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.1 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.2 Determining what constitutes a text’s “plain meaning” is intrinsically subjective.3

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


differences between biblical and rabbinc Hebrew, and explains verses from within the text rather than depending on information extraneous to the text. 

I. Was Peshat New in the Middle Ages?

Modern scholars disagree about whether rabbis in the classical rabbinic period (roughly the 2nd through the 6th centuries) understood the difference between peshat exegesis and midrashic exegesis. 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” (translated by David Weiss-Halivni as “no text can be deprived of its peshat”) as precedents for their own efforts to interpret the Bible according to the plain sense of Scripture. They also cited the phrase pashtei di-qra that appears occasionally in rabbinic literature. 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.


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.”
II. Are There Other Rabbinic Hebrew Words That May Mean Peshat?\textsuperscript{11}

The word *mamash* appears fairly often in rabbinic literature and is at times coterminous with our word *peshat*. For example, the Talmud records a disagreement between two rabbis, Rav and Shemuel, about how to interpret the verse (Exod 1:8), “A new king arose in Egypt.” One said *ḥadash mamash*, in other words he was literally a new king, and the other said that he was the same king, but he enacted new decrees.\textsuperscript{12} Here, and in a number of other rabbinic passages, the word *mamash* is used to describe the interpretation that we would consider closer to the *peshat*.

But *mamash* does not consistently mean *peshat*; what it means is “literal,” which in some cases means *peshat* and in others means “hyper-literal.” Consider, for example, another text from the Talmud:

> From the verse (Exod 35:27), “the *nesi’im* [standardsly understood as chieftains, or heads of the tribes] brought lapus lazuli and other stones,” we see that precious stones and gems fell [from heaven] for the Israelites together with the manna. A *tanna* taught: *nesi’im mamash*, literally *nesi’im* [clouds], as in the verse “Like clouds [*nesi’im*], wind—but no rain—[is one who boasts of gifts not given]” (Prov 25:14).\textsuperscript{13}

Here the *mamash* explanation is incompatible with any sense of *peshat*, even if, from the literal perspective, one of the meanings of *nesi’im* in biblical Hebrew is clouds. *Peshat* exegesis insists on explanations that are contextually appropriate; it is not enough that the explanation be based on one possible dictionary meaning of the word.\textsuperscript{14}

Already in twelfth-century France, Rashbam (Samuel ben Meir) made the point that *peshat* does not always mean “literal.” Consider his comment on Exodus 13:9:

\textsuperscript{11} See also the discussion of this issue in Loewe, “‘Plain’ Meaning,” and Kamin, *Rashi’s Exegetical Categorization*.

\textsuperscript{12} B. Sotah 11a: COUNTY 16 — תאריך מזווה, דר אמור: תאריך ממושך, דר אמור: שנותר שלמה וידויי.

\textsuperscript{13} B. Yoma 75a: תואר מזווה: תאריך ממושך, דר אמור: שנותר שלמה וידויי.

\textsuperscript{14} For further discussion of the word *mamash* in rabbinic literature, see *Signs*, 6–7.
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 SIMPLE) [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 hand.”15

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.16

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.”17

16 For example in his longer commentary to Exod 13:9 and 20:1.
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.” 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 פשטי של מקרא).  

III. Uprooting Scripture

In two recent studies of mine, I concluded that editors of different rabbinic works display different attitudes to peshat. 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.

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

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19 Commentary to Gen 37:2: מראותינומתוכוכייפסיטותנתעתק综合性ותרותרותשתה. עיקר, מתרחקךלאוהיגלחעıklıיפסיטותשתהמקרא

20 See n. 4 above.

21 In b. Sotah 16a and other sources discussed below.
Yishmael, and presumably the rest of the tanna‘im, 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 rabbis said (b. Sotah 16a), “Halakhah uproots [the plain meaning of] Scripture.”

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.
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.25

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 (ымכ) 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: תוקפת, עוקפת or עוקרת. See Diqduqi 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.

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.26

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:ולקחת את המרצע, מנין לרבות את הקוץ ואת הזכוכית ואת הקרומית של קנה שנאמר ולקחת דברי רבי יוסי ברבי יהודה רבי אומר מרצע מה מרצע המיוחדמן המתכת אף אין לי אלא מן המתכת. מיכן היה רבי ישמעאל אומר בשלשה מקומות הלכה עוקפת המקרא התורה אמרה ושפך את דמו וכסהו בעפר והלכה אמרה בכל דבר שמגדיל צמחים, התורה אמרה וכתב לה ספר כריתות והלכה אמרה בכל דבר שהוא תלוש, התורה אמרה במרצע והלכה אמרה בכל דבר
[teaches that the divorcement document may be written] on any material [not just a book].

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.

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

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27 B. Sotah 16a. The Hebrew text in the printed editions reads: תי: דא”ר יוחנן: מכות את המכות במקרא: התורה אמרה בעפר, והלכה בכל דבר; התורה אמרה בתער, והלכה בכל דבר; התורה אמרה ספר, והלכה בכל דבר. The printed editions read here עוקפת 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: ויכו רבי ייםאלא מכות את המכות במקרא [עוקפת את המכות במקרא]: התורה אמרה בעפר, והלכה בכל דבר; התורה אמרה בתער, והלכה בכל דבר; התורה אמרה ספר, והלכה בכל דבר. See n. 25.
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 עוקבת here, but he explains that it means to uproot (עקרת). 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 דתווספת הוא). 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.

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. עוקבת: מקפחת את עוקב מפורע וourkeת בכ”פ קומחת הלכה למשנה מפורע באוהacje עוקרת.

30 S.v. והלכה בכל דבר. The full text of the relevant part of his comment reads: וא”ת אין זו עקירה אלא תוספת איבר עקירה היא שמלקין אותו על כך ואסור להכות את ישראל בחנם שהרי אמרה תורה (דברים כה) לא יוסיף פן יוסיף ואף על גב דבכולו קראי דרשי’ בשחיטת חולין ובגיטין ובنزיר לר’ ישמעאל לא משמע ליה קראי דכתיב לה דמרבינן מיניה לרבות כל דבר דרישolah כתובה מתגרשת ואינה מתגרשת בכסף כדדרשינן לה התם וכן וכלן אלא אהלכה למשה מסיני סמכינן וקראי אסמכתא בעלמא הוא הלכך שאר מדרשים ריבונים 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 العليי בשלשה אלא מרצע והכי תניא התם התורה אמרה ספר והלכה בכל דבר התורה אמרה עפר והלכה בכל דבר המגדל צמחים התורה אמרה מרצע והלכה אמרה אפי' סול וסירה הוא. נראת בעיני מאד דהך דתער מוספת הוא.

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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 prooftext (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 prooftexts 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 prooftexts (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 prooftext.

Recently, David Henshke has revisited the issue and come up with his own explanation of Rabbi Yishmael’s statement. 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’.”

(2) “This is one of three passages that Rabbi Yishmael interpreted as an allegory.”

34 Mekhilta de-Rabbi Yishmael, Neziqin 6 (Horovitz-Rabin ed., p. 270): ורבי הושי ר’ ישמעאול ורש בהוה מני משל.
(3) “This is one of the three times that Rabbi Yishmael made a midrash on the word את.”  

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 את as being a sign of a reflexive.” This is one of the three times Rabbi Yishmael made a midrash on the word את. See 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 את, see also PGR, 222–23 and n. 54 there and the sources cited in that note.
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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 prooftext that justifies that expansion, and in general I prefer to expand the meaning of a term by citing a prooftext and explaining it midrashically. But in these three instances alone I say, despite the lack of prooftexts, 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, בָּכֵל דּוֹבִי—‘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. (הַתֹּחַ 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; 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 (נבלה) and torn (טרפה). 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” (בשדה מצאת; 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 leave36 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 (הריב הכתוב בהווה).

5. Similarly [the Torah says], “Do not boil a kid in its mother’s milk” (גדי בחלב אמה; Exod 23:19). We know only [that one may

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36 Or perhaps “must leave.” See *Minḥat Ḥinnukh*, commandment 526.
Does Halakhah Really Uproot Peshat?

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.37

Note that in the first example, the text finds a midrashic prooftext 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 prooftext is in the form of a heqeish, 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 prooftext 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

other words, they recognized this type of exegesis as *peshat*. 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.

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