

At the migrant detention center in Clint, Texas: “Outbreaks of scabies, shingles and chickenpox were spreading among the hundreds of children and adults who were being held in cramped cells... The stench of the children’s dirty clothing was so strong it spread to the [Border Patrol] agents’ own clothing — people in town would scrunch their noses when they left work. The children cried constantly.”¹

A House Oversight Committee Report notes that at least 2,648 children have been separated from their parents, often unnecessarily.² As of July 2019, “approximately 30 children separated from their parents more than a year ago... have not been reunited with a parent or released to a sponsor.”³

*Mitzvah goreret mitzvah, v’aveirah goreret aveirah.*⁴ One mitzvah leads to another, and one transgression leads to another. Ben Azzai points out that even the smallest acts are important, because they lead to bigger and bigger acts of the same kind. So, when I see, or read, or hear accounts like these about the treatment of immigrants on our southern border – families separated, children missing, asylum-seekers detained, people crowded into inadequate makeshift shelters without basic necessities – I wonder, how did we get here? Where did this snowball of inhumanity start?

The answer, I believe, is in this week’s parasha: not in the high drama of the captive wife, or the *ben sorer*, or of Amalek’s treachery, but in something far more basic – a small *mitzvah*, easily overlooked, but which sets the course of our moral lives: the *mitzvah* of the *kan tzippur* [bird’s nest].

¹ Romero, Simon et al. “Hungry, Scared and Sick: Inside the Migrant Detention Center in Clint, Tex.” Jul 9, 2019. Accessed Aug 9, 2019. <https://www.nytimes.com/interactive/2019/07/06/us/migrants-border-patrol-clint.html?module=inline>

² Committee on Oversight and Reform, U.S. House of Representatives. “Staff Report: ‘Child Separations by the Trump Administration.’” July 2019. Accessed Aug 29, 2019. pp 1-2. <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-07-2019.%20Immigrant%20Child%20Separations-%20Staff%20Report.pdf>

³ *ibid* pp 23

⁴ Pirkei Avot 4:2

כִּי יִקְרָא קוֹרְצֵפוֹר לְפָנֶיךָ בַּדֶּרֶךְ / בְּכַל־עֵץ אוֹ עַל־הָאָרֶץ / אֶפְרָחִים אוֹ בְּיָצִים / וְהָאֵם רֹבֶצֶת עַל־הָאֶפְרָחִים אוֹ עַל־
הַבְּיָצִים / לֹא־תִקַּח הָאֵם עִלְהַבְּנִים:

If you spot a bird's nest in front of you along the road, in any tree or on the ground, with chicks or eggs and the mother sitting over the chicks or on the eggs, do not take the mother with her children. (Deut. 22:6)

In our household of five, we go through a lot of eggs, but when **we** run low, our biggest debate is which supermarket has them on sale this week. Rashi wasn't quite so lucky in his day, so he was forced to think about this issue of the *kan tzippur* more carefully. And he asked a very important question: HOW? How do I fulfill this *mitzvah* properly? How does one follow the rules? How do we make sure that people have enough food to eat without breaking the commandment?

With that question in mind, Rashi dove in. He looked at the notes of generations of rabbis who parsed the words of Torah until they whittled the mitzvah down to its legal core. Rashi studied the Talmud and exegetic midrash, and at the end of the day, he had a five simple words to offer us to illuminate this verse of Torah: "*Prat limzuman* (פָּרַט לְמִזְמָן)" and "*B'odah al baneyah* (בְּעוֹדָה עַל בְּנֵיהָ)": The rule **doesn't** apply to domesticated birds that you've raised, and it **only** applies if the mother is physically lying on top of her young.

Rashi, following in the footsteps of his predecessors, plugged this commandment into his special study algorithm and came out with... the exceptions.

The same tradition that tells us to build a fence around the Torah⁵ – to celebrate holidays for an extra day to make sure we're on time, and to hunt down every crumb of *chametz* before Passover – in this case, actively codifies loopholes to **skirt around** the mitzvah.

Rashi does have a point. After all, people gotta eat! *Im ain ani li, mi li* – אם אין אני לי, מי לי? If I don't look out for my own needs, who will? And I'm sure that many of his contemporaries were relieved that the parameters of the halacha allowed them to have a hearty chicken dinner that night instead of just an omelet for breakfast. But searching for legal

⁵ Pirkei Avot 1:1

loopholes can be a slippery slope, and – like *mitzvot* and *aveirot* – one exception can easily lead to another.

If you glance over on the page – or scroll down in Sefaria – you’ll find Ramban’s commentary on the *kan tzippur*, and you might wonder, “Were these two Rishonim really reading the same verse?!”

Ramban looked at the *pasuk* and asked a very different question from Rashi’s HOW. Ramban asked, WHY? Why does this bird get her own verse of Torah? There’s already a separate commandment preventing us from killing two generations of an animal family in one day, so this verse must have a unique meaning. What does G-d want us to learn from it?

Like Rashi, Ramban did his research, but the opinions in the Talmud weren’t sufficient to answer *his* question of WHY. For that, he turned to RamBAM’s Guide for the Perplexed, where, in addition to legal clarifications, he found discussion of the rationale for the commandments, and consideration for the feelings of animals. From this, Ramban concluded that the *mitzvah* of the *kan tzippur* has a deeper purpose: לבלתי היות לנו לב אבזרי ולא נרחם – “that we should not have a cruel heart and be lacking in mercy.” Ramban recalled that the hen in this verse is not just a bird, but a mother, and a mother bird is no less attached to her young than is a human parent. If we cruelly kill her and her children in one fell swoop, then **we** are likely to be lacking in compassion in everything else we do. *K’she ani l’atzmi, mah ani* – בשאני לעצמי מה אני – If we only focus on our own needs, to the exclusion of all else, what does that make us?

For Ramban, the *mitzvah* of the *kan tzippur* is a moral training practice. It’s the small *mitzvah* whose observance keeps us on the path of greater and greater compassion, instead of greater cruelty. One act of mercy can lead to another.

This *mitzvah* is therefore not “for the birds” but for **us**, for our own benefit. Ramban seems to be admonishing Rashi: Yes, Rashi, you’ve got the rules right, but you’re missing the bigger picture! You can’t see the moral forest for the legal trees!

Rashi asked HOW to obey the *mitzvah* of the *kan tzippur* and found its lower limits. He accurately sketched out the boundaries of what we are allowed to do and what benefits we are

legally entitled to claim for ourselves. Ramban acknowledged that people do need eggs to eat, but brought the moral ramifications of how we treat the mother hen to the forefront. He saw the legal arguments and challenged us to think bigger – beyond tonight’s dinner and into the future. If we let ourselves off the hook once, even for a worthy cause, and get even a small taste of cruelty, we may just develop an appetite for it. To halt that process, we need to use the *kan tzippur* as a moral litmus test: When each of us spots a mother bird sitting on her eggs, do we see a parent clinging to her children, and feel compelled to deal mercifully with her? If not, perhaps one day we will face a human mother clinging to her children and see them as nothing more than animals to be caged or hunted.

When I look at the history of US immigration policy, and especially the conditions at the border today, it seems clear to me that we have failed Ramban’s test.

We started comparatively small. Although limitations on immigration have taken various forms over the years, from legal to economic to social, the core law being cited today with regards to incarcerating undocumented migrants was enacted in 1929.⁶ It sat on the books for decades but wasn’t often put into play. Eventually, though, one step at a time, the restrictions and enforcement grew. In 2005, Operation Streamline took a “zero tolerance” approach to unauthorized border-crossing. And in the spring of 2018,⁷ the current administration doubled down on that idea; it ended the existing programs that kept asylum-seeking families together while they awaited their court dates, and sought to use the harsh conditions of family separation and detention as intentional deterrents to scare others away.

Valeria Luiselli, a Mexican author who lives in the United States, took a family trip to the border town of Shakespeare, New Mexico. While she was there, she found an advisory on the town’s Web page: “There is an abundance of rattle snakes, animals, mine borings and shafts that can cause you injury or death. There is also the current danger of drug mules walking from the Southern Border into the Lordsburg area. You do not want to come across or stop any

⁶ 8 US Code 1325

⁷ Office of the Attorney General. “Memorandum for Federal Prosecutors Along the Southwest Border.” Apr 6, 2018. Accessed Aug 30, 2019. <https://www.justice.gov/opa/press-release/file/1049751/download>

person walking on the range.”⁸ When she asked one of the local residents to elaborate on the warning, he advised her that there were actually two dangers to watch out for: the “coyotes” who help sneak people into the country without going through Border Patrol or other legal processes, and the drug “mules” who smuggle drugs into the US. Luiselli’s suggestion that the newcomers could just be “people migrating” was drowned out. For this resident, there *were* no people crossing; there were only “the coyotes and the mules.”

All of Ramban’s warnings have come to pass. We **have** failed the morality test of the *kan tzippur*. We started generations ago, heading in the direction of cruelty rather than compassion, and our legal actions have officially made us a nation with a *lev achzari* – a heart focused on a harsh definition of strict legal justice – *v’lo nircheim* – and we offer no mercy.

We failed to heed the warning of the bird’s nest. We clearly still have more to learn, more to do, and more questions to ask.

Rashi approached the verse with the question of HOW, but he only showed us one piece of the puzzle. He pointed out the absolute bare minimum obligations of the law. His perspective provided the most leniency to relieve the hunger of our bodies, but it didn’t show us the upper reaches of the *mitzvah* that benefit our souls. Ramban sketched out that moral high ground with his question of WHY. He asked us to hold to the highest ideals of morality, rather than the lowest thresholds of legality.

As a country, we have spent too much time dwelling on the lower limits, the exceptions. Yes, it seems that we *can* legally deport parents before we find and reunite them with their children, but *should we*? Is the bare minimum enough?

To climb back up from the bottom, I think we need to ask a different question altogether: WHO? Who do we want to be as citizens and as a nation? How do we want to be known? In this month of Elul, when we pray that G-d will temper *din* with *rachamim*, judgment

⁸ Luiselli, Valeria. “The Wild West Meets the Southern Border.” *The New Yorker*. Jun 3, 2019. Accessed July 23, 2019. <https://www.newyorker.com/magazine/2019/06/10/the-wild-west-meets-the-southern-border>

with compassion, are we prepared to do the same? When the Prophet Isaiah promises us consolation, do we envision ourselves extending that message of comfort to all others?

Ramban saw the *mitzvah* of the *kan tzippur* as a benefit to **us** – a way to become our best individual selves and the best possible iteration of society. We can elevate our fulfillment of the *mitzvah* of the *kan tzippur* by following Ramban's advice: by treating every living being with compassion; by seeing every interaction with another person as an opportunity for building our moral character; by walking step by step away from harshness and towards mercy until it becomes routine. Our individual and collective actions may at first seem small, compared to the enormity of what we are facing, but *mitzvah goreret mitzvah*. Each step puts us on the path to creating bigger and greater good in ourselves and the world. We have both the obligation **and the power**, slowly but surely, to change a *lev achzari* into a *lev rachum* – a heart of cruelty into a heart of compassion. And only one question remains: *Im lo achshav, eimatai* – אם לא עכשיו אימתי? If we don't take those steps now, WHEN?