בס"ד

Shiluach Haken: Compassion or Cruelty?

Source Sheet by *Elise Loterman*

Deuteronomy 22:6-7

(6) If, along the road, you chance upon a bird's nest, in any tree or on the ground, with fledglings or eggs and the mother sitting over the fledglings or on the eggs, do not take the mother together with her young. (7) Let the mother go, and take only the young, in order that you may fare well and have a long life.

דברים כ״ב:ו׳-ז׳

(ו) כִּ֣י יִקָּרֵ֣א קַן־צִפּ֣וֹר ׀ לְפָנֶ֡יךָ בַּדֶּ֜רֶךְ בְּכׇל־עֵ֣ץ ׀ א֣וֹ עַל־הָאָ֗רֶץ אֶפְרֹחִים֙ א֣וֹ בֵיצִ֔ים וְהָאֵם֙ רֹבֶ֣צֶת עַל־הָֽאֶפְרֹחִ֔ים א֖וֹ עַל־הַבֵּיצִ֑ים לֹא־תִקַּ֥ח הָאֵ֖ם עַל־הַבָּנִֽים׃ (ז) שַׁלֵּ֤חַ תְּשַׁלַּח֙ אֶת־הָאֵ֔ם וְאֶת־הַבָּנִ֖ים תִּֽקַּֽח־לָ֑ךְ לְמַ֙עַן֙ יִ֣יטַב לָ֔ךְ וְהַאֲרַכְתָּ֖ יָמִֽים׃ (ס)

Deuteronomy 5:16

(16) Honor your father and your mother, as the LORD your God has commanded you, that you may long endure, and that you may fare well, in the land that the LORD your God is assigning to you.

דברים ה׳:ט״ז

(טז) כַּבֵּ֤ד אֶת־אָבִ֙יךָ֙ וְאֶת־אִמֶּ֔ךָ כַּאֲשֶׁ֥ר צִוְּךָ֖ ה' אֱלֹקֶ֑יךָ לְמַ֣עַן ׀ יַאֲרִיכֻ֣ן יָמֶ֗יךָ וּלְמַ֙עַן֙ יִ֣יטַב לָ֔ךְ עַ֚ל הָאֲדָמָ֔ה אֲשֶׁר־ה' אֱלֹקֶ֖יךָ נֹתֵ֥ן לָֽךְ׃ (ס)

Rashi on Deuteronomy 22:6:1

(1) כי יקרא - If it chance to be, this excludes that which is always ready at hand (in thy court yard) (Sifrei Devarim 227:1; Chullin 139a).

Rashi on Deuteronomy 22:6:2

(2) לא תקח האם THOU SHALT NOT TAKE THE MOTHER so long as she is sitting upon the young.

Sefer HaChinukh 544:1

(1) **To not take the mother upon the young:** That we should not take a bird's nest - the mother and the chicks or the eggs together - but rather that we should send away the mother. And about this is it stated (Deuteronomy 22:6), "do not take the mother upon the young."

Sefer HaChinukh 545:10

'If you chance upon a bird's nest in front of you on the path' - just like the path which is not acquired by you; so too all, etc. From here they said, 'Doves from the coop and doves from the attic that nested in cubicles and in edifices, and geese and chickens that nested in an orchard, [one is] obligated in sending away; but [if] they nested within the house, and also Herodian doves, [one is] exempt from sending away. [...And] Rav Yehuda ... said, '[If] he found a nest in the sea, [he is] obligated in sending away,'" as it is included in the expression, 'on the path,' "as it states (Isaiah 43:16), 'So said the Lord, who makes a path in the sea.'" And (Chullin 12:3) "[If] it was flying - [...if] its wings do not touch the nest, one is exempt from sending. [...If] there were[...] damaged eggs, one is exempt from sending, as it states (Deuteronomy 22:6), '[...] young birds or the eggs' - just as young birds are viable, so too [the] eggs [must be] viable [to fall under the law...] If one sent her away and she returned,[...] - even [several] times - one is obligated [to send her away again], as it states (Deuteronomy 22:7),' You shall surely send.'" And the rest of the details of the commandment are elucidated in the last chapter of Chullin.

Rashi on Deuteronomy 22:7:1

(1) למען ייטב לך וגו׳ THAT IT MAY BE WELL WITH THEE etc. — If in the case of an easy command which involves no monetary loss, Scripture states “Do this in order that it may be well with thee and thou mayest prolong thy days”, it follows à fortiori that this at least will be the grant of the reward for the fulfilment of commands which are more difficult to observe (Chullin 142a).

Sforno on Deuteronomy 22:7:1

(1) למען ייטב לך והארכת ימים, in the matter of dispatching the mother bird before taking her chicks, we find some display of protective concern by the Torah for the preservation of the species, an effort not to destroy the seed of the birds of

the field although they are הפקר, unclaimed property. In the example of the dispatch of the mother bird the Torah appears to teach us that even the display by us of concern for such totally unclaimed eggs or chicks is rewarded by the Creator with the party showing this empathy receiving dividends in this life and the principal (reward) in the world to come.

Rambam Guide of the Perplexed (3, 48)

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 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)

Ramban on Devarim (22:6)

Scripture will not permit a destructive act that will cause the extention of a species even though it has permitted the ritual slaughtering of that species. And he who kills mother and children in one day, or takes them while they are free to play away, is considered as if he destroys the species.

Tikkunei Zohar 23a

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 noone 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 compassion is thereby aroused upon the Shechinah and the children in exile.

Rabbi Natan Slifkin- Shiluach Haken: The Transformation of a Mitzvah

There is no intellectually honest way of avoiding… the conclusion that the rationalist and mystic approaches to this mitzvah are irreconcilable. Martin Gordon has extensively documented the phenomenon that with some mitzvot, the rise of mysticism caused a dramatic revolution in the understanding of the mitzvah. 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 services as a metaphysical protective device for the home… In tracing the history of the mitzvah of shiluach hakein from Scripture through Chazal through 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… it is an absolute and striking transformation of a mitzvah.