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## JUDAISM AND ANIMAL EXPERIMENTATION

While our teacher Moses was tending the sheep of Jethro in the wilderness a kid ran away from him. He ran after it until it reached Hasuah. Upon reaching Hasuah it came upon a pool of water [whereupon] the kid stopped to drink. When Moses reached it he said, "I did not know that you were running because [you were] thirsty. You must be tired." He placed it on his shoulder and began to walk. The Holy One, blessed be He, said, "You are compassionate in leading flocks belonging to mortals; I swear you will similarly shepherd my flock, Israel."

*Midrash Rabbah, Shemot 2:2*

### I. CONCERN FOR WELFARE OF ANIMALS

In a provocative comment, the German philosopher Arthur Schopenhauer remarked that the denial of rights to animals is a doctrine peculiar to Western civilization and reflects a barbarianism which has its roots in Judaism: "Die vermeintliche Rechtlosigkeit der Tiere ist geradezu eine emporende Rohheit und Barberei des Okzidents, deren Quelle im Judentum liegt."<sup>1</sup>

Whether denial of rights to animals is, or is not, barbaric is a value judgment regarding which reasonable men may differ. Whether or not Judaism actually denies such rights to animals is a factual matter which is readily discernible. The Bible abounds in passages which reflect concern for animal welfare. Concern for the welfare of animals is clearly regarded as the trait of a righteous person: "A righteous man regardeth the life of his beast; but the tender mercies of the wicked are cruel" (Proverbs 12:10). Divine concern for the welfare of animals is

reflected in numerous passages: “And His tender mercies are over all His works” (Psalms 145:9); “The eyes of all wait for Thee, and Thou givest them their food in due season. Thou openest Thy hand and satisfiest every living thing with favor” (Psalms 145:15–16); “He giveth to the beast his food, and to the young ravens which cry” (Psalms 147:9); “Who provides for the raven his prey, when his young ones cry unto God and wander for lack of food?” (Job 38:41); “. . . and should not I have pity on Nineveh, that great city, wherein are more than six score thousand persons . . . and also much cattle?” (Jonah 4:11); and “Man and beast thou preservest, O Lord” (Psalms 36:7). *De minimis*, these verses serve to establish the theological proposition that divine mercy extends, not only to man, but to members of the animal kingdom as well.

It further follows that, as a religion in which *imitatio Dei* serves as a governing moral principle,<sup>2</sup> Judaism must perforce view compassion towards animals as a moral imperative. It is told variously of one or another of the leading exponents of the *Musar* movement that he kept a cat as a pet and insisted upon feeding the cat personally. That individual is reported to have remarked to his disciples that his motivation was simply to emulate divine conduct. Since God extends “His tender mercies over all His works” (Psalms 145:9), man should eagerly seek opportunities to do likewise. The story is perhaps apocryphal in nature but remarkable nonetheless because of its wide currency in rabbinic circles.<sup>3</sup>

These sources, however, serve only to demonstrate that animal-directed conduct which is compassionate in nature constitutes a “good deed” but do not serve to establish a system of normative duties or responsibilities. Particularly in light of the strong nomistic element present in Judaism, the absence of normative regulations might well be regarded as indicative of the absence of serious ethical concern for the welfare of members of the animal kingdom. But this is demonstrably not the case, for, in Jewish teaching, there is no dearth of *nomoi* designed to protect and promote animal welfare. The most obvious example of a regulation having such an effect, and one which is clearly biblical in origin, is contained in the verse “If thou seest the ass of him that hateth thee lying under its burden, thou shalt forebear to pass by him; thou shalt surely release it with him” (Exodus 23:5). The selfsame concern is manifest in the prohibition against muzzling an ox while it threshes in order that the animal be free to eat of the produce while working (Deuteronomy 25:4). Similarly, Scripture provides that both domestic animals and wild beasts must be permitted to share in produce of the land which grows without cultivation during the sabbatical year.<sup>4</sup> Although the literal meaning of the biblical text may be somewhat obscure, talmudic exegesis understands Genesis 9:4 and

Deuteronomy 12:23 as forbidding the eating of a limb severed from a living animal. Jewish law teaches that this prohibition, unlike most other commandments, is universally binding upon all peoples as one of the Seven Commandments of the Sons of Noah. Sabbath laws contained in both formulations of the Decalogue reflect a concern which goes beyond the mere elimination of pain and discomfort and serve to promote the welfare of animals in a positive manner by providing for their rest on the Sabbath day: "But the seventh day is a sabbath unto the Lord thy God, in it thou shalt not do any manner of work . . . nor thine ox, nor thine ass, nor any of thy cattle . . ." (Deuteronomy 5:14). Even more explicit in expressing concern for the welfare of animals is the verse ". . . but on the seventh day thou shalt rest; that thine ox and thine ass may have rest" (Exodus 23:12).<sup>5</sup>

Judaism posits yet another regulation regarding the welfare of animals which is regarded as biblical in nature even though the law is not reflected in a literal reading of Scripture. The biblical statement "I will give grass in thy fields for thy cattle, and thou shall eat and be satisfied" (Deuteronomy 11:15) is understood in rabbinic exegesis as forbidding a person to partake of any food unless he has first fed his animals.<sup>6</sup> This regulation is derived from the order in which the two clauses comprising the verse are recorded. The passage speaks first of providing for animals and only subsequently of satisfying human needs.<sup>7</sup> Amplifying this rule, the Palestinian Talmud, *Yevamot* 15:3 and *Ketubot* 4:8, declares that a person is forbidden to purchase an animal unless he can assure an adequate supply of food on its behalf.

Nevertheless, it does not necessarily follow that a general obligation to be kind to animals, or minimally, a duty to refrain from cruelty to animals, can be inferred from any of these biblical regulations or even from all of them collectively. These regulations have been understood by some Sages of the Talmud as establishing particular duties, not as expressions of a more general duty. Nor is it demonstrably certain that even these limited and particular duties are designed primarily for the purpose of promoting the welfare of animals. Even with regard to the particular duty concerning removing the burden borne by a beast, the commandment does not necessarily reflect concern for the welfare of the animal. The obligation to release the ass from its burden (Exodus 23:5), i.e., to assist the owner in unloading merchandise or materials carried by a beast of burden, and the similar obligation to come to the assistance of a fallen animal (Deuteronomy 22:4) are understood by many classical commentators as duties rooted in a concern for the financial loss which would be suffered by the animal's master were the animal to collapse under the weight of the burden. Thus, in formulating the rationale underlying this commandment, R. Aaron ha-Levi of Barcelona, *Sefer ha-Hinnukh*, no. 80, declares:

The root purpose of the precept is to educate our spirit in the trait of compassion, which is laudable. It is unnecessary to state that a duty lies on us to take pity on a person suffering physical pain;<sup>8</sup> however, it is incumbent upon us to pity and rescue even a person who is in distress because of the loss of his money.

Yet, Judaism most certainly *does* posit an unequivocal prohibition against causing cruelty to animals. The Gemara, *Baba Metzi'a* 32b, carefully defines the limits of the obligation to assist in “unloading” the burden carried by an animal but hastens to add that assistance not encompassed within the ambit of the commandment concerning “unloading” (*perikah*) is required by virtue of a general biblical principle prohibiting cruelty to animals and requiring that measures be taken to alleviate “*tza'ar ba'alei hayyim*—the pain of living creatures.” Thus, for example, the commandment concerning “unloading” imposes no obligation in a situation in which an inordinate burden has been placed upon the animal. This exclusion may readily be understood in light of the earlier-cited analysis of *Sefer haHinnukh*. Since the master has brought the impending loss upon himself by reason of his own imprudence, there is no obligation to come to his aid. However, assistance is nevertheless required by virtue of the obligation owed to the animal. The Gemara proceeds to indicate that proper categorization of the nature of the obligation is not of mere theoretical interest but yields a practical distinction. No fee may be demanded for assisting in unloading an animal when such assistance is required by the commandment concerning “unloading,” i.e., when the concern is conservation of property; however, compensation may be required if the sole concern is for the welfare of the animal.<sup>9</sup>

The source of the obligation concerning *tza'ar ba'alei hayyim* which imposes a general concern for the welfare of animals is far from clear. Indeed, the Gemara, *Baba Metzi'a* 32b, cites a dispute with regard to whether the obligation with regard to *tza'ar ba'alei hayyim* is biblical or rabbinic in nature.<sup>10</sup> As has been indicated, if biblical in nature,<sup>11</sup> according to most authorities, this duty is not directly derived from the obligation of “unloading.” One notable exception is Rashi, *Shabbat* 128b. Rashi states that, according to those Sages of the Talmud who maintain that binding regulations may be inferred from the rationale underlying precepts, obligations concerning *tza'ar ba'alei hayyim* are directly derived from the verse “thou shalt surely release it with him” (Exodus 23:5).<sup>12</sup> Rambam, *Guide of the Perplexed*, Book III, chapter 17, and R. Judah he-Hasid, *Sefer Hasidim* (ed. Reuben Margulies), no. 666, regard the biblical narrative concerning Balaam and his ass as the source of the biblical prohibition against cruelty toward animals. These authorities indicate that the verse “And the angel of the Lord said unto him: ‘Wherefore hast thou smitten thine ass these three times?’” (Numbers 22:32) serves to establish a prohibi-

tion against conduct of that nature.<sup>13</sup> Me'iri, *Baba Metzi'a* 32b, is of the opinion that obligations concerning *tza'ar ba'alei hayyim* are derived from the prohibition against muzzling an ox while it is engaged in threshing (Deuteronomy 25:4). *Shitah Mekubbetzet, Baba Metzi'a* 32b, suggests that these obligations may either be derived from the prohibition against muzzling an ox engaged in threshing or, alternatively, *tza'ar ba'alei hayyim* may simply be the subject of *halakhah le-Mosheh mi-Sinai*, i.e., an oral teaching transmitted to Moses at Mount Sinai with no accompanying written record in the Pentateuch.<sup>14</sup>

Other scholars advance less obvious sources as constituting the scriptural basis for obligations concerning *tza'ar ba'alei hayyim*. R. Moses ibn Habib, *Yom Teru'ah, Rosh ha-Shanah* 27a, finds a source for such obligations in the verse “. . . and thou shalt bring forth to them water out of the rock; so thou shalt give the congregation and their cattle drink” (Numbers 20:8). Water was miraculously produced from the rock for the benefit of animals as well as of humans. Water was provided for the animals, states R. Moses ibn Habib, in order to obviate *tza'ar ba'alei hayyim*. In the opinion of this authority, Scripture specifically records that the miracle was performed on behalf of animals as an admonition to man directing him likewise to alleviate the suffering of brute creatures. R. Moses Sofer, *Hagahot Hatam Sofer, Baba Metzi'a* 32b, similarly regards obligations with regard to animal welfare as predicated upon emulation of divine conduct. Thus *Hatam Sofer* cites the verse “And His tender mercies are over all His works” (Psalms 145:9) as imposing an obligation upon man to exercise compassion toward animals. Earlier, *Sefer Haredim*, chapter 4, expressed the opinion that compassion toward animals is mandated by the commandment “and you shall walk in his ways” (Deuteronomy 28:9). Rambam, *Hilkhot De'ot* 1:6, apparently basing himself upon *Sifre*, Deuteronomy 11:22, renders the verse as meaning, “just as He is merciful so also shall you be merciful.”

It is nevertheless probably incorrect to conclude that concern for *tza'ar ba'alei hayyim* is predicated upon a legal or moral concept of animal “rights.” Certainly, in Jewish law no less than in other systems of law, neither the animal nor its guardian is granted *persona standi in judicio*, i.e., the animal lacks capacity to institute judicial proceedings to prevent others from engaging in acts of cruelty of which it may be the victim. This is so despite the unique provision in Jewish law to the effect that an animal that has committed an act of manslaughter is subject to criminal penalty but is entitled to due process of law, including a right analogous to the Sixth Amendment right of confrontation, viz., the requirement that the proceedings take place only in the presence of the accused animal.

In all likelihood, the rationale governing strictures against *tza'ar*

*ba'alei hayyim* is concern for the moral welfare of the human agent rather than concern for the physical welfare of the animals, i.e., the underlying concern is the need to purge inclinations of cruelty and to develop compassion in human beings.<sup>15</sup> This is certainly the position taken by many early authorities in their discussion of the rationale underlying specific commandments dealing with comportment vis-a-vis animals. Thus, in discussing the prohibition against muzzling an animal while it is engaged in threshing, *Sefer ha-Hinnukh*, no. 596, writes:

The root purpose of the precept is to teach ourselves that our souls be beautiful, choosing fairness and cleaving to it, and that [our soul] pursue lovingkindness and mercy. In habituating [our soul] to this even with regard to animals, which were not created other than to serve us, to be kindful of them in granting them a portion of the travail of their flesh, the soul acquires a propensity for this habit to do good to human beings and to watch over them lest he cross the boundary with regard to anything which is proper with regard to them and to compensate them for any good they perform and to satiate them with whatever they travail. This is the path which is proper for the holy, chosen people.

In a similar vein, Rambam, *Guide of the Perplexed*, Book III, chapter 48, declares, "The reason for the prohibition against eating a limb [cut off] a living animal is because this would make one acquire the habit of cruelty." Rambam, *Guide*, Book III, chapter 17, makes the same observation with regard to the general obligation with regard to *tza'ar ba'alei hayyim* in stating that that duty "is set down with a view to perfecting us that we should not acquire moral habits of cruelty and should not inflict pain gratuitously, but that we should intend to be kind and merciful even with a chance animal individual except in case of need."<sup>16</sup>

The concern expressed in these sources is that cruelty to animals consequentially engenders an indiscriminately cruel disposition. Acts of cruelty mold character in a manner which leads to spontaneously cruel behavior. *Tza'ar ba'alei hayyim* is forbidden because cruelty is a character trait which is to be eschewed. Practicing kindness vis-a-vis animals has the opposite effect and serves to instill character traits of kindness and compassion. Development of such traits results in spontaneous acts of kindness, compassion and mercy.

## II. SLAUGHTER OF ANIMALS

Since the concern is for the moral and spiritual health of the human agent rather than for the protection of brute creatures, it is not at all surprising that concern for *tza'ar ba'alei hayyim* is less than absolute.

The most obvious exception is the slaughtering of animals for meat which is specifically permitted by Scripture to Noah and his

progeny: “Every moving thing that liveth shall be food for you” (Genesis 9:3). Rambam, followed by *Sefer ha-Hinnukh*, regards this exception as circumscribed by the provisions surrounding the requirement for ritual slaughter in order to eliminate pain.<sup>17</sup> According to Rambam, those provisions are designed to limit the pain insofar as possible. Thus in the *Guide*, Book III, chapter 26, Rambam states:

As necessity occasions the eating of animals, the commandment was intended to bring about the easiest death in an easy manner. . . . In order that death should come about more easily, the condition was imposed that the knife should be sharp.

The same concept is reiterated by Rambam with even greater clarity in Book III, chapter 48, of the *Guide*:

For the natural food of man consists only of the plants deriving from the seeds growing in the earth and of the flesh of animals. . . . Now since the necessity to have good food requires that animals be killed, the aim was to kill them in the easiest manner, and it was forbidden to torment them through killing them in a reprehensible manner by piercing the lower part of their throat or by cutting off one of their members, just as we have explained.

*Sefer ha-Hinnukh*, no. 451, similarly states:

It has also been said with regard to the reason for slaughter at the throat with an examined knife that it is in order that we not cause pain to animals more than is necessary, for the Torah has permitted them to man by virtue of his stature to sustain himself and for all his needs, but not to inflict pain upon them purposelessly.

Rambam, *Guide*, Book III, chapter 26, makes it clear that the concern evidenced in the prescription of the mode of slaughter is identical with the consideration underlying the admonition concerning *tza'ar ba'alei hayyim*. Both the prescriptions concerning ritual slaughter and the prohibition against *tza'ar ba'alei hayyim* are regarded by Rambam as having been imposed “with a view to purifying the people,” i.e., in order to prevent internalization of cruelty as a character trait and to promote the development of compassion.<sup>18</sup>

Although Jewish law permits consumption of meat only if the animal has been slaughtered in the prescribed manner, there is not to be found an explicit statement in the various codes or in the writings of early authorities prohibiting other forms of slaughter in situations in which the animal is killed for other purposes. If, as Rambam explicitly states, ritual slaughter is ordained to obviate *tza'ar ba'alei hayyim*, it might well be presumed that other forms of slaughter are entirely excluded. Yet, as is well known, the ramifications and appli-

cations of Jewish law in fulfilling any specific commandment frequently are not coextensive with the rationale underlying the precept.<sup>19</sup> Thus it cannot be assumed that other modes of killing animals are proscribed by Jewish law, particularly if the method utilized is painless.<sup>20</sup>

In point of fact, there is some controversy among latter-day rabbinic decisors with regard to the permissibility of putting animals to death other than by means of ritual slaughter. Some authorities maintain that the very act of killing an animal constitutes *tza'ar ba'alei hayyim*; others maintain that considerations of *tza'ar ba'alei hayyim* pertain only to the treatment of animals while they are yet alive, but do not preclude the killing of animals by any available method. Stated somewhat differently, the latter authorities maintain that the act of putting an animal to death is excluded from the prohibition against *tza'ar ba'alei hayyim*. The authorities who forbid putting an animal to death (other than for the satisfaction of a legitimate human need, as will be shown later) apparently forbid even "painless" methods since the act of killing the animal *ipso facto* constitutes *tza'ar ba'alei hayyim*. Thus, according to those authorities, the destruction of an unwanted pet, for example, would be forbidden.

The most prominent latter-day authority to address this question directly is the preeminent eighteenth-century rabbinic decisor, R. Ezekiel Landau, *Teshuvot Noda bi-Yehudah, Mahadura Kamma, Yoreh De'ah*, no. 83. *Noda bi-Yehudah* declares emphatically that the mere killing of an animal does not involve transgression of the prohibition against *tza'ar ba'alei hayyim*, a prohibition which he regards as applicable "only if he causes [the animal] pain while alive."<sup>21</sup> In support of this ruling *Noda bi-Yehudah* cites a narrative reported in the *Gemara, Hullin 7b*. The narrative, in part, illustrates the Gemara's assumption that a wound inflicted by a certain type of mule may be particularly dangerous in nature. It is reported that R. Judah the Prince invited R. Phinehas to dine with him. The Gemara relates:

When R. Phinehas ben Yair arrived at the home of R. Judah he happened to enter by a gate near which were some mules. He [R. Phinehas] exclaimed, "The angel of death is in this house! Shall I dine with him?" Rabbi [Judah] heard and went out to meet him. He said to him [R. Phinehas], "I will sell them," He [R. Phinehas] said to him [R. Judah], "Thou shalt not put a stumbling block before the blind" (Leviticus 19:14). "I shall abandon them." "You would be spreading danger." "I shall hamstring them." "That would cause suffering to animals." "I shall kill them." "There is a prohibition against wanton destruction" (Deuteronomy 20:19).

Since R. Judah suggested killing the animals after already having been apprised that mutilating them is forbidden, argues *Noda bi-Yehudah*, it may be deduced that putting an animal to death does not constitute a proscribed form of *tza'ar ba'alei hayyim*. Moreover,

R. Phinehas objected to this proposal only because it would involve “wanton destruction,” but not on the basis of considerations of *tza’ar ba’alei hayyim*. An argument based upon the narrative recorded in *Hullin 7b* identical to that of *Noda bi-Yehudah* was earlier advanced by R. Gershon Ashkenazi, *Teshuvot Avodat ha-Gershuni*, no. 13.<sup>22</sup>

It is nevertheless clear from the discussion of *Noda bi-Yehudah* that it is forbidden to put an animal to death in a manner which involves pain prior to its demise. For that reason *Noda bi-Yehudah* declines to sanction withholding of food and water from an animal in order to cause its death. The method employed must be relatively swift in order to avoid pain to the animal while it is yet alive.

The argument advanced by *Noda bi-Yehudah* in support of his contention that the killing of an animal is not a prohibited form of *tza’ar ba’alei hayyim* is, however, rebutted by the nineteenth-century scholar, R. Joseph Saul Nathanson, *Teshuvot Sho’el u-Meshiv, Mahadura Tinyana*, III, no. 65. *Sho’el u-Meshiv* notes that the white mules in the home of R. Judah the Prince were regarded as posing a threat to human life. Ostensibly, all prohibitions, including both the prohibition against *tza’ar ba’alei hayyim* as well as “thou shalt not wantonly destroy” may be ignored in order to eliminate danger to life. However, observes *Sho’el u-Meshiv*, the danger could not have been of a significant magnitude since Rabbi Judah had already kept the mules in his custody for a significant period of time without the animals having manifested any sign of aggressive behavior. Hence, since no actual danger threatened, “wanton destruction” could not be sanctioned. However, argues *Sho’el u-Meshiv*, pain may be inflicted upon animals in order to alleviate human suffering of a comparable magnitude. Therefore, the transitory pain attendant upon the swift death of an animal would have been justified in order to eliminate even an improbable threat to human life. Hamstringing the mules would, however, have resulted in ongoing suffering on the part of the animals and could not be sanctioned since the suffering caused to the animal would have been disproportionate to the human anguish alleviated thereby.<sup>23</sup> Accordingly, concludes *Sho’el u-Meshiv*, it may be inferred that causing the death of an animal is justifiable only if necessary to alleviate human pain, even if such pain is minor in nature, provided that no “wanton destruction” is involved. However, it cannot be inferred that causing the death of an animal is excluded from categorization as *tza’ar ba’alei hayyim*. According to *Sho’el u-Meshiv*, the exchange between R. Phinehas and R. Judah serves only to support the conclusion that animals may be killed when necessary for human welfare but does not yield the conclusion that killing animals is excluded from the prohibition against *tza’ar ba’alei hayyim*.

A twentieth-century scholar, R. Yechiel Ya'akov Weinberg, *Seridei Esh*, III, no. 7,<sup>24</sup> cites a statement of the Gemara, *Avodah Zarah* 13b, in support of the position that putting an animal to death does not constitute a forbidden form of *tza'ar ba'alei hayyim*. The Gemara's discussion centers upon the problem presented by an animal that has been sanctified during the period following the destruction of the Temple. Since the animal cannot be used for its intended purpose and it is also forbidden to derive benefit from such an animal or to make use of it in any way, the animal can only serve as a vehicle for transgression. Its elimination, if halakhically permitted, would clearly be desirable. The Gemara queries, "Why can it not be made a *gistera*?" i.e., why can it not simply be killed by cutting it in half? It is evident from the question, argues *Seridei Esh*, that destroying an animal does not involve the prohibition of *tza'ar ba'alei hayyim*. This argument, however, is not as compelling as it might appear. As will be shown, according to almost all authorities, *tza'ar ba'alei hayyim* is permitted when designed to serve a human need. *Noda bi-Yehudah, Mahadura Kamma, Yoreh De'ah*, nos. 82 and 83, contends that elimination of a potential source of transgression constitutes such a need. Hence rendering the animal a *gistera* might be sanctioned, not because causing the death of an animal is uniformly permitted as not involving an infraction of strictures against *tza'ar ba'alei hayyim*, but because even though it does involve a form of *tza'ar ba'alei hayyim*, causing pain to an animal is permitted when designed to serve a human need. The query "Why can it not be made a *gistera*?" serves to establish that one of two principles is correct: Either the killing of an animal is excluded from the prohibition against *tza'ar ba'alei hayyim* or *tza'ar ba'alei hayyim* is permitted when designed to serve a human need. Accordingly, this source does serve to establish the principle that killing an animal for a purpose designed to serve a human need does not entail transgression of strictures against *tza'ar ba'alei hayyim*.<sup>25</sup>

Both *Seridei Esh* and R. Judah Leib Graubart, *Teshuvot Havalim ba-Ne'imim*, I, no. 43, sec. 4, demonstrate that *Tosafot* maintains that killing *per se* does not constitute an act of *tza'ar ba'alei hayyim*. The Gemara, *Baba Batra* 20a, indicates that considerations of *tza'ar ba'alei hayyim* prohibit the severing of a limb from a living animal in order that the limb may be used to feed dogs. Yet *Tosafot* states that the entire living animal may indeed be cast before dogs, which will then prey upon the animal. Thus, *Tosafot* apparently maintains that although a limb may not be torn from a living animal, nevertheless, causing the death of the animal in much the same manner does not involve transgression of the prohibition against *tza'ar ba'alei hayyim*.<sup>26</sup> *Teshuvot Avodat ha-Gershuni*, R. Meir Fischels, quoted by *Teshuvot Noda bi-Yehuda, Mahadura Kamma, Yoreh De'ah*, no. 82, and

*Havalim ba-Ne'imim* also cite the comment of *Tosafot, Sanhedrin* 80a, in which *Tosafot* remarks that withholding food and drink from an animal constitutes *tza'ar ba'alei hayyim* but that causing its death by use of a hatchet does not.<sup>27</sup>

However, the exclusion of killing animals from the prohibition of *tza'ar ba'alei hayyim* is not recognized by all authorities. Although his comments are not cited in this context by latter-day authorities, Rambam apparently maintains that the killing of an animal, in and of itself, constitutes a form of *tza'ar ba'alei hayyim*. Rambam, *Guide of the Perplexed*, Book III, chapter 17, states:

. . . Divine Providence extends to every man individually but the condition of the individual being of other living creatures is undoubtedly the same as has been stated by Aristotle. On that account it is allowed, even commanded, to kill animals; we are permitted to use them according to our pleasure. . . . There is a rule laid down by our Sages that it is directly prohibited in the Torah to cause pain to an animal based on the words: "Wherefore hast thou smitten thine ass?" (Numbers 22:32). But the object of this rule is to make us perfect; that we should not assume cruel habits; and that we should not uselessly cause pain to others; that, on the contrary, we should be prepared to show pity and mercy to all living creatures, except when necessity demands the contrary: "When thy soul longeth to eat flesh" (Deuteronomy 12:20).<sup>28</sup> We should not kill animals for the purpose of practicing cruelty or for the purpose of sport.<sup>29</sup>

Rambam's comments regarding unnecessary killing of animals, especially as they single out for censure the killing of animals for sport, stand in sharp contrast to the position of *Noda bi-Yehudah* particularly as formulated in *Mahadura Tinyana, Yoreh De'ah*, no. 10, in which *Noda bi-Yehudah* addresses the question of the permissibility of engaging in hunting as a pastime.<sup>30</sup> Although *Noda bi-Yehudah* is severely critical of those who engage in this activity on the grounds that hunting is both frivolous and dangerous, he explicitly states that it cannot be proscribed as a form of *tza'ar ba'alei hayyim* since, in his opinion, putting animals to death is not encompassed within the ambit of that prohibition. A similar statement attributed to R. Joseph ibn Migas (known as Ri Migash) is quoted in *Shitah Mekubbetzet, Baba Batra* 20a. In contrast to the earlier cited comments of *Tosafot*, Ri Migash states that the slaughter of a domestic animal in order to feed its flesh to dogs constitutes no less a form of *tza'ar ba'alei hayyim* than does the tearing of a limb from an animal while it is yet alive. Ri Migash apparently maintains that, although animals may be utilized in a usual and customary manner in order to satisfy human needs, they may not be subjected to pain and discomfort in conjunction with a use which is not usual. Ri Migash contends that, since it is not customary to slaughter animals for dog food, such slaughter even if performed in the ritual manner "is also *tza'ar ba'alei hayyim* for it is killing and not ritual slaughter."<sup>31</sup>

In a similar vein, *Sefer Ha-Hinnukh*, no. 451, explains that the rationale underlying the commandment concerning ritual slaughter is the consideration of *tza'ar ba'alei hayyim* and, for that reason, it is forbidden to slaughter an animal "even with a knife which is notched." Thus, *Sefer Ha-Hinnukh* clearly maintains that killing animals other than in the ritually prescribed manner is a form of *tza'ar ba'alei hayyim*. Similarly, Rabbenu Nissim, *Hullin* 18b, states that killing an animal by crushing its vertebrae rather than by severing the trachea and esophagus constitutes *tza'ar ba'alei hayyim*.<sup>32</sup>

Latter-day authorities who maintain that putting an animal to death constitutes a form of *tza'ar ba'alei hayyim* include R. Joel Sirkes, *Bayit Hadash, Yoreh De'ah* 116, s.v. *mashkin*; R. Jacob Emden, *She'elat Ya'avetz*, I, no. 110; R. Jacob Reischer, *Teshuvot Shevut Ya'akov*, III, no. 71; R. Eliyahu Klatzkin, *Teshuvot Imrei Shefer*, no. 34; and R. Moshe Yonah Zweig, *Ohel Mosheh*, I, no. 32.

*She'elat Ya'avetz* questions whether *tza'ar ba'alei hayyim* applies to all living creatures, including insects and the like, or is limited to beasts of burden and domestic animals.<sup>33</sup> Presumably, if lower animals are excluded, it is on the basis of the rationale that they lack highly developed nervous systems and hence do not experience pain in a manner comparable to mammals and vertebrates. *She'elat Ya'avetz* concludes that it is permissible to kill harmless insects because insects are excluded from the prohibition concerning *tza'ar ba'alei hayyim*. The clear inference to be drawn from these comments is that, with regard to vertebrates, *She'elat Ya'avetz* maintains that killing *per se* constitutes a prohibited form of *tza'ar ba'alei hayyim*.

Echoing the earlier cited statements of Ri Migash, *Imrei Shefer* forbids the slaughter of animals for purposes of feeding their meat to dogs and adds the explanatory comment that it is forbidden to cause pain to an animal for the benefit of another animal. In this regard the constraint vis-a-vis imposition of pain upon animals is identical with that concerning causing human suffering. No pain may be imposed upon a human, even for the benefit of a fellow man, other than upon the consent of the person who suffers the pain. Since animals lack capacity to grant consent, pain may not be imposed upon an animal for the benefit of another member of the animal kingdom.

### III. TZA'AR BA'ALEI HAYYIM FOR HUMAN BENEFIT

Jewish law, at least in its normative formulation, sanctions the infliction of pain upon animals when the act which causes pain is designed to further a legitimate human purpose. This is evident from two rulings recorded in *Shulhan Arukh*. Rema, *Shulhan Arukh, Yoreh*

*De'ah* 24:8, rules that, prior to slaughtering sheep, the wool covering the area where the neck is to be slit should be removed in order to enable the act of slaughter to be performed in the prescribed manner. *Shakh, Yoreh De'ah* 24:8, extends the same requirement to the slaughter of fowl and requires that feathers be plucked from the throat of fowl prior to slaughter. Rema, *Shulhan Arukh, Even ha-Ezer* 5:14, states even more explicitly:

Anything which is necessary in order to effect a cure or for other matters does not entail [a violation] of the prohibition against *tza'ar ba'alei hayyim*. Therefore, it is permitted to pluck feathers from geese and there is no concern on account of *tza'ar ba'alei hayyim*. But nevertheless people refrain [from doing so] because it constitutes cruelty.

This ruling, cited in the name of *Issur ve-Heter* 59:36, is supported by the comments of *Tosafot, Baba Metzi'a* 32b.<sup>34</sup> *Tosafot* poses the following question: The Gemara, *Avodah Zarah* 11a, declares that, in conjunction with the funeral rites of a monarch, it is permitted to sever the tendons of the horse upon which the king rode. This practice is permitted despite its source in pagan rituals because it is intended as an act of homage to the deceased king. If *tza'ar ba'alei hayyim* involves a biblical infraction, queries *Tosafot*, why may the animal be mutilated in this manner? *Tosafot* answers that such a practice is permitted “in honor of king[s] and prince[s] just as ‘thou shalt not wantonly destroy’ (Deuteronomy 20:19) is abrogated for the sake of their honor.” Insofar as the prohibition concerning “wanton destruction” is concerned, *Tosafot*'s comment is clear. The prohibition against “wanton destruction” is not suspended or abrogated for the sake of royal honor; rather, Scripture forbids only wanton destruction of fruit trees and, by extension, of other objects of value as well. Scripture does not forbid enjoyment of consumables since such use does not constitute “destruction.” Similarly, “destruction” which serves a legitimate purpose is not proscribed since it is not wanton or “destructive” in nature. “Destruction” for purposes of rendering homage to a deceased monarch is a legitimate use of property and hence is not forbidden. *Tosafot* apparently regards *tza'ar ba'alei hayyim* in a similar light, i.e., as forbidden only when wanton in nature,<sup>35</sup> but permissible when designed to achieve a legitimate goal.<sup>36</sup> Hence, declares *Tosafot*, mutilation of the royal steed in conjunction with the funeral of a monarch is permitted even though the animal experiences pain because mutilation of the animal serves to fulfill a legitimate purpose. In accordance with this position, Rema rules that *tza'ar ba'alei hayyim* is permissible for purposes of healing or for any other legitimate purpose.<sup>37</sup>

Among early authorities, the permissibility of *tza'ar ba'alei hayyim*

for human benefit is explicitly accepted by Ramban, *Avodah Zarah* 13b, who states that the “slaughter and causing of pain to animals is permissible for the need of man.” A similar view can be inferred from the comments of Rabbenu Nissim of Gerondi, cited by *Nimmukei Yosef, Baba Metzi’a* 32b. The Gemara explicitly exempts scholars and others for whom such activity would be unseemly and undignified from the obligation of assisting in the unloading of a burden from an overlaid animal. *Nimmukei Yosef* questions why it is that considerations of human dignity are permitted to supercede biblical obligations regarding the welfare of animals. In resolving this difficulty, *Nimmukei Yosef* quotes the comments of Rabbenu Nissim who states that “since *tza’ar ba’alei hayyim* is permitted for the use of humans<sup>38</sup>, *a fortiori* [it is permitted] for their honor.”<sup>39</sup> Yet another early authority, Ritva, *Shabbat* 154b, maintains that *tza’ar ba’alei hayyim* is permitted even for financial reasons as is evident from his statement that “for the purpose of [man’s] service and preservation of his money [*tza’ar ba’alei hayyim*] is certainly permitted.”

*Terumat ha-Deshen, Pesakim u-Ketavim*, no. 105, regards the permissibility of causing suffering to animals for the benefit of mankind to be inherent in the biblical dispensation granting man the right to use animals for his needs.<sup>40</sup> R. Moses Sofer, *Hagahot Hatam Sofer, Baba Metzi’a* 32b,<sup>41</sup> cites the divine declaration to Adam and Eve, “. . . and have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that creepeth upon the earth” (Genesis 1:28),<sup>42</sup> as establishing man’s absolute and unlimited mastery over the animal kingdom.<sup>43</sup> R. Judah Leib Graubart, *Havalim ba-Ne’imim*, I, no. 43, sec. 3, advances an identical argument on the basis of Genesis 9:1–2: “And God blessed Noah and his sons. . . . And the fear of you and the dread of you shall be upon every beast of the earth, and upon every fowl of the air, and upon all wherewith the ground teemeth, and upon all the fishes of the sea: into your hand are they delivered.”

*Terumat ha-Deshen, Pesakim u-Ketavim*, no. 105, and R. Elijah of Vilna, *Bi’ur ha-Gra, Even ha-Ezer* 5:40, cite a number of talmudic sources as the basis of Rema’s ruling. Leviticus 22:24 serves to establish a prohibition against the emasculation of animals. Although the phenomenon is unknown to modern science, the Gemara, *Shabbat* 110b, regards removal of a rooster’s comb as causing the rooster to become sterile but nevertheless permits the practice because it does not involve excision of a sexual organ.<sup>44</sup> This procedure is permissible despite the fact that it is obviously accompanied by pain. The attendant pain, argues *Bi’ur ha-Gra*, does not render the procedure impermissible because it is designed to promote a human benefit. Moreover, the Gemara, *Hagigah* 14b, tentatively considers the possibility that Scrip-

ture forbids only the emasculation of members of those species of animals which may be offered as sacrifices, an inference that might be drawn from the context of Leviticus 22:24. Since castration is necessarily accompanied by pain, this possibility could be entertained only if it is accepted as an antecedent premise that *tza'ar ba'alei hayyim* is not forbidden when necessary to achieve a beneficial result. Furthermore, these scholars indicate that placing a heavy load upon a beast of burden, an act that is clearly sanctioned by the Gemara, *Baba Metzi'a* 32b, is in itself a form of *tza'ar ba'alei hayyim* and is permitted only because the prohibition does not apply in situations in which the act is undertaken for human benefit.<sup>45</sup>

A twentieth-century halakhist, R. Ya'akov Breisch, *Helkat Ya'akov*, I, no. 30, sec. 6, seeks to find further support for this position in *Taz'* understanding of a discussion recorded in the Gemara, *Hullin* 28a. In the household of Rava, the skin on the throat of a dove was found to have been pierced and bleeding. The question confronting Rava was whether or not the dove might yet be slaughtered and eaten. A perforation or anomaly of either the trachea or the esophagus would have rendered the bird unfit. Since the outer skin had been pierced, there was reason to suspect that the trachea and/or the esophagus might have been damaged as well. Those organs could not be examined satisfactorily subsequent to slaughter since a perforation or anomaly might well have been present at the site of the incision made by the slaughterer's knife and would not be discernible subsequent to slaughter. Moreover, since the esophagus is pink in color it is not possible to examine any part of the esophagus prior to slaughter because a drop of blood might possibly be lodged at the site of the perforation and cover a miniscule hole or (according to *Tosafot*) the reddish color of the esophagus itself might render a perforation or an anomaly indiscernible. Rava's son Rav Yosef counseled that the trachea, which is white, be examined prior to slaughter and, since fowl (as distinct from four-legged animals) require the severance of either the trachea or the esophagus but not necessarily of both, care be taken not to pierce the esophagus. Rav Yosef further directed that, subsequent to slaughtering the bird, the esophagus be removed and examined along its inner surface which is white.

This narrative serves as the basis of the normative rule to be applied in similar situations in which an animal has experienced a trauma in the area to be incised in the act of slaughter. The problem which arises in such instances is that the site at which the trachea is to be severed must be examined prior to slaughter. If, as must be presumed to be the case, the tear in the skin covering the trachea is small, such an examination is impossible. *Taz, Yoreh De'ah* 33:11, indicates that the tear in the skin of the throat must be enlarged in order to

examine the trachea. Clearly, enlarging the hole in the skin covering the trachea causes pain to the animal. It must be presumed that this procedure is sanctioned despite the accompanying pain only because the procedure is necessary in order to render the bird permissible for consumption. Accordingly, this ruling would support the thesis that *tza'ar ba'alei hayyim* is permissible when necessary for human welfare. *Helkat Ya'akov* agrees that subsequent to Rema's ruling there is no question that the procedure described by *Taz* is permissible. However, he points out that the talmudic discussion cited by *Taz* cannot be adduced as the basis of this ruling concerning *tza'ar ba'alei hayyim*. That discussion could well be understood as permitting a procedure of this nature in the rare circumstances in which the requisite visual examination of the trachea can be undertaken without further elongation of the already existing cut.

*Teshuvot Shevut Ya'akov*, III, no. 71,<sup>46</sup> and *Teshuvot Rav Pe'alim*, I, *Yoreh De'ah*, no. 1, find support for Rema's ruling in the Mishnah, *Avodah Zarah* 13b. It is forbidden to sell a solitary white chicken to an idolator for fear that he may intend to offer the bird as a pagan sacrifice. However, since a mutilated bird would not be used for idolatrous purposes, the Mishnah permits the seller to render the chicken unfit for sacrificial use by removing a digit from the chicken's foot prior to sale. Here, too, such a procedure necessarily entails pain to the chicken. Accordingly, argue *Shevut Ya'akov* and *Rav Pe'alim*, such a practice could be permitted only because it is prompted by legitimate commercial need. The procedure sanctioned by the Mishnah serves as a paradigm establishing the general principle that *tza'ar ba'alei hayyim* is permissible when necessary to satisfy a human need.<sup>47</sup>

Although Rema's ruling is accepted by virtually all latter-day authorities, it appears that his position is rejected by at least one early authority. The authors of the commentary of *Tosafot* on *Avodah Zarah* 11a pose the selfsame question with regard to the mutilation of the royal steed as raised in the commentary of *Tosafot* on *Baba Metzi'a* 22b. However, in their commentary on *Avodah Zarah*, the authors of *Tosafot* resolve the problem in an entirely different manner.<sup>48</sup> But, since the problem is completely dispelled on the premise that *tza'ar ba'alei hayyim* is permissible for human benefit, *Tosafot's* failure to resolve the problem in that manner in the commentary on *Avodah Zarah* presumably reflects the fact that the authors of the *Tosafot* on that tractate (in disagreement with the view of the authors of *Tosafot* on *Baba Metzi'a*) regard *tza'ar ba'alei hayyim* as not permissible even when designed to promote human benefit.<sup>49</sup>

A somewhat modified position is espoused by R. Joseph Teumim, *Pri Megadim*, *Orah Hayyim*, *Mishbetzot Zahav* 468:2. *Pri Megadim*

reports that his advice was sought by an individual who maintained exotic birds in his garden and was fearful that they might take flight. The interlocutor sought a ruling with regard to the propriety of breaking “a small bone in their wings” in order to render them incapable of flight and prevent financial loss to their keeper. *Pri Megadim*’s response was negative for, in his opinion, “*tza’ar ba’alei hayyim* other than in place of great need, is forbidden.” Apparently, *Pri Megadim* distinguishes between ordinary “need” or “benefit” and “great need” and sanctions *tza’ar ba’alei hayyim* only in the latter situation. In a similar vein, *Teshuvot Avodat ha-Gershuni*, no. 13, quotes a certain R. Tevel the Physician as declaring that *tza’ar ba’alei hayyim* cannot be sanctioned for purposes of realizing “a small profit.”

There is also some controversy with regard to the nature of the need or benefit which is deemed to warrant causing pain to animals. *Issur ve-Heter he-Arokh*, 59:36, cites a version of *Tosafot* which differs from the published texts. *Issur ve-Heter he-Arokh* states that, in declaring that *tza’ar ba’alei hayyim*, “if it is efficacious for some matter,” is permissible, *Tosafot* intends to permit *tza’ar ba’alei hayyim* only for therapeutic purposes including procedures necessary for the treatment of even non-life-threatening maladies.<sup>50</sup> Thus, *Issur ve-Heter* apparently regards *tza’ar ba’alei hayyim* which is designed to serve other needs, e.g., financial profit, as improper and forbidden.<sup>51</sup>

Among latter-day authorities, R. Yitzchak Dov Bamberger is quoted by R. Jacob Ettlinger, *Teshuvot Binyan Zion*, no. 108, as asserting that Rema permits *tza’ar ba’alei hayyim* “only when there is need for medical purposes even for a patient who is not dangerously ill, but we have not found that he permitted *tza’ar ba’alei hayyim* for financial profit.”<sup>52</sup> This interpretation of Rema is difficult to sustain for two reasons: 1) Rema, *Shulhan Arukh, Even ha-Ezer* 5:14, rules that “anything which is necessary in order to effect a cure or for other matters does not entail [a violation] of the prohibition against *tza’ar ba’alei hayyim*.” 2) Rema, *Shulhan Arukh, Yoreh De’ah* 24:8, indicates that plucking feathers from a live bird is permissible as a matter of normative law. The feathers plucked in this manner are designed for use as quills. No one has suggested that the procedure is permitted only if the quill is needed by a physician in order to write a prescription; indeed, such an interpretation could not be sustained since Rema’s caveat regarding the non-acceptability of such practices does not apply to procedures required by reason of medical need.<sup>53</sup> Nevertheless, R. Moshe Yonah Zweig, *Ohel Mosheh*, I, no. 32, sec. 11, cites Rabbi Bamberger’s position as meriting serious consideration.<sup>54</sup> Rabbi Ettlinger himself, however, distinguishes between “great pain” and “minor pain” and permits minor pain for other “definite” benefits as

well.<sup>55</sup> R. Eliyahu Klatzkin, *Teshuvot Imrei Shefer*, no. 34, sec. 1, adopts an intermediate position in stating that Rema intended to permit *tza'ar ba'alei hayyim* for medical purposes or for purposes of similar importance and necessity, but not simply for the purpose of financial gain. *Imrei Shefer* does not indicate what these purposes of similar necessity might be. In support of the position that *tza'ar ba'alei hayyim* may not be sanctioned for financial gain, *Teshuvot Imrei Shefer*, no. 34, sec. 1, cites the statement of the Gemara, *Baba Batra* 20a. The Gemara forbids the severing of a limb from a live animal in order to feed it to dogs because of considerations of *tza'ar ba'alei hayyim*. *Imrei Shefer* notes that were the limb to be fed to the dogs, their master would benefit financially in not having to provide other food on their behalf. Moreover, notes *Imrei Shefer*, in the case under discussion, the limb had already been severed but remained attached to the body. The removal of such a "hanging" limb, asserts *Imrei Shefer*, would not significantly increase the animal's pain. Evidently then, concludes *Imrei Shefer*, monetary gain is not sufficient to obviate the prohibition concerning *tza'ar ba'alei hayyim*.<sup>56</sup>

However, the majority of rabbinic authorities regard financial gain as a legitimate "need" or "benefit" which, at least as a matter of law, may be fostered even at the expense of *tza'ar ba'alei hayyim*. The comments of a number of authorities who espouse this view have been cited earlier. Other authorities who permit *tza'ar ba'alei hayyim* for monetary advantage include R. Moses Sofer, *Hagahot Hatam Sofer*, *Baba Metzi'a* 32b,<sup>57</sup> who remarks that the prohibition does not apply when the act is performed "for the benefit of human beings, their honor or financial benefit."<sup>58</sup> An identical position is adopted by *Teshuvot Avodat ha-Gershuni*, no. 13; *Teshuvot Noda bi-Yehudah*, *Mahadura Tinyana*, *Yoreh De'ah*, no. 10, s.v. *ve-omnam*;<sup>59</sup> *Teshuvot Panim Me'irov*, I, no. 75; *Teshuvot Pri Yitzhak*, I, no. 24; and *Teshuvot Yad Eliyahu*, *Ketavim* 3:5.<sup>60</sup> *Pri Hadash*, *Yoreh De'ah* 53:7, permits the severing of a broken wing from a bird so that the jagged edge will not perforate an internal organ and thereby render the bird non-kosher and hence unfit for consumption. According to *Pri Hadash*, *tza'ar ba'alei hayyim* is warranted under such circumstances because of potential financial loss. Among contemporary authorities, a similar view is expressed by R. Yitzchak Ya'akov Weisz, *Teshuvot Minhat Yitzhak*, VI, no. 145.

#### IV. MORALITY BEYOND THE REQUIREMENTS OF THE LAW

Despite his ruling that plucking feathers from a live bird for use as quills is permitted as a matter of law, Rema adds the comment that

people refrain from doing so because of the inherent cruelty involved in this practice.<sup>61</sup> The immediate source of both this caveat and of the normative ruling regarding the plucking of feathers is the fifteenth-century rabbinic decisor, R. Israel Isserlein, *Terumat ha-Deshen, Pesakim u-Ketavim*, no. 105. *Terumat ha-Deshen*, however, elaborates somewhat and presents a talmudic source for the popular renunciation of this practice. *Terumat ha-Deshen* states, “. . . and perhaps the reason is that people do not wish to act with the trait of cruelty vis-a-vis creatures for they fear lest they receive punishment for that, as we find in chapter *Ha-Po'alim* with regard to our holy teacher.”<sup>62</sup> It is particularly noteworthy that *Terumat ha-Deshen* suggests the possibility of divine punishment for cruelty toward animals even in a situation in which no infraction of normative law is involved.<sup>63</sup>

The talmudic source cited by *Terumat ha-Deshen* is an anecdote concerning R. Judah the Prince related by the Gemara, *Baba Metzi'a* 85a.<sup>64</sup> R. Judah suffered excruciating pain for many years until the pain subsided suddenly. In the following narrative, the Gemara explains both why R. Judah experienced suffering and why the suffering was ultimately alleviated:

A calf, when it was being taken to slaughter, went and hung its head under Rabbi [Judah]'s cloak and cried. He said to it, “Go, for this wast thou created.” [In heaven] they said, “Since he has no mercy, let suffering come upon him.” . . . One day Rabbi [Judah]'s maidservant was sweeping the house; some young weasels were lying there and she was sweeping them away. Rabbi [Judah] said to her, “Let them be; it is written ‘And His tender mercies are over all His works’ (Psalms 145:9).” [In heaven] they said, “Since he is compassionate, let us be compassionate to him.”

Reflected in this account, and in the halakhic principle derived therefrom, is the distinction between normative law and ethical conduct above and beyond the requirements of law (*lifnim mi-shurat ha-din*).<sup>65</sup> In its normative law, Judaism codifies standards applicable to everyone and makes no demands that are beyond the capacity of the common man; but at the same time, Jewish teaching recognizes that, ideally, man must aspire to a higher level of conduct. That higher standard is posited as a moral desideratum, albeit a norm which is not enforceable by human courts. Not every person succeeds in reaching a degree of moral excellence such that he perceives the need and obligation to conduct himself in accordance with that higher standard. Those who do attain such a level of moral perfection are obliged, at least in the eyes of Heaven, to conduct themselves in accordance with that higher standard. No human court can inquire into the degree of moral perfection attained by a particular individual and hence, such a court cannot apply varying standards to different persons. The heavenly court, however, *is* in a position to do so and, accordingly, will punish

a person who does not comport himself in accordance with the degree of moral perfection which he has attained. Thus, the Gemara, *Baba Kamma* 50a, cites the verse “And it shall be very tempestuous about Him” (Psalms 50:3) and, in a play on the Hebrew word “*se’arah*” which connotes both “tempestuous” and “hair,” declares that “the Holy One, blessed be He, is particular with those around Him even with regard to matters as light as a single hair.”

R. Yechiel Ya’akov Weinberg, *Seridei Esh*, III, no. 7, hastens to point out that Rema’s cautionary statement with regard to normatively permitted forms of *tza’ar ba’alei hayyim* should not be construed as applicable to medical experimentation. In a short comment, *Seridei Esh* rejects the application of Rema’s remarks to medical experimentation for what really are three distinct reasons: 1) Moral stringencies beyond the requirements of law are personal in nature; a person may accept stringencies of piety for himself but may not impose them upon others. 2) Elimination of pain and suffering of human beings takes precedence over considerations of animal pain. 3) The concern for avoiding pain to animals even when it is halakhically permitted to cause such pain is germane only at the cost of foregoing benefit to an individual but not when benefit may accrue to the public at large. The last point is supported by the fact that no hesitation is expressed with regard to inflicting pain upon animals for the sake of “the honor of kings,” which is tantamount to the honor of the entire community, as evidenced by the earlier cited statement of the Gemara, *Avodah Zarah* 11a, which sanctions hamstringing the steed of the deceased monarch.

*Seridei Esh*’s comments are in opposition to the view expressed by *Helkat Ya’akov*, I, no. 30, sec. 6, to the effect that, although medical experimentation upon animals is certainly permissible as a matter of law,<sup>66</sup> nevertheless, in accordance with Rema’s caveat, it is proper to refrain from inflicting pain upon animals even for such purposes “as a matter of piety to persevere [oneself] from the trait of cruelty.” More recently, a member of the Supreme Rabbinical Court of Israel, R. Eliezer Waldenberg, *Tzitz Eli’ezer*, XIV, no. 68, found no difficulty in supporting medical experimentation upon animals but urged that pain be minimized insofar as possible.

In one of the earliest responsa which specifically address the question of the permissibility of animal experimentation, *Shevut Ya’akov*, III, no. 71, draws yet another distinction between plucking feathers, which is eschewed as a form of cruelty, and certain types of medical experimentation. *Shevut Ya’akov* was asked whether the toxicity of certain medications might be tested by feeding them to dogs or cats. *Shevut Ya’akov* replies in the affirmative and states that feeding a possibly poisonous substance to an animal is not comparable to plucking the feathers of a goose. In the latter case, the pain is

caused directly and is immediately perceived with the plucking of each feather. On the other hand, the pain caused to an animal as a result of imbibing a poisonous substance is neither direct nor immediate and hence, rules *Shevut Ya'akov*, there is no reason to refrain from such experimentation "even as an act of piety." The cogency of this distinction lies in the recognition that, according to Rema, the concern with regard to *tza'ar ba'alei hayyim* in cases in which a human need exists is not with regard to the welfare of the animal but with regard to the possible moral degeneration of the human agent who may acquire traits of cruelty as a result of performing acts which are objectively cruel even when such acts are warranted under the attendant circumstances. Apparently, *Shevut Ya'akov* feels that concern for developing a cruel disposition exists only when the human act is the immediate and proximate cause of perceivable pain, but not when the act is not immediately associated with the pain experienced by the animal. Quite obviously, *Shevut Ya'akov's* distinction does not apply to forms of medical experimentation in which the pain is immediately attendant upon the procedure performed, e.g., unanesthetized vivisection, while the criteria formulated by *Seridei Esh* apply to such situations as well.

It should, however, be noted that the foregoing analysis of the consideration underlying the practice of refraining from plucking feathers from a live animal, is not at all obvious. As has been noted earlier, *Terumat ha-Deshen*, who is the source of Rema's remarks, declares that this practice is eschewed because of fear of punishment for causing pain to animals even when the practice is entirely permissible, as is evidenced in the narrative concerning R. Judah and the calf recorded in the Gemara, *Baba Metzi'a* 85a. Ostensibly, the concern reflected in that report is for the welfare of the animal. However, R. Judah Leib Zirelson, *Ma'arkhei Lev*, no. 110, interprets that narrative in a manner entirely compatible with what appears to be the premise underlying the distinction formulated by *Shevut Ya'akov*. *Ma'arkhei Lev* asserts that it is inconceivable that R. Judah was punished for allowing the calf to be slaughtered for its meat. Rather, declares *Ma'arkhei Lev*, he was punished for his outburst, "Go, for this wast thou created." That sharp remark betrayed a lack of sensitivity which was inappropriate for a person of R. Judah's moral stature. Thus it was for his own lack of sensitivity that R. Judah was punished, rather than for the suffering caused to the calf.<sup>67</sup>

*Ma'arkhei Lev* himself draws a much broader distinction between the conduct frowned upon by Rema and other uses to which animals may be put without breach of even the "trait of piety" commended by Rema. According to *Ma'arkhei Lev*, the crucial factor is the element of necessity. Quills may be removed from dead fowl as readily as from

live ones. Hence, plucking feathers from a live bird is an entirely unnecessary act of cruelty, even though the act itself serves a human purpose. According to *Ma'arkhei Lev*, in any situation in which there exists a need which cannot otherwise be satisfied, it is not improper to cause discomfort to animals, and refraining from doing so does not even constitute an act of piety. R. Judah was punished, asserts *Ma'arkhei Lev*, because his sharp and impulsive remark was entirely gratuitous. In support of this thesis *Ma'arkhei Lev* cites a ruling recorded in *Shulhan Arukh, Orah Hayyim, 362:5*. On the Sabbath it is permissible to carry objects only within an enclosed area. *Shulhan Arukh* rules that an enclosure may be formed by stationing animals in a manner such that they constitute a "wall," but only on the condition that the animals are bound so that they remain immobile. Animals forced to remain in a stationary position for the duration of an entire Sabbath day certainly experience discomfort. Nevertheless, none of the commentaries on *Shulhan Arukh* indicate that, in light of Rema's caveat regarding plucking feathers from a live fowl, the practice of utilizing animals for fashioning a "wall" should be eschewed.<sup>68</sup> The reason that they fail to do so, argues *Ma'arkhei Lev*, lies in the distinction which must be drawn between a use of animals which is essential for achieving a purpose pertaining to human welfare and one which, while it serves a purpose, is nevertheless not absolutely necessary in order to achieve the desired end.<sup>69</sup>

## V. CONCLUSIONS

Jewish law clearly forbids any act which causes pain or discomfort to an animal unless such act is designed to satisfy a legitimate human need. All authorities agree that hunting as a sport is forbidden. Although many authorities maintain that it is not forbidden to engage in activities which cause pain to animals in situations in which such practices yield financial benefits, there is significant authority for the position that animal pain may be sanctioned only for medical purposes, including direct therapeutic benefit, medical experimentation of potential therapeutic value and the training of medical personnel.<sup>70</sup> *A fortiori*, those who eschew the latter position would not sanction painful procedures for the purpose of testing or perfecting cosmetics. An even larger body of authority refuses to sanction the infliction of pain upon animals when the desired benefit can be acquired in an alternative manner,<sup>71</sup> when the procedure involves "great pain,"<sup>72</sup> when the benefit does not serve to satisfy a "great need,"<sup>73</sup> when the desired benefit can be achieved in another manner,<sup>74</sup> or when the benefit derived is not commensurate with the measure of pain to which the

animal is subjected.<sup>75</sup> Even when the undertaking is designed to promote human welfare, there is greater justification for causing the swift and painless death of an animal than for subjecting it to procedures which cause suffering to a live animal.

Judaism recognizes moral imperatives which establish standards more stringent than the standard of conduct imposed by law. According to the view of most authorities, those moral imperatives should prompt man to renounce cruelty to animals even when the contemplated procedure would serve to promote human welfare.

Medical experimentation designed to produce therapeutic benefit to mankind constitutes an exception to this principle<sup>76</sup> and is endorsed by virtually all rabbinic authorities. Nevertheless, as stated by R. Eliezer Waldenberg, *Tzitz Eli'ezer*, XIV, no. 68, sec. 7, it is no more than proper that, whenever possible, such experimentation be conducted in a manner such that any unnecessary pain is avoided and, when appropriate, the animal subject should be anesthetized.

#### NOTES

1. *Die Beiden Grundprobleme der Ethik* (Frankfurt a.M., 1841), pp. 243–244. For an English translation see Arthur Schopenhauer, *The Basis of Morality*, translated by Arthur B. Bullock (London, 1915), p. 218. See also Arthur Schopenhauer, *The World as Will and Representation*, translated by E. F. J. Payne (New York, 1957), II, 645.
2. The obligation of *imitatio Dei* is derived from the verse “and thou shalt walk in His ways” (Deuteronomy 28:9). See Rambam, *Hilkhot De'ot* 1:5–6.
3. See also narratives concerning R. Eliyahu Lopian recounted by Aaron Soraski, *Marbitzei Torah u-Musar* (Brooklyn, 5737), IV, 165, and concerning *Hazon Ish* by R. Shlomo Cohen, *Pe'er ha-Dor* (Bnei Brak, 5726), I, 175. It is told of the Hasidic master, R. Zusya of Anapole that, saddened by the sight of caged birds, he would purchase them from their owner in order to set them free. He informed his disciples that he regarded this to be a form of “ransoming prisoners” which constitutes a moral imperative.
4. See Me'iri, *Baba Metzi'a* 33a and *Sefer ha-Hinnukh*, no. 596. The purpose of other biblical laws pertaining to animals is less clear-cut. The prohibition against plowing with animals of different species, recorded in Deuteronomy 22:10, is understood by *Sefer ha-Hinnukh*, no. 550, as well as by *Da'at Zekenim mi-Ba'alei ha-Tosafot* and *Ba'al ha-Turim* in their respective commentaries on Deuteronomy 22:10, as rooted in considerations of prevention of cruelty to animals, but is understood in an entirely different manner by Rambam, *Guide of the Perplexed*, Book III, chapter 49, as well as by Ramban in his commentary on Deuteronomy 22:10. However, Rambam, *Guide*, Book III, chapter 48, regards the prohibition against slaughtering an animal and its young on the same day, recorded in Leviticus 22:28, as a precautionary measure designed to prevent the slaughter of the offspring in the presence of its parent. The underlying concern is to spare the mother the anguish of seeing her young killed before her eyes, “for in these cases animals feel very great pain, there being no difference regarding this pain between man and the other animals. For the love and the tenderness of a mother for her child is not consequent upon reason, but upon the activity of the imaginative faculty, which is found in most animals just as it is found in man.” Here, Rambam speaks of concerns for the welfare of the animal rather than for the moral character of the human agent; see below notes 14–15 and accompanying text. This interpretation is reflected in the comments of R. Bahya ben Asher, Leviticus 22:28, and, in part, in *Sefer ha-Hinnukh*, no. 294. *Sefer ha-Hinnukh* regards the commandment prohibiting the slaughter of an

animal and its young on the same day as designed both to spare the parent from anguish and as a conservation measure as well. See also Abarbanel's *Commentary on the Bible, ad locum*. Rambam's analysis of the rationale underlying this precept is rejected by Ramban in his *Commentary on the Bible*, Deuteronomy 22:6. According to Ramban, the concern is not to avoid pain to the animal but to purge man of callousness, cruelty and savagery.

Although the Gemara, *Baba Metzi'a* 32a, declares that assistance in unloading a burden from an animal is mandated by reason of *tza'ar ba'alei hayyim* but that the obligation to assist in loading the burden upon the animal is not independently mandated by reason of *tza'ar ba'alei hayyim*, Ritva, cited by *Shitah Mekubbetzet, Baba Metzi'a* 31a, s.v. *aval te'inah*, asserts that the commandment requiring a person to render assistance to another who is engaged in loading an animal is predicated upon considerations of *tza'ar ba'alei hayyim*. According to Ritva, a single person engaged in this task is likely to cause additional discomfort to the animal by applying the full force of his body weight whereas, when he is assisted by another, there is no need to apply similar pressure.

*Sefer ha-Hinnukh*, no. 186, is of the opinion that the prohibition against the slaughter of sanctified animals outside the Temple precincts is rooted in considerations of *tza'ar ba'alei hayyim*. According to *Sefer ha-Hinnukh*, such slaughter is forbidden because no purpose is served thereby and hence constitutes *tza'ar ba'alei hayyim*. See below, note 29.

Neither the prohibition against mating animals of different species, Leviticus 19:19, nor the prohibition against emasculation of animals, Leviticus 22:24, is understood by classical rabbinic scholars as rooted in considerations of animal welfare. For a discussion of animal welfare as a possible rationale associated with other commandments see R. Joel Schwartz, *Ve-Rahamav al Kol Ma'asav* (Jerusalem, 5744), pp. 11–16.

5. The requirement that the parent bird be released before the young are taken and the concomitant prohibition against taking both the parent and the young, recorded in Deuteronomy 22:6–7, quite obviously have the effect of sparing the parent from anguish. The Mishnah, *Berakhot* 33b, however, does not view this desideratum, laudable as it may be, as the underlying purpose of the commandment. Cf., however, Rambam, *Guide*, Book III, chapter 48; Ramban, *Commentary on the Bible*, Deuteronomy 22:6; and *Sefer ha-Hinnukh* no. 545.
6. See *Berakhot* 41a and *Gittin* 62a. See also Rambam, *Hilkhot Avadim* 9:8; R. Meir Rothenberg, *Teshuvot Maharam ben Barukh he-Hadashot*, no. 302; R. Jacob Reisher, *Teshuvot Shevut Ya'akov*, II, no. 13; *Magen Avraham, Orach Hayyim* 167:18 and 271:12; *Hayyei Adam* 45:1, and R. Joel Schwartz, *Ve-Rahamav al Kol Ma'asav*, pp. 59–62. R. Jacob Emden, *She'elat Ya'avetz*, I, no. 17, rules that there is no absolute requirement to feed a dog or a cat before eating oneself since those animals sustain themselves on table scraps and forage for foods but that it is nevertheless proper to feed them first in order "to acquire the trait of compassion." *Magen Avraham, Orach Hayyim* 324:7, declares that providing food for any animal, including animals belonging to other persons and ownerless animals, constitutes a *mitzvah*. See also R. Simeon ben Zemah Duran, *Teshuvot Tashbatz*, III, no. 293; R. Jacob Ettlinger, *Teshuvot Binyan Zion*, no. 103; and R. Elijah Klatzkin, *Teshuvot Imrei Shefer*, no. 34, sec. 1. Cf. R. Moses Sofer, *Teshuvot Hatam Sofer, Yoreh De'ah*, no. 314, s.v. *ve-la'asot*, and no. 318, s.v. *ve-hinneh*.
7. Similarly, Scripture records that Laban gave straw to the camels and only afterwards did he provide food for Abraham's servant. See Genesis 24:32–33 and *Sefer Hasidim* (ed. Reuben Margulies), no. 531. Cf., R. Joel Schwartz, *Ve-Rahamav al Kol Ma'asav*, p. 60, note 4.
8. The same authority, *Sefer ha-Hinnukh*, no. 540, asserts that the obligation to come to the assistance of an animal that has fallen applies equally with regard to assisting a person who is overladen. See also Rambam, *Sefer ha-Mitzvot, mitzvot aseh*, no. 203 and *mitzvot lo ta'aseh*, no. 270. This is also the position of R. Solomon ben Adret, *Teshuvot ha-Rashba*, I, nos. 252, 256 and 257. Cf., however, R. David ibn Zimra, *Teshuvot ha-Radbaz*, I, no. 728 and R. Ya'ir Chaim Bachrach, *Teshuvot Havot Ya'ir*, no. 191.
9. For a full analysis, see commentary of Rabbenu Nissim, *ad locum*, and R. Joseph Babad, *Minhat Hinnukh*, no. 80.
10. Whether *tza'ar ba'alei hayyim* is prohibited by virtue of biblical or of rabbinic law is of

no significance whatsoever insofar as the normative regulations prohibiting overt acts of cruelty vis-a-vis animals are concerned. There are, however, a number of distinctions, albeit most of which are currently of relatively minor impact, with regard to the duty to intervene in order to relieve or prevent animal suffering. The most obvious distinctions are those posited by the Gemara, *Baba Metzi'a* 33a: “[If thou seest the ass of him that hateth thee lying under its burden] ‘lying’ [just now], but not an animal which habitually lies down [under its burden]; ‘lying’, but not standing.” The Gemara then queries, “If you say that [relieving the suffering of an animal] is biblically [enjoined] what does it matter whether it was lying [this once only], habitually lay down or was standing?” and concludes that such distinctions are cogent only if *tza'ar ba'alei hayyim* is the subject of rabbinic enactment, but that such exclusions from the duty to relieve animals from pain cannot be entertained if *tza'ar ba'alei hayyim* is a matter of biblical law. Indeed, it is Rambam's failure to make such distinctions which, in part, prompts *Kesef Mishneh*, *Hilkhot Rotze'ah* 13:9, to conclude that Rambam maintains that *tza'ar ba'alei hayyim* is biblically enjoined. On the basis of the discussion recorded in *Baba Metzi'a* 33a, *Minhat Hinnukh*, no. 80, concludes that intervention to rescue an animal from pain is mandated only if *tza'ar ba'alei hayyim* is mandated by biblical law, whereas, if *tza'ar ba'alei hayyim* is the subject of rabbinic decree, such legislation only prohibits acts of cruelty but does not command intervention. See below, note 11. See also Mahari Perla, *Commentary on Sefer ha-Mitzvot* of R. Sa'adya Ga'on, *aseh* 24, s.v. *ve-adayin tzarikh*. [Cf., however, R. Moses Sofer, *Teshuvot Hatam Sofer*, *Yoreh De'ah*, no. 314, s.v. *ve-la'asot*, and no. 318, s.v. *ve-hinneh*, who apparently maintains that the obligation to rescue an animal from pain is limited to one's own animals. See also *Teshuvot Hatam Sofer*, *Hoshen Mishpat*, no. 185, s.v. *ma she-katavta me-Rabad*. Thus, *Hatam Sofer* maintains that, although an overt act of cruelty toward any animal is forbidden, one may allow an ownerless animal to starve. See, however, R. Ezekiel Landau, *Teshuvot Noda bi-Yehudah*, *Mahadura Kamma*, *Yoreh De'ah*, nos. 81–83, who fails to draw a distinction of this nature. See also *Kitzur Shulhan Arukh* 191:1 and sources cited by R. Eliyahu Klatzkin, *Teshuvot Imrei Shefer*, no. 34, sec. 1.] Another distinction is found in the application of certain Sabbath restrictions. If it is accepted that obligations with regard to *tza'ar ba'alei hayyim* are biblical in origin, a non-Jew may be requested to perform acts of labor on the Sabbath, e.g., milking a cow, in order to relieve the animal's discomfort and certain specific rabbinically proscribed acts may also be performed even by a Jew in order to alleviate the animal's pain; but no suspension of Sabbath restrictions is countenanced if duties with regard to *tza'ar ba'alei hayyim* are the product of rabbinic enactment. See Ritva, *Baba Metzi'a* 32b, as well as Rosh, *Baba Metzi'a* 2:29 and *Shabbat* 18:3; see also *Magen Avraham*, *Orah Hayyim* 305:11, and *Korban Netanel*, *Shabbat* 18:3, sec. 50. [Cf., however, *Teshuvot Rav Pe'alim*, I, *Yoreh De'ah*, no. 1, who maintains that such actions are permitted only when the life of the animal is endangered. Failure to milk a cow, he asserts, endangers the animal.] There is some controversy with regard to whether a non-Jew may be directed to perform a rabbinically proscribed act; see *Encyclopedia Talmudit*, II, 45. According to the authorities who adopt a permissive position with regard to this question, such a procedure would be permissible with regard to *tza'ar ba'alei hayyim* as well, were it accepted that regulations concerning *tza'ar ba'alei hayyim* are rabbinic in nature. [The citation of *Pilpula Harifta*, *Baba Metzi'a* 2:29, in this context by R. Ze'ev Metzger in his useful survey, “Nisuyim Refu'iyim be-Ba'alei Hayyim,” *Ha-Refu'ah le-Or ha-Halakhah*, vol. II (Jerusalem, 5743), part 3, p. 11, appears to be inaccurate.] See also below, note 52.

11. It is the virtually unanimous opinion of rabbinic decisors that obligations with regard to *tza'ar ba'alei hayyim* are biblical in nature. See Rif, *Shabbat* 128b; *Sefer ha-Hinnukh*, no. 450 and no. 451; Rosh, *Baba Metzi'a* 2:29 and *Shabbat* 3:18; *Nimmukei Yosef*, *Baba Metzi'a* 32b; Me'iri, *Baba Metzi'a* 32b; *Shita Mekubbetzet*, *Baba Metzi'a* 33a; *Sefer Yere'im*, no. 267, *Sefer Hasidim* (ed. Reuben Margulies), no. 666; Rema, *Hoshen Mishpat* 272:9, *Levush*, *Orah Hayyim* 305:18; and *Magen Avraham*, *Orah Hayyim* 305:11.

Rambam, both in his *Commentary on the Mishnah*, *Beitzah* 3:4, and in the *Guide*, Book III, chapter 17, affirms that the prohibition against *tza'ar ba'alei hayyim* is biblical in origin. There is some dispute regarding the proper understanding of the position adopted by Rambam in his *Mishneh Torah*. Although in *Hilkhot Shabbat* 25:26 Rambam appears to adopt the identical position, the language employed in *Hilkhot Rotze'ah* 13:9

is somewhat ambiguous. Nevertheless, *Kesef Mishneh*, *ad locum*, understands even the latter source as consistent with the view that the prohibition against *tza'ar ba'alei hayyim* is biblical in nature. However, *Pnei Yehoshu'a*, *Baba Metzi'a* 32b, and R. Elijah of Vilna, both in his *Hagahot ha-Gra al ha-Rosh*, *Baba Metzi'a* chapter 2, sec. 29:1, and in his *Bi'ur ha-Gra*, *Hoshen Mishpat* 272:11, understand Rambam's ruling in *Hilkhot Rotze'ah* as reflecting the view that these strictures are rabbinic in nature. See also *Minhat Hinnukh*, no. 80.

*Pri Megadim*, *Orah Hayyim*, *Eshel Avraham* 308:68, and R. Meir Simchah ha-Kohen of Dvinsk, *Or Same'ah*, *Hilkhot Shabbat* 25:26, both resolve any apparent contradiction in Rambam's rulings by asserting that in *Hilkhot Shabbat* Rambam's intention is only to affirm the biblical nature of the obligation concerning the requirement that animals be permitted to rest on the Sabbath and that it is that biblical law which prompted suspension of certain rabbinic restrictions regarding Sabbath regulations in order to prevent suffering by animals on the Sabbath. In comments which are at variance with his own heretofore cited thesis, *Or Same'ah*, *Hilkhot Rotze'ah* 13:9, offers a novel analysis of Rambam's position. *Or Same'ah* here asserts that Rambam affirms the biblical nature of strictures against *tza'ar ba'alei hayyim*, but that Rambam distinguishes between practicing cruelty toward animals, which is forbidden, and intervention in an overt manner to spare the animal from discomfort. According to these comments of *Or Same'ah*, Rambam maintains that such intervention is not mandated. Rambam reasons, avers *Or Same'ah*, that there is no prohibition against causing discomfort to an animal in order to satisfy a human need; similarly, argues *Or Same'ah*, there is no requirement that a person discomfit himself in order to promote the welfare of an animal.

*Mordekhai*, *Baba Metzi'a* 2:263, rules that *tza'ar ba'alei hayyim* is biblically enjoined, but in his work on *Avodah Zarah* 1:799, the same authority rules that such strictures are rabbinic in nature. *Hiddushei Anshei Shem*, *Baba Metzi'a*, sec. 20, endeavors to resolve the contradiction by asserting that, according to *Mordekhai*, "grave pain" (*tza'ar gadol*) involves a biblical prohibition whereas "minor pain" (*tza'ar mu'at*) involves only a rabbinic injunction. It is noteworthy that, according to the *Hiddushei Anshei Shem*, causing an animal to die of starvation involves only "minor pain," whereas killing an animal in an overt manner is categorized as entailing "grave pain." [See, however, R. Jacob Ettlinger, *Teshuvot Binyan Zion*, no. 108, who states that "perhaps" causing an animal to die of starvation entails "grave pain."] *Nimmukei Yosef*, *Baba Metzi'a* 32b, quite independently draws a similar distinction between "grave pain" and "minor pain" without in any way referring to Rambam's statements. According to *Nimmukei Yosef*, "minor pain" is the subject of rabbinic injunction while "grave pain" is biblically proscribed. See also Ritva, *Avodah Zarah* 11a.

As will be shown later, a latter-day authority, R. Jacob Ettlinger, *Teshuvot Binyan Zion*, no. 108, permits causing an animal "grave pain" only for purposes of human medical needs but permits "minor pain" even for lesser reasons, at least insofar as normative law is concerned.

12. See also Rabad, quoted in *Shitah Mekubbetzet*, *Baba Metzi'a* 32b, s.v. *teda*, and *Levush*, *Orah Hayyim* 305:18. If obligations concerning *tza'ar ba'alei hayyim* are derived from the commandment concerning "unloading" it would certainly seem to follow that this obligation is not limited to a prohibition against cruelty but includes a positive obligation to intervene in order to rescue from pain. See R. Joel Schwartz, *Ve-Rahamav al Kol Ma'asav*, p. 43, note 3, and cf., above, note 10.
13. See below, note 43.
14. See also *Minhat Hinnukh*, no. 80.
15. It must, however, be noted that, even with regard to rights enjoyed by humans, the emphasis in Jewish law is upon the notion of "duty" rather than "right." Thus, satisfaction of a debt is actionable, not primarily as enforcement of the creditor's right, but as a means of compelling fulfillment of the religio-moral obligation of the debtor. In all matters of jurisprudence, the emphasis is upon prevention of moral degeneration attendant upon the misappropriation of property belonging to another, rather than upon satisfaction of the claim of the rightful owner. In adjudicating claims between litigants, the *Bet Din* acts, as is its duty, primarily to compel fulfillment of a religio-moral duty rather than to redress a wrong. See Moshe Silberg, "Law and Morals in Jewish Jurisprudence," Harvard

Law Review, LXXV (1961–1962), 306–331. Proper comportment vis-a-vis animals would similarly be compelled by the court as the fulfillment of a religious obligation.

16. See also Ramban's comments in his *Commentary on the Bible*, Deuteronomy 22:6.
17. Indeed, *shehitah* is the most humane method of slaughter known to man. The procedure involves a transverse cut in the throat of the animal with an extremely sharp and smooth knife. Due to the sharpness of the knife and the paucity of sensory cutaneous nerve endings in the skin covering the throat, the incision itself causes no pain. The incision severs the carotid arteries as well as the jugular veins. The resultant massive loss of blood causes the animal to become unconscious in a matter of seconds. There is ample clinical evidence confirming the total absence of pain to the animal as a result of *shehitah*. This has long been recognized by scientists of international repute. In view of recurring misinformed attacks upon *shehitah* it is instructive to cite at length a portion of a detailed, clarificatory statement authored by Dr. Leonard Hill, Professor of Physiology, University of London, and Director of Applied Physiology, National Institute for Medical Research, which appeared in *Lancet*, CCV (1923), 1382 [reprinted in Solomon David Sassoon, *A Critical Study of Electrical Stunning and The Jewish Method of Slaughter (Shechita)* 3rd edition, (Letchworth, 1955), pp. 4–6]. Dr. Hill writes:

It is generally assumed by laymen that the shooting is much more humane than the older methods. They suppose that the cutting of the throat is a most painful operation, and that struggling movements are necessarily a sign of pain. Educated in the false ideas and statements of writers of romance, they are easily led astray by agitators having no knowledge of physiological science, nor surgical experience. Now the surgeon knows that sudden big injuries are not felt at the time of their infliction. He knows, moreover, that structures beneath the skin, apart from sensory nerves, are insensitive to the knife. It is well known that men injured in battle—severely and perhaps fatally—often fight on unaware that they are wounded until they see the blood or become exhausted. At most the wounded feel a dull sensation of a blow and numbness in the injured part. Pain comes later when a wound becomes septic and inflamed. The merciful insensitiveness of man to severe injury was impressed upon me, when I was a young house surgeon, by two cases—one of a man with his pelvis crushed between the buffers of a train. Conscious, although collapsed, he was able to tell me that he had felt no pain; shortly afterwards he died of shock. A similar case was that of a man impaled by the shaft of an iron railing through falling out of a window.

In defending the Jewish method of slaughter from unjust attack, the distinguished surgeon Mr. T.H. Openshaw stated that several cases of throat-cutting, which surviving from their injury had come under his care at the London Hospital, were questioned by him. Not one of these had felt the cut when it was made. When a very sharp knife is used to cut the healthy (not inflamed) skin, very little pain is felt—even by a man who is expecting the cut—particularly so in parts, such as the back, which are not so trained to delicate sensibility as the finger-tips. Horses standing loose in a stall are bled from the jugular vein for the obtaining of anti-diphtheritic serum; they continue during the operation to eat placidly at the manger. Sensitive as the horse is to the sting of a fly, or whip, or prick of a spur, it takes no notice of the cut of a sharp knife. The skin has been evolved sensitive only to those things which concern it in the natural struggle for existence, and deep structures, apart from sensory nerves, protected as they are by the skin, are wholly insensitive to touch. The touch of whip or spur is like the sting of a fly, and is therefore felt by the horse, which must protect himself against a natural enemy; on the other hand, the cut of a sharp knife is not a natural stimulus and is unfelt,

Of these facts laymen are, as a rule, wholly ignorant. As to the duration of consciousness after the cutting of the throat, I can cite an experiment made by myself some years ago when, together with Mr. Openshaw, I defended the Jewish method of slaughter. I anaesthetized a calf and inserted a tube in the peripheral end of the carotid artery—that is, in the end connected with the arteries supplying the brain. It must be borne in mind that the vertebral arteries do not also supply the brain of cattle but end in the muscles of the head. The tube placed in the artery

was filled with a strong saline solution to prevent clotting of the blood, and connected with a mercurial manometer arranged so as to record (on a revolving drum) the blood pressure. The animal's neck was then cut with a sharp knife so as to divide the great blood-vessels at one stroke. The manometer recorded an instant fall of blood pressure which reached zero in a second or two, showing that the circulation in the great brain has ceased. Now we know by human experience that such sudden cessation of the circulation by depriving the brain of oxygen instantly abolishes consciousness, whether produced by pressure on the brain or by heart failure, or by occlusion of the great blood-vessels of the neck. An old medical writer tells of a beggar in Paris who had a large hole in his skull covered with skin. He sat in the street and for a coin allowed a person to press upon his brain, when he fell asleep. The moment the pressure was withdrawn he became conscious again. The very word carotid betokens sleep. Mountebanks used to compress these arteries in a goat and make the animal fall down unconscious or spring up again at their will. The garroter by compressing these arteries by a grip from behind rendered his victim unconscious while he robbed him of his watch and money. A schoolboy playing at hanging has lost consciousness through the sudden compression of these arteries and has died in consequence. This unhappy accident has been repeated through a general ignorance of the danger.

Two facts are, then, indisputably established: (1) that a big injury, such as throat-cutting, is not felt at the moment of infliction; (2) that the cutting of the big arteries in the throat instantly arrests the circulation in the great brain and abolishes consciousness.

See also Leonard Hill, "The Jewish Method of Slaughter: A Rejoinder to the Dutchess of Hamilton," *The English Review*, June 1923, pp. 604–607, reprinted in Sassoon, pp. 36–38. Further statements confirming the painless nature of *shehitah* by Lord Horder, F.A.C.P., and Sir C. P. Lovatt Eveans, Emeritus Professor of Physiology, London University, are included in Sassoon, pp. 38–39. See also Solomon David Sassoon, *Supplement to the Booklet Entitled: A Critical Study of Electrical Stunning and The Jewish Method of Slaughter (shechita)* (Letchworth, 1956).

Both the absence of pain as a result of the incision and the almost instantaneous loss of consciousness subsequent to *shehitah* are confirmed in a report prepared in 1963 by the Department of Physiology, New York State Veterinary College, Cornell University, Ithaca, New York, titled "An Electroencephalographic Study of the Effect of Shechita Slaughter on Cortical Function in Ruminants." The primary significance of this study lies in the clinical investigation of changes in function which occur in the cerebral cortex following the act of *shehitah*. The investigators utilized an electroencephalograph in order to determine the precise moment at which the slaughtered animal ceases consciously to perceive pain and other environmental stimuli. Recordings were taken with sheep, calves and goats as subjects. It was determined that in the rams tested the time which elapsed subsequent to the making of the incision until the cerebral cortex lapsed into a state of complete unconsciousness ranged from 3.3 to 6.2 seconds. In calves it was found that consciousness appeared to be poor by the time that four seconds had elapsed after the cut and complete unconsciousness, in which condition the animal could not perceive stimuli of any kind, became manifest between 4.4 and 6.9 seconds after the cut. Of two goats tested, one became unconscious 5 seconds after slaughter; in the case of the second goat the electroencephalogram was obscured and hence it was impossible to determine the exact time at which unconsciousness was reached.

Electroencephalographic evidence serves to determine the precise moment at which the animal becomes unconscious and conclusively establishes the time beyond which it is manifestly impossible for the animal to experience pain. In the animals examined this ranged between 3.3 and 6.9 seconds subsequent to slaughter. However, this does not mean that the animals experienced pain during the few seconds prior to becoming unconscious. Indeed, there is no way of interpreting an electroencephalogram to determine whether or not pain is actually being experienced by a conscious animal. The electroencephalogram can only serve to establish that the animal is, in fact, unconscious and hence no longer capable of experiencing pain. With regard to the possibility of pain in

conjunction with the actual incision before the animal loses consciousness the report, p. 17, states:

As anyone who has slit a finger on a page of a magazine knows, the pain from such a cut comes not during the actual cutting, but afterwards when the edges of the cut are rubbed or pressed together and the nerve endings in the skin are stimulated. The edges of the cut neck cannot be thus brought together after Shechita simply because of the animal's hanging position.

18. See also Ramban, *Commentary on the Bible*, Deuteronomy 22:6, and R. Joseph Albo, *Book of Principles*, Book III, chapter 15. An identical view is expressed by Philo, *De Virtutibus*, 141.
19. This point is made by *Pri Megadim* with regard to ritual slaughter in particular. See the concluding section of *Pri Megadim's* introduction to *Hilkhot Shehitah*.
20. See *Taz*, *Yoreh De'ah* 116:6 and *Taz*, *Yoreh De'ah* 117:4. See below, note 60.
21. The identical position is reiterated by the same author in *Noda bi-Yehudah*, *Mahadura Tinyana*, *Yoreh De'ah*, no. 10 and no. 13. In the latter responsum *Noda bi-Yehudah* rules that, although *tza'ar ba'alei hayyim* is permitted when necessary to serve a human need, nevertheless, when the option is available, it is preferable to sacrifice the animal rather than to perform a painful procedure upon a living animal. *Noda bi-Yehudah* presumably reasons that, since killing an animal involves no transgression of *tza'ar ba'alei hayyim*, there is no dispensation to cause pain when the same need can be met by killing the animal.
22. A similar position is also espoused by *Sefer ha-Eshkol*, III, *Hilkhot Shehitah*, no. 10; *Teshuvot Bet Ya'akov*, no. 42; R. Yonatan Eibenschutz, *Kreti u-Pleti* 57:9; and *Gilyon Maharsha*, *Yoreh De'ah* 117:4. Cf. R. Eliezer Waldenberg, *Tzitz Eli'ezer*, XIV, no. 68, sec. 4.
23. A similar analysis of the considerations underlying the exchange between R. Phinehas and R. Judah was earlier advanced by *Terumat ha-Deshen*, *Pesakim u-Ketavim*, no. 105. See also R. Yitzchak Blaser, *Teshuvot Pri Yitzhak*, I, no. 24, who offers an even more comprehensive analysis in a similar vein.
24. This responsum was addressed to R. Ya'akov Breisch and was first published in the latter's responsa collection, *Helkat Ya'akov*, I, no. 31.
25. Similarly, the Gemara, *Hullin* 27b and 85b, permits the putting of an animal to death by means other than ritual slaughter when the intent is not to use the animal's meat for consumption but to conserve its blood when the blood is required for some other purpose. That source also serves to establish either that *tza'ar ba'alei hayyim* is permitted when designed for human welfare or that putting an animal to death is excluded from the prohibition against *tza'ar ba'alei hayyim*. See below, notes 28 and 60.

R. Moses Sofer, *Teshuvot Hatam Sofer*, *Yoreh De'ah*, no. 103, citing *Avodah Zarah* 13b, permits the killing of a sickly animal other than by means of ritual slaughter. It is, however, not possible to determine whether *Hatam Sofer* sanctions this practice because he espouses the position that putting an animal to death is excluded from strictures prohibiting *tza'ar ba'alei hayyim* or because the pain inflicted is designed to serve a human need, viz., to prevent the loss that would accrue to the animal's owner were it to become carrion and its meat no longer be salable. This point seems to have been missed by R. Ze'ev Metzger, "Nisuyim Refu'iyim be-Ba'alei Hayyim," *Ha-Refu'ah le-Or ha-Halakhah*, vol. II, part 3, p.31. See also below, notes 57 and 60.
26. See also *Tosafot*, *Hullin* 2a, s.v. *shema*. *Tosafot* apparently permits the killing of an animal by means of ritual slaughter in order to feed its meat to dogs. Cf. above, note 25 and below, note 53 and accompanying text.
27. Cf., however, *Sho'el u-Meshiv*, *Mahadura Tinyana*, III, no. 65, who refutes this evidence claiming that *Tosafot* merely asserts that when *tza'ar ba'alei hayyim* is warranted it must be minimized insofar as possible.
28. The immediately following verse, ". . . then thou shalt kill of thy herd and of thy flock . . . and thou shalt eat within thy gates" (Deuteronomy 12:21), serves to sanction ritual slaughter for purposes of food. Since, in context, the reference in Deuteronomy 12:20 is to ritual slaughter, it is clear that Rambam regards even the painless mode of

ritual slaughter, when undertaken other than for purposes of food, as forbidden by reason of *tza'ar ba'alei hayyim*. However, Rambam would certainly regard ritual slaughter undertaken in order to satisfy other legitimate human needs as tantamount to slaughter for purposes of food. Ritual slaughter other than for purposes of food is clearly permitted as evidenced by the statement of the Gemara, *Hullin* 85b, to the effect that R. Hiyya slaughtered a bird in the prescribed manner because he sought to use its blood to destroy worms which had infested his flax. See *Sefer Hasidim* (ed. Reuben Margulies), no. 667. Moreover, when the blood of an animal is necessary for some beneficial purpose, the Gemara, *Hullin* 27b and 85b, permits putting an animal to death even by means other than ritual slaughter in order to conserve its blood. The comments of Rashi, *Shabbat* 75a, s.v. *shohet*, serve to indicate that, under any circumstances, when an animal is killed for human benefit other than for food, it is not necessary to put it to death by means of ritual slaughter. Cf. Rashi, *Hullin* 27b, s.v. *hayyav le-khasot*.

29. See also *Sefer ha-Hinnukh*, no. 186, who explains that the slaughter of sanctified animals outside of the Temple precincts, even though the act is performed in the ritually prescribed manner, is forbidden because no purpose is served by such slaughter. *Sefer ha-Hinnukh* comments that wanton killing of animals is tantamount to “shedding blood.”
30. For other sources prohibiting hunting see *Va-Yikra Rabbah* 13:3; Rashi, *Avodah Zarah* 18b, s.v. *kenigyon*; *Teshuvot Mahari Brona*, no. 71, *Teshuvot Maharam Rothenberg*, no. 27; Rema, *Shulhan Arukh, Orach Hayyim* 316:2; *Teshuvot Shemesh Tzedakah, Yoreh De'ah*, nos. 18 and 57; *Giv'at Sha'ul, Parshat Va-Yeshev*, pp. 87–88; *Pahad Yitzhak, s.v. Tzeidah; Teshuvot Toldot Ya'akov, Yoreh De'ah*, no. 33; and *Darkei Teshuvah, Yoreh De'ah* 117:44.
31. See also *Teshuvot Imrei Shefer*, no. 34, sec. 1; R. Yechiel Ya'akov Weinberg, *Seridei Esh*, III, no. 7, and *Teshuvot Helkat Ya'akov*, I, no. 31, sec. 4; and R. Moshe Yonah Zweig, *Ohel Mosheh*, I, no. 32. See also R. Jacob Reischer, *Teshuvot Shevut Ya'akov*, II, no. 110, who declares that an “unusual” practice involving pain is prohibited, particularly when designed for only “a minor benefit.” Cf. *Teshuvot Rav Pe'alim*, I, *Yoreh De'ah*, no. 1.
32. See *Havalim ba-Ne'imim*, I, no. 43, sec. 4. This also appears to the position of *Teshuvot ha-Ge'onim* (ed. Abraham E. Harkavi), no. 375.
33. *Havalim ba-Ne'imim*, I, no. 43, sec. 6, quotes *She'elat Ya'avetz'* comments as cited by a secondary source, *Bet Ephrayim, Yoreh De'ah* 117. That source quotes *She'elat Ya'avetz* as stating that *tza'ar ba'alei hayyim* applies only to “work animals.” *Havalim ba-Ne'imim* cites a ruling of *Sefer Hasidim* (ed. Reuben Margulies), no. 44, forbidding pulling the ears of a cat and states that this position contradicts the view of *She'elat Ya'avetz*. In point of fact, *She'elat Ya'avetz* explicitly states “and perhaps even dog[s] and cat[s] are included [in the prohibition] since they also are domesticated and perform work.” A more significant contradiction to the position of *She'elat Ya'avetz* is found by *Havalim ba-Ne'imim* in the comments of *Shevut Ya'akov*, III, no. 71. *Shevut Ya'akov* demonstrates that *tza'ar ba'alei hayyim* is permitted for the benefit of human beings on the basis of the Gemara, *Shabbat* 77b. The Gemara observes that God did not create a single thing without purpose. The Gemara gives specific examples of the utility of seemingly useless creatures. The fly is crushed and applied to the site of a hornet's sting; the mosquito is crushed and used as a remedy for a serpent's bite; a crushed spider is used as a remedy for a scorpion's bite; and various serpents are boiled to a pulp and rubbed in at the site of an eruption. *Shevut Ya'akov* adduces that dictum as proof that *tza'ar ba'alei hayyim* is permissible for human welfare. *Havalim ba-Ne'imim* points out that *Shevut Ya'akov's* argument is cogent only if, in contradiction to *She'elat Ya'avetz'* position, he assumes that considerations of *tza'ar ba'alei hayyim* apply to all creatures, including serpents and insects. See also, below, note 46.
34. Cf., however, R. Elijah of Vilna, *Bi'ur ha-Gra, Even ha-Ezer* 5:40, and the comments of R. Jacob Breisch, *Teshuvot Helkat Ya'akov*, I, no. 30, secs. 2–3, as well as Shmuel, Moshe Mordecai and Eleazar Shulsinger, *Mishmar ha-Leviyim* (Zikhron Me'ir, 5740), no. 20. See also R. Yechiel Ya'akov Weinberg, *Seridei Esh*, III, no. 7, and *Helkat Ya'akov*, I, no. 31, secs. 1–3.

R. Judah Leib Zirelson, *Ma'arkhei Lev*, no. 110, finds a biblical source for this ruling: “And Samson went and caught three hundred foxes and took torches and turned

tail to tail and put a torch in the midst between every two tails. And when he had set the torches on fire, he let them go into the standing corn of the Philistines and burn up both the shucks and the standing corn and also the oliveyards” (Judges 15:4–5). *Ma'arkhei Lev* argues that inflicting severe pain on the foxes was sanctionable only because it served a human need and hence the general principle can be traced to these verses. R. Jacob Breisch, *Teshuvot Helkat Ya'akov*, I, no. 30, sec. 5, cogently rebuts this argument on the grounds that Samson was involved in a defensive war against the Philistines and, in fact, his own life was endangered. Hence Judges 15:4–5 serves only to establish that *tza'ar ba'alei hayyim* is permitted when human life is endangered but not necessarily for the sake of a lesser purpose.

35. Cf. *Teshuvot Mareh Yehezkel*, no. 59, who expresses amazement at Rema's ruling querying, “from whence is it derived that violation of the biblical prohibition of *tza'ar ba'alei hayyim* may be sanctioned to effect a cure or for human benefit?” In light of *Tosafot's* comments to the effect that the prohibition does not encompass such contingencies, *Mareh Yehezkel's* incredulity is misplaced.
36. See below, note 50.
37. See R. Abraham Hafuta, *No'am*, IV (5721), 223 f. *Piskei Tosafot, Avodah Zarah* 1:11, in what is apparently a precis of *Tosafot, Baba Metzi'a* 32b, (or the precis of a different manuscript of *Tosafot* on *Avodah Zarah*) states that *tza'ar ba'alei hayyim* is forbidden only when the pain caused to the animal yields “no profit” (*beli revah*).
38. Cf., however, *Teshuvot Imrei Shefer*, no. 34, sec. 11, who endeavors to ascribe a different import to the words of Rabbenu Nissim.
39. *Nimmukei Yosef* cites Ramban as resolving this difficulty in an entirely different manner. Ramban asserts that the “commandment concerning honor of the Torah takes precedence over considerations of *tza'ar ba'alei hayyim*.” The readily apparent explanation of Ramban's failure to advance an explanation similar to that offered by Rabbenu Nissim is that Ramban does not sanction *tza'ar ba'alei hayyim* for the purpose of satisfying a human need. That position is however rejected by Ramban's own remarks in his commentary on *Avodah Zarah* 13b.
40. This concept is echoed in Psalms 8:7–9 which says of man: “Thou hast made him to have dominion over the works of Thy hands; Thou hast put all things under his feet. Sheep and oxen, all of them, yea, and the beasts of the field. The fowl of the air, and the fish of the sea; whatsoever passeth through the paths of the seas.”  
As evidenced by numerous biblical verses, it is clear that man is granted license to utilize animals as beasts of burden, for agricultural purposes, as a means of transportation and the like. Judaism also accepts the view that animals were created for the benefit of mankind. Thus, the Gemara, *Berakhot* 6b, reports: R. Eleazar said, “The Holy One, blessed be He, declared, ‘The whole world in its entirety was not created other than on behalf of this [human species].’” Even more explicit is the statement of R. Simeon ben Eleazar, *Kiddushin* 82b, declaring “. . . they [animals] were not created other than to serve me.” This view is not contradicted by the position espoused by Rambam in a celebrated dispute with Saadya Gaon in which Rambam denies the homocentric nature of the universe. Saadya, *The Book of Beliefs and Opinions*, Treatise IV, introduction, asserts that man is the intended and ultimate purpose of creation; Rambam, *Guide*, Book III, chapter 13, challenges this view, pointing out that the human species has no need for a great part of the cosmos. Rambam maintains that all parts of the world are equally intended by the divine will but acknowledges that certain beings were created for the service of others. Thus, in Rambam's view, there is no contradiction in acknowledging that service to other species is the instrumental purpose of some creatures while yet affirming their own existence as the final cause of those creatures.
41. See also *Teshuvot Hatam Sofer, Hoshen Mishpat*, no. 185, s.v. *ma she-katavata me-Rabad*; cf., however, *Teshuvot Hatam Sofer, Yoreh De'ah*, no. 314, s.v. *omnam*; and *Teshuvot Imrei Shefer* no. 34, sec. 2.
42. *Terumat ha-Deshen* rules that, as a matter of law, it is permissible to cause pain to animals even for the esthetic pleasure of man, and, accordingly, permits clipping the ears and tail of a dog “in order to beautify it.” Cf., however, *Sefer Hasidim* (ed. *Mekitzei Nirdamim*), no. 589, who forbids any attempt to effect a “change” in correcting a congenital anomaly in a limb or organ of an animal on grounds that such a procedure

constitutes a violation of the prohibition against *tza'ar ba'alei hayyim*. In an even more general statement, *Da'at Kedoshim, Yoreh De'ah 24:12*, declares that acts which cause discomfort to animals are permissible in order to satisfy “any desire of man even if his desire in this regard is not in accordance with the weighing of need or benefit but only a desire without a proper reason.” The same authority permits such procedures even if there is only the mere possibility that the need or desire may be satisfied thereby. See also *Da'at Kedoshim, Yoreh De'ah 23:28*. A similar view is expressed by *Ezer mi-Kodesh, Even ha-Ezer 5:14*. Cf., however, below, note 66.

43. Cf., however, *Sefer Hasidim* (ed. Reuben Margulies), no. 666, who applies Genesis 1:28 in a radically different manner. *Sefer Hasidim* remarks that Adam was forbidden to eat the flesh of animals but was granted dominion over them, whereas the sons of Noah were permitted to eat the flesh of animals but were not granted dominion over them. According to *Sefer Hasidim*, it is because the sons of Noah were not granted dominion over animals that the angel chastised Balaam in demanding, “Wherefore has thou smitten thine ass these three times?” (Numbers 22:32). As pointed out by R. Reuben Margulies in his commentary on *Sefer Hasidim, Mekor Hesed 666:7*, *Sefer Hasidim* obviously maintains that Noachides are forbidden to engage in acts involving *tza'ar ba'alei hayyim*. As indicated earlier, Rambam also cites Numbers 22:32 as the source of the prohibition against *tza'ar ba'alei hayyim*. Hence there is some reason to assume that Rambam also maintains that *tza'ar ba'alei hayyim* is prohibited to Noachides. *Teshuvot Imrei Shefer*, no. 34, sec. 2 and sec. 8, also suggests that Noachides may be bound by strictures concerning *tza'ar ba'alei hayyim* which, in his opinion, may be encompassed in the prohibition contained in the Noachide Code concerning the eating of a limb torn from a living animal. See, however, *Pri Megadim, Orah Hayyim, Mishbetzot Zahav 467:2* and R. Shalom Mordecai Schwadron, *Teshuvot Maharsham*, II, no. 364, who apparently maintain that non-Jews are not bound by strictures concerning *tza'ar ba'alei hayyim*. See also *Toldot Ya'akov, Yoreh De'ah*, no. 33.
44. See Rema, *Even ha-Ezer 5:13*. Cf., *Bi'ur ha-Gra, Even ha-Ezer 5:31*; and R. Jacob Emden, *She'elat Ya'avetz*, I, no. 111.
45. For a rebuttal of the evidence yielded by these sources see R. Yitzchak Dov Bamberger, *Teshuvot Yad ha-Levi*, I, *Yoreh De'ah*, no. 196, and *Teshuvot Imrei Shefer*, no. 34, sec. 10.
46. *Shevut Ya'akov* also adduces proof that *tza'ar ba'alei hayyim* is permitted, at least for medical purposes, on the basis of the statement of the Gemara, *Shabbat 77b*, to the effect that various insects were created so that, when crushed, they might be used as remedies for various bites and that serpents were created so that they might be boiled and used as a cure for eruptions; see above, note 33. As additional evidence, he cites the statement of the Gemara, *Shabbat 109b*, advising that if one is bitten by a snake “he should procure an embryo of a white ass, tear it open, and be made to sit upon it.” A further source which may be cited is the statement of the Gemara, *Shabbat 110b*, dealing with the treatment of jaundice, which advises, *inter alia*, “let him take a speckled swine, tear it open and apply it to his heart.” However, these sources fail to demonstrate that *tza'ar ba'alei hayyim* is permitted for medical purposes if the killing of animals is excluded from the prohibition; see above, notes 21–25 and accompanying text.
47. See, however, R. Yechiel Ya'akov Weinberg, *Seridei Esh*, III, no.7, and *Helkat Ya'akov*, III, no.31, sec. 4. Rabbi Weinberg argues that this source cannot serve as a basis for Rema's ruling since “perhaps” such practices are condoned only for the purpose of preventing idolatrous activities. Cf. Ramban, *Avodah Zarah 13b*. In his analysis of the Gemara's citation of the verse “and their horses shall you hough (*et suseihem te'aker*)” (Judges 1:6), Ramban equates abrogation of idolatrous practices with other human needs. See also *Teshuvot Imrei Shefer*, no. 34, sec. 9, who endeavors to show that *tza'ar ba'alei hayyim* was permitted in the case of the white chicken sold to an idolator only to spare the animal from even greater pain. The same authority, *loc. cit.*, no. 34, sec. 14, also suggests that this procedure was permitted only when performed in a manner which does not entail pain; see below, note 52. A similar explanation is advanced by *Havalim ba-Ne'imim*, I, no. 43, sec. 3.
48. *Tosafot, Avodah Zarah 11a*, states that *tza'ar ba'alei hayyim* is permitted “in honor of the king which is the honor of all of Israel, and the honor of the multitude takes

- precedence over *tza'ar ba'alei hayyim*." See also *Teshuvot Noda bi-Yehuda, Mahadura Tinyana, Yoreh De'ah*, no. 10,
49. See also the comments of Ramban, cited above, note 39. *Teshuvot Rema Panu*, no. 102, forbids placing a bird upon eggs of another species in order to hatch them because of concern for *tza'ar ba'alei hayyim*. This ruling is also recorded in *Kitzur Shulhan Arukh* 191:4. Ostensibly, this authority maintains that *tza'ar ba'alei hayyim* is prohibited even when designed for general human benefit or, minimally, when undertaken for financial profit; however, see below, note 58. Cf. R. Shimon ben Zemah Duran, *Tashbatz*, II, no. 58, cited by *Pit'hei Teshuvah, Yoreh De'ah* 297:1, who maintains that this procedure causes no discomfort to the bird.
  50. See commentary of Zev Zakhar, sec. 17, on *Issur ve-Heter, ad loc.* Zev Zakhar points out that an entirely different inference should be drawn from the published text of *Tosafot, Avodah Zarah* 11a; viz., that *tza'ar ba'alei hayyim* is permissible only for the sake of "the king's honor which is the honor of the multitude." Cf., also, *Teshuvot Imrei Shefer*, no. 34, sec. 9. [It should be noted, however, that experimentation designed to benefit the public at large is to be regarded as undertaken for the sake of "the honor of the multitude"; see R. Abraham Hafuta, *No'am*, IV (5721), 224.] *Noda bi-Yehudah, Mahadura Tinyana, Yoreh De'ah*, no. 10, assumes that *Issur ve-Heter* cites *Piskei Tosafot* rather than *Tosafot*. The phraseology employed by *Piskei Tosafot* is "there is no prohibition of *tza'ar ba'alei hayyim* other than if he derives no 'revah.'" The term "revah" is somewhat ambiguous and has the connotation of either "profit" or "benefit."
  51. See *Or Gadol, Shabbat* 24:1, who endeavors to demonstrate that the permissibility of *tza'ar ba'alei hayyim* in order to prevent financial loss is the subject of dispute among early authorities. According to *Or Gadol*, Rashi permits *tza'ar ba'alei hayyim* in such circumstances while Ramban and Rashba maintain that *tza'ar ba'alei hayyim* for avoidance of financial loss is forbidden.
  52. Evidence in support of the position that *tza'ar ba'alei hayyim* is permitted for financial gain adduced from the statement of the Mishnah, *Avodah Zarah* 13b, permitting removal of a digit from the foot of a chicken is dismissed by *Binyan Zion*. *Binyan Zion* argues that, in declaring this practice to be permissible, the Mishnah adopts the position that *tza'ar ba'alei hayyim* is prohibited only by virtue of rabbinic decree, but that, in accordance with the accepted opinion that *tza'ar ba'alei hayyim* is biblically proscribed, dispensation for such acts does not exist. *Havalim ba-Ne'imim*, I, no. 43, sec. 3, offers the explanation that the Mishnah intends to permit the removal of a digit "only by utilization of a drug which does not entail pain to the chicken." See also *Teshuvot Imrei Shefer*, no. 34, sec. 14, and *Nahal Eshkol, Hilkhot Avodah Zarah* 45:6. Painless amputation by means of a drug was known in the days of the Talmud; see *Baba Kamma* 85a and Rashi, *ad loc.*, s.v. *bein sam le-sayif*. Presumably, reference is to use of a local anesthetic which was known in the days of the Talmud; see *Teshuvot Imrei Shefer*, no. 34, sec. 15.
  53. Rabbi Bamberger's letter to *Binyan Zion* has now been published in *Teshuvot Yad ha-Levi*, I, *Yoreh De'ah*, no. 196. Upon examination of his comments, it is evident that Rabbi Bamberger does not attempt to interpret Rema's comments but rather expresses disagreement with *Terumat ha-Deshen*.
  54. See also *Teshuvot Toldot Ya'akov, Yoreh De'ah*, no. 33, and *Apei Zutrei, Even ha-Ezer* 5:25. Cf., however, R. Eliezer Waldenberg, *Tzitz Eli'ezer*, XIV, no. 68, sec. 5.
  55. See above, note 11. In support of his position *Binyan Zion* cites the statement of the Gemara, *Bekhorot* 36b, countenancing infliction of a blemish upon an entire flock of animals in order to circumvent the requirement that every tenth animal be offered as a sacrifice. For a rebuttal of that argument, see *Teshuvot Imrei Shefer*, no. 34, sec. 2.
  56. The identical source was earlier adduced by R. Yitzchak Dov Bamberger, *Teshuvot Yad ha-Levi*, I, *Yoreh De'ah*, no. 196, as evidence that *tza'ar ba'alei hayyim* is not permitted for the sake of financial gain.
  57. See also *Teshuvot Hatam Sofer, Hoshen Mishpat*, no. 185, s.v. *ma she-katavta me-Rabad*. Cf., however, *Teshuvot Hatam Sofer, Yoreh De'ah*, no. 314, s.v. *omnam*; and *Teshuvot Imrei Shefer*, no. 34, sec. 2.
  58. *Teshuvot Rav Pe'alim*, I, *Yoreh De'ah*, no. 1, rules that *tza'ar ba'alei hayyim* is permitted when designed for human benefit, but only if the desired benefit cannot be achieved in another manner. *Rav Pe'alim* cites *Teshuvot Rema Panu*, no. 102, who forbids placing a

bird upon eggs of another species in order to hatch them. Since *Rav Pe'alim* assumes that *tza'ar ba'alei hayyim* is permitted even for the purpose of financial profit he declares that the ruling of *Teshuvot Rema Panu* applies only in situations in which a bird of the same species is available. See also *Kitzur Shulhan Arukh* 191:4 and *Pit'hei Teshuvah Yoreh De'ah* 293:1.

59. Cf. *Teshuvot Noda bi-Yehudah, Mahadura Kamma, Yoreh De'ah*, no. 83.
60. There are also a number of authorities whose comments yield the conclusion that either *tza'ar ba'alei hayyim* is permissible for purposes of financial gain or that putting an animal to death involves no infraction of the prohibition against *tza'ar ba'alei hayyim*. *Taz, Yoreh De'ah* 117:4, reports that he was asked by a person engaged in the sale of hides whether it is permissible to kill an animal by means other than ritual slaughter because the hide of an animal slaughtered in the ritual manner commanded a lower price. The Gemara, *Hullin* 27b and 85b, indicates that, when the blood of an animal is required for a beneficial purpose, the animal may be put to death by means other than ritual slaughter. See *Shulhan Arukh, Yoreh De'ah* 28:18, and *Derishah, Yoreh De'ah* 28:6. Similarly, *Taz, Yoreh De'ah* 116:6, quotes *Yam shel Shlomoh, Baba Kamma* 10:37, to the effect that one who owns a dog that causes damage or destroys food may poison the dog even though it presents no danger to human beings and that the destruction of the animal involves no prohibition of *tza'ar ba'alei hayyim*. See also *Teshuvot Hatam Sofer, Yoreh De'ah*, no. 103, cited above, note 25.
61. See R. Jacob Emden, *She'elat Ya'avetz*, I, no. 110, who reports that the renowned kabbalist R. Isaac Luria, known as the Ari ha-Kadosh, directed his disciples not to kill "even a louse." *She'elat Ya'avetz* states that this directive was based upon "the trait of piety and upon [kabbalistic] mystery." An opposing view is adopted by *Sefer Hasidim* (ed. Reuben Margulies), no. 831:

There were two people. One did not want to burn the flies. His friend said to him, "Be not righteous overmuch" (Ecclesiastes 7:16). Better to burn the flies so that they shall not fall into the food and drink. [Then] one who swallows them will sin. Therefore it is written 'Be not righteous overmuch.'"

62. Cf., however, *She'elat Ya'avetz*, I, no. 110, who asserts that "perhaps" the calf was the incarnation of a human soul and that this fact was known to R. Judah.
63. Cf., however, *Teshuvot Imrei Shefer*, no. 34, sec. 10, who asserts that *Terumat ha-Deshen* seeks to establish a normative halakhic principle "for if the matter were permitted there would be no suspicion of punishment."
64. R. Nathan Zevi Friedman, *No'am*, V (5722), 190, seeks another talmudic source for Rema's comment and, in doing so, apparently overlooks the fact that *Terumat ha-Deshen* himself cites *Baba Metzi'a* 85a as his source.
65. A somewhat parallel, although less clearly developed, concept may be found in Aristotle's notion of "superhuman virtue" which he defines as "a kind of heroic and divine excellence." See *Nicomachean Ethics*, Book VII, 1145a. The concepts are, however, dissimilar in that Aristotle's superhuman virtue appears to be essentially unobtainable and, indeed, Aristotle presents no imperative for seeking its attainment, whereas in Jewish teaching all persons may, and indeed should, aspire to act *lifnim mi-shurat ha-din*. Also, for Aristotle, superhuman virtue is a quality of character from which certain modes of conduct flow. There is no indication that Aristotle ascribes any moral value to an act which merely mimics the conduct of one who has acquired this quality of character. In Jewish teaching, the act itself is deemed meritorious.
66. The sole rabbinic authority to express reservations with regard to the permissibility of animal experimentation as a matter of normative law is *Teshuvot Imrei Shefer*, no. 34, sec. 16. *Imrei Shefer* declares that "it is not clear" that *tza'ar ba'alei hayyim* is permitted "for the purpose of tests and experiments." *Imrei Shefer* readily acknowledges that *tza'ar ba'alei hayyim* is clearly permitted for therapeutic purposes, but distinguishes between therapeutic procedures of demonstrated value and experimentation which is undertaken on the mere possibility that "perhaps there will emerge from this benefit through medical science." [It may be noted that *Teshuvot Noda bi-Yehudah, Mahadura Kamma, Yoreh De'ah*, no. 83, similarly suggests that *tza'ar ba'alei hayyim* may not be permissible when

undertaken to avoid possible, but uncertain, transgression. *Noda bi-Yehudah* himself, however, concludes that, at least in some circumstances, *tza'ar ba'alei hayyim* is permissible in order to eliminate the potential for transgression.] *Imrei Shefer* concludes that “we cannot conclusively determine whether, in accordance with the precepts of our holy Torah, license is granted to Jewish physicians to engage in those tests on the bodies of living creatures.” As has been noted earlier, *Da'at Kedoshim*, *Yoreh De'ah* 24:12, explicitly affirms that the concept of benefit to man includes even “possible benefit.” See above, note 42.

The distinction drawn by *Imrei Shefer* between *tza'ar ba'alei hayyim* designed for direct therapeutic benefit and experimentation for the general advancement of medical knowledge is, in effect, an application of a principle of Jewish law first enunciated by *Noda bi-Yehudah*, *Mahadura Tinyana*, *Yoreh De'ah*, no. 210, in a classic responsum regarding post-mortem examinations. *Noda bi-Yehudah* states definitively that the suspension of virtually any prohibition is warranted in face of an already present danger, or, in rabbinic terminology, in the case of a *holeh le-faneinu* (lit: “a patient in front of us”). The concept of a *holeh le-faneinu* is, roughly speaking, the halakhic equivalent of “a clear and present danger.” Prohibitions are suspended for the purpose of saving an endangered life, but not in anticipation of a purely hypothetical eventuality. Accordingly, *Noda bi-Yehudah* rules that performance of an autopsy is warranted in order to obtain specific information of value in the treatment of another similarly afflicted patient, but not in the vague hope that some potentially life-saving knowledge may be gained in the process of the post-mortem examination. *Imrei Shefer* appears to apply the same principle to experimentation upon animals.

67. Cf. Maharsha, *Baba Metzi'a* 85a, and *Teshuvot Imrei Shefer*, no. 34, sec. 10 and sec. 12, who offer explanations for the censure of R. Judah which differ from the explanation advanced by *Ma'arkhei Lev* but which are entirely consistent with the conclusion reached by *Ma'arkhei Lev*.
68. See, however, R. Chaim Pelaggi, *Ruah Hayyim*, no. 630, who cites this ruling as evidence that *tza'ar ba'alei hayyim* is permitted “for the purpose of a *mitzvah*.” A similar view was earlier expressed by *Shiltei Gibborim*, *Avodah Zarah* 1:21, and *Knesset ha-Gedolah*, *Hoshen Mishpat* 240:6. See also *Sedei Hemed*, *Ma'arekhet ha-Tzadi*, no. 1 who maintains that the treatment of the scapegoat sent into the wilderness and destroyed in conjunction with the ritual of *Yom Kippur* serves as a paradigm permitting *tza'ar ba'alei hayyim* for the purpose of fulfilling any *mitzvah*. The difficulty raised by *Ma'arkhei Lev* is readily resolved if, as may be assumed, it is recognized that Rema's caveat does not apply to *tza'ar ba'alei hayyim* in a matter pertaining to a *mitzvah*.
69. The analysis of Rema's position as presented by *Ma'arkhei Lev* seems to be at variance with that of *Taz*, *Even ha-Ezer* 5:11. *Taz* remarks that, in accordance with Rema's caveat, it is improper to remove the comb of a rooster. However, since the presumed sterilization does serve a need which cannot be achieved in another manner, according to *Ma'arkhei Lev*'s analysis, removal of the comb should be sanctioned even according to Rema.
70. This does not apply to painful procedures performed on living animals by students enrolled in laboratory courses as part of their general education. See R. Joel Schwartz, *Ve-Rahamav al Kol Ma'asav*, p. 56. It should be stressed that even those authorities who sanction the infliction of pain upon animals for the benefit of human beings do so only when the benefit is practical in nature, but not merely for the satisfaction of intellectual curiosity. Thus, even according to those authorities, only experiments directly related to the development of a specific skill necessary for fulfillment of the student's professional or vocational goal may be sanctioned. Nevertheless, in this writer's opinion, students directed to perform such procedures as part of the course requirements for purposes of earning an academic degree may perform such acts according to the opinion of those authorities who sanction *tza'ar ba'alei hayyim* for financial gain or for the fulfillment of a human need since the earning of a degree leads directly to economic gain. However, since acquisition of theoretical knowledge for its own sake and perfection of skills which are not intended for applied use do not constitute such a need, it is improper for educators to impose such requirements upon students for general educational purposes. Castration, spaying and sterilization of living animals is forbidden by biblical law. Accordingly,

Jewish students and practitioners may not perform such acts even in situations in which considerations of *tza'ar ba'alei hayyim* do not pertain. Whether such acts are also prohibited to Noachides is the subject of some controversy both among the Tanna'im and among rabbinic decisors; see *Encyclopedia Talmudit*, III, 356.

71. *Ma'arkhei Lev*, no. 110.
72. *Teshuvot Binyan Zion*, no. 108.
73. *Pri Megadim, Orah Hayyim, Mishbetzot Zahav* 468:2.
74. *Teshuvot Rav Pe'alim*, I, *Yoreh De'ah*, no. 1.
75. *Teshuvot Sho'el u-Meshiv, Mahadura Tinyana*, III, no. 65; and R. Tevel the Physician quoted by *Teshuvot Avodat ha-Gershuni*, no. 13.
76. Israel-Michael Rabbinowicz, *La médecine du Thalmud* (Paris, 1880), p. 56, note 1, and p. 57, note 1, cites therapeutic procedures performed upon animals which are reported by the Gemara, *Hullin* 57b, as evidence that vivisection was performed by the Sages of the Mishnah. See, however, *Teshuvot Imrei Shefer*, no. 34, sec. 16, who refutes this contention arguing that those procedures were undertaken to correct injuries sustained in accidents or the like.