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## **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.”<sup>1</sup>

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.”<sup>2</sup> And it is consistent with the portrayal of many rabbinic scholars and students as experts in the Talmud but ignorant in Tanakh.<sup>3</sup>

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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.<sup>4</sup>

### 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."<sup>5</sup> 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 Parshanut 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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup> 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 ממשוטן, ונאמר שיהיה כל פסוק עומד בעצמו...

10 *Ibid*:

ואני חושב עוד סברא, שודאי המאנה את תבירו 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.<sup>11</sup>

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.<sup>12</sup>

## 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.<sup>13</sup> 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.<sup>14</sup>

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 וממכר 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 בכלן. 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.<sup>15</sup>

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.<sup>16</sup> 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.<sup>17</sup> And it appears to run contrary to what would otherwise be the straightforward application of the rules of inheritance as presented in the Talmud.<sup>18</sup> Yet Ramban confidently arrives at his conclusion based on his novel interpretation of the biblical verse.<sup>19</sup>

### 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*?<sup>20</sup>

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 לפניו 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.<sup>21</sup> 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.<sup>22</sup> When Akhan confesses that he violated the *herem*, Joshua sentences him to death.<sup>23</sup>

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.<sup>24</sup>

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.<sup>25</sup> Note that in this instance, the *herem* was not declared by a king or by the Sanhedrin but by the assembly of people themselves.<sup>26</sup> Ramban contends that these three biblical narratives indicate that a

21 *Mishpat ha-Herem*, 296.

22 *Ibid.*: זהו דינו של יהושע שדן עכן בדיני נפשות לפי שפשוט 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 רשאים להסייע 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."<sup>27</sup> 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."<sup>28</sup> According to the second interpretation, the verse blocks someone sentenced to death from "purchasing" his way out of the punishment.<sup>29</sup>

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.<sup>30</sup> 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.<sup>31</sup>

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 פשוט 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 שמים 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.<sup>32</sup>

#### 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.<sup>33</sup> 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 resolved 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.<sup>34</sup>

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*).<sup>35</sup>

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*.<sup>36</sup> 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.<sup>37</sup> 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.<sup>38</sup> 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*).<sup>39</sup> 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*.<sup>40</sup>

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 לכתך 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 לבניה 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 (*hekesheh*) between the two documents.<sup>41</sup>

## 6. Concubinage

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

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.<sup>46</sup>

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 בעינין 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.<sup>47</sup>

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.<sup>48</sup> 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.<sup>49</sup> 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*).<sup>50</sup>

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.<sup>51</sup> 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 נושאים אותה. שנאמר ועיפה פילגש כלב ילדה. וגדעון שופטן של ישראל שדבר בו ה' כתיב בו ופילגשו אשר בשכם ילדה לו.

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

49 Ibid: 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.<sup>52</sup> Tosafot interpret the phrase as referring to the requirement of wearing clean clothing on the festivals.<sup>53</sup>

Ramban disagrees with these interpretations and argues that the phrase *mikra'ei kodesh* denotes a convocation or assembly.<sup>54</sup> 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.<sup>55</sup>

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*.<sup>56</sup> 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 מכוון 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.<sup>57</sup> *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.<sup>58</sup>

## 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 *melekheth '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 *melekheth '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 (*melekheth han'ah*), especially that which is done to prepare food for personal consumption.<sup>59</sup>

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 (*melekheth '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.<sup>60</sup>

In his *Hiddushim* to b. Shabbat (117b s.v. *ha de-tani*), Ramban employs his distinction between the *kol melakhah* Sabbath prohibition and the *melekheth '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.<sup>61</sup> Ramban argues that the Torah's use of *melekheth 'avodah* for each of the holidays (in contrast to *kol melakhah*) implies that only a subset of *melakhah* is prohibited—*melekheth hana'ah*, which includes food preparation—is permitted on these days.<sup>62</sup> Thus, according to Ramban's analysis, the Torah explicitly permits food preparation on all of the holidays.<sup>63</sup>

60 *Milhamot Betzah* Alfasi 13b:

הוּ 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 נתרין 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* (*melekheth 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:

פירושו [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.<sup>64</sup> 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*.<sup>65</sup>

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."<sup>66</sup>

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 *teshevu 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.<sup>67</sup>

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 (*Shevithah*)

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.<sup>68</sup>

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.<sup>69</sup> 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.<sup>70</sup>

Ramban's legal conclusion based on his interpretation of the verse—prohibiting 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*.<sup>71</sup> 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 שבתה לנוח בו. ואמרו רבותינו (שבת כד ב) שבתון עשה הוא. והנה העושה מלאכה ב"ט עובר בלאו ועשה.

69 Ibid:

ונראה לי שהמדרש הזה לומר שנצטוונו מן התורה להיות לנו מנוחה ב"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 ב"ט ויהיה השוק מלא לכל מקח וממכר, ותהיה החנות פתוחה והחנווני 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 הזהירו על המלאכות בשבת בלאו ועונש כרת ומיתה והטרחים והעמל בעשה הזה.

70 Ibid.: לא כן אמרה תורה "שבתון" שיהיה יום שבתה 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*.<sup>72</sup>

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.”<sup>73</sup>

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.<sup>74</sup> 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 התאווה מקום להיות שטוף בזמת אשתו או נשיו הרבות, ולהיות בסובאי יין בזוללי בשר למו, וידבר כרצונו בכל הנבלות, שלא הזכיר 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 שאמר (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 הזהירנו 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.<sup>75</sup> 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.<sup>76</sup>

זאת הצוואה הנקיית בידי 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 הישר 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 חקותי ועדותי 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 נבחת 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.<sup>77</sup>

### 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.<sup>78</sup>

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.<sup>79</sup>

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, Shores 2*:

שהמדות [שהתורה נדרשת בהם] כולן אצלם כדבר מפורש בתורה ודורשים אותן מדעתם... שהמדות האלה  
דבר 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*.<sup>80</sup> 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*.<sup>81</sup> 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.<sup>82</sup> 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.<sup>83</sup> 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 להורות לוחות האבן זו המקרא והתורה זו המשנה והמצוה כמשמעה אשר כתבתי אלו נביאים להורות 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:

המדרישים 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 ופשוטו. ולא כל אתין וגמין וריבויין ומעוטיין ואכין ורקין ושאר המדרישים 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 שבתחוננים כח המחצבים וכח צמח האדמה ונפש התנועה והנפש המדברת בכלם נאמר למשה רבינו בריאתם וכחותם ומהותם ומעשיהם ואפיקת 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-Dovdov: 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.<sup>84</sup> For Ramban, the biblical verse served as a consistent guide that informed and enriched his halakhic jurisprudence.<sup>85</sup>

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.