

5780 – Deuteronomy 21-25 - Ki Tetze (When You Go In)

With *Ki Tetzeh*, Moses reaches the heart of the detailed provisions of the covenant. The *parasha* contains no fewer than seventy-four commands, more than any other in the Torah. Among them are laws about family dysfunctions, moral and legal obligations towards neighbours and fellow citizens, sexual misdemeanours, moral behaviour in relation to financial matters, and other rules of social responsibility. The *parasha* ends with the command to be eternally vigilant about Amalek, the Torah's paradigm case of hatred and cruelty.

The first of the following essays is about loved and unloved wives and about the relationship between the law and the story of Jacob, Leah, and Rachel. The second is about the logic of the command regarding the “stubborn and rebellious son.” The third is about **the Torah's approach to animal welfare**. The fourth essay is about the command not to hate an Egyptian. Why was this important for the Israelites to hear? The fifth is about the rehabilitation of offenders, a principle derived by the sages from a phrase in this *parasha*. The sixth is about Amalek. What does this law tell us about the nature of hatred in general, and anti-Semitism in particular? Are there different kinds of hate, and should they be treated differently?

*Animal Welfare*¹

Ki Tetzeh is about relationships: between men and women, parents and children, employers and employees, lenders and borrowers. **Strikingly, though, it is also about relationships between humans and animals.**

Descartes² thought that animals lacked souls. Therefore you could do with them as you pleased.³ Judaism does not believe that animals lack souls—“The righteous person cares about the *nefesh* of his animal,” says the book of Proverbs (12:10). To be sure, *nefesh* here probably means “life” rather than “soul” (*neshama* in Hebrew). But Tanakh does regard animals as sentient beings. **They may not think or speak, but they do feel. They are capable of distress.** Therefore there is such a thing as animal distress, *tzaar baalei chayim*, and as far as possible it should be avoided.

1. Life is very vivid to animals. In many cases they know who they are.

They know who their friends are and who their rivals are. They have ambitions for higher status. They compete. Their lives follow the arc of a career, like ours do. We both try to stay alive, get food and shelter, and raise some young for the next generation. Animals are no dif-

ferent from us in that regard and I think that their presence here on Earth is tremendously enriching.³

So we read in *Parashat Ki Tetzeh*: “Do not muzzle an ox when it is treading grain” (Deut. 25:4). **What is striking about this law is that it parallels provisions for human beings as well:** “When you come [to work] in your neighbour's vineyard, you may eat as many grapes as you desire to satisfy your hunger ... When you come [to work] in your neighbour's standing grain, you may take the ears with your hand” (Deut. 23:25-26). The principle is the same in both cases: it is cruel to prevent those working with food from eating some of it. **The parallel is instructive. Animals, not just humans, have feelings and they must be respected.**

2. 1Corinthians 9:3-11

⁷Who serves as a soldier at his own expense? Who plants a vineyard and does not eat its grapes? Who tends a flock and does not drink the milk?

⁸Do I say this merely on human authority? **Doesn't the Law say the same thing?** ⁹For it is written in the Law of Moses: “Do not muzzle an ox while it is treading out the grain” (Deu 25:4). Is it about oxen that God is concerned? ¹⁰Surely he says this for us (as well), doesn't he? Yes, this was written for us, because whoever plows and threshes should be able to do so in the hope of sharing in the harvest. ¹¹If we have sown spiritual seed among you, is it too much if we reap a material harvest from you?

a. 1Timothy 5:17-18 (NAS)

¹⁷Let the elders who rule well be considered worthy of double honor, especially those who work hard at preaching and teaching. ¹⁸For the Scripture says, “You shall not muzzle the ox while he is threshing,” (Deu 25:4) and “The laborer is worthy of his wages” (Deu 24:15).

NIV—¹⁷The elders who direct the affairs of the church ...

Another law is: “Do not plough with an ox and donkey together” (Deut. 22:10). The ox is stronger than a donkey, so expecting the donkey to do the work of an ox is cruel. **Each animal species has its integrity, its role, its niche in the scheme of creation that we must respect.**

3. 2Corinthians 6:14-18

¹⁴Do not be yoked together with unbelievers. For what do righteousness and wickedness have in common? Or what fellowship can light have with darkness? ¹⁵What harmony is there between Messiah and Be-

1 Rabbi Jonathan Sacks, *Covenant and Conversation, Deuteronomy*, (Maggid Books & The Orthodox Union), pp. 195-199.

2 René Descartes (1596-1650) was a French philosopher, mathematician, and scientist.

3 Simon Worrall, “Yes, Animals Think And Feel. Here's How We Know.” The author of a new book also says that animals can feel empathy, like the humpback whale that rescued a seal—<https://www.nationalgeographic.com/news/2015/07/150714-animal-dog-thinking-feelings-brain-science/>

lial? Or what does a believer have in common with an unbeliever?

¹⁶**What agreement is there between the temple of God and idols?** For we are the temple of the living God. As God has said: "I will live with them and walk among them, and I will be their God, and they will be my people." ¹⁷Therefore, "Come out from them and be separate, says the Lord. Touch no unclean thing, and I will receive you" (Isa 52:11). ¹⁸And, "I will be a Father to you, and you will be my sons and daughters, says the Lord Almighty" (2Sam 7:14).

- 1) Notice in the instruction from which this *midrash* is taken, the ox is not "intrinsically superior" to the donkey—it is just physically "stronger." Oxen are not "better" than donkeys, donkeys are not "inferior" to oxen—they both have their own "integrity ... role ... and niche in the scheme of creation."
- 2) If this is true of oxen and donkeys, how much more is it true of men and woman. Both play an equally valuable, but different, role in God's work.

The most fascinating animal legislation in this *parasha* is the law of "sending the mother bird away":

If you come across a bird's nest beside the road, either in a tree or on the ground, and the mother is sitting on the young or on the eggs, do not take the mother with the young. You may take the young, but be sure to let the mother go, so that it may go well with you and you may have a long life. (Deut. 22:6-7)

Much has been written on this command. Here I discuss only the analysis given by Moses Maimonides, fascinating in its complexity. There is a law that appears twice in the Mishna, stating that if a leader of prayer says, "Your mercies extend even to a bird's nest," he is to be silenced.⁽²⁾ The Talmud offers two possible explanations, of which one is that such a prayer "makes it seem as the attributes of God are an expression of compassion, whereas in fact they are mere decrees."

In both his commentary to the Mishna and his law code,⁽³⁾ Maimonides adopts this view. He adds: If the reason for sending the mother bird away were divine compassion towards animals then, in consistency, God should have forbidden killing animals for food. The law therefore should be understood as a decree (*gezerat hakatuv* [written decree]), and has nothing to do with compassion, human or divine.

In Guide for the Perplexed, however, Maimonides adopts the opposite approach. There he rejects the very idea that there are commands that have no reason. The reason it is permitted to kill animals for food is, he says, because meat eating is necessary for human health. *Shechita* (ritual slaughter), however, has been ordained because it is the most painless way to kill an animal. He continues:

It is also prohibited to kill an animal with its young on the same day, in order that people should be restrained and prevented from killing the two together in such a manner that the young is killed in the sight of the mother, for the pain of the animals under such circumstances is very great. *There is no difference in this case between the pain of human beings and the pain of other living beings, since the love and tenderness of the mother for her young ones is not produced by reasoning but by imagination, and this faculty exists not only in man but also in most living beings ...* The same reason applies to the law which enjoins that we should let the mother bird fly away when we take the young.⁽⁴⁾

4. *Shechita* is the Jewish religious and humane method of slaughtering permitted animals and poultry for food. It is the only method of producing kosher meat and poultry allowed by Jewish law. It is a most humane method as explained below.⁴

There is no ritual involved in *shechita*. It is a cardinal tenet of the Jewish faith that the laws of *shechita* were divinely given to Moses at Mount Sinai (Deu 12:21); the rules governing *shechita* are codified and defined and are as binding and valued today as ever and **they ensure a swift and painless dispatch of the animal ...** The time hallowed practice of *shechita*, marked as it is by compassion and consideration for the welfare of the animal, has been a central pillar in the sustaining of Jewish life for millennia.

Shechita is performed by a highly trained *shochet*. The procedure consists of a rapid and expert transverse incision with an instrument of surgical sharpness (a *chalaf*), which severs the major structures and vessels at the neck. This causes an instant drop in blood pressure in the brain and immediately results in the irreversible cessation of consciousness. Thus, *shechita* renders the animal insensible to pain, dispatches and exsanguinates in a swift action, and fulfils all the requirements of humaneness and compassion.

So Maimonides, contrary to the position he takes in his law code, here states that the law *does* have compassion as its logic. Moreover, what it seeks to avoid is **not physical pain to the animal but psychological distress**. Maimonides' view of animals has been confirmed by recent findings in biology that suggest that many species do indeed resemble humans in their ability to form groups, engage in reciprocal altruism, and display a range of emotions.⁽⁵⁾ **In most animal species, it is the mother that forms an ongoing bond with the young.** Among animals, fatherhood is usually

4 https://www.chabad.org/library/article_cdo/aid/222240/jewish/What-Is-Shechita.htm

far less developed. So Maimonides' explanation in *The Guide* is empirically well founded.

5. Isaiah 49:14-16

¹⁴But Zion said, "The LORD has forsaken me, the Lord has forgotten me." ¹⁵"**Can a mother forget the baby at her breast and have no compassion on the child she has borne?** Though she may forget, I will not forget you! ¹⁶See, I have engraved you on the palms of my hands; your walls are ever before me.

a. 1Kings 3:23-28

²⁶**The woman whose son was alive was deeply moved out of love for her son** and said to the king, "Please, my lord, give her the living baby! Don't kill him!" But the other said, "Neither I nor you shall have him. Cut him in two!"

b. Isaiah 66:13

¹³As **a mother comforts her child**, so will I comfort you; and you will be comforted over Jerusalem."

c. 2Corinthians 1:3-4

³Praise be to the God ... **the Father of compassion** and the God of all comfort, ⁴who comforts us in all our troubles, so that we can comfort those in any trouble with the comfort we ourselves receive from God.

However, elsewhere in *The Guide*,⁽⁵⁾ Maimonides takes yet a third position. Divine providence, he says, extends to individuals only among humans. Amongst animals, it applies solely to a species as a whole. So the reason we must not cause animals pain or distress is not because the Torah is concerned about animals but because it is concerned about humans. We should not be cruel:

There is a rule laid down by our sages that it is directly prohibited in the Torah to cause pain to an animal. This rule is based on the words [of the angel to Balaam], "Why have you beaten your donkey?" (Num. 22:32). 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.

In this view, we are forbidden to cause needless suffering to animals because this will desensitise us and lead us eventually to be cruel to human beings.

Maimonides thus seems to embrace three sharply conflicting views:

1. The law of the mother bird is a divine decree with no reason.
2. It is intended to spare the mother bird emotional pain.
3. It is intended to have an effect on us, not the animal, by training us not to be cruel.

In fact all three are true, because they answer different questions. The first view explains why we have the laws we have. The Torah forbids certain acts that are cruel to animals but not others. Why these and not those? Because that is the law. Laws will always seem arbitrary. Why, for example, is one permitted to drive at thirty miles an hour in a city, but not thirty-one? Why not set the bar at twenty-nine? The reason for the law is obvious: to avoid accidents. But we observe the law because it is the law, even though, under certain circumstances, driving at forty miles an hour would be safe, and at others, driving at twenty would be dangerous. The second view explains the immediate logic of the law. It exists to prevent needless suffering to animals, because they too feel physical pain and sometimes emotional distress as well. The third view sets the law in a larger perspective. Cruelty to animals is wrong, not because animals have *rights* but because we have *duties*. The duty not to be cruel is intended to promote virtue, and the primary context of virtue is the relationship between human beings. But virtues are indivisible. **Those who are cruel to animals often become cruel to people.** Hence we have a duty not to cause needless pain to animals, because of its effect on us. Hence the third proposition. Interestingly, Maimonides' analysis was repeated almost exactly, six centuries later, by the greatest philosopher of modern times, Immanuel Kant.⁽⁷⁾

This is a subtle and nuanced approach. Animals are part of God's creation. They have their own integrity in the scheme of things. We now know that they are far closer to human beings than philosophers like Descartes thought. This would not have been news to the heroes of the Bible. Abraham, Moses, and David were all shepherds who lived their formative years watching over and caring for animals. That was their first tutorial in leadership, and they knew that this was one way of understanding God Himself ("The Lord is my shepherd" [Ps. 23:1]).

Judaism also reminds us of what we sometimes forget: that the moral life is too complex to summarise in a single concept like "rights." Alongside rights, there are duties, and there can be duties without corresponding rights. Animals do not have rights, but we have duties towards them. As several laws in *Parashat Ki Tetze* and elsewhere make clear, we must not cause them unnecessary pain or emotional distress.

As we saw in the case of environmental legislation in *Shofetim*, Genesis 1 gives us the mandate to "subdue" and "rule" creation, including animals, but Genesis 2 gives us the responsibility to "serve" and "guard."

5 Immanuel Kant (1724-1804) was a German philosopher and one of the central Enlightenment thinkers. Kant's comprehensive and systematic works in epistemology (theory of knowledge), metaphysics (first principles), ethics (moral principles), and aesthetics (appreciation of beauty) have made him one of the most influential figures in the history of Western philosophy.

Animals may not have rights but they have feelings, and we must respect them if we are to honour our role as God's partners in creation.

1. See Tom Regan and Peter Singer, eds., *Animal Rights and Human Obligations* (Englewood Cliffs, NJ: Prentice Hall, 1989), 13-19.
2. Mishna Berachot 5:3; Mishna Megillah 4:9
3. Maimonides, *Mishneh Torah*, Hilchot Tefilla (Laws of Prayer) 9:7.
4. Maimonides, *Guide for the Perplexed*, III:48.
5. See on this the many works of primatologist Frans de Waal, including *Good Natured* (Cambridge, MA: Harvard University Press, 1997); *Chimpanzee Politics* (Baltimore, MD: John Hopkins University Press, 2007); *The Age of Empathy* (London: Souvenir, 2011); *The Bonobo and the Atheist* (New York: W. W. Norton and Co., 2014); and *Are We Smart Enough to Know How Smart Animals Are?* (New York: W. W. Norton and Co., 2017).
6. *Guide for the Perplexed*, III:17.
7. Immanuel Kant, *Lectures on Ethics* (London: Methuen, 1930).

6. Genesis 2:18-25

¹⁸The LORD God said, "It is not good for the man to be alone. **I will make a helper suitable for him.**" ¹⁹Now the LORD God had formed out of the ground all the wild animals and all the birds in the sky. **He brought them to the man to see what he would name them; and whatever the man called each living creature, that was its name.** ²⁰So the man gave names to all the livestock, the birds in the sky and all the wild animals. **But for Adam no suitable helper was found.** ²¹So the LORD God caused the man to fall into a deep sleep; and while he was sleeping, he took one of the man's ribs and then closed up the place with flesh. ²²Then the LORD God made a woman from the rib he had taken out of the man, and he brought her to the man. ²³The man said, "This is now bone of my bones and flesh of my flesh; she shall be called 'woman,' for she was taken out of man." ²⁴That is why a man leaves his father and mother and is united to his wife, and they become one flesh. ²⁵Adam and his wife were both naked, and they felt no shame.