

Judaism and the Environment

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I. Introduction

The media are constantly informing us of dangers to the environment: oil spills damage the beaches and kill fish and birds; building a dam may destroy entire species of animals; holes in the ozone layer allow dangerous levels of radiation; smog caused by car exhausts already pollutes and endangers many cities around the globe; poisonous gases leak from chemical plants and harm thousands, not to speak of the dangers from nuclear reactors. In this article we will explore ways that the Torah or Rabbis mandate for protecting the environment.

In halacha there are three main categories of laws that impact on man and his environment. First, there is *bal tashchit* (בל תשחית) which forbids wanton destruction of property. Second, there are laws governing torts between neighbors (הלכות שכנים). Finally, the Torah forbids ownership of materials that can cause harm (לא תשים דמים בביתך).

Bal Tashchit

Environmental concerns frequently conflict with the desire to improve our material position. This conflict already appears in the Bible. On the one hand, man is commanded to study and harness nature and subjugate it for human progress, "*vektivshuha*", וּכְבַשׁהּ.¹

1. *Bereshit* 1:28.

Some writers, (e.g. Glucken "Man Against Nature: An outmoded

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On the other hand, man is commanded not to destroy materials unnecessarily, "*lo tashchit*" לֹא תִשְׁחִית.² Quoting Rabbi Soloveitchik,³ "Man must be creative in both the material (ארץ) and the spiritual (שמים) realms. There are diseases to conquer (ירפא מלאו את הארץ), rivers to control, miseries to extirpate (ירפא), conquering and settling Eretz Yisrael (כבוש וישב הארץ)," all of which are mitzvot.

The Torah tells us that particular territories were assigned to each nation, to develop according to their creative genius, while Eretz Yisrael was assigned to the Jews (בהנחל עליון גוים) (בהפרידו בני אדם יצב גבולות עמים למספר בני ישראל).

Mankind has an obligation to develop the world beyond the natural state he found it in. As an example of man's need to perfect nature, Rabbi Akiva⁴ draws attention to ears of wheat as they grow in nature and compares them with the bread produced by man. However, "*vektivshuha*" implies a struggle, a struggle between mankind and nature; as with every struggle there is a price to be paid. Part of this price is the increase in pollution with its consequent effect on the lives of all living things.

Furthermore, although man has tremendous power in the world, nevertheless, man does not have free rein to do as he wishes with the world. The Torah⁵ teaches us that if one chances to meet a bird sitting on its eggs or chicks, one may not take the mother bird

Concept," in *The Environmental Crisis: Man's Struggle to Live with Himself*, ed. H.W. Helfrich, Jr. New Haven, NY, pp.129-130); Toynbee, "The Religious Background to the Present Environmental Crisis," *International Journal of Environmental Sciences* 3, 1972, p.142; and White, *Science*, p.155, 1967, pp. 1203-7) have claimed that modern man's drive for technology and against nature derives from this verse in *Bereshit*.

As we see in this article, this is definitely not the viewpoint of Judaism, which stresses in numerous places the deep connections between man and nature and man's duty to preserve nature.

2. *Devarim* 20:29

3. Rabbi Besdin, *Reflections of The Rav*, Dept. Jewish Agency; see also "Lonely Man of Faith" *Tradition*, Spring 1965, and also *Divrei Harav*.

4. *Midrash Tanchuma Tazria* 5.

5. *Devarim* 22:6

with the children, but rather must send away the mother bird and only then take the eggs or chicks. Ramban there explains that killing the bird and its children together is morally the equivalent of destroying the entire species and hence to be avoided. Thus, according to Ramban one should be careful to avoid killing entire species of animals even if it is for man's benefit.

How does the Torah view man in relation to his environment? We may gain some insight from the biblical prohibition to cut down trees, even as a military exigency:

כי תצור אל עיר ימים רבים להלחם עליה לתפשה לא
תשחית את עצה לנרוח עליו גרון כי ממנו תאכל ואותו לא
תכרות כי האדם עץ השדה לבא מפניך במצור

When you besiege a city for many days to fight and conquer it, do not destroy its trees, because you eat from them [the trees] and do not cut it down, for is the tree of the field a person, that it should fall before you in siege?⁶

It is not clear what the last phrase of the verse "is the tree a person" means. Rashi understands it as a rhetorical question implying that one should not cut the tree, for it is not like a man, who is being besieged, and should not be threatened. Thus, according to Rashi, the prohibition of "do not destroy - *lo tashchit*" arises because the trees do not belong to man; mankind has no right to inflict damage on the vegetation of the world. Ibn Ezra disagrees with Rashi, claiming that the prohibition arises because man depends on trees for his livelihood.

According to Rashi the prohibition is a basic one. Man does not have the right to destroy nature without a good reason. In disagreeing, Ibn Ezra says that the prohibition is for man's own benefit, not for the benefit of nature.

However, even according to Rashi, who interprets the prohibition as based on the tree's "rights," there are limits to these rights. It is ultimately the good of man which determines the limits

6. *Devarim* 20:19

on the destruction of the ecosphere, as will be explained hereinafter.

Rav Saadiah Gaon⁷ enumerates at great length the rights of man under the rubric of "conquest of nature," (וכבשה). He includes using animals and fish for food and medicine, pearls from shells, constructing dams for power, extracting metals from the earth, etc. The Talmud⁸ and Midrash teach that everything in the world was created with a purpose. Even flies, wasps and other insects can be used for medical purposes or are messengers of G-d. *Ein Yaakov*⁹ explains that without this Gemara we would have no right to kill these insects. However, when man gets direct benefit from them, they can be destroyed. Just as man is allowed to eat animals, so too he may kill animals or insects for use in medicines. However, except for such purposes, there is no justification in destroying animal life. *Ein Yaakov* further explains the Gemara as teaching us to follow G-d's example. Just as He created the world with good sense and purpose, so man should not change anything in this world without giving it deep thought.

The position of *Ein Yaakov* summarizes the Torah view towards the environment: Man has the right to make changes in his environment since the world was created for man's benefit. However, man should exercise this privilege judiciously. We should take into account that G-d created everything as it is with a good purpose, and thus we should not change or pollute our surroundings without giving it serious consideration. While *ve-kivshuho* is a right and a privilege, it is also a responsibility and is limited by *bal tashchit*.

II. Wanton Destruction

As previously mentioned, the Torah prohibits the destruction of fruit trees while besieging a city. Even indirect destruction — for

7. Rav Saadiah Gaon, *Commentary on Genesis* (in Arabic and Hebrew) ed. Moshe Zucker, pp.53-54 and pp. 258-2598.

8. *Shabbat* 72b. See also *Bereshit Rabba*, *perasha* 10:7. Even insects can act as messengers of G-d, see *Midrash Tanchuma* beginning of *Chukat*. An example is a gnat that tortured Titus (*Gittin* 56b).

9. *Ein Yaakov* on *Shabbat* 77b.

example, diverting a stream of water from the tree — is forbidden.¹⁰ The Talmud extends this as a prohibition to tear clothing, destroy buildings, waste money, fuel, food or drink, or in general ruin anything that can benefit people. Even if one destroys property to instill fear in his family (e.g. breaks dishes to frighten children), he transgresses this biblical prohibition. Maimonides¹² disagrees and says that only the destruction of fruit trees is biblically proscribed, while other cases are rabbinically prohibited. Moreover, the prohibition of destroying fruit trees applies only if the destruction is wanton and purposeless. However, if one cuts down the tree because the wood is worth more than the fruit, one does not violate the prohibition. Rosh¹³ extends this to a case where one needs the place where the tree is growing.

Based on this reasoning, Rabbi Landau¹⁴ (the *Nodah Biyehudah*) states that hunting animals is not prohibited by either *bal tashchit* or the prohibition to cause animals unnecessary pain (צער בעל חיים) since there is a benefit. Nevertheless, Rabbi Landau points out that only wicked people such as Nimrod and Esau are identified in the Bible as hunters. Hence, hunting is a profession that should be avoided, if possible.

We can gauge the importance of preserving trees from the report of Rabbi Chanina¹⁵ that his son died because he had cut down a fig tree. Among those who will never see a blessing from their activity in their lifetimes, the Talmud¹⁶ lists people who destroy good trees. R. Yaakov Emden¹⁷ (*Yavetz*) struggles with both these passages. We have already seen that destruction of fruit

10. Rambam, *Hilchot Melachim* 6,8; *Sifre to Devarim* 20:19.

11. *Shulchan Aruch Harav, Hilchot Sh'mirat Guf Vanefesh* p.14. See also the *Nodah Biyehudah*, *Yoreh Deah* 10, who says that if there is no use to the ownerless property, e.g. wild animals in a forest, there is no prohibition of *bal tashchit*.

12. Rambam, *op cit*, 6:10.

13. *Pesachim* 50b.

14. *Nodah Biyehudah*, *ibid*.

15. *Pesachim* 50b.

16. *Bava Bathra* 91b; see also *Yoreh Deah* 11b; 16, r.o.6.

17. *Shealat Yavetz*, 1,66.

trees is a violation of biblical law. If so, why does the Talmud stress the dangers involved, if there is the stronger case of a biblical prohibition? Furthermore, we would assume that no *Amora* (Talmudic Rabbi) would transgress a biblical prohibition — why then did the Rabbi's son cut down a tree? Hence, he concluded that personal danger and punishment apply even in cases where one does not actually violate the biblical prohibition of destroying trees — for example, if one derives benefit from the wood of the tree. Consequently, he concludes that one should never cut down a tree regardless of the justification. Rabbi Yehuda Hechasi¹⁸ also wrote that one should not cut down fruit trees. The commentators again explain that even when there is no specific biblical prohibition, there is nevertheless danger. The son of Rabbi Chanina would not have violated a biblical law. If he died because of cutting down a tree, obviously it was a circumstance which, from the vantage of pure law, allowed destruction of the fig tree.

*Chatam Sofer*¹⁹ disagrees with *Yavetz* and rules that if the place of the tree is needed, it is permissible to cut it down. Only if the benefits are doubtful is there a danger. *Chatam Sofer* further observes that if it is possible to uproot the tree with its root system and replant it elsewhere, it is prohibited to destroy the tree. Others have a custom to sell the tree to a gentile (even in cases where destroying the tree is justifiable) or leaving the tree to dry out by itself and only afterwards cutting it down. Rabbi Vosner²⁰ opines that the comparative worth of a tree depends on local custom. Thus, in modern societies one may cut down a tree even to plant a vegetable garden, since most people prefer a garden to trees in their front lawn. When the tree is in the way of building a synagogue or if its roots are damaging graves, Rabbi Vosner concludes that it is

18. *The Ethical Will of Rav Yehudah Hechasi*, #45. See Comments of Maharsham Berzon on the page.

19. *Responsa Chatam Sofer, Yoreh Deah* No. 102; *Responsa Chavat Yair* No. 195; *Responsa Binyan Zion* I, No. 61.

20. *Responsa Shevet HaLevi*, I, 112 and II, 46, 47. Rabbi Vosner points out that driving a speeding car is more dangerous than crossing a river with strongly flowing water and so is certainly prohibited.

immediately permissible to remove it; however, even in this case it is preferable to ask a non-Jew to chop it down.

From the above discussion, it is evident that the prohibition of destroying fruit trees is more stringent than many other biblical laws although it seems to be an ordinary prohibition. The *Netziv*²¹ explains that man himself is identified with trees: the Torah wishes to stress that man is part of the cycle of nature and thus should be particularly careful about any unnecessary destruction. Although the Torah views the world as having been created for the benefit of man, the mitzva of *bal tashchit* comes to remind man that he is part of nature, that man himself is thus similar to the tree, and that mankind must carefully guard the world's resources and not squander them. The Talmud states²² that one should even pray for a sick tree in addition to taking care of it physically. *Chinuch* continues that the message of this mitzva is for everyone to appreciate and conserve the good in the world and not waste even the smallest seed; only evil people destroy worldly goods, thereby ultimately destroying themselves.

In practical terms, the prohibition of *bal tashchit* coincides with the need to conserve energy resources. The Talmud prohibits covering lamps because it makes the oil burn faster. Extrapolating from this, we may say that one should not leave on lights when not in use, wasting electricity and ultimately the natural fuel used to generate the electricity. Similarly, other ways of wasting energy, e.g. not using thermostats, could be included in the prohibition of the Gemara, as would wasting gasoline by running the motor for extended periods of time when the car is not in use.

The prohibition of *bal tashchit* applies even when the property being destroyed is ownerless, *hefker*.²³ Thus, the destruction of wildlife through oil spills, industrial pollution, or similar catastrophes, are all prohibited by this law.

In summary, *bal tashchit* forms a counterbalance to *vektivshuho*. *Vekivshuho* instructs man to subjugate the world for

21. *Ha'amek Davar* to *Devarim* 20:19.

22. *Shabbat* 67a.

23. See note 11.

his benefit, while *bal tashchit* teaches man that as part of nature he should conserve his resources and not destroy nature unless there are strong overriding considerations.

Even in cases where the destruction is technically legal, there are personal dangers to man. Rabbi S. R. Hirsch²⁴ connects the two principles: Under the concept *bal tashchit* purposeless destruction is forbidden, so that our text becomes a most comprehensive warning to human beings not to misuse their G-d-given position as masters of the world to capriciously or merely thoughtlessly wreak destruction on anything on earth. Only for wise use did G-d lay the world at our feet when He said to Man, "subdue the world and have dominion over it."

III. Relations between Neighbors

Today it is generally recognized that pollution has both an economic and a human cost. Water pollution requires the construction of water treatment plants. Smog and acid rain blacken the exterior of buildings. Agricultural output is diminished by a lack of soil conservation. Some countries are beginning to keep track of an "environmental gross national product." These economic factors are in addition to the dangers to human beings. In this section we discuss the obligations of a person to prevent damage to property and life.

Before discussing details of this law, we need to understand the general approach of halacha to damages. The Torah states that the entire world belongs to G-d (לה' הארץ ומלואה). As such, man does not have complete control over anything in the world. At one extreme, even man's body is not completely his to do as he sees fit. Suicide is an offense to G-d equivalent to murder, and the person will be punished in the world to come.²⁵ One does not have the right to cause unnecessary harm to oneself or to give someone else permission to damage him.²⁶ (Thus, it is questionable whether one

24. Rabbi Hirsch on *Devarim* 20: 20.

25. Commentary of Radvaz to Rambam, *Hilchot Sanhedrin* 18:6 see also Rav Zevin, *Le'or ha-Halacha*, *Mishpat Shiluk*.

26. Rambam, *Hilchot Chovel Umazzik* 6:1. *Shulchan Aruch*, *Choshen Mishpat*, 420:31. *Shulchan Aruch Harav*, *Hilchot N'zikei Guf Vanefesh* 4.

may undergo plastic surgery for purely cosmetic reasons.)

When a person causes damages to property, he has to make restitution. However, beyond the money he owes, he has also sinned. One who damages property is required to do *teshuva* even though full restitution has been made.²⁷ If the damage is negligible (worth less than a *peruta*) he is liable for “stripes” (lashes).

A general rule in torts is that one is not liable for indirect damage (גרמא פטור בנויקין). Nevertheless, one is prohibited from causing indirect damage. This arises because damage has an “*issur*” aspect to it in addition to the financial aspect.²⁸ In this article we will be concerned mainly with cases where one is prohibited from damaging other people or property but shall not concern ourselves whether one could actually collect payment for these damages.

The second chapter of *Bava Bathra* deals with the laws between neighbors and lists many circumstances in which a person is required to remove hazardous materials even if they have not caused damage. For example, one can be prevented from digging a pit next to his neighbor’s wall, as the hole will weaken the wall. Similarly, one cannot use an oven if the heat will cause damage to an upstairs neighbor.

There is a fundamental area of disagreement between the rabbis and Rabbi Yosi. The rabbis state that על המזיק להסיר הנוק, it is the responsibility of the potential damager to prevent damages, while Rabbi Yosi claims על הניזק להסיר הנוק, that the one to be damaged must prevent it. The Gemara²⁹ explains that they argue only about a potential damage, but for an immediate damage (גיריה דייליה), everyone agrees it is the damager’s responsibility. Thus, according to Rabbi Yosi, one can plant a tree near a neighbor’s yard even though the roots will eventually cause harm to his property, yet one may not dig a hole, since the hole immediately weakens the ground.

27. Rambam, *Hilchot Teshuva* 1:1 and 2:9.

28. Meiri, *Bava Bathra* 23a, see also R. Shimon Shkop to *Bava Bathra* 87.

29. *Bava Bathra* 18b and 22b. The exact definition of “גיריה דייליה” is controversial. See Rashi and Tosafot to *Bava Bathra* 22b, as well as Ramban and Rosh. Also Rambam, *Hilchot Shecheinim* 10:6; *Encyclopedia Talmudit*.

Rosh³⁰ was asked about someone who made a hole in his ground so that when it rained, the water rose out of the well and flooded the neighbor’s basement and also caused a stench in the neighbor’s yard. Rosh responded that according to all opinions in the Talmud, the first party had to remove the possibility of damage. The second party is unable to do anything to defend himself since all houses have yards and basements and the damage is extensive.

The Talmud also introduces “zoning laws” mandating that certain industries must be situated outside city limits. Industries which produce bad smell, — e.g. tanneries, meat packing, and also cemeteries — must be located at least 50 *amot* outside the city.³¹ Similarly, all industries which produce smoke must be at least 50 *amot* outside the city. The Talmud says that in Jerusalem one may not have large ovens because they blacken the walls, while Rabbi Nathan extends this to all cities. These laws are based on the fact that damage to the whole community is more severe than damage to an individual.

There are many cases where the court cannot prevent the establishment of certain practices because of possible damage to an individual, but can prevent it if the general public is endangered. Thus, one may not have a permanent threshing floor³² within 50 *amot* of a city; even if the threshing floor preceded the city it must be removed, though with proper compensation. The kernels of wheat from the threshing floor may harm the people of the city. Rashi emphasizes that not only do the particles harm people, but they also dry out the vegetation in the surrounding areas. If the damage were to an individual, we could not insist on the dismantling of a preexisting factory. However, if there is a hazard to the general public, even preexisting industries can be removed.³³

30. *Tur*, *Choshen Mishpat* 155,21.

31. *Bava Bathra* 25a.

32. *Ibid.* 24b.

33. *Ibid.* See also *Shulchan Aruch*, *Choshen Mishpat* 155 and *Aruch Hashulchan*, *ibid.* no. 21. If the government pressures a small group to move or else it will punish the entire community, they must move for the sake of the community. Similarly, in other cases individuals must give up their claims in deference to the entire community and can only claim compensation for the damages incurred.

Similarly, one cannot establish a threshing floor on one's private property inside the city unless there is sufficient room to prevent any kernel of wheat (or other dust particles) from reaching outside the property.

Beyond the general zoning laws, special rules apply to the land of Israel to increase its beauty and encourage people to live there. The Mishnah states³⁴ that all trees must be planted at least 25 *amot* outside the city and that sycamore or carob must be 50 *amot* away in order to preserve the beauty of the city. Tur³⁵ explains that this law applies only in Israel; *Bet Yosef* further states that in his day this law doesn't apply even in Israel since the Jews do not govern the country. Logically, then, this law should apply again in modern-day Israel. The rabbis instituted many decrees to facilitate the beautification of the land of Israel and to prevent the desolation of the country, for they gave the settlement of Israel a very high priority.

In most cases, if the one damaged acquiesces to the damage, he gives up his subsequent right to object. However, for certain categories of damage, even an oral declaration giving permission is meaningless, since these damages are so great that a person does not realize the full implications of giving up his rights.³⁶ Rabbenu Tam³⁷ says even if he made a formal agreement (*kinyan*) in front of witnesses, he can still change his mind. Among the things in this special category are outdoor bathrooms and smoke.³⁸ The Jerusalem Talmud qualifies this to apply only to permanent (most of the day) smoke. Rabbenu Tam says that one may object and prevent the use of even temporary smoke that bothers the neighbors. Furthermore,

34. Mishnah *Bava Bathra* 2:7.

35. Tur, *ibid.*, and *Shach*, #12. The Ramah (רמ"ה) disagrees. See also R. Arieli, *Einayim Lemishpat, Bava Bathra* 24b.

36. *Bava Bathra* 23b.

37. *Ibid.*, אין חוקה לנויקין, see also *Shulchan Aruch Harav, Hilchot Nizkei Mammon* #18.

38. Tosafot (ב"ב כג א ד"ה בקטרא) say that this applies only to exposed bathrooms but not to modern bathrooms that are enclosed. Ritva, *ibid.*, says that it depends only on the odor emitted. See *Shulchan Aruch, ibid.*#38.

smoke and outdoor bathrooms are only *examples* of damages that people cannot tolerate; when there are other types of damages which people find intolerable, the same law applies.³⁹ Ramban⁴⁰ explains that only for monetary damages do we rely on assumed consent (חזקה), but when there is damage to a person's body, he can change his mind even after he has consented.

As an application of this principle, Rabbi Feinstein discusses⁴¹ the question of smoking in a public place, e.g. a *Bet Medrash*. He decides that any objector can prevent people from smoking, since smoke directly affects others. Furthermore, smoke causes physical harm and not just discomfort. Rabbi Feinstein goes further and opines that theoretically one could even collect payment for these damage. Rabbi Waldenberg⁴² seconds this opinion and adds that even if the smoke enters a public area, one can object to it, and certainly if it enters one's private property. Furthermore, even if one had already agreed to the smoking, he can change his mind based on the latest medical reports. However, *Chazon Ish* seems to disagree in part.⁴³ He says that the laws of an outdoor bathroom apply only if the odor is so offensive that one could not say the *Shema*. However, if the air from the bathroom is odorless but harmful, one cannot object. Presumably, this would also hold for the laws of smoke.

The *poskim* have taken various positions. Rabbi Eliashiv⁴⁴ says that smoking in a *Bet Medrash* is to be decided by a majority vote since it is a commonly accepted practice to smoke. According to this opinion, if smoking is prohibited in most places because of health reasons, then Rabbi Eliashiv would agree that one person could

39. Jerusalem Talmud, *Bava Bathra* Chapter 2, Halacha 2; Ritva, *Bava Bathra* 23; Tur, *ibid.* 55.

40. Ramban, *Bava Bathra* 59a.

41. Responsa *Iggerot Moshe Choshen Mishpat* II 18; also, *Assia*, Vol. 5, pp. 248-251.

42. Responsa *Tzitz Eliezer*, Vol. 15, #39; Vol. 17, #22; also *Assia*, Vol. 5, pp. 252-257; R. Gross, *Shevet Hakehati*, I, 332.

43. *Chazon Ish* to *Bava Bathra* 22.

44. Responsa *Yeshiv Moshe* of R. Eliashiv, pp.227-8.

object to any smoking in the room. It is not clear why Rabbi Eliashiv and the *Chazon Ish* do not consider the health problem as constituting direct damage.

In addition to control over air pollution, halacha is concerned with water pollution. The *Tosefta* states that one may wash his body in public pools. However, if the feet are muddy, he may not wash them in the public pool.⁴⁵ If the water is used for drinking, one should never use it for bathing. Rabbi Yehuda Hechavid states⁴⁶ that one should not bathe in a swimming area if he has a skin disease (שחין) because the next person might get it. The Talmud⁴⁷ also gives rules for use of water when several cities draw from the same river. The city closer to the source has a prior claim for use of the water for any reason — whether for human consumption or for animals or even for laundry.

One of the main questions facing the modern environment movement is the frequent conflict between environmental concerns and jobs. Talmudic and rabbinic literature have long respected the dichotomy. The sages of Narbonne⁴⁸ felt that one could not force a person to close a chimney in his house even when the smoke entered someone else's window. The reason is that the house owner has no other alternative and cannot be forced to move. The Talmud says that one may not operate a smithy or similar device in one's home because of the noise and the people who are constantly entering and leaving, disturbing the neighbors' quiet. *Chatam Sofer*⁴⁹ says that the Gemara is talking about a case where these types of business should be in a part of town zoned for commercial places. However, if one cannot move the business to the market place, he is not required to give up his livelihood to stop the noise. The reason for this is that neighbors cannot collect payment for

45. *Tosefta Bava Metzia* Chapter 11, p. 31.

46. *Sefer Chasidim* No. 161.

47. *Nedarim* 80b; see also *Sheiltot*.

48. Meiri, *ibid.*, 23a.

49. *Responsa Chatam Sofer, Choshen Mishpat* #192; *Pitchei Teshuva* indicates that there are circumstances where one would be required even to give up his livelihood in order to prevent damage to someone.

indirect damages. Nevertheless, one can prevent his neighbors from causing indirect damage.

However, if a person's livelihood is at stake, this prohibition does not apply. Meiri⁵⁰ explains that the difference between a store at home or a smithy is that a store belongs in the market place and not in the local courtyard.

Maharsham considered the case of owners of barrels of dye which emitted a foul odor.⁵¹ He decided that one cannot prevent them from continuing their business, for two reasons. First, people in the town have become accustomed to the smell. Furthermore, many of the Jews in this town make their living by selling these dyes. Maharsham⁵² considers the case of a fully enclosed bathroom. He says that the neighbors cannot object even initially, since the bad odors have been reduced to a minimum.

Another concern of rabbis was noise pollution, which is only now beginning to be recognized as a problem in modern communities. One cannot open a store in the local courtyard since it prevents the neighbors from sleeping, due to the traffic to and from the store. This damage is considered so severe that it is included in the category of things about which neighbors can change their mind, even if they did not object originally.

Although Rav Caro⁵² rules that one can protest the noise of machinery in a private home (קול הפטיש וקול הריחיים), Ramo disagrees. *Chatam Sofer* explains that in the days of the Gemara, people worked at home and sold the goods at the marketplace. Hence, one cannot stop the use of tools such as a hammer or grindstones, because the other person has no other place to use them. According to this explanation, with modern zoning laws, it is possible that Ramo might agree that one can restrict the use of noisy machinery to industrial zones. Similarly, Rivash⁵³ states that one can prevent the use of noisy machinery even in the home if the

50. *Bava Bathra* 23a.

51. *Responsa Maharashdam, Choshen Mishpat*, 462.

52. *Responsa Maharsham*, I, 178.

53. *Shulchan Aruch, Choshen Mishpat*, No. 156, 2. See *Bet Yosef* for a discussion of the various opinions.

neighbor suffers from headaches or if the noise damages wine in a preexisting winery.

IV. Avoidance of Dangerous Objects (לא תשים דמים בביתך)

Immediately after the mitzva of send the mother bird away before taking the eggs or chicks, the Torah commands us to build a fence around our roofs so that we will "not bring blood into our house", if a person should fall from the roof.⁵⁴

The Torah enjoins us to build a fence on the roof to prevent danger to others. Even in cases where the neighbor does not sue to prevent damages, on our own we must make sure that no dangerous condition exists on our premises.⁵⁵ The Talmud teaches us that this law applies not only to rooftops but to all dangerous objects. As examples, one is not allowed to own a wild dog or a faulty ladder. On a stormy day, Rav Huna used to survey the buildings of his city and order the demolition of all unsafe structures.⁵⁶ The Mishnah⁵⁷ states that one is not allowed to keep a dog in a city unless it is chained. The Gemara says that one who raises a dog is like one who raises pigs, and a curse applies to both groups of people. A Jewish court can force the owner to kill his wild dog and remove a potential danger to the community.⁵⁸ Even if a public building, such as a synagogue, has a roof that is frequently used, a fence is required, and public funds are to be used to erect it.⁵⁹ We are stringent about doubtful situations concerning safety even more than doubts concerning biblical prohibitions, ספק סבנה, חמור מספק איסור תורה.

In addition to the commandment exhorting us not to harbor any dangerous situation in our dwellings, it is also forbidden due to

54. *Responsa Rivash*, No. 196.

55. *Devarim* 22:8.

56. Rambam, *Hilchot Rotzeach*, 11:44; see also *Chinuch*, No. 546 and *Minchat Chinuch* No.53.

57. *Ta'anit* 20b, *Ketubot* 41b.

58. *Bava Kamma* 83; see also Rambam, *Hilchot Nizkei Mammon* 5:9; *Shulchan Aruch*, *Choshen Mishpat* 409, 3.

59. Rambam, *Hilchot Talmud Torah* 6:14. *Bava Kamma* 15b.

the mitzva of "guarding" our bodies and our health, השמר לך ושמר נפשך. *Minchat Chinuch* explains⁶⁰ that the prohibitions are biblical when the objects harm other people, e.g. a roof without a fence or a dilapidated ladder. However, the prohibition is only rabbinical if the danger applies only to oneself, e.g. drinking unsafe water.

The *Tosefta*⁶¹ lists a group of activities that one may do only if there is a minimum distance from possible damages. For example, Rabbi Yosi says that one must distance a beehive from the city by at least 50 *amot*, so that they will not sting people. Most commentators learn that this law is part of the laws of neighbors, which we presented previously. However, Rabbi Abramsky⁶² has a novel way of interpreting this *Tosefta*. He claims that bees are dangerous and so keeping them near a city violates לא תשים דמים בביתך. It makes no difference whether or not people come to the house, as in the case of a dilapidated ladder, but rather that the bees chase the people. In either case the prohibition exists. Rabbi Abramsky further claims that according to *Chinuch* this prohibition applies even when the bee sting is not life threatening but only very uncomfortable.

According to Rabbi Abramsky, it is possible that industrial plants which deal in dangerous chemicals or other harmful materials must be sufficiently far away from populated areas so that no harm can occur. Similar rules may also affect building of nuclear plants. In all these cases, not only the rules of הלכות שכנים, "Laws between Neighbors," pertain, but also the biblical prohibition of *lo tasim damim beveitecha*.

V. Applications

Conservation of energy is certainly included under the mitzva of *bal tashchit*. Therefore, every person is commanded to do whatever he can to reduce waste of resources. This includes not using electricity unnecessarily, not wasting fuels of any kind, recycling materials, etc.

60. *Minchat Yitzhak*, V, No. 122.

61. *Minchat Chinuch* No. 546.

62. *Tosefta*, *Bava Bathra*, Chap 1, No. 7.

Factories that produce constant smoke which bothers nearby residents can be forced to construct special smokestacks or scrubbers to remove all offensive odors. Moreover, according to Rav Feinstein and other authorities who do not allow smoking in public buildings because of health hazards, neighbors should also be able to prevent a factory from issuing dangerous smoke even though it has no odor. Rabbi Feinstein⁶³ stresses that smoking in a closed room is prohibited; although many people contribute to the harm that smoke causes, they are all responsible. Similar reasoning may apply to automobile exhaust or acid rain, which causes smog harmful to people and buildings. It is clear that factories can be prevented from dumping chemicals into public waterways that may harm other people along the riverside. One may not even wash filthy feet in public waters or bathe in the waters if one has a health condition that can contaminate other people using the waterways. If the water pollution does direct damage, one should even be able to collect damages in court.

We previously showed that the prohibition of *bal tashchit* applies even if the damage is indirect, e.g. diverting water from a tree. Nevertheless, it is not clear if very indirect damage would also be included under this reasoning. Thus there may not be a prohibition against using an aerosol can that might damage the ozone layer or using phosphates that damage wild life, since all these damages are very indirect. Nevertheless, the spirit of the law is that one should not do any action that even remotely causes unnecessary damage. Certainly, one would not be permitted to allow any oils spills that harm animals or fish, although one could not collect damages for this destruction since the fish and birds are not private property. However, damage to beach areas would have to be paid to whichever agency was in charge of that area.

The greatest arguments arise when there is a conflict between environmental concerns and people's livelihood. *Chatam Sofer* decided that one need not give up one's occupation because it is a nuisance to one's neighbors. According to this, one could not prevent lumber companies from cutting trees on their property as

63. *Chazon Yechezkel*, *ibid.*

long as there was no undue waste. Even edible fruit trees can be cut down if there is sufficient justification, but this should be avoided in most circumstances. *Chatam Sofer* indicates that if the damage is severe enough, the courts can force a person even to give up his job, but he doesn't give any details of the extent of this exception.

There are several topics that we have not discussed, which impact on practical decisions. Foremost is "*Dina De'Malchuta Dina*," the impact of government regulations on halacha.⁶⁴ Thus, many cases of pollution that are not prohibited by halacha may nevertheless be prohibited by government laws, which then gives them halachic status. Another point which we have glossed over is the question of priority. In many cases the ability to prevent damage a priori depends on which party was the first in the neighborhood. These laws are very complicated and beyond the scope of this article.⁶⁵

We conclude by quoting the *midrash* :⁶⁶

בשעה שברא הקב"ה את האדם הראשון נטלו והחזירו על כל אילני גן עדן ואמר לו: ראה מעשי כמה נעים ומשובחין הן וכל מה שבראתי בשבילך בראתי. תן דעתך שלא תקלקל ותחריב עולמי. שאם תקלקל אין מי שיתקן אחרריך.

When G-d created Adam he took him to see all the trees of the Garden of Eden and said to him: "See how good they are. Everything that I have created, I created for you. Pay attention that you don't destroy my world for if you destroy it, there is no one to fix it afterwards."

That the world was created for man's benefit implies obligations as well as privileges. If man destroys his environment, he will pay the price. To prevent such damage, G-d commanded us to appreciate nature and to preserve it.

64. See note 41.

65. Rav H. Schachter, *Journal of Halacha and Contemporary Society*, Vol. 1, pp. 103-130.

66. See for example, *Responso Rabbi Akiva Eiger* No. 151. Rav Shach, *Avi Ezri*, *Hilchot Shecheinim*.

67. *Kohelet Rabbah*, *perasha* 6:28.