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(Yeshiva College 1981)

Who embodied Torah, Avoda
and Gemilut Chassadim

His wisdom, integrity, warmth
and generosity endure

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* Winner of the student writing competition held **in memory of Joel Salzman, z"l**

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Shimon Maged

Nadab, Abihu, and the Second Passover

Among the best-known biblical holidays is Passover: the seven-day festival marking the Israelites' escape from Egyptian bondage. Among the least-known biblical holidays, meanwhile, is the substitute-festival celebrated exactly one month later: the so-called "Second Passover." Yet while the details of this latter holiday fill no more than a single paragraph in the corpus of biblical literature, beneath those details may lie one of the most poignant religious developments in the history of ancient Israel.

To trace this development, we need to piece together a series of subtle literary clues. Those clues will point us towards a conclusion formed long ago by the great Talmudic sage, R. Akiva: namely, that the anonymous men who petitioned Moses for a Second Passover may have been Mishael and Elzaphan, cousins of Nadab and Abihu. As we shall see, this possibility would render the backstory to our obscure biblical festival far more significant than we typically appreciate. In fact, when we unpack the full implications of this theory, the story of the Second Passover that emerges is one especially pertinent to our period—a period marked, as that one may have been, by home lockdowns, sanctuary shutdowns, postponed festivities, and even "social distancing" of a sort.[1]

The Origins of the Second Passover

Exactly one month following the biblical holiday of Passover, some of the Israelites were invited to participate in a postponed-Passover of sorts—the "Second Passover." The origins of this substitute festival are first recorded in the book of Numbers:

> The Lord spoke to Moses in the wilderness of Sinai, in the first month of the second year after they had come out of the land of Egypt, saying: Let the Israelites keep the Passover at its appointed time. On the fourteenth day of this month, at twilight, you shall keep it at its appointed time; according to all

1 The ideas presented in this paper were originally developed in 2017 as part of a lecture series delivered at Congregation Ahavas Achim in Highland Park, New Jersey, and were further developed for a lecture delivered remotely to the Young Israel of Brookline at the height of the COVID-19 pandemic in 2020.

> its statutes and all its regulations you shall keep it. So Moses told the Israelites that they should keep the Passover. … Now there were certain men who were unclean through a corpse, so that they could not keep the Passover on that day. They came before Moses and Aaron on that day, and said to him, "Although we are unclean through a corpse, why must we be kept from presenting the Lord's offering at its appointed time among the Israelites?" Moses spoke to them, "Wait, so that I may hear what the Lord will command concerning you."
>
> The Lord spoke to Moses, saying: Speak to the Israelites, saying: Anyone of you or your descendants who is unclean through touching a corpse, or is away on a journey, shall still keep the Passover to the Lord. In the second month on the fourteenth day, at twilight, they shall keep it; they shall eat it with unleavened bread and bitter herbs. They shall leave none of it until morning, nor break a bone of it; according to all the statute for the Passover they shall keep it…[2]

This passage transpires in the second year following the Exodus from Egypt. As it recounts, certain men could not participate in the Paschal offering at its regularly scheduled time because they had come in contact with the dead. Per biblical law, such individuals remain impure for seven days, and are quarantined from the camp in the interim.[3] Thus, the people in our passage would have been unable to participate in the Paschal offering on the fourteenth of the first month. They therefore turned to Moses, who presented their quandary before God, and who ultimately ruled that they could bring the offering one month later, on the newly instituted "Second Passover."

The Identity of the Anonymous Men

The terse narrative of the Second Passover leaves readers with many unresolved questions. Perhaps no set of issues is more clamant than that involving the identity of the anonymous "impure men." Who exactly were these men? How, exactly, did they contract corpse impurity? When, indeed, would *anybody* in the wilderness have come in contact with the dead, at this early point in the Exodus? The text does not explicitly address any of these questions.[4]

2 Num. 9:1-14.

3 See Num. 19:1-22.

4 Nor has contemporary literary scholarship on the Second Passover focused on the identity of its protagonists. Instead, most studies focus on connections between this narrative and later biblical narratives. See, e.g., Simeon Chavel. *Oracular Law and Priestly Historiography in the Torah*. Tübingen: Mohr Siebeck, 2014; Gad Eldad, "'Why Should We Be Kept Back?' Between the Second Passover and the Daughters of Zelophehad" (Hebrew), *Megadim* 54, 75-83, 5773; Gilad J. Gevrayhu, "The Root

Yet the narrative of the Second Passover does provide us with chronological coordinates that may enable us to solve this mystery ourselves. After all, the story opens "in the first month of the second year after the [Israelites] had come out of the land of Egypt."[5] Then, upon its conclusion, the Torah proceeds immediately to recount the events that took place upon the erection of the tabernacle: "On the day the tabernacle was set up, the cloud covered the tabernacle, the tent of the covenant; and from evening until morning it was over the tabernacle, having the appearance of fire…"[6] This juxtaposition appears to suggest that the anonymous men of the Second Passover law contracted their "corpse impurity" around the time that the Israelites erected the tabernacle in the wilderness.

In fact, this theory works well for several reasons.

First, God explicitly commands Moses to erect the tabernacle "on the first day of the first month" of Israel's second year in the wilderness[7]—the very same date on which Moses is commanded to review the Paschal laws, in the story of the Second Passover.[8]

Second, it so happens that the erection of the tabernacle was eclipsed by two of the most tragic deaths in the entire Torah. These were the deaths of Nadab and Abihu, sons of the High Priest, Aaron, who died while offering a "strange fire" at the climax of the inaugural festivities.[9] Theirs are two of only three individual deaths recorded between Israel's exodus, in Exodus 14, and the law of the Second Passover, in Numbers 9,[10] and they are the only ones which the Torah explicitly dates within that timeframe.

G-R-A in the Bible: The Case of the Daughters of Zelophehad and Beyond," *The Jewish Bible Quarterly* 41:2, 107-112, April 2013; Simeon Chavel, "The Second Passover, Pilgrimage, and the Centralized Cult," *Harvard Theological Review* 102:1, 1-24, 2009. Some scholars do cite the Talmudic debate about the identity of the impure men in the Second Passover story. However, these scholars focus on other issues, such as the theological meaning of the Second Passover holiday, or the methods of midrash. They do not comment on the question of identity, nor do they explore biblical underpinnings for the positions presented in the Talmud. See Emanuel Feldman, "The Second Pesah: Mitzvah as Paradigm," *Tradition: A Journal of Orthodox Jewish Thought*, 24:2, 38-43, Winter 1989; Ronald Goetschel, "The Midrash of the Second Passover" (French), *Revue des Sciences Religieuses*, 47, 2-4.

5 Num. 9:1.

6 Num. 9:15.

7 Exod. 40:2.

8 Num. 9:1.

9 See Lev. 10.

10 The only other individual is the son of Shelomit the Danite in Lev. 24. There were also many casualties in the war that followed the Golden Calf, but there are several reasons that the story of the Second Passover could not plausibly originate in this event. First, corpse impurity lasts only

Third, the Torah expressly identifies two men who were tasked with transporting the corpses of Aaron's deceased sons. These men are named as Mishael and Elzaphan, the first cousins of Nadab and Abihu.[11] From the Exodus onwards, they are the only individuals in the Torah, aside from Moses,[12] who are explicitly recorded as having transported dead bodies.

Fourth, the date on which the deaths of Nadab and Abihu reportedly took place—on the "eighth day,"[13] apparently meaning the eighth day from the erection of the tabernacle, on the first day of the first month[14]—falls one week before the Passover offering, which occurs on the fourteenth of that month.[15] As mentioned, biblical law assigns "seven days" of impurity to "anyone touching the corpse of a human soul,"[16] and precludes such individuals from participating in the tabernacle rites during that

seven days. See, e.g., Num. 19:11. Yet the Golden Calf took place many months before Passover of the second year. See, e.g., Rashi, Exod. 33:11 (dating the Golden Calf to the fourth month of the first year); Ramban, Exod. 33:7 (same); R. Bachya, Exod. 32:1 (same); Bechor Shor, Deut. 10:10 (same); Samson Raphael Hirsch, Exod. 33:9 (same). Cf. b. Taanit 4:6 (dating the breaking of the tablets, which followed the Golden Calf, to the fourth month of the first year). Second, the narrative of the Second Passover describes "men"/ "the men" who were impure, a term which appears to imply that the group of petitioners was relatively small. See Num. 9:6-7. The description of these men "approaching" Moses and Aaron personally, and "standing by" while they awaited a ruling, likewise suggests a small, private audience. See Num. 9:7-8. Yet the casualties following the Golden Calf numbered 3,000 (Exod. 32:28). If these casualties occasioned the Second Passover petition, the group of petitioners would presumably have been quite large.

11 Lev. 10:4.

12 See Exod. 13:19.

13 Lev. 9:1.

14 See, e.g., Exod. 40:2, describing that the Tabernacle is to be erected on the first of the first month; Lev. 8:10, describing Moses inaugurating the already-erect Tabernacle with anointing oil; and Lev. 9:1 et. seq., describing the inauguration ceremony on the "eighth day," which includes, in Lev. 10:1, the deaths of Nadab and Abihu on that same day. Among biblical commentators, Ibn Ezra is most frequently cited for the view that the "eighth day," on which Nadab and Abihu died, was the eighth of the first month. See Ibn Ezra, Lev. 9:1. Before Ibn Ezra, Mizrachi defended this interpretation, and even cited in its support a non-extant edition of the Midrash Sifre attributing that interpretation to R. Akiva. See Mizrachi, Lev. 8:2. Following Ibn Ezra, others who defended this view include Shadal and Malbim. See Shadal and Malbim to Lev. 9:1. Note, however, that the majority of biblical commentators interpret the "eighth day" as occurring on the *first* of the first month—i.e., coincidental with the inauguration of the Tabernacle. This dating would undermine R. Akiva's position, as well as our analysis which builds upon that position.

15 See, e.g., Num. 9:3.

16 Num. 19:11.

time.[17] Thus, those who handled the corpses of Nadab and Abihu, on the eighth of the first month, would have faced precisely the predicament attributed to the anonymous men from the story of the Second Passover: they would have been ineligible to bring the Passover offering on the fourteenth of that month.

Fifth, it hardly seems coincidental that the Torah's laws of corpse impurity are addressed particularly to Aaron and to his surviving sons—Elazar in particular.[18] Nor would it appear accidental that the paradigm case used to illustrate the laws of corpse impurity involve, most specifically, "a man who shall die in a tent."[19] There is only one narrative in the Torah wherein "men" die in a "tent," and must be ritually removed from the camp by the family of Aaron. This, of course, is the story of Nadab and Abihu, Aaron's oldest sons, who die in the tabernacle—otherwise known as the "Tent of Meeting"[20]—and who are transported out by their surviving relatives as a result.[21]

17 Num. 9:13.

18 See Num. 19:3-4. Remarkably, in this regard, one Talmudic sage appears to suggest on *Gittin* 60a-b that the law of corpse impurity was taught on the same day that Nadab and Abihu died. See, however, Yehudah Shaviv, "On the Place of the Red Heifer Passage" (Hebrew), *Megadim* 12, 31-39, 5751, where the author reviews and proposes various alternative explanations for the literary context of this law. Proposed triggers include the deaths of Korah and his faction (see Num. 16-7), or of Miriam and Aaron (see Num. 20), but not of Nadab and Abihu. Interestingly, if Korah's rebellion occurred in the second year of Israel's wilderness travels, and the deaths of Miriam and Aaron occurred in the fortieth, then the only text corresponding to the thirty-eight years in the interim is the law of corpse impurity—as if to suggest that those years were defined by the experience of death. In some sense, they were, for per divine decree, all members of that generation were to die in the desert following the sin of the spies. This may offer yet another approach to the literary context of the red heifer ritual. See Shimon Maged, "Interrupting Cow (Chukkat)," *What's Pshat?*, June 18, 2018, https://whatspshat.org/2018/06/18/and-now-cows-chukkat/.

19 Num. 19:14.

20 See, e.g., Lev. 9:5, 23; 10:7-9.

21 Remarkably, Jewish law calls for reciting the passage related to corpse impurity each year prior to Passover. The timing of this practice could hardly prove more apropos: per our analysis, it was an incident of corpse impurity occurring prior to Passover which provided the original catalyst for teaching these laws. See also Mishnah Berurah 685:1 (explaining that the passage is recited prior to Passover because the ritual for removing corpse impurity was required "in the desert, close to Nissan [=the first month]… immediately after erection of the Tabernacle, so that they could be pure and could make the Passover sacrifice at its designated time").

Taken together, then, the evidence adduced here all seems to point towards the same conclusion. In fact, it is a conclusion reached long ago by the great Talmudic sage, R. Akiva:

> "There were certain men who were impure by the corpse of a person" (Num. 9:6)… R. Akiva says: They were Mishael and Elzaphan, who had handled Nadab and Abihu.[22]

R. Akiva states explicitly what our analysis appears to suggest—namely, that the impure men ineligible to bring the Passover offering in Numbers 9 are not anonymous after all. Rather, they may have been none other than Mishael and Elzaphan, the cousins of Nadab and Abihu, who perished on what ought to have been one of the most joyous dates in Israel's early history. That date was the final day of festivities celebrating the inauguration of the tabernacle: very possibly, the eighth day of the first month, in the second year following the Exodus from Egypt.

Although R. Akiva does not explain his position in the Talmud, the series of textual considerations we have catalogued here may offer us a window into his thinking. As we shall see, in fact, R. Akiva's theory offers us much more to think about than he himself articulated.

The Inauguration of the Tabernacle and the Inaugural Passover

According to the literary evidence that we have pieced together until this point, the dedication of the tabernacle—and the concomitant deaths of Nadab and Abihu—may well have occurred in the same week that the Israelites began preparing for the Passover offering, in the second year following their exodus. That, in fewer words, is the conclusion urged by R. Akiva, generations ago. The immediate benefit we derive from this analysis is that we can now possibly identify the otherwise anonymous men who clamor for the right to celebrate the Passover ritual in Numbers 9. Of course, by situating the deaths of Aaron's sons as the backdrop of the Second Passover law, our analysis also exposes a tragic drama motivating that law—one which might otherwise elude us entirely.

22 b. Sukkah 25a-b. R. Yosei the Galilean disagrees, contending that the impure men were the bearers of Joseph's coffin. R. Yitzchak challenges both views based on chronology, but later commentators defend R. Akiva. See, for example, *Hiddushei ha-Tzlah,* Sukkah 25a. See also Mizrachi, Lev. 8:2, where the author cites a defense of R. Akiva's position provided by a non-extant text of the Midrash Sifre. For a summary of relevant sources, cf. supra n. 16.

Yet having come this far, we would be remiss to conclude our analysis here. For if indeed the dedication of the tabernacle was scheduled in the same week as the second Passover offering, then we must naturally wonder why the Torah chose to conflate these two events, in the first place. That is: Why did God command Moses to complete the inauguration of the tabernacle "on the first day of the first month"—the very date on which, a year earlier, God had commanded Moses to first teach the laws of Passover to the Israelites?[23] Such calendrical coordination should hardly strike us as the product of mere happenstance.[24]

In fact, carefully comparing the original Passover offering in Egypt with the ceremony of the tabernacle's inauguration celebrated a year later appears to suggest precisely the opposite—namely, that in all of its salient details, the latter ceremony is deliberately patterned upon the former. After all, both the inauguration of the tabernacle in the wilderness, and the command to bring the Passover offering in Egypt, occur on the first day of the first month.[25] In both cases, participants are required to bring offerings[26] that are accompanied by unleavened bread[27] and that are eaten while "girded."[28] These participants are to sprinkle blood around their dwelling—their homes, or the Tabernacle—for atonement or protection.[29] They are prohibited from "exiting the entrance" of that dwelling.[30] They receive specific assurances against death,[31] and their ritual is described as a "safeguard."[32] Upon completing this ritual, they are to "burn" any "leftovers."[33] Finally, at the conclusion of each ceremony, the participants are to celebrate a seven-day festival[34]—a festival which, in both cases, climaxes at its culmination in national song.[35]

23 See Exod. 12:2-3.

24 On the literary chronology of the Tabernacle's inauguration more generally, see Yoninah Dison, "The Erection of Moses' Tabernacle Until 'The Day of its Completion'" (Hebrew), *Megadim* 43, 39-71, 5765.

25 Exod. 40:2; Exod. 12:2.

26 See, e.g., Lev. 8:15; Exod. 12:6.

27 Lev. 8:2; Exod. 12:8

28 Lev. 8:7, 13; Exod. 12:11. In addition, Ezra Sivan noted in personal correspondence that on both occasions, the participants receive new clothing. See, e.g., Lev. 8:7-13; Exod. 12:35-36.

29 See, e.g., Lev. 8:15; Exod. 12:13. Compare also Lev. 8:10 with Exod. 12:7.

30 Lev. 8:33; Exod. 12:22.

31 Lev. 8:35; Exod. 12:23.

32 Lev. 8:35; Exod. 12:6.

33 Lev. 8:32; Exod. 12:10.

34 See, e.g., Lev. 8:33; Exod. 12:15.

35 Lev. 9:24; Exod. 14:31-15:1.

Taken together, these connections suggest strongly that the ceremony of the tabernacle's inauguration was purposely intended to evoke the inaugural Passover offering in Egypt. This dedication ceremony, which immediately presaged the one-year anniversary of the original Passover offering, involved only the second instance of commanded collective sacrifice in Israel's history,[36] and mirrored the experience of that original offering in most of its myriad legal details. Surely the Israelites participating in the tabernacle's inauguration, or witnessing it from the sidelines, could not have missed such a blatant connection.

But what larger meaning were they supposed to draw from this connection?

The Evolution of God-As-Sustainer[37]

Upon close reflection, it appears that the two ceremonies of the "first month"—the Passover offering, in the first year, and the tabernacle's inauguration, in the second—bookend a gradual evolution in Israel's conception of its God. For while the night of the original Passover offering is widely regarded as one of the high points in Israel's relationship with God, the text makes clear that, from the perspective of the people,

36 Although there were other offerings presented between the Passover offering and the tabernacle's inauguration offerings (e.g., Exod. 18:12, 24:5, 32:6), those offerings were not formally commanded by God.

37 I have borrowed the helpful terminological distinction between "God-as-Destroyer" and "God-as-Sustainer" from Ezra Sivan, "Why Do We Deserve God's Favor?" *The Lehrhaus*, November 12, 2019, https://thelehrhaus.com/scholarship/why-do-we-deserve-gods-favor. Sivan notes that Israel would have experienced God on the night of the Exodus primarily as a "destroyer," and he identifies God's provision of the manna as the critical moment when Israel began relating to God primarily as a "sustainer." See also Shimon Maged, "Manna as Mnemonic (Beshalach)," *What's Pshat?*, February 6, 2017, https://whatspshat.org/2017/02/06/remember-the-manna-beshalach/, arguing that the manna may have served as a substitute for the Passover offering during Israel's wanderings in the desert. This theory helps explain the pervasive similarities between the laws regulating these two edibles. It also lends additional meaning to: the date of the Second Passover, which coincides with the one-year anniversary of manna's first falling; the people's complaints against the manna, which surface shortly after the Passover offering is re-introduced, in the second year; and the cessation of the manna, in the days of Joshua, on the very same day that the Passover offering is brought again following a long hiatus during the remaining wilderness years. See also R. Yonatan Grossman, "The Manna and the Paschal Sacrifice," *The Israel Koschitzky Virtual Beit Midrash*, July 5, 2017, https://etzion.org.il/en/tanakh/torah/sefer-shemot/parashat-beshalach/beshalach-manna-and-paschal-sacrifice, where R. Grossman similarly notes parallels between the manna and the Passover offering to help explain the multiplicity of miracles God performs in response to the people's complaints about lacking food.

what God represented more than anything on that night was, in fact, destruction.[38] To these Israelites, the God of the Exodus was most recognizable as a retributive force, which they actively sought, through the ritual of the Passover offering, to keep *outside* of their homes. In other words, the God of the Exodus is conceived above all else of as a source of danger, which His adherents attempt to *avoid*. Surely this is not the most sublime way to conceive of one's creator!

In fact, it is in this context, it would seem, that we can best understand the meaning of the tabernacle's inauguration. One year earlier, on the first of the first month, the Israelites were warned to keep God *out* of their homes, as it were. One year later, on that very date, they moved their relationship onto a higher plane, by inviting God *into* the home they had built for Him. After spending a year travelling through the wilderness at God's guidance—a year in which God fed them, clothed them, and sheltered them—the people no longer related to God as a source of danger or destruction. Now, for the first time, they could recognize God as a source of love, support and sustenance, and could feel comfortable dwelling with Him side by side.[39] Thus, the dedication of the tabernacle parallels the original Passover offering—and immediately precedes the second Passover offering—in order to mark this transition: the transition towards an elevated relationship with God, in which the goal is no longer to keep God at a safe distance, but rather, to draw close to Him.

Indeed, God appears to allude to this connection early on. After all, God's very first instructions concerning the tabernacle—instructions related to the collection of building funds—open with an apparently odd promise that "no plague [נגף]" will come upon those who partake in the census that is associated with contributions to the tabernacle.[40] Taken in isolation, God's assurance that those who contribute to the building of the tabernacle will be spared from an unspecified "plague" seems out of place. It is by no means clear, in abstraction, what collective fear this promise may be responding to.

In light of our analysis, however, the need for such guarantees is readily apparent. After all, "plagues," in the Torah, first appear in the context of the "ten plagues." In fact, the most recent mention of a "plague," in the Torah, had occurred on the night of the Passover offering, during the "plague" of the firstborns.[41] Only twelve months prior,

38 Cf. Exod. 12:23.

39 Cf. Exod. 25:8 ("They shall make a sanctuary for me, and I will dwell among them").

40 Exod. 30:12.

41 Exod. 12:13. Note, however, that the root נ.ג.ף, meaning "to strike," appears in several interim contexts to describe various tort cases (Exod. 21:22, 35). The root also appears as a verb after the sin of the

the Israelites were cautioned to keep distant from God, in order to escape the "plague" that befell their slave masters. They were even commanded to mark a yearly festival in "remembrance" of that plague. Therefore, as God invites them, one year later, to dwell alongside Him, He evokes the memory of that plague once again, and pledges that those who now seek closeness with Him will be "remembered" for life. Put otherwise, God's opening commitment, as He initiates the construction of the tabernacle, is that those who participate in its rites will *not* meet the fate of those who fell in the firstborn plague.

Tragically, however, the commitment appears to unravel almost immediately.

The Deaths of Nadab and Abihu and the Firstborn Plague

By all accounts, the deaths of Nadab and Abihu constituted a national calamity. Yet in light of our analysis, the impact of this calamity would have been even more jarring than we traditionally appreciate. Here, after all, stood a nation whose members, on our reading, were celebrating how comfortable they now felt in God's presence, relative to a year ago. And yet, at the apex of this festivity, two priests, stirred by the spirit of their newfound closeness to their God, reached out to that God of their own initiative—and fell dead as a result.[42] Suddenly, and against all their recent expectations, God revealed Himself to the Israelites not as a sustainer, but once again as a force of destruction. For the stunned onlookers, the fears of the original Passover night were materializing all over again.

In fact, the pain of these latest deaths likely stung even deeper than the trauma sustained one year earlier. For whereas the plague of Passover struck the firstborns of their slave masters, the fire God dispatched at the inauguration of the tabernacle claimed the sons of Israel's own priestly family. Nor were these just any sons of Aaron. They were, more specifically, Aaron's *eldest* sons—his *firstborns*, as the Torah later emphasizes[43]—and, as Levites, they hailed from the tribe which God had chosen to

Golden Calf (Exod. 32:35), which follows our verse, but which precedes the account of Nadab and Abihu's deaths.

42 Many suggestions have been raised to explain why Nadab and Abihu died, but that question falls outside the scope of this article. The text merely states that they "took each his censer, and put fire in it, and laid incense on it, and offered strange fire before God, which He had not commanded them" (Lev. 10:1). For a concise overview and analysis of the major exegetical approaches to this issue, see Neima Novetsky, "Why Were Nadav and Avihu Killed?", *Al HaTorah*, https://alhatorah.org/Why_Were_Nadav_and_Avihu_Killed/1/en.

43 Num. 3:2. The reference is specifically to Nadab, but the verse groups Nadab and Abihu together through selective use of the term "and." "These are the names of Aaron's sons: the firstborn Nadab,

replace the firstborns as His ministers in the year following the Exodus.[44] In a sense, then, Nadab and Abihu were no less than the firstborn sons of Israel's "firstborn" tribe. On the date of their deaths, they served as the literal stand-ins for the firstborns of the previous year.

But whereas those firstborns were narrowly spared, these firstborns were inexplicably stricken.

The Request of Mishael and Elzaphan, Revisited

With this background in mind, the narrative of the Second Passover told in Numbers 9 suddenly assumes far profounder significance. At first glance, this text tells a story about a few anonymous men, who contracted some mysterious form of "corpse impurity," and who simply wanted the chance to participate in the holiday festivities like everybody else. Their request, on this reading, is not all that remarkable.

Yet when we dig deeper, we discover that these probably were not just any men. They were—per R. Akiva, and the literary evidence we adduced in his footsteps—very likely Mishael and Elzaphan, nephews of Aaron, the High Priest. Nor did these men merely happen to stumble across some anonymous corpse. It was, in fact, their own first cousins whose deaths they had likely been exposed to. Nor did this exposure occur at some unidentified point in the past. It was, very possibly, on that very day—the same day they had retrieved their deceased cousins from the tabernacle—that they petitioned Moses for permission to participate in the upcoming Passover offering. Nor did the date of this Passover offering merely happen to fall out in the near future as a matter of calendrical coincidence. On the contrary: The inauguration of the tabernacle—during which Mishael and Elzaphan lost their firstborn cousins—had, it seems, been deliberately scheduled to precede the Passover offering, precisely because the ceremony was intended to assure the nation that the divine danger which their

and Abihu; Elazar, and Ithamar." More fundamentally, reference to Nadab as the "firstborn" is extraneous in context. Cf. also Lev. 10:16, wherein Elazar and Ithamar are described as Aaron's "leftover" or "remaining" sons. For the interesting suggestion that Nadab and Abihu were twins, see Yonah Bar-Moaz, "Were Nadab and Avihu Twins?" *Bar Ilan University*, April 2, 2005, https://www2.biu.ac.il/JH/Parasha/eng/shmini/bar1.html. To be sure, under the plain sense of Num. 3:2, only Nadab was a firstborn. Moreover, the cantillation notes traditionally ascribed to Num. 3:2 divide between "the firstborn, Nadab," and Aaron's three other sons.

44 See Num. 3:10-13. Remarkably, in this regard, m. Zevahim 14:4 teaches that the day of the tabernacle's inauguration was the day that the priests formally assumed the functions previously reserved for the nation's firstborns.

firstborns barely evaded a year prior would not materialize now, as they took steps to draw God closer into their community.

Under the weight of such loss, the survivors of Nadab and Abihu might rightly have been excused had they sought to withdraw from their priestly functions. Indeed, that is exactly the impulse exercised by the boys' father, Aaron, and their brothers, Elazar and Ithamar, in the immediate aftermath of their deaths:

> Moses spoke to Aaron and to his remaining sons, Eleazar and Ithamar: Take the grain offering that is left from the Lord's offerings by fire, and eat it unleavened beside the altar, for it is most holy… Then Moses made inquiry about the goat of the sin offering, and—it had already been burned! He was angry with Eleazar and Ithamar, Aaron's remaining sons, and said, "Why did you not eat the sin offering in the sacred area? For it is most holy, and God has given it to you that you may remove the guilt of the congregation, to make atonement on their behalf before the Lord. Its blood was not brought into the inner part of the sanctuary. You should certainly have eaten it in the sanctuary, as I commanded." And Aaron spoke to Moses, "See, today they offered their sin offering and their burnt offering before the Lord; and yet such things as these have befallen me! If I had eaten the sin offering today, would it have been agreeable to the Lord?" And when Moses heard that, he agreed.[45]

Aaron and his sons react to the deaths of Nadab and Abihu by stepping back from the ritual service. When reprimanded by Moses for their failure to partake in the ritual offering, Aaron responds, quite justifiably, that he cannot possibly continue to lead God's worship on the very day that his sons were taken from him. This is the natural response that we might expect from anybody in Aaron's position. It proves agreeable to Moses presumably for that reason—and that, we typically assume, is how the story ends.[46]

45 Lev. 10:12-20.

46 Since antiquity, biblical scholars have been fascinated by the biblical stories in which Moses is presented with a legal question or challenge for which he does not know the correct ruling. Traditionally, this list includes the account of the blasphemer, in Lev. 24; the Second Passover, in Num. 9; the man who collected wood on Shabbat, in Num. 15; and the petition by Zelophehad's daughters to inherit land, in Num. 27. See, e.g., Targum Yonatan, Lev. 24:12; Philo. "On the Life of Moses." *On Abraham. On Joseph. On Moses.* Translated by F. H. Colson. Harvard University Press, 1929; Simeon Chavel. *Oracular Law and Priestly Historiography in the Torah*. Tübingen: Mohr Siebeck, 2014. Yet the first instance wherein Moses apparently misinterprets the applicable law—at least initially—occurs immediately following the deaths of Nadab and Abihu. See Lev. 10:16-20. Of course, according to our analysis, this story is directly connected to the story of the Second Passover.

Except, of course, that the story does not end in Leviticus 10. It ends, our analysis suggests, in Numbers 9. For aside from Aaron, Elazar, and Ithamar, there are two other Levites who appear to respond to the tragedy of the tabernacle's inauguration. Those relatives are Mishael and Elzaphan. They, too, confront Moses in the aftermath of this tragedy, it seems. They, too, allude to the recent deaths of their kinsmen. They, too, insist that the ritual order cannot proceed as usual. They, too, propose religious innovations as a result. Yet unlike those who precede them, Mishael and Elzaphan do not seek permission to *abstain* from God's worship. In fact, they demand just the opposite: permission to *participate*.

The Enduring Meaning of the Second Passover

In the end, then, the story of the "second Passover"—or rather, its untold backstory, as pieced together in the wake of R. Akiva—offers one of the Torah's most profound models for responding to tragedy from a religious perspective.

For the night of Passover in Egypt constituted perhaps the most explicit example of overt providence in Israel's history. It was to be memorialized, for generations, as the "night of safeguarding"[47]—the night on which God miraculously rescued Israel from slavery.

Yet celebrating this night for posterity is sometimes easier said than done. It is not on every night, after all, that divine deliverance is so easily discernable. It is not on every night that God so clearly spares us from the dangers threatening to do us harm. Sometimes, in fact, God seems to let us down—to turn against us even—*even* as we are engaged in efforts to draw closer to Him.

Such was the tragedy of Nadab and Abihu. It was a tragedy which caused the entire nation to reconsider how, under such circumstances, its collective relationship with God could continue. How, indeed, does a people celebrate God's sparing of their firstborns, right after He has claimed the lives of the most prominent of those firstborns?

Here, on R. Akiva's reading, Mishael and Elzaphan may offer us an enduring model. Perhaps we cannot, under conditions like theirs, worship in the ordinary fashion. With the pain of loss so fresh, with the impurity of death so raw, we may simply be unable to relate to God as a source of strength and comfort in the way we would ideally hope to. Yet the pain of present suffering does not preclude the possibility of future redemption. Mishael and Elzaphan understood this. They recognized that while they

47 Exod. 12:42.

were in no state to serve God on that particular Passover, this did not mean that they would never be able to do so again at some future point; that, in a month hence, they would not be ready to relate to God once again as the source of hope and salvation.

Hence, God offered them another chance: He offered them the Second Passover. And they, as it were, offered another chance to Him. By petitioning for this Second Passover, Mishael and Elzaphan taught their nation that even though God may not rescue them from every difficulty or danger in a manner as direct, manifest, or immediate as He did in Egypt, they must always preserve faith in His promise for the brighter future that ultimately awaits.

[1]

Shalom Carmy

Recovering the Land: Nehemiah 9 and Ramban

Our discussion will focus on two issues. The first has to do with Ramban's resolution to a question about the interpretation of Genesis 12-17, specifically the progression from chapter 15 to chapter 17. In the section of *Lekh lekha* (Gen. 12-17) God promises the land of Canaan to Abraham four times. Why the seeming repetition? What does each iteration of the promise add to the previous ones? Ramban responds to this question in his commentary to Genesis 15:14.[1] We shall be concerned with the third and fourth promises in Genesis 15 and 17, respectively.

The second subject is some noteworthy features of the prayer of the Levites in Nehemiah 9. To begin with, the phraseology of the rehearsal of the patriarchal period in this prayer seems more indebted to Genesis 15 (the *berit ben ha-betarim*) than to Genesis 17. In terms of content, one would have expected a post-exilic survey of Jewish history to stress the exile itself and the return to the land. Why does Nehemiah 9 omit such reference?

I suggest that one resolution to the questions raised by this prayer might fit well with Ramban's statements in Genesis. Let me make it clear at the outset that our question about Ramban is distinct from the analysis of Nehemiah. In other words, one may follow Ramban's approach and endorse my elaboration on it without tying it to my proposal about Nehemiah 9 and without holding that Ramban even thought about the prayer when he discussed Genesis 15 and 17. Likewise one may endorse much of what we say about Nehemiah, and much of what is proposed about the relationship of Nehemiah to Genesis 15, without adopting Ramban's view about the contrast between Genesis 15 and 17.

I

Let us examine our first theme: Ramban's discussion of the promises in Genesis 12, 13, 15 and 17. According to Ramban, the first two promises (in chapters 12 and 13)

1 See Ramban on Genesis 15:18. Note also commentary on 15:7, where Ramban explains that although God had intended to give Abraham the land from the moment he left Ur, Abraham asked for assurance that sin would not cause the promise to be revoked for him or his descendants.

differ in terms of the geographical extent of the land. Genesis 12:7 ("to your seed I will give this land") refers only to the areas Abraham had visited. Genesis 13:14 ("lift your eyes, north and south and east and west") includes the entire land of Israel. God also promises the land to Abraham's descendants who will be many.

The promises in chapters 15 and 17 are more nuanced and require more attention. What is new in chapter 15 ("the covenant of the parts," *berit ben ha-betarim*) is the borders of the land, the list of ten nations occupying the land before Abraham's seed and the covenant. The covenant ensures that the promise will not be annulled by the sin of Abraham's children. The key phrase in chapter 17 ("the covenant of circumcision"), according to Ramban, is *ahuzat olam*, an everlasting commitment. It denotes that even if Israel is exiled from the land they will yet return and recover it.

Our present goal, in this section, is to present Ramban's explicit and implicit support for his view about chapters 15 and 17 and to add other evidence from Genesis that he could have offered.

From the standpoint of content, the difference between the promise of chapter 15 and that of chapter 17, as parsed by Ramban is subtle. The promise of 15 is irrevocable, not vulnerable to the impact of sin. Nonetheless, an irrevocable promise can be forfeited. An employer, for example, may promise his protégé a position, and commit himself to stick to the offer regardless of what happens in the interim. Yet if the employee is subsequently terminated for whatever reason, especially for failure to meet requisite standards, the employer, having discharged his original commitment, is not bound to hire him back later. Renewed employment would require renewed commitment. According to Ramban, God makes both promises to Abraham and at two separate times.

This need for the additional promise of return to the land of Israel implies that the divine commitment to Abraham already includes the prospect of exile after Israel has inherited the land. Later the Torah anticipates the exile explicitly in Deuteronomy 4 and 28. When Ramban applies his principle of *maaseh avot siman la-banim* with respect of Isaac's wells (Gen. 26) and Jacob's encounter with Esau (Gen. 32) he alludes to the future after the exile.[2] The fact that the Torah introduces in Genesis (according to Ramban on 15:14) not only the sojourn of Abraham's offspring before they conquer the land but also the idea of subsequent exile and return, is significant. Yet we should also remember that even for Ramban the references to later exile from the land in Genesis, unlike Moses' speeches in Deuteronomy, are not in the foreground; they become visible only in the light of exegesis.

2 One may argue that Ramban's use of this typological principle is homiletical, but I believe Ramban invokes it to solve *peshat* problems in the text, such as why the Torah recounts certain incidents at length.

How did Ramban derive his distinction from the text of chapters 15 and 17? He states or hints at three pieces of evidence. First, as we have seen, the phrase *ahuzat olam* in chapter 17 implies permanence beyond what is given in chapter 15. Second, Ramban, in his summary of chapter 15, refers to the ten nations preceding Israel in the land. This list is pertinent if the chapter is about the first inheritance of the land as fulfillment of God's irrevocable promise. The catalogue of nations is absent from chapter 17. If the promise attached to the covenant of circumcision applies later, after Israel has forfeited the original promise and gone into exile, then the identity of the inhabitants at the time of Abraham or Joshua is no longer part of the promise. Third, Ramban is aware of a grammatical change from chapter 15 to chapter 17. The grant of the land to Abraham in the former, is stated in the past tense (*natatti*), as something already achieved. The promise in chapter 17 utilizes the future tense (*ve-natatti*) which is appropriate if the promise refers to a later situation, after the people are exiled.

One might consider another possible philological ground for Ramban's conclusion. Chapter 15 speaks about "cutting the covenant" (*karat berit*) while in chapter 17 God "gives" His covenant (*natan*). Is there a difference between cutting the covenant, on the one hand, and "giving a covenant" or "establishing a covenant" (*hekim berit*) on the other hand? One might hesitantly suggest that "cutting" the covenant refers to the first inauguration of the covenant, and that "giving" a covenant means confirming or expanding commitments already initiated.

II

As noted, Ramban does not mention the prayer of the Levites (Nehemiah 9). This prayer reviews the history of Israel from the election of Abraham, through the exile in Egypt, the redemption from Egypt, the giving of the Torah at Sinai, the incident of the golden calf. He goes on to mention God's sustenance of the people in the desert, the vanquishing of Israel's enemies Sihon and Og before entering the land, the great increase in their numbers "like the stars of heaven," the conquest of the land and the long history of disobedience afterwards. They then lament the present situation, with the people deservedly subjected to the yoke of foreign rule.

Let us reflect on some of the references to Abraham in this prayer. One detail mentioned here that appears in Genesis 17 but not in chapter 15, is the change of name from Abram to Abraham.[3] Otherwise, the parallels between Nehemiah and

3 This essay discusses only parallels between Nehemiah 9 and Genesis 15 that are germane to our subject. Scholars have compiled longer lists. See, for example, Mark Boda, *Praying the Tradition: The Origin and Use of Tradition in Nehemiah* 9 (Berlin, 1999), 101-114.

Genesis all allude to chapter 15. God took Abraham from Ur Kasdim in Gen. 15 and in Nehemiah 9; this detail does not come up in Gen 17. When the Levites speak of God's covenant with Abraham, they use the verb *karat* that is found in Gen 15, not the alternative verb *natan* from Gen 17. Gen 15 and Nehemiah 9 compare the number of Abraham's offspring to the stars of heaven; this figure of speech is absent from Gen 17. Most interesting, Gen 15 and the prayer in Nehemiah 9 list the various nations that Abraham's descendants will supplant; Gen 17 omits the list. Yonatan Grossman found additional elements of chapter 15 in Nehemiah, which we discuss later. For now, one may guardedly submit that this prayer echoes Gen 15, not Gen 17.

If one accepts Ramban's explanation of the difference between the promise to Abraham in chapter 15 and that of chapter 17, the implicit conclusion is that Levites' prayer goes back to God's assurance at the *berit ben ha-betarim* that the promise to Abraham's seed is irrevocable rather than to the assurance in Gen 17 that Israel will return to the land even if they forfeit the original grant of *Eretz Yisrael*. There is no evidence that Ramban thought about the echo of Gen. 15 in Nehemiah, but readers who would adopt Ramban's position may seek support in it.

Offhand, however, this point presents a minor difficulty for Ramban. The situation of the Jewish people in Ezra-Nehemiah seems closer to that which Ramban identified with Gen 17 than that of Gen 15. A millennium has passed since God spoke to Abraham and many centuries since Israel first inhabited Canaan in Joshua's days. One would think that the people in Nehemiah 9 are enacting Ramban's comments on Gen 17, the eventuality that the people will lose the land of Israel and need reassurance that God will bring them back. If Ramban is right, one might expect Nehemiah 9 to be linked to Genesis 17 rather than 15.

This difficulty, however, leads to another difficulty in Nehemiah that is independent of our discussion of Ramban. There is a striking omission in Nehemiah 9. Although this prayer takes place after the return from exile, the words, which speak bluntly of the sins that led to Israel's current subjugation to foreign powers, make no reference to the exile from which they have returned. That part of the history which ought to have been most conspicuous has been left out. As readers of Nehemiah, we may not feel compelled to respond to every difficulty regarding the approach Ramban developed elsewhere. However, we cannot easily dismiss or marginalize a problem that goes to the heart of the prayer. If we understood why exile is omitted from Nehemiah 9 this might also explain why the prayer chose to quote Gen 15 rather than Gen 17.

Let me develop a line of thought regarding the silence in Nehemiah. It requires us to consider how the return of the exiles is treated elsewhere in Tanakh. For some of the prophets, most notably Isaiah 43:5ff: "I shall bring your children from the east and

gather them from the west," the ingathering of the exiles is of the utmost significance.[4] The return plays a leading role in these prophecies of consolation; it is the cause of astonishment and jubilation. Similarly, Ezekiel 11:17-18 insists that the exiles in Babylon will be re-established and flourish in their land. Ezekiel's prophecy explicitly rebuts the notions he cites in the preceding verses (15-16) where those who remained in Jerusalem are said to believe that they alone would inherit the land and that the exiles have lost their place. Again, after word reaches Tel-Aviv of the destruction, the prophet rebukes the inhabitants of the ruins who compare themselves to Abraham, who was solitary yet inherited the land (33:24). Ezekiel tells them that the land will be desolate because of their sins (33:25-29).

The post-exilic prophets of the return to Israel, Zachariah, who prophesied shortly after the fall of Babylon, and his contemporaries and near-contemporaries Haggai and Malachi, do not devote space to celebrating the return of the exiles, though Zachariah 2:11 calls upon the Jews to "flee Babylon and abandon the Chaldeans." The reader who is not aware of the exile from other sources, would know from Zachariah and Haggai, that the Temple is to be rebuilt and that the political standing of the Israelites is in flux, but not that *kibbutz galuyot*, the ingathering of exiles, is at the center. Bearing this in mind, the omission of the exiles from the Levites' prayer sometime after Zachariah is not as exceptional as it first appears. Moreover, Ezra's confession, contemporary with Nehemiah (Ezra 9) also describes the community's present subjugation to foreign nations due to their sin without referring to the history of exile and return. Hence the lack of attention to exile in the Second Temple prophets and in Ezra and Nehemiah is not as unusual as it might seem.

Why this change? We can now offer three explanations. One is chronological and geographic. For the populace exiled in Babylon at the time when the Babylonian empire was overthrown, the prospect of return to the land of Israel was of paramount importance. For that reason, the prophets who spoke about that generation (Isaiah, Ezekiel, Zachariah) and were concerned with that group of exiles had much to say about their return to their homeland. The main preoccupations of Zachariah and his cohorts were connected to the situation in Jerusalem. Once we reach Ezra and Nehemiah the preoccupation with internal Judean problems is even greater. Therefore, the novelty and impressiveness of return after having forfeited the land fades from view in Ezra's prayer.

4 See also Isaiah 11:11ff on the return from Assyria and Egypt and other areas in Mesopotamia and Africa, and 27:12-13, which refers to ingathering from the Euphrates to the Nile.

A second approach is formulated by Judith Newman. In her opinion, the prayer wishes to establish Israel's inalienable right to the land. She then argues: "How better to establish such a claim than to mitigate the aspect of the Exile having to do with the loss of the land as a punishment."[5] In other words, the prayer confesses that the people suffered great punishment for their sins but does not mention the Exile among the punishments.

I would like to propose another explanation. Like Newman, I believe the omission of the Exile is intended to fortify the claim to the irrevocable grant of the land. I would, however, concentrate on different implications of Nehemiah 9's focus on the narrative of God's promise to Abraham and the first conquest of the land to the exclusion of the return from exile. Let us go back to the time of destruction and exile to Babylon. Jeremiah 24 ("the parable of the figs") expresses a clear divine preference for the exile community over those remaining in the land. The "good figs," the Judeans whom God exiled to the land of the Chaldeans, He will recognize favorably and they "will be restored to this land" (24:5-6). As already noted, Ezekiel reports that the remaining inhabitants of the land of Israel deprecated the exiles. We see that the exiles were beleaguered by serious doubts about their future as part of Israel. Were they still God's people, having been expelled from His land? After the first exile of 597, which brought Ezekiel and many of his leading compatriots to Babylonia, those who remained in Jerusalem thought of themselves as the chosen inheritors of the land. They said of the exiles "they are distanced from God; to us the land has been given as inheritance" (11:15). After the destruction of 586 the remnant continued to consider themselves, and not the exiled Judeans, the true heirs of Abraham: "For Abraham was one, and we are many; the land has been granted to us" (33:24). It is as if the Jerusalemites whom Ezekiel castigates were preemptively rejecting Ramban's remarks about reacquiring the land after having lost it, while retaining their possession insomuch as they had not been transported elsewhere. One of Ezekiel's tasks, strongly proclaimed in chapter 20 (32ff) is to assure the exiles that they could not disengage themselves from the divine covenant, that God would rule over them whether they wished it or not and that He would restore them to the land despite their transgressions. In this context one might say that the teaching about the future ingathering of the exiles was not only a message of consolation but a theological revolution. No wonder that the idea is not only present in books like Ezekiel but conspicuously so.

Babylon fell. Return to Eretz Yisrael became viable; some but not all the Babylonian exiles took advantage of the opportunity. What, or rather, who awaited

5 Judith H. Newman, *Prayer in Second Temple Judaism* (Atlanta, 1999), 99-100.

them when they returned? From Ezra-Nehemiah we know that many of the natives did not welcome the restoration; they complained to the Persian regime and resisted the rebuilding of the Temple by the returnees and Nehemiah's efforts to strengthen Jerusalem. We do not hear anything about the "regular" Judeans who happened to remain in the land after the various exiles. These people would be the descendants, in effect, of those who had claimed superiority over the exiles of 597 and 586.

It is plausible to think that the Levites in Nehemiah, painfully aware of local opposition, would not want to keep alive the century-old tensions between the exiles and those Judeans who remained in the land. They would not have wanted to remind their community that there had once been a dispute about the identity of Abraham's "true" heirs. For that reason alone, they might have chosen to treat their present subjugation to foreign rule as a direct continuation of the misfortunes and punishments from before the exile. In remaining silent about the story of exile and return, the prayer in Nehemiah 9 is like the contemporary prayer of Ezra (Ezra 9) which also describes subjugation to foreign rulers without discussing the exile. Both prayers differ from the confession of Daniel (Daniel 9:7) which speaks clearly about God having driven away his people for their sins.

Our suggestion would explain the silence of Nehemiah 9, about the exile. Secondly, if we wish to work with Ramban's view on the difference between Gen 15 and Gen 17, our suggestion yields an explanation of the fact that the prayer alludes to the former rather than the latter. Lastly, our understanding of Nehemiah provides one more piece of evidence consonant with Ramban's approach, although it was not cited by him.

III

Let us examine one additional point regarding Genesis 15 and 17 and another respecting Nehemiah 9 that have come up in recent scholarship which are germane to our subject.

Yonatan Grossman assembled several parallels between Genesis 15 and Nehemiah 9.[6] Our analysis until now was based entirely on the promises found in the second half of the chapter—the enactment of the "covenant of the parts" (*berit ben ha-betarim*) and the accompanying divine promises. Grossman's primary interest is in the opening verses. The Levites's reference to God having taken Abraham from Ur Kasdim is based on God's statement (Genesis 15:7) to that effect. When the Levites say that "You found his heart faithful before you," their source is Genesis 15:6: "He trusted in God,

6 *Avraham*: *Sippur shel Massa'* (Tel Aviv, 2014), 110.

and He deemed it righteousness (*tsedaka*)." And when the Levites affirm that God sustained His word "for You are righteous" (*tsaddik atta*) they are relying on the same verse.[7]

I am not sure that linking the two parts of chapter 15 together is the only way to read the chapter. The opening verses seem dedicated to Abraham's concern about an heir, while the latter part of the chapter is about inheriting the land. In fact, when Grossman advocates the unity of these two themes, he appeals to Nehemiah 9 as "the first source that relates to Genesis 15 as one unit."

Adopting Grossman's view regarding the unity of Genesis 15 would mesh well with the approach we have developed. If the prayer of the Levites is connected to the belief that the grant of the land is irrevocable, then recalling that Abraham merited the promise strengthens that conviction. God's promise is assured because Abraham deserved it. Even if one does not follow Grossman on the unity of Genesis 15, one may still endorse this insight given the faithfulness ascribed to Abraham in Nehemiah 9.

Gili Kugler has recently written about the crises recorded in Tanakh where God threatened the destruction of the Jewish people: the incidents of the Golden Calf (Exodus 32-34) and the spies (Numbers 13-14).[8] The Torah highlights Moses' intercession with God to prevent the annihilation. Kugler examines versions of these narratives elsewhere in Tanakh.[9] She notes that in the rehearsal of Israel's sinful history in Nehemiah 9, there is no reference to the danger of annihilation. The reason for this omission, she proposes, is that the Levites prefer not to confront the real prospect of such punishment. This piece of evidence is hospitable to the view we are proposing, namely that the omission of exile in the prayer in Nehemiah seeks to secure faith in a permanent right to the land that is not endangered by sin.[10]

7 Is the righteousness in 15:6 imputed to God, as Ramban held, or to Abraham, like Rashi? I am not sure whether it is plausible to follow Grossman in adopting both readings. I will return to this question below.

8 Gili Kugler, *When God Wanted to Destroy the Chosen People* (Berlin/Boston, 2019).

9 On Nehemiah 9, see 125-144 and her previous article "Present Affliction Reflects the Representation of the Past: An Alternative Dating of the Levites' Prayer in Nehemiah 9" (*VT* 63 605-626).

10 Kugler, following a line of scholarship going back to the early 20th century, juggles the date of Nehemiah 9 to explain the lack of reference to the exile. According to our approach there is no need to re-date the prayer. As indicated above, both Ezra 9 and Nehemiah 9 avoid explicit mention of the exile. Nor is there a contradiction between Ezra 9's benign view of the Persian monarchy and Nehemiah 9; both texts bemoan subjugation to foreign power.

IV

We began with Ramban's attempt to differentiate between the promise in Genesis 15 and that in Genesis 17. When we then moved to Nehemiah 9, our focus shifted from the contrast between the two promises in Genesis to the employment of Genesis 15 in Nehemiah. Returning to the passage in Ramban's commentary it remains to wonder: On Ramban's interpretation, why was the assurance that Abraham's children would receive the land, not subject to withdrawal of the promise due to sin, linked to the *berit ben ha-betarim*, whereas the assurance that his descendants would be able to re-inherit the land, despite sin, was tied to *berit mila*?

Grossman's approach to Genesis 15 would explain why Genesis 15 takes priority over Genesis 17. That is because Grossman treats the two parts of Genesis 15 as one unit, in addition to his claim that Genesis 15:6 ("And God considered [Abraham's faith] to be righteousness") testifies to the patriarch's merit. Linking the promise of the land to Abraham's merit increases the conviction that Israel has "earned" possession of the land and that reinforces the inalienable nature of the promise. Genesis 17 does not contain the affirmation of Abraham's prior merit and thus does not provide such reinforcement.

Grossman's approach does not fit well with Ramban's own view. According to Ramban, Genesis 15:6 is not about merit that God imputed to Abraham but about Abraham's gratefulness to God. According to Ramban, God's finding Abraham faithful before Him is not an allusion to Genesis 15. Is there an alternative approach to Ramban that explains why the covenant promising the land to Abraham in Genesis 15 would not be sufficient to guarantee the perpetuation of the covenant after Israel had forfeited it, therefore necessitating the covenant of Genesis 17?

Perhaps one could respond that the demands made by the two covenants are different. Gen 15 imposes exile and suffering; Gen 17 demands the painful act of circumcision. The exile and suffering that God ordains during the formative period of the nation do not require actions of religious commitment on the part of the people. The Torah does not ascribe to the people acts of merit that make them worthy of being redeemed. Their role is to suffer and to endure. In Gen 17, by contrast, keeping the covenant entails the children of Abraham, Isaac and Jacob taking upon themselves the divine commandment to circumcise. The initial covenant, promising the land to Abraham's posterity, is fulfilled by God, with the people experiencing a passive role. The second covenant, which for Ramban represents the recovery of the land after it has been forfeited, requires action on the part of the people.[11]

11 Thanks to R. Hayyim Angel for comments on first draft. Thanks to Joshua Fitterman who commented on an earlier oral version.

[1]

Lisa Fredman

The Motif of Enticement to Christianity in Rashi's Commentary to Proverbs[1]

The presence of anti-Christian polemic is a known phenomenon in Rashi's commentary to the Bible. Rashi utilized his commentary as a vehicle to strengthen the faith of the Jewish people through the refutation of basic Christian beliefs connected to the Old Testament. Scholars debate the amount of anti-Christian polemic found in his commentary; Baer was the first to investigate this phenomenon and believed that it was the primary factor in Rashi's decision to compose his commentary.[2] Rosenthal takes a more moderate position and enumerates many interpretations in which Rashi speaks up against Christological interpretations, but he is not prepared to assert that an anti-Christian bias was the sole thrust of Rashi's exegesis as a whole.[3] Most Rashi scholars, including Touitou, Kamin, and Grossman have followed in Rosenthal's footsteps.[4]

More recently, Shaye Cohen has drawn a distinction between Rashi's Torah commentary and his commentary to some books of the Later Prophets and Hagiographa.[5] He demonstrates that whereas the former does not respond to

1 I would like to thank Professor Jordan Penkower for reviewing this paper and offering valuable comments and suggestions.

2 Yitzhak F. Baer, "Rashi and the World around Him," *Binah*: *Studies in Jewish History, Thought and Culture* 3 (1994) 101–117. (Translated from the Hebrew: *Sefer Rashi*, ed. Y. I. Ha-kohen Maimon; Mosad ha-rav Kuk, 1956.)

3 Yehuda Rosenthal, "Anti-Christian Polemic in the Biblical Commentaries of Rashi," *Mehkarim u-Mekorot*, vol. 1 (Hebrew;R. Mass, 1967), 116.

4 Elazar Touitou, "Rash's Commentary on Genesis 1–6 in the Context of Judeo-Christian Controversy," *Hebrew Union College Annual* 61 (1990): 81-159; Sarah Kamin, "Rashi's Commentary on the Song of Songs and Jewish-Christian Polemic," in *Jews and Christians Interpret the Bible* (Hebrew; Magnes, 20082), 22–57; Avraham Grossman, *Rashi* (Littman Library, 2012), 10–11.

5 Shaye J. D. Cohen, "Does Rashi's Torah Commentary Respond to Christianity? A comparison of Rashi with Rashbam and Bekhor Shor," *The Idea of Biblical Interpretation—Essays in Honor of James Kugel*, ed. H. Najman and J. Newman (Brill, 2004), 72–449.

Christianity, the latter does.[6] Not all agree with this distinction; those that differ detect anti-Christian polemic in Rashi's Torah commentary as well.[7]

Yet regarding Rashi's commentary to Proverbs (hereafter RPC), there is scholarly consensus that it contains anti-Christian polemic. Baer was the first to note its existence in passing, Rosenthal investigated this phenomenon, and Grossman noted additional examples and explanations. [8] Rashi's Proverbs commentary contains more than fifty-five polemical comments directed against Christianity. In these glosses, Rashi emphasizes the enticement of the Jews, the embezzlement of Jewish money, and the willingness of the Jewish people to forfeit their lives for the sake of God.[9] This article will focus specifically upon the theme of Christian enticement because it is the primary polemical theme of Rashi's commentary to this book; it is mentioned more than fifteen times. We will take a closer look at these glosses with the goal of trying to better understand the identity of these enticers and the content of their seduction and to gauge their impact upon the Jewish community in northern France in the eleventh century.[10]

6 This distinction primarily rests upon the degree to which Rashi's commentary interfaces with Christian exegesis and truth claims, although elsewhere in his article Cohen expands the definition to include interfacing with Christianity: "Christianity, Christian exegesis, or Christian truth claims." See Cohen, "Does Rashi's Commentary Respond to Christianity?" 460–61, 467, 472.

7 Devorah Schoenfeld, *Isaac on Jewish and Christian Altars* (Fordham University Press, 2013), 26; Touitou, "Rash's Commentary on Genesis," 159–81.

8 Baer, "Rashi and the World," 109; Rosenthal, "Anti–Christian Polemic," 106-7 ; Avraham Grossman, *Rashi ve-ha-pulmus Yehudi-Notzri*, (Hebrew; Bar-Ilan University Press, 2021), 114–20, 276–81; Avraham Grossman, "*Nusah perush Rashi la-Nakh ve-ha-pulmus Yehudi-Notzri*" (Hebrew), *Sinai* 137 (2005): 47–58;Avraham Grossman, "The Tension between *Torah* and *Hokhmah* (Wisdom) in Rashi's Commentary to the Bible," in *Teshurah le-'Amos*: *Collected Studies in Biblical Exegesis Presented to Amos Hakham*, (Hebrew; Tevunot Press, 2007), 13–28; Avraham Grossman, "Rashi's Rejection of Philosophy: Divine and Human Wisdoms Juxtaposed," in *Simon Dubnow Institute Yearbook* 8 (Stuttgart:Deutsche Verlags-Anstalt, 2009), 95–118.

9 Some of these glosses are analyzed in *Rashi's Commentary on the Book of Proverbs*, ed. L. Fredman (Hebrew; World Union of Jewish Studies, 2019), 51–64; Grossman, "*Nusah perush Rashi la-Nakh*," 55–47.

10 The version of Rashi's commentary utilized to detect anti-Christian polemic will be: Fredman, *Rashi on Proverbs*; see preceding note.

A. Terms indicating enticement in Rashi's Proverbs commentary

Rashi uses a variety of terms to describe enticement to Christianity. At times these words are of a general nature, and it is therefore difficult to pinpoint the type of enticement referred to, but in other cases Rashi utilizes more specific terms in his gloss or in the wider context of the gloss to help clarify the nature of persuasion. Below the terms are listed, ordered from the less specific to the more precise. We will explore each term individually and then view them as a collective.

1. The root *sut*/סות

The Hebrew root *sut*/סות appears sixteen times in Rashi's commentary to this book.[11] Traditional biblical dictionaries translate the root *sut* as "to incite," "to allure," or "to entice."[12] However, in modern usage, the verb "to incite"—in contrast to the verb "entice," which connotes persuading or alluring by arousing hope and desire[13]—sometimes connotes prompting to action, encouraging someone to riot.[14] In light of this distinction, we will henceforth translate the root *sut* as "to entice, persuade, allure, or seduce" in the body of this essay, but will preserve the language of "to incite" when found in the existing English translations of Rashi's commentary.

Because the root *sut* is of a general nature, in the following gloss to Proverbs 11:9 the identification of the enticer is difficult to pinpoint:

> **With his mouth, the flatterer**—the flatterer, who entices/*mesit* his friend on an evil way, destroys him with his mouth.[15]

11 *Hasatah* 1: 22 (twice), 2: 12, 6:13, 7:10, 9:7, 10:10, 11:9, 15, 14:15 (twice), 17:12, 20:19, 26:4–5, 19:23.

12 Ludwig Koehler and Walter Baumgartner, *Hebrew and Aramaic Lexicon of the Old Testament*, vol. 2 (Brill, 1995), 749, s.v. ,1 סות "to mislead, incite"; s.v. 2 סות, "to entice away"; Francis Brown, S. R. Driver, and Charles Briggs, *Hebrew and English Lexicon of the Old Testament*, (Clarendon Press, 19728), 694, s.v. ,סות "to incite, allure, instigate."

13 *The Random House Dictionary of the English Language*, ed. J. Stein (Random House, 19839), 476.

14 *The Random House Dictionary*, 720.

15 English translations of the biblical text are taken from the *New Jewish Publication Society of America Tanakh* (Jewish Publication Society, 20032). The English translation of Rashi's commentary is based primarily upon the Judaica Press translation, *Proverbs: A New English Translation*, trans. and notes A. J. Rosenberg (Judaica Press, 1993). At times, changes have been made to this translation to match the English to the wording in Fredman, *Rashi on Proverbs*, and to match the lemmas of the glosses with the New Jewish Publication Society's translation of the Proverbs text.

Yet, in the other cases (fifteen in number), the proximity of the term to other, more specific language and the use of similar imagery in other glosses help us connect the enticement to Christianity.

2. The root *sut*/סות and *halaklak*/חלקלק

Rashi's commentary to Proverbs 26:23 reads:

> So are **burning lips**—which pursue people to entice them/*lehasitam* with smooth and hypocritical talk/*be-halaklakot*.

Rashi often uses the term *be-halaklakot* found at the end of the gloss to refer to the smooth speech of Esau and his descendants.[16] As will be seen below (section A 5), Esau and his progeny are identified with Christianity in Rashi's Bible commentary. Hence, the term *be-halaklakot* can hint to the identity of the enticer, one promoting Christianity.

3. The juxtaposition of the roots *sut*/סות and *pth*/פתה

The pairing of the roots *sut*/סות and *pth*/פתה (entice)[17] occurs twice in RPC, such as in the following gloss:[18]

> **Is one** [**who cheats his fellow**]—an inciter/*mesit* who tempts/*ha-mipateh* his friend from ways of life to ways of death, and when his friend realizes that he is misleading him, he says, "I am joking."

Although both roots are of a general nature, the juxtaposition of the two signals Christian enticement, as already noted by Rosenthal with regard to Rashi's commentary to Song of Songs.[19]

4. The root *sut*/סות and mention of idolatry

Although, due to technical reasons, Rashi did not halachically deem the Christians of his time as idolaters, he still classified Christianity as idol worship and designated

16 See Rashi to Ps. 5: 10; Dan. 8:24, 11:32.

17 Koehler and Baumgartner, *HALOT*, vol. 3 (Brill, 1996), 984–85, s.v. I פתה , "to persuade, entice"; Brown, Driver, and Briggs, *Hebrew and English Lexicon of the Old Testament*, 834, s.v. פתה, "to persuade, entice, deceive."

18 See Rashi to 26:19.

19 Rosenthal, "Anti-Christian Polemic," 107.

it with the appellation *avoda zara*.[20] Six times the root *sut* is joined with the term idolatry; in four of the cases, other terms designating Christianity are mentioned as well,[21] but in the two remaining cases, only these two terms are present, such as in the following example.[22]

Proverbs 26:4 and 5 contradict one another. Verse 4 warns the reader not to answer a fool according to his foolishness, whereas verse 5 states the opposite: Answer the fool! Rashi reconciles the contradiction in the following way:

> **Do not answer a fool**—with words of quarrel and contention lest you become like him. **Answer a fool**—who comes to incite you to idolatry/*le-hasitkha le-avodah zarah*; let him know his folly, **else he will think himself wise**. The meaning of these two verses is explained in [the verses] themselves: **Do not answer**—in a matter in which you will become like him if you answer him. **Answer a fool**—in a matter in which if you do not answer him, **he will think himself wise**.

Each verse is identified with a different type of quarrel. The former describes a foolish argument conducted in a quarrelsome tone. To that, the text warns, "Do not answer," because the outcome will be that both parties will be deemed foolish. Whereas the latter, which states: "answer him according to his folly" is referring to a fool enticing another to Christianity. In this case one must respond appropriately and effectively in order that the "fool," the enticer, not see himself as correct. This comment is original to Rashi.

Although the above contradiction was resolved in the Talmud (b. Shabb 30b), Rashi chooses to ignore the resolution posed there equating the first verse: "Do not answer the fool," with one discussing worldly matters, and the subsequent phrase: "Answer the fool," with one speaking words of Torah. Rashi's disregard for this talmudic resolution is surprising in light of the fact that the theme of Torah is the primary motif of Rashi's allegorical commentary to Proverbs. Yet it would seem that his desire to repel the danger of enticement to Christianity takes precedence in his gloss to these verses.

20 Israel Elfenbein, "Rashi in His Responsa," in *Rashi, His Teachings and Personality*, ed. S. Federbush (World Jewish Congress, 1958), 90; *Teshuvot Rashi*, ed. I. Elfenbein (Hebrew; New York, 1942), 337 (no. 327); Rosenthal, "Anti-Christian Polemic," 110; Jacob Katz, *Exclusiveness and Tolerance*: *Studies in Jewish-Gentile Relations in Medieval and Modern Times* (Behrman House, 1961), 24–36.

21 Such as the appellations Esau and *min*, which will be discussed below in paragraphs 5 and 6.

22 See Rashi's gloss to 11:15.

5. The root *sut*/סות and idolatry and Esau

Proverbs 14:10–16 is composed of seven verses that ostensibly have no thematic connection between them. Rashi brings two original explanations to explain the verses in succession. The former expounds the verses as distinguishing between the righteous and the wicked, and the latter distinguishes between Esau and Jacob. The following is Rashi's second explication:

> Another explanation: **The heart alone knows its bitterness**—Israel, who are of embittered heart in exile, for they are killed for the sanctification of the Name **and in its joy**—in the future [no stranger shall mingle]. **The house of the wicked will be demolished**—the house of Esau. **A road may seem right to a man**—The road of idolatry seemed right in the eyes of Esau, "a man of the field" (Gen. 25: 27) **but in the end**, etc. **Even in laughter**—that the Holy One, blessed be He, laughs with them in this world. **Their heart**s will ache in the future.… **An unprincipled man reaps the fruit of his ways**—Esau. **A good man of his deeds**—Jacob. **A simple person believes**—their words and is enticed after them; **a clever man ponders**—and will not be enticed.

Rashi's gloss identifies the generic words "man" and "wicked" with Esau.[23] In rabbinic thought, Esau is viewed not only as the biological son of Isaac and Rebecca but also as the progenitor of the Roman Empire and the Christian church.[24] Rashi adopts this association, and in his Bible commentary Esau becomes synonymous with Christianity.[25]

The above gloss presents a sharp contrast between Jews (Jacob) and Christians (Esau). Presently, the heart of the Jewish people is embittered in exile because they are being killed for the sake of Heaven, in contrast to the Christians, who are laughing with God. Yet, in the future, the tables will be turned: the Jews will be joyful and Christian

23 Similarly, in Rashi's commentary to Psalms; see Avraham Grossman, "Rashi's Commentary on the Psalms and the Jewish-Christian Debate," in *Studies in the Bible and in Education, Jubilee Volume in Honor of Professor Moshe Ahrend*, ed. D. Rappel (Hebrew; Touro College, 1996), 63-67.

24 Gerson D. Cohen, "Esau as Symbol in Early Medieval Thought," in *Jewish Medieval and Renaissance Studies*, ed. A. Altman (Harvard University Press, 1967), 18-48; Grossman, *The Early Sages of France*, 145, 206.

25 Avraham Grossman, "*Pulmus dati ve-megamah hinukhit be-perush Rashi le-Torah*," in *Pirkei Nechama*, 187-205; Avraham Grossman, *Rashi*: *Religious Beliefs and Social Views* (Hebrew; Alon Shevut, 2007), 137-70; Gilad Gevaryahu, "*Nusha'ot Rashi le-Tehillim ve-hatzenzurah*," *Mehkarim be-Mikra u-be-mahshevet Yisrael* 1 (Hebrew; Kiryat Sefer, 1989): 61-248.

hearts will ache. Cognizant of the fleeting nature of the present, the clever man will not be enticed by the words of the Christians, whereas the simple man will be.

The content of this gloss undermines the well-known Christian claim that the lowly state of the Jews in exile proved that the special status of the chosen people had been transferred from the Jews to the Christians due to their rejection of Jesus. The Christian success, so they claimed, was proof of their replacement as the "*Verus Israel*." Rashi's original response is clear: the status quo is only temporary; in the future, the Jews will be joyful and the Christians pained.

6. *Sut*/סות and *Minim*

Five times the word *Minim* appears in conjunction with the term *sut*: four times the enticers are called *ha-Minim ha-mesitim* [26] and once they are called *mesitim ve-Minim*. In Rashi's commentary to the Bible, the term *Minut* primarily refers to Christianity and the term *Minim* to the Christians.[27] In his uncensored gloss to Daniel 12:10, Rashi writes: "for example the heretics/*ha-Minim*, the students of Jesus/*Yeshu*."[28] At times in Rashi's commentary to the Bible, his use of this term is copied straight from talmudic sources, and therefore its appearance in his commentary does not refer to the followers of Jesus but rather other ancient heretics. This is not the case with regard to his Proverbs commentary; here the terms *Minut* and *Minim* appear a total of twelve times and can be identified confidently with Christianity. Six times the use of these terms *Minut* /*Minim* is original to Rashi and therefore it has no talmudic precedent; the remaining six mentions are connected to the motif of the *isha zara*/strange woman.[29] The *isha zara* is identified with *Minut* and specifically the teachings of the disciple of Jesus of Nazareth as seen in the uncensored versions of the Talmud (b. Avoda Zara 17a).

26 *Ha-Minim ha-mesitim*: 2:12, 7:10, 17:12; *ha-Minin ha-mesitim*:6:13.

27 Rosenthal, "Anti-Christian Polemic"105 and n24; Elazar Touitou, "On the Meaning of the Concept *Teshuvat ha-Minim* in the Writings of our French Sages," *Sinai* 99:3–4 (Hebrew; 1986): 48–145; Elazar Touitou, *Exegesis in Perpetual Motion* (Hebrew; Bar-Ilan University Press, 2003), 39 and n26; Cohen, "Rashi's Torah Commentary," 459.

28 See *Daniel, Ezra-Nehemiah* [*Mikra'ot Gedolot "Haketer"*], ed. M. Cohen, (Hebrew; Bar-Ilan University Press, 2019), 84.

29 *Minut* :2:16, 5:3, 6:24, 9:17, 23:28; all mentions are connected to the the *isha zara*. *Minim*: 1:22, 2:12, 6:1, 13, 7:10, 17:12, 18; all mentions are original to Rashi excluding 7:10, which is connected to the *isha zara* theme. See Fredman, "Rashi's Women: Prototypes in Proverbs," *Tradition* 53:2 (2021): 18–23.

Let us look at a number of examples of Rashi's use of the term *ha-Minim ha-mesitim*.[30]

I. *Ha-Minim ha-mesitim*:

Proverbs 6:12–15 describes the ways of an unscrupulous man, Rashi glosses the following:

> **Walks with a crooked mouth**—He walks with crooked lips. **He winks with his eyes**—winks of deceit. **Points with his fingers**—They are all expressions of hinting: one applies to the eye, one to the foot, and one to the finger, but the main idea is that it is speaking of *ha-Minin* who entice/*ha-mesitim* people to idolatry.

Rashi's gloss highlights the fact that Christian enticement is all-encompassing: all organs of the body are mobilized in the effort to persuade the Jew to leave his faith. Connecting the meaning of this verse with Christian enticement is original to Rashi.

The Proverbs text (17:12) states: "May a bereaving bear encounter a person rather than a fool with his folly," and Rashi glosses:

> **May a bereaving bear**—It is better for a person that a bereaving bear encounter him rather than one of the foolish *ha-Minim* who entice/*ha-mesitim* him to idolatry.

Bereshit Rabbati, the midrash ascribed to Rabbi Moshe ha-Darshan (eleventh century), connects our verse with Esau.[31] Although Rashi often quotes from Rabbi Moshe ha-Darshan's writings in his commentary to the Bible, it is unclear whether Rashi is familiar with the specific work entitled *Bereshit Rabbati* and how much of this compendium emanates from Rabbi Moshe ha-Darshan.[32] *Pirkei de-Rabbi Eliezer* also connects the motif of the bereaving bear with Esau but does not mention our verse.[33] Rashi narrows the identification of the bereaving bear specifically to the medieval Christian enticer from the clan of Esau.

What were the *Minim* saying? Why were they deemed so dangerous? Proverbs 2:12 states, "It will save you from the way of evil men, from men who speak duplicity/*tahpukhot*," and Rashi glosses:

30 See Grossman, "Rashi's Rejection of Philosophy," 14-111.

31 *Midraš Berešit Rabbati , ex libro R. Moses ha-Daršan*, ed. Ch. Albek (Hebrew; Mekize Nirdamim, 1940; reprint 1966), *Vayishlah* , 149.

32 See Hananel Mack, *Me-sodo shel Moshe ha-darshan* (Hebrew; Bialik, 2010), 94–188, 39–223.

33 *Pirke de Rabbi Eliezer*, trans. and annotated G. Friedlander (Sepher-Hermon Press; 19814), chapter 37, "Jacob and the Angel," 281.

> **Who speak duplicity**—These are *ha-Minim* who entice/*ha-mesitim* Israel to idolatry and distort/*u-mehapkhim* the Torah to evil.[34]

Rashi linguistically links the actions of the Christian enticers with the biblical text through the use of the root *hpkh*/ הפך (overturn):[35] "men who speak duplicity/ *tahpukhot* " (Prov. 2:12) are the Christian enticers who distort or overturn/*u-mehapkhim* the Torah.

A similar accusation of the Christian distortion of the Torah is found in Rashi's uncensored gloss to the Talmud:

> b. Rosh ha-Shana 17a:*ha-Minim*—the students of Jesus of Nazarene, who distorted/*hapkhu* the words of the living God to evil.[36]

What Christian "distortion of" the Torah "to evil" is intended? Rashi is referring to the bringing of scriptural proofs from the Old Testament by Christian scholars and polemicists to prove the truthfulness of Christian beliefs. Scholars have shown that in the Early Middle Ages, the arguments brought by Christian theologians were repetitive and consisted mostly of the rehashing of arguments from earlier church fathers.[37] Although Rashi's knowledge of Christianity was limited,[38] he was familiar with the technique of twisting the meaning of the Old Testament ("*mehapkhim* the Torah") in order to support Christian doctrine.

II. *Mesitim ve-Minim*

Only once does Rashi utilize the term *mesitim ve-Minim*; this phrase is found in his gloss to the opening chapter of Proverbs (v. 22) and thereby becomes Rashi's introductory comment to the theme of enticement:

> **You simple ones**/petayim—those who are enticed/ *ha-mitpatim* by enticers/ *mesitim* and Christians/*ve-Minim*. **Love simplicity**/peti—enticement/*hasatah*.

34 There is no known source for this gloss.

35 Brown, Driver, and Briggs, *Hebrew and English Lexicon of the Old Testament*, 245, s.v. הפך, "turn; overturn"; Koehler and Baumgartner, *HALOT*, vol. 1 (Brill, 1994), 253: s.v. הפך, "to turn, to overthrow."

36 See Rashi to b. Berakhot 12b, s.v. *Minut*.

37 Bernard Blumenkranz, "The Roman Church and the Jews," in *Essential Papers on Judaism and Christianity in Conflict*, ed. J. Cohen (New York University Press, 1991), 193–230; Amos Funkenstein, "Changes in Christian Anti-Jewish Polemics in the Twelfth Century," in *Perceptions of Jewish History* (University of California Press, 1993), 78–172.

38 Daniel Lasker, "Jewish Knowledge of Christianity in the Twelfth and Thirteenth Centuries," in *Studies in Medieval Jewish Intellectual and Social History*, ed. D. Engel, L. Schiffman, and E. Wolfson (Brill, 2012), 100.

Rashi's gloss states the reason why they are considered "simple ones": because they are enticed by *mesitim ve-Minim*.

Note the conjunction *vav* connecting the nouns *mesitim* and *Minim*; this letter, which is present in all the reliable manuscripts, indicates that it is the accurate version of Rashi's text.[39] What is the meaning of this conjunction? Although in Biblical Hebrew this letter embodies a variety of meanings,[40] and Rashi's Bible glosses often distinguish between them,[41] here the *vav* is found not in the biblical text, but rather in his gloss. What is the relationship between the two nouns connected by this letter?

a. The meaning "and"

At first blush, one would assume that it is a connective *vav*, meaning "and"; two sources of enticement are therefore intended: enticers and Christians. Yet in section A (1-6) above, we have seen that the root *sut* is used almost exclusively to describe enticement to Christianity. Who would be enticing to Christianity barring the Christians (*Minim*) themselves?

Perhaps the former group (*mesitim*) can be identified with Jewish apostates or Jews who are veering toward Christianity. After all, Rashi would not call Jewish apostates *Minim*, because to them he applied the talmudic dictum (b. San 44a): "Even though he sinned, he remains a Jew." Yet throughout his oeuvre, Rashi uses more specific language to refer to wayward Jews, such as: *poshei Yisrael*, *meshumad*, and *mumarim*.[42] This suggestion, therefore, does not seem tenable.

It has been noted regarding his talmudic commentary that Rashi often explicates the difficult word in a passage by juxtaposing two synonyms, connecting them by the letter *vav*. Fraenkel explains that the purpose of the two synonyms is to highlight the shared meaning between them. Because each synonym embodies its own nuance, the exact explanation of the difficult term under discussion can therefore be found at the specific point of overlap between the two.[43] Applying this theory to our gloss, the

39 See Fredman, *Rashi on Proverbs*, 93.

40 Koehler and Baumgartner, *HALOT*, vol. 1, 257-59.

41 Isaac Avinery, *Heikhal Rashi*, vol. 3 (Hebrew; Heikhal Rashi, 1956), 28–120; Esra Shereshevsky, *Rashi*: *The Man and His World* (Sepher-Hermon Press, 1982), 80–81; Chanoch Gamliel, *Linguistics in Rashi's Commentary* (Hebrew; Bialik, 2010), 184–96.

42 *Poshei Yisrael* – Rashi to Ex. 30:34; Isa. 29:9; Ps. 10:15; Songs 2:13, 7:14; *meshumad* – Rashi to II Kings 18:22; Ezek. 44:7; *mumarim* – Rashi to Dan. 11:14.

43 Jonah Fraenkel, *Rashi's Approach in His Commentaries to the Babylonian Talmud* (Hebrew; Magnes, 1974), 96–103.

terminology *mesitim ve-Minim* would signal not two groups but one, whose definition is defined as the point of contact between the two.

A similar type of word pair can be found in Rashi's gloss to Zech. 13:4:

> "**A hairy mantle**—So is the custom of *mesitim ve-medihim*/those who entice and draw away.".

Upon closer examination, we see that whereas the synonyms in the Zechariah gloss are evenly matched ("entice" and "draw away"), ours are less so. The first term, *mesitim*, is a broader category and the latter, *Minim*, more specific; the former is a common noun and the latter a proper one. We would therefore like to propose an alternate meaning.

b. The meaning "that is"

Often Rashi views the conjunction *vav* as "explaining or identifying the word immediately preceding, in the sense of "that is/כלומר."[44] Avinery notes, upon close perusal of Rashi's style, that many instances which have been explicated as *vav* connective really embody the definition of "that is," in particular, when the conjunction *vav* is found in between two verbs or descriptive terms.[45] The meaning of the prefix *vav* in our gloss would be: "Inciters/*mesitim* [that is] *Minim*."

One might query why Rashi veers here from his regular manner of phrasing in his Proverbs commentary, *ha-Minim ha-mesitim*. The answer lies in a close reading of the gloss as an extension of the biblical text:

> **You simple ones**/petayim (1:22)—those who are enticed/*ha-mitpatim* by enticers and Christians/*mesitim ve-Minim*. **Love simplicity**/peti—enticement/*hasatah*.

In his opening comment, Rashi linguistically links the word *petayim*/simple ones to the root *pth*, to be seduced/*ha-mitpatim*; they are simple because they are seduced by seducers/*mesitim ve-Minim*. And similarly, in his closing comment, *peti*/simplicity is defined as enticement/*hasatah*. Note that both of Rashi's comments juxtapose the roots *pth* and *sut*, and as noted earlier, these roots are often paired by Rashi to describe Christian enticement.[46] Hence, one can conclude that Rashi deliberately chose the word order *mesitim ve-Minim* in order to pair the word *mesitim* with its lemma (*petayim*) derived from the root *pth*, thereby juxtaposing the two roots.

44 Avinery, *Heikhal Rashi*, vol. 3, 123, and vol. 2 (Hebrew; Heikhal Rashi, 1949), 28; Shereshevsky, *Rashi: The Man and His World*, 81; Gamliel, *Linguistics in Rashi's Commentary*, 190.

45 Avinery, *Heikhal Rashi*, vol. 3, 123.

46 See Section A 3 above.

Because this gloss introduces the important theme of enticement, Rashi then adds the word *ve-Minim* to identity the enticers: "Inciters/*mesitim* [that is] *Minim*/Christians."

In conclusion, Rashi has used a variety of terms to describe Christian propaganda. An analysis of his glosses has revealed that he was aware of the techniques of the Christian missionizer and understood the potential impact upon his people. The large number of original glosses that he composed along with the intensity of his language to describe the persuasion clearly indicate the danger Rashi perceived in the Christian propaganda efforts.

B. Jewish comportment

How did the Jews conduct themselves in light of the Christian propaganda? Proverbs 9:7 describes the danger of rebuking a wicked man: "To correct a scoffer or rebuke/*mokhiah* a wicked man for his blemish is to call down abuse on oneself." Regarding this verse, Rashi writes:

> **Rebuke/*mokhiah* a wicked man for his blemish**—It is a blemish [upon] the one who reproves [him], for this one berates him/*me-harpo* and does not heed him. This is a warning that it is forbidden to speak with those who entice/*ha-mesitim*, even to reprove them/*le-hokhiham* and to draw them near/*ule-korvam*.

The application of this verse to enticers is original to Rashi; he states that it is forbidden to speak to them. The gloss is linguistically linked to the biblical text through use of the root *ykh*/to reprove.[47] Let us compare this comment with Rashi's gloss to Song of Songs (7: 9–10), which also discusses communication with a seducer:

> **And let your breasts be now**—And now, cause my words to be realized, that you will not be seduced/*titpeti* after the nations, and may the good and wise among you be steadfast in their faith, to retort/*le-hashiv devarim* to those who seduce them/*le-mepatim*, so that the small ones among you will learn from them. **And your palate is like the best wine**—be careful with your answers/*be-teshuvotayikh* that they should be like the best wine. **That glides down smoothly to my beloved**—I am careful to answer/*le-hashiv* them that I will remain steadfast in my faith, that my palate will go before my beloved with straightforward love, which emanates from the heart, and not from deceit and guile.

Let us begin with the similarities. Both glosses discuss how to respond to enticement. The Proverbs gloss uses the root *sut* to describe the seducers, and the gloss on Song of

47 Koehler and Baumgartner, *HALOT*, vol. 2, 410, s.v. יכח, "to rebuke, to reproach."

Songs uses the sister root *pth*. Additionally, both glosses contain the root *zhr*/caution, warning—once in the former gloss and twice in the latter. Rashi's use of this term emphasizes the danger he deemed in conversing with the enticers.

But whereas the former states that it is forbidden to speak with the seducers, in the latter, the elders, the wisest of minds, are directed how to respond. Their answers should be as good as fine wine in order to set a standard of excellence for the laymen. An additional difference is the verb used to describe speech: the former uses the verb "to speak/*daber*," while the latter utilizes the root "answer/*shuv*".

The two glosses seem to be contradictory. What is permitted according to Rashi—to speak or not to speak?

One can propose that the sources are directed to different groups within the nation. The Song of Song's gloss addresses the elders and scholars of the generation; they are charged to answer the enticers effectively. Our Proverbs gloss, however, is directed to the laymen; they are forbidden from responding.

Yet the Song of Song's gloss concludes with the phrase "so that the small ones among you will learn from them." "The small ones," that is, the laymen, are to learn from the responses of the scholars. But why must they learn if it is forbidden for them to respond? Through a close reading of both texts, let us fine-tune the distinction between the glosses.

The comment to Song of Songs, with its emphasis on the verb "to answer," is referring to the classic scenario in medieval times where the Christian enticer confronts the Jew with a claim and the Jew needs to know how to respond effectively to it.[48] Rashi directs the greatest minds of the generation to provide quality answers that could be repeated by the less knowledgeable. The Proverbs gloss is describing a different situation. The warning not "to speak" describes a scenario in which the Jew is seeking out the enticer; he is making the first move. This type of conversation is absolutely forbidden. The closing phrase "even to rebuke them and to draw them near"

48 Touitou has noted that in the writings of the Northern French exegetes from the school of Rashi, the phrase *teshuvah le-Minim*, in contrast to the phrase *teshuvat ha-Minim*, can mean a challenge posed to the *Minim*, i.e., that the Jew is directly confronting the Christian and not responding to a Christian claim. The former meaning, to confront, is untenable regarding the Song of Songs gloss for two reasons. First, the phrase *teshuvah le-Minim* does not appear, and in its place is written: *le-hashiv devarim le-mepatim*; the term *Minim* is not even mentioned. Second, the content of our gloss is one of responding and not confronting. After all, the "smaller ones" are supposed to learn from the answers of the "elders," and Rashi would not be encouraging the "small ones" to challenge Christian enticers. See Touitou, "The Concept *Teshuvat ha-Minim*," 48-144.

indicates that at times Jews were promoting discussions with Christians in order to convince them of the truthfulness of Judaism.

Does this gloss reflect historical reality? Were Jews sometimes on the offensive during Rashi's lifetime?

Berger has shown that a substantial number of anti-Jewish treatises produced by Christian theologians in the eleventh and twelfth centuries state that the impetus for their writing was the Jewish challenge.[49] The Jewish challenge refers to Jews who posed questions to Christians regarding the Christian religion. Berger writes:

> The evidence, moreover, does not allow the assumption that these discussions were necessarily initiated by proselytizing Christians.... Whether Jews or Christians initiated these exchanges, the indications are overwhelming that they were real and frequent.[50]

Berger concludes that prior to the thirteenth century, due to the absence of an organized, full-scale Christian missionizing movement, there existed "lively, regular, often friendly debates between Jews and Christians, which were sometimes begun by the Jewish participant."[51]

Rashi's Proverbs gloss seems to be warning against these interfaith encounters initiated by a Jew. It is important to note, however, that the tone of the exchange described by Rashi is not a friendly one; Rashi forbids speaking to the enticer because he will taunt you and not listen. Rashi's use of the root *hrp* (to taunt)[52] is sharp language the Bible utilizes to describe the speech of Israel's enemies, such as Goliath (I Sam. 17:36), the Rav-Shakeh (II Kings 19:4), and by Rashi himself to describe warring families who come to him for mediation.[53]

What was the goal of these discussions initiated by Jews? Katz sees a proselytizing component.[54] Berger discerns a different goal, "Jews challenged Christians as an expression of pride—to raise their own morale and to discomfit their opponents."[55]

The closing phrase of Rashi's Proverbs gloss, "and to draw them near/*ule-korvam*," seems to strengthen the former view. The specific case Rashi discusses describes

49 Berger, "Mission to the Jews," 585-91.

50 Berger, "Mission to the Jews," 586.

51 Berger, "Mission to the Jews," 591; Daniel Lasker, "The Jewish Critique of Christianity: In Search of a New Narrative," in *Studies in Christian-Jewish Relations*, Council of Centers on Jewish-Christian Relations, vol. 6 (2011), 1-9.

52 Koehler and Baumgartner, *HALOT*, vol. 1, 355, s.v. II חרף, "to annoy, taunt."

53 Elfenbein, *Teshuvot Rashi*, 81-82 (no. 70).

54 Katz, *Exclusiveness and Tolerance*, 81.

55 Berger, "Mission to the Jews," 91–590.

a desire to bring the other party closer to Judaism.[56] Regardless of the motive, Rashi unequivocally warns his reader not to initiate this type of discussion.

Although one cannot glean from the aforementioned gloss the frequency of these exchanges, the mere fact that this type of encounter is alluded to indicates that it was not a onetime incident.

C. The impact

With an understanding that there is ongoing enticement to Christianity and at times it is Jews who are initiating interfaith discussion in eleventh-century Northern France, can we gauge the impact of this behavior upon the Jewish community? Two glosses in RPC shed light upon the consequences.

Proverbs 9:13–18 describes the behavior of Madame Folly; she is foolishness personified as a woman who tries to entice youths to enter her home by saying, "Stolen waters are sweet, and bread eaten furtively is tasty" (9:17). Upon this verse Rashi writes:

> **Stolen waters are sweet**—The pleasure afforded by intimacy with a single woman does not equal that afforded by intimacy with a married woman. And also, regarding the *Minut*, **stolen waters are sweet**, for they were afraid to do it in public, but did it in secret.

Rashi, based on the Talmud (b. San 26b), sees our verse as a metaphor for adultery; intercourse with a married woman is more pleasurable. Rashi's second explanation then expands the metaphor to spiritual adultery, worshipping other gods. "Stolen waters" are describing people who are involved in *Minut* /Christianity, worshipping other gods, yet he describes these people as worshipping in secret because they are fearful of public worship. This explanation is original to Rashi. It is difficult to apply the latter explanation to the Christians because, as the majority religion, they had free reign to worship publicly. The logical conclusion is therefore that this verse refers to Jews who practice Christianity privately.

Rashi directly acknowledges the reality of Jewish apostasy. Proverbs 23:26-28 warns against the dangers of the foreign woman. The warning concludes with the verse "She, too, lies in wait as if for prey, and she will increase the faithless among men;" on this verse, Rashi writes:

56 If Rashi was referring to a Jewish apostate, we would expect the use of the root *shuv*; see Elfenbein, *Teshuvot Rashi*, 188-91 (nos. 168-170).

And she will increase the faithless among men—multiplies in Israel/ *marbeh be-Yisrael* those who are treacherous to God. Regarding *Minut* the text is speaking.

Once again there is no known source for Rashi's comment. Rashi is describing large-scale conversion to Christianity during his lifetime.

Although the reasons for conversion are varied and complex, Christian enticement played a significant role, enticement which emphasized the correct Christological interpretation of scriptural verses in contrast to the erroneous Jewish explanation.[57] Rashi's commentary acknowledges the impact of the enticer's power of persuasion.

In the aforementioned gloss to Prov. 23:28, Rashi acknowledges the multiplicity of Jews betraying God. Does this comment reflect historical reality? Was there large-scale conversion to Christianity during Rashi's lifetime?

Historians emphasize the difficulty in coming to a conclusive answer regarding the number of Jews in Ashkenaz who embraced Christianity during the Middle Ages. The fact that there are many rabbinic *responsa* dealing with questions of Jewish apostacy does not indicate the rate of occurrence, because even the isolated case had to be addressed by the rabbinic authorities.[58] The general consensus, though, was that it was a limited phenomenon.[59]

Although Rabbeinu Tam (Rashi's grandson) wrote that "More than twenty bills of divorce involving apostates were executed in Paris and [Île-de-] France,"[60] Katz believes that this number was an aggregate one culled from different time periods rather than referring to one specific occurrence.[61] Grossman, on the other hand, believes that this number is indicative of widespread apostasy, taking into consideration the small size of medieval Jewish communities in the twelfth century.[62]

The plethora of statements in RPC, a non-halachic work, warning against Christian enticement and even acknowledging in one gloss widespread apostacy, seems to

57 Such as the apostates Peter Alfonsi and Herman of Cologne, see Shereshevsky, "Rashi's and Christian Interpretations," *Jewish Quarterly Review* 61 (1970): 76; Berger, "Mission to the Jews," 87–586; Jeremy Cohen, "The Mentality of the Medieval Jewish Apostate: Peter Alfonsi, Hermann of Cologne and Pablo Christiani," *Jewish Apostasy in the Modern World*, ed. T. Endelman (Holmes & Meier, 1987), 23–35; Touitou, "Rashi's Commentary on Genesis 1–6," 168.

58 Katz, *Exclusiveness and Tolerance*, 67; Cohen, "The Medieval Jewish Apostate," 23.

59 Grossman, *The Early Sages of France*, 500–503; David Malkiel, "Jews and Apostates in Medieval Europe—Boundaries Real and Imagined," *Past and Present* 194 (2007): 7–9.

60 Translation taken from Malkiel, "Jews and Apostates," 8.

61 Katz, *Exclusiveness and Tolerance*, 67.

62 Grossman, *The Early Sages of France*, 503.

support the latter view that apostacy was a more common occurrence than otherwise thought. Berger draws a similar historical conclusion:

> In the last generation, arguments have been presented for a variety of theses that would have seemed implausible thirty years ago… that sharp polemical exchanges, sometimes initiated by Jews, took place on the streets and even in homes, that Jews were sorely tempted by Christianity and converted more often than we imagined.[63]

D. The commentary to Proverbs and the theme of enticement

At this point we must query why Rashi choose to incorporate so many overt comments regarding Christian enticement specifically in his Proverbs commentary. Although this question is difficult to answer, we will attempt to address it from two different angles; the two are not mutually exclusive.

1. Historical consideration: The dating of the commentary

Although the position of the Jews in Northern France was relatively stable throughout Rashi's lifetime, his Proverbs commentary seems to have been written late in life, close to the period of the First Crusade when conditions between Jews and Christians worsened. Poznanski posits that Rashi began his commentary to the Bible with his glosses to the Pentateuch, continued with his commentary to the Prophets, and ended with the Hagiographa.[64] Gelles adopts this view and brings additional support.[65] Based on Rashi's *responsa* and notes in his Talmud commentary, Gelles claims that Rashi completed his talmudic commentary by the mid-1080s and then began writing his Bible commentary. According to this calculation, Rashi's commentary to Proverbs, a book of the Hagiographa, was written toward the end of his life. Although Grossman is not totally convinced by the above calculations, he also believes that RPC was written late in Rashi's life, albeit not necessarily after the First Crusade (1096).[66] This would place the dating of the composition of RPC close to that of his glosses to Psalms and

63 David Berger, "A Generation of Scholarship on Jewish-Christian Interaction in the Medieval World," *Tradition* 38:2 (2004): 5.

64 Samuel Poznanski, *Mavo al Hakhmei Tzorpat meporshei ha-Mikra* (Mikize Nirdamim, 1913), xiv.

65 Benjamin Gelles, *Peshat and Derash in the Exegesis of Rashi* (Brill, 1981), 43–137.

66 Grossman, "*Nusah perush Rashi la-Nakh*," 57–58 and n50.

Song of Songs[67] and would explain the centrality of Jewish-Christian polemics in all three compositions. As tensions rose and conditions worsened, Jews became more susceptible to the impact of Christian propaganda.

2. Literary considerations

An additional consideration is a literary one and connected to the nature of the book. Proverbs is part of the collection of wisdom literature whose authorship was attributed to Solomon. Grossman notes that Rashi's thought process might have been the following: If Solomon, the wisest of all men, warns against Christian incitement; this could be a powerful incentive for the Jew to take heed of his warnings. And because a proverb naturally embodies a moral lesson which can be understood on more than one level, it was quite natural for Rashi to apply the allegorical message to the Jewish-Christian debate.[68]

Whereas Grossman's comments apply to the authorship and genre of Proverbs, I would like to go a step further and focus on the contents of the book. Whybray notes the important role of speech in Proverbs and summarizes the work of other scholars regarding this motif. Skaldny detects that more than 20 percent of the proverbs in collections 2 (chaps. 10:1-22:16) and 5 (chaps. 25-29) deal with the spoken word.[69] Aletti draws attention to the fact that in collection 1 (chaps. 1-9) there is particular emphasis "on speech as a means of seduction and persuasion."[70]

Rashi clearly discerned the centrality of speech in Proverbs and applied those proverbs to the historical reality of his time. The theme of Christian enticement becomes the nucleus of Rashi's polemical comments in this commentary; approximately one-third of his polemical comments there are connected to this theme. Once this kernel is established, Rashi then expands and includes other polemical motifs such as the embezzlement of the Jews and *kiddush Hashem*,[71] but these other themes take a secondary position to the primary theme of enticement.

67 Grossman believes that Rashi's Psalms commentary was written after the First Crusade; see Grossman, "Rashi's Commentary on the Psalms," 59–74.

68 Grossman, " *Nusah Perush Rashi la-Nakh*," 57.

69 Udo Skladny, *Die altesten Spruchsammlungen* (Vandenhoeck & Ruprecht, 1962), 70; Roger N. Whybray, *The Book of Proverbs, a Survey of Modern Study* (Brill, 1995), 140.

70 J. N. Aletti, "*Seduction et parole en Proverbes I–IX*," *Vetus Testamentum* 27:2 (1977), 44–129; Whybray, *Proverbs*, 141.

71 Embezzlement: 11:16, 15:19; *kiddush Hashem*: 7:19–20, 17:26, 14:10–15.

The aforementioned reasons, therefore, coalesce into one. The plethora of glosses warning against enticement to Christianity are a natural outgrowth of the nature of Proverbs and reflect the heightened tensions between Jews and Christians in the final period of Rashi's life.

E. Conclusion

A nuanced reading of Rashi's glosses to Proverbs has uncovered hints to the complex landscape of Jewish-Christian relations in Northern France in the final quarter of the eleventh century. Religious discussions and debates centering upon the correct interpretation of the Old Testament were common, and they were often, but not always, initiated by Christians. At times, Jews challenged the dubious Christological reading of the Bible in order to prove the truthfulness of Judaism. Rashi warns the Jews from taking the offensive and initiating discussion.

The theme of Christian enticement is mentioned more than fifteen times in RPC, and the majority of these glosses are original to Rashi; they rest upon no rabbinic antecedents. Rashi uses a variety of terms to describe this seduction to Christianity, among them the terms *Minim* and *Minut*. Their appearance, twelve times in RPC, equals the sum total of times the root *min* is mentioned in Rashi's glosses to all the other biblical books![72] Although at first blush RPC does not meet the formal criteria set by Shaya Cohen to detect anti- Christian polemic in Rashi's writings, namely, explicit and unambiguous attacks on Christian truth claims and Christian exegesis,[73] Cohen notes looser signs for detecting anti-Christian animus, including an expectation that Rashi's "responses to *minim* would have been more pointed and more frequent, and the Christian identity of his opponents would have been more evident."[74]

Our findings fulfill this latter set of informal criteria. The quantity, originality, and explicit language of Rashi's Proverbs glosses clearly express his grave concern regarding the persuasive power of Christian propaganda and an awareness of its destructive impact upon the medieval Northern France Jewish community.

72 See Haketer editions of the Bible: Gen. 1:26, 6:6; Deut.32:21; II Kings 20:9; Isa. 1:28, 38:8; Ps. 2:1, 21:2; Ecc. 7:25, 26; Dan. 12:10.

73 Cohen, "Rashi's Torah Commentary," 451, 472.

74 Cohen, "Rashi's Torah Commentary," 467.

Itamar Rosensweig

The Biblical Verse as a Source of Halakhah in Ramban's Normative Jurisprudence

I. Introduction

Most readers will agree that the Talmud, and not the Tanakh, serves as the basis for deciding contemporary Jewish law. It is, of course, true that the Talmud derives many of its laws from the biblical text via hermeneutical principles. But the decisor or student of Jewish law is primarily occupied with the interpretation of the Talmud and its commentaries, not the biblical verse. Consider the fact that a contemporary question of Jewish law is settled by analyzing talmudic and rabbinic case law, not by exegesis of Scripture.

As one observer put it:

> "Earlier generations [before the Talmud] developed the Torah through interpreting the biblical verse. But that is not the approach of later generations [after the Talmud]. They found, after the sealing of the Talmud, that Jewish law had already been set and determined, and it was no longer permissible to determine the law by direct interpretation of the biblical verse. If they had a question regarding Jewish law, they did not decide it by analyzing the biblical verse but rather through consulting the Talmud."[1]

This perspective is also captured by a comment of R. Aharon Ha-Levi of Barcelona (Re'ah), who declared: "we do not derive rulings from the biblical verse unless the rabbis [of the Talmud] already derived it."[2] And it is consistent with the portrayal of many rabbinic scholars and students as experts in the Talmud but ignorant in Tanakh.[3]

* I wish to thank Prof. David Berger, Prof. Moshe Halbertal, Prof. Ephraim Kanarfogel, and my father, Rabbi Michael Rosensweig for valuable discussions that enhanced the ideas formulated in this paper.

1 Zechariah Frenkel, *Darkhei ha-Mishnah* (Leipzig, 1859), 18.

2 Re'ah b. Ketubot 60a, s.v. *Tanu Rabbanan*.

3 See Mordechai Breuer *Oholei Torah: The Yeshiva, Its Structure and History* (Jerusalem, 2003), 116-129; R. Michael Rosensweig, "The Study of Talmud in Contemporary Yeshivot," *The Printing of the Talmud*, 3.

This paper argues that Ramban systematically appealed to his direct interpretation of the biblical verse in determining normative *halakhah*. I offer eleven examples where Ramban offers a novel, normative interpretation of Jewish law based on his reading of the biblical verse, unmediated by the Talmud. In some examples, Ramban's conclusions have wide-reaching and dramatic practical implications. And Ramban endorses those conclusions even when the Talmud interprets the verses differently. This study suggests that the biblical verse was an active part of Ramban's halakhic jurisprudence. For Ramban, the legal significance of the biblical text goes beyond the fact that it constitutes the basis for the Talmud's application of the hermeneutical principles. Ramban saw the text of the Tanakh as an indispensable source of halakhic jurisprudence that continues to frame and inform the interpretation of Jewish law.

II. The Biblical Verse in Ramban's Halakhic Jurisprudence

In this section, I provide eleven examples of Ramban deriving *halakhah* from his interpretation of the biblical verse. The examples are drawn from a range of Ramban's writings, including his commentary on the Torah, his *Hiddushim* on the Talmud, his short halakhic treatises, his *Milhamot Hashem*, and responsa. The appearance of these examples throughout Ramban's works, composed at different points throughout his career, and over a wide range of halakhic topics, indicates that Ramban *systematically* looked to the biblical verse as a source of *halakhah*. At the end of this section, I point to several further examples of this phenomenon in Ramban's oeuvre.[4]

1. Price Gouging in Real Property

Our first example pertains to the prohibition of price gouging. The Talmud (b. Bava Metzia 49b-51a) provides that price gouging above 1/6 of the fair price invalidates a transaction, less than 1/6 is wrongful but the transaction is valid. The Talmud further states (b. Bava Metzia 56a) that "real property is exempt from [the strictures] of price gouging."[5] The standard interpretation amongst talmudic commentators is that real

4 For some discussion of the role of the biblical verse in Ramban's halakhic jurisprudence, see Oded Yisraeli, *Intellectual Biography*, 152-154. See also Yosef Erel, *Hashpa'ot Hadadiyot Bein Parshanot ha-Peshat le-Bein ha-'Iyun ha-Hilkhati be-Yezirato shel Ramban* (MA Thesis, Jerusalem 5766); Yosef Erel, *Parshanut Peshat le-Mikra ve-Halakhah Pesukah be-'Avodato Shel Ramban*, JSIJ 8 (2009), 117–152.

5 b. Bava Metzia 56a.

property is excluded from all aspects of the price gouging injunction, including the prohibition itself.[6] Therefore, it would be permissible to sell real property at any price.

In his Commentary on the Torah (Lev. 25:14-15), Ramban acknowledges that the straightforward reading of the Talmud implies that real property is excluded from all price gouging regulations.[7] But this forces an awkward reading of the biblical verses. Verse 14, which states the general price gouging prohibition, is surrounded by two verses (13 and 15) that deal with real property. Verse 16 also discusses real property, and the next verse, 17, once again takes up the price gouging prohibition. Ramban notes that the juxtaposition and intermingling of the verses implies that the price gouging prohibitions in verses 14 and 17 apply to the real property sales discussed in the neighboring verses 13, 15 and 16.[8]

Ramban argues that the talmudic interpretation excluding real property from all price gouging regulations does violence to the plain meaning of the biblical text, breaking up the verses as if they were dealing with unrelated topics.[9] He therefore sets out to reconcile the talmudic interpretation excluding real property from price gouging with his reading of the biblical verse that appears to apply the price gouging prohibition to real property. Ramban suggests distinguishing between the price gouging *prohibition* and the price gouging *rules* that either rescind the transaction or compel the seller to disgorge the exorbitant portion of the sale price.

Ramban argues, on the basis of his interpretation of the biblical verse, that the price gouging *prohibition* applies to real property. The talmudic exclusion of real property is limited to the *rules of repair*—of rescinding the sale and disgorging the excessive payment. Thus, someone who price-gouges on the sale of real property violates a biblical prohibition, even though they have no duty of repair after the fact.[10] Ramban

6 See for example, Rashi, b. Bava Metzia 56b s.v. *davar and Hikrei Lev*, Hoshen Mishpat 2:86; *Raza de-Shabti* Bava Metzia 56b, p. 500, s.v. *Rashi d.h. Davar*. See also Tosafot *Bava Metzia* 6a s.v. *ela*, and *Mishneh le-Melekh*, Malveh 4:1; *Minhat Hinukh*, Mitzvah 229:1 and *Raza de-Shabti* Bava Metzia 61a, 541.

7 Ramban, Lev. 25:14-15.

8 Ibid:
אל תונו – זו אונאת ממון... פשוטו של מקרא על אופניו, על האונאה בא להזהיר, כשתמכור או תקנה קרקע...

9 Ibid:
רבותינו אמרו (ב"מ נו ע"א) שאין אונאה לקרקעות... על כרחנו נצטרך להטות מקראות מפשוטן, ונאמר שיהיה כל פסוק עומד בעצמו...

10 Ibid:
ואני חושב עוד סברא, שודאי המאנה את חבירו לדעת עובר בלאו, בין במטלטלים בין בקרקעות, שבהן דיבר הכתוב אל תונו איש את אחיו... אבל רבותינו חדשו באונאה תשלומים בשתות המקח, וביטול מקח ביותר משתות, ומזה בלבד מעטו הקרקעות...

even offers a detailed reading of the verses to demonstrate that the verse itself intends to distinguish between the prohibition which applies to both real and personal property, and the duty of repair that is limited to personal property.[11]

Note the halakhic conclusion that emerges from Ramban's novel analysis of the verse. According to Ramban, a biblical prohibition enjoins a seller from selling his real property above its market value—even though the straightforward reading of the Talmud implies otherwise. Ramban's analysis and legal conclusion was accepted by later commentators and halakhic authorities.[12]

2. First-Born's Double Inheritance

Our second example is drawn from the laws of inheritance. Under Jewish law, a first-born son is entitled to receive a double portion in the estate of his deceased father, and the father is prohibited from denying the first-born son the double portion.[13] But what happens if the first-born son predeceases his father?

Under the normal rules of inheritance, whenever a son predeceases his father, the right of inheritance passes on to the son's heirs. For example, if Isaac predeceases Abraham, Isaac's sons would receive Isaac's portion of the inheritance from Abraham's estate upon Abraham's death. There is no indication in the Talmud that this rule would not apply with equal force to a first-born's double-portion. To be sure, some authorities explicitly hold that the first-born's children are entitled to receive their (deceased) father's double-portion in their grandfather's estate, and the grandfather is prohibited from denying those grandchildren that double portion.[14]

In his Commentary on the Torah, Ramban disagrees. He argues, based on his interpretation of the biblical verse, that the prohibition against denying a first-born's

11 Ibid:
ודרשו חכמים מפני שאמר הכתוב וכי תמכרו ממכר לעמיתך או קנה דבר הנקנה מיד ליד אל תונו איש את אחיו, למדנו שיש באונאה דין מיוחד במטלטלים שאינו נוהג בקרקעות, והוא חזרת הממון, אבל אזהרת הלאו נוהגת בכולן. ולכך אמר "וכי תמכרו ממכר" לשון רבים, למוכר קרקעות ולמוכר מטלטלין, "או קנה מיד עמיתך", היחיד מהם המוכר המטלטלין מיד ליד, ואמר לכולן "אל תונו", וכיון שייחד והפריש המטלטלין ריבה בהן דין אונאה, והיא בחזרת התשלומין.

12 See, for example, *Sefer ha-Hinukh*, Mitzvah 337.
See also Rabbenu Yonah, Bava Batra 78a. R. Akiva Eger *Hoshen Mishpat* 227:29. See also *Pithei Hoshen*, Gezeilah ve-Ona'ah 10:4 note 6.

13 b. Bava Batra 130b; Rambam Nahalot 6:3; Shulhan Arukh Hoshen Mishpat 281:4. See Ramban, *Hassagot* to *Sefer ha-Mitzvot*, Shikhhat ha-Lavin.

14 *Responsa Maharit* Hoshen Mishpat no. 71.

double portion does not apply after the first-born's death. Thus, where the first-born predeceased his father, the father can rightfully block those grandchildren from receiving a double portion of his estate.[15]

Ramban's argument is based on his novel reading of the verse. The verse (Deut. 21:16) prohibits the father from favoring the second child "over (*al penei*)" the first-born. Ramban contends that the phrase "*al penei*" appears in Scripture only in reference to living people.[16] You cannot "pass over someone" who is already dead. On this basis, Ramban concludes that the biblical prohibition of denying the first-born's double portion does not apply after the death of the first-born.

Ramban's halakhic conclusion constitutes an extraordinary limitation on the first-born's inheritance right.[17] And it appears to run contrary to what would otherwise be the straightforward application of the rules of inheritance as presented in the Talmud.[18] Yet Ramban confidently arrives at his conclusion based on his novel interpretation of the biblical verse.[19]

3. Communal Authority and Power to Punish

Ramban's *Mishpat ha-Herem* is a short halakhic work on the nature of communal authority to legislate and to punish offenders. After explaining that a community is authorized to legislate through imposing a *herem* (an edict) and that anyone who violates the *herem* is liable to be punished, Ramban turns to address the severity of the punishment: What is the maximum punishment a community can impose on someone who violates their *herem*?[20]

15 Commentary on the Torah, Deut. 21:16-17.
וממה שאמר הכתוב "על פני בן השנואה הבכור", יראה לי שאין המצוה הזאת והדין הזה נוהג אלא בחיי הבכור. אבל אם מת הבכור בחיי אביו, אף על פי שהוא יורש חלק בכורתו בקבר ומורישו מן הדין לבניו, אם רצה הזקן ואמר יירשו בני כך וכך בנכסי ובניו של בני הבכור יטלו כך וכך בנכסי, דבריו קיימין כדרך שהם קיימים במקום שאין שם בכור. וכן איננו עובר בלאו הזה אם לא הכיר הבכור לאחר מותו.

16 Ibid:
כי לא מצאתי "על פני" רק בחייו, על פני אהרן אביהם (במדבר ג', ד), על פני תרח (בראשית י"א, כח), וכן כולם.

17 Note the exclamation in the *Pithei Teshuva*, Hoshen Mishpat 281:1 regarding Ramban's interpretation:
אמנם אתן הודע"ה על העבר כי עד היום לא מצאתי חידוש דין זה באחד מן המחברים אשר לפני היו עוברים.

18 See Maharit above, n. 14

19 For decisors who adopt Ramban's view, see *Ketzot ha-Hoshen*, 281:4. See also *R. Akiva Eger* Hoshen Mishpat 281:4. See also *Pitchei Teshuva* 281:1.

20 *Mishpat ha-Herem* (ed. Hirshler), 294-295. For the importance of the *herem* in communal self-government, see Menachem Lorberbaum, *Politics and the Limits of Law* (Stanford 2001), 106, noting that the *herem* was "the main legal technique used to make communal charters and enactments binding."

Ramban argues that if the *herem* was declared by a Jewish monarch or by the High Court (Sanhedrin), or even if it was declared by a public assembly of the Jewish people, a violator of that *herem* may be punished with death.[21] Although no clear talmudic statement or ruling suggests this conclusion, Ramban argues for it based on his analysis of the biblical verses. Ramban begins by citing the verses in Joshua 6, where Joshua issues a *herem* proscribing the spoils of Jericho.[22] When Akhan confesses that he violated the *herem*, Joshua sentences him to death.[23]

Ramban then turns to the verse in Samuel (14:44). King Saul had imposed a *herem* on his soldiers, prohibiting them from eating before the enemy had been defeated. When Saul discovers that Jonathan had violated the ban, he declares him liable to be punished by death.[24]

Third, Ramban cites the verse in Judges (21:5) where, after the tragedy of the Levite's concubine, the people of Israel gather at Mizpah to deliberate their response to the tribe of Benjamin. The Israelites declared a *herem* punishing with death anyone who did not show up to the national assembly. Indeed, the people of Jabesh-Gilead did not attend the assembly and were punished with death.[25] Note that in this instance, the *herem* was not declared by a king or by the Sanhedrin but by the assembly of people themselves.[26] Ramban contends that these three biblical narratives indicate that a

21 *Mishpat ha-Herem*, 296.

22 Ibid: וזהו דינו של יהושע שדן עכן בדיני נפשות לפי שפשט ידו בחרמי שמים.

23 See Joshua 6:16-19; Joshua 7:20-25.

24 *Mishpat ha-Herem*, p. 296: כן בחרמי שבועת ביטוי מצינו שאמר שאול מות תמות יהונתן.
See I Samuel 14, verses 24, 27, 43, and 44.

25 Ibid:
וכן ישראל בימי פילגש בגבעה הרגו את אנשי יבש גלעד שנא' כי השבועה הגדולה היתה לאשר לא עלה אל ה' במצפה לאמר מות יומת... אנשי יבש גלעד לא עלו ונתחייבו מיתה.

26 Hence Ramban's formulation: וכן ישראל בימי פלגש בגבעה, which suggests that this power resides in the assembly of people itself.
Note also Ramban's formulation, *Mishpat ha-Herem* p. 295, explicitly extending this *herem* power to the townspeople themselves:
וכן הדין באנשי אותה העיר אם הסכימו כולם או רובם במעמד טובי העיר והחרימו כיון שהם רשאין להסיע על קיצתן ולהחרים בדבר, החרם שלהם חל על כל החייבים לילך בתקנתם...
See also Lorberbaum, *Politics and the Limits of Law*, 107: "Nahmanides returns to the political sphere in which this authority originates—the townspeople, and not just the courts, are empowered to impose a *herem*." And p. 108, where Lorberbaum describes Ramban as holding that "even the court's authority to impose a ban is described as derived from that of the public. The court stands for a public."

Jewish king, Sanhedrin, or an assembly of the Jewish people has the power to impose a *herem* that carries with it the penalty of death.

But the most remarkable part of Ramban's analysis is his novel interpretation of the biblical verse in Lev. 27:29. The verse states: "Any person who has been condemned by a *herem* shall not be redeemed; he shall be put to death."[27] As Ramban notes, the talmudic tradition offers two interpretations of the verse. The first interprets the verse as referring to the market value of an individual sentenced to be executed under Jewish law's death penalty. If such an individual pledges his "value" to the Temple, he is not obligated to donate anything, since he "has no worth."[28] According to the second interpretation, the verse blocks someone sentenced to death from "purchasing" his way out of the punishment.[29]

Yet Ramban boldly offers his own interpretation of the verse. He argues that the verse refers to the power of a community (or king or Sanhedrin) to enact a *herem* whose violation carries the death penalty.[30] Fully cognizant of the fact that the Talmud interprets the verse differently—and that there is no talmudic support for his interpretation—Ramban insists that the biblical verse never loses its plain meaning and that the verse can sustain multiple interpretations simultaneously.[31]

In his Commentary on the Torah, Lev. 27:29, Ramban offers further support for his argument. Ramban contends that since the assembly of Israel sanctioned the sentence against the members of Jabesh-Gilead and participated in executing that sentence, it would be absurd to think that the entire assembly acted in error.

27 Lev. 27:29: כל חרם אשר יחרם מן האדם לא יפדה מות יומת.

28 Ramban, Lev. 27:29:
כל חרם אשר יחרם מן האדם – היוצא ליהרג ואמר אחד ערכו עלי לא אמר כלום. "מות יומת", הרי הוא הולך למות לפיכך לא יפדה אין לו דמים ולא ערך, לשון רש"י. ורבותינו נחלקו בדבר (ערכין ו ע"ב).

29 Ibid: ויש מהם אומרים שהוא אזהרה לחייבי מיתות שאין לוקחין מהן כופר לפטרן.

30 *Mishpat ha-Herem*, p. 296:
ואני אומר בשמא לאחר בקשת המחילה, שזהו פשט הכתוב בתורה כל חרם אשר יחרם מן האדם לא יפדה מות יומת, כלומר מה שהסכימו עליו הכל והוחרם לדעתם העובר עליו לא יפדה בממון אלא חייב מיתה.

31 Ibid, pp. 296-297:
ואל תהיה חוסם פינו בזה מפני שרבותינו ז"ל דרשו המקרא הזה לענין אחר, מהם מי שאומר (ערכין ו ע"ב) למעריך היוצא ליהרג, ומהם מי שאומר שאין חייבי כריתות וחייבי מיתות ב"ד נפטרים בממון כדאיתא בכתובות (לה ע"א), שאעפ"כ אין מקרא זה יוצא מידי פשוטו, דכתיב אחת דבר אלהים שתים זו שמעתי משמש הוא הכתוב לזה ולזה... הא למדנו שכמה פנים של אמת לתורה.

In this extraordinary example, Ramban anchors and develops an entire area of halakhic jurisprudence—communal authority to legislate and punish violators with the death penalty—through his direct analysis of the biblical verses.[32]

4. Vigilance for Temple Sacrifices

Our fourth example appears in Ramban's *Hiddushim* to Hullin (2b). The Talmud (b. Hullin 2b) states that a ritually impure person can slaughter a sacrifice, but he must use a long knife and testify that he is certain (*bari li*) that his body never touched the sacrifice.[33] This implies that without such testimony, the sacrifice is disqualified.

Tosafot (Hullin 2b s.v. *de-leteh*) observe that the Talmud's ruling is inconsistent with the general principles of uncertainty (*safek*) regarding ritual impurity (*tumah*). In general, the Talmud holds that uncertainties regarding ritual impurity in public areas are to be resolved as pure. Because the Temple slaughtering area (*'azarah*) is considered a public area, any uncertainty about the ritual status of the sacrifice should have been resolve as "pure," and the Talmud in Hullin should not have required the slaughterer to affirm with certainty (*bari li*) that he never touched the sacrifice.[34]

Tosafot offer two ad hoc solutions. According to one solution, the passage in Hullin is discussing the slaughter of a sacrifice at a private altar (*bamah*), which may constitute a private domain. Ritual uncertainty in a private domain is generally resolved as "impure." According to another suggestion, the close physical proximity to the animal during slaughter generates a *presumption* of contact. With the presumption of contact, the case cannot be considered an instance of genuine uncertainty (*safek*).[35]

Ramban rejects Tosafot's approach, and, instead, resolves the contradiction by appealing to his own novel interpretation of the biblical verse in Num. 18:8. The verse requires "safekeeping" (*mishmeret*) for Temple sacrifices (*terumotai*). Ramban interprets the verse as a prerequisite for the validity of Temple sacrifices. According to

32 Commentary on the Torah, Lev. 27:29:
ולכך אני אומר כי מן כתוב הזה יצא להם הדין הזה... ומהיכן נתחייבו אלו מיתה מן הדין חוץ מן המקום הזה...
For further discussion of this area of jurisprudence in Ramban's halakhic thought and in the works of his disciples, see, Lorberbaum, *Politics and the Limits of Law*, 112-159, especially the discussion of *Derashot ha-Ran* no. 11 on pp. 124-149. For Rashba's enormous contribution to this area of halakhic theory, see Menachem Elon, *Jewish Law*: *History*, *Sources*, *Principles*, vol. II, 558-768.

33 Strictly speaking, he must stand outside the Temple itself, since a ritually impure person cannot enter the Temple area.

34 Tosafot Hullin 2b s.v. *de-leteh*.

35 Ibid.

Ramban's interpretation, Temple sacrifices are kosher only when they are *known to be pure*, when they have been properly safekept with extra vigilance. They are invalidated when their ritual status fails the standard of absolute *mishmeret*.[36] Thus, even if ritual uncertainty (*tumah*) in a public area is normally resolved as pure, temple sacrifices are disqualified whenever they are not vigilantly watched and known to be pure.

In this example, Ramban's novel reading of Num. 18:8 develops—or discovers—a fundamental principle of Temple sacrifices, and it allows Ramban to offer a compelling solution to the problem raised by Tosafot.

5. Recording Names in the Bill of Divorce

The Talmud requires a bill of divorce (*get*) to state the names of the husband and wife who are separating.[37] In his *Hiddushim* to b. Kiddushin (9a s.v. *bein*), Ramban acknowledges that the straightforward reading of the Talmud implies that this requirement is merely rabbinic. [38] It was enacted by R. Gamliel to ensure that the *get* could evidence the divorce in case anyone challenges the woman's status.

But Ramban proceeds to argue, based on his interpretation of the verses in Deuteronomy (24:1-3), that the requirement to include names in the *get* is biblical. The verse refers to the bill of divorce as *sefer keritut*, and Ramban contends that "*sefer*" implies "narrating the story" of the divorce (*sippur devarim she-kortim beineihen*). Now, the *get* could only narrate the story of the divorce if it included the names of the protagonists (*ve-i efshar belo shem shelahem*).[39] Thus, Ramban concludes that the verse's characterization of the *get* as *sefer keritut*—narrating the story of the divorce—constitutes the biblical source for the requirement to record the names of the parties in the *get*.[40]

36 *Hiddushim,* Hullin 2b:
דבמוקדשין בכי האי גונא לאו בספק טומאה דיינינן דהא בעו שימור דכתיב משמרת תרומותי, אלא צריך שיהא ברי לו שהן טהורין ואם לאו אסור להקריבן.

37 b. Gittin 34b.

38 Ramban, b. Kiddushin 9a s.v. *bein*:
שאפילו במגרש ואומר תן גט זה או התקבל לבתך או לאחותך מגורשת, ואף על פי שבגט עצמו צריך לפרש שמה, התם מתקנת ר"ג בגיטין היא (גיטין לד ע"ב), אבל מן הדין מגורשת.

39 Ibid:
גבי גט בעינן שמו ושמה דאורייתא דכתיב ספר כריתות בעינן סיפור דברים שכורתים ביניהן ואי אפשר בלא שם שלהם, ולא מתקנת ר"ג היא אלא מדאורייתא.

40 See also Ramban Gittin 20a s.v. *ha*:
נ"ל משום דכתיב ספר כריתות והיינו ספירת דברים של כריתות, ואי אפשר לספר כריתות שבינו לבינה אלא א"כ כתב שמו ושמה.

Note that Ramban derives a further legal consequence from his interpretation of the verse. Since the requirement to record names in a bill of divorce is biblical, it follows, on Ramban's analysis, that a document (*shetar*) used to effectuate a marriage (*kiddushin*) must also record the names of the parties, given the biblical connection (*hekesh*) between the two documents.[41]

6. Concubinage

Our sixth example appears in a responsum of Ramban regarding concubinage.[42] It is well established that Jewish law prohibits prostitution, but commentators disagree whether the injunction against prostitution also prohibits concubinage.[43] Maimonides held that, excluding the exceptional case of a monarch, concubinage is prohibited.[44] In his view, any sexual relationship not sanctioned by marriage falls under the prostitution injunction.[45]

Ramban's responsa originated in an inquiry from R. Yonah b. Abraham of Gerona, who had asked Ramban to clarify the halakhic status of concubinage. Ramban responds that concubinage is permitted, and he begins his analysis by noting that the prostitution injunction is primarily to avoid uncertainty about the paternity of children. Such uncertainty can lead to the marriage of siblings who are unaware of their familial relation. Ramban explains that this concern does not arise in concubinage because the concubine moves in with her partner and the relationship is known to the public.[46]

Ramban supports his position from a careful reading of several biblical verses. First, Ramban notes that the biblical verse refers to Caleb's concubine (I Chron. 2:46) and

41 Ramban, b. 9a, s.v. *bein*:
גבי גט בעינן שמו ושמה דאורייתא ... הלכך גבי קדושין נמי צריך לכתוב הרי את פלונית מקודשת לי ואם כתב לאביה בתך פלונית אינה מקודשת... דהא אקושי מקשינן להו לגיטין.
Whereas on the assumption that the names requirement is rabbinic, the *shetar kiddushin* would not have to specify the names of the parties.

42 Responsa Ramban (ed. Chavel) no. 105.

43 See Deut. 27:18 and Lev. 19:29 for the prostitution injunctions.

44 See Rambam Melakhim 4:4.

45 See Rambam Ishut 1:4 and Kesef Mishnah Melakhim 4:4:
מאחר שרבינו סובר שהבא על פנויה שלא לשם קידושין לוקה כמ"ש א"כ הדיוט אסור בפלגש.

46 Responsa Ramban (ed. Chavel) no. 105:
ודאי מותרת היא כיון שיחדה לעצמו שלא נאסרה אשה בזנות לישראל אלא ממדרשו של רבי אליעזר בן יעקב. נמצא אח נושא אחותו ואב נושא בתו. ועל זה נאמר ומלאה הארץ זמה. אבל כשנכנסה בביתו והיא מיוחדת וידועה לו בניה נקראים על שמו ומותרת.

to Gideon's concubine (Judg. 8:31). Here Ramban's appeal to scripture is primarily historical. The fact that the great leaders of Israel had relationships with concubines suggests that such relationships are permitted.[47]

Ramban further supports his halakhic conclusion from a careful analysis of the verses describing the incident of the Levite's concubine. The verse (Judg. 19:3) refers to the Levite as the "husband" (*ishah*) of the concubine. Ramban argues that the verse would not have used such a proper, formal designation if the relationship was illicit.[48] Ramban further observes that the verse (Judg. 19:5) refers to the Levite as the "son-in-law" (*hatano*) of the concubine's father. Such a characterization (*hatano*) would be unthinkable if the relationship was illicit and shameful.[49] Finally, Ramban points to the verse (Judg. 20:6) describing the atrocity committed by the Benjamites. The verse characterizes the Benjamites' wrongdoing as "a foul and scurrilous" act of depravity (*'asu zimah u-nevalah be-yisra'el*). Ramban contends that the verse's scathing condemnation of the Benjamites' actions implies that the Levite's ongoing sexual relationship with the concubine was "neither foul nor scurrilous" (*lo zimah ve-lo nevalah*).[50]

Ramban's analysis of the verses in the Book of Judges is central to his halakhic conclusion permitting concubinage—even though the verses do not feature in the talmudic discussion.[51] Ramban relied upon his direct analysis of the biblical verse in reaching his halakhic ruling.

7. Communal Celebration of Holidays

The Talmud's exposition of the laws of the Sabbath and festivals focuses on the prohibitions of labor (*melakhah*) and other restricted activities. The Talmud also mentions an obligation to dress in clean clothing on the festivals as well as an

47 Ibid:
ומצינו גדולי ישראל נושאין אותה. שנאמר ועיפה פילגש כלב ילדה. וגדעון שופטן של ישראל שדבר בו ה' כתיב בו ופילגשו אשר בשכם ילדה לו.

48 Ibid: ופילגש בגבעה אילו היתה אסורה עליו לא אמר הכתוב ויקם אישה וילך אחריה.

49 Ibid: וכתיב ויאמר אבי הנערה אל חתנו. וגם הוא מתבייש בזמתו. אלא שהיה הדבר מותר ונהוג בישראל.

50 Ibid:
והוא אמר ואוחז בפילגשי ואנתחה כי עשו זמה ונבלה בישראל. מכלל שהוא לא היה עושה לא זמה ולא נבלה.

51 For R. Yonah Gerondi's own position on concubinage, see *Sha'arei Teshuvah* 3:94:
ולא הותרו פילגשים בלא כתובה ובלא קידושין אלא למלך.
For a discussion of concubinage in Spain, see Yom Tov Assis, *The Golden Age of Aragonese Jewry* (Oxford, 2008), 265-266.

obligation to celebrate the holiday with meat and wine. In his Commentary on the Torah (Lev. 23:2), Ramban develops a novel obligation of the Jewish festivals which he derives directly from his interpretation of the biblical verse.

The verse (Lev. 23:2) elusively refers to the festivals as "sacred convocations" (*mikra'ei kodesh*). Ramban's predecessors interpret the verse as reflecting known talmudic principles. For example, Maimonides and *Sefer ha-Hinukh* interpret *mikra'ei kodesh* as referring to the prohibition of labor (*melakhah*) on the festivals.[52] Tosafot interpret the phrase as referring to the requirement of wearing clean clothing on the festivals.[53]

Ramban disagrees with these interpretations and argues that the phrase *mikra'ei kodesh* denotes a convocation or assembly.[54] Ramban points to other verses where some variation of the word *k-r-a* denotes a convocation or assembly, such as Numbers 1:17, where the phrase *keru'ei ha-'edah* connotes the congress of representatives. In I Samuel (9:1), the verse refers to the assembled guests as *ha-keru'im*. Ramban also cites Isaiah 4:5, where *mikra'eha* denotes the "assembly place" where the elected representatives gather to legislate.[55]

Ramban employs his novel interpretation of the verse to derive the following halakhic conclusion. Ramban argues that *mikra'ei kodesh* enshrines an obligation to celebrate the festivals through a communal assembly of public celebration, prayer, and rejoicing to mark the holy day. This includes a biblical obligation incumbent upon a community to gather in houses of worship on the festivals, to sanctify the day in public through communal prayer and *hallel*.[56] Thus, based on his interpretation of the verse, Ramban derives a novel halakhic obligation that was never characterized or noted by his halakhic predecessors.

Ramban's halakhic conclusion is adopted and further developed by later authorities. For example, *Beit Yosef* adopts Ramban's position to explain why the text of the holiday prayers should include *mikra kodesh*, since that phrase uniquely denotes

52 Rambam *Sefer ha-Mitzvot, aseh* 159, 160, 162, 166, 167. *Sefer ha-Hinukh,* no. 297 and onward.

53 Tosafot *Keritut* 7a s.v. *ve-kar'o*.

54 Commentary on the Torah, Lev. 23:2.

55 Ibid:
והנה "מקרא קדש", מלשון קרואי העדה (במדבר א', טז), אחרי כן יאכלו הקרואים (ש"א ט', יג), וכן על כל מכון הר ציון ועל מקראיה (ישעיה ד', ה), המקומות שנקראים שם שיתקבצו בהם קרואי העדה.

56 Ibid:
וטעם מקראי קדש – שיהיו ביום הזה כולם קרואים ונאספים לקדש אותו, כי מצוה היא על ישראל להקבץ בבית האלהים ביום מועד לקדש היום בפרהסיא בתפלה והלל לאל.

a special obligation of communal prayer during the holiday.[57] *Peri Megadim* adopts Ramban's position to explain why even though prayer during the year may be rabbinic in nature, prayers on the holiday constitute a biblical obligation. Furthermore, *Peri Megadim* argues that Ramban's analysis of *mikra kodesh* generates a biblical obligation to pray with a quorum on the holidays—even if no such obligation exists during the year.[58]

8. The Melakhah Prohibition of Sabbath and the Holidays

In his Commentary on the Torah (Lev. 23:7), Ramban observes that the verse formulates the *melakhah* prohibition of the Sabbath differently from that of the holidays. For Sabbath, the verse prohibits *kol melakhah* (all work), whereas for the holidays it prohibits *melekhet 'avodah* (laborious work). Ramban argues that these different formulations reflect two distinct types of prohibitions: For Sabbath, the verse prohibits all types of work, but for the holidays, only a subset of *melakhah*, defined as laborious work, is prohibited.

Ramban explains that the holiday prohibition of *melekhet 'avodah* is limited to *productive* work. He supports his analysis by noting that '*avodah* elsewhere in the Torah connotes productive work (Gen. 4:2, Exod. 1:14, 20:9, Ezek. 36:9). Thus, the holiday injunction does not prohibit work performed for personal enjoyment (*melekhet hana'ah*), especially that which is done to prepare food for personal consumption.[59]

Ramban appeals to this distinction twice in his talmudic writings. In his *Milhamot* (Betzah, Alfasi 13b), Ramban explains that the *melakhot* which precede kneading (*lishah*) on the Mishnah's list are, by definition, productive (*melekhet 'avodah*). They

57 Beit Yosef, Orah Hayim, 487.

58 See Peri Megadim, Orah Hayim 490:2; Eshel Avraham 106:3; and Petihah Kolelet Section 5.

59 Ramban, Lev. 23:7:

פירוש "מלאכת עבודה", כל מלאכה שאינה לצורך אוכל נפש, כענין שנאמר ששת ימים תעבוד ועשית כל מלאכתך (שמות כ', ט), ובכל עבודה בשדה (שם א', יד), ונעבדתם ונזרעתם (יחזקאל ל"ו, ט), וקין היה עובד אדמה (בראשית ד', ב), ומלאכה שהיא באוכל נפש היא מלאכת הנאה לא מלאכת עבודה.... ולא יאמר הכתוב לעולם באחד מכל שאר ימים טובים "כל מלאכה" ולא יפרש בהם היתר אוכל נפש, כי "מלאכת עבודה" ילמד על זה... פירוש "מלאכת עבודה" מלאכה המשתמרת לעבודת קנין כגון זריעה וקצירה וחפירה וכיוצא בהם, אבל אוכל נפש אינה מלאכת עבודה... הבא בטורח גדול בדומה לעבודה יהיה בכלל איסור והבא בנקל כמנהגו של אדם לעצמו יהיה מותר. או מקצתו כדי חייו, וכולו תבשילין מרובין לתענוג. והכלל במלאכת עבודה שהוא להתיר אוכל נפש.

are therefore prohibited on holidays even when they are performed for the sake of preparing food.[60]

In his *Hiddushim* to b. Shabbat (117b s.v. *ha de-tani*), Ramban employs his distinction between the *kol melakhah* Sabbath prohibition and the *melekhet 'avodah* holiday prohibition to solve the following "known problem." While the verse explicitly permits *melakhah* for food preparation on Passover (see Exod. 12:16), it does not explicitly extend this license to other holidays. Yet the Talmud takes it as axiomatic that the food preparation allowance applies to all the holidays. Commentators scramble to explain the Talmud's extension to the other holidays.[61] Ramban argues that the Torah's use of *melekhet 'avodah* for each of the holidays (in contrast to *kol melakhah*) implies that only a subset of *melakhah* is prohibited—*melekhet hana'ah*, which includes food preparation—is permitted on these days.[62] Thus, according to Ramban's analysis, the Torah explicitly permits food preparation on all of the holidays.[63]

60 *Milhamot* Betzah Alfasi 13b:
הוו יודעים שלא כל המלאכות הותרו ביום טוב אלא הכשר המאכלים לאכלן כגון אפייה ובשול וכיוצא בהן אבל לצוד בעלי חיים שאינן ברשות אדם וכן לעקור דבר מגדולו כגון קצירה ותולדותיה אלו וכיוצא בהן אסורין והן בכלל מלאכת עבודה... למעט טחינה והרקדה וכל שכן קצירה ותלישה... ומכל מקום נתמעטה קצירה ותולדותיה... שלא התירה תורה אלא להכשיר אוכלין שברשותו אבל לעקור דבר מגדולו לא... וכל שכן צידת בעלי חיים שהוא בכלל מלאכת עבודה.

61 See, e.g., *Yere'im* 305 and 306; *Hagahot ha-Ramakh* Hilkhot Yom Tov 1:1.

62 *Hiddushim* b. Shabbat 117b:
ול"נ דהכי פירושו דמתוך שהשבת אסורה בכל מלאכה ואפי' באוכל נפש כתיב בה לעולם כל מלאכה וכן ביום הכפורים, ומתוך שיו"ט מותר באוכל נפש כתיב בו כל מלאכת עבודה לא תעשו דאוכל נפש אינה מלאכת עבודה אלא מלאכת הנאה.
ומן הענין הזה נתרץ מה שרגילין לשאול מהיכן למדו היתר אוכל נפש בשאר ימים טובים חוץ מחג המצות, וכבר נתפרש שהוא נלמד מלשון מלאכת עבודה והדבר ברור הוא ממה שכתוב בכולן כן.

63 Ramban's analysis of the biblical verse has important conceptual implications for the nature of the holiday food preparation license (*hetter okhel nefesh*). Some commentators hold that in principle all *melakhah* is prohibited on the holidays—the license to prepare food is an external override to ensure that to celebrate can be celebrated with proper meals. The need to celebrate the holiday (*simhat Yom Tov*) "overrides" (*doheh*) the *melakhah* prohibition. (See Tosafot, b. Megillah 7b and *Sha'agat Aryeh* Responsa 102.) But on Ramban's analysis it turns out that food preparation melakhah (*melekhet hana'ah*) was never prohibited at all on holidays.
See the notes in *Hiddushei ha-Ramban al ha-Torah*, ed. Machon ha-Ma'or Vol 3, p. 151:
פירשו [תוס' ורש"י] שגדר ההיתר של מלאכת אוכל נפש ששמחת יום טוב דוחה את האיסור מלאכה... [אך] לדרכו של רבינו [הרמב"ן] מלאכת אוכל נפש אינה כלל בכלל מלאכת עבודה.
See also Rabbi Michael Rosensweig "be-Inyan Isur Melakhah ve-Hiyuv Shevitah be-Shabbat u-ve-Yom Tov", *Beit Yitzchak*, p. 108:
הרמב"ן עצמו מציע הסבר יסודי לביטוי "מלאכת עבודה". לפיו, ביטוי זה מגדיר עצם איסור מלאכה ביו"ט

9. The Traveler's Sukkah Exemption

Our ninth example, drawn from Ramban's commentary to Leviticus 24:42, differs from the previous examples in that Ramban does not attempt to derive a novel conclusion from the biblical verse. Instead, Ramban offers a novel biblical *source* for a well-established talmudic rule—even though the Talmud itself does not offer any basis in the biblical text for the rule in question.

The Talmud (b. Sukkah 26a) rules that travelers are not obligated to eat in a sukkah.[64] The Talmud does not explicitly offer a source for this exemption, but Rashi suggests, based on context, that the exemption flows from the talmudic principle of *teshevu ke-'ein taduru*.[65]

In his Commentary on the Torah, Ramban offers a different, novel source for the traveler's exemption. The verse establishing the sukkah obligation (Lev. 24:42) states "You shall live in sukkot for seven days: all citizens (*kol ha-ezrah*) in Israel shall live in sukkot." Ramban argues that the verse itself limits the sukkah obligation to "citizens" (*kol ha-ezrah*) and suggests that "citizens" implies someone "who is like a citizen, refreshed in his own home, which excludes travelers."[66]

In one sense, this example is less significant than our previous ones, as Ramban is not relying on the verse to derive a novel halakhic rule. On the other hand, this example demonstrates just how central the biblical verse was to Ramban's systematic interpretation of Jewish law: Ramban was scouring the biblical text not only to locate new laws but also to locate new *sources* for well-established talmudic principles. The biblical verse was an active part of Ramban's study of Jewish law.

Ramban does not explain why the *tesheveu ke-'ein taduru* principle is insufficient to explain the talmudic ruling or why he needed to source the exemption in the biblical verse's *ezrah*. But Ritva, a disciple of Ramban's academy, in his *Hiddushim* (b. Sukkah 26a s.v. *Pirzah* and 28b s.v. *Rava*) adopts Ramban's analysis and utilizes it to solve certain difficulties that arise in the Talmud's halakhic discussion.[67]

לעומת שבת... חילוק זה בין איסור מלאכה בשבת וביו"ט אינו מוגבל רק לפרטים טכניים. הנה עצם ההגדרה ותיאור האיסור שונה–בשבת "כל מלאכה" אסורה, ואילו ביו"ט "מלאכת עבודה גרידא אסורה....

64 See b. Sukkah 26a.

65 Rashi, b. Sukkah 26a *s.v. Holkhei*.

66 Commentary on the Torah, Lev. 24:42:

ויתכן שיאמר כל אשר כאזרח רענן בביתו, להוציא מפרשי ימים והולכי על דרך.

67 See Ritva b. Sukkah 28b s.v. *Rava* and Ritva b. Sukkah 26a s.v. *Pirzah*.

10. The Positive Commandment of Sabbath Resting *(Shevitah)*

In his commentary to Leviticus 23:24, Ramban develops a novel interpretation of the positive commandment to "rest" on the Sabbath and holidays. The Torah characterizes the holidays as *shabbaton*, which the Talmud interprets as a positive commandment (*'aseh*) to refrain from *melakhah*. For most commentators, this positive commandment has the same extension as the *melakhah* prohibition. The positive commandment simply *reinforces* the duty to refrain from the thirty-nine *melakhot* but does not add any new content to it.[68]

Ramban develops a different interpretation of the verse, with minor support from the *Mekhilta*. Ramban contends that *shabbaton* prohibits activities not covered by the thirty-nine *melakhot*. Ramban observes that it is conceivable to spend the entire Sabbath consumed by weekday work and engaged in market transactions without technically violating any of the thirty-nine *melakhot*—which would undercut the essence of Sabbath as a day of rest.[69] For that reason, Ramban argues, the *shabbaton* verse prohibits any activity that would render the Sabbath a day of toil. This positive commandment is distinct from the *melakhah* prohibition.[70]

Ramban's legal conclusion based on his interpretation of the verse—forbidding all sorts of (non-*melakhah*) commercial activity as a biblical prohibition—is taken up by later commentators. Ritva, for example, adopts Ramban's conclusion in his *Hiddushim* to tractate *Rosh Hashanah*.[71] Hatam Sofer also adopts Ramban's ruling when he declares a shop owner who opened his store for business on Sabbath as a "Sabbath

68 Commentary on the Torah (Lev. 23:24):
יהיה לכם שבתון – שיהיה יום שביתה לנוח בו. ואמרו רבותינו (שבת כד ב) שבתון עשה הוא. והנה העושה מלאכה בי"ט עובר בלאו ועשה.

69 Ibid:
ונראה לי שהמדרש הזה לומר שנצטוינו מן התורה להיות לנו מנוחה בי"ט אפילו מדברים שאינן מלאכה, לא שיטרח כל היום למדוד התבואות ולשקול הפירות והמתנות ולמלא החביות יין, ולפנות הכלים וגם האבנים מבית לבית וממקום למקום, ואם היתה עיר מוקפת חומה ודלתות נעולות בלילה יהיו עומסים על החמורים ואף יין וענבים ותאנים וכל משא יביאו בי"ט ויהיה השוק מלא לכל מקח וממכר, ותהיה החנות פתוחה והחנוני מקיף והשלחנים על שלחנם והזהובים לפניהם, ויהיו הפועלים משכימין למלאכתן ומשכירין עצמם כחול לדברים אלו וכיוצא בהן, והותרו הימים הטובים האלו ואפילו השבת עצמה שבכל זה אין בהם משום מלאכה...
And later in the same discussion:
פירוש שבתון כך הוא שתהיה לנו מנוחה מן הטורח והעמל כמו שביארנו, והוא ענין הגון וטוב מאוד. והנה הוזהרו על המלאכות בשבת בלאו ועונש כרת ומיתה והטרחים והעמל בעשה הזה.

70 Ibid: לכך אמרה תורה "שבתון" שיהיה יום שביתה ומנוחה לא יום טורח. וזהו פירוש טוב ויפה.

71 Ritva, b. Rosh Hashanah 32b.

desecrator (*mehalel shabbat*)" even though he did not technically violate any of the thirty-nine prohibited *melakhot*.[72]

As we shall see in the next example, Ramban's novel interpretation of *shabbaton* derives from a more general theory of biblical interpretation that Ramban advances elsewhere.

11. Meta-Legal Principles of Jurisprudence

In his commentary to Leviticus 19:2, Ramban develops a sweeping halakhic principle based on his reading of the biblical verse, with far reaching ramifications. Ramban contends that "you shall be holy" (Lev. 19:2) commands individuals to refrain from activities that run contrary to the law's ethos—even though those activities would otherwise appear to be technically permitted. Thus, whereas the Talmud might imply that a non-nazirite need not limit his wine consumption, or that one can eat kosher food as gluttonously as he desires, or that one can indulge in excessive sexual relations so long as no specific Torah prohibition is violated, Ramban contends that the verse in fact prohibits all of these through the sweeping injunction "you shall be holy."[73]

Further, Ramban argues that the "you shall be holy" injunction reflects a general principle of biblical jurisprudence. According to Ramban's theory, the verse will often enumerate a set of specific injunctions followed by a general formulation that captures the underlying meta-principle which unifies the specific injunctions. Ramban argues that the formulation of the underlying meta-principle generates a constellation of novel obligations.[74] In the "you shall be holy" example, the formulation of the meta-

72 Responsa *Hatam Sofer* 5:195.

73 Commentary on the Torah, Lev. 19:2:
והענין כי התורה הזהירה בעריות ובמאכלים האסורים והתירה הביאה איש באשתו ואכילת הבשר והיין, א"כ ימצא בעל התאוה מקום להיות שטוף בזמת אשתו או נשיו הרבות, ולהיות בסובאי יין בזוללי בשר למו, וידבר כרצונו בכל הנבלות, שלא הוזכר איסור זה בתורה, והנה יהיה נבל ברשות התורה.
לפיכך בא הכתוב, אחרי שפרט האיסורים שאסר אותם לגמרי, וצוה בדבר כללי שנהיה פרושים מן המותרות. ימעט במשגל, כענין שאמרו (ברכות כב ע"א) שלא יהיו תלמידי חכמים מצויין אצל נשותיהן כתרנגולין, ולא ישמש אלא כפי הצריך בקיום המצוה ממנו. ויקדש עצמו מן היין במיעוטו, כמו שקרא הכתוב (במדבר ו', ה) הנזיר קדוש, ויזכור הרעות הנזכרות ממנו בתורה בנח ובלוט. וכן יפריש עצמו מן הטומאה, אף על פי שלא הוזהרנו ממנה בתורה, כענין שהזכירו (חגיגה יח ע"ב) בגדי עם הארץ מדרס לפרושים, וכמו שנקרא הנזיר קדוש (במדבר ו', ח) בשמרו מטומאת המת גם כן. וגם ישמור פיו ולשונו מהתגאל ברבוי האכילה הגסה ומן הדבור הנמאס, כענין שהזכיר הכתוב (ישעיה ט', טז) וכל פה דובר נבלה, ויקדש עצמו בזה עד שיגיע לפרישות, כמה שאמרו על רבי חייא שלא שח שיחה בטלה מימיו.

74 Ibid:
באלו ובכיוצא בהן באה המצוה הזאת הכללית, אחרי שפרט כל העבירות שהן אסורות לגמרי, עד שיכנס בכלל

principle prohibits excessive sexual relations, gluttonous consumption of food, excessive consumption of wine, the use of foul language, and more. Although none of these activities are explicitly enumerated as biblical prohibitions in the Talmud or halakhic literature, Ramban concludes that they are all biblically prohibited under his interpretation of the sweeping "you shall be holy" injunction.

Armed with this theory of interpretation, Ramban deduces a host of new halakhic obligations from the biblical verse. In addition to the obligations deduced from "you shall be holy", Ramban cites his interpretation of *shabbaton* (discussed above) as an instance of the same interpretive principle. After prohibiting the specific *melakhot*, the verse mandates *shabbaton* more generally to prohibit any kind of labor, commerce, or weekday-like activity that would compromise the Sabbath as a day of rest.[75] Here too the formulation of the meta-principle generates a host of novel Sabbath prohibitions.

Ramban offers a third example in his commentary to Deuteronomy 6:18. Commenting on the verse "you shall do the right and good," Ramban explains that it would be impossible for the verse to enumerate all the rules necessary and sufficient to govern society. For that reason, after the verse enumerates specific regulations governing interactions between members of society, it commands "you shall do the right and good" as a general principle of social and political governance. Like the previous examples, this meta-principle generates specific halakhic obligations. These include: an obligation to waive one's legal rights and to settle disputes without pressing one's claim according to the strict letter of the law; to allow an abutter to have the right of first refusal to purchase real property; and to always engage with others respectfully.[76]

זאת הצוואה הנקיות בידיו וגופו, כמו שאמרו (ברכות נג ע"ב) והתקדשתם אלו מים ראשונים, והייתם קדושים אלו מים אחרונים, כי קדוש זה שמן ערב. כי אף על פי שאלו מצות מדבריהם, עיקר הכתוב בכיוצא בזה יזהיר, שנהיה נקיים וטהורים ופרושים מהמון בני אדם שהם מלכלכים עצמם במותרות ובכיעורים.

וזה דרך התורה לפרוט ולכלול בכיוצא בזה, כי אחרי אזהרת פרטי הדינין בכל משא ומתן שבין בני אדם, לא תגנוב ולא תגזול ולא תונו ושאר האזהרות, אמר בכלל ועשית הישר והטוב (דברים ו', יח), שיכניס בעשה היושר וההשויה וכל לפנים משורת הדין לרצון חבריו, כאשר אפרש (שם) בהגיעי למקומו ברצון הקדוש ברוך הוא.

75 Ibid: וכן בענין השבת, אסר המלאכות בלאו והטרחים בעשה כללי שנאמר תשבות.

76 Commentary on the Torah, Deut. 6:18:

ועשית הישר והטוב בעיני ה'... זו פשרה ולפנים משורת הדין. והכוונה בזה, כי מתחלה אמר שתשמור חקותיו ועדותיו אשר צוך, ועתה יאמר גם באשר לא צוך תן דעתך לעשות הטוב והישר בעיניו, כי הוא אוהב הטוב והישר... וזה ענין גדול, לפי שאי אפשר להזכיר בתורה כל הנהגות האדם עם שכניו ורעיו וכל משאו ומתנו ותקוני הישוב והמדינות כלם, אבל אחרי שהזכיר מהם הרבה, כגון לא תלך רכיל (ויקרא י"ט, טז), לא תקום ולא תטור (שם פסוק יח), ולא תעמוד על דם רעך (שם פסוק טז), לא תקלל חרש (שם פסוק יד), מפני שיבה תקום (שם פסוק לב), וכיוצא בהן, חזר לומר בדרך כלל שיעשה הטוב והישר בכל דבר, עד שיכנס בזה הפשרה ולפנים משורת הדין, וכגון מה שהזכירו בדינא דבר מצרא (ב"מ קח ע"א), ואפילו מה שאמרו (יומא פו ע"א) פרקו נאה ודבורו בנחת עם הבריות, עד שיקרא בכל ענין תם וישר.

In these three examples—*shabbaton*, "you shall be holy," and "you shall do the right and good"—Ramban derives novel normative content from his interpretation of the biblical verse.[77]

III. Conclusion: The Biblical Verse and the Jurisprudence of *Halakhah*

This paper has argued that Ramban methodically derives normative halakhic conclusions from his interpretation of the biblical verse. As the above examples demonstrate, the biblical verse was an important and active component of Ramban's halakhic jurisprudence. In many cases, the normative conclusions reached by Ramban from his interpretation of the biblical text are significant and far reaching. He authorizes the Jewish community to punish violators of its ordinances with the death penalty. He limits the first-born's right to a double portion. He prohibits price gouging in real property. He permits concubinage. He prohibits a wide range of commercial activities as a biblical violation of the Sabbath. These types of examples can easily be multiplied.[78]

We can only speculate as to *why* Ramban saw the biblical verse as so relevant to his normative jurisprudence while other Rishonim did not. But Ramban's orientation appears to be consistent with his expressed views about the fecundity of the biblical verse, its metaphysical significance and completeness, and its manifold layers of meaning. For example, in his debate with Maimonides over the divide between rabbinic and biblical authority, Ramban adopts a very broad interpretation of biblical authority. He maintains that rabbinic derivations from the biblical text by means of *derashot* are part of the original meaning of the verse and are therefore considered to be endowed with biblical authority.[79]

77 For further discussion of these meta-principles, see Moshe Halbertal, *Nahmanides* (Yale, 2021), 276-277.

78 For further examples, see Ramban, Gen. 49:10 (prohibiting priests from serving as monarchs); Ramban, Deut. 17:6 (obligating a court to subpoena all available witnesses); Ramban, Deut. 1:12 and b. Bava Batra 167b (entitling a litigant to demand a five-judge panel for a monetary dispute); Ramban, Deut. 16:18 (on the powers of the tribal Supreme Court); Ramban, b. Eruvin 43a (limiting the Sabbath boundary prohibition as it pertains to sailors); Ramban, b. Megillah 2a (on the two day celebration of Purim).

79 See *Hassagot* to *Sefer ha-Mitzvot*, *Shoresh* 2:
שהמדות [שהתורה נדרשת בהם] כולן אצלם כדבר מפורש בתורה ודורשים אותן מדעתם... שהמדות האלה כדבר מפורש בתורה הם.
On this debate, see Moshe Halbertal, *People of the Book*, Chapter 2.

To justify his position, Ramban argues that the biblical text is teeming with multiple layers of meaning. At one point, Ramban lists four layers of biblical meaning: *ha-torah tezaveh u-tefaresh ve-todi'a ve-tirmoz*.[80] The biblical verse includes not only its plain meaning, but also *derashot*, interpretations, derivations, literary allusions, and numerical hints. Ramban maintains that the biblical verse simultaneously contains all of these (*ha-katuv yikhlol ha-kol*). Ramban grounds this contention in his conception of the biblical text's completeness: *Torat Hashem Temimah*.[81] Ramban offers a similar formulation in his introduction to the *Commentary on the Torah*. There Ramban argues that every bit of knowledge revealed to Moshe is encoded in the biblical text in one form or another.[82] It stands to reason that Ramban's wider and dynamic conception of the biblical verse's meaning partly explains his attempt to unearth novel *halakhot*, and to locate new sources for established *halakhot*, in the biblical text itself. If the text of the Torah contains the wisdom revealed to Moshe, then the legal scholar ought to scour the biblical verse for legal insights and jurisprudential guidance.

In addition to characterizing Ramban's jurisprudence, the present study contributes to a broader debate over the extent to which Geonim and Rishonim appealed to their interpretation of the verse to decide halakhic questions.[83] The fact

80 Ibid:
והתימה שתמה הרב מן תורה צוה לנו משה שירמוז למגלה ונר חנוכה בגימטריא איננו גדול. שכבר דרשו (מגילה ז ע"א) כתוב זאת זכרון בספר כתוב זאת מה שכתוב כאן ובמשנה תורה, זכרון מה שכתוב בנביאים, בספר מה שכתוב במגלה. כי התורה תצוה ותפרש ותודיע ותרמוז. ... וכן אמרו בפרק ראשון של ברכות (ה ע"א) מאי דכתיב ואתנה לך את לוחות האבן והתורה והמצוה אשר כתבתי להורותם לוחות האבן זו המקרא והתורה זו המשנה והמצוה כמשמעה אשר כתבתי אלו נביאים להורותם זה התלמוד מלמד שכולם ניתנו למשה בסיני. והנה זו המימרא מתרצת לבעל הלכות כל קושיות הרב שהרי הם אומרים בכולם ניתנו למשה בסיני.

81 Ibid:
המדרשים כולם בענין המצות אין בהם מקרא יוצא להם מידי פשוטו אלא כולם בלשון הכתוב נכללים אף על פי שהם מרבים בהם בריבויים. ואין מדרש כבוד תלמידי חכמים מלשון את י"י אלהיך תירא מוציא הכתוב מפשוטו. וכן אם נאמר בכי יקח איש אשה שהוא בכסף אינו מוציא ממשמעו ופשטו. ולא כל אתין וגמין וריבויין ומעוטין ואכין ורקין ושאר המדרשים כולם. אבל הכתוב יכלול הכל... כי ספר תורת י"י תמימה אין בה אות יתר וחסר כולם בחכמה נכתבו.

82 Introduction to the Commentary on the Torah:
כל הנאמר בנבואה ממעשה מרכבה ומעשה בראשית והמקובל בהם לחכמים תולדות עם ארבע הכחות שבתחתונים כח המחצבים וכח צמח האדמה ונפש התנועה והנפש המדברת בכלם נאמר למשה רבינו בריאתם וכחותם ומהותם ומעשיהם ואפיסת הנפסדים מהם והכל נכתב בתורה בפירוש או ברמז...
וכל הנמסר למשה רבינו בשערי הבינה הכל נכתב בתורה בפירוש או שרמוזה בתיבות או בגימטריאות או בצורת האותיות הכתובות כהלכתן או המשתנות בצורה כגון הלפופות והעקומות וזולתן או בקוצי האותיות ובכתריהם.

83 See Yitzchak Gilat's excellent study, Y. Gilat, "Midrash ha-Ketuvim ba-Tekufah ha-Batar-Talmudit" in Gilat and Stern (ed.), *Mikhtam le-Dovid*: *Sefer Zikaron le-Rav D. 'Uks* (Ramat Gan 5753). Avraham

that Ramban, one of the greatest halakhists of the Middle Ages, appeals directly to his interpretation of the verse to inform his legal positions may lend additional credibility to the view that Ashkenazic Rishonim did so, as well.

Furthermore, Ramban's integration of the biblical verse with normative *halakhah* is a powerful countermodel to the paradigm of rabbinic scholars and students of *halakhah* as experts in the oral legal tradition but ignorant in the biblical text.[84] For Ramban, the biblical verse served as a consistent guide that informed and enriched his halakhic jurisprudence.[85]

Grossman contends that pre-crusade Ashkenazic scholars were unique in appealing to the biblical verse to decide questions of *halakhah*. See A. Grossman, *Hakhmei Ashkenaz Ha-Rishonim*, 155-157, 430. See also David Berger's review of Grossman in D. Berger, "Heker Rabbanut Ashkenaz ha-Kedumah," *Tarbiz* 53:3 (5744), 484 n. 6; D. Berger, *The Jewish Christian Debate* (Philadelphia, 1979), 25-26; and Berger, "Jacob Katz on Jews and Christians in the Middle Ages," *Persecution, Polemic, Dialogue* (Boston, 2010), 58-60, especially note 21 therein; Ta-Shma argues that later Ashkenazic scholars also decided halakhic questions based on their interpretation of the verse. See Ta-Shma, "Teshuvat Ri ha-Zaken be-Din Moser," *Studies in Medieval Rabbinic Literature IV*: *East and Provence* (Jerusalem 2010), 162.

Haym Soloveitchik strongly opposes the claims of Grossman and Ta-Shma. See Soloveitchik, "The Authority of the Babylonian Talmud and the Use of Biblical Verses and Aggadah in Early Ashkenaz," in *Collected Essays II*, 70-71: "I must dissent from the now widely held view… that the scholars of Early Ashkenaz… knowingly and openly disregarded [the Bavli] and resolved halakhic questions on the basis of Mishnah, aggadah, and biblical verses."

See also Haym Soloveitchik, "On the Use of Aggadah by the Tosafists: A Response to I.M. Ta-Shma," *Collected Essays II*, 102-103.

84 See above, n. 3.

85 For important discussion of the integration of *Torah she-Bikhtav* with *Torah she-Ba'al Peh* in contemporary *Talmud Torah*, see R. Michael Rosensweig "Reflections on the Conceptual Approach to Talmud Torah," in *Lomdus*: *The Conceptual Approach to Torah Study* (ed. Yosef Blau), 209-214. The model of integration proposed therein—that the biblical verse formulates conceptual motifs (e.g., an eye for an eye), whereas the oral tradition formulates normative law (e.g., monetary damages)—differs from the model of Ramban's jurisprudence characterized in this paper. In Ramban's model, the biblical verse actively guides the interpretation of the *normative* law. Nevertheless, the models are not incompatible. They simply emphasize different aspects of integration.

ABSTRACTS

English Articles

Shimon Maged

Nadav, Avihu, and the Second Passover

This article explores the theory, first advanced by R. Akiva, that the anonymous men who petitioned Moses for a "Second Passover" are to be identified as Mishal and Elzaphan, the cousins of Nadab and Abihu. Support for this theory can be adduced from several textual details, including the chronology of the key events: if Nadab and Abihu died on the eighth of Nissan, then Mishael and Elzaphan, who transported their corpses, would have been ineligible to participate in the Passover offering at its appointed time one week later—precisely the quandary posed by the petitioners for a Second Passover. After considering support for this theory, we also examine its implications. Among the related textual interconnections examined in this regard are those between the inauguration of the Tabernacle and the law of the red heifer; between the inauguration of the Tabernacle and the original Passover offering; between the deaths of Nadab and Abihu and the plague of the firstborn; and between the response by Aaron to the death of Nadab and Abihu, as compared to the response of Mishael and Elzaphan, the purported petitioners of the Second Passover. In this last comparison, we suggest, may lie a model for responding to tragedy from a religious perspective that is especially pertinent to the presentperiod.

Shalom Carmy

Recovering the Land: Nehemiah 9 and Ramban

Two themes in the article: 1. examining possible arguments on behalf of Ramban's explanation for the repeated promises of the land to Abraham in Genesis 15 and 17; 2. explaining features of the Levites' review of Biblical history in Nehemiah 9, particularly that Genesis 15 is utilized more than Genesis 17 and the omission of reference to the Babylonian exile. We suggest possible relevance of Ramban's approach and further relate our interpretation to other recent studies.

Lisa Fredman

The Motive on Enticement to Christianity in Rashi's Commentary to Proverbs

Rashi's Proverbs commentary contains more than fifty-five explicit polemical comments directed against Christianity, and the primary polemical theme of these glosses is that of Christian enticement. This motif is mentioned in more than fifteen glosses, the majority of which are original to Rashi. He uses a variety of terms to describe the seduction to Christianity, among them *Minim* and *Minut*. The occurrence of the latter terms twelve times in the commentary approximates the sum total of instances the root min appears in Rashi's glosses to all other biblical books.

Discussions and debates centering upon the correct interpretation of the Old Testament were not uncommon during Rashi's lifetime, and they were often, but not exclusively, set in motion by Christians. Rashi warns Jews against taking the offensive and initiating such discussions. The quantity, originality, and explicit language of Rashi's glosses on this subject clearly express his grave concern regarding the persuasive power of Christian propaganda and an awareness of its destructive impact upon the medieval Jewish community in Northern France.

Itamar Rosensweig

The Biblical Verse as a Source of Halakhah in Ramban's Normative Jurisprudence

Although the Babylonian Talmud is the unrivaled source of Jewish law, contemporary scholars differ on the extent to which medieval halakhic authorities utilized their interpretation of the biblical verse--unmediated by the Talmud--to determine normative Jewish law.

In this paper, I argue that Ramban used his novel and direct interpretation of the biblical verse to arrive at normative halakhic conclusions. The paper offers eleven examples of this phenomenon from Ramban's hiddushim on the Talmud, his commentary on the Torah, his responsa, and his short halakhic treatises. The paper also investigates the theological premise underlying Ramban's use of the biblical verse as an ongoing source ofhalakhah.

Hebrew Articles

Haggai Rozenberg

Passover as Korban Hashem: The Passover Passage in Book of Numbers (9, 1-14) as a Redesign of the Passover Sacrifice

The Passover passage in the Book of Numbers describes the commandment and fulfillment of the Passover sacrifice in the desert, the complaint of ritually impure people who could not bring the sacrifice, the acceptance of their complaint and the commandment to offer a 'Second Passover' on the fourteenth day of the second month. Careful study of this passage reveals that the Passover sacrifice found here has a different emphasis than the Passover sacrifice as presented in the Book of Exodus. While the Passover sacrifice in the Book of Exodus is a sacrifice of protection and salvation, the sacrifice in the Book of Numbers celebrates a covenant between God and the people of Israel. This is accomplished by blurring the direct connection between the Exodus and the Passover sacrifice, emphasizing the Passover as a covenantal sacrifice and introducing the punishment of *karet* - excision - for those who willfully refrain from offering it.

Examining the texts that describe Passovers offered throughout biblical history reveals that they emphasize this meaning, as well. These Passovers are described as covenantal sacrifices brought in the context of the renewal of the covenant. This is the case with the Passover sacrifice brought in Gilgal, the Passover sacrifices of King Hezekiah and King Josiah, as well as the Passover sacrifice brought by the returnees from exile at the beginning of the Second Temple period.

Zvi Erlich

From the Test of the Ketoret to the Test of the Matot: The Metamorphosis of the Test of the Priesthood

Korah led a struggle for the position of the priesthood, as well as a struggle challenging the leadership of Moses. In response to the challenge to his own leadership, Moses declares the "test of swallowing" whereby Korah's unusual death would serve as proof of Moses' leadership, and, indeed, Korah and his co-conspirators are swallowed up by the earth. The central claim in the article is that the Test of the *Ketoret* (incense),

which Moses suggested as a means of establishing the post of priesthood, had several phases in its planning and its execution. The test is presented twice in the biblical text in its planning stage because Moses changed its details. The biblical text shows that the test did not take place as planned, regarding to both the timing of the test and the participants involved. These changes are what led the people to complain and to be smitten by plague.

The article suggests that the Test of the *Matot* (staffs), which, after the Test of the *Ketoret*, appears redundant, is presented in the biblical text using a linguistic structure parallel to that of the Test of the *Ketoret* to teach that this dispute must be resolved in a similar manner. The argument about the priesthood should not be viewed as a challenge between Aaron and those confronting him, as suggested by Moses, but as a test of Moses himself, who must prove that his appointments are based on the word of God. Throughout the story, there are various hints that the argument regarding the priesthood would not be resolved until Moses, himself, would be put to the test in a manner similar to the "test of swallowing" in the struggle regarding his leadership.

Hezi Cohen

Samuel's Leadership During the Battle of Ebenezer:
A Paradigm of Teshuva

Our Sages have taught that no two prophets offer prophesy in the same style, which requires us to attempt to characterize the unique approach of each one of the prophets. Our article will analyze the process of repentance led by the prophet Samuel, which finally led to Israel's victory over the Philistines, as described in I Samuel, Chapter 7. Samuel leads the people in a multi-stage process that results in deep and meaningful repentance. At the same time, he organizes an impressive ceremony in Mitzpah, recognizing the value in dramatic and powerful events that can serve to deepen the change taking place among the people. At the climax of the event, Samuel chooses to remain silent in order to allow the people to choose their own path and reach full, independent, repentance.

This article includes literary analysis of the story, making use of close reading, drawing parallels to the story of the previous war in Ebenezer (I Samuel 4) where the Israelites were beaten. Samuel's prophetic approach is evident in light of the differences between him and the Prophet Elijah who acted in a harsh, exacting manner, when trying to bring

about repentance at Mount Carmel (I Kings 8). Elijah was unsuccessful, as is evident from the fact that the Israelites soon returned to their sinful ways.
In closing, we will examine Samuel's approach of combining spectacular events with daily rituals and note the connection with his parents' approach to serving God.

Adina Sternberg

"ובדברך עשיתי": The Stories of Eliyahu and Elisha

The article reviews the two main approaches to understanding the Eliyahu narratives, and consequently the Elisha narratives. The first, more common approach, is that Eliyahu operated on his own accord, not in accordance with God's will. Respectively, selecting Elisha is meant as a way to substitute Eliyahu's policy. The second, less known approach, sees Eliyahu as God's loyal messenger, acting upon His word, while Elisha is brought in to continue and enhance this policy. The article analyzes the different sources supporting each approach, and develops, establishes and proves the veracity of the second approach.

Jonathan Grossman

"וּבָרַד בְּרֶדֶת הַיָּעַר" – Wordplay and Isaiah 32

The meaning of the verse "וּבָרַד בְּרֶדֶת הַיָּעַר" in Isaiah 32:19 has troubled many commentators throughout the ages. This article examines the various possibilities proposed in relation to this verse, and discusses the difficulties associated with them. In order to present an alternative interpretation, this article first points to the many wordplays that the prophet weaves into this prophecy, and, against this background, raises the possibility that the noun 'היער' also is a play on words. In using this word, the prophet is not referring only to a grove of trees, rather his main intent is to refer back to the beginning of the prophecy: "עַד יֵעָרֶה עָלֵינוּ רוּחַ מִמָּרוֹם" (Isaiah 32:15), and to describe the wind that will be poured into the earth. This explanation reveals that in the description of the 'descending forest,' the prophet alludes to the wind that will come down from on high.