

**“THE LEAST OF THE COMMANDMENTS”:
DEUTERONOMY 22:6-7 IN RABBINIC JUDAISM
AND EARLY CHRISTIANITY**

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Climaxing a passage which some find theologically or critically difficult, Matt 5:19 reports Jesus as saying: “Whoever then relaxes one of the least of these commandments and teaches men so, shall be called least in the kingdom of heaven.” The culprits in view have been variously identified with Paul or Paulinists, Libertines, or casuistic Pharisees. Others have theorized that this logion was a dominical saying lifted out of its original context, which was a controversy in which Jesus was addressing Pharisees who had accused him of antinomianism.

Still another question arises: What, precisely, is meant by “the least of these commandments”? G. D. Kilpatrick¹ and more recently R. J. Banks² have argued implausibly that Jesus was referring to his own instruction, but with good reason most interpreters

¹G. D. Kilpatrick, *The Origins of the Gospel According to St. Matthew* (Oxford, 1946), pp. 25-26. Kilpatrick argues that originally Matt 5:19 followed vs. 41, so that the phrase “the least of these commandments” refers to the commandments as revised by Jesus in vss. 21, 27, 33, 38. This conclusion, prompted by the lack of an antecedent for “these,” is opposed by W. D. Davies, *The Setting of the Sermon on the Mount* (Cambridge, 1964), p. 355.

²R. J. Banks, “Matthew’s Understanding of the Law: Authenticity and Interpretation in Matthew 5:17-20,” *JBL* 93 (1974): 226-242. This article is included without significant change as a chapter in R. J. Banks, *Jesus and the Law in the Synoptic Tradition*, SNTS Monograph Series 28 (London, 1975). As one reviewer has mildly observed, the attraction of Banks’s understanding of Matt 5:19 “must, however, be set against the improbability that Matthew could have allowed the term *entolai* to follow so closely on a reference to the Old Testament laws in verse 18 and yet expected it to be understood in a quite different and, in his Gospel, unique sense. The natural flow of thought is strongly against Banks’ argument here. . .” (Dick France in *Themelios* 2/1 [1976]: 30; cf. David Wenham, “Jesus and the Law: An Exegesis on Matthew 5:17-20,” *Themelios* 4 [1979]: 92-96).

have understood the "commandments" to refer to the laws of the Torah—whether conceived as limited to the Decalogue, or viewed more broadly as embracing the entire Mosaic code of 613 precepts, as traditionally numbered. But even if the usual interpretation is accepted, what specific commandment or commandments are here called "least"?

This article will argue that the Matthaean or dominical expression refers to the law of the bird's nest in Deut 22:6-7, or at least includes it. That law occurs in a section of Deuteronomy which contains a number of other laws that seem to be aimed at promoting humane treatment of animals. This is virtually unparalleled elsewhere in the Torah, except perhaps in Lev 22:26-30. The law of the nest reads: "If you chance upon a bird's nest, in any tree or on the ground, with young ones or eggs and the mother sitting upon the young or upon the eggs, you shall not take the mother with the young; you shall surely send the mother away, but the young you may take to yourself; that it may be well with you, and that you may prolong your days."

1. *Two Preliminary Linguistic Observations*

We must first make two linguistic observations. First, as Alexander Sand points out,³ Matthew uses the words *nomos* and *entolē* differently and with quite precise meanings. *Nomos* is the equivalent of *tōrāh*, referring to the whole body of Mosaic law. *Entolē* translates *mišwāh* and is used of individual precepts, whether one of the Ten Words, as in 15:3 or 19:17, or one of the other Mosaic precepts, as in 22:36, 38, 40.

Second, in order to make sense out of the saying in Matt 5:19, we must accept the point made by T. W. Manson and others, namely that the Greek phrase translated "one of the least of these commandments" represents an Aramaic idiom which would be more correctly expressed simply, "one of the least commandments."⁴ The Hebrew idiom was literally "light commandments,"

³Alexander Sand, *Das Gesetz und die Propheten: Untersuchungen zur Theologie des Evangeliums nach Matthäus* (Regensburg, 1974), pp. 33-36.

⁴T. W. Manson, *The Sayings of Jesus* (Grand Rapids, Mich., 1979), p. 154. Manson is probably following G. H. Dalman, *Jesus-Jeshua: Studies in the Gospels* (New York, 1929), p. 62.

as contrasted with “weighty” ones (*mišwôt qalôt we-mišwôt ḥomerôt*).

Matt 23:23 reflects something akin to this idiom: “Woe to you, Scribes and Pharisees, hypocrites! for you tithe mint and dill and cummin, and have neglected the weightier matters of the law, justice and mercy and faith; these you ought to have done, without neglecting those others.” We do not have here a completely parallel usage, however, for no specifically biblical commandment is cited or alluded to; rather, the concrete *application* of one of the Mosaic commandments—that of tithing—is contrasted with abstract *principles*—justice, mercy, and faith—which underlie the entire Torah. The expression, “the least of the commandments,” on the other hand, must refer to neither an application nor a general principle, but to a specific precept.

2. Light and Weighty Precepts

The apparently Hillelite distinction between light and weighty precepts is a commonplace throughout rabbinic literature, but—perhaps as a concession to Shammaite sentiments—the contrast is generally made in a context which stresses that both kinds of commandment are equally binding and stringent. Thus, the Jamnian Tanna Simeon b. Azzai said: “Run to the light as well as to the weighty commandment” (Aboth 4:2);⁵ and Judah ha-Nasi said: “Be as heedful of a light commandment as of a weighty one, for thou knowest not the recompense of reward of each commandment” (Aboth 2:1).

The quintessential example of a light commandment was the law of the nest (Deut 22:6-7), which for rhetorical reasons made an especially attractive contrast with the fifth commandment of the Decalogue in Deut 5:16—“Honor your father and your mother”—, for to these commandments were attached the same promises, “that your days may be prolonged” and “that it may be well with you.” Abba b. Kahana is credited with the clearest expression of this relationship: “The Scripture has made alike the least of the commandments and the weightiest of the commandments. The least commandment is that dealing with sending away the mother bird

⁵Cf. also Aboth de R. Nathan (resc. B), 2:3.

[Deut 22:6-7], and the weightiest is that dealing with honoring parents [Exod 20:12]; and with both it is written, 'That you may prolong your days' " (pQid. 1, 61b, 58).

A more elaborate version of Abba b. Kahana's dictum is in Deut. R. 6:2:

R. Abba b. Kahana said: The Holy One, blessed be He, said: Do not spend time weighing up the precepts of the Torah . . . and do not say, "Seeing that this precept is a great one, I will perform it because its reward is great, and seeing that the other precept is a minor one, I will not perform it." What did God do? He did not reveal to His creatures the reward for each separate precept, so that they may perform all the precepts without questioning. . . . So God did not reveal the reward of the precepts except two, the weightiest and the least weighty. The honoring of parents is the very weightiest and its reward is long life, as it is said, "Honor thy father and thy mother, that thy days may be long" [Exod 20:12]; and the sending away of the mother bird is the least weighty, and what is its reward? Length of days, as it is said, "That it may be well with thee, and that thou mayest prolong thy days." Hence the force of, "If thou chance upon a bird's nest."

Abba b. Kahana is a relatively late witness to this conception (late third century), but there is good reason to believe that he did not originate it; he is only the one who articulated it most neatly. His thought is really an expansion of the dictum ascribed to Judah ha-Nasi, quoted earlier. Even more important is the conclusion of the Mishnaic halakot based on the law of the nest, in Hullin 12: "If then of so light a precept concerning what is worth but one assarium the Law has said 'that it may be well with thee and that thou mayest prolong thy days,' how much more for the weightier precepts of the Law!" (Hullin 12:5b).

3. *Two Lessons: Importance of Law and Importance of Human Beings*

This last passage illustrates one of the two chief lessons for which the law of the nest is adduced in classical rabbinic literature. For the rabbis, this law taught two things: the importance of the law and the importance of human beings. If God is concerned about something so trivial, *a fortiori*, how much more is he particular about his weighty commandments. If God is concerned

about little birds, *qal we-homer*, how much more important is man! The birds are not important in themselves; they are but a foil for more important things. God's compassion for cattle and mercy for birds are affirmed (Deut. R. 6:1 and Lev. R. 27:11),⁶ but only to assure us of his concern for greater things.

God, says an anonymous midrash, "left not a thing in the world in connection with which He did not charge Israel with some commandment" (Num. R. 17:5), such as plowing, sowing, reaping, threshing, kneading dough, eating meat, slaughtering, and the bird's nest—there is a commandment about all of these things, showing how God is concerned about even the most trivial act.

Accordingly, the bird's-nest law underwent considerable halakic elaboration. The basic halakah is in Hullin 12, further supplemented in Tos. Hullin 10, and expanded in the Gemaras and Sifre on Deuteronomy, as well as other midrashim. Related mishnayot are also in Makkot 3:4, Berakot 5:3, and Megillah 4:9. We learn, for example, that the law applies only to wild birds, not domesticated fowl (Hullin 12:1, etc.), for the Scripture says, "If you *chance* upon a bird's nest." Unclean birds are also exempted (Hullin 12:2). If the mother bird was hovering over the nest, but not sitting on it, the law did not apply unless her wings touched it (Hullin 140b).

There was a dispute about whether the law applied to wild doves of the dove-cote (Hullin 141b), about whether a man could keep the mother bird if he were willing to incur the forty stripes (Mak. 3:4), and about whether the law applied to a captive fowl which had been consecrated to the Temple but had broken loose and escaped (Hullin 139a). The finder of the mother-bird, if ignorant that she had been sent away from the nest, could eat her without transgressing (Hullin 115a), but the law of the nest applies irrespective of how many times the mother bird returns to the nest. Moreover, it applies under all circumstances—whether the birds are taken for food or for the fulfillment of some other precept, such as for the sacrifice for a cleansed leper prescribed in Lev 14:4-7 (B.M. 31a).

⁶Cf. J. Wohlgenuth, "Vom Tier und seiner Wertung," *Jeschurun* 14 (1927): 585-610; "Das Leid der Tiere," *Jeschurun* 15 (1928): 245-267, 452-468; "Einfühlung in das Empfindungsleben der Tiere," *Jeschurun* 16 (1929): 455-481, 535-567.

The promises attached to the law of the nest gave rise to a poignant theological problem:

It was taught: R. Jacob [2d-cent. Tanna] says: There is no precept in the Torah, where reward is stated by its side, from which you cannot infer the doctrine of the resurrection of the dead. Thus, in connection with honoring parents it is written: "That thy days may be prolonged and that it may be well with thee." Again in connection with the law of letting the mother bird go from the nest it is written, "That it may be well with thee, and that thou mayest prolong thy days." Now in the case where a man's father said to him: "Go up to the top of the building and bring me down some young birds," and he went up to the top of the building, let the dam go and took the young ones, and on his return he fell and was killed—where is this man's length of days, and where is his happiness? But "that thy days may be prolonged" refers to the world that is wholly long, and "that it may be well with thee" refers to the world that is wholly good (Hullin 142a; cf. Tos. Hullin 10:16).

The Gemara informs us that R. Jacob actually saw such an occurrence. We are also told that it was a similar accident which caused Elishah b. Abuyah to lose his faith and apostatize, because he did not recognize the eschatological force of these promises as R. Jacob did (Hullin 142a; Qid. 39b; Ruth R. 6:4; Eccl. R. 7:8:1; pHag. 2:1).⁷

Thus the *mišwah* of the bird's nest serves to teach the stringency of the Torah and the rewards for keeping it, if not in this life, at least in the world to come. But the Rabbis also cited this precept to stress the duty to treat human beings humanely. Thus Deut 22:7 is seen as being violated by Pharaoh when he sent the fathers away and cast the sons into the river. Hence God said, "I also will cast thee into the sea and make thee perish," as is implied in Ps 136:15; but God himself did obey his law of not taking the mother bird with the young, for he said to Pharaoh: "Thy daughter, however, I will take and cause her to inherit Paradise" (Ex. R. 20:4; cf. Num. R. 10:2, where it says that Pharaoh's daughter was one of those who entered Paradise while still alive). In Gen. R. 76:6, the law of the nest is applied to Gen 32:11b (Heb., vs. 12), where Jacob prays God to deliver him from the hand of Esau, "lest he come and

⁷The concern here resembles that of Paul in 1 Cor 15:19-20.

slay us all, the mothers with the children." Abba b. Kahana, commenting on Lam 1:9, observes that the enemy transgressed the Torah in two matters: "It is written, 'Thou shalt not take the mother with the young' [Deut 22:6], but here [it is recorded], 'The mother was dashed in pieces with her children' [Hos 10:14], which was contrary to Thy Torah" (Lam. R. 1:9:37). That is to say, one transgresses the law of the nest by murdering human mothers.

The second-century Tanna Simeon b. Eleazar cites God's care for lowly creatures as proof of the worth of human beings, though he has a second thought about the matter: "Hast thou ever seen a wild animal or a bird practising a craft?—yet they have their sustenance without care and were they not created for naught else but to serve me? But I was created to serve my Maker. How much more then ought not I to have my sustenance without care? But I have wrought evil, and [so] forfeited my [right to] sustenance [without care]" (Qiddushin 4:14). Thus, one must take anxious thought about his life, after all! (Cf. Matt 6:26, where the same lesson is drawn from the birds, but without retraction at the end.)

Two parallel mishnayyot (Ber. 5:3 and Meg. 4:9) seem explicitly to disavow that the law of the nest bespeaks mercy for birds. The first reference reads: "If a man said [in his prayer], 'To a bird's nest do Thy mercies extend,' or 'May Thy name be remembered for the good [which Thou hast wrought],' or 'We give thanks, we give thanks,' they put him to silence." The second reference introduces virtually the same halakah thus: "If a man said [in his prayer], 'Good men shall bless thee!' this is the way of heresy; [if he said,] 'Even to a bird's nest do Thy mercies extend . . . they put him to silence.'"

The Gemara cites two different explanations of the disapproval of the prayer that blesses God for mercy to bird's nests. Jose b. Abin says it is because the petitioner "creates jealousy among God's creatures," but Jose b. Zebida says more directly that it is "because he presents the ordinances of the Holy One, blessed be He, as springing from compassion, whereas they are but decrees" (Ber. 33b; Meg. 25a).⁸

⁸I am grateful to Allan D. Kensky and Tikva Frymer-Kensky of Ann Arbor, Michigan, for their suggestion that the prohibition was introduced because such a prayer may have been used by Christians, and because it was interpreted as limiting God's concern.

The commandment, not the sparrow, is important. The word used for bird in Deut 22:6-7 is *šipôr*, generally a small bird, and generally understood to refer to undomesticated clean birds (cf. Hullin 139b-140a). The word is cognate with the Arabic *ʿašfûr*, which means sparrow, and the word may very well even be related to the Greek *sparassion*, the Latin *passer*, and the English word *sparrow*. It is translated "sparrow" in the RSV of Ps 84:3 (4) and Prov 26:2. In the LXX, *šipôr* is generally translated *strouthion*, which is always understood to mean "sparrow" in the NT. Sparrows were the cheapest form of life, a proverbial symbol of low value.

4. *Bird-Sayings and Related Concepts in the NT*

We may turn now from the rabbinic literature to the sparrow-sayings in the NT. Matt 10:29-31 states: "Are not two sparrows sold for an assarium? And not one of them will fall to the ground without your Father's will. . . . Fear not, therefore: You are more important than many sparrows." The Lucan parallel (Luke 12:6-7b) advertises five sparrows for two assariums. Hullin 12:5 prices one sparrow at one assarium. Thus, one assarium will purchase two and a half sparrows in Luke, two in Matthew, and only one in the Mishnah.⁹ In any case, the *assarium* (Gk., *assarion*; Heb., *ʿîsâr*) was virtually the smallest unit of currency, hence usually translated by the English "farthing" or "penny."¹⁰ God's care for the worthless bird is used to prove his concern for human beings.

The same message is to be obtained from Matt 6:26 and the Lucan parallel: "Look at the birds of the air: they neither sow nor reap nor gather into barns, and yet your heavenly Father feeds them. Are you not of more value than they?" We have already noted the close similarity of this saying to that of Simeon b. Eleazar in the Mishnah (Qid. 4:14). The primary thrust is the same.

Paul also makes this kind of use of the Mosaic laws which apparently had been intended to protect animals. Thus, in 1 Cor 9:9-10 he writes: "For it is written in the law of Moses, 'You shall not muzzle an ox when it is treading out the grain' [Deut 25:4]. Is it for oxen that God is concerned? Does He not speak entirely for our sake? It was written for our sake, because the plowman should

⁹I am tempted to attribute this discrepancy to the progress of inflation!

¹⁰Two *assaria* = one *pondion*; twelve *pondia* = one *denarius*.

plow in hope, and the thresher thresh in hope of a share in the crop." Paul's point is that therefore preachers should not be deprived of their due. (Cf. 1 Tim 5:17-18.)

Deut 22:10 inserts into the Levitical law of mixtures (Lev 19:19) the commandment, "You shall not plow with an ox and an ass yoked together." Whatever the original intent of this law may have been, Paul seizes upon it to teach a spiritual lesson about human beings: "Do not become unequally yoked together with unbelievers; for what partnership have righteousness and iniquity? Or what fellowship has light with darkness? What harmony has Christ with Belial? Or what has a believer in common with an unbeliever?" (2 Cor 6:14-15). The NT attitude, wherever we can test it, appears to be identical with that of the rabbinic literature: Human beings, not birds, are important.

Not only do the bird-sayings of Jesus and the rabbinic halakot concerning the bird's-nest law share a human orientation, but associated with them both is an eschatological motif. Just as R. Jacob interpreted the promise, "that it may be well with thee and that thou mayest prolong thy days," so as to refer to the World to Come, and warns against applying it to this life, even so Jesus prefixes his sparrow-saying with the admonition, "Do not fear those who kill the body but cannot kill the soul. . ." (Matt 10:28).

5. *Bird-Sayings in Patristic Literature*

There is nothing in the earlier patristic literature to change the tendency which we have noted in rabbinic literature and the NT. Although none of the early Fathers refer to Deut 22:6-7, or for that matter to Matt 5:19, Matt 10:29 was a favorite text of several of them: "Are not two sparrows sold for an assarium? . . ." Irenaeus cites this text several times in polemical contexts (*Adv. haer.* 2.26.2; 2.28.9; 5.22.2); he is mainly concerned to say that it would be impious and arrogant for someone to seize upon these words out of idle scientific curiosity and seek to determine the number of hairs on his own head or the number of sparrows captured in a day—information which spiritual men leave exclusively to God's ken. Tertullian, who refers to the verse in five different places, resembles more closely what we have seen. He argues *a fortiori* that martyrs are better than many sparrows (*De fuga* 3.2). The two sparrows of the Lucan saying represent flesh and spirit; and if they fall to the

ground, we will nevertheless be resurrected (*Scorpiace* 9.7-8; *De resurrectione* 35.9-10). Another kind of bird is the phoenix, and like Clement of Rome, Tertullian adduces it as proof of the resurrection. He concludes: "Our Lord has declared that we are 'better than many sparrows:' well, if not better than many a phoenix too, it were no great thing. But must men die once for all, while birds in Arabia are sure of a resurrection?" (*De resurrectione* 13.4, as translated in *ANF* 3:554). He also cites Matt 10:29 to show that no spouse dies without the Father's will—God alone can separate what he has joined together. Origen likewise sees in the sparrows an encouragement to martyrdom (*Contra Celsum* 8.70).

6. Conclusion: Community of Ethos

In all these matters there is an evident community of ethos between early Christianity and rabbinic Judaism. The expressions of that ethos are more complete in the rabbinic literature, because it is much more extensive, and because the reference to Mosaic laws such as the law of the bird's nest is much more explicit and direct than what we could expect to find in the NT or even in the Christian patristic literature.

The two main points of this ethos—that the law points to the importance of the law and that it points to the importance of human beings—are each summed up in the words of two great medieval Jewish masters. There is first the legal emphasis, expressed by Rashi in his commentary on Deut 22:6-7: "If (as a reward for the observance of) a light commandment, connected with which there is no monetary loss, the Torah has said, 'That it may be well with thee, and that thou mayest prolong thy days'—how much greater will be the reward (for the observance) of commandments which are more difficult."¹¹ Then there is the humanitarian emphasis, which is expressed by Maimonides in his explanation of the same passage: "If the Law provides that such grief should not be caused to cattle or birds, how much more careful must we be that

¹¹Trans. by Abraham ben Isaiah and Benjamin Sharfman, *The Pentateuch and Rashi's Commentary: Deuteronomy* (Brooklyn, N.Y., 1950), p. 200.

we should not cause grief to our fellow men" (*Moreh Nebuchin* 3.48).¹²

The second point of this ethos can be clearly documented in the NT, especially in Matthew. We ought to expect to find the first point of it there also, especially in the light of such texts as James 2:10-11 and Gal 5:3. It appears probable that the place to find this emphasis is Matt 5:19. If there was any specific precept of Moses which Matthew or Jesus could call "the least of the commandments," it seems likely that the law of the bird's nest is the best candidate for that distinction. It is so designated in the rabbinic literature, and is the only precept given that appellation there.

¹²Trans. by Charles B. Chavel in *The Commandments: Sefer Ha-Mitzvoth*, vol. 1: *The Positive Commandments* (London, 1967), *ad loc.*