

## Jewish Law and the Environment

Traditional Judaism sees itself as a religion of laws. As such the legal framework of Judaism was meant to structure and direct one's life experiences and perceptions of the world giving them meaning, spirituality, and sanctity. Against that background it is interesting to note how pervasive environmental legislation is in Jewish law with the consequence that one who follows Halachah (the Hebrew name for the Jewish legal system) to the fullest, would, if only from repeated exposure, develop a highly refined environmental consciousness. What follows is a presentation of many of the halachic imperatives that relate to the environment and how they play themselves out in the lives and experiences of those who choose to live by them.

Any discussion of Jewish law and the environment must begin with the following classical Biblical selection:

When you shall besiege a city a long time, in making war against it to take it, you shall not destroy its trees by forcing an ax against them; for you may eat of them, and you shall not cut them down. For is the tree of the field a man that it should join the siege with you? Only the trees which you know are not trees for food, you shall destroy and cut them down; and you shall build siege works against the city that makes war with you, until it is subdued.  
*(Deuteronomy 20:19-20)*

Ancient wars were fought using different raw materials than those we use today. For us rubber, plastic, and various metals are the crucial elements. In ancient times it was wood. Fuel, siege engines, arrows and spears, all needed this critical element to function. While not all types of wood were good for all purposes, all wood could be helpful to the war effort in some ways. War is, undeniably, a time of great need, and great danger. Nonetheless Biblical law prohibits use of wood from fruit trees even under battle field conditions. If limits are imposed on use of natural resources in situations of extremus such as this, then clearly ecological concerns are well-rooted in Jewish tradition. Remembering that for Biblical era armies a prohibition such as this was equivalent to a contemporary restriction placing half the available petroleum resources off-limits to a modern army, we must necessarily extend the prohibition to other less extreme circumstances. Wanton environmental destruction is certainly prohibited for anyone if it is prohibited for soldiers under the pressure of war and battle. In fact, the great twelfth century sage, philosopher, and physician Maimonides includes a large number of destructive activities under this prohibitive rubric.

This prohibition does not apply to trees only. Rather, anyone who breaks utensils, tears garments, destroys buildings, stops up a stream, or ruins food with destructive intent transgresses the command "Do not destroy." (*Maimonides, Laws of Kings: 6:10*)

He thus indicates that the parameters of the prohibition were always understood to be broader than the single case of fruit trees and war embodied in the above cited Biblical verses.

Maimonides goes even further in the continuation of this section. Not only are direct acts of wanton destruction prohibited, but even indirect acts such as cutting off water sources necessary for the trees to grow are also precluded. Similarly, when normal human activity does require some destruction of natural resources, decisions must be made in favor of methods that involve less rather than greater destruction (i.e., destroy the tree that does not bear fruit before the one that does bear fruit).

Over time this prohibition (now colloquially known as "Bal Tashchit" from the Aramaic translation of the command "You shall not destroy"), came to refer to any wasteful or destructive act. All things, even inanimate objects, must be treated with respect and not abused or wasted. Certainly all living things must receive at least that much respect as well.

Alongside the negative -- you shall not destroy -- is the positive -- you shall maintain, leading to an entire series of laws that are designed to maintain and improve the general environmental quality of life.

Many of the relevant sources appear in the Talmudic Tractate Baba Bathra. The Tractate deals, generally, with civil law and monetary matters. Maintaining an environmentally sound quality of life is an imperative, and damaging that quality of life is treated in Jewish law as a tort -- a physical injury against one's neighbor. Interestingly, the second tort so mentioned in the relevant portion of the Tractate involves intruding into someone's privacy.

If a man has a wall running alongside his neighbor's wall... if there are windows [in the neighbor's wall], he must leave a clear space of four cubits whether above or below or opposite. (*Mishnah Baba Bathra 22a*)

The Mishnah, the very succinctly worded earliest (180-200 BCE) topical codification of the oral law is here describing the following scenario. Next to someone's property for a minimum of three years there has been a wall of a house or courtyard with a window or windows overlooking his yard. The owner now wishes to build his own wall that will pass in front of these windows. For this wall to meet Jewish legal standards the wall must either be out of line of sight or higher or lower than the height of the existing window by a distance of four cubits. This four cubit requirement is understood by the Talmud as follows:

that a space must be left 'above' so that he should not be able to peep into the other one's room, and 'below' so that he should not stand on tiptoe and look in, and opposite so that he should not take away his light. (*Ibid. 22b*)

As we shall see, this concern for privacy is embedded in a section that otherwise deals with what we would today consider environmental trespass. Even in this one citation reference is also made to concern about blotting out someone's access to the light - an environmental rather than a privacy concern. One can, therefore, legitimately suggest that violating and harming someone's environmental well-being is viewed in Jewish law as equivalent to trespassing in a harmful and unwarranted way on their privacy. Certainly the negative impact on health, well-being and physical functioning that can come with environmental degradation invades the victim's privacy in the most profound way. If my house is assailed by terrible odors or my body is invaded by toxins I have suffered a serious violation of my personal private intimate internal functioning.

Looking at the larger context it is interesting to note that the Mishnaic statement that precedes the one just discussed deals with noise pollution:

If a man desires to open a shop in a courtyard, his neighbor may prevent him on the grounds that he will not be able to sleep through the noise of people coming and going. A man, however, may make articles in the courtyard to take out and sell in the market, and his neighbor cannot prevent him on the ground that he cannot sleep from the noise of the hammer or of the mill-stones. (*Ibid. 20b*)

While accommodation must be made, even in residential areas, to allow people to make a living -- there are limits. Some manufacturing may be allowed but the noise pollution of crowds and customers cannot be permitted to disturb the peace. Noise, which can penetrate walls and doors, is both an act of pollution and an invasion of privacy. The privacy violation is again as we have seen, no different than if someone is peering into a neighbor's window. In fact, most environmental violations can be understood in this way. Here, the noise coming from outside into my home invades the quiet privacy that we usually treasure as part of the safe haven that is our home.

Certain professions, by the very nature of their functioning, create noise and need to be controlled. By the same token these and other professions may negatively impact the environment in other ways such as damaging surrounding trees and fields. This too, is reason enough to set limits on their functioning.

A pigeon cote must be kept fifty cubits from a town. A man should not put up a pigeon cote on his own estate unless there is a clear space of fifty cubits all round. R. Judah says, the space should be sufficient for the sowing of four kor (7500 square cubits, approximately 1200-1500 square feet), which is as much as a bird flies at a time. If, however, he buys it [from another] with only the space for sowing a quarter of a kab round it (105 square cubits or 300 square feet), he has a right to keep it. (*Ibid.23a*)

The reason for the distance requirement is generally understood to be the need to prevent the birds from damaging neighboring crops, though separation from noise may also be a factor. Optimum distance would prevent all damage. A grandfather clause was allowed, however, in pre-existing situations. Even here enough distance must be maintained so that damage will be small and rare. The combination of concern for noise pollution and potential damage to trees and crops suggested by this source reaches its fullest expression in the Gemara's discussion in the same section of the Tractate.

R. Joseph had some small date trees under which cuppers (blood letters) used to sit [and let blood], and ravens used to collect to suck up the blood, and they used to fly on to the date trees (with their bloody feathers) and damage them (by bringing the blood in contact with the wood). So R. Joseph said to the cuppers 'Take away your croakers (loud birds) from here.' Said Abaye to him, 'But they are only the indirect cause?' (The blood is really doing the damage) He replied: 'R. Tobi bar Mattanah has expressly said: This (the case of the birds with the bloody feathers) is equivalent to saying that it is prohibited to cause damage indirectly.' But [R. Joseph] had given them a right [to let blood under the trees]? R. Nahman has said in the name of Rabbah b. Abbuha: There is no legal title to things causing damage. But are we not told in a gloss on this statement that R. Mari says it refers [for instance] to smoke, and R. Zebid to a privy? (but not to blood) Said R. Joseph to him, 'I am very sensitive, and these ravens are as offensive to me as smoke or a privy.' (*Ibid* 22b-23a)

While the issue of nuisances and legal title will be discussed below, it is certainly clear that the concerns for both noise pollution and physical damage to trees were sufficient to significantly alter the lives of those who ran their society according to Halachah and its principles. Certain activities were severely circumscribed as to where they could be practiced, property rights were curtailed, easements (see below) were found ineffective and individual reactions to environmental violation were held paramount, all in the name of protecting the environment.

The next Mishnah reads:

A fixed threshing-floor must be kept fifty cubits from a town. A man should not fix a threshing-floor on his own estate unless there is a clear space all round of fifty cubits. He must keep it away from the plantation of his neighbor and his plowed fallow field a sufficient distance to prevent damage being caused. (*Ibid.*)

The Gemara's discussion of this Mishnah includes the following comments:

Why is a fixed threshing-floor kept fifty cubits away from a town? To prevent it doing damage. (*Ibid.*)

'A fixed threshing-floor (which by its nature produces chaff a potentially airborne dust particle and pollutant) must be kept fifty cubits away from a town, and as it must be kept fifty cubits from a town, so it must be kept fifty cubits from a neighbor's cucumber and pumpkin fields, from his plantations and his plowed fallow field, to prevent damage being caused.'...We can understand [why the threshing-floor must be kept away] from the cucumber and pumpkin

fields, because the dust goes and penetrates into them and dries them up but [why should it be kept away] from the plowed fallow field? - R. Abba b. Zebid [or it may be R. Abba b. Zutra] replied: Because it over-fertilizes it. (*Ibid.*) (Chaff being organic will affect the soil of the field in this negative way).

As such, Jewish law, long before the collective raising of our contemporary consciousness to the importance of these issues, understood the potential harmful effects of industrial air pollution and acted to mitigate those effects. To summarize to this point, Jewish law out of ecological concerns insisted that one not open a shop in a courtyard if the noise pollution of customers will disturb his neighbor's sleep, that one must put a pigeon cote at least fifty cubits from town so that the scavenging birds not damage the town's vegetable gardens, that threshing floors must also be kept at this distance to prevent the chaff from creating an air pollution problem for the city.

Finally, Jewish law understood that, while industry is given some room to function, it is located where it will be the least damaging to the environment. For this reason, carrion, graves and tanneries also have the fifty cubit distance requirement because of the odors they produce. In the latter case there may also be a requirement that the tannery be placed on the side of the city away from or directly opposite the direction of the prevailing winds (which come from the West in Israel) in that region. This is codified in the Mishnah as follows:

Carrion, graves, and tanyards must be kept fifty cubits from a town. A tanyard must only be placed on the east side of the town. R. Akiba, however, says it may be placed on any side except the west, providing it is kept fifty cubits away. (*Ibid.* 25a)

Within these sources, then, one finds early concern for the effects of pollution as well as recognition that action taken in one place may negatively impact the environment somewhere else. Threshing floors must be kept far enough away so that the chaff, the byproduct, not be able to reach and harm another's property. There is thus a clear understanding that destructive activities of this type must be carefully regulated. Many modern parallels suggest themselves. (see P. Bentley's piece in this volume)

Environmental nuisances find their way into another important discussion in Jewish law. Most nuisances, if implemented for someone's benefit and tolerated at that time by his neighbors, cannot subsequently be removed because of the latter's complaints. For example, in many American jurisdictions if I have walked across my neighbors lawn for more than a year to get to work, that passage can no longer be prevented by my neighbor. This is called an easement in American law. A similar concept exists in Jewish law. However, this is not true, as we have seen above, in all cases. Maimonides' conclusions on the matter read:

With respect to any of the prescribed distances mentioned in the preceding chapters, if one does not keep the proper distance and

the other sees it and is silent the latter thereby waives his right to challenge the first and cannot thereafter change his mind and compel him to withdraw to the proper distance. This obtains if it is apparent that he has waived his right, as when he helps the first at the time or tells him to do it or sees the other doing it alongside his property without leaving the required distance and is silent and does not resent it, because whoever holds unchallenged an easement that damages the neighbor's property (for example walking across someone's property) acquires title to that easement (and can no longer be stopped), as we have already explained. This applies only to damages other than the four mentioned in this chapter, to wit: smoke, the smell of a privy, dust and the like, and the stir of the ground. To these four there is no legal title on grounds of unchallenged practice, and even if he who suffers the damage is silent many years he can change his mind and compel him who causes the damage to withdraw to the proper distance. Thus also in the case of discomfort that comes from being exposed to the view of others (a violation of privacy), where the law is that a wall must be erected, (in some cases Jewish law requires neighbors to share the cost of building a dividing wall in response to either neighbor's concern that the other neighbor can see into his or her property) we rule that the aggrieved party can compel the other to erect a wall whenever he wants, as we have already explained. Why are these kinds of damage different from the other kinds? Because it is hard for one to endure these, and we presume that he who suffers the damage has not waived his right to prohibit them inasmuch as he is subjected to persistent suffering. But if he has bound himself by a Kinyan (if he has sold the rights to perpetuate the existing nuisance to the perpetrator of the nuisance using a halachik symbol of sale) when he waived his right (in this way) he cannot retract (even) in case of those damages. (*Maimonides*, "*Laws of Neighbors*", 11:4)

Again we see the association between privacy and environmental regulation. Further, smoke, the odor of a privy, dust and vibration are assumed to be such "great" intrusions into a human being's personal ecology that no one can ever be assumed to have truly and completely accepted their presence. Therefore, if one engages in work that produces such pollution, he can protect himself only by purchasing rights to produce these nuisances from those affected. This, too, serves to limit and control the production of such pollutants and is conceptually similar to a Bush era plan that was never implemented to regulate the environment through a system of violation points and corresponding taxation. Such a plan, were it to be proposed again, would bear serious consideration by the Jewish community.

Even simple environmental amenities that improve the quality of life are subject to halachik concern. Cities in Israel are surrounded by a *migrash*, an area of

1500-2000 feet in length left for public enjoyment in to which nothing may intrude. These domains were park-like areas kept free of cultivation so that inhabitants could enjoy visiting these places. Also, trees were to be kept 25 to 50 cubits (about 50-100 feet depending on the species of tree and the amount of leaves the species has), from the city wall so that people would get the full benefit of these areas. In this way, cool breezes that might head in the direction of the city would be allowed to reach the city streets and amenity areas and not be stopped by the trees.

The Mishna says:

Trees must be kept at a distance of twenty-five cubits from a town; carobs and sycamore trees fifty cubits. Abba Saul says that all wild fruit trees must be kept at a distance of fifty cubits. (*Baba Bathra 24b*)

And the Gemara explains:

[TREES MUST BE KEPT AT A DISTANCE, etc.] What is the reason for this regulation? Ulla says to preserve the amenities of the town. Similarly: ...that amenity areas (migrash) must not be turned into cultivated field nor cultivated field into amenity areas (migrash). (Ibid.)

Further, according to the Rabbis the migrash may not be turned into a field as it destroys the beauty of the city. To maintain balance, a field may not be made into a migrash as it will diminish the crops. So, too, a migrash cannot be made into a city because that too will destroy the city's beauty, while making a migrash out of the city is prohibited as it destroys the place where people live. Again a balance is struck between environmental and other needs. In our day national and public parks and wilderness areas serve similar needs. However, proper balance and preservation of these areas as protected domains is often in doubt.

A more absolutist position but one which still maintains at least some balance is taken by Jewish law in regard to what farmers call the woolly locusts, i.e., sheep and small cattle which may not be raised in Israel as they, with their grazing, will defoliate the land and eat its crops.

It is not right to breed small cattle in the land of Israel. They may however be bred in Suria (an area under Jewish control with a Jewish population, but less populated and less centrally important to Jewish society in Talmudic times where environmental damage could, therefore more easily be limited) or in the deserts of the land of Israel. (*Baba Kama 79b*)

Again it is understood that environmentally damaging activities will occur. While these activities may be necessary, they must be kept under as much control as possible so that environmental damage be kept to a minimum or occur in areas where the impact will be least consequential.

An interesting law promoting positive development of the environment in the land of Israel comes from the case of a farmer whose olive trees are swept away and are then found rooted in another farmer's field.

If the river swept away a man's olive trees and deposited them in his neighbor's field [and there they produced olives] [and] one maintains, 'my olive trees produced them,' whereas the other claims, 'my land caused the yield,' they divide (the value of the fruit). < Metziah >

Adds the Gemara:

A Tannah taught: If he said, 'I wish to take my olive trees,' he is not heeded. Why? R. Johanan said: That Palestine may be well cultivated. Said R. Jeremiah: For such an answer a master is necessary. (*Ibid.* 101a)

Though discussion begins with the question of who owns what with regard to the trees and the fruit that they bear in their new location, it ends with the conclusion that the trees are not to be returned to their original location. R. Johanan, the author of this halachah, explains his decision as emerging from his concern that Israel be well cultivated and settled. Presumably the new owner will farm his serendipitously acquired trees while the original farmer will in all likelihood, replace his loss. In this way two sets of trees will grow in the land where only one set had existed before. R. Johanan deserves to be called a great teacher for this decision.

A similar concern leads to alteration in the Temple service.

They began to take up the logs to lay the fire. . . . Except vine and olive wood... Why were these excepted? R. Papa said: Because they have knots: R. Aha b. Jacob said: Because of the amenities of the Land of Israel. (*Tamid* 29b)

Olive wood and wood from grape vines are prohibited from use on the altar. The second opinion holds that the reason is also concern for the settlement and cultivation of the land of Israel. The first opinion is more specific. These types of wood have knots and burn with a great deal of smoke. Since air pollution is to be avoided these types of wood will not be used in the Temple service. Other special laws apply to preserve the unique environment of Jerusalem, Judaism's spiritual center.

No dunghills should be made there; ... no kilns should be kept there. (*Baba Kama* 82b)

Accumulated garbage had to be dealt with and removed from Jerusalem on the day that it was created. The famous Dung Gate in the Old City walls of

Jerusalem in near proximity to the Temple Mount is architectural testimony to Jewish compliance with this ordinance.

Kilns produce two things, pottery and smoke. In Jerusalem the former is not worth the price of the latter. This concern is so deep-seated that leniency in some Kashrut laws is permitted within a fifteen mile radius of Jerusalem to help preserve its environment.

From Modi'in inwards [the potters] are trusted in regard to earthenware vessels; from Modi'in outwards they are not trusted. For instance: if the potter who sells the pots entered inwards of Modi'in, then the same potter in regard to the same pots and in regard to the same buyers is trusted. But if he went out [from Modi'in outwards] he is not trusted. (*Chagiga 25b*)

Normally one does not trust the average nonobservant potter as to how he has used his pots. Perhaps he has treated them carelessly and inadvertently rendered them unfit for use through contact with unkosher or impure food. Under usual circumstances Jewish law would require acquiring new pots whose pedigree could be guaranteed.

Such a requirement would, however, necessitate the presence of kilns to manufacture such pots. But kilns are undesirable in and around Jerusalem. They create smoke that pollutes the air and ruins the beautiful Jerusalem stone. Within fifteen miles of Jerusalem (the distance from Jerusalem to Modi'in), then, such pots will not be deemed suspect so that kilns need not be built. Outside of Jerusalem the same pot is declared unusable because it lacks the special protection afforded by our concern for the environment of our sacred city of gold.

Even contemporary rituals are impacted by concerns such as these. Traditionally one says, "may it wear out and you acquire another one" to someone wearing a new garment. This is, however, not said for leather shoes as an animal must be killed for the wish to come true. So, too, one who slaughters for the first time, unlike one who performs other ritually significant acts for the initial time, does not say "Shehechyanu" (the blessing recited when one reaches or achieves an important milestone in one's life) as an animal must be killed in the process.

We return, finally to the laws of war;

When you go out to encamp against your enemies, then keep yourself from every wicked thing. You shall have a place also outside the camp, where you shall go out to it; And you shall have a spade among your weapons; and it shall be, when you will ease yourself outside, you shall dig with it, and shall turn back and cover your excrement; For the Lord your God walks in the midst of your camp, to save you, and to give your enemies before you; therefore shall your camp be holy; that he should see no unclean thing in you, and turn away from you. (*Deuteronomy 23:10, 13-15*)

Even at times of great distress seemingly small details that maintain a proper environment must remain a priority.

It is this type of spiritual and environmental sensitivity that one can and should develop through living a Halachik lifestyle. If one's professional, ritual and military lives are ecologically controlled, if one's city is environmentally planned, if one is precluded from engaging in wanton destruction, if one is asked to develop an environmental sense of privacy, if one, in the course of study frequently encounters ecological themes, then some environmental consciousness must develop. This should then influence all of one's activities. For those who do not live a Halachik lifestyle, at the very least the wisdom and morality of the law should become part of every Jew's knowledge base and identity no matter how observant he or she is.