

*The Explanatory Commandments:
Ramban's Daring and Creative
Contribution to the Parshanut of the
Book of Deuteronomy*

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Some years ago, Yakov Elman examined Ramban's intriguing contribution to the *parshanut* of Deuteronomy,¹ for traditionists at least, the most puzzling book of the Torah. Elman restricted his presentation to Ramban's general thesis, which had been long overlooked or, perhaps more accurately, overshadowed, by his own esoteric *al derekh ha-emet* commentary² and Abarbanel's sharp critique. In this article, I explore in detail Ramban's thesis, uncover some surprising implications and raise significant theological, juristic and hermeneutical questions relating to Ramban's daring exegetical move. But first, a quick review.

According to the traditional enumeration of the *Sefer ha-Hinukh*, the Deuteronomic legal corpus contains almost 200 commandments, a large proportion of all Torah legislation. Of special note is that the book is narrated mostly by Moses, in the first per-

¹ "The Book of Deuteronomy and Revelation: Nahmanides [=Ramban] and Abarbanel," *Hazon Nahum*, Y. Elman and J.S. Gurock [eds.], (New York 1997) pp. 229–250.

² See, for example, Moshe Halbertal, "*Al Derekh ha-Emet: ha-Ramban ve-yetsirata shel Masoret*," Shalom Hartman Institute (Jerusalem, 2006).

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son, in sharp contrast to the third-person narration of the four earlier books.

More significantly, nowhere in Deuteronomy does one find the Lord directing Moses to instruct the Israelites with regard to a certain commandment as one finds in the earlier books. Moses addresses his audience directly, without prior instruction, as if he were the independent authority of the legislation. Tradition rejects this implication and instead justifies this unusual feature by suggesting that the book is a repetition of the Torah, hence its rabbinic designation *Mishneh Torah*.³ That is, Moses was only repeating the instructions he had already received from God at an earlier point in time. Of the various rabbinic commentators⁴ who dealt with the questions of the nature of this repetition (a repetition of what?) and how this came about (why now, not earlier?), Ramban's remains the most daring treatment of these questions.

Ramban commences his commentary on Deuteronomy by immediately taking note of the book's special genre (*ha-sefer ha-zeh inyano yadua'*) and by addressing the implications of the name *Mishneh Torah*. The book, he says, is addressed to the generation of Israelites who were about to enter the Land and covers most of the commandments that they would need to perform on coming into the Land. Moses was wont to repeat these commandments to the Israelites "time after time, to add to them explanations." It is not clear to me if the repetitions were made so that more explanations could be added, and not simply to remind them of the previously instructed commandments. The confusion arises out of the fact

³ The name owes its existence to a verse found in the section of the law of the king, where he is commanded to write "this *mishneh torah*" and to read it all the days of his life. While the plain sense of *mishneh torah* is "copy of the torah," the sages found the redundancy significant enough to argue that the phrase was referring to the actual title of the book. Deuteronomy was being referred to as *mishneh torah*, because *mishneh* could also be rendered "repetition"; thus Deuteronomy emerges as the book that repeated the Torah.

⁴ See Don Yitzhak Abarbanel's introduction to the book of Deuteronomy, in all standard editions of Abarbanel's *Perush al-ha-Torah*. See also, *Sheelot u-Teshuvot RaDVaZ*, Warsaw 1882 (Reprinted in NY, 1947) Volume 5, #2143.

that, in the next sentence, Ramban says that the cultic and purity laws were not repeated in this book because the priests, to whom these special laws were addressed, were exceptionally diligent in their performance, and did not require repeated admonitions. The contrast would imply that the address to the Israelites was intended to remind and urge them to perform the commandments rather than to further clarify them.

Ramban notes that Moses delivered a number of “new” commandments that had not been mentioned in the earlier books, yet he also notes that “nothing new was revealed to Moses in the plains of Moab except the words of the covenant, as is expressly stated there” (Deuteronomy 28:69). The fact that nothing new was revealed to Moses in the plains of Moab explains, according to Ramban, why we do not find in this book specific divine instructions indicated by biblically typical prefatory phrases such as “and God spoke to Moses saying command the children of Israel” or “speak to the children of Israel and say to them the following commandment.” Later, in his commentary on vv. 1–3, Ramban tells us that the words “according to all that the Eternal had commanded him for them” (v. 3) is an “allusion to the commandments which he would tell them in this book that have not been mentioned thus far in the Torah.” On separate occasions Ramban calls these newly delivered commandments by the name of *mitzvot mehudashot* (e.g., 18:3, 20:1, 21:18 and 22:8). In his introduction to the book, he lists among them “the laws of levirate marriage, the law concerning the defamation of a virgin bride, the divorcing of a wife, the punishment for plotting witnesses and others.” He states that these commandments had already been issued at Sinai, or at least in the first year, and suggests that they were not given over to the people up to now because they had not been in force throughout their stay in the desert; only now, on their coming to the Land, would they become obligatory. Alternatively, he suggests that circumstances that occasioned these commandments did not occur frequently enough. These suggestions do not satisfy some of his critics, troubled principally by the fact that these commandments are of a personal nature, not

dependent on living in the Land.⁵ One should also note that there are many commandments that were written down in previous books even though they occur at least as infrequently as these.

In addition to commandments, Ramban notes that the book also contains repeated admonitions, rebukes, and threats of punishments, in particular with regard to the cardinal sin of idolatry, that are “intended only to caution the Israelites.”

It is only in his commentary to v. 1 that we come to the real novelty of his position. Pointing to a statement found in v. 5, Ramban suggests that Deuteronomy contains an entirely new category of commandments:

It further stated that ‘Moses undertook (*ho’il*) to explain the Law,’ (v. 5) this being an allusion to the commandments which were already declared, that he would repeat them in order to clarify them (*le-baer otam*) further and to add innovations (*u-le-ḥadesh bahem devarim*) to them. And the meaning of the expression ‘Moses undertook (*ho’il*)⁶ to explain this Law’ is that Moses wished (*ratzah*) to explain the Torah, and he mentioned it thus to let it be known that he discerned the need to do so himself (*ki me-atzmo ra’ah le’asot ken*).⁷ God had not commanded him in this regard.⁸

In the next few lines, Ramban provides lexical support for reading *ho’il* as “to wish.” Elman already pointed out that “Ramban departs from his exegetical tradition,” which tends to read the word as

⁵ It is primarily here that Ramban runs into severe criticism. See footnote 4, above.

⁶ Also resolved; see below, footnote 10. Elman has “deigned.”

⁷ I followed Elman. Chavel has, similarly, “that Moses saw fit to do so.”

⁸ An unfortunate typo appears here in Elman’s translation. It has “God had commanded him” instead of “God had not commanded him.” All the Hebrew versions of Ramban *al ha-Torah* that I checked have it as I have translated. A tendentious error is found in Chavel’s translation, which adds “although God had not *yet* commanded him thereon” (my italics). Ramban is referring only to Moses’ action. At the time he undertook it, it was entirely on his own accord. The fact that God presumably confirmed at a later time his explanations takes nothing away from Moses’ original move. Since God had not commanded him to explain the Torah, his explanations assume a special theological significance.

“began.”⁹ In fact, not only does Ramban break with the exegetical tradition that preceded him, but he also demonstrates a strikingly modern philological sensibility. Later on we shall return to assess the significance of this interpretation.

Let me bring out some of the critical points that Ramban makes in this paragraph, keys to a proper understanding of his commentary to the book. Moses undertakes to explain some of the commandments that had already been delivered, and which are clearly attested in previous books of the Torah, but he does so seemingly “to add to them innovations.” In this sense, these “explanations” are different than the earlier ones, the explanations that Moses was accustomed to make “time after time” and to which Ramban referred in his introduction. Moreover, these explanations were undertaken (*ho'il*) entirely on his initiative, so much so that Ramban makes a point to note that “God had not commanded him in this regard.” We are clearly in the face of a new phenomenon in the transmission of the commandments. The significance of Ramban’s interpretation cannot be gainsaid.

The themes of innovation, explanation, and categorization of commandments run right through the entire book of Deuteronomy, and primarily through chapter 28, the end of the legal corpus. Ramban often explains why a certain commandment is an “explanation” (*biur*) or “added explanation” (*tosefet biur*) rather than, as the reader might suppose, a new *mitzvah*. In at least a handful of cases, Ramban begins by characterizing a commandment as a new *mitzvah* but then retreats, leaving open the possibility that it is simply an explanation of an “old” *mitzvah*. This approach to the laws of Deu-

⁹ Rashi and Ibn Ezra take *ho'il* to stand for “began,” while Saadiah suggests “dwelt at length” and Samuel ben Hofni Gaon suggests that the word indicates “concern for the matter involved.” Elman, *The Book of Deuteronomy*, p. 233. Modern lexicographers support Ramban’s reading. For example, Brown-Driver-Briggs has (1) “shew willingness, be pleased, determine, undertake”; (2) more actively, “voluntarily undertake to do anything”; (3) more actively still, “be pleased, determine on one’s own responsibility, resolve.” It should be noted, however, that (1) “to show willingness” or “to be pleased” could also apply in a case where Moses had wanted to carry out God’s will, which is not the case here. BDB’s second and third suggestions for *ho'il* exactly parallel Ramban’s suggestion.

teronomy, which considers them alternatively as new or elaborative of old legislation, is elemental to Ramban's commentary on the entire book.

It is worth noting that Ramban's diachronic conception of the Torah, his unwavering insistence throughout his commentary that there is a chronological ("an earlier and a later") order to sections and books of the Torah (see e.g., Numbers 9:1, and in particular, his comments to Numbers 16:1), could be playing an important role in his understanding of the book of Deuteronomy. Not only is Deuteronomy the last book to have been written by Moses, and not only do the new laws and formulations that we find in Deuteronomy appear there for the first time in the Torah, as is rather obvious, but we can be reasonably sure that Ramban believed that these new laws and formulations were *promulgated* for the first time in the plains of Moab and that they were *heard* there for the first time by the Israelites. Furthermore, since Ramban notes that nothing new was revealed to Moses in the plains of Moab, we must conclude that, at least with respect to the *mitzvot mehudashot* such as the laws of divorce, while these commandments were revealed to Moses at Sinai (or just subsequently in the Tent of Meeting), they were delivered to the Israelites only 38 years later. (Ramban offers, as we saw, two reasons for the delay.) By the same token, we must assume that the explanatory commandments were first promulgated and heard on the Plains of Moab. Were they also revealed on Sinai? Not very likely if we draw a reasonable conclusion from what Ramban says when explaining the term *ho'il*. As we saw, Ramban maintains that although Moses undertakes, on his own accord, to explain existing commandments and to add some innovations to them, he is not commanded by God to do so. Thus, these explanations and innovations look and feel very much like his creation. Moreover, had Ramban believed that these explanatory commandments had been revealed at Sinai, he would have needed to explain why Moses tarried this long to convey them to the Israelites, much as he offered explanations for the delayed promulgation of the *mitzvot mehudashot*. No such explanation is forthcoming. We are therefore left with two fundamental questions: when and how were these explanatory commandments originally conceived?

In the rest of the article, I shall deal exclusively with those laws I have designated as explanatory commandments. As I analyze and categorize the nature of the explanations, it will become clear that Ramban's use of the term *biur* is far broader in its semantic range than its ordinary sense of clarifying or elucidating. Moses not only explains but he also explicates, interprets and even suggests new laws that are intended to safeguard existing laws. In fact, Moses' exegetical activity is so innovative that at times it leads us to wonder if we are not, in fact, in the presence of a new commandment. In addition, the closer we examine the Ramban's approach the more the line between God's laws and Moses' laws becomes blurred. I shall then explore the theological and jurisprudential implications of this category of commandments.

Ramban's exegetical contribution is doubly noteworthy. When comparing the Deuteronomic formulation with the earlier formulations of the same *mitzvah*, Ramban's unique reading of the text often runs contrary to normative halakhah as reflected in the rabbinic midreshei halakhah. When Ramban does cite rabbinic midrash, it is always tangential to the primary purpose of highlighting what Moses wishes to explain.¹⁰

In what follows I categorize a select sample of *biurim* that Ramban puts in Moses' words. Though these categories are not always precise and often tend to overlap, they are instructive for appreciating the broad range of meaning that Ramban intends for *biur*.

1. Supplementations

a. 16:1. (1) "Observe the month of Aviv... (10) And thou shalt keep the feast of weeks unto the Lord thy God... (11) And thou shalt rejoice before the Lord thy God... in the place which the Lord thy God shall choose... (13) Thou shalt keep the feast of Sukkot... (14) And thou shalt rejoice in thy feast..."

¹⁰ See 14:3, *u-lerabbotenu od midrashim...*; 19:1-5, *u-midrashim rabbim od she-darshu rabbotenu be-parshah*.

Ramban comments:

The commandment of the festivals [mentioned here] is explanatory, for He has already mentioned it.¹¹ Now in the Book of Leviticus, He mentioned with reference to the festivals, ‘And ye shall bring an offering made by fire unto the Lord’ (Leviticus 23:8) but here he [i.e., Moses] did not mention them [the offerings] at all. Instead, he commanded Israel to ascend on their account [to celebrate the festivals] to the place which He will choose and rejoice before Him... he added [here] to make it clear that they will all be further obligated to come before God and celebrate before Him on three festivals *and rejoice with the peace offerings that they will offer before Him*. Now he did not mention the times of the festivals of Unleavened Bread and Tabernacles on which dates they occur, but he briefly mentioned their months, for He had already stated everything there (my italics).

Perceptively, in contrasting this rendering of the festival pilgrimages to its parallel in Exodus 23:14-19 and 34:18-26, Ramban identifies an additional provision unmentioned previously. The Deuteronomic version introduces the element of rejoicing before the Lord, fulfilled by partaking of the peace offerings. This addition clearly does not change the thrice-yearly obligation to visit the sanctuary, but certainly adds an important element to the *mitzvah*.

b. 17:2-5. “If there be found in the midst of thee within any of the gates which the Eternal thy God giveth thee.” The original law of apostasy encapsulated by the verse “He that sacrificeth unto the gods shall be utterly destroyed” (Exodus 22:19) covers apostasy committed at any time and everywhere, and stipulates the death penalty, which according to tradition takes place at the entrance of the court where he was convicted. The Deuteronomic passage “is explanatory” and “is repeated in order to explain what must be add-

¹¹ Chavel (in his English edition only) and the *Torat Hayyim* and *Ha-Maor* editions of the *Miqraot Gedolot* note that Ramban is referring to Leviticus 23 and Numbers 28-29. I respectfully disagree. These sections do not speak about the obligatory pilgrimage to the chosen sanctuary. Instead, I believe that Ramban had in mind Exodus 23:14-19 and 34:18-26, which specifically mention this obligation.

ed to the commandment,” namely, that when the apostasy takes place in the Land, the apostate is to be stoned at the gates of the city in which he worshipped the idol.

Ramban does not say how Moses arrived at this significant new detail by sole reference to the original formulation.¹² It is worth noting that Ramban could have allowed vv. 17:2-5 to represent a “new” commandment, in the mold of the punishment for plotting witnesses, rather than an explanatory commandment, justified on the basis that the Israelites were now about to enter the Land. That he did not do so indicates the extent to which Ramban went to ascribe *Mishneh Torah* to Moses’ initiative.

c. 19:1-5. “When the Eternal thy God shall cut off the nations... (v. 2) thou shalt separate three cities for thee.” We quote here Ramban in full:

This is also an explanatory commandment (*mitzvah mevoeret*) since He has already commanded thereon¹³ and now he went on to explain the ordinances thereof, saying ‘and dwell in their cities and in their houses’ (v. 1), teaching that they are not obligated to [set aside the cities of refuge] until after taking possession of the Land and dwelling in it. And so Joshua did. He also added here, ‘Thou shalt prepare thee the way’ (v. 3), meaning that the roads leading thereto should be direct [without being unnecessarily circumflex], and that [signs reading] ‘Refuge, Refuge’ be set up at the crossroads. So also he added ‘and thou shalt divide the territory of thy Land into three parts’ (v. 3) [meaning that the cities should be equidistant from the frontier and from each other]. And he also went on to teach us [the

¹² See B Kethubot 45b. The distinction Ramban makes, that the place of execution depends on where the apostasy took place, is, however, problematic. See *Torah Temimah*, *ad loc.*, end of note 14.

¹³ Exodus 21:13. Ramban does not dwell on any of the additional details and/or discrepancies between this section and Numbers 35:9-34 because in his own words at 17:2, “he repeated it [i.e., in Deuteronomy] in order to explain what must be added to the commandment but he abbreviated regarding matters previously mentioned.” In the parlance of modern biblical scholarship, Deuteronomy revises the previous books, not the other way around.

rules of] the matter of ‘error’ [which requires the unintentional murderer to seek refuge] as he said, ‘And when a man goeth into the forest with his neighbor...’ (v. 5)

According to Ramban, Moses’ explanation consists of adding a few details to the general commandment of setting up cities of refuge. They are as follows:

- 1) The cities of refuge should be set up and become operative only after the conquest and settlement of the Land;
- 2) The Israelites should build roads providing quick and easy access to the cities;
- 3) Erect signposts to help those seeking refuge find the cities;
- 4) Divide the country roughly into three parts so that the three cities are equidistant from one another and provide maximum accessibility from all directions.
- 5) The nature of unwitting manslaughter, plus, Ramban adds, “many additional midrashim that our rabbis expounded on this section.” Ramban is stating that Moses’ explanatory commandment (*mitzvah mevoeret*) gives rise to further exegetical activity, midrashim derived from the new textual reality and formulation. It is worth noting, though, that these midrashim represent the work of the later rabbis and do not necessarily represent Moses’ contribution.

Common to all the above “explanations” is that Ramban does not provide a rationale for these Mosaic addenda. If, on the other hand, he was so instructed originally, then one must wonder why he did not include these details in the original formulation. What is more, Ramban’s assertion that God did not command Moses to offer these explanations poses a problem that looms over the entire explanation thesis. This implies that the Israelites may never have come to know these additions were it not for Moses’ own initiative.

2. Clarifications

The following I categorize as clarifications since they offer explanations that purport to dispel any misconceptions generated by their original formulation.

a. 14:1. "Ye are the children of the Eternal, your God. Ye shall not cut yourselves, nor make any baldness between your eyes for the dead." Ramban notes that this verse is an explanation of the original formulation, "They shall not make baldness upon their head ... nor make any cuttings in their flesh" (Leviticus 21:5), which was exclusively addressed to priests. In Ramban's words, Moses explains here that:

It is not merely because of the distinction of the priests which He mentioned there, 'They shall be holy unto their God' (Leviticus 21:6), that they were thus commanded. Rather, 'all the congregation are holy, every one of them' (Numbers 16:3), and all of you are the children of Israel of the Eternal your God, like the priests; if so, you too take heed to yourselves regarding this commandment like them.

Moses advances two reasons for extending the prohibition of self-mutilation to all Israelites. Firstly, 'all the congregation are holy, every one of them' (Numbers 16:3), therefore by dint of their holy status, Israelites too must guard against this act. Secondly, holiness may not be the determining factor for the prohibition, despite the imperative 'They shall be holy unto their God' that follows the injunction. Rather, the reason is that all Israelites, priests and non-priests, are children of God (and therefore they ought not to mourn excessively or therefore they must look presentable), and if priests are commanded so must Israelites also be commanded.

b. 22:1. "Thou shalt not see thy brother's ox or his sheep running away." Ramban glosses that "this is a commandment explanatory of what He stated in the Torah, 'If thou meet thine enemy's ox or his ass going astray, thou shalt surely bring it back to him again.'" (Exodus 22:4) Ramban finds Moses adding here a number of details in the way of explanations: an animal running away, implying one that is distant from the owner, against the original injunction dealing with an animal that simply goes astray; a sheep, because it is more likely to be lost than an ox or an ass; and other items, all included in v.3, such as an ass, because it is an impure animal;¹⁴ gar-

¹⁴ Note, however, that the ass is already mentioned in the original piece of legislation.

ments, because they are less cherished than animals; and household vessels, because of their low monetary value.

c. 24:15. “In the same day thou shalt give him his hire, neither shalt the sun go down upon it.” Ramban notes here that this verse explains, or rather clarifies, the Torah formulation that “the wages of a hired servant shall not abide with thee all night until the morning.” (Leviticus 19:13) This formulation might lead us to conclude that the employer has a right to pay the worker even after he leaves work, until well into the night. Moses corrects this impression and explains that the “intent of what He [i.e., Leviticus] said in the Torah ... is that you pay him during his day, for if you do not pay him when he leaves his work, he will go home and his wage will be left with you until morning and he may die of hunger at night.”¹⁵

The above clarifications raise the same questions raised earlier as well as some new ones. If God verbally supplemented the original laws in such a manner as to remove any misconceptions or equivocations, then Moses failed to formulate these laws in a sufficiently precise manner. This is highly unlikely, since Moses is called “trusted throughout my household” (Numbers 12:7), that is, a highly credible and reliable messenger. The alternative of Moses having to correct an earlier and what is essentially an imprecise divine instruction compromises God’s perfection. If, on the other hand, these clarifications were entirely the result of Moses’ own analytical reasoning, then on what basis does Moses clarify earlier formulations? Since the suggested clarifications do not appear to be the result of inferences drawn from the original text, how did he arrive at them? Finally, in what sense can these laws be called explanations?

¹⁵ Ramban further notes that the rabbis’ interpretation of these verses is radically different. The two verses are seen as complementary to one another, one verse dealing with a day worker and the other with a night worker. In each case, the employer has 12 hours in which to pay the wages that he owes. Following this interpretation, Ramban adds: “This is the truth as received by tradition and is appropriate with correct interpretation.” Despite its “truth” Ramban does not propose it as an explanation, either because the rabbinic interpretation made the verse look like a new commandment, a label that Ramban preferred to avoid at all cost, or because Ramban could not make the *peshuto shel miqra* justify it.

3. Explications, making explicit what was hinted at or understood implicitly in the Torah

a. 6:4. "Hear, O Israel, the Eternal our God, the Eternal is One." Ramban argues that this commandment is merely an explication of the first of the Ten Commandments, "I am the Eternal thy God" (Exodus 20:2), where Oneness is implied in the direct revelation, and not a new commandment. Ramban relies here exceptionally on a rabbinic aggadah to make this claim: "Rabbi Nathan says, from here there is a refutation to those heretics who say there are two powers governing the universe. For, when the Holy One, blessed be He, stood on Mount Sinai and proclaimed 'I am the Eternal thy God,' who protested against Him?" The declaration of Oneness is derivative of, and therefore presupposed by, the first commandment of the Decalogue.

b. 6:7-9. "And thou shalt teach them diligently unto thy children... (8) And thou shalt bind them for a sign upon thy hand, and they shall be for frontlets between thine eyes, that the law of the Lord may be in thy mouth... (9) And thou shalt write them upon the doorposts of thy house, and upon thy gates." Ramban comments that this group of three commandments was already hinted at previously in the Torah. Teaching and studying Torah is presupposed by the various passages that speak about keeping alive forever the statutes, signs and covenants between God and the children of Israel.¹⁶ Here, too, Moses does little more than draw inferences from the text, an interpretive activity. The commandment of tefillin, Ramban suggests, is already alluded to in the verse "And it shall be for a sign unto thee upon thy hand, and for a memorial between thine eyes" (Exodus 13:9), and here "He further explained 'and thou shalt bind them,' meaning that they be placed through tying."

This explanation looks more like supplementation than interpretation, though, of course, one could accept that a strictly literal reading might yield the obligation to place a "sign" through tying. With regard to the commandment of *mezuzah*, Ramban is willing at

¹⁶ Leviticus 3:17, with respect to not eating blood; Exodus 31:17, with regard to the Sabbath; and Genesis 17:10, where the reference is to circumcision.

first to concede that this is a new commandment, one that “has not been mentioned,” but immediately thereafter he reverses himself and says, “Perhaps this too is [merely] explained [here rather than being an entirely new commandment] since it has been suggested in the commandment [i.e., Exodus 13:9] ‘and it be a memorial between thine eyes, that the law of the Eternal may be in thy mouth.’”¹⁷

This explanation is far-fetched, and one has to wonder why Ramban tries so hard to remove this commandment from the category of new commandment.

4. Innovations

The following examples explore the outer semantic limits of the term *biur*.

a. 15:1-2. “At the end of every seven years thou shalt make a release (*shemittah*).” Ramban connects this verse with the laws of the Sabbatical year stipulated in Exodus 23:11,¹⁸ which enjoin one from plowing, sowing and reaping in the seventh year. Then he adds that Moses “abridged the prohibition of sowing and pruning because He expressly mentioned them already [Leviticus 25:4] but he supplemented [what was previously said] to explain that it is ‘a *shemittah* of the Eternal’ (v. 2) also in regard to the release of moneys.” Moses supplements the laws of the Sabbatical year and innovates a new

¹⁷ Ramban does not explain how this verse alludes to *mezuzah*. In his Hebrew comment, Chavel explains that the *mezuzah* rests on the doorpost at the height of the *mouth*; in his English commentary, he suggests that the *mezuzah* is fastened at *eye* level.

¹⁸ Ramban makes a point of relating this verse to the passage in Exodus rather than to the detailed legislation in Leviticus because Exodus uses a verbal form of *shemittah*. Leviticus, on the other hand, never uses *shemittah* or any verbal form of this noun to describe the Sabbatical year; it simply calls it “Sabbath Sabbaton” and a “Sabbath unto the Lord.” (Leviticus 25:4) Aware of this difficulty, Ramban attempts to make a lexical connection by arguing that “thou shalt make *shemittah*” means that “you should rest, similar to the expression ‘to keep the Sabbath day.’” (Deuteronomy 5:14) A bit later, he says, “This is the sense of the expression, because it is proclaimed ‘the remission of the Eternal’ (v.2), which is similar to a ‘Sabbath unto the Eternal’ (Leviticus 25:2), and all works are to cease.”

sabbatical provision (*shemittah*), the remission of debts every seventh year.

This “explanation” is as close as one comes to enacting new legislation. The remission of debts has no logical or even allusive connection to the law prescribed in Exodus of leaving the earth fallow every seventh year. Note, for example, that Moses ben Maimon (Rambam) and all other enumerators of the commandments consider the prohibition to plow, sow and reap in the seventh year (*shemitat qarqa*) and the obligation to remit debts in the seventh year (*shemitat kesafim*) as two entirely separate commandments. Ramban’s view here, as we have argued, continues to expand the semantic bounds of *biur*.

b. 18:3. “And this shall be the priests’ due from the people.” The priestly dues refer here to the shoulder, the two cheeks and the maw of the offering. Ramban characterizes this direction as a new commandment, given to the people that were about to enter the Land. These portions differ from the portions already assigned to the priests in Numbers 18:9 in that those were sacred and these are not, thus providing some justification for their being singled out in Deuteronomy. Nevertheless, Ramban reverses course and, based on a rabbinic midrash, finds reason to characterize this mandate as an explanation on the grounds that these portions were already hinted, as per Sifre, in the words “which they give” (Numbers 18:12). Moses makes explicit the extra portions by means of an exegesis that attributes the special priestly gift to Phineas’ zeal in the slaying of Zimri and the Midianite princess (Numbers 25:7-9) and symbolically links the portions to elements of that act. Accordingly, shoulder represents the hand that held the spear, cheeks stands figuratively for Phineas’ (tearful) prayer (as per Psalms 106:30) and maw, or stomach of the animal, symbolizes the organ that was stabbed. The new details based on the assumption that the words “which they give” were alluding to a further priestly gift, the identification of the Phineas story as the source text for the halakhic discovery, and the symbolic association of the portions with selective elements of that story should perhaps best be described as innovations built on creative exegesis rather than as explications or interpretations.

In sum, the inventiveness of these laws militates against the model of Moses merely supplementing existing laws. In fact, they appear to represent new and independent pieces of legislation.

5. Special cases of more general laws

a. 21:18. “A stubborn and rebellious son.” Vv. 18–21 deal with the punishment to be administered to an insubordinate son, a law for which we find no precedent in the earlier books of the Torah. Ramban’s comment is brief and surprising: “This, too, is a newly declared commandment—or it may be explanatory (*mevoeret*) of the commandment ‘Honor thy father and thy mother’ (Exodus 20:12) and ‘Ye shall fear every man his mother and his father.’” (Leviticus 19:3) This is another instance in which Ramban demonstrates a preference for characterizing ostensibly new commandments as Mosaic explanations, despite the obvious exegetical difficulties. The stubborn and rebellious son represents a special case of the positive injunctions to honor and fear one’s parents. There is no hint in the older legislation, however, to this type of case and to the severity with which the violator is to be treated—stoning—for breaching the terms of honor and fear. If anything, older legislation prescribes the death penalty for hitting or for cursing one’s parents but not for mere disobedience. Explanation or innovation?

b. 22:6. “If a bird’s nest chances to be before thee...” Ramban calls the commandment to take the young and send away the dam an:

explanatory commandment (*mitzvah mevoeret*) of the prohibition ‘and whether it be cow or ewe, ye shall not kill it and its young both in one day’ (Leviticus 22:28), because the reason for both [commandments] is that we should not have a cruel heart and lack compassion, or it may be that scripture does not permit us to destroy a species altogether, although it permits slaughter [for food] within that group. Now he who kills the dam and the young in one day or takes them when they are free to fly [it is regarded] as though he cut off that species.”

c. 22:8. “Then thou shalt make a parapet for thy roof.” Here Ramban equivocates, and for good reason: “The commandment of the parapet is newly declared, or it may be explanatory of the prohibition ‘neither shalt thou stand idly by the blood of thy neigh-

bor.” (Leviticus 19:16) In the case of a roof without a parapet, of course, the home owner does not “stand idly by” as a neighbor’s life is threatened. Rather, he merely invites the possibility that someone may fall from the roof and die. The immediacy of the threat to one’s life is far enough removed to make the parapet commandment an extremely far-fetched example of an explanation of the Leviticus commandment.

d. 22:9. “Thou shalt not sow thy vineyard with two kinds of seed, lest the fullness of the seed which hast sown be forfeited together with the increase of the vineyard.” Ramban categorically posits this commandment as “explanatory, for He has already stated, ‘Thou shalt not sow thy field with two kinds of seed.’ (Leviticus 19:19) Now this [prohibition] implied any place where they are sown; here he [i.e., Moses] added that if a vineyard be sown with mixed seeds” the whole vineyard will be forbidden. Actually, the yield of the vineyard *and* the produce of the seed grown in the vineyard become “holy,” i.e., prohibited. This detail is particular to the vineyard and not to the mixed plantings of the field. Rather than an explanation of Leviticus 19:19, this appears to be an entirely new commandment.

6. Explanations as precautionary commandments avoiding the violation of existing prohibitions

a. 19:14. “Thou shalt not remove thy neighbor’s landmark.” As Ramban saw it, this admonition “is an explanatory commandment, deriving from what He commanded: ‘According to the lot shall their inheritance be divided between the more and the fewer.’” (Numbers 26:56) In other words, this commandment is meant to preserve original princely apportionment of the Land to the tribes.

b. 22:10. “Thou shalt not plow with an ox and an ass together.” Ramban argues that “it is an explanatory commandment of the prohibition ‘Thou shalt not let thy cattle breed with a diverse kind’ (Leviticus 19:19), for it is the custom of the tillers of the soil to bring their working animals into the same stall and breed them.” In other words, this prohibition is meant to strengthen the grave prohibition against mating two animals of different species.

c. 23:20-1. “Thou shalt not cause thy brother to take interest.” According to Ramban,

this is also an explanatory commandment, adding here an admonition to the borrower as well, unlike in all civil cases, for if a person wishes to damage his belongings he may do so [and it should therefore be permitted to the borrower to give freely to the lender]. However, because of the habitual nature of this sin [of paying interest], Scripture admonishes the borrower as well. And he explained here [v. 21] that a heathen’s interest is permissible.

Prohibiting the borrower from passing on interest to the lender reinforces the original prohibition against lending at interest. (Leviticus 25:37)

Though Ramban calls them explanations, the above examples precisely mimic the ordinances and decrees that the Talmudic rabbis enacted to impose what they termed a “fence” around Torah prohibitions. In essence, they constitute new commandments.

In conclusion, the explanatory commandments resemble new commandments or new details of existing commandments rather than explanations of previous ones. There is nothing in the original formulations that would lead us to understand them in the way Moses did in the *Mishneh Torah*. Exception might be some the commandments in category three above, which appear to be the result of deductive reasoning, and category four, which clarifies existing commandments, though clearly they are not grounded in the formulation of the original commandments nor are they necessarily logical extensions of those. All we can say about the rest of the explanatory commandments is that they maintain a topical relation to existing commandments and perhaps share some of the same rationales.

In his comment to Deuteronomy 27:8, referring to the command of writing down the laws on stones, Ramban renders *baer beitev* as clear, legible (script), seemingly agreeing that the root *b'r* conveys a meaning of clarifying, i.e., making plain. While it is true that in using the term *biur* Ramban adopts and attempts to conform to the term used in verse 5 (*ho'il Moshe be'er*), it begs the question why he did not read the term *be'er* in its most common sense of “explain and make plain” and why he felt compelled to construct, on a seemingly lexically unattested basis, an absolutely novel class

of commandments. In what follows, I will attempt to deal with an even more fundamental issue, the legal standing of these explanatory commandments.

The authority of the explanatory commandments

In normative Judaism, there is no difference between the commandments of the *Mishneh Torah* and those of the first four books of the Bible. None of the enumerators of commandments, for example, thought to distinguish between the commandments promulgated at Sinai, those given in the Tent of Meeting and those announced on the Plains of Moab; together they numbered the now classic 613 commandments. This is because the *Mishneh Torah* not only came down the chain of tradition appended to the other books but was canonized as part of the Five Books of Moses. Tradition assumed that all the 613 commandments were of divine origin.

Yet, according to Ramban, many of the commandments first presented in the *Mishneh Torah* are the product of Moses' own "explanations," undertaken on his own initiative. Ramban does not say whether the explanatory commandments are the product of Moses' own judgment or of prophetic revelation, but he notes that Moses was *not* ordered by God to proclaim them. What, then, are we to make of such innovative commandments as the obligation to remit debt in the seventh year, the prohibition against self-mutilation for Israelites, the punishment of the rebellious son, the obligation to send away the mother bird and so many others that have been codified as separate commandments as opposed to details? Do these commandments really enjoy an equal legal standing to the commandments directly given by God? In blunter terms, do these commandments qualify as *de-oraita* (scriptural) according to Ramban or might they belong to the lower category, such as for example, *divre sofrim* (rabbinic) law?¹⁹

¹⁹ I realize that the question, as phrased, assumes a particular categorical distinction between *de-oraita* and *divre sofrim*, the boundaries of which became the subject of a well-known dispute between Rambam and Ramban. As we shall see, this distinction, or more precisely where the distinction lies, can lead us to a resolution. Nevertheless, I framed the question as I did to sharpen it. On the dispute between Rambam and

One may argue that this is a non-issue and that the origin of the commandment is not relevant, given that Moses' laws were incorporated in the final version of the Torah, necessarily making these laws scriptural rather than rabbinic. It is as if God conceded *a posteriori* to Moses' suggestions, a theologically bold assumption made by the Talmudic rabbis in the few instances in which prominent biblical figures appear to act on their own, without prior divine instruction. According to various aggadic midrashim, these concessions were made to Abraham, Jacob, Moses, Joshua, David and Elijah on various occasions, and the commandments appear to be inferred directly from the scriptural text.²⁰

Still, we find in Ramban's commentary no hint that indeed such was the case and that these commandments were validated *a posteriori*. Neither do we find midrashic support for this assumption. It would therefore not be unreasonable to conclude that Ramban believed that Moses had sufficient authority to sanction these commandments and to give them a scriptural status. We now take up this issue.

The legal status of prophetic law

As related by the Torah, all the commandments, with the exception perhaps of the first two of the Ten Commandments, were transmitted by God through Moses as intermediary to the Israelites. Thus we find repeatedly such expressions as "and God spoke to Moses, saying: 'Command the children of Israel,' or 'Speak to the children of Israel and say to them the following commandment'" and so on. Moses receives the commandments directly from God via his pro-

Ramban on this issue, see first *Sefer ha-Mitzvot*, ed. Frankel, first *shoresb*, in particular pages 16 and 17, and then see the accompanying critique of Ramban (*Hasagot ha-Ramban*) to the second *shoresb*, pp. 84 through 94.

²⁰ The rabbinic expression is "*a posteriori*) God agreed with him" (*Ha-Kaddosh Barukh Hu hisqim al yado*). With reference to Moses, see for example *Midrash Tanhuma, Parshat Shoftim, siman 19, s.v. ve-qaratab eleha* and *Pesiqta Zutrata, Shemot 19, s.v. vayomer el*. In none of the instances surveyed do the midrashim deal with the type of commandments that we are familiar with, that is, commandments that are binding for all times, as all 613 purport to be.

phetic faculties and transmits them to the children of Israel. While Moses mediated new laws, subsequent prophets could not. As understood by the oral tradition (B Shabbat 104a), the words “these are the commandments” (Leviticus 27:34) severely restricted all future legislative activity by insisting that only “these,” i.e., those contained in the Mosaic books, constitute the commandments. Henceforth, no prophet could innovate normatively and in fact would be guilty of violating biblical law prohibiting such innovation should he do so.

In effect, the five Mosaic books constituted a closed canon with regard to commandments. Nevertheless, while the prophets could not innovate, they certainly could issue decrees and ordinances in an effort to maintain the integrity of Torah law. In sum, Torah law and its commandments are immutable. Decrees and ordinances promulgated by prophets and sages, on the other hand, are, for the most part, temporal and subject to change and do not enjoy the juridical status of Torah law. They come under the category of rabbinic law.

Though there is general agreement among rabbinic thinkers, two medieval commentators, Moses ben Maimon (Rambam) and Ramban, offer the fullest expositions of these legal doctrines and draw precise definitions of and boundaries between Torah law and rabbinic law.²¹ To justify the selection and identification of all 613 commandments, Rambam offered 14 methodological rules or principles, known as roots (*shorashim*). Of particular interest to this paper are Rules 1 and 2 and, more particularly, Ramban’s lengthy and creative critique of Rambam’s position on the subject of laws promulgated by the prophets who follow Moses. He says:

And with respect to what the master [i.e., Rambam] wrote in Rule 1, namely, ‘everything that the prophets that came after Moses laid out²² is also [called] *mi-derabbanan* (rabbinic)’ and he learned this from the [fact that the] laws of *erubin* and [the washing of] hands enacted by [King] Solomon are called *de-*

²¹ Their views can be found in any of the standard editions of Rambam’s *Sefer ha-Mitzvot* printed alongside Ramban’s critiques (*basagot*).

²² *Sidru*. The classical translators of the *Sefer ha-Mitzvot* have here *tiqnu*, enacted.

rabbanan. Well now, in my opinion this too is not as he thought. What [King] Solomon enacted or what the prophets enacted and is not written in Scripture in a prophecy is without a doubt rabbinic, including *erubin* and [the washing of] hands... Also, what is written [in Scripture] in a narrative form [relating how they undertook to perform certain customs] ...is all [considered] rabbinic...and even the decrees of Moses our master himself are [considered] rabbinic...But, what is written through the medium of prophecy (*bi-nevuah*)²³ in the form of commands²⁴ as, for example, when they urge to perform a certain positive commandment and warn regarding a certain prohibition, this is [considered] a Torah matter (*devar torah hu*).²⁵ And the reason for this is that since the Torah warned us: 'These are the commandments' (Leviticus 27:34), teaching us that henceforth, no prophet can come and innovate, then we know that what [laws] come through the medium of prophecy is a Torah matter²⁶: **it either represents a commentary (*perush*) to a verse in the Torah or a Mosaic ruling that was passed down from Sinai (*halakhab le-Moshe mi-Sinai*) [that was] in their possession...**

The transmission of divine law, according to Ramban, was an ongoing process, not restricted to the time of the giving of the Torah at Sinai, and capable of being conveyed by the prophets that followed Moses. Still, these prophetically promulgated laws are in some fashion anchored to and bound by existing Torah law. All such law can be only a commentary on existing Torah law or based on an existing oral tradition that originates with Moses. Such laws do not represent innovations. For this very reason, they must be deemed scriptural laws.

²³ So the mss. In the printed versions, the books of the prophets (*bi-nevi'im*).

²⁴ Contrasting it with what is not written in the prophetic books and with what is conveyed through the medium of prophecy in the form of narration.

²⁵ Ramban offers a similar theory in his commentary on Deuteronomy 4:1-2, though his comments there are not as well fleshed out.

²⁶ Ramban obviously understands the exegesis descriptively rather than prescriptively.

To support his position, Ramban draws examples from the Talmud: "And so it is that we know that a priest who grows his hair long must not officiate in the Temple and, if he does, he is liable to capital punishment." This law is not found in the Five Books of Moses but is deduced from a prophetic text in the book of Ezequiel. In the exact same manner, we know that an uncircumcised priest who officiates in the Temple is liable to lashes. And again, that the priestly garments are to be made out of linen, *pishtim*, according to Ezequiel, which clarifies, according to the Talmud, the Mosaic hapax *shesh*. In all these cases, the Talmud notes that the law had been transmitted and known orally already from the time of Moses, well before the time of the prophet Ezequiel.²⁷ The prophet, perhaps for fear that they would be forgotten in the course of time, merely provided an exegetical basis for laws that were essentially known from tradition and recorded their existence. Nevertheless, Ramban notes that these laws enjoy a scriptural status even though they are conveyed by a prophet.

Ramban notes further that verses found in the prophetic writings also lend themselves to exegesis, yielding laws and principles that command scriptural force. Such is the case with Ezequiel 18:11, whence we deduce that one who is convicted by the court and incurs two death penalties is executed by the more severe of the two (b Sanhedrin 81a). Another instance is that of Ezra 10:8 and Joshua 14:1, from where it is derived that the Rabbis have the power to expropriate and can therefore enforce repayments of debt in the seventh year, contrary to the law of the Torah (bGittin 36b).

In his last example, Ramban shows that a court's acceptance of written testimony is derived from a prophetic text in Jeremiah, despite the Torah's insistence that testimony must be heard directly from the mouth of witnesses, because "prophetic words (*divre nevuah*) are [like] the words of Torah in these types of cases."²⁸ Ramban concludes from the aforementioned cases that, in certain

²⁷ The precise expression is *gemara gamir lab ve-ata Yehezkel ve-asmekha agra*, rendered as "it was a tradition and then Yehezkel came and gave it a Scriptural basis." See b Taanit 17b, b Yoma 71b, b Sanhedrin 22b.

²⁸ To exclude decrees and ordinances promulgated by the prophets for the sole purpose of protecting the essential Torah law.

circumstances, the Talmud found it entirely appropriate to consider prophetic words as carrying the same legal force as Torah law.²⁹

The legal theory expounded in the *Hassagot* provides the juridic underpinning for Ramban's bold but implicit assertion that the commandments of Deuteronomy enjoy the same legal force as those promulgated in the rest of the Pentateuch. Moses, the greatest of all prophets, is no less qualified to explain, explicate, modify, supplement and clarify God's laws than any other prophet. When Moses does so, as with the explanatory commandments, he appears to create commandments that qualify as Torah law. In what follows we shall examine whether Moses' explanatory commandments are in fact comparable to the above paradigmatic cases.

The nature of prophetic explanations

Ramban allows for two categories of prophetic legal activity: explanations of existing Torah law (*perush*) and promulgation of early traditions heretofore transmitted orally. The latter category can contain legal innovations—for example, the law that an uncircumcised priest who officiates in the Temple is liable to lashes, a law for which we find no trace in the Torah.³⁰ Yet the Talmud does not see the prophet as having innovated; it simply sees him as having inscribed an ancient law that presumably goes back to Sinai and is thus of divine origin. To this category belong Ramban's first three examples, including the prohibition for the uncircumcised priest to officiate, since the Talmud expressly says that these laws were known through tradition (*gemara gamir leh*; idiomatically, "he received this tradition from his teacher").

²⁹ It is interesting to note that, in at least one instance, the Talmud finds it natural to refer to the permission found in Jeremiah for the use of witnesses signing on a contract as Torah law (*de-oraita*). See b Gittin 36a, *ve-ha-edim hotmin al ha-get mi-pne tiqun ha-olam, de-oraita hu!? di-ketiv ve-khatov ba-sefer ve-hatom ve-haed edim* (Jeremiah 33:44).

³⁰ Moses ben Maimon struggles with this prohibition. Faced with the problem of administering "scriptural" lashes for a law not expressly stipulated in the Torah, he subsumes the uncircumcised under the Torah category of *zar*, the "outsider." See *Hilkhot Biat ha-Miqdash* 6:8, but see *ibid.*, 9:1 for a definition of *zar* that makes implausible such a theory.

The former category of explanations of existing commandments is not as straightforward. In keeping with the entire tenor of Ramban's comments in the *Hassagot*, the explanations must be anchored and bound by Torah law—anchored, because they must connect with some Torah theme or commandment, and bound because they can do no more than clarify, explain or supplement an existing law. That the signatures of witnesses can validate a transaction perhaps derives from the general Torah requirement of validating a legal act by means of witnesses. Still, the Torah stipulates that “at the mouth of two witnesses... shall a matter be established” (Deuteronomy 19:15), specifically, that testimony must come from their mouths, not from their written words. Shall we then not call this prophetic law of signatures an innovation rather than an explanation, even though it is anchored in a Torah theme?

Ramban evades this problem by restricting its application to commercial law as opposed to criminal law. Documents issuing from parties to a transaction, such as writs of divorce, betrothal contracts, loans and sales receipts, where the parties validate the document by affixing their signatures, are admissible as evidence. Ramban argues, however, that they are inadmissible in criminal cases. The prophetic law fills in a gap, clarifies, and supplements, and therefore is not entirely innovative. But what are we to say about the judicial principle that courts must administer the more severe of two punishments when in the presence of two convictions, rather than order the court to choose the lighter of the two punishments or simply leave it to its discretion? Or, more problematic yet, what can we say about the prophetically conveyed principle that the rabbinical courts have the power to expropriate property? In what sense can this principle or authorization be said to be an explanation of Torah law? Similarly, can we really call these legal innovations *explanations* of Torah law just because in some remote fashion they deal with general matters of property and court punishments, topics dealt with in the Torah? How far can we stretch the meaning of *perush*?

Recall that Ramban suggested only two valid categories of prophetic lawmaking activity, namely, explanations of existing Torah law (*perush*) and promulgation of early traditions, heretofore transmitted orally. Since, as we saw, the above cases do not appear to fit

into the first category of explanations because they bear no relation to the text, a way out of the dilemma might be to consider these as cases belonging to the second category, that of *gemara gamir leh*, oral traditions that originate in Sinai. Attributing all the illustrations to cases of oral traditions originating in Sinai implies that Ramban never provided illustrations to his first possibility, namely, that prophets can expound on scriptural passages and offer interpretations that enjoy the force of Torah law, as he had claimed. Still, the general context of his thesis makes this solution plausible.

The explanatory commandments of Deuteronomy, however, present a far more intractable problem. Here Ramban tells us specifically that they represent explanations, or added explanations (*tosefet bi'ur*), to an existing Torah law; nowhere are we told that these explanations represent oral traditions that Moses received earlier, directly from God. These laws, then, would by all accounts appear to belong to the category of prophetic explanations to Torah law. In each instance, Ramban demonstrates that these explanations are anchored or connected to an existing law. In a number of instances one could allow that the explanations supplement, clarify or explicate existing laws, and in this sense, they are intimately bound to them. This would be the case, for example, with respect to the explanatory commandments listed under categories one, two and three.

The remaining categories of explanations, however, can hardly be described as being bound to existing law. For example, the release of debt in the seventh year (*shemitat kesafim*) in category four neither supplements nor clarifies nor explicates the agrarian law of the Sabbatical year (*shemitat qarqa*), as pointed out earlier. Likewise, the explanatory commandment to send away the dam and take the young (5d) neither supplements nor clarifies nor explicates the existing law mandating “whether it be cow or ewe, ye shall not kill it and its young both in one day.” (Leviticus 22:28) Why would Moses single out the special case of the bird’s nest out of a myriad of other forms of animal cruelty that could be imagined? Other than making the infraction less likely to occur by adding a second party to the prohibition, the commandment prohibiting a borrower from paying interest (6c) neither supplements nor clarifies nor explicates the existing prohibition to lend money at interest.

In reality, these commandments are not explanations of existing laws but new commandments. But if that is the case, then Ramban has depicted a theologically offensive Moses who is an autonomous legislator rather than a divine agent. In an attempt to resolve this crux, I suggest that the validity of these innovations lies in the common rationale that they share with their legal precedents. For example, one could say that the prohibition against sowing and other agricultural activities, the existing Torah law, aims at a humanitarian and social objective of offering relief to those who are economically disadvantaged. Similarly, the remission of debt extends financial relief to the debtor class.

Ramban's rationale for the commandment to send away the dam before one takes the young precisely mirrors that underlying the legal precedent that prohibited the killing of a cow or ewe and its young in one day—to inculcate in us a feeling of compassion for animals or to teach us that an entire species of animals must not be destroyed. The proposed additional definition of explanation, namely legislation that shares a common rationale with some legal precedent, appears to provide a plausible justification for Moses' lawmaking. Moses, as prophet, develops or intuits a capacity to probe the telos of the law. The law is thus perceived as a compilation of illustrations, each of which exemplifies a certain principle. This series of laws, viewed in this way, was never meant to be exhaustive. Moses' genius is that he distills these principles in the most perfect way to provide new applications. Moses' "innovations," then, do not add to the comprehensive sense of legislative closure rabbinically implied by the phrase "these are the commandments" (Leviticus 27:34), because "these" pertain to overarching intentions, goals, and policies, and not to specific laws.

But even this suggestion falls short of resolving the explanatory commandments of category six, which includes laws whose objective is simply to strengthen precedent legislation, along the lines of the common rabbinic "fences around the law." If the rationale for forbidding the lending of money at interest is that it represents financial oppression, then the explanatory commandment, forbidding the debtor from making a voluntary payment of interest, does not share the same rationale. If the rationale, on the other hand, is different—say, that to charge interest on money is morally repug-

nant and therefore the borrower too ought not engage in it—then Ramban should have offered us a hint of this significant idea. What he does say is that “because of the habitual nature of this sin [paying interest], Scripture admonishes the borrower as well,” which implies that the borrower’s matter-of-fact familiarity with and acceptance of these types of transactions makes it easier for the transaction to take place. This rationale leads us back to our original suspicion, that these laws merely represent “fences around the law.”

Or take Moses’ explanatory commandment forbidding one to plow with an ox and an ass together (6b). In this instance, Ramban is quite clear that this new law strengthens the original prohibition against mating animals of different species, since “it is the custom of the tillers of their soil to bring their working animals into the same stall and breed them.” Much the same can be said with regard to the explanatory commandment forbidding one to remove his neighbor’s landmarks (6a), as is obvious from Ramban’s discussion.

Can the legislative building of “fences around the law” also fall in the category of “adding explanations”? A first reading of Ramban’s own words at Deuteronomy 4:2 might suggest this. Following his assertion that the sentence “these are the commandments” (Leviticus 27:34) explicitly forbids a prophet from adding to the Torah, he notes that “whatever [laws] the Sages have established in the nature of ‘a fence [around the Torah],’ such as the secondary degrees of forbidden marriage (*sheniyot*), that activity is itself a requirement of the Torah, provided one realizes that these [laws] are a result of a particular fence and that they are not [expressly] from the mouth of the Holy One, blessed be He, in the Torah.” The requirement of the Torah to which Ramban is referring is the Torah obligation to make “fences around the law” based on the verse “and ye shall keep my charge” (*u-shemartem et mishmarti*, Leviticus 18:30). Unfortunately, this comment says only that the Sages were authorized (and encouraged) to make these fences, not that they constituted Torah law, and that these laws did not violate the strictures against making additions to the law provided one realized that these fences around the law were *not* issued by the Holy One.

In fact, Ramban’s comment conceives of “fences around the law,” an activity in which sages are commanded to engage, as external to Torah law. Secondary degrees of forbidden marriage are not

explanations of primary degrees of forbidden marriages; they simply represent new prohibitions. Since, in Ramban's scheme, these *fences* contained in category six were promulgated by Moses, as the term defined as "undertook" or "wished" (*ho'il Moshe*) ascribed to Moses implies, one is tempted to conclude that these commandments do not enjoy the force of scriptural commandments. However, regardless of any characterization of the explanatory commandments in category six, these commandments are qualitatively different from those in the earlier categories.

Loose ends

A number of issues alluded to earlier still remain unresolved. Are these explanatory commandments a product of Moses' exegetical activities, or are they instead "explanations" that were passed on to him while receiving the commandments and for which he now offers a scriptural basis, much as Ezequiel was purported to have done with received oral traditions? If the explanations came via prophecy, it is difficult to understand why God would not order Moses to pass on this information to the Israelites.³¹ Moreover, we would have to assume that either God changed His mind and was forced to add, clarify, modify, supplement and strengthen earlier legislation (and then why would He not want the Israelites to know of this?),

³¹ A different solution has been proposed by one of the anonymous readers of this paper, namely, that Moses had received these commandments via prophecy but God intended that they not be put into writing and instead remain part of the oral law. On the assumption that Moses' undertaking to explain and innovate is to be equated to the idea that the explanatory commandments would be put into writing, a somewhat questionable assumption, this theory would explain why God did not command Moses to explain and add innovations to them. It would also explain why there was no delay in transmitting these commandments: they were presumably explained orally all through the many years of wandering in the desert. In my opinion, this is not a tenable theory to explain Ramban's position, for, if this were so, Moses violated God's wish; nowhere, however, does Ramban even hint that Moses committed such an impropriety. Moreover, if God had truly wanted these commandments to remain part of the oral law, He could have simply ordered Moses to omit them from the final form of the book.

or Moses was less than precise on the first round of transmission. Either assumption is theologically unacceptable.

Should Ramban, on the other hand, maintain that these clarifications were entirely the result of Moses' own analytical reasoning, that is, they were exegetically derived, how were they so derived? Invariably, nearly all the explanations, or perhaps all of them, fail to show an exegetical connection to the original text. Neither does Ramban provide a clue to the hermeneutical methods employed by Moses. Finally, regardless of the source of these explanations, why did Moses wait until the last moment, weeks or months before the end of his mission, to transmit these laws? Unlike the new commandments (*mitzvot mehudashot*), these explanatory commandments do not appear to bear special relevance to the generation entering the Land. Finally, why does Ramban choose to understand *ba'er* as the creative/innovative act that it turns out to be? Why not simply understand *ba'er* as the type of rabbinical exegesis commonplace among the Talmudic sages? At the same time the explanatory commandments could have been identified with the scores of other commandments (*mitzvot mehudashot*) that are revealed to the Israelites for the very first time.

Ramban may have been forced to create the category of explanatory commandments because of the difficulty in explaining why commandments that appear to be unrelated to coming into the Land were communicated in the Plains of Moab. But Ramban admits that a number of commandments such as the laws of levirate marriage, the law concerning the defamation of a virgin bride, and the divorcing of a wife bear little or no relevance to coming into the Land. The same (unsatisfactory) explanation he offers for the inclusion of these commandments at this late date could have been proposed for the so-called explanatory commandments.

Conclusion

Ramban offers a radical and fascinating interpretation of Moses' role in the giving of the Torah to the Israelites. The words *bo'il Moshe* suggest to Ramban that Moses undertook some explanatory activity solely on his own accord, with God not ordering him to do so. Even more surprising, the explanatory activity itself, coming under the rubric of *ba'er*, cannot be understood conventionally. Ac-

According to Ramban, Moses supplements, clarifies, explicates and creates new laws on the basis of a revealed rationale and strengthens existing legislation. Despite it all, Moses the prophet does not, *because he may not*, innovate and violate the terms of “these are the commandments.”

My attempts to reconcile Moses' legislative activity to these strictures unfortunately do not succeed. Moreover, Ramban's daring and creative commentary leaves behind a host of other theological and interpretative questions that will require a better person than I to resolve. Still, his approach is fresh and highly stimulating and opens a new dimension on our understanding of this most difficult book of the Bible. ❧

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