

# Zera Shimshon

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## Chapter XLIX: Ki Teitzei (Deut. 21:10–25:19)

### Essay 4. Sending away the mother bird from her nest

This essay discusses the commandment found in Deut. 22:6–7 to send away a mother bird from her nest prior to taking her eggs or chicks.

**בְּפֶרֶק ה'** דְּבִרְכוֹת הָאוֹמֵר עַל קֶן צִפּוֹר יִגִּיעוּ רַחֲמֵיךָ, מוֹדִים מוֹדִים מִשְׁתַּקִּין אוֹתוֹ, וְאַמְרִינוּ הֵתָם בְּגִמְרָא שְׁעוֹשֶׂה מְדוּתָיו שֶׁל הַקַּב"ה רַחֲמִים, וְאֵינָן אֵלָא גְזִירַת מִלְּךָ עַל עֲבָדָיו. קִשְׁיָה דְּהָא אַמְרִינוּ בְּמִדְרַשׁ פְּרָשָׁה זֹו וְכַשֵּׁם שְׁנַתְמַלְא הַקַּב"ה רַחֲמִים עַל הַבְּהֵמָה, כִּד גַּתְמַלְא רַחֲמִים עַל הָעוֹפּוֹת, מִזֵּנוּ שְׁנַאָמַר "כִּי יִקְרָא קוֹן-צִפּוֹר" וְכוּ', וּמִכַּאן נִרְאָה בְּבִירוּר שְׁעָקֵר טַעַם קוֹן צִפּוֹר הוּא מְשׁוּם רַחֲמִים. וְעוֹד אַמְרִינוּ הֵתָם יֵשׁ מִצְוָה שְׁמַתָּן שְׁכָרָה פְּבוֹד, וְיֵשׁ שְׁמַתָּן שְׁכָרָה עוֹשֵׁר, וּמֵה מַתָּן שְׁכָרָה שֶׁל מִצְוָה זֹו, שְׂאֵם אֵין לָהּ בְּנִים אֲנִי נוֹתֵן לָהּ בְּנִים, שְׁנַאָמַר "וְאֵת-הַבְּנִים תִּקַּח-לָהּ". וְאִךָ בְּנֵה צְרִיף עֵיוֹן מָה עֲנִינוּ שְׁכַר נָה שֶׁל הַבְּנִים עִם מִצְוָה זֹו.

**In chapter 5 of tractate Berachot**, the Mishnah states: “[Regarding] **one who recites** [in leading communal prayers]: ‘As **Your mercy is extended to a bird’s nest**, so too extend Your mercy to us . . . **we give thanks, we give thanks**’—[they] **silence him.**”<sup>1</sup>

**It says there in the Gemara**, that one problem is that by saying “we give thanks” twice, it sounds as though the prayer leader is praising two deities, G-d forbid! Another problem is that [the prayer leader] “**transforms the attributes of the Holy One, Blessed be He, into [expressions of] mercy, when they are nothing but decrees**”<sup>2</sup> of the King toward His servants. Rashi interprets the word “attributes” here to refer to the mitzvot, and that “transforming into [expressions] of mercy” means that the prayer leader was ascribing a reason for this mitzvah. There is generally a danger in ascribing reasons for a mitzvah, as one may then decide that the reason doesn’t apply and that the mitzvah can be ignored. For example, “enlightened” individuals argued that the reason for kashrut was because some food was unsafe, and that with modern advancements in food safety, the laws of kashrut could be ignored, G-d forbid!

**A difficulty of Rashi’s understanding of the Gemara is that it says in a Midrash for this parashah:**

**Just as the Holy One, Blessed Be He, is filled with mercy for animals, similarly He is filled with mercy for fowl. How [do we know this]? Because it is written, “If, [along the road], you chance upon a bird’s nest, [in any tree or on**

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<sup>1</sup> Mishnah Berachot 5:3; Berachot 33b.

<sup>2</sup> Berachot 33b.

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. You shall surely send away the mother, and take the offspring, in order that you may fare well and have a long life].”<sup>3</sup>

- Deut. Rabbah 6:1

**From here, it clearly appears that the main reason for the mitzvah of the bird’s nest is because of mercy.**

Question 1: If, as Rashi explains the Gemara, we silence the prayer leader because he’s ascribing a reason for the mitzvah, why does the Midrash seem to ascribe a reason for the mitzvah?

**Also, it is said there, in Deut. Rabbah 6:6, “There are some commandments for which the reward is honor, and there [are others] for which the reward is wealth. What is the reward of this commandment? That if one does not have children, I will give you children, for it is said, “take the offspring.” Even for this, it requires investigation.**

Question 2: **What connection does this reward of children have with this commandment?** After all, the Torah explicitly says “in order that you may fare well and have a long life.” It doesn’t say anything about also being rewarded with children.

אף זה יובן בפשיטות במאי דאיתא שם, דבר אחר מהו "שלם תשלח את האם", אם קיימת מצוה שילוח, את ממהר לבוא מלך המשיח, שכתוב בו "שילוח", שצאמר "הנה אנכי שלם לכם" וכו'. ובפרק ד' דיבמות אמרינו, אין בן דוד בא עד שיכלו כל הנשמות שבגוף, והואיל שמתן שכרם של מצוה זו שמהר לבא מלך המשיח, משום הכי יפקדוהו בבנים פדי שיכלו כל הנשמות שבגוף.

**But this will be understood plainly by what is brought:**

**Another matter: What is [the meaning of], “You shall surely send away the mother”? If you uphold the commandment of sending away the mother bird from the nest, you have hastened bringing the King Messiah, for “sending” is written about him, as it is said, “Lo, I will send the prophet Elijah to you before the coming of the awesome, fearful day of the L-rd.”**<sup>4</sup>

- Deut. Rabbah 6:7

**Also, in chapter 4 of tractate Yevamot, it is said, “The [Messiah,] son of David, will not come until all the souls of the body have been finished [i.e., until all souls that are destined to inhabit physical bodies will do so].”**<sup>5</sup> **Since the reward of this mitzvah is that it will hasten bringing the King Messiah, because of this, He will call forward the children to be born in order to finish all the souls of the body.**

Answer to Question 2: Thus, a Midrash connects sending away a mother bird to bringing the Messiah, and Yevamot says this won’t happen until all souls are born into bodies. This results in the birth of children. This explains the connection between sending away a mother bird and having children.

<sup>3</sup> Deut. 22:6–7.

<sup>4</sup> Malachi 3:23.

<sup>5</sup> Yevamot 63b.

וַעֲדִינן צָרִיכִין אָנוּ לַמּוֹדְעֵי אֵיךְ תְּלוּי בִּיאַת הַמְּשִׁיחַ בְּקִיּוּם מַצְנֵה זֶה. וְגַשׁ לֹאמֵר דְּאִיתָא בְּמִדְרַשׁ רֹת הוּבָא בְּשׁ"ךְ פְּרָשָׁה זֶה, "כִּי מִתּוֹךְ שֶׁהוּא מְשַׁלַּח אֶת הָאֵם הַיָּא הוֹלֵכֶת וְדוֹאֲגָת וּמַצְטַעֲרָת עַל קִנָּה וְעַל בְּנֵיהּ, וְהוֹלֵכֶת נֹעָה וְנִדְהָ וְרוֹצָה לְהַרְוֵג אֶת עֲצָמָהּ. וּמְרוֹב צַעֲרָה הַשָּׂר הַמְּמוּנָה עַל הַעוֹפוֹת מְבַקֵּשׁ רַחֲמִים מֵהַקַּב"ה, וְאֵז הַקַּב"ה מִתְמַלֵּא רַחֲמִים וְאוֹמֵר אִם זֶה הַשָּׂר מְבַקֵּשׁ רַחֲמִים עַל מֵינוּיָיו, אָנִי, שְׂאֲנִי רַחֲמָן וּמְמַנֵּי הֵם הַרַחֲמִים לֹא אֲרַחֵם עַל בְּנֵי, אִוִי שֶׁהִתְרַבְּתִי אֶת בֵּיתִי וְכו' מִי גָרַם כֹּל זֶה אוֹתוֹ שְׂקִיּוּם מַצְנוֹת שִׁלּוּחַ הַקָּן" עכ"ל. הַרִי מְבוֹאֵר הַיָּאד מַצְנוֹת שִׁלּוּחַ הַקָּן מְקַרְבֶּת הַגְּאוּלָּהּ.

Question 3: Besides the commonality of the word “send,” what is the connection between sending away the mother bird and the bringing of the Messiah?

**“We still need [the explanation of Rabbi Elazar] HaModa’i,”<sup>6</sup> [an expert in matters of Aggadah], how the coming of the Messiah depends upon fulfilling this mitzvah. It can be said that it’s brought in Midrash Ruth,<sup>7</sup> and it’s brought in Shach<sup>8</sup> for this parashah:**

**That because he sent away the mother bird, she goes wandering and worrying and sorry about her nest and about her offspring, and goes straying and wandering, and wants to kill herself. Because of her great pain, the guardian angel appointed over fowl requests mercy from the Holy One, Blessed be He. Then the Holy One, Blessed be He, becomes filled with mercy and says that if this angel requests mercy for those over whom he is appointed, “I — I, Who am merciful, and from Me come mercies, should I not have mercy upon My own children? Woe, that I have destroyed the House [i.e., the Temple] and I exiled My children, then I am filled with mercy and have mercy on the whole world.”**

**Who caused all this? The one who fulfilled the commandment of sending away [the mother bird from] the nest.**

*- Siftei Cohen on Torah, Ki Teitzei*

Answer to Question 3: **Thus, it is explained how the commandment of sending the mother bird away from the nest brings the redemption.**

<sup>6</sup> Megillah 15b; Shabbat 55b; Bava Batra 10b; Chullin 92a.

<sup>7</sup> Zohar Chadash, Ruth 77a: “There is an angel appointed over the birds . . . and when Israel performs this commandment, and the mother departs weeping and her children crying, [the angel] agonizes for his birds, and asks G-d: ‘Does it not say that “His compassion is on all of His works” (Ps. 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 compassion is thereby aroused upon the Shechinah and the children in exile.” *See also* Bahya ben Asher ibn Halawa (1255–1340) (“Rabbeinu Bachaye”), Commentary on the Torah, Ki Teitzei.

<sup>8</sup> Rabbi Mordechai Ha’Cohen of Safed (1523–98), *Siftei Cohen on Torah* (Venice 1605), parashat Ki Teitzei.

ועוד נמצאנו למדין בתירוץ המדרש הראשון, דאין הכי נמי שבמצינה זו יש בה מדת רחמים, אבל אינו מן הראוי לומר שנגזרה מצוה זו בשביל הרחמים, שהרי הרחמים אינם באים אלא לאחר מכאן, שמתמת הבכי של אותה האם אז הקב"ה מתמלא רחמים, ואדרבא מתחלה נראה כמו אכזריות, שהרי אותה האם משום הכי צועקת ובוכה מרוב צערה ואין אלו רחמים. ובהכי ניחא טובא לישנא שעושה מדותיו של הקב"ה רחמים ואינן אלא גזירות מלך על עבדיו, דבלאו הכי קשה דהיה לו לומר שעושה מצות של הקב"ה רחמים, דהיינו המצוה של שילוחם השן ואינם אלא גזירת מלך וכו', ומהו הלשון של מדותיו דנקט.

Zera Shimshon now returns to a discussion of Deut. Rabbah 6:1 and the relationship of mercy to the mitzvah of sending away a mother bird. **Also, we find that we have learned in the explanations of the first Midrash, that it is indeed so that within this commandment there is the attribute of mercy, but it is not proper to say that this mitzvah was decreed for the sake of mercy. After all, mercy does not come until after this, because of the crying of the mother bird, only then is the Holy One, Blessed be He, filled with mercy. To the contrary, it initially appears as cruelty, as that mother bird screams and cries out in great pain, and this is not mercy.** In fact, rabbis debate whether one should seek out this mitzvah or not. The Ramban teaches that the reason for the mitzvah is to prevent us from acting cruelly.<sup>9</sup> Because it is considered cruel, some rabbis are against performing the mitzvah, especially if one has no need for the eggs of chicks.<sup>10</sup> Other rabbis believe that it is permissible or even obligatory to perform the mitzvah.<sup>11</sup> For those interested in fulfilling the mitzvah, it should be noted that the cruelty can be minimized.<sup>12</sup>

**Thus, the language is fine that the Gemara says that [the prayer leader] is silenced because he transforms the *attributes* of the Holy One, Blessed be He, into [expressions of] mercy, when they are nothing but decrees of the King toward His servants.<sup>13</sup> For without this explanation above, [the wording] would be difficult to understand, for he should say that he transforms the *commandments* of the Holy One, Blessed be He, into [expressions of] mercy.**

<sup>9</sup> Ramban on Deut. 22:6.

<sup>10</sup> According to Rabbi Natan Slifkin, *Shiluach haKein: The Transformation of a Mitzvah* (2010), these include: Chatam Sofer (1762–1839), *Responsa*, Orach Chaim 100; Rabbi Baruch HaLevi Epstein (1860-1941), *Torah Temimah* to Deut. 22:7; Rabbi Menashe Klein, *Responsa Mishneh Halachot* 12:223; Rabbi Pinchas Horwitz (1730-1805), *Sefer HaMakneh* to Kiddushin 41a; Rabbi Yaakov Tzvi Mecklenburg (1785-1865), *HaKesav VeHaKabbalah* to Deut. 22:6; Rabbi Naftali Tzvi Berlin (1817-1893), *Meromei Sadeh*, part 5, p. 104; Rabbi Avraham Bornsztain (1838-1910), *Avnei Nezer*, Orach Chaim 481:6; the Chafetz Chaim (1838-1933), *Sefer HaMitzvot HaKatzet*, Mitzvot Aseh 74; Chazon Ish (1878-1953), *Commentary* on Yoreh De'ah 175:2; Rabbi Yechezkel Abramsky (1886-1976), *Chazon Yechezkel* to Tosefta Chullin 10, p. 39.

<sup>11</sup> According to Rabbi Natan Slifkin, *Shiluach haKein: The Transformation of a Mitzvah* (2010), these include: Rabbi Yair Bachrach (1638-1702), *Chavot Ya'ir*; Rabbi Tzvi Hirsch Eisenstadt, *Pitchei Teshuvah*; 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; Rabbi David Luria, *Chiddushei HaRadal*, *Midrash Devarim Rabbah* 6:3; Rabbi Chaim Vital, *Sha'ar HaMitzvot*, Introduction; Maharal (1525-1609), *Tiferet Yisrael*, end of chapter 61; Rabbi Akiva Eiger (1761-1837), *Commentary* on Shulchan Aruch, Yoreh De'ah 292:1; Rabbi Chaim Yosef David Azulai ("the Chida") (1724-1807), *Birkei Yosef*, Gilyon Shulchan Aruch, Yoreh De'ah 292:8; Rabbi Shlomo Zalman Auerbach (1910-1995), *Minchat Shlomo* 2:5:4.

<sup>12</sup> Some hold that while the mother bird must be sent away, the eggs or young need not be taken. *Responsum Chacham Tzvi* 83. While the majority view is that the eggs or young must be taken, *Aruch Hashulchan*, Yoreh De'ah 292:4, it seems that they can be restored immediately, and the mother would typically return to them.

<sup>13</sup> A section entitled "Omissions" at the end of the first edition corrects the text that had been presented earlier in the sefer for this essay. The Hebrew version presented here and the accompanying translation follows the correction.

**For** we understand that **the commandment of sending away** the mother bird from **the nest is nothing other than a decree of the king** upon his servants, and that we should be careful not to ascribe a reason for the mitzvot. **What is the significance of the language of “His attributes” that is used** instead by the Gemara?

ויש לומר שמדתו של הקב"ה היא "נחמתי את-אשר אחו", אף על פי שאינו הגון, "ורחמתי את-אשר ארחם", אף על פי שאינו כדאי כמו שאמרו רז"ל, וכשעושה חסד עם אחד אינו מחוייב לעשות חסד עם אחר, ונה האומר כשם שחסת על הקן חוס ורחם עלינו, נותן חיוב להקב"ה לרחם על זה אחר שכבר ריחם על אחר, ואינו אלא טועה.

**It can be said that the attribute of the Holy One, Blessed be He, is that “I will grant the grace that I will grant,”<sup>14</sup> even though [the one receiving it] is not worthy, “and show the compassion that I will show,”<sup>15</sup> even though it is not worthwhile, as the rabbis of blessed memory said.<sup>16</sup> When someone does kindness with one, he is not obligated to do kindness with another. But this [prayer leader] who says, “Just as You sheltered the nest, have mercy upon us,” seeks to oblige the Holy One, Blessed be He, to have mercy after He has already had mercy on another, and this is wrong.**

Answer to Question 1: We asked how the Midrash could ascribe a reason for the mitzvah, if (according to Rashi’s explanation of the Gemara), we silenced a prayer leader for doing that. We now see that the Zera Shimshon disagrees with Rashi here. The Gemara says “attributes” and not “commandments,” and the reason the prayer leader is silenced is because he is trying to force G-d’s hand to show mercy to us. Even though the prayer leader was silenced for a different reason, the concern about ascribing a reason for a mitzvah still stands independently, so we can still question the Midrash. But the rabbis feel that it is appropriate to try to understand the reasons, so as to make observance of the mitzvot more meaningful to us. We just need to be careful to realize that we are not certain as to the reasons for the mitzvot, and we are not allowed to rationalize and discard the mitzvot.

ואיברא שעל ידי מצוה זו מתגלגלים הרחמים, שפשוואה שנה השר הממונה על העופות מתמלא רחמים על העופות שהם עבדיו, מפל שכן אני שאף על פי שישראל כשאני עושים רצונו של מקום נקראים עבדים, עם כל זה מוכרח אני לרחם עליהם. ואפשר שיהיה זה להשתיק המדת הדין והמקטרגים על ישראל, כדאיתא במדרש על פסוק "והאלהים נסה את-אברהם" הן הוא דכתיב "נתתה ליראיך נס להתנוסס מפני קשט סלה", בפביל שתתקשט מדת הדין בעולם וכו', ועיין שם.

**In truth, mercy is rolled out because of this commandment, for when He sees that this guardian angel appointed over the fowl is filled with mercy for the fowl, who are His servants, G-d says to Himself: “All the more so, I—even though Israel, who does not fulfill the will of the Omnipresent, are called My servants—because of all this, I am obliged to have mercy upon them.”** I.e., as the evil Turnus Rufus observed, when we follow His will, we are called His

<sup>14</sup> Ex. 33:19.

<sup>15</sup> Id.

<sup>16</sup> Berachot 7a.

children, but when we do not follow His will, we are considered His servants.<sup>17</sup> Nevertheless, just as the guardian angel has mercy upon his subjects, G-d will have mercy upon His subjects.

**It is possible that this mitzvah of sending away the mother bird will silence the attribute of strict justice and the prosecuting angels working against Israel. This attribute of strict justice is what is brought in the Midrash on the verse:**

**“G-d tested [נסה] [*nisa*] Abraham”<sup>18</sup>—It is written, “Give those who fear You because of Your truth [קִשְׁת] [*koshet*] a banner [נֵס] [*nes*] for rallying, Selah!”<sup>19</sup>**

. . . .

[He tested them] **in order that the attribute of strict justice may be confirmed [טִיקַשְׁת] [*titkashet*] in the world.** [I.e., that people are rewarded for good deeds, and punished for bad deeds.]

- Gen. Rabbah 55:1

But perhaps the mitzvah of sending away the mother bird will act to counter the attribute of strict justice.

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<sup>17</sup> Bava Batra 10a.

<sup>18</sup> Gen. 22:1.

<sup>19</sup> Ps. 60:6.