


HALOCHOSCOPE



This week's question:

There is an injured bird lying on a porch. Ants are beginning to congregate around it. Should the onlooker try to save and heal it, kill it quickly, or leave it to “nature”?

The issues:

- A) *Tzaar baalei chaim*, causing pain to animals
- B) *Bal tashchis*, wantonly destroying
- C) 'Mercy' killing an animal
- D) Allowing nature to take its course

A) *Tzaar baalei chaim* [excerpted from Halochoscope VII:25]

The clear assumption is that *tzaar baalei chaim* is forbidden. Logically, this could easily be seen as a matter of ethics. In fact, there is an ethical concept of *achzarius*, cruelty, in general. However, the Talmud considers *tzaar baalei chaim* a *halachic* issue. This means that it must be taken into account when dealing with general *halachic* issues. For example, an ethical concept could not be invoked to override a *halachic* concept. A *halachic* concept might override another *halachic* concept, depending on the context. The Talmud debates whether *tzaar baalei chaim* is considered a Scriptural *mitzvah* or whether it is Rabbinical. That is, though the ethical concept might apply logically, which is usually considered Scriptural, the *halachic* concept might have been institutionalized Rabbinically. The consensus of the poskim is that the conclusions drawn by the Talmud are to follow the opinion considering it Scriptural.

There are many views on the source for this *mitzvah* in the Torah. There is no specific *mitzvah* forbidding general cruelty to animals *per se*. There are a number of *mitzvos* forbidding or requiring certain behaviors with regard to animals. In many of these cases, the underlying theme, or one of the themes, is the prevention of cruelty to the animal. The commentaries view these as the basis for the *mitzvah*.

One example of such a *mitzvah* is the obligation to help one whose donkey is overloaded. Due to the wording of the *mitzvos* associated with this, there are a few different applications. They include: helping unload the donkey, helping to load it up, shoring up the load as it falls, and the like. The *mitzvah* seems to be an interpersonal obligation, to help one's fellow Jew. By parsing the *mitzvah*, it becomes clear that there are situations when there is no obligation to help the owner. Yet, there is always an obligation to help the innocent animal. The Torah also commands us against slaughtering an animal's offspring in its presence. We may not take the offspring from its mother within eight days of its birth, to use as an offering in the *Bais Hamikdash*. One must send away a bird before taking its eggs or chicks. When slaughtering, one must cut the animal in the least painful part, so that it will not die painfully. When an animal is threshing grain that it

usually consumes as its fodder, it may not be muzzled. There is even an explanation given for what is otherwise considered a *chok*, statute. One may not harness an ox and a donkey together. One reason offered for this is that they work at different paces or strengths. It is considered cruel to force them to work like this. Neutering or spaying are forbidden. Some say that this is partly due to the pain.

The Midrash mentions the concepts of mercy and kindness to animals in connection to these *mitzvos*. On the other hand, in at least one of these instances, we may not imply that the *mitzvah* is due to Hashem's compassion on His creatures. The *mitzvos* are decrees. One answer is that while Hashem's reasons for the *mitzvah* may not be revealed to us, we may understand how they affect us. *Mitzvah* observance refines the character. These *mitzvos* refine the person's attitude to creatures in general. This becomes especially important when slaughtering. One involved in this is likely to become insensitive to animals' feelings. He needs to refine this part of his character and personality. In addition, we are always obliged to emulate the ways of Hashem, Who is the All-merciful.

Tzaar baalei chaim is included in the considerations for certain applications on *Shabbos*. For example, there are Rabbinic restrictions on feeding and handling animals. Some involve *muktze*, moving items that are not meant to be moved on *Shabbos*, or *tircha*, too much effort. If an animal has become very dependent on being force-fed, one may force feed it in certain ways. If an animal needs help getting out of a hole or a pool, one may do certain things that would otherwise be forbidden. If an animal is carrying a load that includes *muktze* items, one may place pillows under it and loosen the load so that it falls. An itchy animal may be scratched with certain types of tool.

B) Bal Tashchis

Apart from hurting a living animal, killing or starving an animal involves *hashchasa*, wastefulness. *Bal tashchis* applies to anything that has a use for man. One may not destroy it for no purpose. Even items that do not have an apparent direct use, may sometimes not be destroyed wantonly. *Bal tashchis* is just extended to forbid even productive destruction, when preserving the item would be more productive. Thus, one may not cut down a fruit-bearing tree for its lumber. This involves at least one negative *mitzvah*. Some say that it is a violation of two negative *mitzvos* and one positive. The poskim debate whether the Scriptural *mitzvah* applies to items other than fruit-bearing trees. It is definitely forbidden, somewhat Scripturally, even if it does not violate this specific *mitzvah*. Even destroying it indirectly, such as starving it of water, or weakening it without destroying it, is considered a violation of *bal tashchis*. There is a minority opinion that the Torah only permits killing an animal for food. Otherwise, even a dangerous animal may only be killed by a *Bais Din* of twenty-three *dayanim*.

Hunting a wild animal for sport, with no intent to trade the hide, is also a form of *bal tashchis*. One may, however, kill pests. They are considered not productive, and their disposal is considered justifiable and productive. [See Emor 22:28 (Targ Yon, Midr) Shoftim 20:19 Ki Saitzai 22:6-7 (Ibn Ezra Ramban) 22:10 (IE Daas Zekainim, Baal Haturim). Shabbos 53a 128b 154b 155b Beitzah 23a Baba Kama 91b Baba Metzia 31a-33a 85a Avoda Zara 13a, Poskim. Chinuch 294 451 545. Tur Sh Ar OC 305:19 324:9-10, YD 24:8 116:7 117:Taz 4 (Darkei Teshuva 35 44 etc.), EH 5:14, commentaries. Sh Ar Harav,

hil. Tzaar Baalei Chaim. Kitz. Sh Ar 191.]

C) 'Mercy' killing an animal

In light of the above considerations, the issue in our case is whether there is a *mitzvah* to put the bird out of its misery, or whether this is in fact forbidden. We know that just as there is a prohibition against actively causing suffering to an animal, there is also a *mitzvah* to prevent further suffering? If so, what if this involves killing the animal? In the examples of Scriptural *mitzvos*, the prevention of suffering is accomplished by actively helping the animal, such as unloading it. In our case, it will put an end to the suffering, but also an end to the life. Does this serve the 'needs' of the animal? Does it show the 'living' animal compassion? Does it refine the character?

On the other hand, we have shown that one may not destroy a resource when there is no human gain from its destruction. Is it permissible to kill the bird?

The bird in question is living. The onlooker actually has no knowledge about the extent of its injury. A broken wing can make a bird a *traifah*, terminally ill, or a *mesukeness*, dangerously ill. Or it might be able recover with some help, or even by itself. The concern is that the animal will die due to its injury, or that it will fall prey to a predator, or that it might starve because it cannot hunt for its food.

The Torah addresses healing in general terms. One could say “this is Hashem's will.” Or one could rely on prayer and repentance. The Torah says that a doctor may heal. One may heal another person's 'money', meaning his livestock. This is a monetary matter. In our case, the animal does not belong to anyone. The reason to heal this animal would be due to *tzaar balei chaim* or plain kindness and mercy, that are divine attributes to be emulated. There is no obligation to spend one's own resources on preventing pain to animals. Thus, one need not spend his own money to feed animals that do not belong to him. In the same way, if dealing with the medical issues of this animal will cost the person money or other resources, he is not obliged to try. Accordingly, if this person knows how to heal the injured bird by himself, he should do so. If he will need to take it to someone else, and certainly if he will need to spend money on it, he is exempt.

One cannot say that this bird is almost dead and that therefore, one is not really killing it. According to the view that we mentioned that any time an animal is killed for no human need, it must be judged like a human, the same comparison applies to this. One may not kill a human to put him out of his pain. Though there have been examples of this in Tanach, they were never condoned. Furthermore, even those who are less stringent agree to the basic principle of *bal tashchis*. In effect, the Torah permits humans to rule over animals. This is the basis to allow both *tzaar baalei chaim* and *bal tashchis* for human needs. If there is no human need, there is no permission to kill or hurt an animal. In our case, there is no human need. The reason one might wish to kill it is because he thinks that there is a *mitzvah* to do so. Alternatively, he feels a human need because he feels bad. To assuage his feelings of 'pity' he will kill it. This does not serve the animal's needs, at least, while it is living. Who is to say that killing it is doing it a favor!

The Talmud discusses an animal with a nearly severed limb. On the suggestion that one could cut off the limb and feed it to dogs, the Talmud says this is *tzaar baalei chaim*. [Presumably, the dogs do not depend on him for food.] The poskim debate why one

should not give the entire animal to dogs. One may assume this means by killing it first. In one view, the reason is that killing it is also unnecessary pain. [See Baba Kama 85a Baba Basra 20a (Tosafos, Ri Migash), Poskim. Tur Sh Ar YD 53:4 CM 272 Sh Ar Harav 3., commentaries.]

D) Intervening with nature

In our case, the injured animal might become prey to a predator. The question is whether one may or should try to save it. If one owns a domestic animal, he protects it from predators. If one is hired to watch his fellow's animals he is obliged to do the same. However, animals that roam wild are created within an ecosystem. Hashem actually ordained it such that some animals will be prey for others. Some animals were created such that they prefer live prey. They don't eat it once it is dead, and the carcasses provide food for scavengers. Such is the intricacy of Hashem's creation. One of the sins of the generation of the great flood was that they manipulated the natural course of Creation. Thus, in a sense, the reason we may deprive predators of our flocks is because we are serving the needs of mankind. In the wild, by protecting one animal we deprive another. The Talmud distinguishes between different wild animals. Some forage easily for food or prey, while others have a difficult time. Hashem took care of these as well. One should show compassion by feeding a dog that has no owner, because it has a harder time finding food. [Due to this, it is able to store food in its system for longer.] On the other hand, since one is not obliged to spend his own resources to provide for ownerless animals, after giving it the food, he should hit it. This will deter it from coming back for more!

The Torah rewards dogs for protecting their owner's flocks from wild predators by directing us to give them the meat of a *traifah*. In addition, the dogs chose not to bark at the Israelites in Egypt, and were likewise rewarded. The Torah uses this to show that Hashem does not withhold reward from any creature that deserves it. Likewise, there are examples that show that Hashem ordains certain animals as prey for others (e.g. Psalms 104:21). Accordingly, this bird might have been ordained as food for its predator. Even inanimate objects demand their fair share in the greater scheme.

On the other hand, a great sage was condemned for a lack of compassion in this area. He noticed an animal resisting being slaughtered and said it should accept its fate, as this was Hashem's plan for it. Thus, while one may not intervene, one must not let this affect his compassion for the creatures. Rather, he should view it as a fulfillment of Hashem's overall plan. For humans, the Talmud says that all is in the Hands of Heaven except for watching one's health. Furthermore, one is obliged to toil by the sweat of his brow in order to gain his sustenance, as part of the curse for the original sin. [See e.g. Shabbos 155a Kidushin 82a Baba Metzia 85a etc. Halochoscope XIII:43:C.]

In conclusion, if one is able to, he should heal the bird. Otherwise, let nature take its course. [Note: By the following morning, the bird had obviously been eaten!]

Sponsored by Avi and Rifky Apfel in memory of Moshe Chaim ben Mair Taub a"h, whose

yahrzeit was on the 13th on Sivan. ם

© Rabbi Shimon Silver, May 2013.

Subscriptions and Sponsorships available. (412) 421-0508. halochoscope@hotmail.com