



Parashat Ki Teze  
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Among the more famous laws presented in Parashat Ki-Teitzei is that of *shilu'ach ha-kein*, the obligation to send away a mother bird before taking her eggs or chicks (22:6-7). Maimonides' discussions of this obligation are characteristic of the dichotomy that one often finds between *Mishneh Torah* and the *Guide for the Perplexed*. In his philosophical treatment of the reason underlying the commandments, Maimonides asserts that this law is intended to serve two purposes: it discourages people from taking undeveloped eggs or chicks, which are often unhealthful, and expresses a degree of compassion for the mother bird:

The same reason applies to the law which enjoins that we should let the mother fly away when we take the young. 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... 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.

(*Guide*, 3:48)

Maimonides then acknowledges that the Talmud, in Masekhet Berakhot (33b), appears to emphasize that to the contrary, we must not approach this *halakha* as a means of showing sympathy to the mother bird. The Mishna sharply condemns somebody who declares in prayer, "Your compassion extends to the bird's nest..." in an attempt to invoke divine compassion. According to one view cited in the Gemara, such a prayer is discouraged because it "makes the Almighty's edicts into [expressions of] compassion, whereas they are only decrees." Meaning, we may not take the liberty to determine that God issued this obligation in order to engender within us compassionate tendencies; we must rather approach all of God's laws as simply "decrees," which we obey without any questions or inquiry.

Maimonides dismisses this view in the Talmud as a minority position. He writes that this comment was made by one of the Sages who held that "the precepts of the Law have no other reason but the Divine will." Maimonides then adds, "We follow the other opinion."

Surprisingly, however, in his halakhic code (*Mishneh Torah*, Hilkhos Tefila 9:7), Maimonides explicitly codifies the law in the Mishna – as well as the explanation which he explicitly rejects in the *Guide*:

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.

Much has been written in an attempt to reconcile these seemingly conflicting passages, but one might simply explain that they reflect the two different perspectives from which Maimonides composed these two seminal works. Rav Eli Haddad compared Maimonides in this regard with the famous Talmudic and Biblical commentator Rashbam, a grandson of Rashi and prominent member of the Tosafist school of Talmudic scholars. Despite his obvious and unquestioned fealty to halakhic study and practice, the Rashbam, in his Torah commentary, often interprets verses contrary to their traditional halakhic interpretation. Most strikingly, perhaps, the Rashbam explains the verses that introduce the obligation of *tefillin* (Shemot 13:9) as actually referring to a different kind of symbolic reminder, and not to the *mitzva* of *tefillin*. Apparently, the Rashbam held that the Torah conveys its message on two distinct levels: the level of *peshuto shel mikra* (the straightforward reading), and that of halakhic exegesis. Both are equally valid and binding; rather than contradicting one another, they complement each other and combine to form the complete picture which the Torah seeks to draw in instructing how we must live our lives.

It would appear that Maimonides similarly subscribed to these two levels of interpretation. In the *Guide for the Perplexed*, Maimonides presents his understanding of the Torah’s message as conveyed through the straightforward reading, which he claims expresses the rationalist approach which he so vigorously championed. His *Mishneh Torah*, of course, presents the halakhic application of the Torah, which is certainly no less crucial or authoritative than the former, but simply operates on a different exegetical level, with its own internal logic and guidelines.

*Shilu’ach ha-kein* serves as a perfect example of these two tiers. On the straightforward level, the more intuitive understanding, without doubt, is that the Torah here commands sending away the mother bird as a display of sensitivity. On the level of halakhic implementation, however, we must not approach *mitzvot* with this mindset. Rather, we observe the commandments as “decrees,” with the primary intent of serving our Creator with faithful obedience. This aim must be our very basic motivation in performing all the *mitzvot*, before we then proceed to the next step of inquiring into their underlying themes and reasons.