**Masei**: The Mitzva of settling the land of Israel

## Rambam vs Ramban

**Bemidbar 33:53**

| וְהוֹרַשְׁתֶּ֥ם אֶת־הָאָ֖רֶץ וִֽישַׁבְתֶּם־בָּ֑הּ כִּ֥י לָכֶ֛ם נָתַ֥תִּי אֶת־הָאָ֖רֶץ לָרֶ֥שֶׁת אֹתָֽהּ׃  | And you shall take possession of the land and settle in it, for I have assigned the land to you to possess. |
| --- | --- |

**Rashi:** this means: and you shall dispossess it of its inhabitants, and then, וישבתם בה YOU WILL DWELL IN IT — i.e., you will be able to remain in it, but if not, you will not be able to remain in it.

**Ramban:** In my opinion this is a positive commandment,in which He is commanding them to dwell in the Land and inherit it, because He has given it to them and they should not reject *the inheritance of the Eternal*. (*I Samuel 26:19).* Thus if the thought occurs to them to go and conquer the land of Shinar or the land of Assyria or any other country and to settle therein, they are [thereby] transgressing the commandment of G-d. And that which our Rabbis have emphasized, the significance of the commandment of settling in the Land of Israel, and that it is forbidden to leave it [except for certain specified reasons], and [the fact] that they consider a woman who does not want to emigrate with her husband to live in the Land of Israel as a “rebellious [wife],”(*Kethuboth 110b: “If he wants to emigrate [to the Land of Israel] and she refuses, she may be forced to go there, and if she still refuses, she may be divorced without her kethubah)* and likewise the man (*“If she wants to emigrate [to the Land of Israel] and he refuses, he may be forced to go there, and if he still refuses, he must divorce her and give her the kethubah).* — the source of all these statements is here [in this verse] where we have been given this commandment, for this verse constitutes a positive commandment. This commandment He repeats in many places, such as *Go in and possess the Land*.(*Deuteronomy 1:8).* Rashi, however, explained: “*And ye shall drive out the inhabitants of the Land* — [if] you dispossess it of its inhabitants, then *ye will* be able to *dwell therein*, and to remain there, but if not, you will not be able to remain in it.” But our interpretation [of the verse] is the principal one.

**Ketubot 110b**

**The Sages taught:** If the husband **says** that he wishes **to ascend,** i.e., to immigrate to Eretz Yisrael, **and** his wife **says that** she does **not** wish **to ascend, one forces her to ascend. And if** she will **not** do so, as she resists all attempts to force her to make the move, **she is divorced without** receiving her **marriage contract,** i.e., she forfeits her rights to the benefits outlined in the marriage contract. If **she says** that she wishes **to ascend** to Eretz Yisrael **and he says that** he does **not** wish **to ascend, one forces him to ascend. And if** he does **not** wish to immigrate, **he must divorce** her **and give** her **the marriage contract.**

**Ramban, Mitzvot forgotten by Rambam, Positive mitzvot 4**

We were commanded to take possession of the land that God gave our forefathers, Avraham, Yitzchak, and Ya'akov, and not leave it in the hands of other nations or in desolation. This is what He said to them: "And you shall dispossess the inhabitants of the land and dwell in it; for I have given you the land to possess it. And you shall divide the land for an inheritance" ([*Bamidbar* 33:53-54](https://www.sefaria.org/Numbers.33.53-54?lang=he-en&utm_source=etzion.org.il&utm_medium=sefaria_linker))… This is what the Sages called obligatory war. And thus they said in the Gemara in [*Sota* (44b)](https://www.sefaria.org/Sotah.44b?lang=he-en&utm_source=etzion.org.il&utm_medium=sefaria_linker): "Rav Yehuda said: Yehoshua's war of conquest – all agree is obligatory; David's war for [greater] comfort - all agree is optional"… And from what they said "Yehoshua's war of conquest," you understand that this *mitzva* is fulfilled through conquest… And I say that the *mitzva* about which the Sages expanded greatly, namely, living in the Land of Israel, to the point that they said that anyone who leaves it and lives outside the Land [of Israel] should be regarded in your eyes as an idolator… This is all part of this positive precept, for we have been commanded to take possession of the land and dwell in it. **If so, it is a positive precept for [all] generations, binding upon every individual, even during the period of the exile**, as is clear from many places in the Talmud.

**Sefer Hamitzvot, asei 187**

He commanded us to kill the seven nations that dwelled in the Land of Canaan and to destroy them, since they are the root of idolatry and its first base, saying, "you must surely annihilate them" (Deuteronomy 20:17). And He explained to us in many verses that the reason for this is so that we do not learn from their heresy. And many verses come to hint about this - meaning their killing - to strengthen it; and the war against them is a commanded war. And perhaps one might think that this commandment is not practiced for [all] the generations, since the seven nations have already ceased to exist. However it is [only] one who does not understand the topic of a practice that is practiced for the generations or that is not practiced for the generations who will think this. For it is not said about a command that is finished by the arrival of its purpose - without it being dependent upon a specific time - that it is not practiced for the generations. Rather it is practiced in each and every generation that the thing is found to be possible. Would you think that when God, may He be exalted, destroys the seed of Amalek and cuts it off with finality - as it will soon be, as He promised us by His saying, "I will surely blot out the memory of Amalek" - it is not for the generations? This would never be said! Rather it is practiced in each and every generation: Any time that the seed of Amalek is found, it is commandment to cut it off. And so too is killing the seven nations and destroying them a statement that was commanded; and it is a commanded war… And more generally, it is surely appropriate for you to understand and know the difference between commandments and that thing about which we were commanded. For, many times, the commandment will be practiced for the generations, but the thing about which we were commanded has already disappeared from certain times and places. But it does not turn into a commandment that is not practiced for the generations with the disappearance of the thing about which we were commanded.

**Hilchot Melachim 5**

It is permissible to live anywhere in the world, except for Egypt, defined as the area extending west of the Mediterranean Sea, 400 Parsangs by 400 Parsangs, in the direction of Ethiopia and in the direction of the desert. The Torah warned us in three places not to return to Egypt, “*and do not return in this way again*” (Deut. 17:16), and “*and you shall no longer see it”* (Deut. 28:68), *and “And you shall not ever again see it*” (Exodus 14:13). Alexandria is included in this prohibition.

It is forbidden to leave Eretz Yisroel, ever, except for purposes of learning Torah or marrying or to save (his money) from the non-Jews. Then he must return to the Land. One may leave for commerce. However, one may not reside (permanently) outside of the Land unless there is famine so severe that wheat which once cost one Dinar now costs two Dinars…

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.

### Explaining Rambam

| **Pe’at Hashulchan, Beit Yisrael 1:14 (R. Yisrael of Shklow, 18th Century)**According to the Rambam, we must say that it is all by rabbinic decree. But the plain sense inclines toward the Ramban, that the *mitzva* to live in the Land of Israel is a *mitzva* like all the positive precepts in the Torah. For it is unreasonable that a rabbinic commandment should be equivalent to all the positive precepts of the Torah. |
| --- |

| **Megillat Esther on Rambam, R. Isaac Leon Ibn Tzur (16th Century)** It appears to me that the Master did not count it because the *mitzva* to take possession of the land and settle in it only applied during the days of Moshe, Yehoshua and David, and as long as [Israel] was not exiled from its land. After they were exiled from their land, however, this *mitzva* does not apply to [future] generations, until the time that the Messiah will come…As for the statement brought from the *Sifrei*, that they wept and read this verse, "And you shall take possession of it and settle in it" ([*Devarim* 17:14](https://www.sefaria.org/Deuteronomy.17.14?lang=he-en&utm_source=etzion.org.il&utm_medium=sefaria_linker)), it seems to me that they wept because of their inability to fulfill this verse because the Temple had been destroyed. And the proof is… For if this *mitzva* applies even after the [Temple's] destruction, why did they weep and rend their garments? Surely now too they could have fulfilled it.**תוספות:** הוא אומר לעלות כו' - אינו נוהג בזמן הזה דאיכא סכנת דרכים. והיה אומר **רבינו חיים** דעכשיו אינו מצוה לדור בא"י כי יש כמה מצות התלויות בארץ וכמה עונשין דאין אנו יכולין ליזהר בהם ולעמוד עליהם:**מהרי״ט יורה דעה ב:כח**ומורי הרב מהר"ר שלמה סאגיש ז"ל היה אומר שטעמו של הרא"ש משום דאזיל לשיטת הר' חיים שהובא בתשובה בשלהי כתובות דעכשיו אין מצוה לדור בא"י כי יש כמה מצות התלויות בארץ וכמה עונשי' שאין אנו יכולים ליזהר בהם, ולפי' אמר שיש לנדר הזה התרה כשאר נדרים. ולא יתכן דעלה סמך הרא"ש! ונ"ל שאינה מיסוד התוס' שהרי הרא"ש ז"ל לא הביאה בתוספותיו וגם לא בהלכות…ואי איתניהו להני מילי דהר' חיים לא הוו שתקי מינה כל הפוסקים ראשונים ואחרונים ז"ל. ומצאתי בתשובות למהר"ם סי' קצ"ט שכתב בלשון הזה ועל כי ראיתי שיש בני אדם באים לחלק בין בזמן הזה בין בזמן הבית צריך אני לבאר דאין לחלק בזה דהא אמרי' בירושלמי בשלהי כתובו' וכו' עד נ"ל דבריי' דכתובות בזמן שישראל שרויין על אדמתן וההיא דירושלמי בזמן הזה ואפ"ה כופין את האשה לעלות ע"כ. ומכאן אתה למד שדברי הר' חיים אינן מיסוד התוס' כי מי לנו בקי בדברי התוס' ממהר"ם והרא"ש ז"ל. והאיר את עיני שמצאתי בהגהות מרדכי כלשון הזה כת' רבינו חיים כהן בתשובה דה"מ בימיהם שהיה שלום אבל עכשיו שהדרכים משובשים אינו יכול לכופה דהו"ל כמו חפץ להוליכה למקום גדודי חיה ולסטים ואפי' אם יעמיד לה ערבים מגוף לממון ערביך ערבא צריך ע"כ - הרי שתשובת הר' חיים כהן ז"ל לא באה אלא מטעם סכנת הדרכי'! ומ"ש בתו' דאין מצוה לדור בא"י הגהת תלמיד היא ולאו דסמכא היא כלל.**Avnei Nezer,** [***Yore De'a*, 454**](https://www.sefaria.org/Shulchan_Arukh%2C_Yoreh_De%27ah.454?lang=he-en&utm_source=etzion.org.il&utm_medium=sefaria_linker)​​Clearly, the author of the *Megilat Esther* did not see the *Sifrei* itself, but only what was cited by the Ramban. For the incident is found in the *Sifrei* (*parashat Re'e*), where it is explicitly stated as follows: "And they returned to their place, and said: Living in the Land of Israel is equivalent to all the *mitzvot*." And furthermore, the *Sifrei* states that [certain Sages] left the Land of Israel to study Torah in Netzivim with Rabbi Yehuda ben Betera, and when they remembered the Land of Israel, they returned, and it concludes as above. We see then that the *mitzva* is binding [even] in our time, and therefore they returned even from Torah study to fulfill [the *mitzva* of] living in the Land of Israel, which is equivalent to all the *mitzvot…*For the mitzva of "you shall surely smite them" ([Devarim 7:2](https://www.sefaria.org/Deuteronomy.7.2?lang=he-en&utm_source=etzion.org.il&utm_medium=sefaria_linker)) is in order that we should settle in the land… For this reason, "you shall surely smite them" and living in the Land of Israel were not counted as two [separate commandments]. But rather he counted only the mitzva of "you shall surely smite them." |
| --- |

| **Eim ha-Banim Semeicha, p. 154**This explains the view of the Rambam, who did not count the positive precept of settling the Land of Israel among the 613 *mitzvot*, even though he too agrees that it is by Torah law. This is based on the rule established in the fourth principle of *Sefer ha-Mitzvot*, not to count commandments that include the entire Torah. Since the *mitzva* of settling the Land of Israel is such a dear *mitzva*, that includes all the *mitzvot* and embraces the entire Torah, and the establishment of the all the festivals and Rosh Chodesh and all its *mitzvot* depend upon it… So too the entire life of the nation depends upon it. Hence, it is a general, and not a specific *mitzva*. For this reason, it is not included in the count of the *mitzvot*, which includes only the specific *mitzvot*.**Sefer Hamitzvot 133 (Kiddush Hachodesh)****​​**And it is known that the Great Court, however, was in the Land of Israel; and that they were the ones that determined the months and intercalated the years in ways that were passed on to them, [doing so] in their gathering together. And this is one of the great principles of the faith - only those that have a deeper knowledge know it and see it in its place. And that is that that which we count today outside of the Land with the work of intercalation that is in our hands - and say that this day is Rosh Chodesh and that day is a holiday - is not because we have determined the holiday from our [own] calculation in any way. Rather, it is because the Great Court in the Land of Israel had already determined that this day is Rosh Chodesh or a holiday. And since they said that today is Rosh Chodesh or a holiday, it is [actually] Rosh Chodesh or a holiday - whether this action of theirs was through calculation or sighting - as appears in the explanation (Rosh Hashanah 25a), "'These are the set times of the Lord [...] which you shall proclaim as sacred occasions' (Leviticus 23:4); I have no other set times besides these" - meaning to say, the ones that they say are the sacred times, even under duress, even in error, even inadvertently - as it appears in the tradition. And we indeed consider the day determined by them - meaning the inhabitants of the Land of Israel - to be Rosh Chodesh. As it is upon [their] work itself that we count and determine [it] - not upon sighting; and it is upon their calculation that we rely, and not upon our [own] calculation. Rather our calculation is just an exposition of the matter. And understand this. And I will explain to you further. If we were to assume, by way of illustration, that the [Jewish] residents of the Land of Israel disappeared from the Land of Israel - God forbid that God would do this, since He promised that He would not erase the traces of the nation [there] totally - and that there would not be a court there, nor a court outside the Land of Israel that was ordained there. [In such a case,] this calculation of ours would surely not help us at all in any way. For we may only calculate months and intercalate years outside the Land of Israel according to the conditions mentioned, as we have explained - 'for out of Zion comes forth Torah.'**Responsa Bnei Banim 2:42***Responsa Tzitz Eliezer*, VII, no. 48, in the name of R. Avraham Yitzchak Kook, *ztz"l*, writes that even the Rambam maintains that it is by Torah law. The reason that he did not count it is that it includes many *mitzvot* that are dependent upon the land. As he writes in the fourth principle, that it is not right to count general commands that embrace the entire Torah. The same applies to the settlement of the Land of Israel, upon which many essential parts of the Torah depend. And furthermore, according to what the Ramban writes that all the *mitzvot* were essentially given to be fulfilled only in the Land of Israel… [However,] this does not fit with the words of the Rambam, for this is what he says in the fourth principle: "The Torah contains commandments and prohibitions that do not relate to a specific act, but rather embrace all the *mitzvot*, as if it said, 'Do everything that I have commanded you to do'… Such a command should not be counted as a separate *mitzva*, for it does not command a specific action, that it should be a positive precept." We see then that he only excludes *mitzvot* that do not involve a specific action, like the examples cited there, "You shall be holy" ([*Vayikra* 19:2](https://www.sefaria.org/Leviticus.19.2?lang=he-en&utm_source=etzion.org.il&utm_medium=sefaria_linker)), "Circumcise the foreskin of your heart" ([*Devarim* 10:16](https://www.sefaria.org/Deuteronomy.10.16?lang=he-en&utm_source=etzion.org.il&utm_medium=sefaria_linker)), and others. They are not similar to the [*mitzva*] of settling the Land of Israel, which involves the specific act of living in the land, and if a person is abroad, crossing the border and entering the land.**Peninei Halacha, Yom Haatzmaut, Chapter 4**The reason the *Rambam* does not include this *mitzvah* in his count of the 613 is that it is beyond the regular “value” of *mitzvot*; therefore, it is not included in their detailed enumeration. This coincides with the rules the *Rambam* lays down at the beginning of *Sefer HaMitzvot*, stating it is inappropriate to reckon commandments that encompass the entire Torah, as he writes in Mitzvah #153 [that settling the Land of Israel is all-inclusive]. Besides which, it is implausible to say that the *mitzvah* of *Yishuv HaAretz* is only rabbinically ordained today [and that that is why the *Rambam* leaves it out of the count].**Ramban, 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 (tziyunim) 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’eh 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.  |
| --- |