

Parashat Ki Tetze 5775, 2015

*Sending Away the Mother Bird*

Rabbi David Etengoff

Dedicated to the sacred memories of my mother, Miriam Tovah bat Aharon Hakohen, father-in-law, Levi ben Yitzhak, sister-in-law, Ruchama Rivka Sondra bat Yechiel, sister, Shulamit bat Menachem, Chaim Mordechai Hakohen ben Natan Yitzchak, Yehonatan Binyamin ben Mordechai Meir Halevi, Avraham Yechezkel ben Yaakov Halevy, HaRav Yosef Shemuel ben HaRav Reuven Aharon, the *refuah shlaimah* of Devorah bat Chana, and Yitzhak Akiva ben Malka, and the safety of our brothers and sisters in Israel and around the world.

If a bird's nest chances before you on the road, on any tree, or on the ground, and [it contains] fledglings or eggs, if the mother is sitting upon the fledglings or upon the eggs, you shall not take the mother upon the young. You shall send away the mother, and [then] you may take the young for yourself, in order that it should be good for you, and you should lengthen your days. (*Sefer Devarim* 22:6-7, this and all Bible translations, *The Judaica Press Complete Tanach*, underlining my own)

Two separate, but interdependent, *mitzvot* are contained in our *pasukim* (verses), namely, the prohibition of taking away the mother bird when she is protecting her young or eggs, and the positive commandment to send her forth prior to removing the fledglings or eggs. As with most halachic topics, our Sages present a variety of opinions regarding the interpretation of these commandments. Let us now examine a representative sampling of their views.

*Talmud Bavli*, *Berachot* 33b contains a discussion of our *mitzvot* in the context of that which is permissible or impermissible to utter in the course of one's *tefilah* (prayer). The Mishnah states: "If someone says: 'Your mercy encompasses (literally, "yagioo") the bird's nest'... we force him to be silent." This overall statement then generates the following Talmudic analysis:

However, when one says: "You are so compassionate and gracious that Your mercy extends to the bird's nest," what is the reason that we silence him? What impiety has he committed? This matter is disputed by two Amoraim [Talmudic Sages] in the West, i.e.

in the Land of Israel, - namely R' Yose bar Avin and R' Yose bar Zevida. One said that we silence him because he instills jealousy in the works of Creation. [Rashi: Since it appears that Hashem has mercy on the birds, but not on other creatures] And the other one said that we silence him because he renders the *mitzvot* of the Holy One, Blessed is He, into acts of mercy, - while, in truth, they are nothing other than decrees. (Translation, *The Shottenstein Edition, Talmud Bavli, Berachot*, vol. II, brackets my own)

In sum, according to Rav Yose bar Avin, one is proscribed from saying that Hashem's mercy "extends to the bird's nest" in his *tefilah*, since this will foment a jealous reaction from the rest of Creation. In contrast, Rav Yose bar Zevida opines that it is forbidden to perceive G-d's commandments as acts of mercy, since they should properly be viewed as nothing other than Divine edicts of the Master of the Universe.

The Rambam (Maimonides, 1135-1204), in a well-known passage found in the *Guide for the Perplexed*, maintains that the underlying reasoning for the prohibition of taking away the mother when she is on her young or eggs, and the positive precept to send forth the mother bird prior to removing the fledglings or eggs, is the fundamental obligation to demonstrate sensitivity to the needs of the mother bird:

If then the mother is let go and escapes of her own accord, she will not be pained by seeing that the young are taken away... If the Law takes into consideration these pains of the soul in the case of beast and birds, what will be the case with regard to the individuals of the human species as a whole? (*The Guide of the Perplexed*, vol. III: 48, translation, Shlomo Pines, page 600)

Maimonides was fully aware that his words explicitly contradicted Rav Yose bar Zevida's interpretation of the Mishnah. The Rambam's response to this concern, however, is quite telling and gives us an overall insight into his understanding of the *mitzvot*:

You must not allege as an objection against me the dictum of the [Sages], may their memory be blessed: "*He who says: Thy mercy extendeth to young birds, and so on.*" For this is one of the two opinions mentioned by us – I mean the opinion of those who think that there is no reason for the Law except only the will [of G-d] – but as for us, we follow

only the second opinion [my addition – that the *mitzvot* do, in fact, have logical and apprehensible explanations inherent therein.]

Thus, for the Rambam, our primary concern is centered upon the needs of the mother bird and our obligation to act toward her in a kindly and sympathetic manner. Almost parenthetically, he suggests that if the Torah is so concerned about the feelings of beasts and birds, the needs of human beings must be a priority as well.

The Ramban (Nachmanides, 1194-1270) openly rejected Maimonides' interpretation of our *mitzvot*. In one of his explanations, he changed the emphasis for these commandments from sensitivity to the mother beast or bird to the removal of brutality from the behavioral repertoire of mankind. Therefore, he states that the rationale of these *mitzvot* is, "in order that we will not have cruel hearts that will render us unable to demonstrate mercy." (*Commentary on the Torah, Sefer Devarim 22:6*, translation my own)

On measure, we have a significant range of opinions regarding the interpretation of our two *mitzvot*. Rav Yose bar Zevida maintains that it is forbidden to interpret these as having anything whatsoever to do with mercy, since all commandments are simply imperatives of the Master of the Universe. The Rambam differs from Rav Yose bar Zevida and holds that the reason we send away the mother bird is precisely to treat her sensitively and with mercy (*rachamim*). The Ramban repudiates the Rambam's position and suggests that the authentic reason for these commandments has nothing to do, per se, with the mother bird. Instead, expanding upon the actual words of the Ramban, he asserts that the *raison d'être* of these *mitzvot* is to encourage us to be merciful by emulating

Hashem regarding the *middah* (ethical characteristic) of *rachamim*. As the Torah states: “And the L-rd passed before him [Moshe] and proclaimed: L-rd, L-rd, merciful G-d, Who is compassionate and gracious, slow to anger and abundant in loving kindness and truth...” (*Sefer Shemot* 34:6 with my emendation)

May the entire Jewish people live lives that are dedicated to expressing mercy to all of Hashem’s creations. In that way, may we be *zocheh* (merit) to receive His *rachamim*.  
*V’chane yihi ratzon.*

Shabbat Shalom

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