



Maimonides on *Shilu'ach Ha-kein* – Sending Away the Mother Bird
By David Silverberg

Among the more familiar of the many laws introduced in Parashat Ki-Tetze is the *mitzva* known as *shilu'ach ha-kein*, or “sending away the bird”:

If you chance upon a bird's nest along the way, in any tree, or on the ground – chicks or eggs – and the mother sits upon the chicks or upon the eggs, do not take the mother with the children. [Rather,] send away the mother and take for yourself the children, in order that you fare well and live a long life.

(Devarim 22:6-7)

This obligation, to send away the mother bird before taking its young or eggs, has given rise to an entire literature surrounding the issue of *ta'amei ha-mitzvot* – the study of the underlying reasons behind God's commandments. Before demonstrating how and why *shilu'ach ha-kein* became the focal point for this philosophical discussion, let us first examine the question more closely. Theoretically, one may approach the Torah's commandments from one of three perspectives. At one extreme, one might contend that the *mitzvot* serve no purpose other than demonstrating one's loyalty to God and forcing him to submit to divine authority at the expense of his personal wishes. According to this approach, it is pointless to try identifying a specific, intrinsic purpose served by any given *mitzva*. The Torah's commands are meant strictly as an exercise in discipline and obedience, and we should therefore not expect to find any inherent meaning in the commandments.

Alternatively, one might acknowledge that God had His reasons in determining the specific *mitzvot* He issued, but argue that these reasons elude human comprehension. Just as the human mind cannot grasp the essence of the Almighty, so is it too limited to understand His commandments, beyond the practical measures it demands.

Finally, the third possible approach advocates endeavoring into the world of *ta'amei ha-mitzvot*, in an attempt to arrive at the rationale underlying the divine laws. Humbly conceding the limitations of the human intellect and its inability to reach definitive conclusions in this regard, this view entitles and even urges the scholar to search for the reasons behind the Torah's *mitzvot*. This does not mean we are necessarily guaranteed access to the rationale behind each and every *mitzva*, but fundamentally, a rational basis of the *mitzvot* exists and is within reach of the human mind.

Maimonides subscribed to this third view, albeit with one important qualification. He devotes numerous chapters of the third section of his *Guide for the Perplexed* to the reasons underlying the commandments, often arriving at very surprising, novel, and sometimes controversial explanations. He introduces this section with a discussion of the general topic of *ta'amei ha-mitzvot*, firmly establishing his belief in the reasons and rationale underlying the commandments: “All of us, the common people as well as the scholars, believe that there is a reason for every precept, although there are commandments the reason of which is unknown to us, and in which the ways of God's wisdom are incomprehensible” (3:26). Among the sources Maimonides cites to support his position is a verse towards the end of the Book of Devarim (32:47), where Moshe declares regarding Torah law, “*ki lo davar reik hu mikem*” – “for it is not a vain thing for you.” According to Maimonides, this verse means that the Torah's laws are not arbitrary; they are rather rich in meaning, substance and purpose, beyond the disciplinary value of obeying God's word.

Later in that same chapter, Maimonides addresses a Midrashic passage (*Bereishit Rabba* 44:1) which appears to contradict his view: “What difference does it make to God whether a beast is killed by cutting the neck in front or in the back? Surely the commandments are only intended as a means of cleansing man...” On the surface, the Midrash here denies the intrinsic, specific significance of the commandments, ascribing their value to strictly the “cleansing” effect of obedience and subordination. God has no preference as to whether we prepare meat by slaughtering animals from the front or back of the neck; the Midrash thus concludes that the *mitzvot* serve no ulterior purpose, and are enjoined upon us purely for the sake of our humble submission to God. Maimonides describes this passage as “very strange,” noting that it “has no parallel in the writings of our Sages,” perhaps suggesting that we could dismiss it as an expression of a minority opinion among the Talmudic scholars. Nevertheless, he proceeds to offer an explanation of this Midrash in accordance to his theory, by distinguishing between two aspects of *mitzvot*:

I will now tell you what intelligent persons ought to believe in this respect; namely, that each commandment has necessarily a cause, as far as its general character is concerned, and serves a certain object; but as regards its details we hold that it has no ulterior object. Thus killing animals for the purpose of obtaining good food is certainly useful, as we intend to show [referring to chapter 48, where Maimonides explains the dietary laws as yielding medical benefits]; that, however, the killing should not be performed by *nechira* [poleaxing the animal], but by *shechita* [severing the neck], and by dividing the esophagus and the windpipe in a certain place – these regulations and the like are nothing but tests for man’s obedience. In this sense you will understand the example quoted by our Sages [that there is no difference] between killing the animal by cutting its neck in front and cutting it in back.

Maimonides firmly believes in specific reasons underlying the commandments, but only with respect to their generalities. The particular halakhic details serve only as “tests for man’s obedience,” and are otherwise of no intrinsic value. Maimonides later points to the Torah’s sacrificial order as an example of these two tiers of *mitzva* observance. He maintains that the general concept of offering animal and meal sacrifices to God indeed has strong rational basis, a topic upon which he elaborates several chapters later (32). There is no reason, however, why in certain circumstances God ordained offering a sheep, whereas in other situations He demands the sacrificing of a bull or goat. Probing these details to identify their underlying rationale, Maimonides claims, is futile:

Those who trouble themselves to find a cause for any of these detailed rules, are in my eyes voice of sense; they do not remove any difficulties, but rather increase them. Those who believe that these detailed rules originate in a certain cause, are as far from the truth as those who assume that the whole law is useless. You must know that Divine Wisdom demanded it – or, if you prefer, say that circumstances made it necessary – that there should be parts [of His service] which have no certain object; and as regards the Law, it appears to be impossible that it should not include some matter of this kind.

In summary, then, Maimonides strongly subscribes to the doctrine of *ta’amei ha-mitzvot* and encourages inquiry into the reasons underlying the *mitzvot* in their general sense. The particular halakhic details, however, as the Midrash asserts, serve strictly “*le-tzoref bahen et ha-beriyot*” – to cleanse the human being’s spirit by engendering humble obedience and submission.

“Your Compassion Extends to the Bird’s Nest”

With this background, let us turn our attention to the obligation of *shilu’ach ha-kein*. On the surface, it would appear that sending away the mother bird constitutes a measure of sensitivity to its

maternal instincts, sparing the mother bird the emotional trauma of witnessing the capture of its young. Maimonides indeed lists this concern as one of the two factors that motivated the imperative of *shilu'ach ha-kein*:

The eggs over which the bird sits, and the young that are in need of their mother, are generally unfit for food, and when the mother is sent away she does not see the taking of her young ones, and does not feel any pain. In most cases, however, this commandment will cause man to leave the whole nest untouched, because [the young or the eggs], which he is allowed to take, are, as a rule unfit for food. If the Law provides that such grief should not be caused to cattle or birds, how much more careful must we be that we should not cause grief to our fellowmen.

Maimonides thus explains that this obligation serves to discourage people from taking chicks or eggs at this stage of development, at which point – according to his medical assessment – they are unsuitable for consumption, and it also constitutes a measure of sensitivity. By showing compassion for the emotions of a bird, we reinforce the importance of sensitivity and concern for the feelings of our fellow human beings.

A famous Mishnaic passage, however, appears to explicitly deny not only the element of sensitivity as the basis of this obligation, but also the legitimacy of the entire enterprise of studying *ta'amei ha-mitzvot*. A Mishna in Masekhet Berakhot (5:3) demands silencing one who exclaims during prayer, “Your compassion extends to the bird’s nest...” A supplicant might wish to appeal for divine mercy by extolling God’s sensitivity, which extends “to the bird’s nest.” If the Almighty had such compassion for the mother bird, that He demanded sparing it the sight of its young’s abduction, then certainly, one might pray, He would show mercy to those who call to Him in prayer. The Mishna, as mentioned, disallows such a prayer, and the Gemara (33b) records two opinions in explaining this ruling. One view explains, “Because he engenders jealousy among the natural world.” Meaning, this prayer implies that God’s compassion for the mother bird is exceptional, and exceeds the sensitivity He shows to other creatures. The second view presents a different explanation: “Because he makes the Almighty’s edicts into [expressions of] compassion, whereas they are only decrees.” In other words, pointing to the *shilu'ach ha-kein* obligation as an expression of divine compassion to birds reflects a fundamentally flawed approach to *mitzvot* generally. God’s commands must be seen as strictly *gezeirot* – divine decrees. We have no right – this view appears to argue – to ascribe any ulterior purpose to a *mitzva*. For this reason, we cannot allow the recitation of prayers that draw upon the compassion underlying the obligation of *shilu'ach ha-kein*.

Interestingly, Maimonides, in his commentary to this Mishna, cites only the second explanation offered in the Gemara, indicating that he viewed this position as more compelling or otherwise authoritative:

Anyone who says this in his prayer is silenced, because he hinges the reason for this commandment on the Almighty’s mercy for the bird, and this is not so, for had this been a measure of compassion, He would not have ordained slaughtering animals or birds at all. It is rather an accepted commandment with no reason.

If, indeed, the Gemara’s second interpretation of the Mishna represents the authoritative reading, then this Mishna appears to directly contradict Maimonides’ position acknowledging a rational basis behind the general contours of every *mitzva*, and particularly his having suggested the reasons underlying the obligation of *shilu'ach ha-kein*.

Maimonides was not at all oblivious to this Mishna, and he addresses it towards the end of his brief discussion of *shilu'ach ha-kein* in the aforementioned passage in the *Guide*:

When in the Talmud those are blamed who use in their prayer the phrase, “Thy mercy extendeth to young birds,” it is the expression of the one of the two opinions mentioned by us,

namely, that the precepts of the Law have no other reason but the Divine will. We follow the other opinion.

Maimonides thus dismisses this Mishna as representing a position that he rejects. Indeed, this Mishna denies any ulterior purpose underlying the commandments, but it expresses but one of two opinions on the matter.

Of course, dismissing the position expressed in this Mishna obliges Maimonides to find other sources in Tannaitic literature supporting his view affirming the rational basis of *shilu'ach ha-kein* and other commandments. Although he does not cite any such sources, several Midrashic passages indeed reflect his position, perhaps confirming that the *Tanna'im* disputed this point. In *Devarim Rabba* (6:1), the Midrash writes explicitly that *shilu'ach ha-kein* demonstrates the Almighty's compassion for birds. It also discusses the prohibition against slaughtering an animal with its young on the same day (Vayikra 22:28), explaining this rule as a measure of compassion for the mother animal. This appears in several other sources, as well, including *Vayikra Rabba* (Margaliyot edition, 27:11), and *Targum Yonatan Ben Uziel* (Vayikra 22:28). Nachmanides, in his commentary to the verses in Parashat Ki-Tetze introducing the obligation of *shilu'ach ha-kein*, cites other Midrashic passages to this effect. Indeed, as Maimonides asserts, there appears to be a difference of opinion on this matter among the *Tanna'im*, and he, of course, sides squarely with view acknowledging the rational basis of the *mitzvot*.

Maimonides' Ruling in *Mishneh Torah*

Many scholars have noted the glaring contradiction that appears to emerge from Maimonides' own comments in *Mishneh Torah* (Hilkhot Tefila 9:7), where he codifies the ruling of the Mishna and the second explanation offered in the Gemara:

One who says in his supplication, “The One who showed compassion to the young bird, [commanding] not to take the mother with the young” – or “not to slaughter it and its young on the same day” – “should have compassion on us” or something similar, is silenced. For these commandments are a Scriptural decree and not [measures of] compassion; had they been due to [the concern] for compassion, He would not have permitted slaughtering at all.

Maimonides' codification of the Mishna contradicts his comments in the *Guide* on two levels. Firstly, whereas in the *Guide* he very explicitly ascribed the Mishna to a non-authoritative position among the *Tanna'im*, here, in *Mishneh Torah*, he unequivocally accepts the Mishna's ruling. Secondly, of course, these comments in *Mishneh Torah* appear to deny the concept of *ta'amei ha-mitzvot*, a concept that Maimonides so emphatically advocates in the *Guide*.

The first issue, of Maimonides' codification of a Mishna whose authority he explicitly dismisses in the *Guide*, appears irresolvable. Accordingly, the work *Lev Meivin*, cited by Rabbi Yosef Kapach in his commentary to *Mishneh Torah*, concludes that Maimonides changed his position after writing the *Guide*. Rabb Kapach notes, however, that Maimonides authored the *Guide* after publishing the *Mishneh Torah*; thus, if one attributes this contradiction to a change of heart, this change must have occurred after Maimonides' publication of *Mishneh Torah*, not before.

Others, including Professor Yaakov Levinger (in an article in the annual journal of Bar-Ilan University, 5727-1967), explain that *Mishneh Torah* and the *Guide for the Perplexed* were written for different audiences. Maimonides wrote *Mishneh Torah* for the masses, to whom the nature of the *mitzvot* as “Scriptural decrees” must be emphasized. Though Maimonides firmly believes in the rational basis of the commandments, as he develops at length in the *Guide*, he nevertheless codifies the Mishna's ruling so as to underscore the importance of unconditional loyalty to the divine command, regardless of one's ability to understand its rationale.

This theory, of course, touches upon the much broader issue of the relationship between Maimonides' different works, a topic that lies beyond the limited scope of our discussion. Suffice it to say, however, that it seems hardly likely that Maimonides would codify for didactic purposes a position which he deemed incorrect. Even if one accepts the premise that Maimonides wrote these two works for different audiences, it is hard to imagine that he would misrepresent his firm belief in *ta'amei ha-mitzvot* by codifying this Mishna, which denies that belief on fundamental grounds.

While the first aspect of the contradiction appears irresolvable, scholars have succeeded in suggesting numerous approaches to resolve the second difficulty, namely, how Maimonides' acceptance of the Mishna's ruling can accommodate his belief in *ta'amei ha-mitzvot*. One explanation arises naturally from Nachmanides' remarks on this topic in his commentary in Parashat Ki-Tetze. Nachmanides, too, firmly asserts that *mitzvot* have underlying reasons and do not serve a strictly disciplinary purpose. However, rather than dismissing the Mishna in Berakhot as representative of a minority position, as Maimonides did, he reconciles it with the notion of *ta'amei ha-mitzvot*. According to Nachmanides, the Mishna seeks to dispel the notion that the *mitzva* of *shilu'ach ha-kein* stems from God's concern for the mother bird itself. In truth, this obligation is intended to engender within the human being an innate sense of mercy and sensitivity. Had God been truly concerned for the emotional well-being of the mother bird and other animals, Nachmanides writes, He would have banned the utilization of animals for human needs altogether. Any laws that appear to result from God's concern for the physical and emotional welfare of animals must be seen as "decrees" – as measures that God, in His infinite wisdom, determined will help refine our characters and develop human compassion and sensitivity.

In truth, these comments of Nachmanides' echo Maimonides' remarks earlier in the *Guide* (3:17), where he denies the effects of divine providence on individual animals, asserting instead that God's protection and concern for the animal world is limited to general species. In this context, he addresses the prohibition against cruelty to animals, and explains that the object of this rule is to make us perfect; that we should not assume cruel habits; and that we should not uselessly cause pain to others; that, on the contrary, we should be prepared to show pity and mercy to all living creatures, except when necessity demands the contrary.

Thus, the Mishna's condemnation of one who attributes *shilu'ach ha-kein* to God's compassion for animals does not relate at all to the issue of *ta'amei ha-mitzvot*. The Mishna rejects not the notion of assigning rational bases to the commandments, but rather the concept that God's laws regarding treatment of animals stem from His personal concern for the well-being of the animals themselves. If Maimonides adopted this reading of the Mishna, then its codification in *Mishneh Torah* poses no contradiction to his championing of *ta'amei ha-mitzvot* in the *Guide*. (Of course, the Mishna's codification still contradicts Maimonides' dismissal of this Mishna as non-authoritative.)

Prayer and Philosophical Inquiry

A much different approach is taken by Rabbi Yom Tov Lipman Heller, author of the classic commentary to the Mishna, *Tosefot Yom Tov*, who suggests a distinction in this regard between the contexts of study and prayer. In the *Guide*, Maimonides clearly advocates probing the commandments to identify their underlying rationale. But such inquiry is appropriate and commendable only in the academic context; in prayer, one may not claim knowledge of the reasons behind the commandments.

This distinction drawn by the *Tosefot Yom Tov* is explained and developed more fully by a 20th-century halakhic scholar, Rabbi Meshulam Rath, in a treatise entitled *Simchat Yom Tov* appended to the second volume of his work of responsa (*Kol Mevaser*). Rabbi Rath explains that speculation with regard to *ta'amei ha-mitzvot* is a laudable endeavor so long as it is indeed speculation. The scholar must ensure never to view his theories as definitively correct. In the case addressed by the Mishna, the supplicant invokes the concept of God's compassion for birds as if it

were a foregone conclusion, and this element of compassion assuredly lies at the heart of the *shilu'ach ha-kein* obligation. Such an individual must be reminded that God's commands must ultimately be approached as divine decrees. Whatever the results of our inquiry and speculation as to the purposes served by the commandments, in the end, we must accept them as decrees to which we remain loyal irrespective of their underlying reasons. The Mishna thus disapproves not of the study of *ta'amei ha-mitzvot*, but rather of the certitude with which the supplicant determines the reason underlying the obligation of *shilu'ach ha-kein*.

Rabbi Avraham Yitzchak Kook (cited by Rabbi Yaakov Filber, in the weekly publication *Behava U-ve-emuna*, Parashat Ki-Tetze, 5759-1999), similarly distinguished between the realms of study and prayer, only from a different angle. According to Rav Kook, these two areas demand two entirely different attitudes and perspectives. In the field of Torah study, a student is encouraged to employ his creative and analytical powers in the pursuit of truth. Creativity necessarily entails a degree of arrogance and assertiveness, and Torah study indeed requires students to assert their views and argue their case as an integral part of the academic process. Prayer, by contrast, demands complete submission to God. Jewish prayer is an exercise in self-negation and even a degree of humiliation and shame. The supplicant must stand before his Creator with a total sense of subjugation to God's authority and genuine feelings of unworthiness. In such a setting, one has no right to assert his understanding of the reasoning behind the divine law. Independent thinking and creative analysis is appropriate and necessary during study, but has no place when one stands to acknowledge God's unlimited power and man's existential helplessness.

Rereading the *Guide*

Now that we have seen a number of approaches taken to reconcile the Mishna with the notion of *ta'amei ha-mitzvot*, to explain how the Mishna's castigation of the prayer "Your compassion extends to the bird's nest" need not negate an ulterior purpose underlying *mitzvot*, yet another question arises. We already noted that Maimonides' rejection of the Mishna directly contradicts his codification of the Mishna's ruling in *Mishneh Torah*. But in light of what we have seen, that the Mishna's ruling need not be seen as opposing the notion of *ta'amei ha-mitzvot*, Maimonides' rejection of the Mishna becomes even more problematic. Why did he conclude in the *Guide* that the Mishna necessarily denies the rational basis of the commandments? Was Maimonides unable to arrive on his own at the approaches mentioned earlier to reconcile the Mishna's ruling with *ta'amei ha-mitzvot*?

In an attempt to resolve these questions, Rabbi Nachum Rabinovitch, in his *Yad Peshuta* commentary to *Mishneh Torah*, poses a novel reading of the relevant passage in the *Guide*. Rabbi Rabinovitch boldly suggests that when Maimonides notes the potential challenge to the concept of *ta'amei ha-mitzvot* from the Mishna, he does not refer to the Mishna itself. Rather, he is speaking of the first view cited in the Gemara to explain the Mishna's ruling: "Because he engenders jealousy among the natural world." This view explains that by referring to God's particular sensitivity towards the birds, one de facto acknowledges a hierarchy of sorts in the animal kingdom, whereby God cares for some creatures more than others. As Rabbi Rabinovitch observes, the possibility of inferring such a hierarchy presumes direct divine providence over individual animals. Only with this assumption can one even think to misconstrue a prayer as implying God's differing levels of concern for different creatures. Now Rabbi Rabinovitch contends that the belief in direct providence over individual animals necessitates the denial of *ta'amei ha-mitzvot*. If God truly looks after individual creatures in the animal kingdom as He does after human beings, it is hardly understandable why He permitted Man to subjugate and even hunt animals. One who – like Maimonides – believes that divine providence affects only the human race can easily explain that God created the animal kingdom for Man to utilize for his own purposes, and forbade cruelty to animals in the interest of character refinement. But once one extends the notion of divine providence to the animal kingdom, *mitzvot* should concern themselves equally with the needs of animals and the needs of man.

Necessarily, then, adherents of this view must deny the underlying rationale of the *mitzvot*, and perceive them as serving only to develop a sense of subservience to divine authority.

It is this position, Rabbi Rabinovitch suggests, that Maimonides addresses amidst his discussion of *shilu'ach ha-kein*. Maimonides is not troubled by the second explanation of the Mishna, which he codifies in *Mishneh Torah*, whereby the Mishna affirms the nature of the commandments as *gezeirot*. As discussed in the previous section, this classification need not be interpreted to mean that the *mitzvot* have no underlying basis. But Maimonides does note the potential challenge to his view from the second explanation cited in the Mishna - "Because he engenders jealousy among the natural world" – which presumes divine providence over animals, a theory which itself necessitates denying a rational basis to *mitzvot*. Maimonides therefore dismisses this position as non-authoritative. But this has no bearing on his attitude towards the Mishna itself, as explained by the other position in the Gemara, which he indeed embraces and codifies in *Mishneh Torah*.

Needless to say, Maimonides' formulation in the *Guide* makes it difficult to accept this reading. Maimonides makes no reference whatsoever to the Gemara's discussion, and raises his question by citing only the Mishna's objection to one who exclaims, "Thy mercy extendeth to young birds." Thus, when he responds by dismissing the passage as non-authoritative, he undoubtedly refers to the Mishna itself, rather to one approach cited in the Gemara in explaining the Mishna's ruling.

Hence, the contradiction between Maimonides' comments in his *Guide* and ruling in *Mishneh Torah* remains unresolved.