

Shiluach haKein
The Transformation of a Mitzvah



Natan Slifkin

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Version 1.0

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This essay was written as part of the course requirements for a Master's degree in Jewish Studies at the Lander Institute (Jerusalem).

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Dear Rabbi Slifkin,

I have seen your articles concerning animal related halachic issues and was hoping to get your help with a dilemma. We performed the mitzvah of shiluach hakan by sending away a pigeon sitting on its chicks that had taken up residence on our windowsill. Our understanding/ hope was that the mother would come back within a short time period. Unfortunately this has not occurred. What can I do with the chicks? Both my husband and I work full time and our children are in school, so no one is home to feed it every two hours etc. Any thoughts?

Introduction

If you happen upon a bird's nest along the road, in any tree or on the ground, with fledglings or eggs, and the mother is crouching over the fledglings or on the eggs, do not take the mother together with the young. Send away the mother, and take the young for yourself, in order that it may be good for you, and your days shall be lengthened. (Deuteronomy 22:6-7)

The mitzvah of *shiluach hakein*¹ seems straightforward enough. It presents itself as an innocent and charming mitzvah. Be kind to birds, and God shall be kind to you.

Yet, tracing the exposition of this mitzvah through Midrash, Mishnah, Talmud, Rishonim, and Acharonim, we encounter extraordinary perspectives that turn the simple understanding upside-down. We shall see it highlight the existence of radically different conceptions of what the Torah's commandments are all about.

The two schools of thought that we shall see to be differentiated by this mitzvah are the rationalist and mystic schools of thought. It is worthwhile highlighting the characteristics of the rationalist school of thought, pioneered in the Golden Age of Spanish Jewry, and most famously embodied in Rambam, as contrasted with the mystical school of thought that became popularized with the Zohar:

KNOWLEDGE—The rationalist school of thought is of the view that knowledge is legitimately obtained ourselves via our own reasoning and senses, and should preferably be based upon evidence/reason rather than faith, especially for far-fetched claims. The mystical school of thought values esoteric knowledge that is gained by select people via some form of revelation, divine inspiration or mystical study, and whose teachings should be taken on faith by others.

¹ While in Scripture, the nest is called *kan*, that is because it has the word *tzipor* appended to it. When not connected to that word, it is correctly vocalized as *kein*.

NATURE—The rationalist school of thought values a naturalistic rather than supernatural interpretation of events, perceives a consistent natural order over history, past and future, and minimizes the existence of supernatural entities and forces. The mystical school of thought tends to prefer seeing the supernatural at work, and maximizes the existence of supernatural entities and forces.

MITZVOT—The rationalist school of thought understands the role of mitzvot and religious life in general as furthering intellectual/moral goals for the individual and society. The mystical school of thought sees a signification function in mitzvos achieving the mechanistic manipulation of spiritual or celestial forces.

These characteristic differences are brought into sharp relief by the mitzvah of *shiluach hakein*.

I. Rationalist Approaches

The Torah itself does not give any explanation as to the rationale for the mitzvah of *shiluach hakein*. As we shall see, to some this meant that we cannot claim to know any rationale. But others saw it as being no different from other mitzvos such as honoring one's parents, which likewise have no rationale given in the Torah, but for which the rationale is obvious. This is very much consistent with the rationalist school of thought—that the Torah's commandments serve to improve one's intellect, personality, or to serve various goals of social improvement.²

In the Midrash

In the Midrash, the mitzvah of *shiluach hakein* was explained to stem from God's compassion for His creations:

Why is an infant circumcised at eight days? Because the Holy One, had compassion on him, waiting until the child was strong. And just as the Holy One has compassion on human beings, so too He has compassion on animals. How do we know this? As it is said, "And from the eighth day on it shall be acceptable..." (Lev. 22:27). Furthermore, the Holy One said, "no animal ... shall be slaughtered on the same day with its young" (Lev. 22:28). And just as the Holy One extended His compassion over animals, so too He was filled with compassion for birds. How do we know this? As it is said, "If you happen upon a bird's nest along the road." (*Midrash Devarim Rabbah, parashat Ki Tetze* 6:1)

We also find a similar view elsewhere in the Midrash:

Rabbi Berachyah said in the name of Rabbi Levi: It is written, "A righteous man knows the needs of his animal" (Prov. 12:10). "A righteous man"—this is the Holy One, for it is written in His Torah, "Do not take the mother together with her young" (Deut. 22:6). (*Midrash Vayikra Rabbah* 27:11)

² See Rambam, *Guide for the Perplexed* 3:31: "The truth is undoubtedly as we have said, that every one of the six hundred and thirteen precepts serves to inculcate some truth, to remove some erroneous opinion, to establish proper relations in society, to diminish evil, to train in good manners or to warn against bad habits."

Neither of these texts elaborate upon the nature of the compassion in the mitzvah, but it can easily be guessed; they are referring to the compassion in sparing the mother, and/or to the compassion in sending her away such that she does not witness the young being taken (birds are more distressed to see this than to return and find the nest empty). It may sound obvious that the mitzvah is related to compassion, but as we shall see later, some disagree.

In the Rishonim

In the period of the Rishonim, the mitzvah of *shiluach hakein* was widely explained to be related to compassion. Some focused on the rationale for the negative prohibition, of taking both mother and young, while others focused on the rationale for the positive commandment of sending away the mother bird before taking the young. Authorities in the former category sometimes explained that it is simply heartless to take both mother and young. This is the approach of Rashbam (c.1085-c.1158) and Chizkuni (13th century) who both state that it is cruel and greedy to take both mother and young.³ (Much later, Chatam Sofer added the nuance that taking both mother and young is only possible because the mother stays to protect her young, and taking advantage of her maternal instincts in this way is especially heartless.⁴) Others, such as Ramban (1194-1270), Ralbag (1288–1344) and Rabbeinu Bachya ben Asher (d. 1340), went further and spoke of such an act as conceptually being the extermination of the species, due to it showing lack of regard for the bird's perpetuation.⁵ In a similar vein, *Sefer HaChinnuch* (13th century) states that the mitzvah teaches about the value of providence vis-à-vis the perpetuation of species.⁶

Ramban (1135-1204) raises the idea that as well as the prohibition of taking the mother bird likely having the effect of leaving the entire nest untouched, the positive commandment of sending away the mother before taking away the young serves to minimize her distress of seeing her young being taken:

He also forbade slaughtering an animal and its young on the same day, to take care to avoid slaughtering the young before its mother's eyes, for the distress caused thereby to animals is

³ Rashbam and Chizkuni to Deut. 22:6.

⁴ Chatam Sofer to *Chullin* 139b. This is perhaps also implicit in Ramban, who speaks of taking the birds when they are free to fly away.

⁵ Ramban, Ralbag and Rabbeinu Bachya to Deut. 22:6-7. In a similar but more utilitarian view, Abarbanel explains that one must enable the mother to produce further young, just as one harvests fruit but one may not cut down a fruit tree.

⁶ *Sefer HaChinnuch*, mitzvah 545.

great; there is no difference between the distress felt by human beings and the distress of other creatures, for a mother's love and compassion for the fruit of her womb is not guided by the intellect but by the power of imagination, which exists equally in most animals as in humans... This is also the reason for sending away the mother bird from the nest, for the eggs on which the mother nests and the fledglings that need their mother are not generally fit for food; and when a person sends off the mother and she goes away, she will not be distressed at seeing her young taken. And since that which would be taken in most instances is not fit to be eaten, for the most part there will be reason to leave everything. If the Torah takes pity on the suffering of animals and birds, all the more so on human beings! (Maimonides, *Guide for the Perplexed* III:48)

All these rationalist explanations for the mitzvah revolve around the theme of compassion, which seems perfectly reasonable. However, the Mishnah issues a ruling which raises a difficulty with this, as we shall now explore.

II. The Mishnah: No Speaking Of Mercy

The Mishnah pronounces a perplexing ruling regarding someone who invokes the mitzvah of *shiluach hakein* in his prayers:

If someone says, “Your mercy extends upon the nest of birds”... we silence him. (Mishnah, *Berachot* 5:3)

The Mishnah is presumed to mean that one may not ask that God extend His compassion upon man in the same way that He extends it upon birds. But why is it not legitimate to mention that this commandment demonstrates God’s mercy upon the bird? Surely our prayers are full of references to God’s compassion over the natural world, such as with the verse, “His mercy is upon all His works” (Psalms 145:9)!

Explanation #1: Anti-Christian Measures

It has recently been proposed that the Mishnah’s ruling was directed against Christian influences on prayer, which was a particular threat during the period of the Mishnah in Israel.⁷ This cannot be ascertained with certainty, due to the fact that anything relating to Christianity has been censored out of the Talmud. But there are clues to this, especially from an analysis of the Mishnah as a whole, in an expanded version of the Mishnah that appears in *masechet Megillah*:

If one says, “The good ones shall bless you,” this is the way of heresy.⁸ “Your mercy extends upon the nest of birds,” “Your Name shall be remembered for the good,” “We thank You, we thank You,”—we silence him. (Mishnah, *Megillah* 4:9)

⁷ Zohar Amar, *Mesorat Ha-Ohf*, p. 223; Robert T. Herford, *Christianity in Talmud and Midrash*, p. 202; Ephraim Yitzhaki, “Of Birds and Heretics,” Bar-Ilan University’s Parashat Hashavua Study Center, *Parashat Ki Tetze* 5761/2001. For other examples of the Sages fighting against Christian influences, see *Berachot* 28b concerning the prayer against heretics in the Amidah prayer, and *Berachot* 12 concerning the removal of the Ten Commandments from the recitation of *Shema* (see Rashi ad loc. and *Machzor Vitri*, par. 16). See too Elijah Schochet, *Animal Life in Jewish Tradition*, p. 183.

⁸ While this phrase is lacking in the parallel Mishnah in *Berachot*, it does appear in Rif and Rosh, as well as in the Talmud (*Berachot* 34a; see *mesoret haShas*).

The term used for heresy, *minnut*, is often a reference to Christianity. Saying “The good ones shall bless you,” in the plural, may therefore be a reference to the trinity.⁹ Repeating “We thank You, we thank You,” may likewise be interpreted as a reference to more than one deity.

There are two suggestions as to how the ruling regarding *shiluach hakein* is to be understood as preventing Christian influence. According to the Unitarian theologian Robert Travers Herford (1860-1950) who carefully studied Talmudic attitudes to Christianity, it should be understood in light of the Pauline antithesis of Law and Grace.¹⁰ In a different approach, Ephraim Yitzhaki of the Department of Talmud at Bar-Ilan points to the variant reading in the Talmud Yerushalmi:

Rabbi Pinchas in the name of Rabbi Simon: Like one who cries foul on the attributes of the Holy One; Your mercy extends upon the bird’s nest, but Your mercy did not extend upon that man. (Yerushalmi, *Berachot* 40a¹¹)

“That man” is usually interpreted to refer to the person issuing the prayer.¹² But Yitzhaki proposes that, as with many other Talmudic usages of the phrase “that man,” it refers to Jesus.¹³ The Christians saw the Biblical account of *shiluach hakein* as an allegory for the sacrifice of Jesus: “Let the mother go, and only take the child, in order that it may be good for you.” Thus Yitzhaki proposes that the prayer was prohibited due to its having a Christological allusion.¹⁴

However, for the purposes of our discussion, it is more important to consider the Talmud’s explanation of this strange ruling of the Mishnah. The Talmud provides two rationales:

⁹ In a similar vein, the final Mishnah in *Berachot*, ruling that one should greet a friend with the Name of God, is likewise explained by R. Hai Gaon as countering a popular greeting that invoked the trinity. See José Faur, *The Horizontal Society*, vol. II, p. 96.

¹⁰ R.T. Herford, *Christianity in Talmud and Midrash*, p. 202.

¹¹ For a comparison between the Jerusalem and Babylonian Talmud on this topic, see Zohar Amar, *Mesorat Ha-Osf*, pp. 224-225; Ephraim Urbach, *Chazal – Pirkei Emunot VeDeyot*, pp. 335-336.

¹² Meiri ad loc.; Tzlach ad loc.; Jastrow, *Dictionary of the Talmud*, s.v. *tagar*.

¹³ For a comprehensive study of Talmudic references to Jesus, see Jacob Z. Lauterbach, *Rabbinic Essays*, pp. 473-570. It should be noted, though, that the phrase “that man” is also used on plenty of occasions without it being a reference to Jesus.

¹⁴ A difficulty with this is that the opinion in the Yerushalmi which uses the phrase “that man” is describing the problem in this as crying foul on the attributes of the Holy One, not as being Christian.

What is the reason? Two Amoraim from the West, Rabbi Yosi bar Avin and Rabbi Yosi bar Zeveida, disagreed on this. One said, because he is placing jealousy amongst the creations. And one said: Because he is making the attributes of the Holy One into mercy, whereas they are nothing other than decrees. (Talmud, *Berachot* 33b)

Both of these reasons appear cryptic. We shall explore these two reasons in turn, showing that the second has been interpreted in radically different ways. Following this, we shall document another explanation that has been given for the Mishnah's ruling, which is particularly astonishing and leads into a discussion of a radically different approach to the entire mitzvah.

Explanation #2: Highlighting Inequalities

Rashi explains the Talmud's first reason—"that it places jealousy amongst the creations"—as meaning that drawing attention to God's compassion over the mother bird serves to highlight an inequality. This presumably refers to the fact that this mitzvah of compassion only applies to kosher birds, and there is no equivalent commandment for other members of the animal kingdom. Alternately, this reason might be identical to that mentioned in the Talmud Yerushalmi, that this prayer is intended to contrast God's mercy upon the bird with God's lack of mercy upon the one issuing the prayer.

It is important to note that according to this reason, the Mishnah's ruling is not negating compassion as the reason for the mitzvah; on the contrary, the mitzvah is very much based upon compassion, but it is inappropriate to publicly draw attention to that.¹⁵

Explanation #3: A Decree, Not God's Mercy

The Talmud's second view as to why we silence a petitioner from relating *shiluach hakein* to mercy is that it is a decree, not an expression of mercy. However, there are dramatically different explanations of this view.

3a. An Incomprehensible Statute

The first and more straightforward explanation is that the Talmud is saying that this commandment is a statute that has no explanation. This is the view presented by Rashi:

¹⁵ In a different twist, Meiri (*Berachot* 33b) states that this refers to an error in thinking that birds receive individual divine providence, causing jealousy amongst the other creatures, which only receive divine providence over the species as a whole, not for individuals.

“His attributes” – His mitzvos. But He did not act out of compassion; rather, to place the statutes of His decrees upon Israel, to make known that they are his servants, guardians of His commandments and the decrees of his statutes, even with matters where there is room for Satan and gentiles to respond and say “What need is there for this mitzvah?”

In fact, Rashi seems to be going even further and saying that it is precisely because *shiluach hakein* (and other mitzvos) have no reason that they were commanded—for the true sign of a servant is that he fulfills the wishes of his master even when there is no reason for them.

Maharsha explains this view of the Talmud to be saying that since the Torah did not ascribe a reason to *shiluach hakein*, we have no right to claim that it is based upon compassion, and we must simply accept it as a *chok*, a commandment with no reason that we can determine.¹⁶

Rambam, in his *Commentary to the Mishnah*, also explains this view in the Talmud to be rejecting any rationale for the mitzvah:

The issue of saying, “Your mercy extends upon the nest of a bird,” concerns the notion that just as God has compassion on the nest of a bird, instructing us not to take the mother with her young, so too, He should have compassion on us. One who says this is to be silenced, since he is saying that the reason for this commandment is the God’s mercy on birds. But this is not so, for were it a matter of mercy, He would not have allowed slaughtering animals at all; rather, this is an accepted commandment without a reason being given. (Commentary to the Mishnah, *Berachot* 5:3)

Thus, Rambam understands this view in the Talmud as saying that there is no reason for *shiluach hakein* that man can grasp. He adopts a similar approach in the *Mishneh Torah*.¹⁷ However, it is important to note that in the *Guide*, Rambam notes that he is not following this view:

This is also the reason for sending away the mother bird from the nest... If the Torah takes pity on the suffering of animals and birds, all the more so on human beings! And you cannot challenge me by arguing, “as far as the nest of a bird does Your mercy reach,” because that argument is based on one of the two views which we mentioned, i.e., the approach of those who believe there is no explanation for the commandments of the Torah other than the will of God alone; but we are inclined to follow the other view. (*Guide for the Perplexed* III:48)

¹⁶ Maharsha to *Berachot* 33b.

¹⁷ *Mishneh Torah*, Laws of Prayer 9:7.

Why does Rambam present the view in the *Commentary* and *Mishneh Torah* that the mitzvah is not related to compassion, if in the *Guide* he states that he does not follow that view? A variety of solutions have been suggested.¹⁸ Amongst contemporary academic scholars, Jacob Levinger claims that Rambam's halachic works were geared to the masses, and Rambam considered it safer for them to consider that the mitzvot have no discernable reasons; only in the *Guide* could Rambam reveal his true views.¹⁹ Roslyn Weiss specifies that Rambam had to pretend for the masses that it was not based on compassion, as otherwise they might think that eating meat is wrong.²⁰ Josef Stern explains that Rambam really means that the mitzvah serves to teach man compassion rather than being based on God's compassion, in line with the view of Ramban and others that we shall now explore.²¹

Rabbi Yom Tov Heller (1578-1654) softens this explanation of the Mishnah, stating that it is only in the context of prayer that it is forbidden to link this mitzvah with compassion, since one is thereby making an absolute statement regarding the ultimate reason for the mitzvah. However, he states, there is no problem in relating this mitzvah to compassion in the context of *peshat* or *derash*.²² As we shall now see, others took an even stronger approach in avoiding the idea that this view is ruling out a theme of compassion for this mitzvah.

3b. Medieval Rationalist Interpretations

As we saw earlier, many medieval authorities understood the mitzvah of *shiluach hakein* as being clearly related to compassion. They were therefore challenged by this opinion in the Talmud which seemingly stated that the mitzvah is an incomprehensible *chok*, unrelated to compassion. Rambam simply stated that he does not follow that view, but others were unwilling to take that approach—either because they were too modest to openly dispute an Amora, or because it was inconceivable to them that someone could hold such a view. Instead, they reinterpreted the Talmud's statement to mean something very different: that God did not issue the mitzvah due to His concern for the bird's welfare, but rather in order to teach people to be compassionate. Ramban is one of those who presents this approach:

¹⁸ See Menachem Slae, *Chayto Aretz*, p. 89 for a survey of several different solutions.

¹⁹ Levinger, *Darhei haMachshavah haHilchatit shel haRambam*, pp. 135-136; *Al ta'am hanezirut beMoreh Nevuchim*, p. 302. In sharp contrast to this is Rabbi Dror Fixler, "Iyun beTaami Mitzvot Shiluach HaKein," who claims that Rambam's true view was that *shiluach hakein* has no reason, and only in the *Guide* did he claim that it was related to compassion, so as to appeal to the philosophically-confused readership.

²⁰ Weiss, "Maimonides on Shilluah Ha-Qen," *Jewish Quarterly Review* 79 (1989) pp. 345-366.

²¹ Stern, *Problems and Parables of Law* pp. 49-66.

²² *Tosafot Yom Tov to Berachot* 5:3.

...These *aggadot* which presented difficulties for the Rav (Rambam), in my view have a different meaning. They mean to say that there is no benefit in the mitzvot to the Holy One himself, but rather the benefit is for man, to prevent him from being harmed, or from a false belief or a deplorable attribute... Similarly, that which they said, “Because he is making the attributes of the Holy One into mercy, whereas they are nothing other than decrees,” means to say that God did not have compassion on the nest of bird, and His mercy did not extend to “the animal and its young,” for His compassion does not extend to animals to prevent us from fulfilling our needs with them; for if so, He would have prohibited their slaughter. Rather, the reason for the prohibition is to teach *us* the trait of compassion. (Ramban, Commentary to Deut. 22:7)

According to this view, when the Talmud describes this mitzvah as a “decree,” it does not mean it in the sense of *gezerat ha-katuv*—a decree with no discernable meaning. Instead, it means that it is not motivated by God’s compassion, but rather to legislate compassion amongst people. The same explanation is presented by Meiri (1249–c.1310).²³ It appears that Rambam may have even taken this approach in his halachic work, notwithstanding his declaration that the mitzvah is not related to compassion.²⁴

Explanation #4: Cruelty, Not Mercy

Notwithstanding the two explanations given in the Talmud for the Mishnah’s ruling, some of the Acharonim give an alternate explanation. It is not only remarkable that an entirely different explanation to those in the Talmud is proposed; the very nature of this explanation is bizarre.

Of the two explanations that we have seen so far, one maintains the idea that the mitzvah of *shiluach hakein* is related to compassion, and the other, which seems to oppose this—the view that the mitzvah is a decree—is reinterpreted by many medieval authorities so as to still be consistent with the idea that the mitzvah is related to compassion. In sharp contrast to all these views, is the view that the reason why we silence someone who utters this prayer is that he is wrong: instead of *shiluach hakein* reflecting God’s compassion, it reflects cruelty. This is the view of the Vilna Gaon (1720-1797);²⁵ Rabbi Yonasan Eibenschutz (1690-1764)²⁶ and

²³ Meiri to *Berachot* 33b. Cf. Maharal, *Tiferet Yisrael* 6.

²⁴ Tabori, p. 126, notes that in *Hilchot Shechitah* 13:7 Rambam issues a ruling based on the idea of not taking advantage of the mother’s desire to protect her young.

²⁵ *Imrei No'am* to *Berachot* 33b.

Rabbi Eliyahu Schick (19th century)²⁷ state similarly. This startling view reflects the kabbalistic approach to the mitzvah, which we shall now explore.

²⁶ *Yaarot Devash* 6. He calls it a “decree,” seemingly subsuming it under the Talmud’s explanation in that vein, but he nevertheless cites the Zohar’s explanation of cruelty to explain why the Mishnah rules against invoking this mitzvah as an example of compassion.

²⁷ Rabbi Eliyahu ben Binyamin Schick, *Ein Eliyahu* to *Berachot* 33a, p. 93.

III. Mystical Approaches

Esoteric Reasons

In the medieval period, those who gave explanations for the mitzvah of *shiluach hakein* usually explained it in terms of reflecting compassion. However, there were those from the mystical school of thought who gave mystical explanations of the mitzvah. Ramban, who straddled both the rationalist and mystical schools of thought, stated that as well as the rationalist rationale of compassion, there are also mystical dimensions to this mitzvah, based on the *Sefer HaBahir*.²⁸ *Akeidat Yitzchak* and Abarbanel both mention that the mother bird symbolizes the human soul. Rashba writes that he is doubtful that anyone living in his generation is able to offer a valid reason for the mitzvah of *shiluach hakein*, as it contains many hidden secrets of the Torah.²⁹

Benefits of Cruelty

The Zohar, in *Midrash HaNe'elam*,³⁰ introduced a very different view of the mitzvah, which was further elaborated upon in *Tikkunei Zohar*:

There is an angel appointed over the birds... and when Israel performs this commandment, and the mother departs weeping and her children crying, he agonizes for his birds, and asks God: "Does it not say that 'His compassion is on all of His works (Psalms 145:9)'? Why did You decree on that bird to be exiled from her nest?" And what does the Holy One do? He gathers all of His other angels and says to them, "This angel is concerned for the welfare of a bird and is complaining of its suffering; is there none amongst you who will seek merit on My children Israel, and for the Shechinah which is in exile, and whose nest in Jerusalem has been destroyed, and whose children are in exile under the hand of harsh masters? Is there no-one who seeks compassion for them, and will attribute merit to them?" Then the Holy One issues a command and says, "For My sake I shall act, and I shall act for My sake," and

²⁸ Ramban quotes the kabbalistic work *Sefer HaKannah* by Kanah ibn Gedor.

²⁹ Responsa *HaRashba* 1:94.

³⁰ *Zohar Chadash, Midrash Ruth, Ma'amar Kan Tzipor*.

compassion is thereby aroused upon the Shechinah and the children in exile. (*Tikkunei Zohar* 23a)

The approach of the Zohar is also cited by Rabbeinu Bachya ben Asher, with slightly different nuances.³¹ However it is important to note that Rabbeinu Bachya presents this as a mystical alternative to the approach that it is an act of compassion (which he presents as being *al derech hasechel*). R. Yitzchak Caro likewise presents this view with the preface “Some say...” thereby acknowledging that it is not the straightforward understanding of the mitzvah.³²

The Cruel Engineering of Compassion

The idea of *shiluach hakein* as explained by the Zohar stands in sharp opposition to the normal understanding of how we encourage God to deal compassionately with us—which is that we should act with compassion. The Talmud itself states that being compassionate upon animals leads to His treating us with compassion, whereas being cruel to animals leads to God dealing harshly with man:

It was taught: Rabban Gamliel bar Rebbi said: “And He shall give you compassion, and be compassionate to you and multiply you” (Deut. 13:18); Anyone who is compassionate to the creations, they have compassion on him in Heaven, and anyone who is not compassionate to the creations, they do not have compassion on him in Heaven. (Talmud, *Shabbat* 151b³³)

The Zohar’s idea, on the other hand, is that one deliberately performs an act of cruelty in order to engineer a process that causes God to extend compassion upon the Jewish People. According to the Zohar, the bird’s cries of distress have an automatic effect, via the protests of the angels, of arousing God’s compassion; an effect that is more powerful than a Jew himself seeking God’s compassion. Instead of directly entreating God for compassion, or acting with compassion in order to deserve it, a person is instead engineering a process (diametrically opposed to the normal method of receiving compassion) that will achieve this result more effectively. This certainly seems strange.

It might seem that there is precedent for such manipulation as being acceptable. A similar case appears in a different context—the repentance of the city of Nineveh.

³¹ Rabbeinu Bachya, commentary to Deut. 22:7.

³² Rabbi Yitzchak Caro, *Toldot Yitzchak*, Deut. 22:6.

³³ See too *Bava Metzia* 85a, where Rebbi’s fate is determined by his compassion towards animals.

The tidings reached the king of Nineveh, and he arose from his throne, and laid his robe from him and covered it with sackcloth, and sat in ashes. And he caused it to be proclaimed and published through Nineveh by the decree of the king and his nobles saying, “Let neither man nor beast, herd nor flock, taste anything; let them not feed, nor drink water, but let them be covered with sackcloth, both man and beast; and let them cry mightily unto God. Let them turn every one from his evil way and from the violence that is in their hands. Who knows whether God will not turn and repent, and turn away from His fierce anger, that we shall not perish?” And God saw their works, that they turned from their evil way; and God repented of the evil, which He said He would do to them and He did not do it. (Jonah 3:6-10)

The Talmud elaborates upon the strategy that the King of Nineveh pursued with the animals:

[The King of Nineveh said,] “But let man and beast be covered with sackcloth. (Jonah 3:10).” What did they do? They tied the animals separately and the young separately. They said before Him: “Master of the Universe! If You do not have mercy on us, we will not have mercy on these!” (Talmud, *Ta’anit* 16a)

This is slightly different from the case of *shiluach hakein*; in this case, they were threatening, even blackmailing God, via threatening hostages. We can therefore understand why the Talmud Yerushalmi³⁴ and Midrash³⁵ condemn this method of obtaining God’s compassion, whereby it certainly does not provide precedent for legitimizing the Zohar’s approach to *shiluach hakein*.³⁶ But what about the Babylonian Talmud, which was understood to be approving this form of repentance? Does this also serve to legitimize the Zohar’s approach to *shiluach hakein*? If we study the commentaries, we see that they interpreted this case in such a way that avoids it being comparable in any way to the Zohar’s explanation of *shiluach hakein*:

This was as if to say: “Just as You wish us to have mercy upon them, in keeping with the verse, ‘For His mercy is upon all His works’ (Psalms 145:9), so You should [set an example of this by having] mercy upon us” (Rashi, ad loc.).

As explained by Rashi, it is actually very different from the Zohar. Here was the idea that God wants us to be compassionate on animals, and the people of Nineveh wished to point

³⁴ Yerushalmi, *Ta’anit* 8a.

³⁵ *Pesikta D’Rav Kahana* 24:11.

³⁶ Ephraim E. Auerbach explains that in Israel, where Christians used the repentance of Nineveh to mock the Jews, it was necessary to show that the repentance of Nineveh was deficient. “The Prophecy of Jonah: The Repentance of the Men of Nineveh and the Jewish-Christian Debate” (Hebrew), *Machanayim* 33 (5718).

out that God should likewise have mercy upon them. This is certainly not the straightforward understanding of the Talmud, but Rashi was probably forced into this interpretation in order to make their actions acceptable. Rabbi Yosef Dov Soloveitchik explains that they were saying that compassion is not a natural trait, and if God does not teach it to man by way of example, man will not know to practice it himself. This is likewise far from straightforward, but Rav Soloveitchik stresses that it is inconceivable that it is acceptable to threaten and to force God into acting compassionately.³⁷

Thus, the case of Nineveh, as it was interpreted, does not provide a precedent for legitimizing the manipulation of God into being compassionate by being cruel to animals; if anything, it shows the opposite.

³⁷ Quoted by Rabbi Hershel Schechter, "Gems from the Rav" (Hebrew), *Beit Yitzhak* (5756) 28, p. 34.

IV. Optional, Recommended or Obligatory?

Relating the Halachah and the Rationale

Thus far, we have seen diametrically opposed views regarding the nature of *shiluach hakein*—the view of the Midrash and the Rishonim that it is an act of compassion, and the view initiated by the Zohar that it is an act of cruelty. Our next task is to see how this relates to a halachic dispute regarding the fundamental status of the mitzvah of *shiluach hakein*. One approach is that the mitzvah is optional—only in a case where one wants the young is one obligated to send away the mother. The second approach is that even if one does not want the young, there is a mitzvah to send away the mother bird.

The Talmud's position on this matter is not absolutely clear; some Rishonim clearly take the position that it is optional; and debate regarding it begins with the Acharonim. Usually, such a halachic question would be resolved via legal reasoning and hermeneutics, entirely independent of any considerations as to the assumed rationale underlying the mitzvah. But with *shiluach hakein*, the assumed rationale often does play a role in resolving this halachic question, sometimes explicitly and sometimes implicitly. The reason why it is related is as follows: If the nature of the mitzvah is showing compassion (by not taking both mother and young, and by sending away the mother so that she does not see one taking the young), then clearly in a case when one does not want the young, there is no purpose in sending the mother away. But if the nature of the mitzvah is to arouse Divine mercy via a procedure involving causing suffering to the mother bird, then there is reason to perform the mitzvah even if one does not want the young.

It should be noted that the fact of something being a mitzvah does not necessarily mean that it is praiseworthy to seek a way to fulfill it. There is a mitzvah of *yefas toar* with a woman who is captured in war, but nobody would deem it praiseworthy to enlist in order to fall in love with a *shiksa*; the Talmud explicitly notes that the mitzvah is a way to accommodate someone who has given in to his desires. There is a mitzvah of *eglah arufah* in the case of an unsolved murder, but it is absurd to suggest that one should go searching for corpses of

murder victims. Many other such examples could be brought. The rationalist approach would place *shiluach hakein* in the same category: it is a way to act nobly in a situation where one wants to enjoy a free meal, not a situation that should be sought out in order to send away the mother bird. Those following the mystical approach, on the other hand, would see it differently.

Determining the Halachah

In evaluating the statements of the Rishonim and Acharonim, some are too quick to conclude there is evidence that they consider it obligatory. Statements such as that of the Shulchan Aruch, which determine that in various circumstances, “one is obligated to send away the mother bird,” do not necessarily mean that one is obligated to do so even if one does not want the young.³⁸ First of all, it may simply be an abbreviation for saying that one is obligated to send away the mother bird in a case where one wants to take the young.³⁹ Second, it is important to note that ancient authorities considering *shiluach hakein* would likely take it for granted that a person would want to take the young. One must appreciate the enormous difference between the world of today and that of ancient times. Today, if a person were to come across a bird’s nest, he would never have a desire to take the mother, and the only circumstances in which he would take the eggs would be if he was a professional egg collector. Nobody would take the eggs to eat, and certainly not the chicks. But in ancient times, when food was scarcer, people would ordinarily seize upon the opportunity for a free, nutritious and tasty meal.⁴⁰

Another important point to note is that the mitzvah actually includes two distinct components: a negative prohibition (of taking both mother and young) and a positive commandment (of sending away the mother). There are two schools of thought as to the relationship between these two commandments. One is that the positive commandment is only applicable in a case where the negative prohibition has been transgressed, as a rectification of it. A person may not take both mother and young, but if he did so, he should then send away the mother in order to rectify this. (The halachic terminology for this structure is לאו הניתק לעשה.) The other approach is that the two commandments are

³⁸ Rabbi Dan Schwarz, in *Kan Tzipor* p. 19, errs in this regard.

³⁹ It should be noted that the words *shiluach hakein* are themselves an abbreviation for *shiluach ha'eim min hakein* – one does not send away the nest, but rather one sends away the mother from the nest.

⁴⁰ See Zohar Amar, *Mesorat Ha-Ohf*, pp. 233-236 for extensive discussion of this point and its ramifications for the mitzvah.

independent of each other; a person may not take mother and young, and when taking the young, he is obligated to send away the mother bird first. (The halachic terminology for the commandment of sending away the mother bird in this structure is that it is a מצות עשה מעיקרא.) There is dispute regarding which of the Rishonim subscribed to each of these views;⁴¹ however many are of the opinion that the former view, that the positive commandment only applies in a case where the negative prohibition was transgressed, necessarily means that the mitzvah is not obligatory i.e. that it does not apply in a case where one does not want the young.⁴²

1. Optional - Only if one wants the young

Many Rishonim rule that when a person has no need for the young, he is not obligated to send away the mother bird. This is the explicit view of Rokeach (c.1176–1238),⁴³ Meiri (1249–c.1310),⁴⁴ Rabbeinu Bachya (d. 1340),⁴⁵ and Ran (1320–1380).⁴⁶ It is also widely understood to be the view of Tosafot⁴⁷ and Rambam.⁴⁸ Note too that in the *Guide*, Rambam saw the prohibition of taking the mother as serving in most cases to cause the entire nest being left untouched, since the young are often not fit to be eaten. Ralbag explicitly states that the goal of the mitzvah is to encourage the person to leave the nest entirely alone.⁴⁹ There is dispute regarding whether it is the view of Rashba that one is not obligated to perform the mitzvah if one has no need for the young.⁵⁰

⁴¹ See Schwartz, *Kan Tzipor*, especially pp. 197-207.

⁴² Chatam Sofer and Rabbi Asher Weiss see this as being the case; see later note.

⁴³ Rokeach, Commentary to *Ki Teze*, p. 244.

⁴⁴ *Chiddushei HaMeiri* to *Chullin* 139b

⁴⁵ Rabbeinu Bechaye to Deuteronomy 22:7.

⁴⁶ *Chiddushei HaRan* to *Chullin* 139a.

⁴⁷ *Tosafot* to *Chullin* 140b, s.v. *Shnei*, as explained by Rabbi Yair Bachrach, *Chavot Yair* 67; *Tosafot* to *Kiddushin* 34a, s.v. *Maakeh*, as explained by Rabbi Shlomo Zalman Auerbach, cited in *Kan Tzipor* p. 159.

⁴⁸ *Megillat Sefer*, *Laavin* 150. Rabbi Asher Weiss in *Minchat Asher*, Devarim 40, p. 275 notes that according to Rambam, *shiluach hakein* is a case of *lav hanitak le'asei*, and is therefore clearly not obligatory. See too *Hilchot Shechitah* 13:5. Rabbi Yisrael Yaakov Fisher, in *Kan Tzipor* p. 202, disputes this, but does not address most of the sources cited by Rabbi Weiss.

⁴⁹ Ralbag, Commentary to Deuteronomy 22:7.

⁵⁰ R. Yaakov Tzvi Mecklenberg in *HaKetav VeHaKabbalah* to Deut. 22:6, R. Chaim Kanievsky (cited by Weinberger), and R. Asher Weiss in *Minchat Asher*, Devarim 40, p. 275, all understand Rashba in Responsa 18 as saying that the mitzvah does not apply if one does not want the young. Tabori states that Rashba's view is

Did these authorities reach this conclusion, that one is not obligated to perform the mitzvah when one has no need for the young, based on the understanding that the mitzvah is an act of compassion? It is impossible to determine this with certainty. However it is perhaps relevant to note that, unlike the Acharonim who reached this conclusion based on analyzing various statements in the Talmud, the Rishonim who took this position generally do not provide any such analysis and thus seem to have taken it for granted, which may reflect their having understood it as being the fundamental nature of the mitzvah.⁵¹ I am therefore not convinced by the claim that this halachic conclusion is apparently entirely unrelated to their understanding of the mitzvah's rationale.⁵²

There are those who apparently did not necessarily see a connection—Rabbeinu Bachya states that the mitzvah only applies in a case where one wants the young, even though he quotes the view of the Zohar as a valid rationale (albeit not the only one).⁵³ However there certainly are those who explicitly made this connection. Chatam Sofer (1762–1839) notes that since the purpose of the mitzvah is to inculcate in us the trait of compassion, then it is clear that we are not obligated to send away the mother bird when we have no need for the offspring, because doing so causes distress to the bird for no reason, and it would in fact be *forbidden* to do so.⁵⁴ While he acknowledges that the Zohar's explanation would lead to a different policy, and he admits that there is no problem of wanton cruelty if one is acting for the greater good of summoning mercy for the Jewish People, he nevertheless determines that the Zohar conflicts with the Talmud, and that in such cases “we have no business with esoterica.” It should be noted that elsewhere Chatam Sofer expressed his disapproval even for someone wanting to follow the Zohar as a *halachic* stringency,⁵⁵ as well as his belief that most of the Zohar was not written by Rabbi Shimon bar Yochai.⁵⁶

unclear, and R Yisrael Yaakov Fisher in *Even Yisrael, Hilchot Shechitah* claims that Rashba considers it obligatory.

⁵¹ The exception being the Meiri, that we shall later discuss.

⁵² Yosef Tabori, “*Shiluach HaKein*: On the Relationship between the Reason for the Mitzvah and its Laws” (Hebrew), pp. 140-141.

⁵³ Rabbeinu Bachya to Deuteronomy 22:7.

⁵⁴ Responsa Chatam Sofer, *Orach Chaim* 100.

⁵⁵ Responsa Chatam Sofer, *Even HaEzer* II:85. See too Responsa Chatam Sofer, *Orach Chaim* 197 and Binyamin Hamburger, *Shorshei Minhag Ashkenaz* vol. I pp. 160-164.

⁵⁶ See the oblique but unequivocal statement in Responsa Chatam Sofer 6:59, s.v. *U'ma SheKatav SheHaRav*. R. Eliezer Lipmann Neusatz, one of Chatam Sofer's leading disciples, writes in *Mei Menuchot* (Pressburg 1884) p.

Amongst more recent authorities, Rabbi Baruch HaLevi Epstein (1860-1941) is vehement about the connection (notwithstanding the fact that, as we shall see later, his father took the opposite view):

...In general, I am in astonishment. How could someone possibly think that the Torah commanded us to do this even against His will regarding the outcome? For it clear and beyond all doubt, that of the foundational reasons in this mitzvah in general is that we should not be cruel and take the mother while she is sitting on her young; and it is only because, at the end of the day, the goal of all creatures is that they were created for man, just as slaughtering an animal [for food] is permitted, that the Torah permitted man to take the young in this way, via sending away the mother beforehand so that she should not see her young being taken. And if so, it is clear that the Torah is only granting an allowance with this, but with someone who does not all want to involve himself, it is certain that he is permitted to simply pass it by. In fact, he is making things even better for the mother and young by leaving them together. There is no argument at all that he should be obligated to break them apart, just as there is no argument that the mitzvah of “Do not slaughter an animal and its young on the same day” is a warning against slaughtering them both, but that it is a mitzvah and obligation to slaughter one of them. (*Torah Temimah* to Deut. 22:7)

Amongst contemporary halachic authorities, Rabbi Menashe Klein likewise explicitly states that since the mitzvah is rooted in compassion, it defeats the purpose to perform it when one has no desire for the young, which would be cruelty.⁵⁷ In a more cautious vein, Rabbi Asher Weiss rules that one should not perform the mitzvah without a pressing practical reason, and relates this to the cruelty involved.⁵⁸

In fact, most Acharonim and contemporary halachic authorities rule that there is no obligation to send away the mother bird in a case where one has no desire for the young. This is the ruling of Rabbi Pinchas Horwitz (1730-1805),⁵⁹ Rabbi Yaakov Tzvi Mecklenburg (1785-1865),⁶⁰ Rabbi Naftali Tzvi Berlin (1817-1893),⁶¹ Rabbi Avraham Bornsztain (1838-

43b, attests that Chatam Sofer told his students that R. Shimon bar Yochai authored only a few pages from the Zohar.

⁵⁷ Responsa *Mishneh Halachot* 12:223.

⁵⁸ *Minchat Asher*, Devarim 40, p. 276. He states that in a situation where one is any case going to remove the nest, such as a bird nesting in one's house, one should perform the mitzvah.

⁵⁹ *Sefer HaMakneh* to *Kiddushin* 41a.

⁶⁰ *HaKesav VeHaKabbalah* to Deut. 22:6.

1910),⁶² the Chafetz Chaim (1838-1933),⁶³ the Chazon Ish (1878-1953),⁶⁴ Rabbi Yechezkel Abramsky (1886-1976),⁶⁵ and Rabbi Yehuda Henkin (1945-present).⁶⁶ However, with these authorities it is impossible to know whether their ruling had any connection to their understanding of the rationale for the mitzvah.

Rabbi Moshe Shmuel Glasner rules that one should not send away the mother bird unless one wants the young, and while he bases this on the Talmud rather than on reasons of compassion, he rejects those who rule it to be obligatory due to the Zohar; Rabbi Glasner argues that kabbalistic reasons do not need to correlate to halachah.⁶⁷ As we shall now see, the approach that he disputes was (and remains) a popular position.

2. Obligatory, Recommended, or Praiseworthy

This linkage, between the reason for the mitzvah and the halachah of whether it is obligatory, also occurs in the other direction—that due to the explanation of the Zohar, the mitzvah is obligatory. One of the first authorities that ruled the mitzvah to be obligatory is Rabbi Mordechai Jaffe (1530-1612).⁶⁸ It is probably no coincidence that he had a reputation not only as a halachic authority, but also as a kabbalist. There are authorities who explicitly used the Zohar's explanation that the mitzvah is one of cruelty as a (partial) basis for the halachic determination that the mitzvah is obligatory. Rabbi Yair Bachrach (1638-1702) in *Chavot Ya'ir* concludes that one is obligated to send away the mother bird even if one does not want the young. He proves this in part via technical halachic reasoning, but supports it with the explanation of the mitzvah provided by the Zohar, that the cruelty to the bird results in Divine compassion.⁶⁹ Rabbi Tzvi Hirsch Eisenstadt (*Pitchei Teshuvah*, 1813-1863)

⁶¹ *Meromei Sadeh*, part 5, p. 104. His commentary on the Torah contains mixed messages; on the one hand, he explains the mitzvah in terms of compassion, but on the other hand he insists that it is a decree and a *chok* beyond human comprehension (*Ha-Amek Davar* to Deut. 22:6-7).

⁶² *Avnei Nezer, Orach Chaim* 481:6.

⁶³ *Sefer HaMitzvot HaKatzet, Mitzvot Aseh* 74.

⁶⁴ Chazon Ish, *Yoreh De'ah* 175:2.

⁶⁵ *Chazon Yechezkel to Tosefta Chullin* 10, p. 39.

⁶⁶ *Responsa Bnei Banim* 3:5.

⁶⁷ Rabbi Moshe Shmuel Glasner, *Dor Revi'i, Chullin*, p. 168.

⁶⁸ Rabbi Mordechai Jaffe, *Levush Ateret Zahav* 292:1. It is, however, possible that he only intends to refer to someone who wants the young.

⁶⁹ *Chavot Yair* 67.

cites this view and adds that if a person comes across a nest and does not perform the mitzvah, he will be punished in a time of Divine anger.⁷⁰ Rabbi Tzvi Hirsch ben Azriel of Vilna (circa 1800) clearly rules that the mitzvah is obligatory, and, along with Rabbi Yosef Molko (circa 1750) and Rabbi Yechiel Michel Epstein (1829-1908), takes the position that due to the Zohar's reason, a person must take the young even if he doesn't want them, so as to ensure that the mother will be distressed and the process described by the Zohar will be activated!⁷¹

Rabbi David Luria likewise notes that the mitzvah is obligatory and that this is consistent with the Zohar's explanation.⁷² Rabbi Chaim Vital goes even further and adds that one should go out of his way to find birds' nests so that he can be obligated to fulfill the mitzvah.⁷³ Other authorities who likewise ruled the mitzvah to be obligatory, albeit without explicitly linking this to the Zohar, include Maharal (1525-1609),⁷⁴ Rabbi Zvi Ashkenazi (Chacham Tzvi, 1660-1718),⁷⁵ Rabbi Akiva Eiger (1761-1837),⁷⁶ Rabbi Shalom Mordechai Schwadron (Maharsham, 1835-1911),⁷⁷ and Rabbi Yisroel Yaakov Fisher (1928-2003).⁷⁸

Several other authorities, although not necessarily stating it to be a halachic obligation, also stress that even if one has no need for the young, one should still make every effort to send away the mother bird, because of the Zohar's rationale. Authorities in this category include the Arizal (1534-1572)⁷⁹ and Rabbi Chaim Yosef David Azulai (Chida, 1724-1807).⁸⁰ (The Arizal also adds another mystical reason for striving to perform this mitzvah; that if one fails

⁷⁰ *Pitchei Teshuvah, Yoreh De'ah* 292:1.

⁷¹ Rabbi Tzvi Hirsch ben Azriel, *Beit Lechem Yehuda, Yoreh De'ah* 292:1; Rabbi Yosef Molko, *Shulchan Gavoa, Yoreh De'ah* 292:19; Rabbi Yechiel Michel Epstein, *Aruch HaShulchan, Yoreh De'ah* 292:2.

⁷² *Chiddushei HaRadal, Midrash Devarim Rabbah* 6:3.

⁷³ Rabbi Chaim Vital, *Sha'ar HaMitzvot*, Introduction.

⁷⁴ *Tiferet Yisrael*, end of chapter 61.

⁷⁵ Responsa *Chacham Tzvi* 83. This is the way that most understand him; however, Responsa *Avnei Nezer, Orach Chaim* 481:6 does not understand his view in this way.

⁷⁶ Rabbi Akiva Eiger to *Shulchan Aruch, Yoreh De'ah* 292:1.

⁷⁷ Maharsham 1:209.

⁷⁸ Rabbi Yisroel Yaakov Fisher, "*Biur Yesodi BeMitzvat Shiluach HaKein*," in Schwartz, *Kan Tzipor*, p. 208.

⁷⁹ As cited in Rabbi Aharon Azriel, Responsa *Kfi Aharon* 10 p. 40; Rabbi Yosef Molko, *Shulchan Gavoa, Yoreh De'ah* 292:8.

⁸⁰ Birkei Yosef, *Gilyon Shulchan Aruch, Yoreh De'ah* 292:8.

to do so, one will return to this world as a *gilgul*.⁸¹) Rabbi Yechiel Michel Epstein (1829-1908), while stating that the mitzvah is a decree with no revealed reason, simultaneously cites the Zohar's explanation in support of his ruling that choosing to simply leave the bird and nest alone is a failure to perform the mitzvah equivalent to finding a lost object and ignoring it instead of returning it to its owner.⁸²

Likewise, although most recent and contemporary halachic authorities rule that there is no requirement to send away the mother in a case where one has no need for the young, many are of the view that even though one is not obligated to send away the mother bird in such a case, it is still praiseworthy to do so, for the reason given by the Zohar. Some state this explicitly, such as Rabbi Shlomo Zalman Auerbach (1910-1995),⁸³ and Rabbi Chaim Kanievsky (1928-present).⁸⁴ With many halachic authorities, although they may well rule that the mitzvah is optional, it is apparent that they view it as praiseworthy. This is evident from the fact that they have been photographed performing the mitzvah, even though in this day and age nobody has any desire for bird's eggs from a nest.⁸⁵

A Mitzvah to Seek Out?

In the Talmud, we find a halachic discussion that has ramifications on this dispute. The Talmud is discussing whether one should travel the countryside seeking opportunities to fulfill the mitzvah of *shiluach hakein*. It proves from the words “*Ki yikarei*—when you happen upon”—that there is no such obligation:

I might have thought that one should travel the mountains and hills in order to find a nest, therefore it tells us “When you happen across it”—only when it happens for you. (Talmud, *Chullin* 139b)

It is this passage that is utilized by Rabbi Yair Bachrach—the primary proponent of the view that the mitzvah is obligatory—as a basis for his ruling. He reasons that the Talmud's

⁸¹ Quoted by Rabbi Chaim Vital in his introduction to *Sha'ar ha-Mitzvos*.

⁸² *Aruch HaShulchan, Yoreh De'ah* 292:1-2.

⁸³ *Minchat Shlomo* 2:5:4.

⁸⁴ Rabbi Chaim Kanievsky, *Siach Ha-Sadeh, Kuntrus HaLikkutim* 9. However in *Shalech Teshalach*, p. 79, Rabbi Kanievsky is quoted as stating that even if one only wishes to acquire the young in order to be obligated in the mitzvah, and not that one has any desire to actually eat them, this is still a perfectly acceptable way to fulfill the mitzvah.

⁸⁵ See Weinberger, *A Practical Guide to the Mitzvah of Shiluach Hakan*, pp. 252-269, where he displays pictures of 29 prominent rabbinic authorities from the *haredi* community performing the mitzvah.

question only makes sense if there is an obligation to send away the mother bird when one encounters a nest. If there is such a requirement, then it makes sense to ask whether one has to search for opportunities to fulfill this requirement, or whether it is only a requirement when the opportunity presents itself. He thus reads the Talmud as follows:

I might have thought that one should travel the mountains and hills in order to find a nest [and be obligated to send away the mother], therefore it tells us “When you happen across it”—only when one happens across it [is one obligated].

Initially, this appears convincing; if one takes the approach that the mitzvah is optional, it would seem to require reading this passage in the following, rather awkward, way:

I might have thought that one should travel the mountains and hills in order to find a nest [and choose to fulfill the mitzvah if one wants the chicks], therefore it tells us “When you happen across it”—[one is only asked to fulfill the mitzvah] when one happens across it [and wants the chicks, and one is not required to look for opportunities to fulfill the mitzvah.]

However, several of those who take the approach that the mitzvah is optional address this passage and interpret it very differently. They focus less on the technical parsing of the Talmud’s wording, and more on the essence of the exegesis—that the words “When one happens across” serve to rule out one having to actively seek to fulfill the mitzvah. Accordingly, this passage in the Talmud serves precisely to resolve the issue of whether the mitzvah is optional or obligatory. The Talmud is to be read as follows: “I might have thought that one has to actively pursue the mitzvah; thus the Torah teaches us that it is optional.” The Talmud is thereby deriving that the mitzvah only applies if one actually wants the young.⁸⁶ This appears to be the way that Meiri understands it:

The mitzvah of *shiluach hakein* is not a mitzvah that one is required to pursue—that is to say, that if one finds a nest, that one must take the young in order to fulfill the mitzvah of sending away the mother, or that one should travel the mountains and hills after this mitzvah. Rather, when the opportunity presents itself, he can fulfill it, as it says, “When one happens across...” (Meiri to *Chullin* 139b)

Meiri sees the Talmud’s exegesis as ruling out both that one would have to travel the hills in order to find an opportunity, and that one must send away the mother bird when one

⁸⁶ Chatam Sofer; Rabbi Yechezkel Abramsky, *Chazon Yechezkel* to *Tosefta Chullin* 10; Rabbi Asher Weiss, *Minchat Asher*, Deuteronomy 40 p. 272. R. Weiss draws a parallel to similar cases: Talmud Yerushalmi, *Sotah* 9:1, regarding the statement that one is not obligated to search for a corpse of a murder victim in order to be obligated in the mitzvah of *eglah arufah* (see *Pnei Moshe* ad loc.), and *Sifrei, Re’ah* 40, regarding *Ir HaNidachat*. See too Rabbi Yehudah Henkin, Responsa *Bnei Banim* 3:5.

finds a nest. His view that the mitzvah is optional, while fitting well with his understanding of the rationale for the mitzvah as being one of compassion, is actually understood by him to be an explicit exegesis of the Talmud.

Reverting back to those who adopted the Zohar's approach, whether or not they saw the mitzvah as actually obligatory, they were led to understand this passage in the Talmud as saying that while one is not obligated to seek out opportunities for this mitzvah, it is nevertheless praiseworthy to do so. Earlier, we saw that Rabbi Chaim Vital states that one should go out of his way to find birds' nests so that he can be obligated to fulfill the mitzvah.⁸⁷ We also have the following testimony from the eighteenth century from Rabbi Yosef Molko:

Pious men, and those of deeds, go around the mountains and hills of the villages, in the darkness of night, and put themselves in danger, in order to fulfill the mitzvah of *shiluach hakein*. (*Shulchan Gavoa, Yoreh De'ah* 292:8)⁸⁸

Rabbi Yosef Chaim of Baghdad (Ben Ish Chai, 1835-1909) likewise attests to pious people who travel the countryside in order to perform the mitzvah.⁸⁹ He himself considers that this is a contravention of the Talmud's ruling; yet on the other hand, he permits a person to recapture the mother bird after sending it away and eat it, and even states that this is a precious opportunity, "since a mitzvah was performed with it."⁹⁰ This is diametrically opposed to the rationalist approach that the prohibition of taking both mother and young serves to perpetuate the species.

Today, it is common for people to seek out opportunities to fulfill the mitzvah. As noted earlier, there are photographs of numerous prominent rabbis performing the mitzvah, even though they presumably did not "happen across" a nest. However, the reason for this zeal is

⁸⁷ Rabbi Chaim Vital, *Sha'ar HaMitzvot*, Introduction.

⁸⁸ There is a much earlier statement in this regard, but it is a little ambiguous. Rabbi Aharon HaKohen of Lunel, one of the Provencal rabbis at the turn of the 14th century, wrote: "Someone who goes around the hills and forests seeking a bird's nest in order to fulfill the mitzvah of *shiluach hakein*, receives reward and is not considered a fool, even though he is exempt from searching after it" (*Orchot Chaim, Hilchot Shabbat, Hilchot Kiddush* 20). I am not convinced that this means that he saw a positive aspect in seeking to perform the mitzvah; rather than praising such an action, he merely notes that the person "receives reward and is not considered a fool." We must also note that it is possible that Rabbi Aharon HaKohen was referring to a case where the person will be eating the eggs as part of his nutrition, and would not sanction it in a case where the person would not be interested in the eggs.

⁸⁹ Rabbi Yosef Chaim, Responsa *Torah Lishmah* 277.

⁹⁰ Responsa *Torah Lishmah* 276.

not only due to the Zohar's explanation of the purpose of this mitzvah; it also relates to the rewards that are promised for it. The nature of these rewards is discussed in the next section.

V. Rewards and their Logic

Good Days and a Long Life

Shiluach hakein is virtually unique amongst mitzvot in terms of the rewards promised in the Torah; along with honoring one's parents, it is the only mitzvah for which the Torah describes the reward. *Shiluach hakein* also stands out from other mitzvot with regard to the list of rewards promised in the Midrash. Those of the mystical school saw the rewards as reason for one to make an effort to perform the mitzvah, even if one does not want the young. Those of a rationalist inclination saw the rationale behind the rewards in a way that made sense only if one actually wants the young.

The Torah promises a good, long life in reward for this mitzvah. The Mishnah elaborates upon the significance of this:

And if for an easy mitzvah which [costs] about an *issar*, the Torah states, "So that it may be good for you and your days will be lengthened," all the more so for the more serious *mitzvot* in the Torah. (Mishnah, *Chullin* 12:5)

The medieval authorities explained the Biblical rewards as logical recompense for the compassion displayed. The promise of God being good to you was explained very straightforwardly to mean that He will be compassionate, in reward for the compassion displayed to the mother bird.⁹¹ Obviously this only makes sense if the mitzvah is one of compassion, not cruelty, which in turn must mean that the person actually wants the young. The "lengthening of days" (i.e. extra life) was explained to be in reward for not taking the mother bird, hence enabling her to have further offspring (i.e. extra life).⁹² This likewise only makes sense in the context of a person having to suppress his desire to take the bird for himself. Rabbi Yosef Bechor Shor (12th century) explains that such a reward is always promised for mitzvot that come at financial cost; accordingly, this likewise makes sense only if one would have wanted the bird to eat.

⁹¹ Ibn Ezra, Rabbeinu Bachya. Chizkuni explained it to be a general promise that is described as referring to the lengthening of days.

⁹² Ibn Ezra, Rabbeinu Bachya, Chizkuni, and Seforno. *Perush Baalei HaTosafos* states that the lengthening of days refers to one lengthening the days of the mother bird by leaving her alive

In fact, Chatam Sofer points out that this idea is inherent in the Mishnah itself, which speaks about the mitzvah costing an *issur*. The description of personal cost demonstrates that the mitzvah only applies in a case where one would have wanted to take the mother bird to eat.⁹³

Midrashic Rewards

In addition to the rewards promised in Scripture, the Midrash adds several other promised rewards. One of these is the promise of children:

There are mitzvot whose reward is wealth, and there are mitzvot whose reward is honor. And what is the reward for this mitzvah? That if you do not have children, I will grant you children. How do we know this? As it is stated, “Send away the mother,” and what reward do you take? “You shall take the young.” (*Midrash Devarim Rabbah* 6:6⁹⁴)

This reward fits well with the rationalist approach; even though one desires to eat the mother, one lets her go, thereby enabling her to have more children, and as a reward, one is blessed with children.⁹⁵ According to the mystical/obligatory approach, there is no obvious reason for this reward. One has not put oneself out and allowed her to have more children if one never would have stopped her from doing so in the first place without the mitzvah. (Some claim that this is not an independent reward at all, merely an implicit component of the blessing of having one’s days lengthened.⁹⁶)

Another reward promised in the Midrash is that one will be able to build a new home:

How do we know that one mitzvah drags along another? As it is written, “When you happen across a nest of birds... Send away the mother... That it should be good for you and your days shall be lengthened”; and what is written afterwards? “When you build a new house...”—you shall merit to build a new house. (*Midrash Tanchuma, Ki Tetze* 1⁹⁷)

This reward likewise makes perfect sense in light of the rationalist view of the mitzvah. The person desired the entire nest of birds, but he nevertheless let the mother bird go to produce

⁹³ Responsa *Chatam Sofer, Orach Chaim* 100; *Chatam Sofer to Chullin* 142a.

⁹⁴ Similarly in *Yalkut Shimoni, Devarim* 930, and *Midrash Tanchuma, Ki Tetze*.

⁹⁵ *Likkutei Batar Likkutei*, citing Chatam Sofer. Ktav Sofer provides a different explanation for the reward, but one that is likewise connected to the mitzvah being one of compassion, not cruelty.

⁹⁶ Rabbi Yehudah Assad, *Dvire Mahari*, vol. II p. 62; Rabbi Avraham Shmuel Sofer, *Chashav Sofer al haTorah*, p. 219.

⁹⁷ Similarly in *Midrash Devarim Rabbah* 6:4.

a new nest. As a reward, he will likewise be blessed with a new home. But according to the mystical/obligatory approach, there is no obvious reason for this reward.⁹⁸

The next reward promised in the Midrash is the hastening of the Messiah:

Another explanation: What does it mean, “Send away the mother”? That if you fulfill this mitzvah, you will hasten the coming of the King Messiah, about whom it is written, “sending.” How do we know? As it is written, “sending the ox and donkey” (Isaiah 32:20). (*Midrash Devarim Rabbah* 6:7)

This is the first reward for which there is no obvious connection to the rationalist approach that the mitzvah is one of compassion. Accordingly, it is stated that this reward fits with the explanation offered by the Zohar, whereby causing suffering to the mother bird sets a process into motion which results in God feeling pity for the Jews in exile.⁹⁹ However, this is by no means conclusive. Others relate the hastening of the Messiah to the building of a new Temple, which in turn is related to the reward of building a new home that we discussed above.¹⁰⁰ It may also be related to the following reward. The Midrash continues to state that another reward is that it will hasten the coming of Elijah the Prophet:

Another explanation: Rabbi Tanchuma said: If you fulfill this mitzvah, you hasten the coming of Elijah the Prophet, about whom it is written “sending,” as it is said, “Behold, I am sending Elijah the Prophet to you, and he shall come and console you” (Malachi 3). How do we know? As it is said, “And he shall restore the hearts of the fathers upon the sons” (ibid.) (Ibid.)

Here, while the reward fits with both approaches to the mitzvah, it seems to fit better with the rationalist approach. Rabbi David Luria explains that just as the mother bird is consoled by being spared to raise further children, so too Elijah consoles the Jewish People.

In summary: Of the various rewards for the mitzvah that are listed in the Midrash, some can be reconciled with both the rationalist and mystic approaches to the mitzvah, but others,

⁹⁸ *Kli Yakar* suggests a connection relating to the mitzvah opposing the Aristotelian eternal universe and supporting belief in the creation of a new world, but this hardly seems straightforward.

⁹⁹ Rabbi Avraham Gombiner (c.1633-c.1683), *Zayit Ra'anah* to *Yalkut Shimoni* 530; Rabbi Alexander Susskind (d. 1794), *Yesod VeShoresh Ha-Avodah, Shaar Hakolel* 20; Rabbi Eiyahu Schlesinger, Responsa *Shoalin VeDorshin*, vol. 4 p. 542, based on Rabbi Yosef Meir Weiss (1838-1909), *Imrei Yosef* to Deut. 22:7.

¹⁰⁰ *Baal HaTurim* to Deut. 22:7; Rabbi Chanoch HaKohen, in R. Rosenbaum, *Sefer HaZikaron leRav Moshe Lifschitz*, p. 63. In a different explanation, Rabbi Hirsch Dachawitz in *Pri Shlomo* pp. 84-85 relates it to the verse speaking about sending out animals free; he explains that *shiluach hakein* involves the idea of letting everything be under the rule of God alone, which will be a feature of the Messianic Era.

when one considers the logic behind them, clearly support the rationalist approach and oppose the mystical approach.

Highlighting Anti-Rationalism

The Vilna Gaon discusses the fact that *shiluach hakein* and honoring one's parents are the only mitzvot for which the Torah promises a good and long life.¹⁰¹ While we have seen above how the rationalist approach easily accounts for this, the Vilna Gaon takes a very different approach in explaining why these two mitzvot are highlighted as receiving the same reward. He takes the position that while honoring one's parents is an act of kindness, sending away the mother bird is, following the Zohar's explanation, an act of cruelty. The Vilna Gaon explains that a spiritually complete person must contain both traits. If one is only performing mitzvot of compassion, this does not mean that one is a servant of God; one might simply be a compassionate person by nature. It is therefore necessary to also have mitzvot of cruelty, just as Abraham was commanded to slaughter his son, in order to demonstrate that one is acting out of allegiance to God rather than following one's character.

The idea that one might have to sometimes override one's natural compassion in order to demonstrate loyalty to God is not innately an anti-rationalist position. And surely all would agree that it is legitimate and sometimes essential to inflict suffering upon animals for the greater good of mankind.¹⁰² However, the Vilna Gaon appears to be going further than that. While the rationalist camp understood that such a requirement may occur on a rare basis—such as with the *akeidah*—they apparently did not accept that it would be legislated into a normative mitzvah.¹⁰³ Any mitzvot that appeared to be cruel, such as slaughtering Amalek and so on, were always explained in such a way as to show how they were just. Furthermore, the Vilna Gaon does not make any mention of *shiluach hakein* being a rare aberration for a specific purpose, in contrast to the mitzvot normally being ethical; instead, he presents matters simply as there being some mitzvot that are compassionate, and some that are cruel, with both being equally beneficial to the one that performs them. It seems that he has a negative view of someone who performs mitzvot due to their resonating with his sense of compassion. Thus, his presentation appears to be stating that the mitzvot as a whole are not to be interpreted as an ethical system, rather they are acts of obedience. If this analysis is

¹⁰¹ Commentary to Proverbs 30:17, and *Imrei No'am* to *Berachot* 33b.

¹⁰² Such as experimenting upon animals in order to devise medical cures.

¹⁰³ Compare the Chatam Sofer with regard to this mitzvah: "Surely it is written. 'Its ways are ways of pleasantness;' it is inconceivable that God would command us to be cruel!"

correct, it is the ultimate antithesis to the rationalist view, and *shiluach hakein* is taken as the indicator of it.

Modern Anti-Rationalists

Modern followers of the mystical approach are enthusiastic about the rewards that are promised by the Midrash. They do not analyze the rationale behind the promise of rewards, which (as we have discussed) reveal that these generally make sense only in a case where one actually wants the birds. In corollary with the mystical belief that the fundamental purpose of the mitzvah is to engineer compassion for the Jewish People, the rewards add yet another reason to send away the mother bird even if one does not want the young. As a result, great efforts are made to fulfill the mitzvah. There are even advertisements for people to fulfill the mitzvah of *shiluach hakein*, publicized by community activists/ entrepreneurs who seek out suitable nests and charge up to \$600 for the facilitation of the mitzvah. Based on the wording of some of these advertisements, it seems that the reason why many are willing to pay such sums is not for the sake of serving God, and not even for the benefits to the Jewish People promised by the Zohar, but rather for the personal rewards that they anticipate. But since the promised rewards include obtaining a livelihood, finding a spouse, and conceiving children, those who are in unfortunate need for these blessings find such an opportunity to be tempting.

מודעה משמחת

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 For a nominal fee one can achieve the blessing of the Torah (Devarim 22:7) and receive **למען ייטב לך והארכת ימים**
PROSPEROUS DAYS AND LONGEVITY
 Additionally according to the Midrash one who completes this Mitzvah is guaranteed to
 - Conceive Children (Yalkut Shimoni Devarim 930, Midrash Rabbah Devarim 6:6)
 - Merit to find a spouse (Midrash Tanchuma Devarim, Yalkut Shimoni Devarim 925)
 - Purchase a brand new house (Midrash Rabbah Devarim 6:7, Midrash Tanchuma Devarim Quoted in Rashi Devarim 22:6)
 - Merit Livelihood (Radal on the Midrash, Devarim Rabbah 17)
 - Hasten the arrival of Moshiach (Midrash Rabbah Devarim 6:7, Midrash Tanchuma Devarim)
 - Will Not get harmed while traveling (Midrash Rabbah Devarim, Midrash Tanchuma Devarim, Radal 13)
 Openings are limited. Please reserve an opportunity by calling

Above: Some *shiluach hakein* advertisements from New York

Conclusion

If we look back at the history of this mitzvah, both in its laws and explanations, we see a clear pattern. In the Midrash, *shiluach hakein* was seen as demonstrating compassion, and there were rewards to reflect that. For the rationalist Rishonim, it was so clearly a mitzvah of compassion that a Talmudic statement indicating otherwise had to be either rejected or reinterpreted. It likewise does not appear to be a coincidence that the Rishonim understood the mitzvah as only applying in a case where one actually wants the young.

With the rise of kabbalah, the mitzvah was transformed into an act of cruelty that engineers a process that causes God to help His people. Correspondingly, the view arose that the mitzvah is obligatory even if one does not want the young, or at least recommended. With the Vilna Gaon, *shiluach hakein* even became a flag bearer for anti-rationalism. The Zohar's view began to become the dominant approach.¹⁰⁴

Most contemporary halachic authorities do rule that the mitzvah is optional, but this is merely due to the fact that they are operating via a purely halachic analysis, without factoring in the assumed rationale for the mitzvah. Nevertheless, the fact that many of them still consider it praiseworthy to perform the mitzvah, whereas the Rishonim would not have said this, means that they have radically transformed both the understanding *and* the application of the mitzvah.

The striking difference between the rationalist and mystical approaches to the mitzvah presents a difficulty for those who try to portray Jewish intellectual history as being monolithic. Accordingly, we find contemporary rabbinic authors engaging in feats of intellectual gymnastics in an attempt to harmonize the rationalist and mystical approaches.

Some attempt this by engaging in outright revisionism of the rationalist approach. In a popular contemporary work of the laws of *shiluach hakein*, which seeks to present a normative viewpoint, it opens with the following ruling:

¹⁰⁴ One contemporary volume of the topic, *Kan Tzipor*, has the Zohar's words preceding the table of contents, as setting the tone for the entire work.

From the standpoint of the essential law, there is no obligation to travel around the hills after a nest, in order to fulfill the mitzvah of *shiluach hakein*; yet nevertheless one should certainly make an effort to fulfill it, and it is a great matter. (Weinberger, *Shalech Teshalach*, p. 27¹⁰⁵)

Another such work claims that even those who saw the mitzvah as optional, and who considered that it does not apply if one does not want the young, would still say that it is praiseworthy to perform it.¹⁰⁶ As we have seen, both these works are severely distorting the halachic picture.

With regard to whether the nature of the mitzvah is one of compassion or cruelty, outright revision of the rationalist approach was not an option, due to the statements of the Rishonim being explicit. Instead, what we find are highly implausible attempts to show how the mitzvah is simultaneously compassionate and cruel.¹⁰⁷ While it is true that the act itself can involve aspects of both—the mother does suffer some distress upon being forcibly sent away, and there is compassion in not taking both mother and young—the presentation and focus of each explanation in the Midrash, Rishonim and Acharonim does not permit such reconciliations.

There is no intellectually honest way of avoiding Chatam Sofer's conclusion that the rationalist and mystic approaches to this mitzvah are irreconcilable. Menachem Kellner has compared the rationalist and mystic views of Judaism in general, with Rambam and the Zohar as paradigms of each model, and has shown that the difference between them is vast.¹⁰⁸ *Shiluach hakein* is a particularly striking example of this difference.

Martin Gordon has extensively documented the phenomenon of how with some mitzvot, the rise of mysticism caused a dramatic revolution in the understanding of the mitzvah.¹⁰⁹

¹⁰⁵ In the English edition of this work, pp. 57-58, he writes that even according to the *poskim* who maintain that the mitzvah is not obligatory, it is "certainly commendable to pursue this mitzvah."

¹⁰⁶ Rabbi Dan Schwarz, *Kan Tzipor*, p. 140.

¹⁰⁷ Weinberger cites Rabbi Shaul Barzam (as quoted in *Zichron Shaul* vol. II p. 161) stating that the act as a whole is one of cruelty, but it is done in a relatively compassionate way. Rabbi Aharon Yehudah Grossman, in *VeDarashita VeChakarta* pp. 464-465, presents a similarly far-fetched reconciliation of the rationalist approach with the mystical approach; he even acknowledges that it is strained, but states that he is doing it so as to avoid the sharp conflict between them (in accordance with *haredi* protocol).

¹⁰⁸ Menachem Kellner, *Maimonides' Confrontation with Mysticism*; see especially p. 39 and p. 288. See too Yaakov Katz, "Tradition and Crisis" (Hebrew), p. 255.

¹⁰⁹ "Netilat Yadayim Shel Shacharit: Ritual of Crisis or Dedication?" *Gesher* vol. 8 (5741) pp. 36-72; "Mezuzah: Protective Amulet or Religious Symbol?" *Tradition* 16:4 (Summer 1977) pp. 7-40. Both these articles can be downloaded at www.rationalistjudaism.com.

For example, for the rationalist Rishonim, mezuzah serves only to remind one of one's duties to God; whereas with the rise of mysticism came the idea that it also serves as a metaphysical protective device for the home. For the rationalist Rishonim, the mitzvah of washing one's hands in the morning serves only hygienic and psychological purposes, whereas with the rise of mysticism came the idea that one is removing harmful spiritual forces. This sometimes even had halachic ramifications, notwithstanding the alleged independence of halachah from mystical explanations of its reasoning. In tracing the history of the mitzvah of *shiluach hakein*, from Scripture through Chazal through to the halachic authorities of today, we see a similar metamorphosis—from compassion to cruelty; from a mitzvah so clearly rationalistic that any statements otherwise must be reinterpreted, to a mitzvah that celebrates the anti-rationalist approach; and from a mitzvah that is preferably unnecessary to a mitzvah that one should actively pursue. Notwithstanding apologetic attempts to interpret matters otherwise, it is an absolute and striking transformation of a mitzvah.

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