

Animal Experimentation

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For the person immersed in Torah observance and study, it is obvious that Torah is much more than a book of laws; it is the respository of divine values, ethics, and eternal truths. Thus we have to be guided not only by the strict letter of the law, but also by the spirit which imbues the mitzvot.

In his daily life, a person develops modes of interaction with those around him — family, friends, Jew, and Gentile. But it is also necessary to consider our relationship with the animal kingdom, to seek out the guidelines which will indicate to us proper and ethical attitudes towards animals. Although there are few specifics in the Torah itself concerning animals, the mitzvot that we do have unquestionably bespeak an attitude which places great importance upon treating living creatures with kindness; the rabbinic teachings in the Midrash and Talmud immeasurably reinforce this approach.

In this paper, we will be discussing the use of animals for various forms of medical and scientific, experimentation or other, non-food, use. Since the 18th century, organized efforts have been under way in America and Europe to make people more sensitive to animals' sufferings. Groups such as the Society for the Prevention of Cruelty to Animals and the National Anti-Vivisection Society have grown, their concerns ranging from the treatment of pets to protests over scientific experiments with any animal. There is no need to cite all the scriptural and rabbinic dicta

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concerning animals; however, a few selections from our literature will amply demonstrate the sensitivity for the welfare of animals which is inherent in Jewish thought.

Aside from the well-known regulations to slaughter an animal in the quickest, least painful method possible, the Torah also teaches that if one sees a donkey struggling under its burden, he must stop what he is doing and help the donkey's master unload the animal to alleviate its suffering.¹ And when one plows the field with his ox, he is forbidden to muzzle the animal.² This mitzva goes beyond the alleviation of physical suffering, for it teaches us to realize the psychological pain the animal might experience having to be surrounded by forage but unable to eat from it.

Our rabbis teach that even so great an individual as Moshe Rabbenu was not chosen by the Almighty to lead the Jews out of Egypt until he had proven his sensitivity as a shepherd guarding the flocks of Jethro.

And Moshe, too, was not tested by G-d except by [his treatment of] the flocks. Our Rabbis taught that when Moshe our teacher, may peace be upon him, was a shepherd for Jethro in the desert, a kid ran away, and he chased after it until he reached [a faraway place], where he chanced upon a pool of water. The kid stopped [running] in order to take a drink. When Moshe reached him, he said, "I didn't realize that you were running because you were thirsty. Now you must be tired!" Whereupon he picked up the kid and carried it on his shoulders. At that, the Holy One, Blessed by He, said, "You have so much pity to lead the flocks belonging to flesh and blood [Jethro] I swear that you will be the shepherd for My flock, Israel."³

The great man cannot be one who is callous to the needs and wants of those under his tutelage. Sensitivity to the needs of the weak is a prerequisite not only for a leader, however, but also for

1. *Shemot* 23:5

2. *Devarim* 25:4

3. *Midrash Rabbah, Shemot* 2:2

the ordinary Jew at all times. Our rabbis taught⁴ that a person cannot sit down to eat until he has fed his animals, based on the verse "And I will give grass in your fields for your animals, and [afterward] you shall eat and be satisfied."⁵

The Talmud teaches that the most revered sage, Rabbi Judah the Prince, was severely punished by Heaven because of callousness to an animal.⁶ Once as he was walking in the street, a young calf being led to the slaughter broke away from its keepers and ran to him, hiding in his robes. Rabbi Judah pulled the creature away and handed it over to the slaughterer, remarking to it "Go, for you were created for this purpose." What was really wrong with what the rabbi said? Was the animal not created in order to bring benefit for man? But there was a certain hardness of heart, a lack of pity, in allowing so very young an animal to be slaughtered.⁷ Therefore, Rabbi Judah suffered terribly from gastrointestinal ailments for years, and it was understood that his pain was a rebuke for his attitude. Only years later was he cured, when he demonstrated his sensitivity to an animal's feelings by not

4. *Berachot* 40a and *Gittin* 62b. See מגן אברהם; ט"ז ס"ק סז; מגן אברהם שבות יעקב ג:יג; ט"ז ס"ק סז; מגן אברהם who debate whether this is forbidden by biblical law or rabbinic restriction. See also שרי חמד חלק א pp. 41 and 219, who questions whether it is only a meal which is forbidden or whether it might even be forbidden to taste food before feeding the animal. Note ד"ה ומ"מ באור הלכה קס"ז ס"ו ד"ה ומ"מ. ספר חסידים תקלא discusses whether the prohibition extends even to drinking before he gives his animal, and מקור חסד אור ג probes whether the rule applies to the morning meal or to any time a person wants to eat. כתב סופר אר"ח ל"ב also writes on this.

In נתיבות עולם, נתיב הצדקה פרק ה' the Maharal expands upon the conceptual basis of the law, noting that someone who does an act of *chesed* with a person or with an animal actually receives a greater benefit than the recipient of the *chesed*.

He also explains why a person must feed his beast before himself partaking of a meal.

5. *Devarim* 11:15.

6. *Bava Metzia* 85a.

7. The Maharsha offers the explanation that although indeed a calf is meant to be slaughtered eventually, this one was almost new born, and Rebbi's attitude to it was unkind. The *Gaonim* fault him for lacking compassion for the animal which had turned to him for help.

allowing his maid to chase away a cat. On that occasion, he admonished her to be gentle, for "His mercy is upon all His creatures."

On the other hand, the Torah makes it abundantly clear that "the Earth and all the fullness thereof" were created for man's use and pleasure, that he is entitled to use animals for food, for work, for play, for his benefit. Is that the extent of man's control? Are there limits to what use man can make of animals, or does he have *carte blanche* in using them to satisfy his every whim? Specifically, are there halachic restrictions on performing experiments upon animals for the benefit of human? Whether animals can be used for various forms of experimentation is a question of crucial importance, particularly in light of the tremendous expansion recently in scientific experimentation in the medical field. Must the hoped-for gains be of life-saving proportions, or may an animal's life be taken even just to improve the quality of human life? Once we posit that an animal may be used in an experiment, are we required to take any precautions to minimize suffering in the course of that experiment? We will search for answers to these questions as well as to others which arise in the course of the following study.

Animal experimentation is a halachic issue whose resolution is important in its own right; incidentally, the inquiry to determine the halacha may also serve as a virtual paradigm of rabbinic methodology in carving a halachic path out of a welter of talmudic material, parts of which seem contradictory. It is fascinating to trace the development of Jewish legal thought on this matter, and we will observe how, over the centuries, scholars have maneuvered through a maze of rabbinic teachings in order to arrive at halachic rulings which are internally consistent and in accord with all the texts.

In *Chullin* 85b the following story is told:

רבי חייא נפל ליה יאניבא בביתניה אתא לקמיה דרבי אמר
ליה שקל עופא ושחוט על בוביתא דמיה.

Rabbi Hiyya had a pile of flax which became infested with worms. He came before Rabbi [to ask his advice]

and he said to him, "Take a bird and slaughter it over a tub of water."

The purpose of this was so that the worms would smell the blood and that would cause them to come out of the flax. The Gemara does not tell us whether the measure was effective, but that is not the point – clearly, Rebbi (Rabbi Judah the Prince who compiled the Mishna) felt no hesitation in recommending slaughter of a bird for a purpose other than food – as a matter of fact, it seems that the bird was to be used only as a means of gaining a financial benefit by saving the flax. Nor is this episode the only one of its kind, for in *Shabbat* 77b, we learn that "Rav said, 'Whatever G-d made in his world was not made for naught: He made a snail, which is [helpful for curing] a scab, [he made a] fly as an antidote for a hornet's sting.'" Here, again, we find the rabbis considering the use of living creatures for a person's use or benefit as a perfectly acceptable, even laudable option.⁸

On the other hand, there are passages in the Gemara which convey quite a different impression. Consider the following episode in *Chullin* 7b:

שמע רבי נפק לאפיה אמר ליה רצונך סעוד אצלי אמר לו
הן צהבו ניו של רבי ... כי אתא איתרמי על בהוא פיתחא

8. There are many other talmudic sources affirming this principle. See שבת קט: and גרא, אה"ע הי"ד אות מ as well as those cited by מ ע"ז י"ג: and חלקת יעקב א"ל and פסקי תו"ס ע"ז י"א, יבמות ע, חגיגה יד מהו סכוסי בלבא who cites the incident in Judges 14 – where Shimshon tied burning torches to the tails of foxes in order to incinerate the fields of the Philistines. However, he rejects this incident as a proper source, for there it was a case of life and death, and we cannot draw general principles from such a case.

Further discussion is to be found in ר"ן ב"מ ל"ב ד"ה ר' יוסי הגלילי בסוף רמב"ן דברים כ"ב:ו,

A unique approach to the subject is found in שמירת שבת כהילכתא קצ"א אות ב חלק ד'

explains the "Seh La-Azazel" as something that was permitted because it was being used for a mitzva.

For comments on the Jewish attitude to hunting, see פרדס יוסף, חלק ב', דף רל"ה ד"ה באברבנאל.

דהיו קיימין ביה כודנייתא חוורתא אמר מלאך המות בביתו של זה ואני אסעוד אצלו שמע רבי נפק לאפיה אמר ליה מזביננא להו אמר ליה ולפני עור לא תתן מכשול מפקרנא להו מפשת היזקא עקרנא להו איכא צער בעלי חיים קטלינא להו איכא בל תשחית הוה.

One time, Rebbi heard that Rabbi Pinchas ben Yair was coming. Going out to greet him, he asked if the revered Rabbi Pinchas would be willing to dine with him. When R. Pinchas ben Yair agreed, Rebbi's face "lit up" with joy. However, later, when the rabbi entered his host's domain, he was startled as he came through the door to see that there were white mules on the property. He exclaimed, "The Angel of Death is in this one's house, and I am going to eat with him?!" [Apparently, white mules were considered by him to be dangerous animals.] Rebbi was upset when he heard this and immediately offered to sell them, but R. Pinchas replied, "Do not place a stumbling block before a blind man!" [How can you sell someone a dangerous animal and put that person in danger?] So then Rebbi offered to let the mules go, to make them *hefker* [ownerless], but once again R. Pinchas objected, saying that that would only spread the danger further. Then Rebbi said he would remove their hooves, so that they could not harm anyone, but R. Pinchas objected that "this would entail pain to the animal." Finally, Rebbi decided that the only solution was to kill the animals, but here again R. Pinchas would not allow it, for "it is *bal tashchit* [a waste]."

The ultimate fate of the mules is not our concern here, but there is an important principle which we may discern: Rebbi wanted to perform a mitzva — *lo tasim damim bevaitecha* — to remove a dangerous object from his house, yet his mentor would not allow him to cause the animals pain, even if by doing so he would remove a halachic violation from his house.⁹

9. This text apparently is the source for the famous ruling of the *Nodah*

may slaughter the bird properly. There is no mention whatsoever of cruelty or pain to the animal.

What then is the halacha — is cruelty to animals to be avoided, as the Ramo indicates, or is it of no concern, as when the *shochet* has to prepare animal for slaughter? And if there is indeed a halachic principle about *tza'ar baalei chaim* (pain to animals), how is it balanced against other principles or values with which it may conflict?

Biblical or Rabbinic Halacha?

One of the first questions that has to be addressed is if *tzaar baalei chaim* is an *issur d'oraitha* (biblical prohibition) or an *issur d'rabbanan* (rabbinic regulation). If it is the latter, we know the rabbis customarily included in their ordinances the proviso that in case of distresses to the person, their rulings do not obtain; thus, animal experimentation could more readily be condoned because of the benefits to humanity. However, if the origin of the *issur* is in the Torah, it is a far more serious limitation.

Disagreement as to the severity of *tzaar baalei chaim* is already found in the Talmud, where considerable discussion is recorded on the issue — albeit without a definitive conclusion. In *Bava Metzia* 32b where this *sugya* is explicated, the majority of *Amoraim* debating the question clearly hold that *tzaar baalei chaim* is forbidden by the Torah. They challenge the minority opposing view, yet each challenge is effectively rebutted by the Gemara itself, leaving the impression that the minority position has considerable merit.

The majority of authorities in the periods following the talmudic age also consider *tzaar baalei chaim* to derive from a biblical injunction,¹⁴ and we may take the ruling of the Rosh as representative of that understanding:

14. ערוך השולחן רע"ב ב. וצב"ח הסכימו רוב הפוסקים דהוי מן התורה
אוצר מפרשי התלמוד ב"מ לב:
שדי חמד מערכה צ כלל ב
שער הציון או"ח של"ב אות ו; משנה ברורה, שם, אות ו
"אסור לעשות שום איסור דרבנן בשביל הבהמה רק מותר לומר לעכום."

בהמה שנפלה לאמת המים מביא כרים וכסתות ומניח
תחתיה בשבת משום דבטול כלי מהיכנו דרבנן וצב"ח
דאורייתא ואתי דאורייתא ודחי דרבנן.

If an animal fell into a pool of water on the Sabbath, he may bring pillows and covers and place them under it, for ... [the prohibition of using these items in this manner] is of rabbinic origin but [the prohibition of] causing pain to an animal is from the Torah and overrides the rabbinic [prohibition].¹⁵

Furthermore, following the same reasoning, the Rosh permits a Jew to instruct a Gentile to milk a cow if the excess milk is causing the animal distress.¹⁶ The Ramo also rules that the *issur* of causing an animal pain derives from the Torah.¹⁷

A qualified dissent is expressed by the Rambam who is, however, the sole outstanding halachist who seems to consider the *issur* as a rabbinic restriction only. He writes that "a Jew is not obligated to get involved with the animal of a non-Jew and its load but [should do so only] to avoid animosity [which failure to help might arouse in the non-Jew]."¹⁸ "אבל בהמה של עו"כ ומשאו אינו חייב להטפל בו אלא משום איבה"

We might deduce from this decision that Rambam considers the causing of pain to an animal to be a rabbinic teaching, for if it were Torah-mandated, it would make no difference whose animal

שמירת שבת כהילכתה פרק כ"ו
משנה ברורה תקכ"ג, ביאור הלכה (ונראה שהטעם משם דהוי צער בעלי חיים).
שי"ע הרב הלכות צב"ח ס"ח

15. However, not all rabbinic prohibitions are set aside. The *Mishnah Brurah* rules that one may not use his hands to help pull the animal out of the pit, since it is forbidden to handle an animal on Shabbat – even though the prohibition is rabbinic (*muktza*).
16. ראש, ב"מ לב in *Orach Chaim* 305;20, two opinions are brought concerning the permissibility of asking a Gentile to milk a cow on Shabbat. See also מרדכי ב"מ שם; מרדכי ע"ז יג; ריף ב"מ; מאירי ב"מ, חינוך, מצוה תנא (לפי הדומה דאיסור דאורייתא הוא).
17. רמ"א, חושן משפט רע"ב - ט: "וי"א לפרוק חייב אפילו אין עכו"ם שם משום דצב"ח הוי דאורייתא."
18. רמבם, הלכות רוצח יג:ט.

it is. However, there is some ambiguity here. There are two possible scenarios which Rambam could have had in mind – (a) an animal owned by a Gentile, struggling under the heavy burden it has to carry, needing someone to help remove the packs or (b) the same animal, carrying nothing, with the Gentile preparing to load packs onto its back. Which one does the Rambam mean when he says “the animal of a Gentile and its load” need be of no concern to the Jewish passerby? If it is the latter case, then Rambam is merely saying that Jew is under no religious obligation to lend a hand to a non-Jew who is loading up his animal (but maybe ought to help out in order to maintain friendly relations). If that be the case, then this passage is neutral on the question of whether the *issur* is biblical or rabbinic. On the other hand, if Rambam has in mind a situation where the animal has collapsed due to its burden, and yet he rules that the Jew need not get involved, obviously he maintains that the *issur* is only rabbinic.

Understandably, Rambam’s cryptic statement has aroused further debate in its own right. The Gaon of Vilna¹⁹ understands Rambam as definitely regarding *tzaar baalei chaim* as a rabbinic teaching, but the *Kessef Mishneh*²⁰ in his commentary to Rambam’s *Mishneh Torah*, sees it merely as a directive that a Jew need not put himself out to help a Gentile in the loading up of his animal.

19. גר"א, חושן משפט רע"ב י"א; פני יהושע; מנחת חנוך מצודה פ.

The *Or Sameach* notes that Rambam, in *Hilchot Shabbat* 25:18 and 26, seems to contradict himself, for there he rules that one should help an animal which fell into a pit on the Sabbath because “the rabbis did not rule where it might cause pain to an animal.”

The Gaon rejects any interpretation of this passage as teaching that rabbinic laws of Sabbath may be waived in deference to the *issur* of causing pain to an animal on the supposed grounds that it is of biblical origin. Not so, writes the Gaon. Rambam consistently considers the *issur* as a rabbinic mandate, but in this instance, there is *another* biblical ordinance which must prevail – the Torah specifically commands “rest” (*menucha*) on the Sabbath not only for us but for our servants and animals as well. Rambam overrides rabbinic Sabbath regulations in order to help the animal not due to the superior (biblical) origin of the command not to pain an animal, but due to the specific biblical command to assure rest for the animal on Sabbath.

20. כסף משנה הלכות רוצח יג.

Despite the failure to reach a consensus on the crucial question of the nature of the *issur*, the prevailing halachic position has been to regard it as a biblical injunction; this has remained the majority posture.

The Nature of the Issur

The prohibition of *tzaar baalei chaim*, causing pain to an animal, is a term which requires definition. Most rabbinic authorities reason that there is a halachic limit to the pain, i.e., that this is not an absolute prohibition. One must differentiate between the minor distress an animal experiences when it has to carry a rider – a “pain” which surely does not fall within the religious restriction of *tzaar baalei chaim* – and the pain it feels upon being whipped. Thus, the Ran rules:

משום צב"ח דאורייתא ומיהו דוקא צער גדול אבל צער
מעט לא.

Causing pain to an animal is a biblical prohibition but specifically only a great pain; however, minor pain is not.²¹

Despite acceptance of this distinction between kinds of pain, there are no halachic guidelines for determining what is “great” and what is “minor” pain. Thus, even in our own time, we do not have specific rulings on the extent of the *issur*; now that animal experimentation has become an important step in the development of medical and pharmaceutical innovations to help humans, there is a great need for clarification of the issue.

The author of *Shvut Yaakov* was asked if one may try medicines out on animals, to see what effect they might have. In giving an affirmative answer²², even in a case where the experiment might cause pain or death to the animal, he explains his apparent dissent from the Ramo’s caution that one ought to refrain from

21. חדושי אנשי רי"ן ב"מ לב ד"ה ר' יוסי הגלילי. The same distinction is made by מרדכי; the same also in נמוקי יוסף.

22. שבות יעקב ג"עא.

plucking feathers from a live goose, since it is cruel – in that case, he explains, one is directly causing the animal pain, but when drugs are administered the animal will not feel the ill effects for a while and therefore it is permissible. He maintains that the Ramo only objected to causing direct pain to the creature but would have found no reason to interdict a delayed-reaction pain.

However, in another responsum on this topic,²³ the *Shvut Yaakov* limits his permission in two important ways: he would not allow animal experimentation if the benefit to scientific knowledge is negligible, trivial, or minor, nor would he sanction it if an alternate method of acquiring the information needed is available.²⁴ We cannot allow pain to an animal just because it might be easier than using some other method to gain the same information. Unessential animal experimentation he considers as callous disregard for Jewish law.

The underlying issue here is the balance of desirable alternatives – people have needs but animals have rights, too. We cannot of course put them on an equal level, but on the other hand we cannot be insensitive to the suffering of an animal which might result in only a negligible benefit to mankind. It is difficult to give broad guidelines, but in the words of *Chelkat Yaakov*,

העולה לנו מכל הנ"ל דעפ"ד ודאי מותר לגרום צב"ח ע"י נסיונות בשביל חקירות מדעיות ולחכמת הרפואה אבל עפ"י חסידות להנצל ממידת אכזריות ודאי אסור כפסק הרמא.²⁵

What emerges from the above [discussion] is that according to Jewish law, it is certainly permissible to cause pain to animals through tests in scientific research or medical study, but as a [measure of] piety to save oneself from [developing] the quality of cruelty, it is certainly forbidden, in accordance with the ruling of the Ramo.²⁶

23. חלק בי"ק.

24. ר"מ סוף סי' כ"ג.

25. ח"א"ל.

26. The only exception would be *shechita*, since this is the only way one can slaughter the animal for consumption.

His opinion is challenged by Rabbi Yechiel Weinberg,²⁷ who objects to the introduction of “*chassidut*” – piety – into this context. One may opt to act with extreme piety when it is only his own welfare which is involved, argues Rabbi Weinberg. But when the lives and health of other people are involved, the scientific researcher is not entitled to let his personal morality hold him to a standard higher than that set by Jewish law. If by Jewish law, it is permitted to experiment on animals, the researcher should proceed to do so.

ומאי חזית דצב"ח עדיף מצער החולים אולי יוכל לעזור להם.

It is a warped sense of values which permits concern for the welfare of animals to take precedence over the needs of human beings.²⁸

Conclusion

Based on our research, we may make certain generalizations about the permissibility of performing scientific experiments on animals. Despite some disagreement as to the status of the prohibition of causing pain to animals – whether of biblical or rabbinic origin – virtually all rabbis agree that it is permitted to perform experiments on animals if the intention is to benefit humans. But that is not a blanket permit: although it is permitted in this case to cause pain to the animal, it is only “*דרכו של איניש בכך*” if it occurs because of “something which people customarily do.” What this limitation means in practical terms is not clear. It is of course understood that at all times, a

27. חלקת יעקב in שרירי אש חלק ג, ז.

28. In *Iggerot Moshe, Choshen Mishpat* II, No. 47, Rav Moshe Feinstein advises against swatting a fly which is bothering a person; he prefers that one kill the fly indirectly. In noting that he actually has no halachic source for this ruling, Rav Feinstein expresses his belief that killing has a deleterious effect on a person's character; therefore he advises that, whenever possible, it be done in an indirect manner. See also the commentary of *Or HaChaim* to Deuteronomy 13:18 and that of *N'tziv* to the incident of Pinchas. See תורה תמימה דברים י"א אות כ"ח.

person must be careful to minimize the animal's pain as far as possible.

There are other objections which may place a legitimate brake on animal experimentation. There are scientists who claim that some of the uses of animals in scientific studies are not needed, because the same results could be achieved without involving animals. Also, some destruction of animal life is wanton waste, tests performed for trivial purposes. These things would not be permitted under Jewish law. In addition, there is the fact that experiments are duplicated or triplicated in dozens of laboratories around the country and around the world, thus entailing massive loss of animal life. Given the ready access which scientists the world around have to each other's studies, the halacha could not countenance many experiments which do not really serve a worthwhile purpose but only repeat what has been done elsewhere.

Other scientific "advances" may also be barred by Jewish law simply because the discomfort they cause animals is too great for the negligible benefit to man. In this vein, R. Moshe Feinstein castigates the modern practice of penning up animals so that they can hardly move about as well as "fattening calves [with chemically doctored foods] in such a way that their flesh develops a white appearance." (White veal is considered preferable to dark veal). He denounces these practices as reprehensible.²⁹

What emerges from all this is that we cannot establish a firm ruling on the question of using animals in scientific experiments. Although in general, halacha condones causing pain to an animal if a person will benefit therefrom, that little "if" leaves a great deal to be determined. Much depends on the need and the circumstances, on the pain to the animal and the expected gain to humanity. This is a determination which the individual experimenter cannot make for himself but which must be addressed on an ad-hoc basis. As the horizons of scientific study expand, the need for further halachic guidelines grows.

29. אגרות משה אבן העזר חלק ד' צ"ב.