed as *עיקר ע"ז* and hence we understand why he says David destroyed them while still saying that some of their genetic descendants have been mixed among the nations. We are only instructed with regard to those who still maintain the identity of the original people and what they stood for. Likewise with Amalek we are not concerned with genetics but the nation and what it stood for. Just as a convert from Amalek becomes a Jew and sheds his Amalek identity, those who adopt Amalek's ideology become Amalek.

⁴⁸ Thus Rambam in *Sefer HaMitzvos* (*Mitzvas Aseh* 20) defines the final function of the *Mikdash* as *בו יהיה ההקרבה והבערת האש תמיד ואילו יהיה ההליכה והעליה לרגל והקבוץ בכל שנה*. An individual should try to act in such a way to hasten the building of the *Mikdash*. In a practical vein, acting to preserve and expand Jewish rights on *Makom HaMikdash* would therefore seem to be a priority.

These mitzvos applied to all of Israel from the time of their entering the land, and even after they were expelled.⁴⁹ Jews lived outside of Israel from very early days, and indeed David conquered Syria and Jews lived there under unique laws made by the Rabbis to govern its residents.⁵⁰ Yet residence outside of the land did not free one from the obligations of a citizen of Eretz Yisrael. One born outside of Eretz Yisrael has no obligation to move there, but still is obligated in the three mitzvos of establishing an Israeli theocracy.⁵¹ This of course includes joining, or at least supporting, the Israeli Defense Forces to bring to fruition **בְּהִנִּיחַ ה' אוֹתָךְ מִכָּל אֹיְבֶיךָ**, “when G-d has relieved you from all the enemies who surround you,” which will then facilitate the building of the Beis HaMikdash.

Prohibition of Leaving the Land

Rambam,⁵² based on the Gemara in *Bava Basra*,⁵³ says it is forbidden to leave Eretz Yisrael except for necessity, and even then one must return as soon as he can.⁵⁴ The *Pe'as HaShulchan*⁵⁵ assumes this is a Rabbinic law, as just as Rambam has no positive command to come to the land, he does not catalog a *lav* in leaving the land. The Rashbam on this Gemara says that the prohibition is one of removing oneself from the performance of the mitzvos that pertain only in the land, and in fact this could be viewed as a *d'oraisa* prohibition of being **מִבְּטֵל** these mitzvos. What are these mitzvos? The mitzvos of creating a nation apply to all of Israel at all times and in all places, so one does not actually remove himself from these obligations by leaving the land. Yet if one places himself in a position that prevents himself from fulfilling them he is culpable. Still, one could argue that even in *chutz la'aretz*, in modern times, it is possible to fulfill these mitzvos as long as one remains engaged with Eretz Yisrael. There is the issue of removing oneself from *terumah* and *maaser*. But the *d'oraisa* fulfillment of these mitzvos is dependent on *Bias Kulchem*, and for thousands of

⁴⁹ They are part of the *taryag* and hence *mitzvos l'doros*.

⁵⁰ See *Hilchos Terumos* 1:3–4

⁵¹ Rambam never speaks of Melech HaMashiach as conquering Eretz Yisrael. He starts off as being a *melech*, who then proceeds to build the Beis HaMikdash.

⁵² *Hilchos Melachim* 5:9.

⁵³ *Bava Basra* 91a.

⁵⁴ But if there is no means in the land to make a livelihood, it seems that the leaving can be without plans for return. Those who were sent in *galus* and had no choice in leaving would not be obligated to return.

⁵⁵ See *Peas HaShulchan*, *siman* 1 14-15 and the *Beis Yisrael*.

years they have only been Rabbinic mitzvos.⁵⁶ Still, in hampering the fulfillment of *Bias Kulchem*, one is *mevatel kedushas haAretz*—and preventing the fulfillment of *terumah* on a *d'oraisa* level. On the other hand, we have argued that even effectuating *Bias Kulchem* can be performed from *chutz la'aretz*, and in any event it is debatable whether this constitutes nullifying a mitzvah. There is also the fact that the קיום of mitzvos of a nationalistic nature such as *tefillin* have a higher fulfillment in the land and cannot be performed from *chutz la'aretz*. Still, this is not a halachically documented prohibition.

Despite counterarguments we can accept the possibility that leaving the land reduces one's ability to properly perform *mitzvos HaHretz* and בטול מצוות are legitimate grounds for a *d'oraisa* prohibition of leaving.⁵⁷ However, this still leaves us with a question. Any type of mitzvah that mandates our not leaving should also demand that we come to the land. If we can understand the element of guilt in leaving the land, why does this not apply to those who refrain from coming there in the first place?

Rambam quotes *Chazal* that leaving the land is like worshiping *avodah zarah*.⁵⁸ Considering this comparison to *avodah zarah* leads us to an analogy to another halachah. There is a Torah prohibition for a *Kohen* to abandon his *avodah*.⁵⁹ Although a *Kohen* has no specific mitzvah requiring him to do *avodah*,⁶⁰ he is prohibited from leaving the *Mikdash* while *avodah* is being performed. Although this *Avodas Hashem* is a privilege and not mandated for the *Kohanim*, abandoning it constitutes מהלל מקדש אלקיו.⁶¹ And as there is a *lav* on a *Kohen* abandoning *avodah*, so too the Jews living within קדושת הארץ emanating from *mekom haMikdash* cannot abandon these mitzvos of the land—as one's leaving threatens the very *kedushas HaAretz*, a form of חלול קדש similar to the *Kohen's* abandoning the *avodah*.⁶²

⁵⁶ The mitzvos of כלאים and מתנות עניים would, however, be abandoned.

⁵⁷ But there is no unique mitzvah involved. The *bitul* is of the individual mitzvos.

⁵⁸ *Hilchos Melachim* 5:12.

⁵⁹ *Law* 165.

⁶⁰ *Mitzvas aseh* 23 requires the *Levi* to come and do *avodah* in the *Mikdash*. There is no such mitzvah on the *Kohen*—the corresponding mitzvah for him is *mitzvas aseh* 32 of לקדש הכהן לעבודה.

⁶¹ *Vayikra* 21:12.

⁶² See *Annei Nezer* YD 454:5–7 who suggests a novel reason for Rambam's omission, based on the *Maayan HaChochmah's* claim that Rambam did not count a mitzvah that was a *tachlis*. I don't believe there is any substantiation for this claim.

The Call to Eretz Yisrael

The missing mitzvah of living in Eretz Yisrael is also reminiscent of a similar omission with regard to the mitzvah of *teshuvah*. Rambam studiously avoids saying that one is obligated in the mitzvah of *teshuvah* upon the performance of sin. He states rather “When one does *teshuvah* and repents from his sin, he is required to do וידוי (confession) before G-d.”⁶³ This has caused some to believe that there is actually no mitzvah to do *teshuvah*⁶⁴ but only to recite וידוי upon repentance, while others note that there is a mitzvah of *teshuvah* on Yom Kippur⁶⁵ but believe there is no obligation to repent upon doing a sin. However, in the seventh *perek* of *Hilchos Teshuvah*, Rambam explains why the sin itself is an immediate מחייב of *teshuvah*.

הואיל ורשות כל אדם נתונה לו כמו שביארנו, ישתדל האדם לעשות תשובה ולנעור כפיו מחטאיו, כדי שימות והוא בעל תשובה, כדי שיזכה לחיי העולם הבא... כל הנביאים, כולן ציוו על התשובה; ואין ישראל נגאלין, אלא בתשובה. וכבר הבטיחה תורה שסוף ישראל לעשות תשובה בסוף גלותן, ומיד הן נגאלין, שנאמר "והיה כי יבואו עליך כל הדברים האלה, הברכה והקללה, אשר נתתי לפניך; והשבות, אל לבבך... ושבת עד ה' אלוקיך... ושב ה' אלוקיך את שבותך (דברים ל, א-ג)... גדולה תשובה שמקרבת את האדם לשכינה, שנאמר "שובה, ישראל, עד ה' אלוהיך" (הושע יד, ב), ונאמר "שובו עדי, נאום ה'" (ראה יואל ב, יב; וראה עמוס ד, ו, ד:ה-יא) ונאמר "אם תשוב ישראל נאום ה' אלי, תשוב" (ירמיהו ד, א): כלומר אם תחזור בתשובה, בי תדבק...

Since free choice is granted to all men as explained, a person should always strive to do *teshuvah* and confess verbally for his sins, striving to cleanse his hands from sin in order that he may die as a *baal teshuvah* and merit the life of the World to Come... All the prophets commanded [the people] to repent. Israel will only be redeemed through *teshuvah*. The Torah has already promised that, ultimately, Israel will repent towards the end of her exile and, immediately, she will be redeemed as [Deuteronomy 30:1–3] states: “There shall come a time when [you will experience] all these things... and you will return to G-d, your L-rd.... G-d, your L-rd, will bring back your [captivity].” *Teshuvah* is great for it draws a man close to the *Shechinah* as [Hoshea 14:2] states: “Return, O Israel, to G-d, your L-rd”; [Amos 4:6] states: “‘You have not returned to Me,’ declares God”; and [Jeremiah 4:1] states: “‘If, you will return, O Israel,’ declares God, ‘You will return to Me.’” Implied is that if you will return in *teshuvah*, you will cling to Me.

⁶³ *Hilchos Teshuvah* 1:1. See Rabbi Rosensweig’s article in this volume.

⁶⁴ The *Minchas Chinuch* believes the mitzvah is וידוי.

⁶⁵ *Hilchos Teshuvah* 2:7; also, see the heading to *Hilchos Teshuvah* where Rambam says the mitzvah is jointly *teshuvah* and *viduy*.

Teshuvah is literally “returning.” Man’s sins separate him from G-d and thus interfere with his ability to experience דבקות. *Sefer HaMada* begins with the mitzvos of *Yedias Hashem* and *Ahavas Hashem* and its last section, *Hilchos Teshuvah*, concludes with the statement על פי הדעה על פי האהבה – “the amount of love is commensurate with the amount of knowledge.” This דבקות that Rambam refers to in the seventh *perek* is a function of the fulfillment of these mitzvos.⁶⁶ It is not possible to fulfill the mitzvos of love of G-d and His knowledge without doing *teshuvah*.

Both with regard to *teshuvah* and when talking of living in Eretz Yisrael, Rambam turns to the poetic to describe the wonder of the experience. Just as *teshuvah* brings about *kapparah*, *mehilas avonos* and *olam haba*, so too does living or even dying in Eretz Yisrael.

אמרו חכמים, כל השוכן בארץ ישראל, עוונותיו מחולין...אפילו הלך בה ארבע
אמות, זוכה לחיי העולם הבא. וכל הקבור בה, נתכפר לו, וכאילו המקום שהוא בו
מזבח כפרה.

As Rambam writes in *Hilchos Teshuvah*, אין נגאלין אלא בתשובה—the return to Eretz Yisrael, גאולה, is linked to Israel’s *teshuvah*. Israel’s spiritual return to G-d via *teshuvah* brings about their physical return to Eretz Yisrael. But similarly, the physical return to Eretz Yisrael brings one to כפרת עוונות which is synonymous with *teshuvah*. In *Sefer HaMitzvos*, Rambam defines the mitzvah of *teshuvah* as מבקש כפרה, “seeking atonement,” and all of *Hilchos Teshuvah* makes clear that the mitzvah of *teshuvah* is a process of striving to cleanse and free oneself from the grip that accommodation to sin has on one’s body and soul. Even walking in the land guarantees *olam haba*, and even being buried in Eretz Yisrael brings about *kapparah*.⁶⁷ This is true, for in seeking to be connected to the land, one connects oneself to the Jewish past of Moshe Rabbenu and Avraham Avinu, and to Israel’s future under *Melech HaMashiach*. There is in the act of connecting to Eretz Yisrael an engagement in לשכנו תדרשו ובאת שמה.

As we explained earlier, a Jew returning to the land brings *kedushah* back to the land, by joining in reassembling *Am Yisrael* and organizing them to complete the three mitzvos they were commanded upon their first arrival, culminating in building the Mikdash. The eternal obligation and purpose of Israel is לשכנו תדרשו ובאתם שמה and it with this verse that

⁶⁶ This includes *yichud* and *yirah* also.

⁶⁷ *Kapparah* is cleansing oneself of one’s sins and when Rambam speaks of *kapparah* it is a function of having cleansed oneself of one’s sins.

Rambam defines the mitzvah⁶⁸ of building the Beis HaMikdash, and thus leaving the land is comparable to *avodah zarah* because it means putting aside this דרישה. The essence of *avodah zarah* is using an intermediary to reach G-d,⁶⁹ rather than immersing oneself directly in *avodas Hashem* in a way that can lead to דבקות. It is with regard to this concept that the Midrash says the mitzvah of living in Eretz Yisrael is equal to all the other mitzvos.⁷⁰

Yet this return to Eretz Yisrael is not an independent mitzvah. In returning to the land, a person performs an act of *teshuvah*, takes part in reestablishing קדושת הארץ וקדושת עם ישראל, elevates his performance of mitzvos such as *tefillin* that are related to the identity of the nation of Israel, and fulfills an act of לשכנו תדרשו as he hastens the building of the Beis HaMikdash. Nevertheless, it is possible to engage in these mitzvos even from afar and one must use his own judgment to decide how best he can accomplish these goals. And even in *chutz la'aretz* it is possible to strive for דבקות, as those with no alternative have attempted for two thousand years. The Torah does not command the individual person to return to the land. It merely lures our people back with the promise of *kapparah*. ❧

⁶⁸ At the beginning of *Hilchos Melachim*. See fifth *ikkar* of the 13 *Ikkarim* and *Hilchos Avodah Zarah* 2:1.

⁶⁹ See fifth *ikkar* of the 13 *Ikkarim* and *Hilchos Avodah Zarah* 2:1.

⁷⁰ *Sifrei* to *Devarim* 11:31.