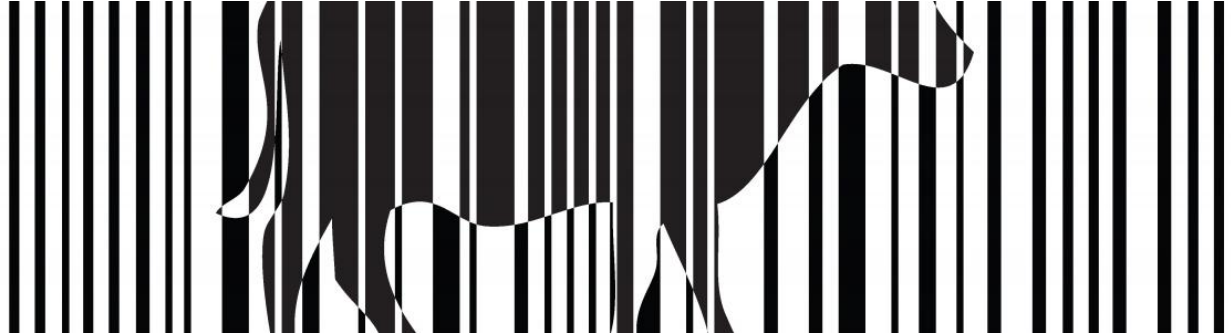


[Creatures in the Nation-State: The Torah Ethics of Animal Rights](#)

[View PDF](#)



Shmuly Yanklowitz was ordained from Yeshivat Chovevei Torah in June 2010. He completed his Masters at Harvard in moral psychology and a Masters at Yeshiva University in Jewish philosophy. He is the Founder and President of Uri L'Tzedek (the Orthodox Social Justice Organization). This article appeared in issue 8 of Conversations, the journal of the Institute for Jewish Ideas and Ideals.

Introduction

In what way are humans and animals distinct? Throughout history, arguments have been made on various grounds including: reason, emotional capacity, language, moral intuition, freedom of will, physical capabilities, and the ability to create sustainable social systems. If humans are created in the image of God,^[i] then there must be something unique about our essence.^[ii] However, with time, each of the above proposals for human uniqueness has been exposed to have flaws. For example, a human without the ability to speak or hear certainly is not lacking in his or her definitional or moral status as human, nor is one who is missing a limb or has a lower-than-average I.Q. Additionally, more and more research has shown that many other species have a sophisticated capacity for communication, reasoning, deliberation, emotional life, the moral enterprise, and perhaps even self-consciousness within limits. It is now a well-known fact that humans share 98 percent of our genetic makeup with chimpanzees.

Most convincing perhaps is the suggestion that humans have unique responsibilities. Viktor Frankl, the great Holocaust survivor and psychoanalyst, suggested that “Being human means being conscious and being responsible.”

This can be read normatively rather than descriptively, that we are not inherently different but have a higher moral calling to responsibility.

What makes humans most similar to God? What makes us most distinct from animals? The answer to these questions will help us to understand our fundamental relationship to all three (the divine, our fellow humans, and the animal world).

Human Responsibility to Creation

In the Creation story, humans are commanded to rule over all creatures.^[iii] This can and should be seen as both a mandate to elevate human existence as well as to care for other creatures dependent on human mercy. We are empowered to emulate God, who is “good to all, and whose mercy is upon all works” (Psalms 145:9). The Rambam explains that the human subjugation of the animal world is descriptive, rather than prescriptive. That is to say, we allow ourselves to subjugate creatures—but we are not obligated to do so.^[iv] The Rambam explains further that animals have their own teleological purpose—that they are created for their own sake.

Rav Soloveitchik taught that we are imbued with a capacity and imperative for “majesty and humility.” The Rav charges us to see our human limitations in a world that God creates and controls, while also fully embracing our unique human capacities and responsibilities that we, as humans, have been created to exercise and fulfill.

The great fourteenth-century Jewish French philosopher Ibn Caspi explains (on Deuteronomy 22:6) that animals are “*ke-llu avoteinu*,” that they are like our forefathers since they preceded us in creation and are similar to us in substance. This is a pre-Darwinian notion of evolution, which claims that humans have not only a moral but also a sacred responsibility to show compassion to God’s sentient creatures. By the nature of their sentient capacity (although animals have duties as well according to the Torah; see Genesis 1:22), humans clearly have unique obligations and responsibilities that animals do not. We can now pose the question: Are the rights of animals comparable to the rights of humans?

Philosophical Construct of “Rights”

Rights are normative principles often understood as entitlements or freedoms. By being human, one might suggest that one has the right to pursue self-interest and happiness. The origin, and even validity, of these rights has been a matter of great debate. Rights are granted to humans based upon a social contract, or, according to some, upon an inherent dignity bestowed by God. Can these philosophical foundations allow for the extension of these same rights to non-humans?

In many ancient societies, animals were perceived through a purely anthropocentric lens as mere tools to human fulfillment, a means to our ends. According to this mindset, non-human beings do not have their own *telos*, but are merely instrumental. Even by the time of the Enlightenment, some still argued for the strongest bifurcation between humans and animals. In the seventeenth century, during the Enlightenment, Descartes argued that animals lack souls, minds, and reason, based on his suppositions of animal consciousness and epistemic capacity.[\[v\]](#)

The first piece of legislation prohibiting animal cruelty did not emerge in an English-speaking society until 1635 in Ireland. Introduced by Richard Ryder, it forbade the ripping of wool off of sheep and tails off of horses.[\[vi\]](#) In 1641, the first legal code was passed in North America to protect domesticated animals from cruel treatment. Many cultures at this time still engaged in forms of animal torture for entertainment such as cock fighting and throwing, bull baiting and running, and dog fighting.

Centuries later, sports consisting of animal cruelty have unfortunately not gone extinct. In fact, with the advent of new production technologies, the disregard for the welfare of the animal kingdom, many have argued, is greater than ever before. At the same time, the animal rights movement has emerged in the past few decades to view animals as sentient beings that not only deserve human compassion but that have a right to exist and thrive. Martha Nussbaum has called this the “neo-Aristotelian capabilities approach.”[\[vii\]](#) She suggests that all beings that have a capacity (to exist, to learn, to be free, etc.) have the right to fulfill that capacity as long as its fulfillment does not harm another.

There are two primary approaches to the issue of animal rights—the utilitarian approach and the rights approach. Peter Singer, a bioethicist at Princeton, a utilitarian philosopher, and the author of *Animal Liberation*, has argued for decades that vegetarianism is a moral imperative due to our knowledge of animal suffering. Singer has called modern meat production to be cruel and damaging to

the ecosystem. A human desire for light pleasure does not allow for gross afflictions and death of animals. The pleasure does not match the pain.

Tom Regan and Gary Francione represent the rights based approach. Regan suggests that animals are “subjects-of-life” and thus have a right to life and the same moral rights as humans. Francione argues for the rights of animals to be free from ownership. The Torah takes a different approach from both of these two philosophical schools of thought.

Jewish Animal Rights and Concomitant Human Virtues

The Torah articulates a myriad of animal rights and ties them together with mitzvot (opportunities for the cultivation of Jewish virtues). The Torah grants the right of rest on the Sabbath not only to humans, but to animals as well (see Exodus 20:10). To put the Torah’s incredible command of rest for animals into perspective, until the end of the nineteenth century, employees in the United States were still expected to work seven-day work weeks. Additionally, the Torah teaches that, during the week, an owner must be conscious of how his or her animals are being employed. One may not plow with an ox and mule harnessed together since both animals, being of unequal size and strength, will suffer (Deuteronomy 22:10). Perhaps most famously, the case of *shiluakh haKan* (the mitzvah to send away the mother bird before taking the chick) creates the imperative to concern oneself with the emotional state of animals as well as their physical state.^[viii] Also out of concern for an animal’s emotional well-being, one may not slaughter an animal along with its young (see Leviticus 22:28).

The Rambam argues that there is no difference between the pain that humans feel and that which animals feel in this regard; between the love that a human mother feels for her child and the love that an animal mother feels for her young.^[ix] When one encounters two animals and one is crouching under its burden and the other is unburdened because the owner needs someone to help him load it, he is obligated to first unload the burdened animal because of the commandment to prevent suffering to animals. The Gemara in *Baba Metsia* 32 teaches us that avoiding the suffering of animals is a biblical law that pushes off rabbinic law.^[x] The Rambam teaches us here of the importance of animal welfare via a radical suggestion that the suffering of the animal takes precedence, at times, over the burden of a fellow human being!

In one *teshuva*, Rav Moshe Feinstein rules that for “those who produce veal, there is definitely the prohibition of *tsha’ar ba’alei hayyim*.” In the same *teshuva*, he argues that “It is forbidden to cause pain to an animal to feed it food from which it derives no benefit, and that causes it pain in the process of eating, and that also brings about diseases, and they suffer from the diseases. Because it was for the sake of this benefit, that they can deceive people and it is forbidden from the perspective of *tsha’ar ba’alei hayyim*, on a biblical level, because for the sake of such purposes it is not permitted for people to cause suffering to animals.”[\[xi\]](#)

After all, we learn from the *Shulhan Arukh* that “if an animal has been fattened with forbidden foods, it is permitted. However, if it has been fattened exclusively for its entire life with forbidden foods, it is forbidden.”[\[xii\]](#)

The Talmud (*Berakhot* 40a) teaches us that one must indeed make personal sacrifices for the welfare of animals. One of the best known instances of animal protection is that one may not eat until having fed one’s animals. This is not only Jewish law but it is also interpreted as the epitome of Jewish virtue. In fact, the Midrash states that Moshe was chosen as the leader and prophet for the Israelite people because of his consideration for animals. It is not only the prophets who are so often portrayed as compassionate shepherds; this is also a popular way of personifying God: “The Lord is my shepherd, I shall not want” (Psalms 23:1). One may not treat one’s animal merely as property to be sold as one wishes. Rather, we are told that one may not sell one’s animal to a non-virtuous person out of fear for how they will treat that animal.[\[xiii\]](#) The Gemara (*Baba Metsia* 85a) explains that the great Rabbi Yehuda HaNassi, the redactor of the Mishnah, experienced years of suffering because of one act of cruelty shown to an animal when he ruled that it should be killed because that was the purpose of its creation. It was not until he showed significant mercy to animals that he was cured of his painful ailments.

The rabbis (in *Eruvin* 100b) even went so far as to suggest that animals themselves have moral attributes that we can directly learn from. “If the Torah had not been given, we could have learned modesty from the cat, honesty from the ant, chastity from the dove, and good manners from the rooster, who first coaxes then mates.” Natural law, and animals, can be great teachers of virtue.

The halakhot of kosher slaughtering can help to ensure that animals are treated more humanely. Those laws concerning the separation of milk and meat, Rav Ephraim Luchitz suggests, are designed to limit meat intake and cultivate a spiritual awareness of how one consumes animal products. [\[xiv\]](#) Interestingly,

while there are special blessings designated for bread, wine, fruit, and vegetables, there is no special blessing reserved for the consumption of meat. Could a blessing be made if we were truly spiritually conscious of what we were consuming: “*haMotzi basar min haHai?*”

How far must we take these sensitivities? Some choose not to hunt, others to limit meat intake, while others refrain completely. How can the Torah guide us?

Vegetarianism and Halakha

Vegetarianism has been a growing trend in the American Jewish community for the past few decades as the Jewish community has become more educated about the detrimental effects meat production has upon human health, animal suffering, the environment, and global hunger. Well-known statistics demonstrate how much food in developing countries, later shipped to the United States, has gone to feeding cattle, rather than impoverished humans. This reality is due to the fact that cattle around the world consume an amount of food equal what 8.7 billion people need. Even further, cattle in the United States consume ten times the grain that Americans themselves eat.[\[xv\]](#)

Over 200 million Americans are eating enough food, much of which is grain-fed livestock that could feed over one billion people in developing countries.[\[xvi\]](#) Jean Mayer, a Harvard nutritionist, claims that 60 million hungry individuals could be fed if people reduced their meat intake by just 10 percent.[\[xvii\]](#) Exploring the details of these serious harms to human health, poverty, animal treatment and the planet are beyond the scope of this article. Our question here is: How do halakha and Jewish ethics look upon vegetarianism for those who feel a moral obligation to limit or cease their meat intake?

A Gemara (*Sanhedrin* 59b) frames the biblical history of vegetarianism quite succinctly: “Rav Yehudah stated in the name of Rav, ‘Adam was not permitted meat for purposes of eating as it is written, ‘for you it shall be for food and to all animals of the earth,’ [Genesis 1:29] but not animals of the earth for you. But when the sons of Noah came (God) permitted them (the animals of the earth) as it is said, ‘as the green grass I have given to you everything,’ [Genesis 9:3]” We can suggest that the biblical history of meat consumption experienced three distinct eras. In the Garden of Eden, humans did not consume animals (era 1). After the flood, God saw the violent and sinful nature of humans and permitted

meat consumption as a concession (era 2). We then learn that meat was only permitted as a sacrifice to God and then ultimately it became permitted outside of sacrificial worship as well (era 3). These three eras mark an evolution from an ideal to a religious pragmatism. I would argue that with the advent of mass production and corporate factory farms that we have entered a fourth era, one that requires a new religious perspective on the consumption of meat (to be explored below). We now must ask whether *shehita* (ritual slaughter) in an age of mass production has lost its sanctity. Rabbi David Rosen, the former Chief Rabbi of Ireland, wrote[\[xviii\]](#) that “The current treatment of animals in the livestock trade definitely renders the consumption of meat halakhically unacceptable as the product of illegitimate means.” Rabbi Rosen argues that in theory kosher meat is perfectly kosher and acceptable to consume—but that in today’s system of mass abuse, it is no longer kosher, that is, no longer fit for consumption. He goes on to suggest that “In contemporary society, more than ever before, vegetarianism should be an imperative for Jews who seek to live in accordance with Judaism’s most sublime teachings.”

The Gemara (*Pesahim* 49b) declares that an ignoramus may not eat meat. The Maharsha explains that if one is not extremely knowledgeable and pious, too many mistakes can be made. The Rama (*Teshuvot Rama* 65) argued that an ignoramus is not well-versed in the laws of *shehita* (ritual slaughter). In addition to scrupulousness in kashruth, it seems that one would need to be a very ethically conscious person to truly appreciate what goes into meat production today. The Talmud (*Kiddushin* 56b) taught that a consumer is more culpable than producers in a certain sense. The demander of a certain product that harms (i.e., the consumer) is really the one responsible for the pain caused.

At least two Rishonim also view vegetarianism as a moral ideal. R. Yitzchak Abarbanel[\[xix\]](#) and R. Yosef Albo[\[xx\]](#) both suggest that it is a moral ideal since the slaughtering process can lead one to cultivate cruel character traits. In the early twentieth century, Rav Avraham Yitzchak HaCohen Kook argued for the eschatological ideal of vegetarianism.[\[xxi\]](#) Even though certain ideals won’t be fully actualized until the messianic era, Jewish theology instructs that the Jewish people must act in spiritual and moral ways that attempt to bring the messianic ideals to reality. The book of Isaiah in its prophesy for the messianic age (11:6, 8) famously teaches that even animals will be vegetarian: “The wolf shall dwell with the lamb, the leopard shall lie down with the kid. And the lion, like the ox, shall eat straw.” The S’dei Hemed suggested, in a different vein, that refraining from wine and meat consumption can be a positive practice to expiate sin.[\[xxii\]](#)

It is important to note that with the Torah's full permission to allow the consumption of kosher meat, it did not become an obligation to consume meat. Rather it grants permission for those who desire it. The Torah says "you say: 'I will eat meat' because your soul desires to eat meat; with all the desire of your soul may you eat meat" (Deuteronomy 12:20). Meat may be consumed when there is real desire—but there is not a need to consume it if there is not desire, and certainly one need not eat meat if one finds it repugnant (physically, morally, or spiritually). The Gemara (*Hullin* 84a) goes even further in explaining this Torah verse and states "A person should not eat meat unless he has a special craving for it." Rabbi Shlomo Riskin, the Chief Rabbi of Efrat, has written that "The dietary laws are intended to teach us compassion and lead us gently to vegetarianism." [xxiii] The sources show that one need not eat meat. The three valid positions are that it is: 1. Permissible to eat meat, 2. Permissible not to eat meat, 3. Ideal not to eat meat. [xxiv]

Stranger today still, within a very anthropocentric worldview, some have also argued that it is ideal to eat meat since animals were merely created for human purpose. This seems to be a very narrow view, and flies in the face of the interpreters of the Torah's values and the *bediavad* (un-ideal) evolution to finally allow meat consumption. When animals were created in the beginning of the book of Genesis, it is clear from the text and commentaries that they were *not* created for human consumption.

A very peculiar Orthodox culture has evolved in certain segments of the Jewish community that sees the consumption of meat almost as a marker of *frumkeit*, and that any religiously observant individual should feel obliged to engage in a hedonistic consumption of meat and that any truly religious celebration must have meat, especially on Jewish holidays. This desire has taken priority in many communities over religious virtues and the spirituality of the joyous occasion.

Simhat Yom Tov?

Some have claimed that even if one chooses to be a vegetarian during the week, it is not permissible to refrain from meat on Jewish festivals since we are obligated in *simha* (joy) and "*ein simha ela basar veYayyin*" (there is no joy without meat and wine).

To treat this approach as conclusive is incorrect. Halakha takes the notion of *simha* (joy) very seriously and does not enforce practices that individuals do not find joyous. Furthermore, for many posekim, the consumption of meat as a fulfillment of the mitzvah to be joyous on holidays existed only in a historical context. The Gemara (*Pesahim* 109a) reads: “R. Judah ben Beteira declared, ‘During the time that the Temple existed there was no ‘rejoicing’ other than with meat as it is said, ‘and you shall slaughter peace-offerings and you shall eat there; and you shall rejoice before the Lord your God.’” R. Judah ben Beteira goes on to conclude “but now that the temple does not exist there is no rejoicing other than wine.” Another Gemara (*Pesahim* 71a; *Baba Batra* 60b) explains that the obligation to be joyous on festivals was not fulfilled through the consumption of meat but through the wearing of clean clothes and drinking of wine. Medieval Jewish legal authorities held that there is no longer any obligation to consume meat on festivals.[\[xxv\]](#) Some Rishonim go even further to argue that eating meat was not even an obligation in the times when the temple stood! [\[xxvi\]](#) Based upon these sources, the Bet Yosef questions those who suggested that one must eat meat on festivals.[\[xxvii\]](#) The Magen Avraham[\[xxviii\]](#) explains explicitly that there is no obligation to eat meat on festivals since the temple was destroyed. [\[xxix\]](#) Although there are posekim who require the eating of meat on festivals, there ample basis to refrain if one will not get enjoyment and spiritual satisfaction.

It is now time that those committed to halakha and living an ethically conscious life stand and courageously articulate their vegetarian convictions. At the Shabbat table, one may ask: “How can you forbid something that the Ribbono Shel Olam permitted?” or “How can you cast aspersions on our ancestors?, or “How can you possibly experience *oneg* and *simhah* on Shabbat and Yom Tov without cholent and brisket?” Halakhic vegetarians can and should proudly quote the Torah sources without feeling any shame for their ethical convictions.

Conclusion

After fleeing from Poland during Nazi persecutions, Nobel laureate Isaac Bashevis Singer argued that animal rights were the purest form of social justice, since animals are the most vulnerable of beings. Our moral response to factory farming is a test of how we respond to the cries of the voiceless and powerless in our world.

According to Jewish tradition, humans were imbued with a level of dignity that is not granted to animals. However, elevating humans to a unique existence with special rights and obligations does not preclude the possibility for some level of rights and obligations to exist for animals nor does it call into question humans as the pinnacle of existence. In the twenty-first-century nation-state, we must consider seeing sentient beings as holders of rights imbued by divine laws and confirmed by human law. It has become apparent that the new age of mass production in factory farms immensely violates *tza'ar ba'alei hayyim* (the Torah prohibition against inflicting pain upon animals). One may no longer plead ignorance—only indifference. In addition to the cruelty of how these animals are caged, fed, tortured, and slaughtered, new findings have shown the detrimental effect that meat consumption has upon human health. Additionally, in a major recession where our charity is needed more than ever and as meat prices increase, this luxury of meat products may need to be the first thing to go from the shelves of a truly pious home. However, this is not an ascetic ideal. Alternative meat options are now more similar in taste to meat, accessible, and affordable than ever. In an age where vegetarianism must be viewed as a halakhic and Jewish ethical ideal, it must be considered as part of our pursuits in striving for truth, justice, peace, and holiness.

[\[i\]](#) Genesis 1:26, 1:27.

[\[ii\]](#) Or the possibility of embracing Sartre's notion of existence over essence; that there is something beyond the phenomenological grasp in a human existential encounter.

[\[iii\]](#) Genesis 1:26, 1:28.

[iv] *Moreh Nevukhim* 3:13.

[v] Descartes, René, "Meditation on First Philosophy and the Discourse on the Method," cited in *The Oxford Companion to Philosophy*, (Oxford University Press, 1995), pp. 188–192.

[vi] Richard Ryder, *Animal Revolution: Changing attitudes towards speciesism* (Berg, 2000), p. 49.

[vii] *Frontiers of Justice*, 179

[viii] Deuteronomy 22:6-7, one must send away the mother bird before taking the young.

[ix] *Moreh Nevukhim* 3:48

[x] *Baba Metsia* 32b; see also: Rambam *Hilkhot Rotseah* 13:9.13 and *Hoshen Mishpat* 272:9–10 with Gra.

[xi] *Iggrot Moshe, Even HaEzer* 4:92.

[xii] Rama, *Yoreh Deah* 60:1.

[xiii] *Sefer Hasidim*, paragraph 142.

[xiv] Kli Yakar .

[xv] Boyce Rensberger, "Water Food Crisis: Basic Ways of Life Face Upheaval from Chronic Shortages." *New York Times*.

[xvi] Ron Sider, *Rich Christians in an Age of Hunger*.

[xvii] Jean Meyer, *US Senate Select Committee on Nutrition and Human Needs: Dietary Goals for the U.S.*

[xviii] Vegetarianism: an Orthodox Jewish Perspective,” p. 53.

[xix] Commentary on Genesis 9:3.

[xx] *Sefer Halkkarim* book 3 chapter 15.

[xxi] *Iggerot Re'iyah*, book 2, 230.

[xxii] *Asifat Dinim ma'arekhet akhilah*, section 1.

[xxiii] *Jewish Week* (New York, August 14, 1987), p. 21.

[xxiv] At least *lifnim mishurat ha'din* (ideal above the letter of the law).

[xxv] Ritva on *Kiddushin* 3b, Teshuvot Rashbash no. 176.

[xxvi] Tosafot *Yoma* 3a, Rabbenu Nissim *Sukkah* 42b, *Hagigah* 8a.

[xxvii] *Orah Hayyim* 529 (questions the Rambam and Tur).

[xxviii] *Orah Hayyim* 696:15.

[xxix] Rabbi J. David Bleich points out a contradiction in the Magen Avraham (*Orah Hayyim* 249:6, *Orah Hayyim* 529:3) .