

day will "the wolf dwell with the lamb, and the leopard shall lie down with the kid; And the calf and the young lion and the fating together; And a little child shall lead them. And the cow and the bear shall feed; Their young ones shall lie down together; And the lion shall eat straw like the ox. And the sucking child shall play on the hole of the asp, and the weaned child shall put his hand on the basilisk's den. They shall not hurt nor destroy in all My holy mountain; For the earth shall be full of the knowledge of the Lord, as the waters cover the sea." 274

Thus, the writer submits, that analysis of the Biblical, talmudic and midrashic literature reflects the concept that man and beast are interrelated; both the children of a mutual Creator; but that man being the superior assumed not only responsibility for his fellow-creatures, but utilized them as media through which to expound and expatiate upon the principles of Judaism as well. Thus, it becomes apparent that a close affinity between the two should have continually developed as the years elapsed; that the principle of "Tsa'ar Ba'ale Hayim" should have become embodied in the very structure of Israel's institutional life; a solicitude for fellow-creatures unparalleled among all the nations of the world.

BOOK II

LEGISLATION AND DEVELOPMENT IN BIBLICAL AND POST-BIBLICAL LITERATURE

PART III

CHAPTER VI

THE RIGHTEOUS MAN REGARDETH THE
LIFE OF HIS BEAST

In the foregoing chapters I have endeavored to examine and analyze various factors, culled from the Biblical, midrashic and talmudic sources, which were instrumental in creating the intimate bond between man and beast. I have further tried to indicate how this close relationship between both beings caused the Jew to act kindly and without cruelty towards the lower creatures. Consequently, the existing Biblical and talmudic legislation making kind treatment mandatory was neither required nor necessary; it was expected from all. "The righteous man regardeth the life of his beast (behemah) but the tender mercies of the wicked are cruel,"²⁷⁵ became for the Jew the human counterpart of "the Lord is good to all, and His tender mercies are over all His works."²⁷⁶

Translated literally of course the verse in Proverbs 12:10 should read, "the righteous man knoweth the soul (nefesh) of his beast." And strangely enough the nefesh as used in Proverbs appears to reflect simply a desire for food²⁷⁷ so that some Biblical exegetes have seen in the righteous the required attribute of carefully supplying their animals only with sufficient sustenance.

But if the desire for food is the meaning of "nefesh" in Proverbs, so is it the desire or longing (for happiness) in Ecclesiastes.²⁷⁸ Furthermore, its true meaning becomes most apparent when we consider the verse in its entirety. The parallelism in both clauses is evident; the thought clear. Cruelty and wickedness are in apposition to life (soul) and righteousness. Nefesh, therefore, must denote the reverse of cruelty; that kind and tender treatment towards the beast are manifestations of the virtuous.

"The righteous man," says Toy, "provides all things necessary for the animal's healthy and happy existence." ²⁷⁹ The Rev. Primatt in an analysis of Proverbs 12:10 maintains that "the man who regards the happiness of his beast, who shows mercy to it, by attending to all its wants and infirmities and who endeavors to make it as easy and as happy as its nature and condition will admit, is a righteous man." ²⁸⁰ ---The man, who regards it not, who is careless and indifferent about it, though he may not be hardhearted and cruel to it, yet inasmuch as he regards it not, he is an unrighteous man; for the righteous man regards the life, the desire and the happiness of his beast. ²⁸¹ If I know that a man is cruel to his beast, I ask no more questions about him. He may be a noble man, or a rich man, or a polite man, or a sensible man, or a learned man, or an orthodox man, or a church man, or anything else, it matters not; this I know, on the sacred word of a wise king, that being cruel to his beast, he is a wicked man." ²⁸²

But cruelty and wickedness can take many forms. Certainly, the one who physically beats and tortures his beast is cruel, but does not Scripture also state that "the tender mercies of the wicked are cruel" as well? The paradox at first appears unreconcilable; upon further reflection, however, its meaning becomes quite apparent. Incapable of real sympathy and understanding, the wicked, even when moved to deeds of compassion and tender mercy, manifest adverse behavior. Human beings who stuff animals with food only to fatten them up for the market do not display acts of kindness. Such deeds are not only selfish, but cause the animals discomfort and suffering. ²⁸³ The medieval moralist Yehudah ha-Hasid of Regensburg expounds still further. "The cruel person," he states, "is he who gives his animal a great amount of straw to eat and on the morrow requires that it climb up high mountains. Should the animal, however, be unable to run up quickly enough in accordance with its master's desires, his master beats it mercilessly. Mercy and kindness have in this instance evolved into cruelty." ²⁸⁴

But to the pious Jew of years past, Proverbs 12:10 meant still more. An agriculturist from time immemorial he realized the genuine worth of his beast. ²⁸⁵ Under the hot sun of the orient, together they sweated to till the ground; together they stumbled over the rough and rocky soil. Certainly, a situation not conducive to man's personal comfort and contentment; a situation in which an otherwise compassionate man might easily become enraged and liberate his imprisoned passions on his defenseless beast. If one forgets that the beast has probably more reason than he to stumble, forgets that anything from a fixed stone or a hillock, a sharp flint or a pinched shoe can prevent the beast from accomplishing his assigned task as planned, the animal inevitably becomes subject to maltreatment and abuse. Have we not, all of us, at some time or another witnessed such abuse?

Cruelty, abuse and inconsideration were inconceivable to the Jew; even under the most trying circumstances. "Who is mighty?" the mishnaic sage Ben Zoma queries rhetorically. "He that subdues his (evil) nature (passion), as it is written 'he that is slow to anger is better than a mighty'; and he that ruleth his spirit than he that taketh a city." ²⁸⁶ ²⁸⁷ Teachings such as these were carried over in dealing with the animal world. Men were cautioned to subdue their sudden emotions and their angry passions, and the righteous, even when provoked to anger, were expected to treat their animals with consideration and kindness. ²⁸⁸ And, conversely, those who gave vent to their anger or displayed cruel conduct were deemed wicked, and made responsible to the Lord above for their actions. ²⁸⁹ So it was, for example, that the Angel of Mercy ²⁹⁰ (commissioned to demand restitution for the injustice shown to Balaam's ass, ²⁹¹) rebuked the wicked ²⁹² Balaam with the words: "Wherefore hast thou smitten thine ass these three times?" ²⁹³ Because, we are informed, Balaam raged against his ass, saying, "I would there were a sword in my hand, for now I had killed thee" ²⁹⁴ he perished by the sword, ²⁹⁵ as it is said, "Balaam also the son of Beor they slew with the sword." ²⁹⁶ Thus, the Lord avenged the defenseless beast; and the fact that the Lord interceded in its behalf through the medium of his devoted angel, became

a classical theme in the preaching of humane treatment of animals. "There is a rule laid down by our Sages," declares Maimonides, "that it is directly prohibited in the Biblical law to cause pain to an animal, and it is based on the words: 'Wherefore hast thou smitten thine ass?'²⁹⁷ 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.'²⁹⁸ We should not kill animals for the purpose of practicing cruelty, or for the purpose of play."²⁹⁹ To the Rabbis of the Talmud and to the Hebrew Sages of all subsequent periods, the prevention of cruelty to the lower creatures was not only a moral requirement, but a Biblical precept³⁰⁰ as well, and cruelty itself was classed among the most serious of offenses. God's Torah, it was felt, required that humans be humane and that kindness to animals be practiced as a religious obligation on the part of observant Jews. As God, "The Holy One, sits in the heights of the universe and distributes food to all creatures,"³⁰¹ so must man on earth do likewise. But the distribution of sustenance as an act of kindness weighs so heavy on the scale of God's justice that Rabbi Samuel ben Nahman declares: "It is even greater than redemption."³⁰² What then could be more important to the pious than to follow in the footsteps of the Lord and to sustain those dependent upon them for nourishment? Mosaic injunctions were carefully examined; and at times even supplemented and reenforced so as to give some moral content, some additional interpretation upon which to further expatiate and expound the teachings of mercy and lovingkindness vis-a-vis the lower animals.

"And I will give grass in thy fields for thy cattle, and thou shalt eat and be satisfied"³⁰³ was construed to imply that man must neither eat nor drink before first providing for his animals.³⁰⁴

But to certain sages of the Jerusalem Talmud, man's moral obligation to the beast cannot be discharged so readily for no person, according to R. Eleazer ha-Kapar, is even

permitted to buy a domestic animal, wild beast or bird unless he can provide it with proper sustenance.³⁰⁵ Thus was the domestic animal assured of continual care and consideration; thus was it assured of its daily bread and actually given priority over its master at feeding time. So scrupulous and meticulous were some in catering to the nutritive needs of their creatures that they conferred upon the dog and the cat privileges already enjoyed by the ox and the ass. Others, however, obviously felt that this was not in the spirit of the talmudic ruling,³⁰⁶ for we find in the Responsa of R. Jacob Emden the following query: "Does one who has a dog or a cat in his home have to provide it with food before he eats himself?"³⁰⁷ "The dog and cat are wild animals," the Rabbi states in his reply, "and wild animals can be included in the category of be-hemot."³⁰⁸ As wild animals they do enjoy some degree of independence and are free to manage for themselves. Consequently, they roam about at will and seek their food whenever they wish. But our domestic animals cannot shift for themselves and are completely dependent on man for sustenance. According to the strict interpretation of the law, therefore, "the obligation to feed dogs and cats," the Rabbi admits, "is not as incumbent upon us as feeding our truly dependent creatures. But inasmuch as they do perform at times some type of labor for man, they must be fed, even as the Talmud states, on the Sabbath day. "And it is desirable," the Rabbi finally concludes, "that one who wishes to perform a righteous act should first feed the dog and cat before partaking of food himself."³⁰⁹ And to make certain that the animals have been definitely fed is of prime importance in the rabbinic law. So much so that the Jew is legally authorized to interrupt the execution of a commandment in order to determine this; he may, for example, after pronouncing the benediction over bread not immediately partake of it and instead query those about him as to whether the animals have been given their provender.³¹⁰ This, under normal circumstances, would constitute not only the desecration of the benediction, but the desecration of the name of the Lord as well.

But such circumstance was not normal. As stated above, the law required the dumb beasts to be fed first; to the Hebrew mind, this law was categorical and irrefragable

for its basis was the Mosaic code. Furthermore, it was felt, as in the case of Balaam, the Lord himself will execute vengeance for all offenses against the defenseless beast. "The Lord," we are told, "does not judge even a single soul of an animal on account of a human being, but he judges the souls of the human beings for the sake of their animals in this world. All the souls of the animals which the Lord has made, even up to the great judgment, bring accusation against the human being if he tends them badly."³¹¹ And "if one repudiates an obligation of benevolence (kind deeds)," the Midrash declares, "it is as though he repudiates the cardinal doctrine (of God's existence)."³¹² As God will punish those who evince callousness of heart, so also will He manifest compassion to the compassionate,³¹³ for "beneficence and kindness," the Tosefta states, "are worth as much as the fulfillment of all the other commandments of the Torah put together."³¹⁴ And truly did the Lord bestow His blessings upon the benevolent Zebulun for before his death Zebulun exhorted his children as follows: "And now my children, hearken unto me. I exhort you to observe the commands of the Lord, and have mercy upon your neighbors, and act compassionately, not only toward men, but also toward dumb brutes. For on account of my mercifulness the Lord blessed me."³¹⁵ Of the three major tenets required by the Lord, deeds of compassion and kindness towards all creation appear to be of prime significance for "greater is he who performs charity," states R. Eleazer, "than he who offers all the sacrifices, for it is said, 'to do charity and justice is more acceptable to the Lord than sacrifice.'³¹⁷ R. Eleazer further said, 'The practice of kindness is greater than charity,' for it is said, 'sow to yourselves according to your charity, but reap according to your hesed (kindness).'³¹⁸ If a man sows, it is doubtful whether he will eat the harvest, but when a man reaps, he will certainly eat."³¹⁹ Is it any wonder then that Israelites are enjoined to deal kindly with everyone they encounter?³²⁰ Is it any wonder then that deeds of kindness have no limitations in the written law³²¹ but are rather left to the conscience and sensibilities (the heart) of the individual? Whenever something is thus left to the conscience and to the heart, the Sifra declares, Scripture says of it: "And thou shalt fear thy God."³²²

Pious men, therefore, men who fear the Lord, strive continually and with all their heart to be kind and considerate of all creation. And, incredible as it may seem, the Midrash cites in this respect the newly emancipated querulous Hebrews as the perfect paragons for man to emulate. As Israel entered the wilderness of Zin and dwelt in Kadesh the Bible relates, Miriam died; and with her death, "the well of Miriam also vanished."³²³ "And there was no water for the congregation; and they assembled themselves together against Moses and against Aaron. And the people strove with Moses, and spoke, saying: 'Would that we had perished when our brethren perished before the Lord! And why have ye brought the assembly of the Lord into this wilderness, to die there, we and our cattle?'"³²⁴ Certainly such words reflect a tense situation: an altercation between Moses, the duly appointed messenger of the Lord and His chosen people; a critical state of affairs which might have educed disastrous results. But the Israelites were neither castigated nor chastised for their evil words; on the contrary, their bickerings and reproaches against Moses were excused and even defended on the grounds that "God holds no man accountable for that which he utters in distress."³²⁵ (For the same reason we are told neither Moses nor Aaron made reply to the accusation hurled against them, but hastened to the Sanctuary to implore God's mercy for his people). Once declared guiltless, the Midrash proceeds to call them righteous for "a righteous man regardeth the life of his beast," and the fact that these people, so near to death, still considered the sufferings of their beasts shows that they were, notwithstanding their attitude toward Moses and Aaron, really pious men.³²⁵

For prayer, Judaism stresses, is not the sole manifestation of the pious. Equally important, always, before God are deeds of compassion, love and mercy. Rabbi Israel Salanter, one of the most distinguished Orthodox rabbis of the nineteenth century, we are told, one Yom Kippur eve failed to appear for worship to intone the sacred Kol Nidre prayer. His congregation became worried, for it was inconceivable that their saintly rabbi would be late or absent on this holy of holiest days! A search party was organized to scour the countryside. After a long search

they found their rabbi, in the barn of a Christian neighbor. On his way to worship, he had come upon one of his neighbor's calves lost and tangled in the brush. He saw that the animal was in distress. Tenderly he freed it and troubled himself to lead it home over stones and rocks, through fields and gardens. As the congregants entered the barn they saw their rabbi trying to lead the animal into the master's stall. That Yom Kippur night the rabbi's prayer was an act of mercy.³²⁶ And to fully appreciate this act of Salanter, it must be remembered what the service at the synagogue on the eve of Yom Kippur meant to a man like him who was in the habit of withdrawing from the world for 40 days preceding Yom Kippur and spending his time in prayer and devotion.³²⁷

But, the Midrash implies, man's consideration for the beast must extend even beyond the limits of the physical; man must learn to appreciate that it is actuated by substantially the same impulses as he himself; that the beast, as man, is emotional, sensitive and sensorial. And so we read of "the man who bought a neck of beef. Behind him goes a donkey with his eye continually on the beef because he hopes to get it as feed. At home the man ties the donkey and ties the beef so high up that the animal can't reach it. You must say to the man, 'You rascal, all the way he runs after it, and now you hold it from him.'"³²⁸ But the righteous man regardeth the happiness even of his beast, for to him the goodness of God respects not only their being but also their well-being; not only their requisite needs and wants for the continuance and preservation of life itself, but also their ease and comfort. "Many times the most cruel means are used by vain and foolish servants," states Primatt, in the attempt "to please their as vain and foolish masters to make the beast appear sleek, shining and of graceful carriage without, whilst the poor creature is rotten, and suffers unutterable misery within."³²⁹ To the Hebrew mind, however, acts of cruelty merely to enhance the physical beauty of the beast were unthinkable and incompatible with the Torah,³³⁰ the divine law.³³¹ Far more important is whether it fares well; and towards this end the scholars of Israel focused their attention. Biblical laws, written or implied became the foundations of the ethical and

theological teachings of the Rabbis and were further extended and amplified; so much so that the humane treatment of animals became fashionable as it was obligatory, and Jews were exhorted to "be pitiful, even to thy cattle, for genuine compassion and pity become and highly adorn the Israelites."³³² And conversely, persons practicing cruelty were deemed unworthy of their heritage and were admonished to the effect that he who is cruel will himself receive cruelty.³³³ Repeatedly the medieval moralists urged the righteous to feel for their beast, not only during sickness or childbirth³³⁴ but also when well. Repeatedly they entreated them to refrain from acts of cruelty, from maltreatment and torture. "For any suffering he may have caused his fellows, man will be punished," declares Yehudah of Regensburg, "yea, even for needless suffering to animals. For the man will be punished who places a burden on a beast heavier than it can bear³³⁵ or goads it with a whip when it cannot move, for cruelty to animals is prohibited in Scripture." "And in the world to come," the Sage declares, "God will punish rulers who wound their horses with spurs."³³⁶ "Never beat nor inflict pain on any animal, beast, bird or insect; nor throw stones at a dog or a cat, nor kill flies or wasps." And in this connection we read the story of a man who was cruel to his dog. The dog, however, sought refuge under the robes of a sage. When the man approached the dog with the purpose of beating him, the Sage protested with the words, 'since the dog sought my protection, you shall not touch it,' and applied to him the verse in Genesis 19:8 'only unto these do nothing, for they came under the shadow of my roof.'"³³⁷ And in the Sefer Hasidim we further note that neither hot water nor a very heavy stick should be used in driving a dog from the house; rather should one employ a normal-size rod, for the use of hot water and/or a very heavy stick would be an injustice towards the animal.³³⁸ Particularly would this be true concerning the dog, for it would reflect gross ingratitude on the part of man toward it. And, "ingratitude is the blackest of faults;"³³⁹ "the Torah ordains," Rabbi Yehudah continues, "that man not consume flesh torn by wild beasts, that the dog be given it³⁴⁰ in payment for its defense of the herd and flock against the wolf."³³⁹ For, together with the herdsman, it follows the cattle from early morn till night over the

uncultivated portions of the land; together with the herdsman it is compelled to battle the wolves which seek their prey. The life of the shepherd in ancient days was hard and arduous and his wages consisted of a small sum paid him for each head of cattle committed to his charge. Consequently, the well-being of his flock was most dear to him, for his earnings were directly dependent upon its welfare. Each animal had to be accounted for and the cause of each death was investigated. But the mishnaic law, however, was fair and lenient. "If the beast died a natural death it was presumed unavoidable³⁴¹ but not if it died of cruel treatment."³⁴² For the unnatural death of the animal, it was believed, would not have taken place had it not been for the cruelty of the shepherd. And to the Jew of old this would reflect an act of wickedness; unpardonable and evil, a violation of the law received at Sinai. Cruelty on the part of the shepherd therefore was inconceivable; especially so to the traditional mind, for it was felt that his labor was a labor of love. Tenderness and loving-kindness characterized his behavior vis-a-vis his lower charges for, even as the Prophet states: "As a shepherd that feedeth his flock, that gathereth the lambs in his arms and carrieth them in his bosom and gently leadeth those that give suck."³⁴³

The Kabbalists of Safed in the 16th century were most extreme in their opposition to the torture of living beings. As the Pythagoreans before them, they held that the souls of humans transmigrated after death into animals.³⁴⁴ Fearing that an animal might perhaps harbor the soul of someone departed, they observed the injunctions of the Little Book of Saints, namely: "Withhold thy kindness and mercy from nothing which the Holy One, blessed be He, created in this world. Never beat nor inflict pain on any animal, beast, bird or insect, nor throw stones at a dog or a cat; nor kill flies or wasps."³⁴⁵ Thus, dominant in the system of Kabbalah authored by the distinguished mystic Rabbi Isaac Luria the killing of any living creature, whether it be insect or worm, is strongly prohibited;³⁴⁶ and in a manuscript of moral precepts Rabbi Moses Cordovero also enjoined his students "not to speak evil of or use insulting words towards any creature including animals."³⁴⁷ And meat, of course, was not consumed.

But extremism has no place in Judaism. When Saul, for example, incurred God's displeasure, and was reprimanded by the prophet Samuel for not exterminating the Amalekites, he said: "If the Torah ordains that a heifer of the herd shall be beheaded in the valley as an atonement for the death of a single man, how great must be the atonement required for the slaughter of so many men? And granted they are sinners, what wrong have their cattle done to deserve annihilation?"³⁴⁸ And granted that the adults are worthy of their fate, what have the children done? Then a voice proclaimed from heaven, 'Be not overjust.' Later on when Saul commissioned Doeg to cut down the priests at Nob, the same voice was heard to say, 'Be not overwicked.'³⁴⁹ Further, the Code of Jewish Law states, "Man should always choose the middle path. . . . and he who adopts the middle course is called a sage."³⁵⁰

As the Jew, therefore, was exhorted to act kindly towards all beings so was he also urged to act with moderation. The extremism as practiced by the mystics and Kabbalists, based in all probability on the doctrine of transmigration, has no basis in Jewish law and lore; and consequently found few adherents and little support in later generations. Certainly, the welfare of the beast had to be considered at all time; its comfort and ease could not be ignored, but the final welfare of the master was of prime importance.³⁵¹ To be sure reputable authorities throughout the ages admonished the pious to refrain from causing useless pain to the dumb; that pity and mercy should be extended to all living creatures; except, however, when necessity demands the contrary; when the human being, created "but little lower than the angels,"³⁵² and "in the image of God"³⁵³ must, in order to sustain himself, maintain his "dominion over the fish of the sea, and over the fowl of the air, and over every living thing that creepeth upon the earth."³⁵⁴ When dire urgency and necessity arises, man unquestionably and categorically possesses the right within the complex of Jewish jurisprudence to do with the beast as he sees proper and as his conscience dictates.

But barring such action, required only under certain specific conditions, the moral legislation, as described herein, not only demands consideration for the lower beings on the basis of the Biblical law but sees in such behavior also, a means for the ethical development of man as well. "The more we abstain from cruelty to animals," declares Friedlander, the distinguished authority on Judaism, "the more noble and loving is our conduct likely to be to one another." 355 Since the dawn of history Jews therefore endeavored, through practice and teaching, to emulate the benevolent and merciful attributes of the Lord; and consequently because of their deeds, one to another, are referred to in rabbinic writings as "rahamanim bene rah-amanim," merciful children of merciful ancestors. 356 A Hebrew, lacking mercy, therefore, was looked at askance and as already stated above was deemed unworthy of his heritage. For clearly and definitively the Talmud states that mercy and benevolence (attributes derived from the Biblical book of Samuel) are two of the three characteristics which mark the Jew. "And there was a famine in the days of David three years, year after year; and David sought the face of the Lord. And the Lord said: 'It is for Saul, and for his bloody house, because he put to death the Gibeonites.' " 357 David therefore sought to pacify the Gibeonites and thereby bring to a halt this plague upon his kingdom. "And David said unto the Gibeonites: 'What shall I do for you? And wherewith shall I make atonement, that ye may bless the inheritance of the Lord?' And the Gibeonites said unto him: 'It is no matter of silver or gold between us and Saul, or his house; neither is it for us to put any man to death in Israel.' And he said: 'What say ye that I should do for you?' And they said unto the king: 'The man that consumed us, and that devised against us, so that we have been destroyed from remaining in any of the borders of Israel, let seven men of his sons be delivered unto us, and we will hang them up unto the Lord in Gibeon of Saul, the chosen of the Lord.' " 357 And the Talmud expatiates upon this incident and declares, "He tried to pacify them but they would not be pacified. Thereupon, he said to them: This nation (Israel) is distinguished by three characteristics, they are merciful, bashful (chaste) and benevolent.----- Only he who cultivates these three

characteristics is fit to join this nation." 358 And as already fully indicated herein the Jew was incontrovertibly bound by law to act with compassion, consideration and kindness not only vis-a-vis his fellowman but also towards the lower species as well. The Jew was forever reminded that God above continually seeks for the welfare of the beast and will assuredly punish those who evince little concern for its well-being; for those who manifest cruelty towards it or those who cause it needless suffering, for "tsatar bat'ale hayim," the talmudic law insists, is a Biblical concept, implied in the Mosaic code.

CHAPTER VII

TSA'AR BA'ALE HA'YIM AND THE SABBATH DAY

Prior to any discussion of tsa'ar ba'ale hayim in terms of the Sabbath law, some indication first of the importance of the Sabbath itself and of its unique significance in Judaism is deemed essential. Consequently, the writer will briefly endeavor to trace its development, to make manifest its exalted stature to the Jew since time immemorial, and will attempt to some degree to impart to the reader the firm desire on the part of the rabbinic sages to prevent its every desecration down to the smallest detail. And it is hoped that in the light of this background the reader will all the more consider it strikingly significant that the Jew was legally authorized to set aside his most cherished Sabbath laws when kindness, or the prevention of cruelty, to animals made such action imperative.

The origin of the Sabbath day, the culmination of the seven-day week, has long been a matter of dispute among scholars. Sacred Scripture, however, relates its genesis either to the creation of the world³⁵⁹ or to the Hebrew exodus from Egypt³⁶⁰ and clearly implies in the first Decalogue that by the time the Hebrews reached Sinai it was already an established institution; a day of rest and holiness. For in the first Decalogue the people are neither asked nor advised to keep the Sabbath holy, but rather are they admonished to "remember the Sabbath day, to keep it holy." ³⁶¹ A pre-Biblical institution of long and honorable standing, a treasured and sacred day inherited from their patriarchs³⁶² had now finally, among desert surroundings received official religious sanction. No longer would God tolerate the desecration of His Sabbath. As He rested on the seventh day, blessed it and hallowed it so must man do likewise. Henceforth, it would be the spiritual covenant between Israel and the Lord; a contract binding forever, a sign whereby all will know that God above is the Lord and Israel, the people He chooses to sanctify. ³⁶³ And "everyone that profaneth it," the Biblical author declares, "shall surely be put to death; for whosoever doeth any work therein, that soul shall be cut off from among his people." ³⁶⁴

But while the Mosaic law remains firm and definite in this respect, later talmudic legislation reveals a tendency to reduce capital punishment in general to a minimum, or if at all possible to abolish it completely. "If in trying a capital case," Maimonides informs us, "all the members of the Sanhedrin vote forthwith for conviction, the accused is acquitted. Only when some cast about for arguments in his favor and are out-voted by those who are for conviction is the accused put to death." ³⁶⁵ "If the court erred in a capital case," we are further told, "and declared guilty one who is not guilty, and rendered a verdict for conviction, and later discovers a reason for setting aside the decision-- a reason which would give the accused a chance to clear himself-- it revokes its decision and tries him again. But if it erred in that it acquitted one who is liable to death, its decision is not revoked and the case is not reconsidered." ³⁶⁶ "That capital punishment further was a rare occurrence in the latter days of the Jewish commonwealth can be inferred from the statement in the Mishnah that a court was stigmatized as 'murderous' if it condemned to death more than one human being in the course of seven years. Indeed, Eleazar b. Azariah applied the same epithet to a court that executed more than one man in every seventy years; and his famous colleagues Tarphon and Akiba, openly avowed their opposition to capital punishment, by saying, 'Had we belonged to the Sanhedrin (during Judea's independence), no man would ever have been executed,' as they would always have found some legal informalities by which to make a sentence of death impossible." ³⁶⁷ Thus we can be fairly certain that because of rabbinic aversion to capital punishment the death penalty was rarely if ever applied to those persons who wilfully and knowingly desecrated the Sabbath day. Sabbath observance, consequently, then as now, was far from universal. ³⁶⁸

Invigilating against those who continually sought the passing of the Sabbath in order to further their personal aggrandizement, the prophet Amos thundered, "Hear this, O ye that would swallow the needy, and destroy the poor of the land, saying: 'When will the new moon be gone, that we may sell grain? And the Sabbath, that we may set forth corn? Making the ephah small, and the shekel great, and

falsifying the balances of deceit; that we may buy the poor for silver, and the needy for a pair of shoes, and sell the refuse of the corn." 369 Jeremiah exhorts his people to refrain from carrying burdens on the Sabbath and in the name of the Lord he pleads: "Take heed for the sake of your souls, and bear no burden on the Sabbath day, nor bring it in by the gates of Jerusalem; neither carry forth a burden out of your houses on the Sabbath day, neither do ye any work; but hallow ye the Sabbath day, as I commanded your fathers.... If ye will not hearken unto Me to follow the Sabbath day, and not to bear a burden and enter in at the gates of Jerusalem on the Sabbath day; then will I kindle a fire in the gates thereof, and it shall devour the palaces of Jerusalem, and it shall not be quenched." 370 To Ezekiel the hallowing of the Sabbath does not only occupy an exalted position in God's law³⁷¹ but partly because of its desecration, he maintains, were the people dispersed. Forcefully and effectively he argues for the Lord. "Thou hast despised My holy things, and hast profaned My Sabbaths.... (therefore) I will scatter thee among the nations and disperse thee through the countries; and I will consume thy filthiness out of thee. And thou shalt be profaned in thyself, in the sight of the nations; and thou shalt know that I am the Lord." 372 And in Isaiah Israel's success and triumph are predicated upon the observance of the seventh day, a day before which all secular pursuits must bow. "For if thou turn away thy foot because of the Sabbath" the prophet declares, "from pursuing thy business on My holy day; and call the Sabbath a delight, and the holy of the Lord honorable; and shalt honor it, not doing thy wonted ways, nor pursuing thy business, nor speaking thereof; then shalt thou delight thyself in the Lord, and I will make thee to ride upon the high places of the earth; and I will feed thee with the heritage of Jacob thy father; for the mouth of the Lord hath spoken it." 373

But the Hebrews refused to listen; they rejected the exhortations of their seers and God fulfilled that which He pledged to do through His spokesmen, His prophetic preachers. And in the year 586 (or 587) B.C.E. on the 9th day of the Hebrew month of Av, Nebuchadnezzar, King of Babylon, besieged and destroyed Jerusalem. "Young men he

slew with the sword in the house of their sanctuary, and had no compassion upon young man or maiden, old man or hoary-headed; He gave them all into his hand. And all the vessels of the house of God, great and small, and the treasures of the house of the Lord... all these he brought to Babylon. And they burnt the house of God, and broke down the wall of Jerusalem. And them that had escaped from the sword carried he away to Babylon." 374 Thus did the wrath of the Lord arise against His people; thus began for the Jews their Babylonian exile; an exile which lives on in infamy throughout the ages and is commemorated annually on the 9th day of Av, through mourning and fasting, on the part of devout Jews everywhere.

But if the desecration of the Sabbath was partly the cause for the dispersion and Babylonian captivity of the Jew, then the Babylonian captivity in turn was the cause for a more universal consecration of the Sabbath. For now in Babylon the wailings and the railings of the prophets were no longer meaningless words; for now the people believed in the words of their seers and accepted the thesis that the profanation of the Sabbath was inextricably tied to their sufferings and misfortunes. Thus, through the tragedy of the exile, Sabbath worship was once more revived and paradoxically enough, the Sabbath fared far better in captivity than it did in its own land among its own people. Because the destruction of the shrine in Jerusalem obviated the need for sacrificial offerings and observances connected with the Temple service, the distinguished historian Graetz declares that the Babylonian Judeans clung "more scrupulously to those customs that were independent of the sanctuary, such as the Sabbath, the Holy Days, circumcision, and the dietary laws. ----The Torah, so long neglected in its own home, now received due honor and attention on a foreign soil. The Sabbath, for instance, was kept far less strictly in Jerusalem than in the Babylonian-Persian community. This ardor for the exact carrying out of the Law and its observances found its embodiment in Ezra." 375 A descendant of high-priests³⁷⁶ Ezra had ready access to the Law³⁷⁷ and ample opportunity to study it assiduously. Convinced of its Divine origin and glowing with zeal to make its authority paramount, particularly in Palestine, Ezra

arrived in Jerusalem with a large contingent of his followers; and with the complete support and cooperation of Nehemiah, governor of Judea, successfully induced the Israelites to make a solemn covenant that they would in the future live according to the Mosaic law and not relapse into their irreligious ways. Hitherto, the Sabbath had been but negligently observed. Henceforth, desecration of the Sabbath would not be tolerated;³⁷⁸ the widespread violations of that day were to Nehemiah flagrantly shocking. For on that day, Judeans labored in the fields; bought and sold publicly.³⁷⁹ Rebuking the nobles of Judah, Nehemiah said to them, "What evil thing is this that ye do, and profane the Sabbath day? Did not your fathers thus, and did not our God bring all this evil upon us, and upon this city? Yet ye bring more wrath upon Israel by profaning the Sabbath." ³⁸⁰ And finally he ordered the gates of Jerusalem closed on that day³⁸¹. Thus were the ordinances strictly enforced and the Sabbath rigorously observed and before long -- during the days of the Soferim -- had become a day of universal concern among the Jews of Palestine. And to insure its sanctity and complete rest according to the Law, the Soferim (Scribes) further developed a complicated code of restrictions. These restrictions were meant to safeguard and preserve the spirit of the Sabbath, in the same manner as the shell protects the kernel.³⁸² The Soferim were remarkably successful in their efforts, for the concept of the Sabbath as a day of delightful rest and as a day of spiritual and intellectual edification reached its fullest development during their era.³⁸³ And by the 2nd Century B. C. E., during the Maccabean revolt against Antiochus IV, it was so deeply embedded in their consciousness that to suffer martyrdom was considered preferable to the desecration of the Sabbath.³⁸⁴ Thus, through a process of evolution, the Sabbath once again slowly became the fundamental spiritual force it once was; a day of complete rest³⁸⁵ and holiness as initially decreed by the lawgiver Moses, and its strict observance continued to engage the attention of the Hebrew sages, so that by the time of the redaction of the Talmud, the few scattered laws of the Bible pertaining to the Sabbath were so reinforced and expanded as to necessitate the publication of two lengthy tracts known as SHABAT and ERUVIN. And to the traditional Hebrew mind of that era,

as well as subsequent generations, the volumes of the Talmud are indispensable to the orthodox understanding of and the proper performance in carrying out, the commandments of the Lord; for as the Mosaic Code they too were the result of Divine inspiration,³⁸⁶ the counterpart and fulfillment of the Old Testament. "Turn it -- the Torah -- and turn it again for everything is in it," declared Ben Bag-Bag, the mishnaic tana, "and contemplate it and grow grey and old over it and stir not from it for thou canst have no better rule than it."³⁸⁷ Consequently, and in conformity with the maxims and teachings, Sacred Scripture was minutely searched. Possible hidden concepts were exposed, difficult passages were simplified, individual words and even letters were made meaningful for nothing in Scripture did the talmudic exegetes deem superfluous. Through a theological system such as this, simple phrases and sentences of the Pentateuch frequently evolved into whole paragraphs and chapters in the Talmud, and the infrequent passages pertaining to the Sabbath were consequently greatly enlarged and reinforced thereby. For to the ancient talmudic casuists, the Sabbath was the foundation of the faith³⁸⁸ in fact as well as theory. To them as to Bialik, the greatest of modern Hebrew poets, the Sabbath was surely "the cornerstone of Judaism."³⁸⁹ It loosed the weighty shackles of the Jew which bound him to his daily toil and broke the yoke of persecution which continually enveloped him. It inspired above all the will to live on, to thank the Lord for the peace of mind and rest the passing Sabbath had offered and for the opportunity to hallow and honor³⁹⁰ the Sabbath to come. It stimulated R. Levi b. Hayta to interpret the verse, "I am black yet comely,"³⁹¹ to read, "I am black all the days of the week and comely on the Sabbath."³⁹² And to the pious it gave renewed hope and confidence that its observance will bring with it the long-awaited redemption. As its desecration discussed above led to the destruction of the sanctuary and caused the Diaspora, so too "would the Son of David come," it was felt, "if Israel kept the Sabbath properly even for one day."³⁹³ For, "God said: 'If ye virtuously observe the Sabbath, I will regard you as observing all the commands of the Law', but if you profane it, I will regard it as if you had profaned all the commands."³⁹³ And the violator of the Sabbath was further equated with the

Israelite apostate and idol worshipper.³⁹⁴ As wine touched by the idolator becomes unfit for use, so too does it become unsuitable when handled by the Sabbath desecrator; the bread he --the Sabbath violator-- baked is considered bread of an idolator and the soup he cooks considered as well like the cooking of an idolator.³⁹⁵

Such being their belief the sages had no alternative but to strengthen the Sabbath laws; and inasmuch as the Sabbath was considered to be but a reflection and foretaste of the future world³⁹⁶ its slightest profanation could not be tolerated. Multitudinous rules were established for its strict observance and all were severely admonished against violations no matter how insignificant the infractions appeared. And the Rabbis were the first to concede that the number of their regulations were far out of proportion to the few Biblical precepts on the subject for they declared that "the rules about the Sabbath are as mountains hanging by a hair, for (teaching of) Scripture (thereon) is scanty and the rules many."³⁹⁷

Nevertheless, the Sages were as practical as they were at times impracticable; liberal as they were dogmatic; lenient in their interpretation of the law as they were rigid. "When the exigencies of the time seemed to demand it, the Rabbis in council or individually did not hesitate to suspend or set aside laws in the Pentateuch on their own authority, without exegetical subterfuges or pretense of Mosaic tradition. Where justification was offered for extraordinary liberties of this kind, Psalm 119:126 was frequently quoted with a peculiar interpretation. Instead of "it is, time for the Lord to do something; they have made void thy Torah" the verse was taken to signify, "it is time to do something for the Lord, so make void thy Torah," i. e. there are times when to abrogate a law is to do something for the law as a whole. There are rabbinical enactments from all periods which are more or less at variance with the plain letter and intent of Scripture.³⁹⁸ And in our day as well do we find this to be true." Rabbi Israel Salanter,³⁹⁹ mentioned in the previous chapter, maintained that when the will of God, as explained by the early codifiers, came in direct conflict with the good of the people, the welfare of the people

deserved priority. When human life is involved, he felt, strict adherence to the law is neither required nor desired; adherence at such time rather subjects the individual to sin. For to him as to the ancient law-makers it was also a matter of paraphrasing Psalm 119:126 to read, "when we have to act for the sake of God; then the law must be dispensed with."⁴⁰⁰ And in the year 1848, the time had come for Rabbi Israel to put his thoughts into action. Despite the severe cholera epidemic which had broken out in the city of Vilna, the people were preparing in their accustomed manner to celebrate the Day of Atonement, their "Sabbath of Solemn Rest."⁴⁰¹ It was then that Rabbi Israel, strict adherent of the law and of the Rabbinic interpretation, even to the minutest detail, "ordered announcements to be posted in all synagogues urging a dispensation of the required fast. The people, however, were hesitant about complying, as indeed he felt they would be. At the very solemn moment after morning services (Shaharit) before taking out the Torah from the Ark, the beadle ascended the platform, demanded that there be silence and made the following announcement: 'By the knowledge of the Omnipresent One, and by the authority of the Torah we grant permission --because of the epidemic-- to eat and drink today.' No one, however, stirred, no one dared to leave his place, holy terror had stricken them all. Then, to the utter amazement of all, Rabbi Israel, the meek unobtrusive Rabbi Israel, followed the beadle on the Reader's platform and in a solemn, muffled voice exhorted the congregants to abide by the decision just proclaimed. ----- But seeing that his exhortations were of no avail, he motioned to the beadle, who produced some wine and cake and he pronounced aloud the proper benediction and he ate and drank, setting the example for his reluctant audience."⁴⁰²

Despite the unique and Godly holiness⁴⁰³ of the Sabbath Day; despite the spiritual and physical knot which bound the Jew body and soul to its complete observance; despite the importance - as cited above - of its continual consecration as a factor in shaping the fate of the Jews as a nation among nations; and despite the continual admonitions on the part of the Hebrew Sages throughout the ages - as described

herein - against the general desecration of this day, yet its desecration was not only authorized but made mandatory where danger of life⁴⁰⁴ - or even possible danger -⁴⁰⁵ or serious illness⁴⁰⁶ prevailed, for "PIKUAH NEFESH," the talmudic sages believed, "DOHEH et ha-SHABAT,"⁴⁰⁷ the Sabbath, they felt, was to be discarded and cast aside when life itself was at stake.

Truly, the Sabbath was a unique institution and of exceptional consequence to the Jew since time immemorial. Yet, the ultimate health and welfare of the individual - regardless of his role in life - was of greater significance.⁴⁰⁸ The God of Israel, to be sure, required the service of His people, but this service was required in life and not death. Undoubtedly, adherents of other religious systems of antiquity, - systems wherein human life itself was sacrificed in order to propitiate the wrath of some god or gods⁴⁰⁹ - contemptuously scorned the ancient Hebrews and considered them paradoxically a peculiar people.⁴¹⁰ But if the Hebrews were peculiar in this aspect of their faith then they were truly distinctive in their interpretation of the Biblical law as it pertains to the Sabbath and its relation to God's lower creatures, the animal world. For as in the case of humans so too for them did the talmudic sages permit the temporary desecration of their holiest day, the Sabbath.⁴¹¹ As already indicated, the few Sabbath precepts found in the Mosaic Code were further supplemented and strengthened by multitudinous rabbinic regulations. Such rules, however, in contrast to Biblical laws⁴¹² were termed "Words of the Scribes," "Ordinances of the Wise" or "Rabbinical Laws."⁴¹³ And in the case of conflict between them, the rabbis were the first to concede that their enactments must yield to the authority of the Biblical law. The concept of "Tsa'ar Ba'ale Hayim" all agreed was implicit in the law of Moses; consequently it must supersede any interdiction proclaimed by the talmudic lawmakers. Should "an animal fall into a dyke on the Sabbath" Rab Judah expatiates, "one brings pillows and bedding and places them under it, and if it ascends it ascends." But "an objection is raised: If an animal falls into a dyke, provisions are made for it where it lies so that it should not perish. Thus, only

provisions, but not pillows and bedding? There is no difficulty: here it means where provisions are possible;⁴¹⁴ there, where provisions are impossible. If provisions are possible, well and good; but if not, one brings pillows and bedding and places them under it. But he robs a utensil of its readiness for use?⁴¹⁵ The avoidance of suffering of dumb animals is a Biblical law, so the Biblical law comes and supersedes the interdiction of the Rabbis.⁴¹⁶ Despite the fact that the rabbinic law prohibited the use of bedding and pillows for such purposes on the Sabbath, the Talmud nevertheless sanctions their use on the grounds that this is a prohibition ordained by the Rabbis, while kindness and the prevention of cruelty to animals in general is a Biblical concept and implied in the Mosaic Code.

And particularly does Scripture caution kindness on the Sabbath Day. For the Jew was to be forever reminded that he was a servant in the land of Egypt;⁴¹⁷ that the Lord admonished him further to keep the Sabbath holy in commemoration of his deliverance;⁴¹⁸ and that the recollection of his former servitude should become the basis of concern for the welfare of others. The compassion and tenderness which he so passionately sought from his Egyptian taskmasters and which he unfortunately never realized⁴¹⁹ were now to be proffered to all who would labor on his account, and the day of rest so desperately required but denied him under Pharaoh was now to be the memorial of his liberation, the holy Sabbath. But the Sabbath rest was not decreed for him alone. His years of servitude had taught him well to appreciate the significance and importance attached to a day of relaxation; a day of respite from his daily toils, a day wherein to rest his tired and weary body. Certainly, in the light of his past experience and in keeping with the philanthropic motive assigned for the observance of the Sabbath it was but natural for the Jew to include within his "framework of Sabbath-rest" his partners in the field; his beasts of burden upon whom he depended for his daily food⁴²⁰ and without whom his daily existence would soon come to an end. It appears quite appropriate, therefore, and highly significant, that it was at Sinai, amidst the most inspiring circumstances and dramatic surroundings when the Lord Himself descended upon the Mount to

deliver His Decalogue unto His people that the following words echoed forth: "Remember the Sabbath Day to keep it holy. Six days shalt thou labour, and do all thy work; but the seventh day is a sabbath unto the Lord thy God, in it thou shalt not do any manner of work, thou, nor thy son, nor thy daughter, nor thy man-servant, nor thy maid-servant, nor thy cattle, ⁴²¹ nor the stranger that is within thy gates." ⁴²² By command of the Lord, henceforth, neither the Hebrew nor his beast would be authorized to work on the Lord's Holy Day. Moreover, the injunction for man not to "go out of his place on the seventh day," ⁴²³ was interpreted so as to include his beast as well. But, strangely enough, although this latter precept was decreed at the time the Lord caused the manna to rain from heaven, solely in order to preclude the further desecration of the Sabbath, it was accepted by many as a general principle of faith; ⁴²⁴ a tenet to be adhered to literally. And the literal interpretation of the word "place" required absolute restriction of movement on the Sabbath and confined both man and beast to home and barn.

But the rabbis of the Talmud - through legal fiction as well as textual interpretation - substituted the word "city" for "place". ⁴²⁵ Thus, freedom of movement was now not only permitted within each city's limits, no matter how large it may have been, but also as far as 2,000 cubits (approximately 2/3 mile) beyond its established borders. ⁴²⁶ But the solution of this problem, however, only yielded a far more complicated one. For now that the beast was authorized to move about fairly freely its owner had to exercise special caution not to violate the commandment of the Lord as stated in the Decalogue above. To the Hebrew sages, the prohibition of work implied not only keeping the beast from carrying burdens on the Sabbath Day, but also allowing it to roam about ⁴²⁷ completely free of all ornaments ⁴²⁷ and appurtenances, regardless of their size or weight. And so important did they consider this precept to be, that they condemned the master as a transgressor of a positive law of the Torah when if his beast, wearing an ornament or an appurtenance, walked voluntarily over a public domain. For to them the actions of the beast, whether voluntary or not, did not discharge the master of his obligation, and any

burden borne by the beast, although considered as an ornament, was nevertheless judged to be a burden in terms of the Sabbath law and therefore strictly interdicted. ⁴²⁸ An ornament or an appurtenance, necessary to the welfare of the beast however, worn as a cure, as a bandage is worn to protect and heal a wound, ⁴²⁹ or if worn because the animal, through its accustomed way of living, becomes associated with it ⁴³⁰ or worn perhaps for the purpose of guarding it ⁴³¹ was considered permissible for the beast to wear, and consequently caused no violation of the law which enjoined the beast from carrying burdens on the seventh day, its legal day of rest. For according to the Hebrew law, the Jew is accountable for the Sabbath observance of his beast and answerable to his Creator in the event that his beast is compelled to experience its desecration. "If (on the eve of the Sabbath), " for example, the Mishnah informs us, "darkness overtook a man while he was on the way, he must give his purse to a gentile, and if there was no gentile with him he must put it on the ass." ⁴³² As God commanded the Jew to keep the Sabbath, so did He also ordain for the beast to celebrate it as well (Ex. 20:10). The gentile, to the contrary, was not so commanded. Consequently, the purse had to be given him in preference to the ass. ⁴³³ Moreover, the Mishnah continues: "When he has reached the outermost courtyard (of the town) he may take off (from the ass) such baggage as can be taken off on the Sabbath, and for what cannot be taken off on the Sabbath he may loosen the cords so that the sacks fall down of themselves." ⁴³³ Thus the Jew prepares for his Sabbath rest; thus he sees to it that his beast, as himself, is made as comfortable as possible. Its burdens are removed from its back and its rider, in accordance with the law, will not require its services during the coming day. Its master is not only forbidden to ride it ⁴³⁴ but must in fact maintain continual caution lest he unwittingly should lean upon it and by so doing cause it some discomfort. For, according to the rabbinic law, it is prohibited to even support oneself upon an animal on the Sabbath. ⁴³⁵

So ingrained was this concept in the mind of the Jew and so deeply embedded in his consciousness was this feeling vis-a-vis the lower creature, that his concern for them and for their Sabbath rest created an important issue in

the consummation of agreements wherein the beast was temporarily assigned to non-Jews. Although the beast was to work for the gentile, it was not to desecrate the Sabbath. Consequently, the Hebrew law forbids the Jew to lend or hire his beast to a non-Jew unless the non-Jew concerned has agreed to return it to him before each Sabbath. And should it happen, however, that the beast was not returned in time, then the Israelite was compelled to renounce his ownership thereof - unilaterally if necessary - in order not to violate a Biblical command. 436

For under no circumstances was the beast to be subjected to perform labor on this day; for just as its human master, it too, as a creature of the Lord, was included in the Mosaic law and consequently merited its Sabbath rest. Tsa'ar ba'ale hayim was truly implied in the law of the Lord. And to the rabbinic sages of old it was categorical and undeniable. Kindness to animals was not a proposition to be proved; it was a postulate, it was axiomatic and part of daily living. In view of such concepts, is it any wonder that the talmudic scholars themselves taught the doctrine, as previously stated, that tsa'ar ba'ale hayim must supersede any interdict proclaimed by the rabbis? Is it any wonder then that many rabbinic laws were modified, qualified or amended in favor of the lower creation? Because of the fact that the nature of the beast frequently differs from that of man and its comfort and welfare are generally subject to the actions of its master, the strict and absolute Sabbath laws which regulated the normal conduct of the Jew on the Sabbath Day were intentionally relaxed and softened in governing man's behavior: vis-a-vis God's dumb creation; for in accordance with the Biblical tradition the Jew strove continually to spare it suffering and possible pain. Rabbinic law, for example, prohibits the handling of all things newly created (NOLAD) on the Sabbath; or such as have made their first appearance or assumed their present form of existence on that day; 437 as in the case of milk, 438 eggs, 439 ashes 440 and fruit fallen from a tree. 441 Yet, should the cow, dependent on man as she is, not be milked on the Sabbath, her supply would be so great as to cause her unbearable suffering and pain. And so to spare her even a modicum of possible pain therefore, the sages ordained that a non-Jew be

permitted - notwithstanding their injunction against the gentile working specifically for the Jew on the Sabbath 442 - to relieve her of her milk. 443

Rabbinic law further forbids the handling of certain other objects on the Sabbath Day. 444 And included in this category are items prohibited either because of their inherent repulsiveness 445 or because of their required use in the execution of a commandment not authorized on the Sabbath. 446 Moreover, those objects acquired in consequence of a ritual or legal prohibition 447 as well as articles which are intentionally set aside on Friday with the distinct understanding that they are not to be employed on the Sabbath 448 were likewise incorporated in the above classification. As a result, therefore, varied objects, and in great number, were declared muktsesh in accordance with the tradition and their handling and use forbidden to the pious Jew. The inanimate as well as the animate; fragments of glass and dry bones, for example, as well as all living animals and fowl, the wild as well as the domestic, were deemed to be muktsesh on the Sabbath. 449 But as in the case of NOLAD above, many rabbinic laws pertaining to muktsesh were temporarily abandoned on behalf of the animal world. For, notwithstanding the fact that the beast itself was banned on the seventh day and judged to be distinctly a creature within the purview of muktsesh, its rights and privileges had to be respected. For tsa'ar ba'ale hayim, as stated earlier, was implied in the law of Moses and consequently enjoined all to treat God's sub-human creation with kindness and benevolence. Consequently, the fragments of glass and dry bones mentioned as muktsesh above, no longer were deemed forbidden when required as food for fowl or beast. "Our Rabbis taught: we may handle hatsav, 450 for it is food for gazelles, and mustard, because it is food for doves, Rabbi Simeon b. Gamaliel said: We may also handle fragments of glass, because it is food for ostriches. --- Our Rabbis taught: Bundles of straw, bundles of branches, and bundles of young shoots, if one prepared them as animal fodder, may be handled, if not, they may not be handled. --- Our Rabbis taught: Bones may be handled because they are food for dogs. "451 And even putrid meat, certainly considered muktsesh because of its general "repulsiveness" 452 was

authorized to be handled because of its utility as food for beasts. ⁴⁵³ Moreover, R. Huna, in the name of R. Hanina, further taught: "A man may stand his cattle on grass on the Sabbath, but not on muktesh ⁴⁵⁴ on the Sabbath." ⁴⁵⁵ For to the beast, the plucking of grass is not work but pleasure. ⁴⁵⁶ The herbage however torn up on the Sabbath by a non-Jew is muktesh and forbidden to the beast; it can neither stand upon it nor feed thereof. However, should this be the only available provender, the law of compassion and kindness, the Biblical "tsa'ar ba'ale hayim" must be given precedence over the law of muktesh. Consequently, the Code of Jewish Law clearly declares: "If there is nothing else to eat, then it is permitted in order to relieve the animal of its suffering. If it has nothing to drink one is likewise permitted to tell a non-Jew to bring water from a well in a territory which is neither public nor private." ⁴⁵⁷ And, in addition, the Jew is admonished to set aside the laws of muktesh in order to further the comfort and well-being of his beast. He is informed that upon his return from a journey on Friday night he must immediately unload the burden of his ass, comprising even muktesh utensils and equipment, in order not to violate the precept of tsa'ar ba'ale hayim. To accomplish this he is advised to place his head beneath the burden and with it move it to the side so that the muktesh may fall to the ground of itself. ⁴⁵⁸ Should the muktesh, however, be of a breakable nature (as surgeon's horns, a glass utensil used for bleeding) the Jew is further counselled first to set pillows under it - to prevent its destruction - and then to loosen the girthle of the animal, thereby permitting the forbidden articles to fall freely upon the pillows. ⁴⁵⁹

But notad and muktesh accounted for only a fraction of the multitudinous rules and regulations decreed by the rabbinic sages. ⁴⁶⁰ Innumerable laws, incomprehensible to the modern mind and to persons uninitiated in the methods of rabbinic casuistry, were prescribed solely to preclude even the slightest possibility of desecrating the holy Sabbath; for all concurred in the teachings of Ben Azzai: "Flee from transgression; for one duty draws another duty in its train, and one transgression draws another transgression in its train, for the reward of a duty (done) is

a duty (to be done), and the reward of one transgression is (another) transgression." ⁴⁶¹ The total preservation of the Sabbath had to be maintained howbeit at the expense at times of seemingly irrelevant legislation. But despite the strictness of the law, concessions were continually made with reference to the welfare of the beast. Bundles of sheaves, destined as cattle fodder, e.g. were not only authorized to be untied ⁴⁶² on the Sabbath Day, but Rabbi Judah even considered it quite proper to spread out the young shoots of cedar trees in order to make them palatable and acceptable as food for the beast. ⁴⁶³ Moreover, cucumbers were also allowed to be cut for the cattle, providing they were torn up the previous day. ⁴⁶⁴ And as a general rule the sages ordained that the Jew must provide his domestic cattle, beasts and poultry with provender even on the Sabbath Day; ⁴⁶⁵ for to these domestic creatures, the master is the sole source for sustenance and their welfare and comfort are wholly dependent upon his actions. As "The Holy One, blessed be He, sits in the heights of the universe and distributes food to all creatures," ⁴⁶⁶ so must man do likewise, particularly to those raised under the shadow of his roof. So instilled was this concept in the consciousness of the people and so fundamentally was it in accordance with the spirit of the traditional teachings of the Hebrews, that the distinguished 15th Century Sage, Joseph ben Moses, stated as follows: "It is necessary to give one's beast whatever it needs to eat even on Yom Kippur (Day of Atonement), for we must have compassion on the beasts, that heaven may have compassion on us." ⁴⁶⁷ Thus, compassion towards the beast was deemed an essential characteristic of human behavior for without it there could be no compassion on the part of God towards His human creation. Thus, the rabbinic sages authorized an exception in the case of dependent creatures and permitted their feeding on the holiest days in the Hebrew calendar, the Sabbath and the Day of Atonement. But the sages' regard for the beast did not cease with this; for as they were concerned with its feeding so were they also concerned with its over-eating. As humans, so too are animals subject to the pain of indigestion. To relieve the beast, therefore, of any possible pain and distress as a result of an excess of vetch and cress, the rabbinic authorities wisely prescribed the use of

exercise. Consequently they sanctioned the temporary disruption of the Sabbath rest by authorizing the master of the beast in pain to cause it to run about the court in order that the exercise may cure it.⁴⁶⁸ Moreover, the Code of Jewish Law further states: "If it suffers from a rush of blood, he may let it stand in water to cool it. If there is a doubt as to whether it will not die unless it is bled, it is permitted to tell a non-Jew to bleed it."⁴⁶⁹ Thus, the Jew was constantly admonished to seek the welfare and comfort of his beast; he was forever cautioned that the beast as himself was a sentient being and subject therefore to the same ills, physical ailments and afflictions as humans. Thus the rabbinic sages permitted fresh wounds, which cause suffering to the animal, to be smeared with salve and oil on the Sabbath Day.⁴⁷⁰ Thus did they sanction the use of the saddle and blankets to protect the tortured beast against the extreme cold of the winter and the infinite number of nasty biting flies created by the heat of the summer.⁴⁷¹ And in the event of fire the sages further ordained sufficient food is to be salvaged for beast and man alike; "enough for three meals - for man, food that is suited to men, and for cattle, food that is suited to cattle."⁴⁷² Finally, there were those, as Jacob ben Asher⁴⁷³ distinguished codifier of the talmudic law, who judged that even on the Sabbath it is permissible for the Jew to offer assistance to the animal about to give birth.⁴⁷⁴ And in answer to the query as to the manner in which this assistance is to be offered, "Rab Judah said: The new-born is held so that it should not fall on the earth"; and R. Nahman added: "The flesh is compressed in order that the young should come out." Moreover, Rab Judah continued: "We hold the young so that it should not fall on the ground, blow into its nostrils,⁴⁷⁵ and put the teat into its mouth that it should suck." And to stimulate compassion and tender feeling on the part of the mother towards its young, "Abaye said: A lump of salt was brought and placed in its womb so that it (the mother) might remember its travails⁴⁷⁶ and have pity upon it; and we sprinkle the water of the after-birth⁴⁷⁷ upon the newly-born animal so that its mother might smell it and have pity upon it."⁴⁷⁸

In the earlier pages of this chapter the writer briefly traced the development of the Sabbath in order to make manifest its exalted and holy stature in Judaism. To Jews since time immemorial the Sabbath was the foundation of their faith, the cornerstone of their religion. No concept existed more prominent except of course the basic belief in monotheism itself. Infinite numbers of laws, Mosaic as well as rabbinic, were devised and decreed to protect it from desecration and to insure its continued consecration in every respect even to the minutest detail. Yet, "tsa'ar ba'ale hayim," consideration for the sub-human creation, deemed to be biblically enjoined, superseded the rabbinic precepts. Despite the unique importance of the Sabbath, "a day unto the Lord," despite the constant meticulous and unflinching attitude of the Jew towards the preservation and maintenance of its absolute holiness, yet was he admonished to set aside laws of his forbears and sages in favor of kindness, and the prevention of cruelty, to animals.

CHAPTER VIII

BEASTS AND THEIR YOUNG

As already indicated in the preceding chapters, humanity and consideration vis-a-vis the lower animals are characteristic of the Hebrew heritage. Moreover, the sub-human creation, even as the human, are endowed with rights and privileges; for all are sentient beings created in accordance with the will of God. As the Lord deals with them in mercy and kindness so is man admonished to do likewise. And their claim to such treatment has not only found continual expression in the rabbinic responsa literature, but also has been clearly and firmly confirmed in the codes of Jewish jurisprudence ever since the Covenant at Sinai.

Capable of sensation and consciousness, the lower sentient forms are beings with joys, desires and sorrows similar to our own. They are actuated by substantially the same impulses and terrorized by approximately the same experiences as we ourselves. They eat and sleep, seek pleasure and try to avoid pain, cling valorously to life, experience health and disease, suffer hunger and thirst and cooperate generally with each other. They build homes, reproduce themselves, love and provide for their children, feeding, defending and educating them, contend against enemies, contract habits, learn from experience, have friends and favorites, appreciate kindness, and cry out in distress. And, in addition, they can see, hear, smell, taste and feel.⁴⁷⁹ Is it any wonder then that the Hebrew sages considered the wall of partition between man and beast as rather thin? Is it any wonder then that they considered that person righteous who regarded the life of his beast? Even the Lord was included in their thinking and in mid-rashic Scriptures is deemed to be righteous⁴⁸¹ for in His Torah the sages declared it is written: "Thou shalt not take the dam with the young"⁴⁸² and "whether it be cow or ewe, ye shall not kill it and its young both in one day."⁴⁸³ In short, the Jew was forever to remember that the beast

reflects similar affections and passions as himself. Both are fed with much of the same food, hurt with the same weapons, subject to many of the same diseases, healed by the same means, and warmed and cooled by the same winter and summer. Consequently, he was admonished to seek its welfare and its comfort as an integral part of his daily routine and instructed that the more he considers its well-being and contentment, the more would he be exalted in the eyes of his Maker. Should he therefore be exalted in or otherwise notice the animals of his kinsman stray from the herd or perchance discover it in distress, he was advised and strongly urged to help it in its hour of need. Moreover, to the devout and faithful such advice was neither necessary nor required for to refrain from action in such cases would be contrary to the law of the Lord. For Moses taught the people as follows: "Thou shalt not see thy brother's ox⁴⁸⁴ or his sheep driven⁴⁸⁵ away and hide⁴⁸⁶ thyself from them; thou shalt surely bring them back unto thy brother."⁴⁸⁷ No longer would the prevention of cruelty to animals alone suffice as a basic concept to differentiate the Jew from his heathen neighbor. Henceforth, additionally, the Jew was equally enjoined to come to the aid of the beast in instances other than actual cruelty. No longer could he act the part of the innocent bystander; no longer could "he hide his eye as though he does not see it."⁴⁸⁸ But rather must he come forward freely and willingly to the assistance of the lost and bewildered animal. To be sure, the scope of this precept implies the rule of justice to restore the beast to its proper owner but also does it indicate compassion and consideration towards it as well, else it might have been sufficient to drive it to a pound or tie it to a gate till its master should come to enquire after it. But Scripture states "thou shalt surely bring them back unto thy brother." Moreover, the law continues: "And if thy brother be not nigh unto thee, and thou know him not, then thou shalt bring it home to thy house, and it shall be with thee until thy brother require it,⁴⁸⁹ and thou shalt restore it to him."⁴⁹⁰ Whether the finder lives near to the owner or not, whether he knows him or not, is of little consequence. Of importance only is the fact that now he has become the temporary possessor of the animal in trust for its rightful master and as such must

care for the lost creature as if it were his very own. Accordingly, therefore, Scripture cautions "thou shalt bring it home to thy house." And "not to the house of another."⁴⁹¹ As the one temporarily in charge of the animal he was expected to treat it as its master would, but should he perchance bring it to the home of another, it would in all probability not receive the care to which it was entitled.⁴⁹² Indeed, the Talmud implies that the finder of the beast must consider its welfare continually in order to return it to its owner at his request in at least as good a condition as that in which he found it; that it be restored without damage. That in the case of the "ox even the shearing of its tail, and sheep, that even its shearings must be returned."⁴⁹³ And finally the lawgiver commanded: "Thou shalt not see thy brother's ass or his ox fallen down by the way, and hide thyself from them; thou shalt surely help him to lift them up again."⁴⁹⁴ As the law had provided for the stray beast, and for the one driven away, so also is this precept no less indulgent toward the one suddenly struck by misfortune. An animal fallen under its burden will frequently acquire relief through the more scientific distribution of the weight it must bear. And to accomplish this, to assist in the reloading of the beast the law demands that "thou shalt surely help him to lift them up again."⁴⁹⁵ However, as indispensable as reloading may be to the welfare of the beast, far more important according to the talmudic sages, is the actual unloading of the burden. "If one is bound to load, though no suffering of dumb animals nor financial loss is involved," they reasoned, "how much more so unloading, seeing that both suffering of dumb animals and financial loss are involved."⁴⁹⁶ Moreover, we are told, "it is a Biblical obligation to unload without remuneration, but not to load without payment, save only for remuneration."⁴⁹⁷ And Maimonides further declares that in the event of conflict between both obligations -- loading and unloading -- unloading must be given priority because of "tsa'ar ba'ale hayim," preventing pain to living creatures.⁴⁹⁸

Thus did the Mosaic Code adjudicate in the case of the lost or fallen beast, the one belonging to the friend or brother. But what of the beast owned by your enemy? An enemy, who, through his acts and sayings, has indicated

his violent hatred toward you; an enemy who finds joy and delight in your adversity. And one, though he may espy your wandering or fallen animal, will, because of his dislike of you refuse to act in accordance with the Scriptural decrees above. But the brute, according to the Hebrew Code, is not to bear the sinful actions of its master and to deny it your assistance and succor constitutes a basic violation of the Biblical word. For the law declares: "If thou meet thine enemy's ox or his ass going astray, thou shalt surely bring it back to him again."⁴⁹⁹ Not for the sake of the enemy,⁵⁰⁰ obviously, was the beast to be returned; but rather for its own sake. For the sake of the dumb creature created by the Father of us all⁵⁰¹ was the Jew enjoined to be benevolent. Is it any wonder then that the distinguished Biblical scholar, J. M. Powis Smith, declares: "The philanthropic spirit rises to its highest level in Exodus 23:4-5. . . . There is nothing approximating this in the Code of Hammurabi."⁵⁰² And as though this were not sufficient the lawgiver continues: "If thou see the ass of him that hateth thee lying under its burden, thou shalt forbear to pass by him; thou shalt surely⁵⁰³ release it with him."⁵⁰⁴ Though the man be your enemy, and although his wickedness is the cause of your dislike for him, yet because of the innocent beast must you abandon at once the malice you bear him.⁵⁰⁵ And together with the man you hate, and regardless how disagreeable the task may be, an attempt must be made to bring relief to the painful suffering of the dumb animal. For lying helpless under its load the beast is in great distress. Whether the owner be known or unknown to us, whether he be heathen,⁵⁰⁶ friend or foe, the law commands that we be kind and benevolent to his beast at all times, and under all conditions. And to the talmudic sages the precepts⁵⁰⁷ discussed thus far in this chapter had a special significance, for from them in particular they derived the very theme of this paper, that tsa'ar ba'ale hayim is a Biblical concept⁵⁰⁸ and not merely of rabbinic origin. But still more than this is required of the observant Jew vis-a-vis the lower forms. Acts of kindness and mercy towards the beast itself are indeed most admirable and praiseworthy; nevertheless, the considerate actions of man which recognize and strengthen the filial bond between the beast and its offspring are of

equal significance. For as among humans, so too among many of the sub-humans much sensitivity, emotion and tenderness pervade the feeling of parenthood on the part of parents for their young. And to prevent the early disruption of this close relationship, the Mosaic law enjoins the Jew as follows: "When a bullock, or a sheep, or a goat, is brought forth, then it shall be seven days under the dam; but from the eighth day and thenceforth it may be accepted for an offering. . . . unto the Lord."⁵⁰⁹ Regardless of the Lord's desire to take unto Himself all the first born⁵¹⁰ of the cattle and despite the ultimate required sacrifice of these consecrated animals as ordained in this precept, yet the Midrash maintains it is nevertheless through this very law that God's mercy to animals is further made manifest. "For as God shows mercy to man," the sages declare, "so too has He shown mercy to cattle. And whence this?" they query rhetorically. "For it is said, 'but from the eighth day and thenceforth it may be accepted for an offering.'⁵¹¹ This rabbinic interpretation, however, appears wanting for the relationship of mercy to the Scriptural text has not been completely clarified; and at best, the connection remains rather enigmatic, and to the uninitiated in talmudic reasoning, quite unintelligible. But to the ancient ordinary Jew, imbued as he was with the concept of "tsa'ar ba'ale hayim," these seemingly unrelated thoughts were most meaningful and to him the above words of his talmudic teachers were very significant. To him, despite the possibility of other interpretations,⁵¹² the attribute of mercy was certainly embodied in the Mosaic Commandments of Ex. 22:29 and Lev. 22:27. And just as the ordinary Jew believed this to be true, so also the scholar, the one steeped in Biblical exegesis. For even Philo Judaeus,⁵¹³ a representative of the latter class, commenting on these verses states: "And he (Moses) extends his principles of humanity and compassion even to the race of irrational animals, allowing them always to share of these benefits as of a pleasant fountain; for in the case of domestic animals, with reference to flocks of sheep and of goats and herds of oxen, he commands the people to abstain from using those animals which are just born, or from taking them either for food or under pretence of sacrificing them. For he looked upon it as a proof of a cruel

disposition to plot against such creatures the moment they are born, so as to cause an immediate separation between the offspring and the mother, for the sake of the pleasures of the belly, or on account of some absurd and preposterous unpleasantness which the soul fancies. Therefore, he says to the man who is about to live in accordance with his most sacred constitution, 'My good man, there is a great abundance of things of which you are permitted the enjoyment, to which there is no blame attached; for, perhaps, it would have been pardonable if it were not so, since want and scarcity compel men to do many things which otherwise they would not intend. But you ought to be pre-eminently temperance and the practice of all virtues. . . . by all which considerations you ought to be rendered humane, avoiding receiving in your mind anything which is wrong. And why in addition to the pains which the animal bears in parturition, should you inflict other pains from external causes by the immediate separation of the mother from her offspring? For it is inevitable that she will resist and be indignant when they are thus parted, by reason of the affection implanted by nature in every mother towards her offspring, and especially at the time of their birth; since at this time the breasts are full of milk-like springs, and then if through want of the child which is to suck them the flow of milk receives a check, they become hardened by being distended by the weight of the milk, and the mothers themselves are overwhelmed with pain.'⁵¹⁴ Therefore, says the law, give her offspring to the mother, if not for the whole time, still at all events for the first seven days, to rear on her milk,⁵¹⁵ and render not unprofitable those fountains of milk which nature has bestowed upon her breasts. . . . the most tender and seasonable food for a tender creature, which, though it is only one thing, is at the same time both meat and drink. For inasmuch as part of the milk is of a watery nature, it is drink; and inasmuch as part of it is of a somewhat solid nature, it is meat; and it is endowed with these characteristics from a prudent foresight to prevent the lately born offspring from suffering disaster,⁵¹⁶ through want, lying in wait for it at different times, taking care thus that by the one and the same application of each kind of food, it may escape those cruel mistresses, hunger and thirst.'⁵¹⁷ Thus, did Philo Judaeus help elucidate a most difficult passage.⁵¹⁸

Indeed, to the ancient Hebrew the sacrifice of consecrated animals unto the Lord was a basic tenet of his faith. But while it was necessary for him to take their lives in the process it was certainly his sacred obligation to spare them all unnecessary pain and suffering. Therefore, the Mosaic law continues: "And whether it be cow or ewe, ye shall not kill it and its young both in one day."⁵¹⁹ And for the uneducated, for those who could not grasp the meaning and spirit of this precept, for those who spoke the Aramaic tongue, the Palestinian Targum paraphrases these words as follows: "Sons of Israel, my people, as our Father in Heaven is merciful, so shall you be merciful on earth: neither cow, nor ewe shall you sacrifice along with her young on the same day."⁵²⁰ By not slaughtering, then, the parent and its young on the same day can one, according to the Targum, emulate the mercy of the Lord. Moreover, the Midrash further teaches the importance of this commandment; and that he who upholds it must be considered righteous, even as the Lord above is righteous. For "it is written, 'a righteous man regardeth the life of his beast.'⁵²¹ A 'righteous man' applies to the Holy One blessed be He, in whose Torah it is written 'whether it be cow or ewe, ye shall not kill it and its young both in one day.'⁵²² Clearly, the purpose of this decree is to inculcate in man the feeling of kindness and pity, and to refrain from cruelty⁵²³ for these are some of the earmarks which differentiate the human being from his sub-human counterpart.⁵²⁴ "To slay in one day the animal which has been born and her who is the cause of its birth," maintains Philo, "is the greatest extravagance of barbarity. . . . and what pleasure can it be to men who are eating meat, to devour, on the same occasion, the flesh of the mothers and of their offspring? And if any one were to desire to mangle the limbs of the two animals together, and to run them in a spit and to roast them, and so to devour them," he further declares, "I do believe that the very limbs themselves would not remain quiet, but would be filled with indignation and would utter speech, through their fury at the extraordinary character of the unprecedented injury done to them, and would revile with innumerable reproaches for their gluttony, those men who had thus prepared this unmentionable banquet."⁵²⁵ But

behavior such as this was inconceivable to the Jew of old, for it was completely contrary to the traditional teachings of his religion and would reflect nothing more than a baseness of heart, for it would cause undoubtedly unbearable grief on the part of the parent to observe the slaughter of its young before its very eyes. And specifically to preclude the possibility of such a situation, Maimonides intimates, "it is prohibited to kill an animal with its young on the same day." As the Jew was admonished to develop the filial relationship in humans; as he was, through instruction and example, continually conditioned to consider and strengthen the common bond of love which pervades the family unit, so too was he taught to act benevolently toward the lower forms. For the parental instinct in many animals to love their young and to protect them, albeit at the cost of life itself,⁵¹⁶ was no less deep-rooted in them, the ancients believed, than in humans themselves. And in the light of this concept Maimonides further expounds on what he judges to be the object of the prohibition as set forth in Leviticus 22:28. Humans are forbidden to kill an animal with its young on the same day, this noted physician and greatest of medieval Hebrew philosophers reasons, "in order that people should be restrained and prevented from killing the two together in such a manner that the young is slain in the sight of the mother; for the pain of the animals under such circumstances is very great. There is no difference in this case between the pain of man and the pain of other living beings, since the love and tenderness of the mother for her young ones is not produced by reasoning, but by imagination, and this faculty exists not only in man but in most living beings."⁵²⁷

To be sure, the pain and anguish which fill the mother's throbbing heart as she observes the death of her offspring stems in part as a result of her inability to pursue her natural instinct to protect and defend her young. And in the desire to spare her such suffering therefore, the Biblical decree declares that "it and its young" are not to be slaughtered on the same day. But this law of "it and its young," the sages argue, encompasses within itself, a third party, the male parent. For as Hananiah rationalizes: "It says, 'it,' which indicates the male parent,⁵²⁸

and it also says, 'its young,' which relates to that parent to whom the young clings; hence it is clear that the law applies both to the male and female parent.⁵²⁹ Ultimately, this concept of Hananiah's was incorporated in the Hebrew law as an extension to the prohibition against the slaughter of the dam and its young. "If the paterinity is definitely known," the Yoreh De'alah adjudicates, "both are not to be killed on one day."⁵³¹ For as the natural mother would experience the agony and misery of a broken heart to see its offspring taken from her, so too, it was surely felt, would its true father feel likewise. And so engrained was this precept in the minds of the people and so great was their concern for the feelings and emotions of the dumb creation that the Talmud states as follows: "At four periods in the year he who sells a beast to another must inform him 'I sold today its dam to be slaughtered' or 'I sold today its young to be slaughtered,' namely, on the eve of the last day of the Feast of Tabernacles, on the eve of the first day of Passover, on the eve of Pentecost and on the eve of the New Year."⁵³² Rabbi Judah agrees that if he sold the dam to the bridegroom and the young to the bride he must inform them of it, for it is certain that they will each slaughter their beast on the same day.⁵³³ And this, in the name of the Divine Law, the Talmud proscribes by stating: "Should not 'it and its young' be forbidden, since I have declared it to be abominable to you?"⁵³⁴

But no less obnoxious to the ancient Jew, however, was the heathen custom of seething their meat in milk,⁵³⁵ a tradition dating back to pre-historic times. And according to the philosopher Philo, the Mosaic lawgiver "looked upon it as a very terrible thing for the nourishment of the living to be the seasoning and sauce of the dead animal, and when provident nature had showered forth milk to support the living creature which it had ordained to be conveyed through the breasts of the mother, that the unbridled licentiousness of men should go to such a height that they should slay both the author of the existence of the other and make use of it in order to consume the body of the other. The man who seethes the flesh of any one of them (lambs, kids, etc.) in the milk of its own mother, is exhibiting a terrible perversity of disposition and exhibits himself as wholly destitute

of that feeling which, of all others, is the most indispensable to, and most nearly akin to, a rational soul, namely, compassion. And having also given a commandment that no one shall sacrifice the mother and the offspring on the same day, he goes further, and is quite prodigal on the particularity of his injunctions, adding this also: "Thou shalt not seethe a kid in its mother's milk."⁵³⁶ To seethe the kid in its mother's milk, the substance which sustained it upon birth and which nature ordained that it be as vital to the life of the young as blood itself, certainly cannot be tolerated in terms of Divine Law; it could have no place in God's scheme of things for it violates not only the ethical laws of mercy and kindness, but reflects a defilement of nature as well. Moreover, the Hebrew sages clearly maintain that the cooking of meat in milk is a thing which the Lord Himself had declared to be abominable.⁵³⁸ Indeed, the purpose of the precept of "thou shalt not seethe a kid in its mother's milk," such distinguished commentators as Ibn Ezra, Abarbanel and Luzzato affirm, is to teach humans to be humane and to discourage a practice that would tend to harden the hearts of men.⁵³⁹ And so desirous it appears was Martin Luther the Christian Theologian of applying this connotation to the thrice repeated ordinance -- Ex. 23:19, 34:26; Deut. 14:21 -- stated above, that his translation goes far beyond the original Hebrew text. Instead of the prohibition against seething the kid in its mother's milk, Luther prohibits the cooking of the kid while still at its mother's breast, while it is still in the process of nursing.⁵⁴⁰ The intent of his translation is quite apparent and its thought clear. To cook the kid in the same vital food of life with which its mother provides it as nourishment, Luther seems to say, is unthinkable and completely unnatural and therefore should be directly proscribed by Divine Law.

But if there were those who ascribed to the above concepts as the motivating purposes of this precept, there were others -- among the talmudic sages -- who confessed freely their inability to assign a specific reason for the Biblical prohibition, and consequently labeled it as "hidush," as an exception, a unique law.⁵⁴¹ Maimonides, however, argues to the contrary. "Every one of the six hundred and

thirteen precepts," he declares, "serves to inculcate some truth, to remove some erroneous opinion, to establish proper relations in society, to diminish evil, to train in good manners or to warn against bad habits. All this depends on three things: opinions, morals, and social conduct. We do not count words, because precepts, whether positive or negative, if they relate to speech, belong to those precepts which regulate our social conduct, or to those which spread truth, or to those which teach morals. Thus, these three principles suffice for assigning a reason for everyone of the Divine Commandments."⁵⁴² Every precept, regardless of its basic importance, the RaMBaM felt, has its rational basis for existence and every effort must be made to uncover it.⁵⁴³ Thus, he discarded the "hidush" concept advocated by some of the earlier scholars and sought to justify the law of Exodus 23:19 in the light of what he believed were historical truths. "From the repeated declarations in the law,"⁵⁴⁴ Maimonides concluded, "you know that the principal purpose of the whole Law was the removal and utter destruction of idolatry, and all that is connected therewith, even its name, and everything that might lead to any such practices."⁵⁴⁵ "Meat boiled in milk is undoubtedly gross food, and makes overfull; but I think that most probably it is also prohibited," he continues, "because it is somehow connected with idolatry, forming perhaps part of the service, or being used on some festival of the heathen. I find a support for this view in the circumstance that the Law mentions the prohibition twice after the commandment given concerning the festivals 'Three times in a year all thy males shall appear before the Lord God' (Ex. 23:17; 34:23) as if to say, 'When you come before me on your festivals, do not seethe your food in the manner as the heathen used to do.' This I consider as the best reason for the prohibition."⁵⁴⁷ And if the boiling of milk and meat is forbidden, he further declares in his Mishneh Torah, it is simply but a matter of course that the eating of such a mixture is prohibited as well.⁵⁴⁸

To be sure, the above interdiction did not originate with Maimonides. For centuries earlier the talmudic sage R. Ashi queried: "Whence do we know that flesh cooked in

milk may not be eaten? From the verse 'thou shalt not eat any abominable thing';⁵⁴⁹ everything which I declared to be abominable to you comes under the law of 'thou shalt not eat.' I know from this that it is forbidden to be eaten."⁵⁵⁰ The proscription against the seething of meat and milk, R. Ashi maintains, implies also the proscription against the consuming of the resultant boiled product; for inasmuch as the boiled product was produced as a result of a forbidden act and therefore an abomination in terms of the Divine Law, so also must the consumption thereof be banned. And as the Talmud, so too does the Targum of Palestine significantly extend the law of Exodus 23:19 to preclude the possibility of eating both flesh and milk together. "My people of the house of Israel," it declares emphatically, "you are not permitted to dress or to eat of flesh and milk mingled together, lest I be greatly displeased."⁵⁵¹ And again it states: "It shall not be lawful for you to boil, much less to eat, flesh with milk when both are mixed together."⁵⁵² And of special consequence perhaps in this connection is the Targum of Onkelos, the standard Aramaic version of the Pentateuch. For, notwithstanding the fact that Onkelos generally clings closely to the Hebrew text, yet he renders the verse: "Thou shalt not seethe a kid in its mother's milk," to read: "Thou shalt not eat flesh and milk!"⁵⁵³ Thus it can be argued -- as indeed it was -- that the interdiction of the talmudic sages against consuming meat and milk together in any way or form whatever simply gave legal status to an already existing Hebrew practice; that the prohibition was doubtless observed long before the rabbinic age and in connecting it to the Biblical text the lawmakers merely sought Divine support for an immemorial Jewish practice. Moreover, this connection could have appeared quite logical to the ancient Hebrew mind for it could be easily understood in light of the thirty-two hermeneutic midot (rules)⁵⁵⁴ ascribed to Eli'ezer ben Yose ha-Gelili, one of the later disciples of R. Akiba.⁵⁵⁵ Repetition of Biblical verses, R. Eli'ezer taught, was employed by the lawgiver in order to draw attention to, or extract a new thought from the text.⁵⁵⁶ Consequently, in terms of this principle, the thrice repeated precept of "thou shalt not seethe a kid in its mother's milk," could now be given additional meaning; so that the school of Yishma'el taught,

three different prohibitions are implied therein: "one against eating it, one against deriving benefit from it, and one against cooking it."⁵⁵⁷

And so resolute were the sages in their efforts to avert the eating of meat with milk that they banned as well even the eating of meat that contained some taste of milk and vice versa; for they declared: "the taste of forbidden food is forbidden as the food itself."⁵⁵⁸ Moreover, should a piece of meat that had become forbidden as food⁵⁵⁹ be cooked with other meat in a pot, all that the pot contained was declared forbidden, unless the contents were sixty times as great as the piece prohibited.⁵⁶⁰ And the Yoreh De'ah, apparently determined to insure the complete separation of meat and milk, ordains that a pot used for the seething of meat should not be utilized for the cooking of milk as well.⁵⁶¹

Thus, through the science of hermeneutics and Biblical exegesis, the rabbis extensively elaborated upon the humane Mosaic injunction against seething a kid in its mother's milk. To preclude even the slightest possibility of performing this unnatural act, the complete and absolute separation of all meat and dairy products was made mandatory;⁵⁶² and the term "kid" was endowed with a generic connotation, to imply within its meaning all mammals authorized for consumption in accordance with the Divine Law.⁵⁶³ Finally, the talmudic lawmakers extended the precept of Exodus 23:19 to include the flesh of fowl,⁵⁶⁴ for there were those who argued that inasmuch as fowl do not possess "mother's milk" their flesh seethed in milk is permitted to be eaten.⁵⁶⁵

As some rabbinic enactments thus concerned themselves also with the fowl of the air, even so did the earlier Mosaic Law; through Divine decree, Moses admonished the faithful to refrain from causing them unnecessary anguish and pain. "If a bird's nest chance to be before thee in the way, in any tree or on the ground, with young ones or eggs, and the dam sitting upon the young, or upon the eggs, thou shalt not take the dam with the young; thou shalt in any wise let the dam go, but the young thou mayest take unto thyself; that it may

be well with thee, and that thou mayest prolong thy days."⁵⁶⁶ Birds, by nature, are pre-eminently emotional, a characteristic clearly reflected in their fondness for singing, in pining for the dead, in their general joyousness and especially in their love for their young. Van Lennep, for example, tells the tale of a stork he once knew whose young brood, falling from its nest one day, had been instantly killed by the village boys. The mother stork thereupon refused to forsake her desolate post, remaining till the cold came on, and there on the spot where her young had perished, was frozen to death by the winter blasts.⁵⁶⁷ And the cheerful twittering of the swallows, he informs us elsewhere, may be heard as they occasionally stop to rest in the midst of their family cares. All summer long they are busy rearing their two successive broods, flitting and darting in all directions, collecting materials for their nests, or food for their progeny.⁵⁶⁸ Moreover, the zoologist Moore writes of the love of a bird for the treasures of her nest as one of the most beautiful things of this world. "Who has not seen the killdeer," he states, "strive with all the tact of her clever little soul to allure some big giant of a human being, who has wandered into her neighborhood, away from her nest of precious young? Many a time I have followed one of these birds limping and tumbling on the ground a few feet ahead of me utterly disabled as I supposed, but always managing to keep just a little beyond the reach of my eager hands. And when the artful mother had led me far from the sacred spot where lay all there was in this world to her, how triumphantly she lifted herself on her unharmed wings and to my astonishment, sailed away. And if by some accident one finds her nest so cleverly concealed, the resourceful mother is ready to outwit you. She watches you all the time from the proper distance, and knows by your conduct that you have found the nest. Immediately, a single peculiar note from her causes the nestful of young to dart out of their cradle and disappear. No amount of searching can find them. And it is enough to touch the heart of the most indifferent to see the anxious mother come back to her nest and call her scattered children together again. Circling around the nest two or three times to assure herself that no one is nigh, she alights and begins a low clucking sound like that

of a hen calling her brood. The little ones come out of hiding one by one as mysteriously as they vanished. --- The family relations of the ring-dotterels are said to be so charming and touching that even hunters recoil from shooting a female surrounded by her young ones. There is love in the heart of that mother as truly as in the heart of woman.⁵⁶⁹ And the commentator RaSHI, commenting on the verse in Exodus, "Ye have seen what I did unto the Egyptians, and how I bore you on eagles' wings, and brought you unto Myself,"⁵⁷⁰ compares the love of the Lord for the Israelites to the love of an eagle for its young. "Like an eagle that carries its fledglings upon its wings. For all the other birds place their offspring between their feet, because they are afraid of other birds which fly above them; but the eagle is afraid only of man, lest he shoot an arrow at him, for there is no bird that flies above him. Therefore, he places them upon his wings, saying, 'it is better that the arrow enter into me and not into my offspring.' I the Lord too have done likewise: 'and the angel of God journeyed. . . . and it came between the camp of Egypt,'⁵⁷¹ and the Egyptians shot arrows and catapulted stones and the cloud received them."⁵⁷²

Unquestionably, the Divine precept of Deuteronomy 22:6-7 mentioned above was decreed in order to preserve the sanctity of the "bird's nest." Though not blessed with the power of human speech, birds and the rest of the sub-human creation, were provided with the capability of producing sounds and gestures to express their emotions and feelings. And the Jew was admonished not to disregard their sensations, particularly with respect to their family relationships. "Open thy mouth for the dumb,"⁵⁷³ the exhortation of the mother of King Lemuel can refer to the lower forms as well as to man. Furthermore, R. Berekhiah, in the name of R. Levi, taught kindness towards the fowl of the air by emulating the mercy of the Lord. For "it is written," R. Berekhiah said, "a righteous man regardeth the life of his beast."⁵⁷⁴ 'Righteous man,' applies to the Holy One, blessed be He, in whose Torah it is written, 'thou shalt not take the dam with the young.'⁵⁷⁵

To be sure, Scripture permits the young to be taken, but not however in the sight of the mother. The mother must first be sent⁵⁷⁶ away, a distance far enough as to make her unaware of the evil that has befallen her. Only upon the fulfillment of this pre-requisite, will the law authorize, "the young thou mayest take unto thyself." Maimonides, apparently, recognizes as the purpose of this regulation a humanitarian motive, for he applies to it the same reason which he attributes to the law of Leviticus 22:28, "and whether it be cow or ewe, ye shall not kill it and its young both in one day."⁵⁷⁷ And, in addition, Maimonides rationalizes: "when the mother is sent away she does not see the taking of her young ones, and does not feel any pain. In most cases, however, this commandment will cause man to leave the whole nest untouched, because the young, or the eggs which he is allowed to take are, as a rule, unfit for food. If the law provides that such grief should not be caused to cattle or birds, how much more careful must we be that we should not cause grief to our fellow-men."⁵⁷⁸

Maimonides, however, is in conflict with an earlier teaching of the Talmud. "If a man said (in his prayer)," the Mishnah states, 'to a bird's nest do thy mercies extend, ' they put him to silence.'⁵⁷⁹ Why must the supplicant be silenced? For he attributed mercy as the cause to an act of the Lord, whereas in reality God's decrees are but injunctions.⁵⁸⁰ Moreover, he should be hushed, we are told, because by implying that the bird is favored above others, the suppliant creates jealousy among God's creatures.⁵⁸⁰ And the Talmud of Jerusalem expounds still further on the Mishnaic verse, "Rabbi Isaac in the name of R. Simon explains the interdiction: One might be led to suppose that in saying these words, one criticizes God's attributes; it is as if one said: 'thou hast pity on bird's nests but not on me.' R. Yosse says in the name of R. Simon: One would seem to impose a limit on God's qualities and to say: 'thy mercy has extended to a bird's nest' (but not beyond). R. Yosse bar R. Aboon says: One does not do well in classing mercy among the qualities of the Almighty (for these are not effects of His goodness, but of the laws ordained by Him), nor to develop

the passage of Leviticus (end of Chapter 22) commencing with the words: 'my people, the Children of Israel,' and to say: 'as I am merciful in heaven, be so on earth, and therefore you will not kill on the same day the cow or the sheep with its young.' This interpretation is wrong, since it presents one of the laws of Divine justice as a simple effect of His mercy. "581

The fact that the above mentioned individuals felt impelled to de-emphasize the concept of mercy in relation to Deuteronomy 22:6-7 would strongly tend to support the theory that many of the sages, as well as a sizeable segment of the populace, believed otherwise. Certainly, the teaching of R. Berehiah above did not go unheeded; for his words, the writer feels, reflect the tenor of the time. Mercy and kindness towards the beasts and the fowl were part and parcel of the Hebrew heritage; a tradition firmly engrained in the heart and consciousness of every Jew; a concept of such lasting significance that centuries after the close of the talmudic period the distinguished scholar and talmudist, the Ga'on Saadia⁵⁸² could state categorically, "a second⁵⁸³ is pity on animals as Scripture says: 'thou shalt in any wise let the dam go but the young thou mayest take unto thyself; that it may be well with thee, and that thou mayest prolong thy days.'⁵⁸⁴"⁵⁸⁵ And Saadia did not stand alone. As R. Berehiah before him, so too many of the most reputable exegetes of subsequent generations supported him. Nachmanides (RaMBaN)⁵⁸⁶ for example, maintains that the purpose of the precept of the "bird's nest" is to be explained in accordance with the principle laid down for "it and its young thou shalt not kill in one day," and asserts that although God's mercy does not extend to the lower forms when they are required to serve the needs of humans, nevertheless the purpose and motivating force of the precepts cited, is to teach man the quality of compassion and not to become unmerciful nor practice cruelty.⁵⁸⁷ The RaMBaN, furthermore, cites the conflict between Maimonides and the talmudic sages as indicated above and defends the thesis of the former that the commandments of God can possess a dual purpose.⁵⁸⁸ And in contradistinction to the talmudic teaching he quotes from Maimonides as follows: "The master wrote in his

Guide to the Perplexed that the reason for 'if a bird's nest' and 'it and its young' was to admonish us not to slaughter the young before the eyes of its mother, for animals have great pain under such circumstances. In such cases there is no difference between the pain of man and the pain of other living beings, since the love and tenderness of the mother for the young are not produced by reasoning, but by imagination, and this faculty exists not only in man but in most living beings."⁵⁸⁹ Ibn Ezra, similarly, felt that to act contrary to these Mosaic prescriptions would reflect a cruelty of heart⁵⁰⁰ and Samuel ben Meir, the RaSHBaM, affirmed likewise, and stated that the decrees of Deuteronomy 22:6, Exodus 23:19 and Leviticus 22:28 were ordained to preclude gluttonous behavior on the part of humans; for one who takes, kills, cooks and eats the mother together with the young, he commanded, manifests such conduct.⁵⁹¹ Luzzatto⁵⁹² and Abarbanel,⁵⁹³ further ascribed humanitarian motives to Deuteronomy 22:6-7.

Despite the above, however, man's fulfillment of the law vis-a-vis his Creator and his fellow humans must, of necessity, take priority over his relations towards his sub-human brothers; his obligations to the world about him would appear to fall into various categories of minor and major importance. And, inasmuch as Judaism requires a just reward for the performance of each commandment, one must logically expect that this reward would be proportionate to the importance of the commandment performed as well; that for the observance of a law, which apparently is of a minor nature and easily performed, that the recompense would not be as great as for the more weightier precepts. Scripture, however, teaches otherwise. Man is admonished to respect the sacredness of the bird's nest. "Thou shalt not take the dam with the young; thou shalt in any wise let the dam go".....it declares, in order "that it may be well with thee, and that thou mayest prolong thy days." For so simple an act, the Law guarantees so great a reward; a reward as great as for the honoring of parents,⁵⁹⁴ considered by some as the weightiest of precepts.⁵⁹⁵ Could it be then that God's concern for fowl is so considerable that He intentionally

prescribed the coveted reward of length of days to humans who observed this dictum? Or did He perhaps equate the rewards for the weightiest and the least weighty of decrees in order to conceal from the faithful the actual merits prescribed for each deed performed? Undoubtedly, inspired by the latter thought, the Mishnaic sages cautioned as follows: "Be heedful of a light precept as of a weighty one, for thou knowest not the recompense of reward of each precept."⁵⁹⁶ God, the Midrash teaches, purposely did not reveal the compensation for the observance of each of the various commandments lest only some of these be carried out, while others would be intentionally neglected. And by way of a parable, R. Abba bar Kahana taught the above concept. "The Holy One, blessed be He, said: 'Do not spend time weighing up the precepts of the Torah, as Scripture hath it: "and weighed the mountains in scales,"⁵⁹⁷ and do not say, "seeing that this precept is a great one, I will perform it because its reward is great, and seeing that the other precept is a minor one, I will not perform it." ' What did God do? He did not reveal to His creatures the reward for each separate precept, so that they may perform all the precepts without questioning. It is as if a king hired for himself laborers and brought them straight into his garden without disclosing what he intended to pay for the various kinds of work in the garden, lest they should neglect the work for which the pay was little for work for which the pay was high. In the evening he called each one in turn and asked him: 'At which tree have you worked?' He replied: 'At this one.' Thereupon the king said to him: 'This is a pepper tree and the pay for working at it is one golden piece.' He then called another and asked him: 'At which tree have you worked?' And he replied: 'Under this tree.' The king thereupon said: 'This is a white-blossom tree and the pay for working at it is a half a golden piece.' He then called yet another, and asked him: 'At which tree have you worked?' And he replied: 'At this one.' Whereupon the king exclaimed: 'This is an olive tree and the pay for working at it is 200 zuz.' Said the laborers to the king: 'You should have informed us from the outset which tree had the greater pay attached to it, so that we might have worked at it.' Thereupon the king replied: 'Had I done this how would the whole of my garden have been worked?' So

God did not reveal the reward of the precepts, except of two, the weightiest and the least weighty. The honoring of parents is the very weightiest and its reward is long life, as it is said, 'Honor thy father and thy mother that thy days may be long' and sending away of the mother bird is the least weighty⁵⁹⁸ and what is its reward? Length of days, as it is said, 'thou shalt in any wise let the darn go... that thou mayest prolong thy days.' "⁵⁹⁹

The above parable, indeed, beautifully illustrates the spiritual truth as reflected in the mishnaic tractate Avot 2,1. Certainly, it can be argued that the rewards for each rule and regulation were purposely withheld in order for the faithful to abide by all. It can further possibly be asserted that even when specific compensations are guaranteed for the observance of certain laws, that they are not always bestowed upon the faithful. 600 But the implication, held by some, that long life is far too worthy a reward for the fulfillment of Deuteronomy 22:6-7, the least weighty of precepts, is certainly found wanting. Deuteronomy 22:6-7 is least weighty only in the sense of performance; its importance need not be defended, for the ancient lawgiver, although neglecting to state the recompense for other decrees, clearly chose to embody the reward for this dictum in the sacred text. A dictum of such import to the Ga'on Saadia, for example, as to war-rant requital in this world to the performer even though he admits of being an unbeliever. 601 A reward as great as that ordained for the fulfillment of the fifth commandment. Moreover, the writer submits, that the precept of "the preservation of the bird's nest," in light of the compensation prescribed for its observance, must be clearly classed among the foremost of the Mosaic laws. Indeed, it can be argued as did many of the early Biblical exegetes, that the words of the Bible reflect many meanings; consequently, their exegesis strayed further and further away from the literal sense of the text. Such exegetes, as in the case of R. Abba bar Kahana above, sought not so much the original meaning of the text, but rather to find authority and Biblical basis for their concepts and ideas and for their rules of conduct and behavior. In contrast to this midrashic exegesis, the "derash," as the above was called, the

Babylonian Amora'im 602 formulated the important principle that no text throughout the Torah could be deprived of its literal meaning, in Hebrew designated by the word "peshat," 603 that no amount of midrashic exegesis could annul the primary text. Consequently, therefore, according to talmudic teaching, the coveted compensation prescribed for the adherence to the precept of Deuteronomy 22:6-7 must first be viewed in terms of its ordinary meaning, and therefore the writer feels that this particular precept, which guarantees to humans both "well-being" and "length of days" must be of such import as to enjoy an exalted position in the Divine Law.

Finally, the ancient lawgiver admonishes the Hebrew as follows: "Thou shalt not muzzle the ox when he treadeth out the corn," 604 "... thou shalt not plow with an ox and an ass together." 605 And Lecky, the distinguished British historian specifically quotes these regulations in support of his assertion that "tenderness to animals is one of the most beautiful features in the Old Testament." 606 For to muzzle the ox when he treadeth out the corn reflects a cruel and wicked heart; an injustice to the beast itself. For its toil and drudgery it requires neither money nor clothes. Sustenance is all it asks; sustenance which is technically its "right" 607 and not man's to dole out in accordance with the dictates of his own conscience. 608

But the precept of Deuteronomy 25:4 implies still more. The right of the beast to sustenance surely is enjoined. But to the writer this alone hardly would justify its incorporation in the sacred text, for its master certainly must be aware that without sufficient food, his partner in the field would not be physically competent to produce its share of the required labor. Of more concern to the Mosaic lawgiver, the writer feels, was the ultimate spiritual happiness of the brute. The Jew, as stated above, was to remember forever that the lower sentient forms are capable of sensation and consciousness; that they are beings with joys, desires and sorrows, and actuated substantially by the same impulses as we ourselves. Consequently, the lawgiver cautions man not to "muzzle the ox when he treadeth out the corn." At the time of threshing, at the

time when the beast is surrounded by the food he loves so well, the beast must not be tantalized by denying it the satisfaction of its longing appetite. 609 And so engrained was this concept in the mind of the Jew, that the sages of the Mishnah felt impelled, in difficult and exceptional cases, to provide the proper guidance to the faithful in order to insure the continued physical and spiritual welfare of the beast. How, for example, should one act, they queried, when "terumah" 610 is trodden out by cattle? For should the cattle not be muzzled as the law requires, then they would surely eat of the consecrated "terumah." The problem thus posed was clearly difficult, and had to be resolved. Violation of the Mosaic injunction would cause spiritual anguish to the beast, for the muzzle would continue to aggravate and excite its salivary glands at the sight of the desired produce. Yet, the beast under the law was forbidden access to it. To a seemingly unsolvable problem the rabbinic teachers found a simple and equitable solution. In lieu of the muzzle, a nosebag containing similar produce to that being treaded, was authorized for the beast. Thus, while it enjoyed a good meal and was spared the pangs of pain, it was neither muzzled nor given the consecrated "terumah" as food. 611

To excite the animal's desire for provender and then frustrate its gratification indeed, is a refinement of cruelty. Inspired, therefore, by the rule of "thou shalt not muzzle," Prof. C. H. Cornhill writes: "What a truly humanitarian sentiment finds expression in the law. The brute should not perform hard labor, and at the same time have food before its eyes without the possibility of eating therefrom. I remember some time ago to have read that one of the richest Italian real estate owners, at the grape-harvest, fastened iron muzzles to his miserable, fever-stricken workmen, so that it might not occur to these poor peasants, working for starvation wages under the glowing sun of Southern Italy, to satiate their burning thirst and their gnawing hunger with a few of the millions of grapes of the owner." 612 Such a situation, obviously, is unthinkable in Jewish jurisprudence, for in accordance with the law, workmen as well as cattle, are authorized to partake freely of the things of their own production. 613 Both man

and beast are entitled to their hire; for the ox that draws the plow, is as necessary a servant as the laborer who guides it. Both have an equal claim to indulgence and tenderness, and it was probably with this concept in mind that the sages of the Midrash in expatiating upon the regulation regarding the hired servant, "in the same day shalt thou give him his hire,"⁶¹⁴ homiletically applied it to the beast.⁶¹⁵

However, muzzling the ox, the talmudic teachers realized only too well, was but one of a number of methods whereby the beast could be deprived of its rightful hire. And all such methods, consequently, they equated with the act of "muzzling."⁶¹⁶ Paraphrased by Maimonides they are as follows: "If a man said to a heathen 'muzzle my cow and thresh with it,'; or if a thorn happened to be stuck in the animal's mouth and he threshed with it while it was unable to eat' or if he caused a lion to lie down nearby (where the ox was threshing thereby frightening the animal from eating); or if he caused the animal's offspring to lie down nearby (so that the mother in her yearning toward it could not eat); or if the animal was thirsty and he failed to give it drink; or if he spread leather over the threshing floor so that the animal was prevented from eating; all this is forbidden."⁶¹⁷ Thus, the Biblical precept of Deuteronomy 25:4 was extended to include every possible condition. Yet, despite this, and despite the talmudic statement that the Biblical law must supersede rabbinic enactments,⁶¹⁸ the muzzle nevertheless was to be applied in cases where the consumption of the food upon which the animal works would prove injurious to its bowels.⁶¹⁹ Such action would be permissible in light of the rabbinic rule that the infliction of pain on animals constitutes a Biblical offense,⁶²⁰ that the Torah is only concerned with that which is beneficial to the animal, and that in the situation at hand it would derive no benefit.⁶¹⁹

Indeed, it must be conceded, kindness to animals according to the Hebrew scholars was provided for in God's scheme of things, and the Lord Himself established it as an essential rule in daily living. For "He left not a thing in the world in connection with which He did not charge

Israel with some commandment," says a midrashic sage. "If an Israelite goes out to plow, then 'thou shalt not plow with an ox and an ass together (Deuteronomy 22:10)..... thou shalt not muzzle an ox when he treadeth out the corn' (Deuteronomy 25:4)..... as regards a bird's nest there is the law of letting the mother bird go (Deuteronomy 22:6)."⁶²¹ And R. Levi elsewhere cites these very laws, decreed by God, as the tangible evidences which differentiate the Jew from his heathen neighbors, and concludes as follows: "All Israel's actions are distinct from the corresponding actions of the nations of the world."⁶²² As R. Levi apparently informs us of the current situation in his day, so also does he seem to prognosticate that this situation will not alter throughout the years. Truly, a prophecy fulfilled, for still today, contrary to the Scriptural text can one observe not only the muzzled ox at work, driven round the threshing-floor⁶²³ but the yoking and ploughing together of the ox and the ass as well.⁶²⁴ Although the Jew may behold such action on the part of his non-Jewish neighbor and although he may consider it expedient and profitable to act likewise on certain occasions, yet is he cautioned not to do so. As the Jew was forbidden to muzzle "the ox when he treadeth out the corn" so also did the Deuteronomist command "Thou shalt not plow with an ox and an ass together."⁶²⁵ Animals of different species, the clean⁶²⁶ represented here by the ox, for example, and the unclean by the ass, are so utterly alienated one from the other, that to compel their labor together would reflect nothing more than malfeasance and the violation of their God-given natures.⁶²⁷ The ox, in accordance with its nature, being of the clean variety, chews its cud; the ass does not. To avoid pain to the ass, therefore, the Ba'al ha-Turim⁶²⁸ declares the injunction was decreed. For yoked together with the ox it would see it continually chew its cud, and consequently, believing the ox to be constantly eating, the frustrated ass would remain in perpetual aggravation.⁶²⁹ Other exegetes, as Ibn Ezra, extract from the Scriptural text of Deuteronomy 22:10 a further concept. Diverse kinds of animals, whether clean or unclean are not to be yoked together,⁶³⁰ for animals of different species possess diverse capabilities. "God," declares Ibn Ezra, "has compassion on all His creatures."

Therefore, this law was promulgated "for the strength of the ass is not equal to the strength of the ox." 631 Yoking animals of unequal strength, it was felt, certainly would not be in keeping with their traditional concept of "Tsa'ar Ba'ale Hayim"; such action would not only cause the weaker brute great pain in trying to keep pace with the stronger, but also would tend to restrain and limit the activity of the stronger. And to deprive the stronger of its accustomed routine, to cause it to act contrary to its animal instinctive nature, could conceivably cause it anguish as well. And finally there were still others, who, like Maimonides, felt that the proscription of yoking diverse species was purposely proclaimed in order to avert their possible conjunction. To be sure, the ancient lawgiver had stated earlier, "thou shalt not let thy cattle gender with a diverse kind.... thou shalt not lie with any beast to defile thyself therewith; neither shall any woman stand before a beast, to lie down thereto; it is perversion." 632 As perversion is the basis of the latter law, so too is it the cause of the former decree. For conjunction of different species is a disruption of the Divine Order and therefore the sages of the Talmud were quick to conclude their discussions on this theme with the implication that man cannot alter the commandments of God. 633 Conjunction of diverse species, whether for purposes of labor or reproduction is certainly contrary to the spirit of perfection attributed to God's law. And to Aaron ha-Levi of Barcelona the very purpose of the commandment as stated in Deuteronomy 22:10 is to preclude all possibility of pain to the sub-human creation. Many beasts and birds, he declares, become quite aggravated when living and working with others not of their own species; and he observes quite accurately that wild animals live only with their own kind. 634 R. Huna, although apparently referring to another matter, remarks appropriately: "All creatures seek their mates. It is related that a wild bitch climbed to the top of a cliff to mate with a dog." 635 To the Jew it would be completely inconceivable to find a violation of nature itself to corrupt the character of the animal species. So much so that according to the Code of Jewish Law it is even "forbidden to make a bird sit on eggs which are not of her own species, for this" we are informed, "is cruelty to the creatures." 636

Moreover, to Maimonides the physician, the conjunction of diverse species further leads to cruelty to the animals, for "animals of different species do not copulate together," he maintains, "unless by force." 637 And acts of force, whether directed towards man or beast, must inevitably give rise to unhappiness, misery and anguish. And "our law," he continues, "objected to it that any Israelite should degrade himself by doing these things, which require so much vulgarity and indecency..... Cross-breeding, however, is not necessary. I think that the prohibition to bring together two species in any kind of work, as included in the words, 'thou shalt not plow with an ox and an ass together,' is only a preventive against the intercourse of two species. For if it were allowed to join such together in any work, we might sometimes also cause their intercourse. 638 That this is the reason for the commandment is proved by the fact that it applies to other animals besides ox and ass; it is prohibited to plow not only with ox and ass together, but with any two kinds. But Scripture mentions as an instance that which is of regular occurrence. 639 Thus, Deuteronomy 22:10, it was felt, was purposely ordained in order to prevent the conjunction of diverse species and thereby avert the possibility of causing cruelty to animals.