

Tzaar Baalei Hayim and Shabbat: A Teshuvah for Our Time

Asher Shasho-Levy

Question: Is one allowed to break Shabbat in order to alleviate the suffering of or save the life of a pet animal?

Introduction

The laws regarding a situation where one would have to break Shabbat in order to save the life of a pet animal have yet to be clearly formulated in a *teshuvah* that takes into account the advanced relationships that exist today between human beings and their animal companions. In order to provide a holistic *psak halacha*, or Jewish legal ruling, traditional sources that account for different realities need to be tempered by a contemporary understanding of the relationship between human beings and their pets, and by the underlying Torah value of *tzaar baalei hayim*, compassion towards animals.

Tzaar Baalei Hayim

In Judaism, there is an understanding that humans are granted a higher level of dignity than is granted to animals, as man is created *b'tzelem elohim*, in the image of God. Rabbi Shmuly Yanklowitz argues that humans are distinct from animals in that we have a higher sense of responsibility, namely a responsibility to care for God's creation. Human beings were commanded to rule over creation (Genesis 1:26, 1:28) in order to "elevate human existence as well as to care for other creatures dependent on human mercy", specifically animals (Yanklowitz). In a proto-evolutionary statement, fourteenth-century Jewish philosopher Ibn Caspi states (on Deuteronomy 22:6) that animals are "*ke'llu avoteinu*," like our

forefathers, as they resemble us in form and antedate us. Clearly, humanity has a sacred obligation to be compassionate to animals.

In the Torah, this obligation is explicitly expressed through a number of *mitzvot* aimed at elevating humanity through acts of mercy and kindness to animals. Among these *mitzvot* are the laws of *shiluach haken*, or the sending away of a mother bird before taking her eggs (Deuteronomy 22:6); "*oto v'et Beno*", the prohibition against killing a mother animal and its child on the same day (Leviticus 22:28); the prohibition of breaking off and eating the limb of a live animal, which is one of the seven laws of Noah which apply not only to Jews but to all of humanity (Genesis 9:4); and the prohibitions against plowing an ox and a donkey together (Deuteronomy 22:10), and muzzling an ox on the threshing floor (Deuteronomy 25:4).

Exodus 23:5 explicitly states our responsibilities to an animal that is in pain:

“When you see the ass of your enemy lying under its burden and would refrain from raising it, you must nevertheless raise it with him. “

If the Torah requires that we prevent our enemy's animals from suffering, *kal ve'chomer*, all the more so, must we take care to prevent the suffering of our own animals!

These concepts are expanded upon in the Talmud, as the Gemara explicitly forbids unnecessary cruelty to animals, "*tzaar baalei hayim*" (Bava Metzia 32b), and requires one to feed his or her animals before feeding his or herself (Berakhot 40a).

As such, *tzaar baalei hayim* is a *d'oraiyta*, or Torah mandated *mitzvah*, which is the highest level of commandment in the Jewish tradition, taking precedence over rabbinic commandment. However, the laws of Shabbat, which could serve as obstacles to saving the lives of our animals, are also *d'oraiyta*, which makes this issue a delicate balance between two contradicting Torah values.

In Mishna Yoma 8:5, it is established that *pikuach nefesh*, saving a human life, takes precedence over Shabbat. This text is not directly applicable to animals, as the biblical sources for *pikuach nefesh* make it sufficiently clear that it applies to human beings exclusively (Leviticus 18:5), yet the fact that *pikuach nefesh* overrides Shabbat provides precedent that Shabbat can be broken in order to preserve another Torah value of great enough significance. While the Gemara in Shabbat 53b prohibits the administration of medicine on Shabbat for people as a *gezerah*, or preventative measure, lest one be led to grinding, one of the thirty-nine prohibited *melachot*, or labors, of Shabbat, the *Mishna Berurah* allows the administration of medicine to animals on Shabbat (*Mishnah Berurah* 332:5), an opinion that has been overwhelmingly adopted by halachic authorities. The widespread adoption of a lenient opinion by the rabbis when dealing with animals clearly shows that the rabbis are willing to be lenient on Shabbat, when concerning life, even that of an animal.

Are Pets Muktzah?

The Gemara, Shabbat 128b, is a crucial source regarding whether or not

and to what degree we can violate Shabbat in order to save the life of an animal.

“Rabbi Yehudah said in the name of Rav: An animal that falls into a canal- we bring pillows and cushions and place them under [it], and if it ascends- it ascends. ... This nullifies the [pillows] of their readiness [their purpose, thus making them not utilitarian, or *muktza*!] [Rabbi Yehudah] holds the opinion that nullifying a utensil of its readiness- [is a] rabbinic [law], [whereas the avoidance] of animal suffering- [is a] Torah [law], and the Torah [law] comes and overrides the rabbinic [law].”

On a weekday, a bridge would be built, leading the animal to safety, but on Shabbat, when no construction can be done, Rabbi Yehudah suggests that a path of pillows be built, thereby leading the animal to safety without violating Shabbat. However, making a bridge out of these pillow and cushions deprives them of their utilitarian value, making them *muktzah*, or rabbinically prohibited on Shabbat due to their non-utilitarian status. However, the fact that the laws of *muktzah* are rabbinically, as opposed to biblically, prohibited allows Rabbi Yehudah to override these laws out of understanding that *tzaar baalei hayim* is the weightier precept. Ultimately, this ruling attempts, through the mitzvah of *tzaar baalei hayim*, to teach compassion for all living things, even at the price of violating a rabbinic ordinance.

This very text that attempts to instill in us compassion for animals is also the source of an incorrect *halachic* conclusion held by many of the great *rishonim* and *acharonim*, namely that pets are *muktzah machamat gufam*, or inherently non-utilitarian. While most rabbis hold this opinion, the argument upon which

this ruling is based is inherently flawed, as it fails to take into consideration sociological circumstances and fails to recognize the difference between a pet and a work animal. Pet ownership is a relatively recent phenomenon among Jews, with dog ownership dating back only several centuries among Ashkenazi communities (Jachter). As such, the vast majority of the *halachic* literature views animals as beast of burden, which would understandably be *mukztah*, as you cannot have animals labor for you on Shabbat:

“The seventh day is a Sabbath of the Lord your God: you shall not do any work- you, your son or daughter, your male or female slave, or your cattle...”
(Exodus 20:10).

Today’s domesticated pets are not work animals, but rather serve the purposes of companionship, entertainment and protection. Guide dogs help people with disabilities, and therapy animals provide comfort to people in a variety of situations, from the physically ill to the grieving to children with learning disabilities. Rabbi Shlomo Zalman Auerbach (*Shmirat Shabbat Kehilchata* 18, footnote 62) comes to the conclusion that seeing-eye dogs are thus not *muktzah*, as they serve a clear valuable and utilitarian purpose on Shabbat; this opinion is widely accepted. New research by leading institutions such as the Center for the Human-Animal Bond at Purdue University has shown the basic therapeutic and calming effects of animals on people, as well as the deeply positive and symbiotic relationships that exist between people and their pets, and as such, pets have significant enough utility to not be considered *muktzah*.

Additionally, amongst the *rishonim*, there was a lack of agreement concerning

whether animals are to be considered *muktzah*. The Mordechai, in Shabbat 316, states the opinion of Rabbi Shimshon, which argues the utility of a pet (the argument is also cited in the name of Rabbi Yosef in Tosafot Shabbat 45b):

We overturn the basket before the chicks—meaning if we need the place [where they are]. This implies that chicks are *muzktah*. And the reason is that since animals are *muktzah*, like pebbles or raisins. And Rabbenu Shimshon explicates [that it only applies in a situation when] that very day when they were born, that if not it is appropriate to quiet a child with them. And his words are not the essence [are not accepted. And in Tosafot I expand on this...

Rabbi Shimshon's argument, while a minority opinion that is dismissed by many of the most important *halachic* authorities, including Moshe Feinstein, Ovadia Yosef, *The Shulchan Aruch*, *Tosafot*, the *Mordechai*, and the *Rosh*, is a legitimate *halachic* opinion that can and should be adopted today, as it accounts for the scientifically supported reality; namely, that pets provide comfort and companionship and are clearly utilitarian.

On legal grounds, since the issue in debate by the *rishonim* is a rabbinic law, one is permitted to rule leniently and take minority opinions, as do Sephardic Chief Rabbi Mordechai Eliyahu (cited by Rabbi Shmuel David, *Sheilot Uteshuvot Meirosh Tzurim* 38:6) and the *Halachot Ketanot*, responsa 45. Based on this, even if one was stringent and considered pets to be *muktzah*, he or she would be obligated to break the laws of *muktzah* to save the animal's life, as these laws are *d'rabbanan*. However, it should be stressed that pets must not be considered *muktzah*, as the argument

that pets have no utilitarian function is in direct contradiction both with contemporary research and deeply felt reality.

Changing Times: Judaism and Pets

The *mitzvah* of *tzaar baalei haim* is a Torah commandment that elevates human existence onto a higher, more compassionate plane, and *halachically*, the opinion that animals are not *muktzah* is fully viable; as such, one who fails to break Shabbat to save the life of a pet due to the restrictions of the laws of *muktzah* is in direct violation of Jewish law, tainting their Shabbat observance with their failure to uphold *tzaar baalei haim*.

If *tzaar baalei haim* is such an important value in contributing to the holiness of Jewish consciousness, then why are *rabbanim* so wary of adopting a lenient position concerning animals? Perhaps the answer is sociological at heart. While Judaism places great emphasis on the avoidance of cruelty to animals, the founders of our faith tended flocks, and Rabbi Yehudah was punished for not saving the life of a calf (Midrash, Bereshit Rabba 33:3), since Biblical times, there has been a strain in Judaism that holds a negative, even hostile attitude towards certain animals. During the biblical and Talmudic period, dogs in particular were reviled; considered to be among the lowest of the low, man's best friend was seen as an unclean scavenger, much as a modern individual would view a rat or an emaciated urban pigeon. In the Tana'ch, Dogs are equated with carrion birds: "All who die in the town...shall be devoured by dogs, and all who die in the open country shall be devoured by the birds of the sky (1 Kings 21:24)". "Dog" was among the lowest insults in the ancient

Jewish lexicon, used alternately to insult and to self-efface: ““What is your servant that you should show regard for a dead dog like me?” (2 Samuel 9:8)”. Additionally, the behavior of dogs is proverbially recorded: “As a dog returns to his vomit, so a dullard repeats his folly” (Proverbs 26:11). The Talmud is even harsher in its opinion on the animals that we today hold as pets “No man should own a dog unless it is on a chain [so that it will do no damage]” (Bava Kamma 79b).

While Rabbi Ishmael permits the ownership of *kofri* dogs, or small dogs that are harmless and can be used to hunt rodents, according to Rambam, this opinion is not legitimate and Jews are forbidden from owning even *kofri* dogs. These texts clearly illustrate that Judaism’s concept of the function and utility of dogs is entrenched in the realities of a time and place very different to that of our own, where dogs were considered to be untamed, wild scavengers. In fact, the prohibitions against owning dogs in the Talmud are rooted in the idea that dogs are frightening and cause damage, a description at odds with the affectionate, loving, caring and friendly animals held as pets today; a wolf or a rabid possum would come closer to the dogs being described by the rabbis than the dogs that we own today.

Breaking Torah Prohibitions: Mutar?

While a rabbinic prohibition may be broken to save the life of an animal, there still is the issue of whether a Torah prohibition may be violated in order to save a pet on Shabbat. All agree that one is allowed to ask a non-Jew to perform tasks forbidden on Shabbat in order to alleviate the suffering of an animal, yet most traditional sources, including Rambam and the *Mishna Berura*, place the value of

Shabbat over the value of the value of animal life even though *tzaar baalei hayim* is also *d'oraita*. Prominent RCA (Rabbinical Council of America) Rabbi Howard Jachter states that “It should be emphasized ... that one may not violate Shabbat even to save an animal's life ...” (Jachter) since halachically one violation of any precept of Shabbat is mandated in order to save a human life, yet, according to most Orthodox opinions, not an animal life.

Yet from the perspective of today's halachic Jews who frame their lives within the strictures of the Jewish legal order yet fully live in the modern world, this conclusion is wrong on a multiplicity of levels. The majority understandings of our traditional sources do not take into account that the relationship that exists between humans and animals is not simply one of subservient animals and human masters, but rather a symbiotic relationship where humanity is responsible for the well being of animals who in turn provide comfort, protection, and companionship. Purdue University's Center for the Human-Animal Bond has been conducting research on the nature of this relationship since 1982. The research has proven that contact with animals improves physical and mental health in a myriad of ways, including but not limited to decreased anxiety and blood pressure. The introduction of animals into rehabilitation centers, convalescent homes, prisons and hospitals has proven that the presence of animals speeds recovery time. As such, animals are here not only to be cared for by humanity, but to care for us as well (Pet Picks).

Thus, saving the life of an animal, while not *pikuach nefesh* in-and-of-itself, would fall under the category of psychological *pikuach nefesh*, as we are too closely linked to our animals to let them die. There is a wealth of *halachic* precedent for

violating Shabbat for psychological cases of *pikuach nefesh*. For instance, the Gemara, in Bava Metzia 84a records an argument between Rabbi Yochanan and Resh Lakish that became so heated that Resh Lakish fell ill and died.

Rabbi Yochanan [, feeling responsible for Resh Lakish's death,] was plunged into deep grief. The Rabbis said, "Who shall go to ease his mind?" [They decided to] let Rabbi Elazar ben Pedat go, whose statements were sharply formulated [like those of Resh Lakish]. So [Rabbi Elazar] went and sat before [Rabbi Yochanan]; and after every statement of Rabbi Yochanan's he would say: 'There is a Baraita which supports you.' Rabbi Yochanan said 'Do you think you are comparable to the son of Lakish? Whenever I said something, the son of Lakish used to raise twenty-four objections, to which I gave twenty-four answers, which led to a greater understanding of the subject; while you say, 'There is a Baraita which supports you.' Do I not know that I am right?" [And so R' Yochanan] went on tearing his garments and weeping, 'Where are you, son of Lakish, where are you, son of Lakish' and he cried out until his mind slipped away from him [and he fell unconscious]. The Rabbis pleaded for [God's] mercy on his behalf and he died.

That the rabbanim were successful in praying for the death of Rabbi Yochanan suggests that psychological suffering is worse than death; this implies that *pikuach nefesh* encompasses mental health.

Saving an animal's life may not directly save a human life, yet the symbiotic relationship between people and their pets is so vital and symbiotic that letting a pet animal die could amount to endangering a person's mental and emotional health,

which in turn could lead to physical deterioration; research has shown that humans benefit from the symbiosis in the form of decreased blood pressure, reduced anxiety, and general well being (Center for the Human-Animal Bond). Even though there is a doubt as to whether saving the life of an animal will extend human life and preserve human health in all or even most cases, we are still obligated to save the animals life on account of *safek nefashot*, doubt of whether a situation is life threatening or not. As such, we are obligated to rule leniently to avoid the possibility of death or mental collapse (Mishna Yoma 8:5).

In recent years, the animal rights movement has emerged, arguing that animals deserve human compassion and have the basic right to exist, or, more radically by groups such as PETA and utilitarian thinkers such as Peter Singer, that call for universal vegetarianism and a total halt to industry that harms animals for human pleasure. In this climate of increased awareness of the capabilities and rights of animals, it would be a *chilul hashem*, a desecration of the name of God, not to violate Shabbat to alleviate the suffering of an animal. The Gemara in Yoma 84b says:

Pikuach nefesh is not attended to by gentiles or children, but rather by the elders of Israel.

The Shulchan Aruch understands this to mean that adult males should be the ones to violate Shabbat for *pikuach nefesh*, so that Gentiles are not led to think that Jews care more for their ritual than for a life. Rambam goes even further, stating that the one to violate Shabbat should be the most pious person or greatest Rabbi available, in order to impress upon people the importance of life in the Jewish tradition.

Though it does not always operate within the framework of Jewish values and ethics, the fact that PETA it is able to command over two million members speaks to the increasing importance of animal rights to the world community, and the increasing number of people who give animal life similar value to human life. It would thus speak poorly of the Torah and the Jewish people for a religious Jew to pass by an animal in pain and not violate Shabbat to save its life, if only for reasons of preserving the legacy of the Jewish people as a beacon of morality, justice and kindness into the modern era.

Conclusion

It is not only *halachically* acceptable to violate laws of Shabbat in order to save the life of your pet; it is also an ethical and religious imperative. Animals play a strong and important role in our lives, and provide comfort, protection, companionship, and contribute to good health; as such, they are of great use and necessity to their owners, and to society in general. Due to these reasons, supported by the fact this issue deals with a rabbinic prohibition in debate by subsequent authorities, pets are not to be considered *muktzah*.

There is little to no precedent for breaking Shabbat in order to save an animals life, yet the minority opinions that present themselves throughout rabbinic literature can be, and must be adopted. However, due to new research and a better understanding of the symbiotic relationship that exists between people and animals, we now understand that damage to this relationship is detrimental to human health. Thus, saving your pet's life falls under the category of psychological *safek nefashot*

pikuach nefesh. As more and more people are beginning to understand this relationship and the importance of animals to the world, not saving the life of an animal on Shabbat is a *chilul hashem*, a disgrace to God, the Jewish people, and the Torah. With this background and in this day and age, it is every Jew's Torah obligation to alleviate animal suffering, whether on a weekday or on Shabbat.

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