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HaRav Yosef Grossman zt"l



## KINDER EGGS, PART II: TZA'AR BA'ALEI CHAIM QUESTIONS IN MODERN FARMING

Adapted from the writings of Dayan Yitzhak Grossman

In this article, we continue to consider halachic perspectives on controversial animal husbandry practices.

### BEAK TRIMMING

The Sheivet Halevi (R' Shmuel Vosner) writes that it is obvious that trimming the beaks of birds in order that they not peck and harm each other is permitted, because the concern for *tza'ar ba'alei chaim* does not apply to actions that have a constructive purpose, and it certainly does not apply when the goal is to prevent likely harm.<sup>1</sup>

### GAVAGE

The animal husbandry practice most heavily debated in the halachic literature is gavage, the force-feeding of ducks or geese in order to fatten their livers for consumption. Though fattened liver, or foie gras, is today best known

as a French delicacy, it has been produced for millennia. It was prepared by the ancient Egyptians after they noticed that when wild geese would gorge themselves before migrating, their livers became particularly tasty. It was also popular among European Jews for multiple reasons, including their lack of alternatives to poultry fat as a cooking medium and the fact that they found in fattened goose liver an important source of nutrition:

For people who subsisted on a diet of noodles, cabbage, and potatoes, fattened goose liver was a precious source of nutrients. The Jews regarded it as a health food and dutifully fed it to growing children, since they would benefit most from the additional calories.<sup>2</sup>

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## PARSHAS BO FIRST TO FAST

Excerpted and adapted from a *shiur* by Rav Moshe Yitzchok Weg

And every firstborn in the land of Mitzrayim shall die...

Shmos 11:5

The minhag is that firstborns fast on Erev Pesach. The Tur says the reason is because Hashem spared the Jewish firstborns during *makas bechoros* while their Egyptian counterparts died.

The Shulchan Aruch cites one view that female firstborns should fast on Erev Pesach. The Rama says our minhag is that they don't. The Shulchan Aruch's source is a Midrash (Shmos Rabbah 12:28) that says female *bechoros* in Egypt died along with the males.

Why does the Rama reject that view? The Biur HaGra answers that the fast was instituted only for those firstborns who have *kedushas bechorah*. Since females do not have the halachic status of *bechor*, they aren't subject to the fast.

The Levush offers another answer. He notes that the Midrash says that in Egyptian homes with no firstborn, the eldest child died. If so, he asks, in a home today where no *bechor* resides, why doesn't the eldest fast?

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<sup>1</sup>Shu"t Sheivet Halevi cheilek 2 end of siman 7.

<sup>2</sup>Jane Ziegelman and Andrew Coe: A Goose for all Seasons, Moment Magazine, June 2001.

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## Buy Now, Ribbis Later?

Q My business offers free financing for twelve months on orders over \$1,000. A customer suggested to me that there may be a *ribbis* problem with this offer. Is he correct?

A Any benefit that a lender receives from a borrower in exchange for a loan is *ribbis* (Y.D. 160:7). Your arrangement might constitute *ribbis* because by stipulating that credit is only offered for large purchases, you essentially require the borrower—your customer—to patronize your business more in exchange for credit.

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Rabbi Dr. Ari Zivotofsky recounts:

For hundreds of years, in traditional Jewish sources stuffed goose was indeed controversial, but not because of animal welfare. The debate revolved around potential treifos due to possible damage to the esophagus caused during the feeding process. It was a widespread debate involving the greatest of authorities. The Rama (Y.D. 33:9) notes that in his town they would stuff geese to make schmaltz and they would check the *veshet* (esophagus) of each bird. Rav Yoel Sirkis (Bach Y.D. 33) was in favor of banning force-feeding because of this potential serious problem. The Aruch Hashulchan (Y.D. 33:37) says they did not do force-feeding in his town. The Chochmas Adam (16:10) preferred to ban the gavage process because of the concern for treifos of the *veshet*, but he agreed that if done, it could potentially be kosher. In modern times, the Tzitz Eliezer (11:49, 11:55, 12:52) and Rav Ovadia Yosef (Yabia Omer 9 Y.D. 3) came out against foie gras, while Rav Yosef Shalom Elyashiv was reported as approving the foie gras that was being produced in 2005. The most famous *posek* to permit stuffed geese was the Chasam Sofer (2 Y.D. 25; Chulin 43b).

Despite the centuries-long debate, force-feeding geese was extremely common among Ashkenazic Jews. Many of the greatest *poskim* lived in regions where they would have been personally exposed to the process and yet none of them ever suggested that it was cruel and bordered on *tza'ar ba'alei chaim*. The issue was not even raised for discussion until the late 20th century. The only place *tza'ar ba'alei chaim* is mentioned in the context of fattened geese is in the opposite direction—the rabbis were aware that geese used to being fed in this manner would not eat any other way and thus, out of concern for *tza'ar ba'alei chaim*, they permitted, with certain stipulations, gavage for these geese on Shabbos (Mishnah Brurah 324:27). This is as opposed to other chickens and geese, for which this is not permitted.<sup>3</sup>

R' Ovadia Yosef, in the conclusion of a *teshuvah* forbidding the consumption of foie gras on the traditional grounds of kashrus concerns, admonishes against the supporting of those “who behave with cruelty toward living

creatures, for the sake of unjust gain.”<sup>4,5</sup>

Similarly, R' Yaakov Epstein rules that “fattening geese for the sake of enlarging the liver (besides the wounding of the esophagus and the rendering of the birds treifos) is prohibited due to *tza'ar ba'alei chaim*,”<sup>6</sup> and R' Avraham Steinberg asserts (based on R' Moshe Feinstein's *teshuvah* on veal production cited in the previous article) that “it is prohibited to fatten animals with cruelty and in a manner involving great suffering, even if this involves financial profit.”<sup>7</sup> Other contemporary authors maintain that gavage is not prohibited on the grounds of *tza'ar ba'alei chaim*.<sup>8,9</sup>

I have elsewhere noted an egregious but widespread misrepresentation of the position of the Bnei Yisas'char (R' Tzvi Elimelech Shapiro of Dinov) on the subject. Various biographical accounts of the Bnei Yisas'char make the following claim:

During the time of his tenure in Munkatch, he prohibited the fattening of geese due to *tza'ar ba'alei chaim*, and the anger of the city's *parnasim* (trustees) was therefore aroused against him, and he was forced to abandon Munkatch and return to Dinov.<sup>10</sup>

But this is apparently a fictionalized version of the Bnei Yisas'char's position and what actually transpired in Munkatch. None of the (identical!) accounts is sourced, and while the Bnei Yisas'char did staunchly oppose foie gras, his own words on the subject clearly indicate that while he did indeed advance a novel reason to prohibit its consumption, that reason was not *tza'ar ba'alei chaim*—an issue he does not even raise—but rather a novel concern for treifos: fowl subjected to gavage develop fatty liver disease, culminating in liver failure.<sup>11</sup>

The Bnei Yisas'char's vehement opposition in Munkatch to foie gras is indeed recorded by the Yeitev Lev (the first R' Yekusiel Yehudah Teitelbaum) and the Bnei Yisas'char's great-grandson, the Darchei Teshuvah (R' Tzvi Hirsch Shapiro)—but they, too, make no mention of a concern for *tza'ar ba'alei chaim* or of the Bnei Yisas'char being forced to abandon the city. They only mention the success, at least among his students and *yir'ei Shamayim*, of

<sup>4</sup>Yecheskel 22:27.

<sup>5</sup>Shu"t Yabia Omer cheilek 9 Y.D. end of siman 3.

<sup>6</sup>Chovel Nachalaso 926.

<sup>7</sup>Encyclopedia Hilchasis Refu's, Volume 5, entry *Tza'ar ba'alei chaim*, p. 467.

<sup>8</sup>R' Pinchas Toledano, Shu"t Bris Shalom cheilek 2 C.M. siman 7; R' Itai Elitzur, *Tza'ar Ba'alei Chaim* Beifum Avazim, Techumin 24 (5764) pp. 110-12.

<sup>9</sup>For additional contemporary discussion of the applicability of the concern for *tza'ar ba'alei chaim* to foie gras production, see R' Ari Enkin, *Tza'ar Ba'alei Chaim: Foie Gras and Veal*, and R' Yair Hoffman, *The New York City Ban on Foie Gras—A Halachic Analysis*.

<sup>10</sup>See here, here, here, here, here, and here.

<sup>11</sup>Agra Dekallah end of Parshas Va'eira (cited briefly in Darchei Teshuvah siman 33 end of s.k. 131)

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The Shulchan Aruch (Y.D. ibid. 23) discusses a similar arrangement, where a loan is given on the condition that the borrower hire the lender for certain work. The *mechaber* forbids this for the same reason:

The lender benefits from being patronized by the borrower. The Taz (ibid. 22) argues that hiring the lender is not considered a benefit, as the lender is receiving fair value for his work, not an extra benefit. But the Shulchan Aruch's view is accepted as halacha (Bris Yehuda 11:24).

There is a debate among *poskim* whether your case is comparable to that one. Some hold that offering credit for a large purchase is not *ribbis*, arguing that it is only *ribbis* when the merchant stipulates that future purchases must be made at his store. In your case, the credit is offered solely to ease the buyer's payment burden on an expensive purchase (Mishnas Ribbis 4 fn. 45, citing R' Nissim Karelitz).

Others are stringent (ibid., citing Rav Elyashiv). They argue that even the Taz would agree that your offer is forbidden, because the borrower is compelled to make a purchase in order to receive credit, whereas in the Taz's case, the borrower is only obliged to hire the lender if the need for his services arises.

In practice, it is advisable to be stringent, because the solution is relatively straightforward: The credit agreement should include a clause stating that it is structured as a *heter iska*. Or, if the transaction is done online, your website should say that the financing follows the *heter iska* structure.

his campaign against foie gras.<sup>12</sup>

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He answers that although female firstborns and eldest household members died, the primary target of the plague was male firstborns—as is evident from the fact that only they are mentioned in the Torah—

and only the primary targets need to fast.

If a non-Jewish firstborn converts to Judaism, should he fast on Erev Pesach? The question may hinge on the above dispute: According to the Gra, only people with *kedushas bechorah* fast, and a *ger*

doesn't have *kedushas bechorah*. But according to the Levush, the fast is for people who would have been primary targets of the *makah* in Mitzrayim, and he is in that category.

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