



COVENANT & CONVERSATION

THOUGHTS ON THE WEEKLY PARSHA
FROM RABBI LORD JONATHAN SACKS

בס"ד

כִּי־תֵצֵא תִשְׁע"ט
Ki Teitse 5779



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COVENANT & CONVERSATION: FAMILY EDITION

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Animal Welfare

Ki Teitse 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.

Descartes thought that animals lacked souls. Therefore you could do with them as you pleased.¹ Judaism does not believe that animals lack souls – “The righteous person cares about the *nefesh* of their animal,” says the book of Proverbs (12:10). To be sure, *nefesh* here probably means “life” rather than “soul” (*neshama* in Hebrew). But Tanach 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, *tza'ar baalei chayim*, and as far as possible it should be avoided.

So we read in Parshat Ki Teitse: “Do not muzzle an ox when it is treading grain” (Deut. 25:4). What is intriguing 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.

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 match the work of an ox is cruel. Each animal species has its unique role in the scheme of creation that we must respect.

The most fascinating animal legislation in this parsha 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

¹ See Tom Regan and Peter Singer, eds., *Animal Rights and Human Obligations* (Englewood Cliffs, NJ: Prentice Hall, 1989), 13–19.

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 Mishnah, stating that if a leader of prayer says, “Your mercies extend even to a bird’s nest,” they are 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 sheer decrees.”

In both his commentary to the Mishnah 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*), 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. There is a purpose to killing animals for food is, he says, because meat-eating is necessary for human health. *Shechitah* (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

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

² *Mishna Brachot* 5:3; *Mishna Megilla* 4:9.

³ Maimonides, *Mishneh Torah*, *Hilchot Tefilla* 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).

However, elsewhere in his *Guide*,⁶ 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 Bilaam], “Why have you beaten your donkey?” (Num. 22:32). The object of this rule is to make us better, that we should not assume cruel habits, and that we should not needlessly 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.

Maimonides thus seems to embrace three sharply conflicting views:

1. The law of the mother bird is a Divine decree with no reason.
2. This law is intended to spare the mother bird emotional pain.
3. This law 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. But we observe the law because it is the law, even though, under certain circumstances, we may reason that we know better, or that it does not apply. 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

“Cruelty to animals is wrong, not because animals have *rights* but because we have *duties*.”

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

⁶ *Guide for the Perplexed*, III:17.

⁷ Immanuel Kant, *Lectures on Ethics* (London: Methuen, 1930).

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 Parshat Ki Teitse and elsewhere make clear, we must not cause them unnecessary pain or emotional distress.

As we saw last week in the case of environmental legislation in Shoftim, Genesis 1 gives us the mandate to “subdue” and “rule” creation, including animals, but Genesis 2 gives us the responsibility to “serve” and “guard.” Animals may not have rights but they do have feelings, and we must respect them if we are to honour our role as God’s partners in creation.

Shabbat Shalom

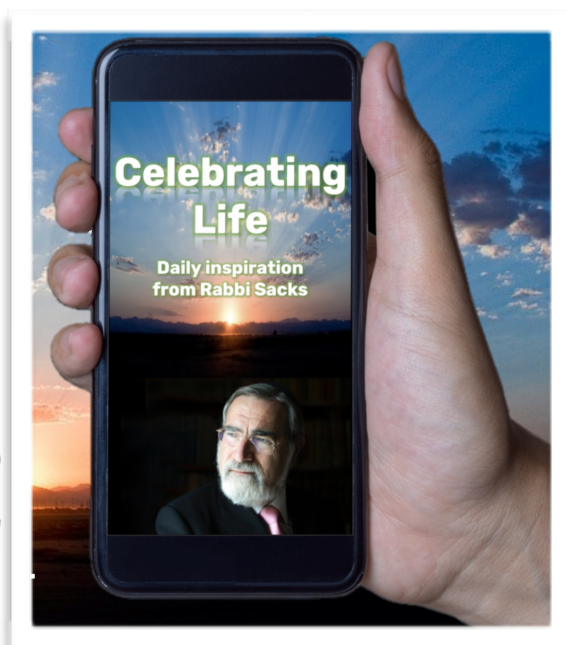
Jonathan Sacks

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

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