

# Does Halakhah Really Uproot Peshat?

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The term *peshat* as Jewish scholars use it refers to the “plain meaning” or contextual exegesis of biblical texts. Most modern scholarly interest in *peshat* centers on the study of medieval Jewish texts, since only then did Jews begin to produce works that were dedicated to *peshat*.<sup>1</sup> But was there no consciousness of *peshat* before medieval times?

Attempting to measure the degree to which any exegetical work is dedicated to or even sensitive to *peshat* presents many methodological problems. No agreed-upon definition of the word *peshat* exists. Different Jewish thinkers used and still use the word in very different ways.<sup>2</sup> Determining what constitutes a text’s “plain meaning” is intrinsically subjective.<sup>3</sup>

But since the term in the sense that we use it today was invented by medieval exegetes, I use their work as my guidepost. In recent articles I have set forth some suggested criteria for determining what is and what is not *peshat*. *Peshat*, to give an extremely condensed version of my criteria, is an interpretation that avoids anachronisms, respects the immediate context of the verse, follows the rules of grammar and syntax, recognizes when wording that might seem anomalous is simply standard biblical style, recognizes the

- 1 See Magne Sæbø ed., *Hebrew Bible/Old Testament: A History of Its Interpretation* (Göttingen: Vandenhoeck and Ruprecht, 1996–2015).
- 2 See David Halivni, *Peshat and Derash: Plain and Applied Meaning in Rabbinic Exegesis* (New York: Oxford University Press, 1991).
- 3 See Raphael Loewe, “The ‘Plain’ Meaning of Scripture in Early Jewish Exegesis,” in *Papers of the Institute of Jewish Studies London I*, ed. J. G. Weiss (Jerusalem: Magnes, 1964), 140–85.

differences between biblical and rabbinic Hebrew, and explains verses from within the text rather than depending on information extraneous to the text.<sup>4</sup>

## I. Was Peshat New in the Middle Ages?

Modern scholars disagree about whether rabbis in the classical rabbinic period (roughly the 2<sup>nd</sup> through the 6<sup>th</sup> centuries) understood the difference between *peshat* exegesis and midrashic exegesis.<sup>5</sup> Medieval Jewish Bible commentators who offered *peshat* explanations of biblical texts also disagreed about whether or not they were doing something new. In their traditional societies, it was useful for them to claim precedents for their methods. Many of them cited older rabbinic statements such as “*en miqra’ yotse’ mi-de peshuto*”<sup>6</sup> (translated by David Weiss-Halivni as “no text can be deprived of its *peshat*”<sup>7</sup>) as precedents for their own efforts to interpret the Bible according to the plain sense of Scripture.<sup>8</sup> They also cited the phrase *pashtei di-qra* that appears occasionally in rabbinic literature.<sup>9</sup> Modern scholars argue about what these phrases and terms meant in classical rabbinic literature, but they certainly did not mean *peshat* in the medieval or modern sense.<sup>10</sup>

4 For more detail, see my “*Peshat in Genesis Rabbah*,” (henceforth *PGR*) in *Genesis Rabbah in Text and Context*, ed. Sarit Kattan Gribetz et al. (Tübingen: Mohr Siebeck, 2016), 213–32, especially pp. 213–14; and my “Signs of Sensitivity to *Peshat* in the Collections of Midrash Halakhah” (henceforth *Signs*), *Mikhlol: Pardes Conference Series* 1 (2016): 5–16, especially p. 6 (Hebrew).

5 See *PGR* and *Signs*. See also the sources cited in the notes there.

6 *b. Šabb.* 63a and a few other times in classical rabbinic literature.

7 Halivni, *Peshat and Derash*, 25.

8 See, e.g., Rashbam, commentary to Gen 1:1 and Gen 37:2, and ibn Ezra, introduction to his Torah commentary “*ha-derekh ha-revi’it*.” They both use this quotation to justify large-scale setting aside of midrashic readings of the biblical text. Earlier on, Rashi had cited this line twice in his Torah commentary (to Gen 37:17 and to Exod 12:2) to justify his own preference for one specific *peshat* explanation over midrashic alternatives.

9 In *b. Eruv.* 23b and six more times in the Babylonian Talmud. Cited for example by Rashi to Job 29:13, Bekhor Shor to Lev 6:3, and Radak to 2 Chron 6:1.

10 See, for example, the discussion by Sarah Kamin, *Rashi’s Exegetical Categorization in Respect to the Distinction Between Peshat and Derash* (Jerusalem: Magnes, 1986) (Hebrew); Halivni, *Peshat and Derash*; Loewe, “‘Plain’ Meaning.”



And this shall serve you as a sign on your hand and as a reminder between your eyes—in order that the Teaching of the Lord may be in your mouth—that with a mighty hand the LORD freed you from Egypt.

While Jewish tradition has always explained this verse as a reference to *tefillin* (phylacteries) which are physically, literally, tied on the arm and head, Rashbam insisted that:

According to the profound plain meaning (עומק פשוטו) [of Scripture], it will always be a reminder for you as if it were written on your hand. Like the verse (Song 8:6), “Let me be a seal on your heart.”<sup>15</sup>

Just as the speaker in the Song of Songs does not mean that she wishes to be literally a seal on her lover’s heart, so the contextual meaning of the verse in Exodus, according to Rashbam, is that a Jew should surround himself or herself with Torah as if the Torah were written on the Jew’s hand or arm. In this case, according to Rashbam, the metaphorical explanation is the *peshat*, the interpretation that fits the context best, while the literal explanation, *tefillin*, is what we might call hyper-literalism.

Abraham ibn Ezra’s favorite example of the principle that the literal is not always coterminous with *peshat* is the verse in Deuteronomy (10:16): “Circumcise the foreskin of your hearts, and stiffen your necks no more.” Context and common sense tell us that the *peshat* of this verse is the metaphorical understanding and not the hyper-literal understanding that the verse advocates open-heart surgery.<sup>16</sup>

Doubtless the rabbis of classical rabbinic times understood the distinction between literal and non-literal. They use the word *mamash* to differentiate between the two. But did they have a sense of *peshat*? Abraham ibn Ezra argued that they must have understood the *peshat* interpretation of the Bible, even if their exegetical works tended not to use it. He writes: “They [the rabbis] knew the *peshat*, for they were endowed with all wisdom.”<sup>17</sup> One

15 Commentary to Exod 13:9: לאות על ירך – לפי עומק פשוטו יהיה לך לזכרון תמיד כאילו כתוב על ירך. כעין שימני כחותם על לבך.

16 For example in his longer commentary to Exod 13:9 and 20:1.

17 Abraham ibn Ezra, *shittah aheret* commentary to Genesis, introduction, p. כט in *Miqraot Gedolot ha-Keter*, volume 1, ed. Menachem Cohen (Jerusalem: Bar Ilan University Press, 1997): והם ידעו הפשט, כי להם נתנה כל חכמה.

Spanish Jewish Bible commentator whose name is now lost even claimed: “We know that our Sages knew *peshat* better than anyone who came after them.”<sup>18</sup> Ibn Ezra’s older contemporary, Rashbam, however, claimed that the classical rabbis never actually honed the skills required for *peshat* exegesis, since they concentrated their efforts on midrash, the type of biblical exegesis that, he claimed, was more important for the religious life of the observant Jew. He writes:

Due to their piety, the earliest scholars tended to devote their time to midrashic explanations; as a result they never became attuned to the profundities of the plain meaning of Scripture (עומק פשוטו של מקרא).<sup>19</sup>

### III. Uprooting Scripture

In two recent studies of mine, I concluded that editors of different rabbinic works display different attitudes to *peshat*.<sup>20</sup> In this paper, my goal is narrower: to analyze one statement, “In three instances halakhah uproots Scripture.” The statement first appears in classical rabbinic literature, and is attributed to Rabbi Yishmael of the second century.<sup>21</sup>

Some medieval and early modern Jewish Bible commentators used this phrase for their own purposes, saying that the halakhah which the classical rabbis formulated, while ostensibly based on exegesis of the Bible, sometimes or perhaps often negated the plain meaning of the biblical text. These medieval and early modern commentators cited Rabbi Yishmael’s phrase to distinguish their own *peshat* project from halakhah, implying that Rabbi

18 ידענו שחכמינו ידעו הפשט יותר מכל הבא אחריהם. From an anonymous manuscript discussed by Hagai Ben-shammai, “The Rabbinic-Midrashic Literature in Saadiah’s Commentaries: Continuity and Innovation,” in *Tradition and Change in Medieval Judeo-Arabic Culture*, ed. J. Blau and D. Doron (Ramat Gan: Bar Ilan University Press, 2000), 67, cited by Uriel Simon, *The Ear Discerns Words: Studies in Ibn Ezra’s Exegetical Methodology* (Ramat Gan: Bar-Ilan University Press, 2013), 118 (Hebrew).

19 Commentary to Gen 37:2: והראשונים מתוך חסידותם נתעסקו לנטות אחרי הדרשות שהן עיקר, ומתוך כך לא הורגלו בעומק פשוטו של מקרא

20 See n. 4 above.

21 In *b. Sotah* 16a and other sources discussed below.

Yishmael, and presumably the rest of the *tanna'im*,<sup>22</sup> recognized this tension and understood that the halakhic process uproots Scripture. For example, in the introduction to his commentary to Exodus 21, Rashbam wrote:

Let those who love wisdom know and understand that my purpose is not to offer halakhic interpretations. ... Some of those explanations can be found in the works of my mother's father, Rashi, may the memory of the righteous be a blessing. But my purpose is to explain the *peshat*. I will explain the laws and rules [of the Torah] in a manner that conforms to the [natural] way of the world. Nevertheless, it is the halakhic level of interpretation that is the most essential one, as the rabbi said (*b. Sotah* 16a), "Halakhah uproots [the plain meaning of] Scripture."<sup>23</sup>

A century and a half after Rashbam, around the year 1300, Rabbi Menahem ha-Meiri wrote in his commentary on that same talmudic phrase:

We have found many cases where halakhah gets around (עוקבת) the biblical text, meaning that halakhah approaches the text in a roundabout manner (בעקיפין) and with rationalizations to dislodge the text from its meaning and establish a new meaning for it, sometimes completely uprooting (בעקירה) [the text from its meaning] and sometimes [simply] adding.<sup>24</sup>

22 There is copious literature on whether Rabbi Yishmael had a different exegetical approach from that of the other *tanna'im*. See *Signs*, p. 8 and the notes there, and *PGR*, 222–23 and notes there.

23 ידעו ויבינו יודעי שכל כי לא באתי לפרש הלכות . . . ומקצתן ימצאו בפירושי רבינו שלמה אבי אמי זצ"ל, ואני לפרש פשוטן של מקראות באתי. ואפרש הדינין וההלכות לפי דרך ארץ. ואעפ"כ ההלכות עיקר כמו שאמרו רבותינו הלכה עוקרת (משנה) [מקרא]. All printed versions of Rashbam's commentary on the Torah are based on one manuscript which has been lost since the Shoah. David Rosin based his edition (Breslau, 1881/1882) on this manuscript, and he reports that the manuscript reads here: הלכה עוקרת. משנה. In a footnote in his edition (p. 112 n. 3), he approvingly quotes a colleague who suggested emending the word משנה to מקרא. Since then, scholarly editions have followed this emendation. See *Miqraot Gedolot ha-Keter*, Exodus, volume 2, ed. Menachem Cohen (Jerusalem: Bar Ilan University Press, 2007), 2, and Martin Lockshin, *Peirush ha-Rashbam al ha-Torah* (Jerusalem: Choreb, 2009), 251 and the notes there.

24 הרבה מקומות מצינו שהלכה עוקבת את המקרא ר"ל שבאה עליו כמו עקיפין ותואנות להזיז את המקרא מהבנתו ולהעמידו בהבנה אחרת מהם בעקירה לגמרי ומהם בתוספת

Even in more recent generations, some rabbis and scholars have continued to see this statement of Rabbi Yishmael's as a comment on the tension between halakhah and *peshat*.<sup>25</sup>

#### IV. What Did Rabbi Yishmael Actually Say?

Is it legitimate to read this meaning into the talmudic passage where Rabbi Yishmael's saying first appeared? Probably not.

We have three different versions of this saying in classical rabbinic literature--in *Sifre Deuteronomy*, in the Babylonian Talmud, and in the Palestinian Talmud.

In *Sifre Deuteronomy*, the relevant passage reads:

"You shall take an awl" (Deut 15:17) [and use it to pierce the ear of a Hebrew slave who does not wish to go free after six years]: And how do we know that [the piercing does not have to be done with an awl but the verse] also [allows piercing] with a thorn or with glass or with the [sharpened] stem of a reed? For the text says "you shall take" [implying any item that one might think to take for this purpose]; these are the words of Rabbi Yose berabbi Yehudah.

Rebbe [on the other hand] says, [the verse says] "with an awl": just as an awl is made of metal so I know only [that the Torah also permits the piercing to be done with any implement] made of metal.

Based on this (מיכן) Rabbi Yishmael used to say: In three instances halakhah circumvents (עוקפת) Scripture:

(1) The Torah said (Lev 17:13): "[And if any Israelite or any stranger who resides among them hunts down an animal or a bird that may be eaten, he shall pour out its blood and cover

traditions for the talmudic passage from which this saying is created, we find a number of different versions of the verb that Rabbi Yishmael used: עוקבת, עוקרת, עוקמת, עוקפת. See *Diqduqei Soferim* to *b. Sotah* 16a. Perhaps ha-Meiri was acquainted with the variation in readings, as he used forms of three of these verbs in his comment.

25 See sources cited by David Henshke, "Two Subjects Typifying the Tannaitic Halakhic Midrash," *Tarbiz* 65 (1995): 427–28 (Hebrew).

it] with earth.” But halakhah [teaches that the slaughtered animal’s blood may be covered] with any material in which plants can grow [not just earth];

(2) The Torah said [that a man who divorces his wife must hand her] (Deut 24:1): “a book [of divorcement].” But halakhah [teaches that the divorcement document may be written] on any material that is not attached to the ground [not just a book];

(3) The Torah said (Exodus 21:6) [that the ear of a Hebrew slave who decides not to go free after six years of service should be pierced] “with an awl” but halakhah says [that the piercing may be done] with any item.<sup>26</sup>

The passage in the Babylonian Talmud reads:

Come and hear: Rabbi Yohanan taught in the name of Rabbi Yishmael: In three instances halakhah uproots Scripture:

(1) The Torah said (Lev 17:13): “[And if any Israelite or any stranger who resides among them hunts down an animal or a bird that may be eaten, he shall pour out its blood and cover it] with earth.” But halakhah [teaches that the slaughtered animal’s blood may be covered] with anything [not just earth];

(2) The Torah said (Num 6:5): “[Throughout the term of his vow as Nazirite, no] razor [shall touch his head].” But halakhah [teaches that for a Nazirite, shaving or trimming is forbidden] using any item [not just a razor];

(3) The Torah said [that a man who divorces his wife must hand her] (Deut 24:1): “a book [of divorcement].” But halakhah

26 *Sifre Deuteronomy* 122. See the notes on p. 180 of Finkelstein’s edition (New York: Jewish Theological Seminary, 1993). Finkelstein found that the passage was missing in around half the manuscripts of *Sifre* that were available to him. The Hebrew text in Finkelstein reads: וּלְקַחַת אֶת הַמְרִצֵּעַ, מִנֵּין לְרִבּוֹת אֶת הַקּוֹץ וְאֵת הַזּוֹכֵכִית וְאֵת הַקְּרוּמִית שֶׁל קִנָּה שֶׁנֶּאֱמַר וּלְקַחַת דְּבָרֵי רִבִּי יוֹסִי בְּרַבִּי יְהוּדָה רַבִּי אֹמֵר מְרִצֵּעַ מֵהַ מְרִצֵּעַ הַמִּיּוּחָד מִן הַמִּתְכַּת אִף אֵין לִי אֵלָא מִן הַמִּתְכַּת. מִיִּכֵן הִיָּה רַבִּי יִשְׁמַעֵאל אֹמֵר בְּשִׁלְשָׁה מְקוֹמוֹת הִלְכָה עֹקֶפֶת הַמִּקְרָא הַתּוֹרָה אִמְרָה וּשְׁפָךְ אֶת דָּמוֹ וְכִסְהוּ בַעֲפֹר וְהִלְכָה אִמְרָה בְּכָל דְּבַר שֶׁמִּגְדִּיל צְמָחִים, הַתּוֹרָה אִמְרָה וְכָתַב לָהּ סֵפֶר כְּרִיתוֹת וְהִלְכָה אִמְרָה בְּכָל דְּבַר שֶׁהוּא בְּתֵלוֹשׁ, הַתּוֹרָה אִמְרָה בְּמְרִצֵּעַ וְהִלְכָה אִמְרָה בְּכָל דְּבַר.

[teaches that the divorcement document may be written] on any material [not just a book].<sup>27</sup>

Another version of this saying appears in the Palestinian Talmud:

Rabbi Yishmael taught: In three instances halakhah bypasses (עוקפת) Scripture . . .

(1) The Torah said [that a man who divorces his wife must hand her] (Deut 24:1): “a book [of divorcement].” But halakhah [teaches that the divorcement document may be written] on any material that is not attached to the ground [not just a book].

(2) The Torah said (Lev 17:13): “[And if any Israelite or any stranger who resides among them hunts down an animal or a bird that may be eaten, he shall pour out its blood and cover it] with earth.” But halakhah [teaches that the slaughtered animal’s blood may be covered] with any material in which plants can grow [not just earth];

(3) The Torah said (Exod 21:6) [that the ear of a Hebrew slave who decides not to go free after six years of service should be pierced] “with an awl” but halakhah says even with a wooden barb or a thorn or glass.<sup>28</sup>

To summarize the differences between the three versions: (1) the Palestinian Talmud and *Sifre* provide the same three examples—“book,” “earth,” and “awl” (although not in the same order), while the three examples in the Babylonian Talmud are “earth,” “razor” and “book.” “Awl” is missing in the Babylonian Talmud, even though in the context in *Sifre* “awl” is the catalyst that began the discussion. (2) In the Babylonian Talmud, the saying concludes that each of these ceremonies may be conducted בכל דבר—with any material or utensil or item. In the Palestinian Talmud, each term is expanded somewhat—listing

27 *B. Sotah* 16a. The Hebrew text in the printed editions reads: ת"ש: דא"ר יוחנן משום ר' ישמעאל, בשלשה מקומות הלכה עוקבת מקרא: התורה אמרה בעפר, והלכה בכל דבר; התורה אמרה בתער, והלכה בכל דבר; התורה אמרה ספר, והלכה בכל דבר. The printed editions read here עוקבת but there are a variety of readings of the verb in the manuscripts. See n. 24.

28 *Y. Qidd.* 1:2 (59d). The Hebrew there reads: תני רבי ישמעאל בשלשה מקומות הלכה עוקפת למקרא . . . התורה אמרה בספר והלכה אמרה בכל דבר שהוא בתלוש התורה אמרה בעפר והלכה אמרה בכל דבר שהוא מגדל צמחים התורה אמרה במרצע והלכה אמרה אפילו בסול אפילו בקוץ אפילו בזוכית.

various items that are like “book,” “earth” and “awl”—but never does the Palestinian Talmud say that the ceremony may be done with *any* item (בכל דבר). In *Sifre*, the first two items are expanded in a limited manner, but the third item, “awl,” the item under discussion in the immediate context there, is expanded to “with any item” (בכל דבר). This may be of significance, since in *Sifre*, in the passage that introduces Rabbi Yishmael’s saying we have a dispute between Rabbi Yose berabbi Yehudah and Rebbe which appears to be about this precise question—how far should we be willing to expand the meaning of the term awl.

## V. Rashi’s Commentary on the Passage in the Babylonian Talmud

Rashi’s lengthy comment on this passage shows how difficult he thought it was. First he explains the wording. Apparently his text of the Talmud read *עוקרת* here, but he explains that it means to uproot (עוקרת).<sup>29</sup> Then, in a totally uncharacteristic manner, he strongly suggests (והוא נראה בעיני מאוד) that the list of items in the Palestinian Talmud is the accurate one and that somebody added the example of “razor” into the text in the Babylonian Talmud even though Rabbi Yishmael never gave this example (דהך דתער מוספת הוא).<sup>30</sup> Rashi does not explain how he arrived at this judgment about what Rabbi Yishmael really said, but David Henshke explains well the problems involved in seeing “razor” as part of Rabbi Yishmael’s original statement.<sup>31</sup>

Rashi also raises other complications. It’s difficult, he writes, to see these three cases as examples of uprooting Scripture. They simply expand

29 S.v. עוקרת: מקפחת את עקבו מעמדו ועוקרת בג' מקומות הלכה למשה מסיני באה ועוקרת את הפסוק.

30 S.v. והלכה בכל דבר. The full text of the relevant part of his comment reads: וא"ת אין זו עקירה אלא תוספת איברא עקירה היא שמלקין אותו על כך ואסור להכות את ישראל בחנם שהרי אמרה תורה (דברים כה) לא יוסיף פן יוסיף ואף על גב דבכולהו קראי דרשי' בשחיטת חולין ובגיטין ובניזיר לר' ישמעאל לא משמע ליה קראי דוכתב לה דמרבין מיניה לרבות כל דבר דריש ליה בכתיבה מתגרשת ואינה מתגרשת בכסף כדררשינן לה התם וכן כולן אלא אהלכה למשה מסיני סמכין וקראי אסמכתא בעלמא הוא הלכך שאר מדרשים ריבויין דכל התורה כולה לא חשיב להו ר' ישמעאל כהלכה עוקבת מקרא אלא הני תלת ובמסכת קידושין ירושלמי מצאתי משנה זו דר' ישמעאל ואין תער מן השלשה אלא מרצע והכי תניא התם התורה אמרה ספר והלכה בכל דבר התלוש התורה אמרה עפר והלכה בכל דבר המגדל צמחים התורה אמרה מרצע והלכה אמרה אפי' סול וסירה והוא נראה בעיני מאד דהך דתער מוספת הוא

31 Henshke, “Two Subjects,” 431–33.

the meaning of three specific terms (earth, razor, and book respectively), something that the classical rabbis did frequently, not just in these three cases. Furthermore, Rashi points out that in other talmudic passages, rabbis other than Rabbi Yishmael provide textual arguments for why these specific terms (earth, razor, and book) should be expanded. For Rashi, if the talmudic rabbis find a proof-text (not just a logical argument) to justify their exegesis of a word or term, by definition this means that they were not uprooting Scripture. They were interpreting it!

Rashi then provides a complicated explanation of what Rabbi Yishmael was actually saying and what uprooting Scripture means. According to Rashi, Rabbi Yishmael knew that other talmudic rabbis had found scriptural proof-texts that led them to expand the meaning of the specific term. Rabbi Yishmael, however, did not agree with their midrashic exegesis. Nevertheless, Rabbi Yishmael came to the same halakhic conclusions as those other rabbis based on halakhah, tradition, which teaches us to expand the meaning of these terms despite the lack of proof-texts (to Rabbi Yishmael's mind) for this expansion. Following Rashi's logic, then, Rabbi Yishmael's statement is saying nothing about the relationship between halakhah and *peshat*. Rather, Rabbi Yishmael is making a statement about the relationship between halakhah and *midrash*. While generally halakhah is based on *midrash* of the Scriptural text, Rabbi Yishmael points out that in three instances (and only three instances?), the rabbis expanded the meaning of a term, despite the lack of a convincing biblical proof-text.

Recently, David Henshke has revisited the issue and come up with his own explanation of Rabbi Yishmael's statement.<sup>32</sup> He notices that Rabbi Yishmael offers a number of statements involving the number three and referring to lists of passages that are to be interpreted in an unexpected way:

(1) "Rabbi Yishmael says: 'every time the word "אם—if" appears in the Torah it refers to doing something optional, except in three instances.'<sup>33</sup>

(2) "This is one of three passages that Rabbi Yishmael interpreted as an allegory."<sup>34</sup>

32 Henshke, "Two Subjects," 417–38.

33 *Mekhilta de-Rabbi Yishmael, Ba-ḥodesh* 11, (Horovitz-Rabin ed., p. 243): רבי ישמעאל אומר, כל אם ואם שבתורה רשות, חוץ משלשה.

34 *Mekhilta de-Rabbi Yishmael, Neziqin* 6 (Horovitz-Rabin ed., p. 270): זה אחד משלשה: דברים שהיה ר' ישמעאל דורש בתורה כמין משל.

(3) “This is one of the three times that Rabbi Yishmael made a midrash on the word אֵת.”<sup>35</sup>

This is a useful framework in which to place Rabbi Yishmael’s saying, but it does not explain what made these three “uprooting” passages different from standard midrash halakhah in Rabbi Yishmael’s eyes.

Henshke agrees with Rashi that Rabbi Yishmael’s original statement included the example of “awl” but not the example of “razor,” found in the Babylonian Talmud. He posits that Rabbi Yishmael was making the following complicated point:

Rabbi Yishmael knew that when rabbis expanded the meaning of a specific noun in the biblical text, some rabbis expanded the word in a more limited manner and some in a more expansive manner. We see this most clearly in the lead-up to our “uprooting” text in *Sifre*:

“You shall take an awl” (Deut 15:17) [and use it to pierce the ear of a Hebrew slave who does not wish to go free after six years]: And how do we know that [the piercing does not have to be done with an awl but the verse] also [allows piercing] with a thorn or with glass or with the [sharpened] stem of a reed? For the text says “you shall take” [implying any item that one might think to take for this purpose]; these are the words of Rabbi Yose berabbi Yehudah.

Rebbe [on the other hand] says, [the verse says] “with an awl”: just as an awl is made of metal so I know only [that the Torah also permits the piercing to be done with another implement] made of metal.

Both rabbis quoted agree that even though the Torah said that the ceremony should be done with an “awl,” other piercing implements are permitted. Rebbe still insists that the piercing must be done with something metal, something somewhat akin to an awl. Rabbi Yose berabbi Yehudah, on the other hand, asserts that any item that can pierce, made of whatever material, suffices.

35 Or perhaps “where Rabbi Yishmael interpreted the word אֵת as being a sign of a reflexive.” זו אחת משלש אהים שהיה ר' ישמעאל דורש בתורה. *Sifre Numbers* 32 (Kahana ed., p. 94; see also Kahana’s explanation of this passage on pages 275–76 of his commentary volume). On Rabbi Yishmael and midrash on the word אֵת, see also *PGR*, 222–23 and n. 54 there and the sources cited in that note.

When Rabbi Yishmael says that there are three instances where, in his understanding, halakhah uproots Scripture, according to Henshke he means something to this effect: “There are three instances where my colleagues expand the meaning of a noun found in the Torah, but they expand the meaning in a limited manner. I, however, in those three instances say that, according to halakhah, any item that can do the job will suffice. I cannot find a proof-text that justifies that expansion, and in general I prefer to expand the meaning of a term by citing a proof-text and explaining it midrashically. But in these three instances alone I say, despite the lack of proof-texts, that ‘halakhah’—oral tradition—teaches me to expand the meaning of the term widely in any case.”

Though ingenious, this solution is speculative and reads a great deal into Rabbi Yishmael’s words. Furthermore, it involves assuming that Rabbi Yishmael’s original statement is misquoted in each of the three places where it appears in rabbinic literature. The Babylonian Talmud erroneously thinks that one of Rabbi Yishmael’s three examples was “razor” and does not know about “awl.” And the other two sources fail to present Rabbi Yishmael as enunciating the crucial phrase, from Henshke’s perspective, *בכל דבר*—with any item. If we must resort to cobbling together a new text that does not exist in writing anywhere in order to make sense of why Rabbi Yishmael thinks that these three cases are unique, perhaps we will never be able to establish with certainty what he actually meant when he made this statement. Whatever the precise meaning of Rabbi Yishmael’s words, Henshke is correct that he is making a statement about expanding the meaning of a biblical term in a legal context without scriptural proof.

## VI. *Dibber ha-Katuv ba-Hoveh*

Are these three examples of “halakhah uprooting Scripture” so different from another better-known exegetical principle: *dibber ha-katuv ba-hoveh*, a principle first found in classical rabbinic literature and later embraced by medieval *peshat* exegetes? *Dibber ha-katuv ba-hoveh* means that a term used in a biblical verse is not meant to be restrictive. The Bible simply presented the most common occurrence. (הויה here does not mean “the present tense” but means “that which happens [most] frequently.”) This interpretive approach is best explained through examples.

In classical rabbinic literature, the longest list of examples of *dibber ha-katuv ba-hoveh* is found in the Mekhilta, a work attributed to the school of Rabbi Yishmael.

Here is the list:

1. [The Torah says not to eat] “Meat torn in the field” (בשר בשדה; טריפה; Exod 22:30). I know only [that the meat is forbidden if it was torn] “in the field.” [If it was torn] at home how do I know [that it is forbidden]? The Torah juxtaposed carcasses (גבלה) and torn (טריפה). Just as concerning carcasses the text did not distinguish between home and field, so also with “torn” we should not distinguish between home and field. So why does the verse say “meat torn *in the field*”? Since the verse uses the most common occurrence (דיבר הכתוב בהווה).
2. Similarly [the Torah says that a woman who was raped and could not summon help is exonerated if she was] “found in the open” (or in a field [בשדה מצאה]; Deut 22:27). We know [that she is exonerated only if she was found in the open. How do we know that she is exonerated if she is found] at home [or presumably anywhere else]? Since the verse uses the most common occurrence (דיבר הכתוב בהווה).
3. Similarly [the Torah describes the case] “If a man is unclean due to a nocturnal emission” (Deut 23:11). How do we know [that the same rule applies in the case of] an emission during the day? Since the verse uses the most common occurrence (דיבר הכתוב בהווה).
4. Similarly [the Torah says], “the man who planted a vineyard but never harvested it” [may leave<sup>36</sup> the battle lines] (Deut 20:6). We know only [that the exemption applies to someone who has planted] a vineyard. How do we know [that the exemption applies also to a man who has planted] any type of fruit tree? Since the verse uses the most common occurrence (דיבר הכתוב בהווה).
5. Similarly [the Torah says], “Do not boil a kid in its mother’s milk” (גדי בחלב אמו; Exod 23:19). We know only [that one may

36 Or perhaps “must leave.” See *Minḥat Hinnukh*, commandment 526.

not boil] a kid. How do we know [that one may not boil] any other animal [in milk]? Since the verse uses the most common occurrence (דיבר הכתוב בהווה). So also [when the first verse mentioned above said] “meat torn in the field” [the law applies wherever the meat was torn. The Torah said “in the field” because] the verse uses the most common occurrence (דיבר הכתוב בהווה). [The field is] the most common place for an animal to be torn.<sup>37</sup>

Note that in the first example, the text finds a midrashic proof-text in order to apply the rule more widely (The Torah juxtaposed carcasses [נבל] and torn [טריפה]). Just as concerning carcasses the text did not distinguish between home and field, so also...). The proof-text is in the form of a *heqesh*, an argument from juxtaposition, a common form of midrashic proof. But as the Mekhilta text proceeds, it abandons that midrashic methodology, expanding the next four terms mentioned without any specific proof-text and relying instead simply on our understanding of standard biblical style. The Torah gave a specific common example, and we are supposed to expand the law to apply in analogous circumstances.

The results of saying “the verse describes the most common occurrence” and “halakhah uproots Scripture” are the same. Rabbi Yishmael says that halakhah uproots Scripture when the Torah says to pierce the slave’s ear with an awl, but it is also an instrument commonly used for piercing, and “the verse describes the most common occurrence,” expecting us to realize that there is no problem with using something else.

In their own Bible commentaries, Rashbam and Abraham ibn Ezra, the medieval Jewish exegetes most committed to *peshat*, often made independent use of the principle דיבר הכתוב בהווה—the verse describes the most common occurrence—beyond the examples of its use in classical rabbinic literature. In

37 *Mekhilta Kaspā* 20 (Horovitz-Rabin ed., pp. 320–21): אין לי אלא ובשר בשדה טרפה. אין לי אלא ובשר בשדה טרפה, תלמוד לומר נבלה וטרפה, הקיש טרפה לנבלה, מה נבלה לא חלק בה, בין בבית בשדה, בין בשדה, אף טרפה לא נחלוק בה בין בבית בין בשדה, הא מה תלמוד לומר ובשר בשדה טרפה, דבר הכתוב בהווה; כיוצא בו כי בשדה מצאה, אין לי אלא בשדה, בבית מנין, דבר הכתוב בהווה; כיוצא בו כי יהיה בך איש אשר לא יהיה טהור מקרה לילה, אין לי אלא מקרה לילה, מקרה יום מנין, דבר הכתוב בהווה; כיוצא בו מי האיש אשר נטע כרם ולא חללו, אין לי אלא כרם, שאר כל אילנות מנין, לא דבר הכתוב אלא בהווה; כיוצא בו לא תבשל גדי בחלב אמו, אין לי אלא גדי שאר כל בהמה מנין, דבר הכתוב בהווה; אף כאן ובשר בשדה טרפה, דבר הכתוב בהווה, מקום שדרך בהמות להטרף

other words, they recognized this type of exegesis as *peshat*.<sup>38</sup> The only sense in which we can say that Rabbi Yishmael's examples "uproot Scripture" is that they uproot the hyper-literal reading of Scripture and replace it with a *peshat* reading that makes sense in the legal context of the verse.

## VII. The Irony of Uprooting

To sum up: Rabbi Yishmael gathered together three halakhic interpretations of biblical texts that actually conform to our understanding of *peshat* and called them "uprooting" since they rose above the hyper-literal reading. Along came medieval and early modern advocates of *peshat* and used the phrase "halakhah uproots Scripture" to describe how halakhah frequently ignores and circumvents *peshat*, the contextual meaning of Scripture. Ironically, Rashbam, ha-Meiri, and others, by taking a phrase that originally introduced three *peshat* explanations of halakhic texts and using that phrase to say that halakhah often uproots *peshat*, essentially uprooted the original meaning of this old statement of Rabbi Yishmael.

38 See for example Rashbam's commentary to Exod 22:20, 22:21, 22:27 and passim. See also ibn Ezra's longer commentary to Exod 12:44, 21:16, 21:27 and passim.