

Ki Tetze

Taught by Steve Bailey

"A BIRD IN THE HAND..."

TEXT: Dev. 22:6-7

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

Among the scores of mitzvot presented in this sidra, we find the unique and fascinating law of "sending away the mother-bird." Although these two verses (6-7) describe the situation quite clearly, we are at a loss to understand the rationale for this mitzvah. If one happens upon a nest in which the mother-bird is sitting on her eggs to hatch them, or on the chicks to keep them warm, the person must send away the mother first if he should wish to take the chicks or eggs. Why send away the mother-bird?

The RambaM, in his *Guide for the Perplexed*, explains the reason for this mitzvah. Although the Torah allows us to eat (kosher) animals and birds, he says, we are required to kill them in the most humane and painless way. Reflecting a similar value, the Torah prohibits the slaughter of an animal and its young on the same day (Vayik.22:28). This is so that the young is not slain in the sight of its mother "*for the suffering of animals...does not differ from that of humans, since the love and tenderness of a mother for her loved ones...exists not only in humankind but in all living things.*" The same reasoning, continues the RambaM, applies to the mitzvah in our sidra, of sending away the mother-bird. "*When the mother is sent away, she does not see the taking of her young ones and does not feel pain.*" He ends with a moral observation: "*If the law says that such grief should not be caused to cattle or birds, how much more careful must we be not to cause grief to our fellow-human!*"

Not surprisingly, the RambaN disagrees with Maimonides. He cannot accept the explanation that the mitzvah is rooted in compassion for the feelings of animals. Surely if animals really had feelings like humans, the intentional killing of an animal -- even for food -- would be unethical and immoral. But God did not forbid the slaughter of animals for food (see our discussion in sidra Re'ay) or to serve higher human purposes, like korbanot. Neither is there any indication that the mitzvah is directed to benefit God in any way. Rather, says the RambaN, "*the advantage is to the person himself.*" The mitzvah of sending away the mother-bird is to teach us the trait of compassion and to refine our human emotions. In other words, although animals do not have feelings like humans, humans attribute human-like emotions to animals (pet owners will understand!) and therefore, will develop sensitivity empathically. Thus, the laws regarding cattle and birds are not motivated by compassion for their feelings (which are, in fact, not human), but to teach us traits of good character, so that we should not become insensitive through our domination over animal life.

Both the RambaM's and the RambaN's explanations are reasonable accounts of this enigmatic mitzvah. But Rav Hirsch is unwilling to accept either hypothesis. In his scientific approach to understanding the text, he is bothered by a number of questions:

1. This mitzvah we are studying is immediately preceded by the prohibition concerning a woman wearing men's clothing (interpreted as carrying a man's implements of war) and a man "wearing a woman's garment" (v.5). Since the order of topics in the Torah is not haphazard, there must be some conceptual connection between these laws.
2. The halachik discussion of our mitzvah includes two curious limitations: if the male bird is caring for the brood, the law of sending it away does not apply; it only applies to the female bird. Secondly, if the person initially took the mother and the chicks together, but then subsequently let the mother go free, he is not guilty of a transgression. Now if the purpose of the mitzvah was either compassion for the feelings of the mother-bird (RambaM) or to teach us the trait of humaneness (RambaN), *these two limitations do not make sense*. There should be no difference in showing compassion to the father or mother bird; and letting the bird go after the chicks are taken should not obviate the transgression, since the "damage" was already done.
3. The term used to "send away" the mother-bird is an emphatic, doubled verb, connoting an active sending away rather than a "release." The emphasis of the mitzvah, therefore, seems specifically tied to this action.
4. Finally, the ending phrase in v.7 is a rare phrase found only in connection with the mitzvah of honouring one's parents (in the "Ten Commandments"). Therefore, there has to be some conceptual association between these two mitzvot.

Considering all of these points, Rav Hirsch proposes a novel interpretation, with far reaching implications. To Hirsch, the focus of the commandment is on the mother-bird, but not on her feelings. *It is on her role*. The essence of the mitzvah is this:

When you are in the field and happen to come across a mother-bird occupied with her maternal functions, she is protected from harm and must be let free.

This is a powerfully symbolic act accentuating the highly valued role of motherhood. From a Jewish perspective, motherhood is a protected role, and while engaged in that role, the mother is to remain free and independent.¹

¹ Perhaps this notion contributes to our understanding of why women are freed from positive commandments that are bound to time. Her role "protects" her from the obligations of time-limited mitzvot...Perhaps. Therefore, the mother-bird has to be sent away, intentionally, in recognition of her protected role, although the chicks or eggs may be taken to serve human purposes.

How does this interpretation answer the questions raised above? How does it explain the association to the verse just preceding this law about cross-dressing (v.5)? Rav Hirsch notes that the accepted Rabbinic interpretation is that this verse does *not* refer to "cross-dressing" (transvestitism). Rather it prohibits a woman from adopting a predominantly *male role* (as expressed by her wearing weapons to go to war) and a man from adopting a primarily *female role* (as expressed by his use of cosmetics, primping his hair in an effeminate manner, as well as dressing effeminately, etc.). This law, then, is designed to protect the respective masculine and feminine roles in Jewish society -- and that is just the value which is symbolically expressed in the adjacent law of the mother-bird.

Hirsch's interpretation also explains why the law is applied only to the mother-bird and not the father-bird. Simply -- caring for chicks or hatching eggs is not his innate, protected role, and the symbolic statement does not apply. The interpretation also explains why letting the mother-bird go, even after the fact, removes the transgression (since he does, in deed, perform the symbolic act). Also explained is the strong emphasis on "sending away," since this act is the core of the symbolic statement.

Finally, we can recognize the inherent association with the fundamental mitzvah of honouring one's parents. The commandment addresses itself to *respect for the role of motherhood and fatherhood*. According to halacha: a) respectful behaviour towards parents is required regardless of the worthiness of a particular parent, and b) the requirement of respect extends to any person who fulfils the parental role (e.g., other relatives, teachers, guardians, etc.) because it is the *role* -- not simply the person -- which must be valued in Jewish society. This basic respect for parental authority is what will insure the continuation of the Jewish nation (accounting for the rare consequence attached to the mitzvah²). The symbolic act of sending away the mother-bird is supporting the identical value expressed in the commandment to respect one's parents, and thus, the similar consequence is described.

It's a pity we don't come across bird's nests too often, nowadays.

² "Long life" refers not to individual longevity, but rather to the continuation of the Jewish Nation on its homeland.