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## **Israel and the Diaspora in Jewish law**

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ALIYAH: CONFLICT AND AMBIVALENCE

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## ALIYAH: CONFLICT AND AMBIVALENCE

As Reflected in Medieval Responsa\*

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**A** *liyah* to the Land of Israel or emigrating from it involved innumerable difficulties with family, physical security, and *parnasah*. The decision of one member of a household to leave his or her native land and take the giant step to *Eretz Yisrael* usually had a profound effect on the rest of the family. In medieval responsa literature this decision, which often resulted in permanent separation of olim from their relatives, is usually discussed in *halakhic*, rather than emotional terms. In addition to the practical issues of an arduous journey and settling in the Land, they were confronted with a number of serious theological and *halakhic* problems.

As we shall see, this was the case of the foremost thirteenth-century *halakhic* advocate of settling in Zion. Nahmanides ruled that *aliyah*, leading to settlement in the Land, is a Torah commandment, yet he fulfilled this *mitzvah* himself only at the end of his life. Even this leading exponent of *aliyah* had to overcome a number of family obstacles and other impediments before he could practice what he exhorted.

### ALIYAH OR HONORING PARENTS

Rabbi Meir ben Baruch, the Maharam of Rothenburg (1215–1293), wrote a responsum<sup>1</sup> about the reaction of great scholars to the mass emigration of their sons to Israel in 1211:

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\*Dedicated to the memory of Wolfram Rainer, Counsellor of the German Embassy in Tel Aviv, who died in the Land of Israel serving his government and the people of Israel.

You have asked if a father may prevent his son from going on *aliyah* to Israel. Since it has been established that *aliyah* to the Land of Israel is a *mitzvah*; and each such *mitzvah* is followed by "I am the Lord," which means that you should not obey your parent when he commands you to violate a *mitzvah*, because the honor due to God takes precedence.<sup>2</sup>

The Maharam contrasts this ruling with the behavior of great sages who opposed the *aliyah* of their children:

You have queried if I have heard why the great sages [*gedolim*] commanded their sons to return [home to Europe]. It would appear to me that there are no merciful people there [in *Eretz Yisrael*]. The young men were unable to study Torah in the Land because they had to struggle to eke out a living. Furthermore, there was no proper guidance in Torah in the Land of Israel, nor were they proficient in the exact observance of *mitzvot*.

These sages apparently believed there was physical danger in the Land due to the cruelty of its inhabitants as well as their sons' poverty. No less threatening were the dangers of spiritual paucity in studying Torah and keeping its precepts. They were convinced that their offspring would fare much better both spiritually and physically in the Diaspora.

This conflict between parents and children about *aliyah* continued throughout the centuries. One of the great scholars who dealt with this issue was Rabbi Moses ben Joseph Trani, who was born in Saloniki, Greece, in 1490. He went on *aliyah* and became the Rabbi

of Safed, where he died in 1580. He was a prolific *halakhist* who wrote innumerable responsa. The Mabit, the acronym by which he is known, received the following anonymous question:

May our Teacher instruct us: Reuven had made a vow that, if he accumulates a certain amount, he will live in Safed, and now the condition has been fulfilled. However, his father and mother are not allowing him to go there to settle. Furthermore, his wife refuses to live there and claims that it is written in their *ketubah* that he will not take her away to live in any other place. Honoring one's father is a great *mitzvah*. Jacob our Father, of blessed memory, was punished twenty-two years [for leaving his parents]. Teach us, our Rabbi, if the vow is valid and binding or may he be released from it, and may your reward be doubled.<sup>4</sup>

This family dissonance results from a seemingly irreconcilable conflict between two Torah commandments: filial respect and *aliyah* to the Holy Land. If the son capitulates to his parents' demand, he will be prevented from observing the precept of dwelling in the Land.<sup>5</sup> If, in spite of their pleading, he does emigrate, it would appear that he was disobeying the Fifth Commandment.

Following is the Mabit's creative responsum to the inquiry:

He neither has to fulfill his vow nor is he obligated to obey his father and mother, who told him not to go on *aliyah*, as it is taught: "If his parents told him to defile himself [where the son is a *kohen*]<sup>6</sup> or ordered him not to return a lost animal<sup>7</sup> he does not obey them, for it is written: "Everyone shall fear his father and mother and

keep my Sabbaths"<sup>8</sup>—it is the duty of all of you to honor me, for at the end of the verse is written: 'I am the Lord.'"<sup>9</sup>

Using highly sophisticated Talmudic exegeses, R. Moshe Trani presents his questioner with a surprising resolution of the conflict:

Both son and father are commanded to dwell in the Land of Israel. The son is not liable for failing to observe the *mitzvah* of honoring his parents, *because they can also go on aliyah with him and thereby both the commandments of dwelling in the Land and filial respect will be fulfilled.*<sup>10</sup>

We may well induce that Trani's personal life experience, no less than his knowledge of Torah, influenced this verdict. He emigrated to Safed from Turkey at the age of eighteen. From the age of twenty-one, he served on the *beit din* of R. Joseph Caro, whom he succeeded as the Rabbi of Safed. In all he lived sixty-two years in this Galilee town and served its Jewish community for more than a half century. His love of Zion was not in the abstract. It is therefore not surprising that he interpreted the *halakhah* of *aliyah* in this manner.

*Halakhic* decisors do not render their judgments merely from a cold analytic perspective of *halakhah*, but are influenced by their own ethical values and *weltanschauung*.<sup>11</sup>

About a century before Trani, Rabbi Simeon ben Zemah Duran (1361–1444), known as the Rashbatz, approached this problem of parents, children, and *aliyah* from a different angle.<sup>12</sup> After hyperbolic recital of the Talmudic praises of the Holy Land, he ruled that going abroad from the Land of Israel is permitted for two purposes: (1) if a

person intended to study Torah and could find no one in Palestine to teach him, or (2) to fulfill the commandment to honor one's father and mother.<sup>13</sup> This permission is granted only on the condition that he return to Israel, as Maimonides states: "It is forever forbidden to leave Israel for the Diaspora, except to study Torah, to marry a woman, or to effect a rescue from the Gentiles *and then he must return to the Land.*"<sup>14</sup>

The source of this *halakhah* is apparently the Talmudic tale of Rav Assi, who left his aged mother to come to the Land of Israel. When he heard that his mother was following him, he went to R. Johanan to request permission to leave Palestine to go abroad. R. Johanan replied that it is forbidden. Assi asked, "But what if it is to meet my mother?" Johanan replied, "I don't know," but some time later said to Assi, "If you are determined to go, may God bring you back in peace." Only after Assi had left for Babylon, did he discover that his mother had died on the way to her son and that her coffin was being brought for burial in the Holy Land.<sup>15</sup>

Rabbi Ovadia Yosef interprets the commentary of the Maharsha (Rabbi Samuel Eliezer Edels, 1561–1631) to this passage that one is permitted to go abroad to fulfill the *mitzvah* of honoring one's father and mother only on the express condition of returning to Israel.<sup>16</sup>

We thus see that over the centuries the commandment of *aliyah* was considered to have precedence over filial honor. This related both to going to Israel from the Diaspora or to going on *yeridah* from the Land.

ALIYAH AND THE MARRIED COUPLE

The *halakhah* governs (or guides) a wedded pair in its decision to migrate to the Land. There is a certain symmetry in the rulings relating to man and wife as revealed in the following Tannaitic source, a *Baraita* in *B. Ketubot 110b*:

If a man wishes to go up [to *Eretz Yisrael*] and his wife refuses, she is forced to go up. If she does not consent, she may be divorced without her *ketubah*. If the wife wishes to go on *aliyah* and he refuses, he is forced to go up; if he does not agree, he must divorce her and pay the *ketubah*.<sup>17</sup>

Maimonides codifies this Talmudic *halakhah* almost word for word but eliminates the use of force on the man or woman to accompany her/his spouse on *aliyah*.<sup>18</sup> The economic sanction against the woman involving the loss of the considerable sum in her *ketubah* or against the man who must pay this amount was apparently considered sufficient without community pressure. In any event, the Rambam rules that a woman who refuses to go up to the Land of Israel with her husband forfeits the payment of her marriage contract.

THE DECEITFUL HUSBAND

The Rambam shows how a person may misuse this *halakhic* ruling as well as his counteraction in the following responsum:

Reuven married Leah in Alexandria and gave her a postdated bond [for her *ketubah*] in the amount of one hundred Egyptian dinars. She is a scion of an outstanding Alexandrian family. After she had borne him a son ... a quarrel broke out between the man and his wife's relatives. He swore in the presence of witnesses that she would not be his wife unless she canceled thirty dinars of his debt to her. His intention was to triumph over his in-laws. When his wife's family heard this, they were greatly incensed that he would decrease his obligation to his wife without any wrongdoing on her part. His demand was so disgraceful that they stopped her from agreeing to it. Her relatives took him to the *beit din*, where he was informed that he could not force his wife to forfeit the sum.<sup>19</sup>

To this point of the questioner's narrative, we are presented with a not uncommon financial controversy between members of a family. Then the husband discovers a *halakhic* artifice that will help him win the case and, suddenly, the love of Zion enters his heart. The questioner continues:

Someone at the Rabbinical Court advised him to invite his wife to go with him to *Eretz Yisrael* and settle there. If she would not agree to leave her family and native country, she would lose the postdated bond. Therefore, she would be forced to succumb to his will. The husband threatened his spouse with this action, and made this claim in the *beit din*.



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So far, the narrative of the case. Now we hear the *halakhic* verdict of the *beit din*:

They ruled that if the way is not dangerous, and if there is no other obstacle that would prevent the journey, the woman is obligated to go to the Land of Israel and settle there. If she does not acquiesce, she will be divorced without her *ketubah*.<sup>20</sup>

Reuven won the court case, but the leaders of the Alexandria Jewish community were unwilling to accede to this unjust decision. They appealed to the Rambam to resolve this inequity.

The man's lawsuit was upheld. When the leaders of the community heard the verdict, however, they were extremely angry and asserted that anyone who hates his wife and wants to divorce her without the *ketubah* payment will libel her with this false charge, which would become the reason for divorcing most women from their husbands.

May your Majestic Holiness teach us whether to acquiesce to this doubtful outcome or to return to the accepted custom of the state and what are the ramifications of this case, in accordance with his wondrous wisdom and his reward will be great.<sup>21</sup>

On the face of it, Maimonides might have been expected to confirm the decision of the Alexandrian judges, since it was almost identical with his own codification in the *Mishneh Torah*: "If a man wishes to go up to the Land of Israel and his wife refuses, she is to be divorced without her *ketubah*."<sup>22</sup>

This is well known to us in cases adjudicated by rabbinical courts in the West,<sup>23</sup> which rule that any man who brings such a charge against his wife must take an oath in the Divine Name, avowing that the only reason for his action is to go on *aliyah* to find blessing in the Land of Israel, and the husband answers "Amen." Then they force the wife to go up with him or she is divorced without her *ketubah*. I have seen how these courts act.

This oath, administered by the court (*shevuat ha-dayyanim*), has dire consequences for one who makes a false deposition. The judges warn him of immediate divine retribution for perjury under this oath in God's name.<sup>24</sup> Maimonides goes on to assert that these exhortations "should be taught to everyone who knows the meaning of the verses 'Justice, justice shall you pursue'<sup>25</sup> and 'You shall not utter a false report.'<sup>26</sup> The result of this is that a judge must be guided only by what his eyes see."<sup>27</sup> The *Dayan* must exercise his own adept judgment based on the facts of the case.

The Great Eagle (as the Rambam is often addressed)<sup>28</sup> presents criteria for determining a husband's creditability when he claims that he wants to go to the Land with his wife.

A man that seeks to go on *aliyah*—who is known for his honesty and had no quarrel in any matter whatsoever with his wife—we shall require his wife to go with him to the Land of Israel. However, if one of these conditions is lacking, no verdict shall be given that she must accompany him.

How does Maimonides apply these criteria to our case of the deceitful husband from Alexandria? We see here that he was not only an academic teacher of the Law and codifier of *halakhot*, but an administrator of justice in specific matters of case law.

Now this "little fox,"<sup>29</sup> who makes this claim or another like it, is allied with criminals<sup>30</sup> and joins hands with wickedness. Thus it is with all those who make false charges in order to avoid an obligation that they have undertaken, like withholding the wages of an employee, which is exploitation no less than the deeds of a robber. In my mind there is no difference between one who withholds wages until the end of the day and then afterward finds some specious reason not to pay the worker and one who contrives to deprive his wife of her marriage contract.... Indeed it is easy for most men to afflict their wives to avoid paying their *ketubah*. It would be appropriate to beware of this iniquity and stop those who perpetrate it, "break the arm of the wicked and evildoer,"<sup>31</sup> and "rescue the oppressed from the hand of the oppressor."<sup>32</sup> Signed, Moshe.

The Rambam points out that most men can easily afflict their wives. They can make these poor women's lives miserable, but if the latter were to protest too much, they might be considered rebellious wives, who could be divorced without recompense. The wife is in the position of the oppressed, about whom the Torah and the Prophets were forever concerned. The Maimoni has no hesitancy in comparing this man's misdeeds with sinning against the Torah prohibition of oppressing the needy wage earner. Maimonides did not limit himself to the strict letter of the law, which he himself had codified. On the

contrary, he contradicts the literal reading of his own *pesikah*.<sup>33</sup> Whereas code law deals with general issues for an entire population in any area, case law as revealed in the responsa literature tries to take into consideration ethical principles related to the special circumstances of a suffering individual.<sup>34</sup>

#### THE DANGERS OF ALIYAH

Rabbi Samson b. Abraham of Sens, a Tosafist leader of the 300 rabbis who migrated to the Holy Land in 1211, responded to questions asked by R. Menahem, who had vowed in public that he would go up to *Eretz Yisrael*:

The vow may be nullified, even though it was made publicly, since his wife is with child and nothing takes precedence over saving life [*pikkuah nefesh*]. It would be dangerous to make a pregnant woman travel and [take] her newborn on such a hazardous journey before the child develops and the summer arrives.... Do not rejoin that there is no danger of life here, since you could go without your wife. In no way would you be allowed to abandon her [*leag'nah*], since you are beholden to her. This is a great *mitzvah*, so therefore your vow can be nullified.<sup>35</sup>

Karnafogel reasons that R. Samson's ruling would probably have been different if R. Menahem's wife had not been pregnant. The way to the Land was always very difficult, but under these circumstances mother and child were in extremely great risk. This is the narrow basis for exempting his questioner from fulfilling the *mitzvah*. He does not base his ruling on the existence of widespread danger or on the lack of a strict obligation to live in Israel, as did other

medieval *poskim*. Rather, the *mitzvah merubah* of not removing his wife and son from danger or not leaving her an *agunah* was sufficient reason to nullify a publicly made vow.

The Tosafist, Rabenu Haim Cohen, completely negated the *halakhic* requirement to settle in the Land of Israel for his generation. In his commentary on the Talmudic controversy of whether couples may compel one another to go to the Holy Land,<sup>37</sup> R. Haim claimed that this debate was irrelevant in his day for two reasons: (1) danger and (2) the impossibility of observing *mitzvot*.

1. Compelling one's spouse to go to the Land may be applied only to the period when the roads are safe, but is not observed in our time because of the danger of traveling. He cannot treat her as a mere object to force her to go to a den of lions and highwaymen.<sup>38</sup>

2. In our day, one is not obligated to live in *Eretz Yisrael* because there are many commandments which must be kept in the Land and many penalties [for their neglect], of which we cannot beware or fulfill.<sup>39</sup>

Many pietists went on *aliyah* to observe those precepts that could be kept only in the Land. Many of these Land-bound commandments (*mitzvot ha-teluyot ba-aretz*) were related to the Temple, and others had not been kept for centuries. These laws and regulations were not fully understood. As a result, settling in the Land might result in violation rather than observance of these *mitzvot*.

Rabbi Moses B. Joseph Trani (Mabit, 1490–1580) rejected the first ruling of R. Haim for the following reasons:

At this time, one may not force a spouse or family to go on *aliyah*, because of the dangerous way for a man's wife and children. However, if the man goes alone for trade or to fulfill a *mitzvah*, *there is no danger even if accompanied by the family!* In our day, when the two great powers of Edom [Christian Europe] and Ishmael [Islamic Arabs] are at peace with each other, there is not very much danger. Periods of time exist during the years when you can travel to *Eretz Yisrael* from great distances. You may find people making a voyage to the Land from Italy, Germany, and France by way of the Turkish Ottoman Empire and from there to the Land of Israel. They go there even for trade, which is not obligatory, as well as for the mandatory *mitzvah* of *aliyah*. Even though bandits are occasionally on the roads, travelers, on the whole, arrive safely.<sup>40</sup>

Of course, Moses di Trani lived at a time removed from that of R. Haim and others who were disquieted by the dangers of traveling to and living in the Holy Land. Indeed, as we have seen,<sup>41</sup> his evaluation of the reality of the situation was influenced by the personal experience of having lived most of his life in Safed. He traveled abroad and received a number of visitors. Yes, there was some danger on the way, but in those days almost all travel abroad, even to a nearby destination, was hazardous. If Jews could travel to Palestine for trade and profit, how much the more could they and their families go on *aliyah*. Above and beyond all other considerations was the supreme importance of the commandment to go up and dwell in the Holy Land.

His son, R. Joseph b. Moses Trani (Maharit, 1568–1639) considered the second ruling of Rabenu Haim against *aliyah* fallacious. He contended that some agricultural *mitzvot* connected with the Land could definitely be observed in the present—that is, the Middle Ages. These included, among others, *leket* (gleanings), *shi'khehah* (the forgotten sheaf), *peah* (corner of the field left for the poor), and *ma'asarot* (tithes). Furthermore, the Maharit declared that dwelling in the Land is a positive *mitzvah* of the Torah as established by Nahmanides. He goes on to list some of the great advantages of living in *Eretz Yisrael* and concludes that the *halakhah* is well established that wherever no danger exists one is compelled to go up to the Land. In reply to a questioner, he summed up his view with the succinct determination: "Therefore, you should not heed the warnings of Rabenu Haim."<sup>42</sup>

The Maharit seems to have been influenced not only by his father's convictions, but by his own experiences in *Eretz Yisrael* as well. He was born in Safed and served there as a rabbi and head of a *yeshivah*. He had lived there for more than thirty years when, in 1639, he was sent to Constantinople on behalf of the Jewish community of Safed. He became the chief rabbi of the capital city and eventually of all Turkey. In spite of the distance, he remained in close contact with his family in the Galilee. His firsthand knowledge of the reality of the Land and its *halakhot* gave him a perspective quite different from that of his colleagues in Europe.

The Maharit ruled in a case similar to that related by R. Samson above.<sup>43</sup> He was consulted by a certain R. Isaac who had been vowing for two years that if his wife bore him a son he would go on *aliyah* to the Land of Israel. His wife did indeed give birth to a male child, but the next year he was unable to go. Then he left his home and family in the city of Adrianople, Turkey. He expressed himself as full

of anxiety about his unfulfilled vow. He was penniless and would have become a beggar. Furthermore, he was terrified of the sea and its fearsome waves. He wished to know whether he could receive release from his vow.

R. Joseph Trani, citing R. Asher b. Yehiel as his authority,<sup>44</sup> states that usually one is not granted release from a holy vow to fulfill a *mitzvah*, such as going on *aliyah*. In contrast to his own exhortations just cited, he allows an exception where the route is hazardous or there is a risk that the man might leave his wife an *agunah*: in such a situation, observing the precept of *aliyah* could lead to a sin (*mitzvah goreret aveirah*). Consequently, the man from Adrianople may be released from his vow. The Chief Rabbi of Turkey proclaimed:

The essence of the *mitzvah* is not *aliyah*, but *dwelling* [*yeshivah*] in the Land and establishing a home there, as the late Nahmanides taught. Anyone who goes there as a tourist intending to return whence he came is not fulfilling the well-known *mitzvah*.<sup>45</sup>

#### PREACHING AND PRACTICING ALIYAH

Great *halakhists*, like all other human beings, were not always able to apply their *pesikah* to their own lives. Instructing their followers around the Jewish globe about the supreme value, holiness, and importance of *Eretz Yisrael* with *halakhot*, responsa, and theological tracts was one matter; drawing conclusions for themselves and putting them into action was quite another issue. A touchstone of these rabbinic judgments and teachings was whether the rabbi himself adopted them and went on *aliyah* to settle in the Land of Israel.



Maimonides (1138–1204) recorded the Talmudic statements about *Eretz Yisrael* almost literally. Did he assume these *halakhot* as a guide for his own life? He wrote in *Hilkhot Melkhim*: “One should always live in the Land of Israel, even in a city which is mostly gentile, and not outside the Land in a city that is mostly Jewish, because one who leaves for the Diaspora is like an idolater.”<sup>46</sup> Yet, when he and his family left Spain in 1160, they migrated to Fez, Morocco. He remained there for five years until his friend and teacher, Rabbi Judah ibn Shoshan, was arrested and executed by the Moslems.

Maimonides feared that the same fate might await him, so on April 18, 1165, he fled with his family by boat for a safe haven in *Eretz Yisrael*. After a stormy voyage he arrived in Acco about a month later, on May 16, 1165.<sup>47</sup> He continued his work on the Mishnah commentary in Palestine and traveled to Jerusalem and other parts of the Land. At the end of 1165 or the beginning of 1166, he emigrated to Alexandria, Egypt. The entire period of his residence in the Land was slightly more than half a year.

The Rambam codified the following laws in *Hilkhot Melakhim* about leaving the Land of Israel for the Diaspora and especially for Egypt:

It is forever prohibited to leave the Land of Israel except to study Torah or marry a woman or to save a person from the pagans or for trade, but it is forbidden to settle in the Diaspora, except if the famine there [in Palestine] is so severe that a dinar's worth of wheat is sold for two dinars. However, if the staples are inexpensive, but one has no money or possibility of earning a living and all savings have been spent, he may go to any place where he can subsist. Even

though it is permitted to leave, it would not be indicative of the quality of piety....<sup>48</sup>

None of these permissive circumstances seems to have applied to Maimonides' leaving the Land. There was no scholarly rabbi in Egypt who could possibly teach him Torah. Nothing is heard about any financial distress. His statement that one may leave under such circumstances but would be considered lacking *midat hasidut* (the quality of piety) was certainly not a light matter to the author of these laws.

Maimonides used this term, *midat hasidut*, to describe the conduct of one who takes it upon himself to observe beyond the letter of the law. He cites as a negative example the sons of Naomi, Mahlon and Chilion, who left the Land of Israel because of famine and died in the country of Moab (Ruth 1:1-5). Why did they die, even though it is permitted to emigrate to escape starvation?

The Rambam explains that they were the great men of their generation, and therefore they were punished by God. The source for his assertion is the Talmudic dictum in the name of Rabbi Simeon b. Yohai: "Elimelech [Naomi's husband], Mahlon, and Chilion were the great men of their generations as well as leaders of their generations (*parnasei hador*). Why then were they punished? Because they left Palestine for a foreign country."<sup>49</sup>

Here is the conundrum: Maimonides is definitely considered to be among the greatest scholars and leaders of his generation. He was certainly aware when he codified these laws that they might refer to himself. He did not even have the mitigating circumstances of a famine. Furthermore, he did not merely leave the Land of Israel, but

he went to settle in Egypt, which was forbidden according to his own code.<sup>50</sup>

It is permitted to dwell everywhere in the world except in Egypt. It is forbidden to settle anywhere in its domain, because the Torah warns us in three places not to return to Egypt:

The Lord has said to you, "You shall never return that way again" (Deut. 17:16).

I promised you that you shall never see (Egypt) again (Deut. 28:6).

The Egyptians that you see today, you will never see again (Exod. 14:13).

Maimonides comments that there are certain permissible exceptions: "It is permitted to return to Egypt for trade and business or to pass through to conquer other lands. The only prohibition is to *settle* there."<sup>51</sup> Here lies the great difficulty. The Rambam did not go to Egypt for trade, business, or war, but to *settle* there. He does not explain this deviation from the *halakhot* that he himself codified. We may be able to find a vague hint of a futuristic *halakhic* justification for settling in the Land of the Nile, however, in his explanation in the same reference, "If a King of Israel conquered Egypt with permission of a *beit din* ... it would be permitted to settle there...." His explanation, of course, did not refer to his period of time. His style of codification is also puzzling in his comparison of leaving *Eretz Yisrael* with leaving Babylon. He concludes his laws of *aliyah* and *yeridah* with the following: "Just as it is forbidden to leave the Land of Israel, so it is forbidden to leave Babylon."<sup>52</sup>

All these rulings, of course, have their roots in the Talmud and related rabbinical literature, yet the juxtaposition and the emphasis are

those of Maimonides. Scholars throughout the ages have tried to understand if he found any justification for violating his own *halakhic* rulings by leaving the Land of Israel and settling in Egypt.

Estori (ben Moshe) HaParhi (1280–1355), prolific chronicler and topographic researcher of the Land of Israel, characterized Maimonides' situation in Egypt in his work *Kaftor va-Ferah*.<sup>53</sup>

I heard in Egypt from the late R. Samuel, a descendent of the Rambam,<sup>54</sup> that when Maimonides signed his name on a letter, he would add: "The writer who transgresses three negative commandments every day."

Scholars of several generations have refused to accept this evidence of the Rambam's repeated public confession. His autograph is found in original manuscripts of responsa, but never with these concluding remarks to which Estori HaParhi testifies.

Rabbi David ibn Zimri (Radbaz, 1480–1574), lived in Spain, Egypt, and the Land of Israel. In his commentary to Maimonides' prohibition to settle in Egypt, the Radbaz states: "If you should say that our Rabbi is contradicted by his own text, because he settled in Egypt, one might respond that he was compelled by the rulers, because he was physician in attendance to the Sultan and his ministers. I also lived a very long time in Egypt to study and teach Torah and even made it my domicile, which is permitted. Nonetheless, I returned to Jerusalem."<sup>55</sup>

The Radbaz, in his apologetic defense of the Rambam, slipped in an autobiographical note that reveals the similarity between the two scholars' establishing residency in the forbidden land. The apparent

contradiction between Maimonides' ruling and his deeds is resolved by the existence of extenuating circumstances. The Rambam was forced by Egypt's rulers to remain and attend to the medical needs of its royalty. In contrast, the Radbaz remained there for the sake of Torah, which is *halakhically* permitted. But he, unlike, Maimonides, did go back to Jerusalem, where he started a second rabbinic career that lasted until the ninety-fourth year of his life.

Nahmanides (Gerona, Spain, 1195–1270) was probably the greatest and most consistent *halakhic* exponent of the Land of Israel. As we have seen, his view of the *halakhic* role of *Eretz Yisrael* had vast influence on sages in every age. This influence has continued to our day.<sup>56</sup> Maimonides did not establish settling the Land of Israel as a biblical precept in his *Sefer HaMitzvot*. In his gloss to Maimonides' Book of Commandments, the Ramban filled the void by claiming that settling *Eretz Yisrael* is indeed a divine commandment.

We are commanded to take possession of the Land that God gave to our forefathers, Abraham, Isaac, and Jacob, and not to leave it to any of the Gentiles or to become desolate. God decreed: "You shall take possession of the land and settle it, for I have given the land to you to possess it" (Num. 33:53) and "you shall settle the land which I have promised to your ancestors."<sup>57</sup>

In his commentary to this verse, Nachmanides admits that Rashi offered a contrary interpretation, that this is merely God's *promise* to Israel and not a commandment. He contradicts his late predecessor, claiming that his, and not Rashi's, rendition is correct—"our interpretation is the essence."<sup>58</sup>

The Nahmani consistently interprets the Torah as commanding the People of Israel to conquer, possess, and settle the Land. The Torah chastises Israel for not fulfilling this commandment, as we see in his version of the Book of the Commandments:

And when they did not wish to go up to the land, as it is written, "You rebelled against the word of the Lord" [Deut. 1:26]. Furthermore, you did not heed the command, which is a *mitzvah* and not merely a promise or assurance.

Further proof is given by the Bible's description of the Canaanite nations' evacuation of the Land and the chronicle of the substitute areas they received.

The Torah's narrative is supplemented by rabbinic hyperbole portraying the incomparable essence of settling in this Land.

So the Gentiles fled before us and wandered off, as our Sages said: The Girgashites dislodged and went away, and God gave them a fair land, Africa. We, on the other hand, were commanded to enter *Eretz Yisrael* and conquer its cities and settle our people there ... as our Sages taught: "Every place that the sole of your foot will tread shall be yours..." [Deut. 11:24] [T]herefore, this conquest is obligatory in every generation. I tell you that the superlatives that our Rabbis used about settling the Land reached a peak in the declaration that "anyone who lives in the Land of Israel may be considered to have a God, but whoever lives outside the Land, may be regarded as one who has no God..."<sup>59</sup> These panegyric praises are derived

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from the Scriptural positive precept that God commanded us to possess the Land and settle it. Therefore, this must be a Torah commandment for all generations that obligates each and every one of us, even in an age of exile, as we learn from the Talmud in many places,... "Dwelling in the Land of Israel is the equivalent of all the other *mitzvot* of the Torah."<sup>60</sup>

The Ramban's entire exposition is based on the premise that the Torah has divinely commanded the People of Israel to settle in the Land of Israel. Therefore, this commandment must be one of the 613 Commandments of the Torah. Maimonides left it out of his list; Nahmanides corrected his oversight.

#### MITZVAH VIS-A-VIS REALITY

In view of his ideological and theological stance, we might have expected that the Ramban would have shown the way to Spanish Jewry by going on *aliyah* to *Eretz Yisrael*, which he had extolled in his *halakhic* and kabbalistic writings, commentaries, and poetry.

On the contrary, we find him in his native Gerona almost all his life, first serving as its rabbi and then as the spiritual and temporal leader of the Jews of Spain, as the chief rabbi of Catalonia. Then, in his sixty-ninth year, the watershed year of 1263, King James of Aragon, at the urging of the powerful Dominicans, ordered the Ramban to engage in a disputation with the apostate Jew and now Dominican monk, Pablo Christiani. The Nahmani's conduct of the theological contest as well as his later treatise on the disputation, *Sefer HaVikuah*, aroused the wrath of the monks that initiated the debate. The Dominicans demanded that the rabbi be severely castigated. Pope Clement IV sent a bull, dated 1266 or 1267, to King James calling for

Nahmanides' punishment. Very shortly afterward, Nahmanides left Spain and went to *Eretz Yisrael*.<sup>61</sup>

He arrived in the port of Acco and then in Jerusalem on September 1, 1267. He was overjoyed to be in the Holy City and yet crushed by the sight of the ruins where once the Temple stood. He composed an ecstatic elegy to Jerusalem and its stones in which he expressed his joy to be in Zion and mourning for its sad state. His ambivalence reached its height with his expression of longing for his family. He celebrated his homesickness in these verses that sound as if the great champion of Zion were in exile!

I am the man, who has seen affliction / exiled from my  
household / distanced from both beloved and friend /  
because the journey is so prolonged, / I am isolated  
from brothers / in a wayfarer's lodging in the desert. /  
I left my home / abandoned my inheritance / there I  
left my spirit and my soul / with sons and daughters  
who are as my own / are the beginning of my way / my  
beloved and pleasant ones / who are ceaselessly with  
my eye and my heart. / The honor of friends may bite  
like a viper, / my companions in darkness, / This  
appears trifling / and everything precious appears  
despicable.<sup>62</sup>

This sad longing for his family and friends in Gerona is suddenly interrupted by a love song and elegy to Jerusalem. His *halakhic* affinity to Zion found expression in love poetry to the Land. Perhaps he was bolstering himself in his loneliness by recalling the realization of his great dream of witnessing the sites of the Holy City, about which he had written most of his life. So he sings to the rubble of Jerusalem:



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How good it is for me to be one day in your courtyard  
/ to visit your ruined, desolate Sanctuary / to see, to  
cherish your stones and to pity your dust/ to lament  
over your ruins, / for your dust in my mouth is as  
honey and sweets / and I shall weep over you in the  
bitterness of my soul and delight in lamentation.<sup>63</sup>

This conflict between love of family and love of the Holy Land was not resolved. The last three years of his life, Nahmanides lived without his wife and children, dying in 1270. His poetry as well as his letters to his two sons, Nahman and Shlomo, give evidence of the ambivalence between his love for the members of his family and for the land of his ancestors, which could not be reconciled.<sup>64</sup>

No evidence seems to have been found of why the Ramban's family did not voyage with him to the Land. We do not know if he had enough time to prepare for their departure. He had long known the Dominicans' enmity. Did he have a contingency plan to escape, as did many of his countrymen? Could the family have joined him in *Eretz Yisrael* at a later date? Were his wife or any of his children willing to risk the voyage or life in the desolate Land to be with their beloved husband and father? Did he ask them to come, or perhaps did he insist that they remain in Spain? The sources are silent and so must we be.

We have seen in our exploration of the responsa and other literature the not infrequent conflict between *aliyah* and family. At times the conflict was resolved by the family going together to the Holy Land or remaining in the Diaspora. In some cases the families separated, with one or more going on *aliyah* or *yeridah* and the rest remaining where they were. When only a small minority immigrated

to the Holy Land, they were apparently either pietists or those searching for a refuge, which Palestine could not always offer.

Why was it that, in spite of the love for Zion, when the opportunity arose to settle in the Land, the vast majority, including those that preached and taught and composed poetry to express this love, remained in the land of their birth?

Yehudah Halevi (Rihal, 1075–1141), was probably the most celebrated philosopher and poet of Zion in medieval times. Yet, in his *Book of the Kuzars*, he gives voice to this eternal ambivalence between love for the Holy Land and the inability or unwillingness to requite this love.

In the dialogue between the King of the Kuzars and the rabbi (*Haver*), the latter describes in detail the many verses of the Bible and the rulings of the rabbis regarding the supreme importance of the Holy Land.

The Kuzari replies: "If this be so, you fall short of the duty laid down in your own Torah, by not endeavoring to reach that place to make it your abode in life and death. Although you pray daily, 'Have mercy on Zion for it is the house of our life,' and believe that the *Shekhinah* [God's presence on earth] will return there,.. is it not 'the gate of heaven'? All nations agree on this point. Christians believe that the souls are gathered there and then lifted to heaven. Islam teaches that it is the place of ascent of the prophets.... Your fathers had no other desire than to settle in the Holy Land. They did not leave it in times of dearth and famine except by God's permission."

What could the rabbi respond to this castigation of the Gentile ruler, who clearly saw the contradiction between what was taught and

what was accomplished? Were there any excuses he could offer? Was there a justification for not fulfilling the biblical precepts and rabbinic injunctions. Yehudah Halevi makes no attempt to excuse or justify this sin of omission. Rather, his rabbi candidly retorts:

You have uncovered the Achilles' tendon of my disgrace, O King of the Kuzars!<sup>65</sup>

After years of planning and vacillation, in 1140 Yehudah finally left for the Holy Land. The famous legend relates that the Rihal arrived in *Eretz Yisrael* and Jerusalem, where he kissed its ruins and recited his famous elegy, "Zion, will you not ask about the welfare of your prisoners?" While in this act, a Moslem horseman trampled him to death.<sup>66</sup> In reality, Jerusalem was under Crusader rule at this time, so this story can be only legendary.

Reality in contrast to myth was not so romantic. Yehudah Halevi arrived in Alexandria on September 8, 1140, and was received by a crowd of admirers. He sojourned for quite a while in the port city and then in Cairo. His close friends and disciples tried to influence him to remain longer in Egypt. At one point he went to the port of Alexandria to take a boat to the Holy Land, but a storm prevented its sailing. *Genizah* letters and eulogies indicate that about six months after his arrival he died and was buried in Egypt.<sup>67</sup>

This tragic, ironic finale to the life of this great savant of Zion indicates that even on the verge of realizing his ultimate desire, he failed to take the ultimate step and ended his life in exile.

#### AFTERWORD

What do we learn from these successful and failed attempts to go on *aliyah* and settle the Holy Land? We find that they involved not only *halakhic* and theological polemics, but very pragmatic issues as well.

1. PARENTS AND CHILDREN—On the *halakhic* level, was *aliyah* a commandment that was incumbent on Jews in the Middle Ages? Most *halakhists* ruled that this *mitzvah* overruled even the Fifth Commandment of honoring one's parents. Among those who so determined the *halakhah* were the Maharam of Rothenberg, of the thirteenth century, and Moses Trani, of the sixteenth century. The former made his ruling against that of the great sages who settled in the Land a generation before. Later on they sent their sons back home to Europe, because of the difficult conditions in the Holy Land relating to cruel inhabitants, unemployment, and lack of Torah guidance. The Rashbatz (1361–1444) took a middle position, allowing a resident of Palestine to go abroad to study Torah or to honor his parents, on the proviso that he return to the Land.

This conflict between the generations is not asserted in terms of loving versus leaving parents. There is no expression of painful separation vis-à-vis independence, though these were undoubtedly very much present. On the verbal and written level we find this to be a conflict of *mitzvot*: *aliyah* or honoring parents. The Mabit had the perfect solution to the conflict—the young man should take his parents with him on *aliyah*.

2. MAN AND WIFE—Even though Talmudic law determined that a man could force his wife to go with him to the Holy Land, he was not permitted to use this ruling to swindle his wife. Neither could he force his wife and children to come with him to Palestine if the journey was hazardous. R. Haim said there was no longer any such *mitzvah*,

because of the dangerous trip and the impossibility of observing the agricultural commandments in the Land. Against him were aligned the Mabit and his son, who claimed that in their time, three hundred years later, the superpowers were at peace and one could join convoys from any number of European countries to the Land of Israel. This is a continuation of the debate whether one could study Torah and observe *mitzvot* better in the Holy Land or in the Diaspora. Throughout this essay, we have witnessed the pluralistic views of medieval times.

3. RABBINIC TEACHING AND APPLICATION—Three great rabbinic leaders of the twelfth and thirteenth centuries taught about the importance of *aliyah*. Maimonides codified Talmudic *halakhot* that instructed his readers to go up to the Land and to avoid returning to Egypt. Maimonides did not treat this as a biblical commandment, but rather as a rabbinic precept. He found a way of explaining away the Talmudic dictate in his responsa, as he has done in a number of instances.<sup>68</sup> He codified according to *halakhic* standards with which he may or may not have agreed. When he dealt with case law of individuals, the acute situation at times called for a radical departure from these standards.

So it appears to have been the situation in his own life. He went to the Land of Israel only as a sanctuary from persecution and possibly execution in Morocco. He spent six months or so touring the Land and then descended to Egypt. Nowhere does he try to justify this action, except for possible veiled hints.

Nahmanides wrote everything about Zion and the commandment to settle there that Maimonides had left unwritten. He wrote and he preached, but he remained in Spain. Only when his life was in danger, in the aftermath of the disputation, did he leave alone for his

spiritual homeland. Here, at the age of sixty-nine, he was in exile from his beloved household, writing lamentations to the ruins of Jerusalem and to the distant family he was never to see again.

Were his ardent compositions about *aliyah* merely academic, meant to influence others, but not for him or his family to take seriously? Was this a matter of teaching *lehalakhah ve-lo lema'aseh* (in theory but not in practice)? Was he, like many others, so involved in his creative life in the Diaspora that he didn't make any serious plans for settling the Land with his family? The last three years of his life were fulfilling, but empty. He was in Zion, but alone.

Perhaps, the Rihal was the most sorrowful. After a lifetime of singing to Zion, he finally made the decision and began his pilgrimage. He was a tragic figure, like the biblical Moses who was commanded by God to view the Promised Land from Pisgah but not to cross over. So Yehudah Halevi stopped just short of realizing his lifelong dream. His Pisgah was Alexandria, but it was not God who commanded him to remain there. For about half a year he remained in Egypt, just a short journey from Palestine. Something in his own psyche prevented him from consummating his coveted aspiration.

The cases presented in this essay show the inner conflict of those who wish to go settle in the Holy Land. It is not surprising that the would-be *olim* might be ambivalent about leaving their family and familiar surroundings, abandoning the comforts of their native environs, to undertake an arduous and often dangerous journey to a land known to them only in holy books. How could they make a livelihood for their family, study Torah, and observe the obscure commandments connected only with the Land? Would they find a Jewish community like the one they left back home?

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It is therefore not surprising that the vast majority of those who considered *aliyah*, from the immortal medieval rabbis to famous Zionists of our own day, remained in the Diaspora. It is remarkable, however, that a number of Jews in almost every era surmounted these obstacles, left the country of their birth, and went up to the unknown Land, like Abraham, their father, and Sarah, their mother, before them.

### Notes

1. Responsa *Maharam ben Barukh* (Berlin: 1891), no. 79. See also E. Karnafogel, "The *Aliyah* of 300 Rabbis," *Jewish Quarterly Review* 86 (3): 191-215.
2. This is based on *Baba Metziah* 32a, which states that one may not obey a parent's command to commit a transgression.
3. *Responsa Maharam*, ad loc. See Israel Schepansky, *Eretz Yisrael in the Responsa Literature* (Hebrew) (Jerusalem: 1966), p. 120, who states that the Maharam may have been asked about the sons of those *gedolim* that lived in the generation before him who themselves went on *aliyah* to the Land. They either permitted or commanded their sons to return home.
4. *Responsa Mabit* (Lemberg: 1861), (1) 139. Mabit was one of the four Safed rabbis who received the controversial *semhah* from Jacob Berab in 1538. The others were Joseph Caro, Moses Cordovero, and Joseph Sagiz.
5. There is a difference of opinion among sages whether *aliyah* and *yeshiva ha-aretz* are Torah *mitzvot*, that must be observed "in our time," i.e., the Middle Ages. Among these who considered them obligatory under Scriptural Law was Nahmanides (see infra note and the chapters in this volume by John Rayner, notes 18-19; Leonard Kravitz, notes 33-34; and Aviezer Ravitzky, notes 30-33).
6. Leviticus 21: 1ff.
7. Deuteronomy 22:1.
8. Leviticus 19:3
9. *B. Yevamot* 6a. See also supra, note 2.
10. *Responsa Mabit*, ad loc. (supra, note 4; emphasis mine).
11. See Moshe Zemer, *Halakhah Shefuyah* (Tel Aviv: Dvir, 1993), on Maimonides, pp. 26-28; on the Rama, pp. 29-32; on R. Yehudah Leib Zirelsohn, pp. 79-81; and many other respondents

- who rendered their decisions in this way. Also, note idem., "Purifying Mamzerim," *Jewish Law Annual* 10 (1992): 99-114, for the influence of individual value systems on rabbinic decisions.
12. The Rashbatz was born in Majorca in 1361 and died in Algiers in 1444. He served as chief rabbi and head of the rabbinic court in Algiers.
  13. *Responsa Tashbetz* (Lemberg: 1891), (3) 288. See also the responsum of R. Samson b. Zadok to the question: "Why didn't all the Amoraim go up to the Land?" To this he responded: "They had no financial support, so they were forced to relinquish their Torah studies to pursue a livelihood. If it is permitted to leave the Land to study Torah, how much more should one not leave his Rabbi in the Diaspora to go to *Eretz Yisrael* and neglect his studies in order to search for a way to make a living." *Responsa Tashbetz (Katan)* (Lemberg: 1858), No. 561.
  14. *Hilkhot Melakhim* 5:3 (emphasis added).
  15. *B. Kiddushin* 31a-b.
  16. *Responsa Yehaveh Da'at* (Jerusalem: 1978-84), (4):49.
  17. See the other sources in *M. Ketubot* 13:11 and *Tosefta Ketubot* 13:2. See the chapter in this volume by Judith Hauptman on "*Aliyah and Yeridah in Rabbinic Sources*" and the chapter by Leonard Kravitz, "Israel and the Diaspora—Sacred and Profane," which analyze these and other sources on these problems.
  18. *Hilkhot Ishut* 13:19.
  19. *Teshuvot Ha-Rambam* (Blau edition) (2), No. 365.
  20. The court relied on the Mishnah and the Gemara in *B Ketubot* 110b and *Tosefta Ketubot* 12:5.
  21. *Ibid.* (supra no. 19); [italics].
  22. *Supra* no. 18 [italics].
  23. The lands of North Africa that are west of Egypt. See Blau (supra note 19) (2): 162, p. 310. note 3. Other references are found in idem., responsa 70, 113, 143, et al.
  24. *Hilkhot Shavuot* 16:11.
  25. Deuteronomy 16:20.
  26. Exodus 23:1.
  27. *B. Baba Batra* (1) 10a. See Rashi ad loc. The Rambam in his *Hilkhot Sanhedrin* 24:3 explains how the *Dayyan* can distinguish between truthful and deceitful litigants and witnesses.
  28. See *Teshuvot Ha-Rambam* (supra 19) no. 311 et al.



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29. Song of Songs 2:15—"The little foxes that spoil the vineyards."
30. *B. Gittin* 61a.
31. Psalms 10:15.
32. Based on Jeremiah 21:12.
33. *Supra* no. 22.
34. My monograph, *The Lesser Evil, A Maimonidian Halakhic Technique*, which is due for publication in 1997, deals in length with this issue.
35. R. Samson's responsum is found in *Responsa Maharam* (4) 202; see *supra* note 1.
36. Karnafogel (*supra* note 1), pp. 198-200.
37. See *supra* note 17.
38. *Hagahot Mordecai* 312 to *Ketubot*; cf. *Tosfot Ketubot* 110b, s.v. *hu omer*, where this view is anonymous.
39. *Ibid. Tosfot Ketubot* 110b.
40. *Responsa Mabit* (*supra* note 4) (3), 131. [Italics].
41. *Supra* notes 10-11.
42. *Responsa Maharit* (Lemberg: 1861) (1), 131. See the ruling of his father, the *Mabit*, R. Moses b. Joseph Trani (*supra* notes 4-11).
43. *Supra* note 35.
44. *Responsa HaRosh* 12:7.
45. *Responsa Maharit* (*supra* note 40) (2), 28.
46. *Hilkhos Melakhim* 5:12, based on *b. Ketubot* 110b. The author does not mention the Talmudic statement that immediately precedes this: "For anyone who lives in the Land of Israel, it is as if he has a God; and anyone who lives outside the Land, it is as if he had no God...." See, in contrast, Nahmanides, *infra*, note 53.
47. See Solomon Zeitlin, *Maimonides* (New York: 1955), pp. 5-15; David Yellin and Israel Abrahams, *Maimonides, His Life and Works*, 3rd ed. (New York: 1972), pp. 24-38.
48. *Hilkhos Melakhim* 5:9.

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49. *B. Baba Batra* 91a.
50. *Hilkhot Melakhim* 5:7.
51. *Ibid.* 5:8 (emphasis added). As we have seen (*supra* 48), the Rambam permitted one to leave the Land of Israel to study Torah abroad, which was considered a temporary matter. It is unlikely that Maimonides could have found anyone in Israel who could have served as his mentor.
52. *Ibid.* 5:12.
53. *Kaṭor va-Ferah* (Jerusalem: 1994), Chap. 5, pp. 81–83.
54. *Ibid.*, p. 81, conjectures that this might have been R. Samuel ben R. Solomon ben R. David HaNagid, but gives no evidence for this identification.
55. Radbaz, *Commentary to Mishneh Torah, Hil. Melakhim* 5:7.
56. See *Responsa Maharit* (*supra* note 44). For an example of his continuing influence, see Rabbi Nahum Rabinowitz, "The *Mitzvah* of Settling the Land," *Gilyon Rabanei Yesha* 28, Samaria, October 1995.
57. Nahmanides' gloss to *Sefer HaMitzvot* (Jerusalem:1957), positive precept 4, p.42.
58. Nahman ben Moshe, *Commentary to the Torah*, ed. by H.D. Chavel, Vol. 2 (Jerusalem:1960), p. 355.
59. *B. Ketubot* 110b. See *supra*, note 45.
60. *Tosefta Avodah Zarah*, ed. by M.S. Zuckerman (Jerusalem: 1963); *Sifrei*, ed. by L. Finkelstein (New York:1969), 80:29. This is the conclusion of the Ramban's gloss to *Sefer HaMitzvot*. See *supra*, no. 57.
61. Israel Ta-Shema. "Moses ben Nahman," *Encyclopedia Hebraica* (Jerusalem-Tel Aviv: 1972), Cols. 565–66; see Martin A. Cohen, "Reflections of the Text and Context of the Disputations of Barcelona," *HUCA* 35 (1964), 157–92, which shows that both sides claimed victory.
62. Abraham Ya'ari, *Journeys of Jews to the Land of Israel* (Hebrew) (Ramat Gan: 1977), p. 77 (my translation).
63. *Ibid.* Nahmanides' verses have many allusions to biblical and rabbinic literature, with which his reader must be acquainted to fully understand his poetry.
64. H.D. Chavel, *The Writings of the Ramban* (Jerusalem: 1963), Letters 7 to Nahman and 8 to Sholomo, pp. 367–71.

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65. Yehudah Halevi, *The Kuzari*, ed. by Yehudah Even Shmuel (Jerusalem: 1973), Vol. 2, pp. 61-63.
66. This legend is first mentioned in Gedalya iben Yihya's *Shalshet Hakabbalah* in the sixteenth century. See Israel Levine, "R. Yehudah Halevi," *Encyclopedia Hebraica* 19:187-88.
67. *Ibid.*
68. See supra no. 19; responsum 311; and my treatment of this subject, supra no. 34.