# 13

# *Bal Tashchit:* A Jewish Environmental Precept

*Eilon Schwartz*

## INTRODUCTION

No single Jewish concept is quoted more often in demonstrating Judaism's environmental credentials than the rabbinic[1] concept of *bal tashchit* ("do not destroy"). It appears in virtually all of the literature that discusses Jewish attitudes toward the environmental crisis. Yet, rarely are any more than a few sentences given to actually explain its history and its meaning. Such a superficial approach has been widespread in contemporary environmental ethics with regard to traditional cultures. Advocates of a particular culture bring prooftexts to show that the culture is part of the solution; critics use it to show that the culture is part of the problem. Neither approach allows a serious investigation of a cultural perspective different from our own, one which is based on different philosophical assumptions debated in a different cultural language.[2]

In keeping with Clifford Geertz's call for thick anthropological descriptions of culture, I have chosen to analyze *bal tashchit* as it unfolds throughout Jewish legal, or halakhic,[3] history. Only by entering the classical world of Jewish texts is it possible to transcend apologetics and get a glimpse of a traditional cultural perspective on its own terms. In the process, I provide a richer understanding of the *content* and the *context* of Jewish cultural views of the natural world.

## *BAL TASHCHIT*

Historically, Jews have been considered "a people of the book," based on the role texts have played in Jewish life. From the Bible, followed by the





Mishnah and the Gemara, known collectively as the Talmud, continuing through medieval commentaries on these texts, and including compilations of questions posed to rabbis with their answers on the practical application of these ancient texts to new situations, Judaism has developed an elaborate interpretive tradition, rooted in the Bible and extending into modern times. Traditional texts beginning with the Bible are the core texts for subsequent halakhic decisions.

*Bal tashchit* is based on a relatively small collection of sources. The original basis for it is biblical, although it is expanded by the rabbis far beyond the original context of the Bible. *Bal tashchit* is considered to have its roots as a *halakhah* of the Bible, but to largely consist of prohibitions developed by the rabbis. In order to understand the halakhic precept, it is necessary to explore both its biblical roots and its rabbinic interpretation.

The principle of *bal tashchit* originated in the attempt to explicate one specific biblical passage from Deuteronomy, which describes what constitutes proper behavior during time of war. I include two translations of the original Hebrew in order to emphasize the difficulty in understanding the Hebrew verses and the interpretative possibilities that emerge from the ambiguity of the text itself.

## THE BIBLICAL SOURCE

> When in your war against a city you have to besiege it a long time in order to capture it, you must not destroy its trees, wielding the axe against them. You may eat of them, but you must not cut them down. *Are trees of the field human to withdraw before you under siege?* Only trees which you know do not yield food may be destroyed; you may cut them down for constructing siegeworks against the city that is waging war on you, until it has been reduced. (Deuteronomy 20:19–20, New Jewish Publication Society translation)
>
> When thou shalt besiege a city a long time, in making war against it to take it, thou shalt not destroy the trees thereof by forcing an axe against them: for thou mayest eat of them, and thou shalt not cut them down, *for the tree of the field is man's life to employ them in the siege.* Only the trees which thou knowest that they be not trees for food, thou shalt destroy and cut them down; and thou shalt build bulwarks against the city that maketh war with thee, until it be subdued. (Deuteronomy 20:19–20, King James translation)

The passage deals with the proper ethical behavior with regard to trees during wartime. Fruit-bearing trees should not be chopped down while a city is under siege. Only non-fruit-bearing trees may be chopped down. The reason behind this prohibition seems to be cryptically supplied by the verse itself. In the King James translation, the reason is that "the tree of the field is man's life," implying some causal relationship between the human being and trees, such that cutting down the tree is, in effect, damaging the human being as well. Yet, the other translation offers a different interpretation of the verse,

translating the verse as a question rather than statement: "are trees of the field human to withdraw before you under siege?" It is a rhetorical question, which denies a relationship between human beings and trees, and implies that trees are not human beings and therefore should not be victims of human disputes.

The discrepancy between the translations echoes medieval commentators' varying interpretations of the verse. The J.P.S. translation seems to agree with Rashi's[4] interpretation of the verse. Rashi accentuates the categorical distance between the human being and the tree to create a rationale for why the tree should not be cut:

> The word *ki* is used here in the sense of *perhaps; should*. . . : Should the tree of the field be considered to be (like) a human being, able to run away from you into the besieged town, to suffer there the agonies of thirst and hunger, like the townspeople—if not, why then destroy it? (Rashi's commentary on Deuteronomy 20:19)

Rashi's interpretation of the verse is based on his understanding of the Hebrew word *ki* as being interrogative, turning the text into a rhetorical question: Is the tree of the field to be part of the same (moral) world as the human being? No. The tree of the field is not the target of the siege; the people of the town are. One has no moral right to destroy the trees because of a dispute among human beings. The trees must not be destroyed because of human disputes.

Rashi in effect has argued for an environmental ethic that views (fruit) trees as having existence independent of human wants and needs. In spite of its strong anthropocentric language, Rashi's position gives ethical consideration to the trees, although it is still not clear why that should be so. The case is accentuated by the setting of the verse itself. In wartime, when human life is so endangered that values are often eclipsed altogether, it is difficult to maintain an ethical outlook on any issue, how much the more so with regard to nature. Indeed, some commentators were aware of, and concerned by, the radically nonanthropocentric nature of such a juxtaposition in which strategic considerations during war, considerations that might save human life, seem to be overruled by consideration for the trees' welfare. Samuel ben Me'ir [Rashbam] (1085–1144), for example, understands the word *ki* as "unless" and therefore interprets the verse as a prohibition against chopping down the fruit tree unless the enemy is using the trees as camouflage ("unless the human being is as a tree of the field"), in which case the trees may be removed.[5] Nachmanides [Ramban] (1194–1270) argues that if chopping trees is necessitated by the conquest, then it is obviously permissible to remove any and all trees.[6] Rashi's interpretation is an anthropocentric reading.

Yet, Rashi seems to have taken the verse out of context, for, if we accept Rashi's interpretation—"is the human being a tree of the field?"—how are we to understand the very next verse, in which permission is given by God to cut down non-fruit bearing trees? What is the distinction between fruit-bearing and non-fruit-bearing trees which protects one and not the other? Rashi's interpretation does not offer a means for making such a distinction. Indeed, the text questions whether a human being is the tree of the field, whereas Rashi asks whether a tree of the field is like a human being. Rashi's reversal of the syntax of the sentence helps to support his interpretation, but is not supported by the original phrasing of the verse.



Ibn Ezra's (1089–1164) interpretation, later echoed by the King James version, attacks Rashi's position on both grammatical and logical grounds, and offers an alternative possibility:

> In my opinion . . . ; this is the correct meaning: that from (the trees) you get food; therefore, don't cut them down; "for man is the tree of the field"—that is, our lives as human beings depend on trees. (Ibn Ezra's commentary on Deut. 20:19)

Human responsibility for the tree is based on human dependence upon the tree. Trees are a source of food, and thus cutting them down reduces the food supply available after the siege. Ramban goes on to suggest that such an act is a sign of loss of faith, for the trees are being cut down to help in the siege. The soldiers, not believing that God will lead them to victory, destroy their own future food supply, fearful that the day of victory will never come.[7]

Ibn Ezra's explanation makes sense in the context of the verse. Fruit trees are not to be chopped down, for their importance as food for human beings is clear. Non-fruit-bearing trees, on the other hand, were seen to have no immediate importance for the human being; therefore, it is permissible to chop them down. The prooftext, "because the human being is a tree of the field," shows us our link to the natural world and how our abuses of nature can result in abuse of ourselves.

## THE RABBINIC UNDERSTANDING AND EXPANSION OF THE TEXT

The rabbinic discussion of the text, and the rabbis' extrapolation of it into the halakhic precept of *bal tashchit*, although terse, expands the text in several, and often conflicting, directions. Let us begin with the primary prooftext in the Talmud for *bal tashchit*. It is an expansion on the mishnaic text which states: "He who cuts down his own plants, though not acting lawfully, is exempt, yet were others to [do it], they would be liable" (*Baba Kamma* 8:6).[8] Here it is clearly stated that cutting down plants is acting unlawfully, presumably because of *bal tashchit*. One who cuts down another's plants is monetarily liable. One who cuts one's own plants, while not liable, is also a transgressor. In other words, it is not merely a question of destroying another person's property. Even destroying what appears to be one's own property is forbidden, although seeking monetary penalty or compensation is inapplicable.

The Talmud proceeds to define what is permitted to be cut down and what is forbidden:

> Rav said: A palm tree producing even one kab of fruit may not be cut down. An objection was raised [from the following]: What quantity should be on an olive tree so that it should not be permitted to cut it down? A quarter of a kab—Olives are different as they are more important. R. Hanina said: Shibbath my son did not pass away except for having cut down a fig tree before its time. Rabina, however, said: If its value [for other purposes] exceeds that for fruit, it is permitted [to cut it down]. It was also taught to the same effect: "Only the trees which you know" (Deut. 20:20) implies even fruit-bearing trees; "that they are not trees for food" (Deut. 20:20) means a wild tree. But since we ultimately include all things, why then was it stated, "that they are not trees for food"? To give priority to a wild tree over one bearing edible fruits. As you might say that this is so even where the value [for other purposes] exceeds that for fruits, it says "only." (*Baba Kamma* 91b-92a)

The talmudic passage here defines the worth of the tree in terms of its produce. A palm tree may be allowed to be cut down when it is producing less than one *kab* (2.2 liters) of fruit; an olive tree, which is deemed more important, presumably for economic reasons, can be cut down only when it is producing less than a quarter *kab*. Although such amounts might be an evaluation of the point at which a tree is still fulfilling its purpose in the world, it is just as likely that it is an evaluation of the point at which the tree is still economically valuable, as the claim that olives are "more important" suggests. Rabina offers a general rule of thumb: one may cut down a fruit tree whenever the value of the tree cut down is worth more than its production of fruit. The Talmud thus interprets the original biblical passage in the spirit of its economic reading of the law. "Trees for food" are not simply fruit-producing trees. They are trees that are producing enough fruit to be economically worthwhile. Thus, not only may non-fruit-producing trees be chopped down, but fruit-producing trees that are not economically productive ultimately fall into the same category.

As stated in the mishnah above, one who unlawfully chops down another's tree is to be fined. One who chops down one's own trees, "although not acting lawfully, is exempt." In the talmudic commentary cited above, Rabbi Hanina makes a curious aside when he states that his son died because of having cut down a fig tree before its time, even though it was allowed since its economic worth cut down was greater than its worth as a fruit-producing tree. Death as divine punishment for cutting down the tree, even though it is permitted by the *halakhah*, certainly demands that we relate to *bal tashchit* as something far more substantial than simply respecting the economic value of fruit-producing trees for human society. It is a mysterious theme that reappears often in the halakhic literature. For example, the same story is related in another talmudic passage:

> Raba, son of Rabbi Hanan, had some date trees adjoining a vineyard of Rabbi Joseph, and birds used to roost on the date trees [of Raba] and fly down and damage the vines [of Rabbi Joseph]. So Rabbi Joseph told [Raba:], "Go cut them!" [Raba said:] "But I have kept them four cubits away" [Rabbi Joseph said:] "This applies only to other trees, but for vines we require more." [Raba said:] "But does not our Mishnah say 'this applies to all other trees'? [Rabbi Joseph said:] "This is so where there are other trees or vines on both sides, but where there are trees on one side and vines on the other a greater space is required." Said Raba, "I will not cut them down, because Rav has said that it is forbidden to cut down a date tree which bears a *kab* of dates, and Rabbi Hanina has said, 'My son Shikhath only died because he cut down a date tree before its time.' You, sir, can cut them down if you like." (*Baba Batra* 26a)[9]



Here the date trees of Raba are the nesting ground for birds that are damaging the vineyards of Rabbi Joseph. The trees must be uprooted, for they are not planted the proper distance from the vineyard of Rabbi Joseph. Nevertheless Raba refuses to uproot the trees, *even though it is halakhically required*, because they are still producing the minimum *kab* of fruit, and Rabbi Hanina's son died for uprooting a date tree before its time. It has been suggested that such fear of cutting down trees might indicate the presence of pagan beliefs in the popular culture of the time.[10] They, certainly, suggest a more complex equation than a simple cost/benefit analysis. Raba does allow, however, Rabbi Joseph to dare to remove the trees.

So far we have examined two talmudic passages regarding *bal tashchit*. Although one deals with the responsibility of one property owner to his neighbor, and the other deals with responsibility independent of others, they both understand the meaning of the halakhah in similar ways. Both deal solely with fruit trees. As is recalled from the original biblical prooftext, it is allowed to chop down non-fruit-bearing trees. Only fruit-bearing trees are forbidden. In the two talmudic passages, the rabbis limit the prohibition and, in the process, offer an interpretation of the reasoning behind *bal tashchit*. No tree is to be destroyed as long as it is economically worthwhile. However, if the value of the tree is greater for having been cut down (Rabina's dictum), or if the tree is causing damage to the value of another's property (Rabbi Joseph's complaint), then it is permissible to chop it down. The tree's worth, and in general the worth of nature, is ultimately evaluated in terms of its economic worth to humans. Notice that the destruction of the bird's nesting place is of no moral concern in the text. Yet, although the cutting down of the tree is permitted, it appears to be problematic. The death of Rabbi Hanina's son offers a disturbing addendum to an otherwise utilitarian interpretation.

Up until now, I have considered a rather narrow understanding of *bal tashchit*, focusing solely on its implications for duties and obligations concerning fruit-producing trees. The rabbis, however, did not understand *bal tashchit* as a precept solely concerned with fruit trees, but rather as a far-reaching principle that defines our responsibilities and obligations to the created world.

The initial discussion as to whether one is prohibited from cutting down trees takes place in a larger talmudic discussion as to whether one may harm oneself. The mishnaic text, which the Talmud then elaborates, parallels the previously quoted mishnah. They are here quoted together in context:

> Where one injures oneself, though forbidden, he is exempt, yet, were others to injure him, they would be liable. He who cuts down his own plants [*koreit*], though not acting lawfully, is exempt, yet were others to [do it], they would be liable. (*Baba Kamma* 8:6)

Once again, there is a distinction between damage inflicted by another party and damage inflicted by oneself. Here one who injures another person is clearly liable. One who injures oneself, although liable, is not punishable in civil courts. But what is the connection between damage to plants and injury to persons? The link is explicated in the talmudic discussion:

> R. Eleazar said: I heard that he who rends [his garments] too much for a dead person transgresses the command *bal tashchit*, and it seems that this should be the more so in the case of injuring his own body. But garments might perhaps be different, as the loss is irretrievable; for R. Johanan used to call garments "my honorers," and R. Hisda whenever he had to walk between thorns and thistles used to lift up his garments, saying that whereas for the body [if injured] nature will produce a healing, for garments [if torn] nature could bring up no cure. (*Baba Kamma* 91b)

The talmudic text seeks to understand how some rabbis came to the conclusion that it was forbidden to injure oneself. Rabbi Eliezer asserts that ripping clothing, a traditional sign of mourning, when done too much transgresses *bal tashchit*. And, if ripping clothing is a transgression of *bal tashchit*, how much the more so is "ripping," or injuring, one's body? Therefore, injury to one's own body must be forbidden according to *bal tashchit*. Still, the Talmud points out, there is a distinction between garments and the body: ripping a garment can be irretrievable, whereas the body may heal. Indeed, Rabbi Hisda, when walking through scrub brush, used to lift up his garments, preventing them from ripping, while allowing his body to be cut and bruised, knowing that it would heal. Thus, injury to one's body is not prevented by *bal tashchit*, although the ripping of clothing is.

Such a conclusion—that is, that *bal tashchit* does not apply to the human being—is contradicted in another talmudic passage:

> Reb Judah said in Samuel's name: We may make a fire for an ill woman on the Sabbath [in the winter]. Now it was understood from him, only for an ill woman, but not for an invalid; only in winter, but not in summer. But that is not so; there is no difference between an ill woman and any [other] invalid, and summer and winter are alike. [This follows] since it was stated, R. Hiyya b. Abin said in Samuel's name: If one lets blood and catches a chill, a fire is made for him even on the Tammuz [summer] solstice. A teak chair was broken up for Samuel; a table of juniper-wood was broken up for Rav Judah. A footstool was broken up for Rabah, where upon Abaye said to Rabbah, "But you are infringing on *bal tashchit*." "*Bal tashchit* in respect of my own body is more important to me," he retorted. (*Shabbat* 129a)



Here *bal tashchit* is used in reference to the breaking of furniture for warming an ill person on the Sabbath, and of course in reference to human health. Notice that it has already been decided that one may disregard rules of the Sabbath in order to take care of the ill. The question now is whether the needs of the individual human being override the rules of *bal tashchit*, in this case, a prohibition on destroying furniture. If we interpret *bal tashchit* in utilitarian terms—that is, the economic worth of something to human beings—then there should be no question. The health of the human being obviously takes precedence over the furniture's existence. Indeed, Rabbah argues just that. However, the very presence of the question suggests that the answer is not taken for granted. There is a tension between an interpretation that evaluates all worth in terms of its use to human beings and one that sees worth independent of human wants and even needs.

But what is the connection between the biblical prohibition on cutting down fruit trees and the expanding rabbinic definition which, as we have so far seen, includes clothing, furniture, and even human beings? Maimonides [Rambam] (1135–1204) argues that the rabbinic prohibition of *bal tashchit* includes the destruction of household goods, the demolishing of buildings, the stopping of a spring, and the destruction of articles of food, as well.[11] Maimonides expands *bal tashchit* to include the destruction before its time of anything, natural or artificial. The world of creation includes the creation of the natural world and the world that humans have created from God's creation. There should be no needless destruction of any of the creation.

The central point, then, is how one is to evaluate "needless" or "wanton" destruction. As I have shown, there is some tension as to whether it is to be evaluated according to the effective use of human beings, or if there is an inherent value that exists apart from human use which must be balanced alongside human wants and needs. Although the dominant interpretation seems to be a utilitarian one, there is evidence of a differing interpretation.

## CONSPICUOUS CONSUMPTION

> R. Hisda also said: when one can eat barley bread but eats wheaten bread, he violates *bal tashchit*. R. Papa said: when one can drink beer but drinks wine, he violates *bal tashchit*. But this is incorrect: *Bal tashchit*, as applied to one's own person, stands higher. (*Shabbat* 140b)

How is one to evaluate what is permissible, and what is excessive, consumption? In this short piece, the rabbinic debate is presented clearly. Rabbi Hisda states that when one can eat barley bread, a poor man's bread, and

instead chooses to eat wheaten bread, a more expensive bread, it is a violation of *bal tashchit*. In the same manner, Rabbi Papa claims that if one can drink beer, a poor man's beverage, and instead drinks wine, a more expensive drink, it is a violation of *bal tashchit*. One must provide for human needs. However, one is not permitted to consume beyond what is necessary to live. To do so would be *bal tashchit*—wanton destruction.

Such a view clearly has ascetic overtones. The link between *bal tashchit* and living a simple life certainly suggests that link between demanding less and not cutting down trees. However, motivation for a simple life has often come from social considerations as well. Excessive consumption means that one is using one's wealth on oneself, often flaunting one's wealth, at the expense of helping out those who are less fortunate. A talmudic passage emphasizes the point:

> At first the carrying out of the dead was harder for [the dead's] relatives than his death, so that they left him and ran away, until Rabban Gamaliel came and adopted a simple style and they carried him out in garments of linen, and all the people followed his example and carried out [the dead] in garments of linen. Said Rabbi Papa: And now it is the general practice [to carry out the dead] even in rough cloth worth [only] a *zuz*. (*Ketubot* 8b)

Although the text makes no mention of *bal tashchit*, later commentators use it as a prooftext in applying *bal tashchit* to excessive consumption. Rambam, for example, links the two in his discussion of the laws of mourning.[12] Here the norm for burial had become so cost prohibitive that the poor would abandon their dead, unable to afford such an expense. Rabbi Gamaliel successfully changed the practice from an excessive one to a modest one, which evolved into virtually an ascetic one. It is clear here that the motivation for simplicity is social.

Yet, for all that can be said for simplicity, the text is blunt as to which perspective wins out in the talmudic argument: "but this is incorrect. *Bal tashchit* as applied to one's own person stands higher." The statement is quite powerful. It is considered *bal tashchit* not to drink the wine or eat the wheaten bread. Human comfort and enjoyment are to take precedence. Not according them priority limits human pleasure in the world, which is a form of destruction—destruction of human pleasure. Although there is a tradition of abstinence in Judaism, it is generally frowned upon. Human beings are to enjoy the bounty of creation. Although two traditions are clearly present, the one which places humans as the evaluator of worth is plainly dominant.

Maimonides canonizes this dominant tradition, leaving out the minority view. In three short *halakhot* in his *Mishneh Torah*, he summarizes the talmudic extrapolation of the biblical text.[13] There is no tension in Maimonides' summary. Wanton destruction is clearly defined as the cutting down of fruit trees when there is no economic justification for its removal. Although the rabbinic expansion of the text is presented, in fact the summary limits the text.



Only when something is clearly of benefit and its destruction does not bring about demonstrably more benefit, is its destruction considered *bal tashchit*. Any time there is economic gain from its use, its destruction is justifiable.

## THE RESPONSA LITERATURE

Two positions emerge from the rabbinic discussion on *bal tashchit*. The first, which is clearly the dominant position, I describe as the minimalist position. It limits *bal tashchit* as much as possible to only those situations that are clearly proscribed by the biblical injunction in Deuteronomy. Although seemingly expanding *bal tashchit* to encompass human creation and not simply nature, it in fact creates a clear hierarchy in which human utilitarian needs always override any inherent value of the created object. In contrast, the maximalist position does expand *bal tashchit* as a counterweight to human desires. Human needs define usage, although the definition of what constitutes human need is far from clear. Consumption should be limited to what is necessary, and the inherent value of the creation stands as a countermeasure to human usage.

The many interpretations offered in the literature on the human responsibility to the natural world thus cited leaves much latitude for the application of the concept of *bal tashchit* in Jewish law. An anthropocentric reading of the traditions leads to a minimalist application of the principle, with human considerations always determining the conduct toward nature. However, a reading of the tradition that gives a degree of inherent worth to the natural world independent of human use demands a much more complex negotiation between human wants or needs and nature, leading to what I call a maximalist application of the principle. The halakhic process enabled each *Posek*—each halakhic authority—to offer his own interpretation of the concept through his own reading of the meaning of *bal tashchit* as it is expressed in the texts of biblical and rabbinic literature; and interpreted by later generations. Not surprisingly, different *Poskim*[14] chose to understand the *halakhah* in the different ways suggested by the interpretations already cited. What follows is a representative survey of the responsa literature, according to the minimalist and maximalist traditions.

## THE MINIMALIST TRADITION

One of the main halakhic questions, once having accepted the idea of *bal tashchit* as relating to wanton destruction, is in what situations is it to be overridden. The Tosafot, for example, commenting on a talmudic passage, argue that *bal tashchit* is overridden by the obligation to honor royalty.[15] In *Sefer ha-Chasidim*, it is argued that rewriting a page of Torah only so that it looks

better also overrides the commandment (*mitzvah*) of *bal tashchit*.[16] Ovadiah Yosef (1920–) claims that the fulfillment of a mitzvah, such as the breaking of the glass as part of the wedding ceremony, overrides *bal tashchit*.[17] He, like *Sefer ha-Chasidim*, also argues that *bal tashchit* is overridden in order to show honor to a *mitzvah*, such as by buying a newer, fancier mezuzah.[18]

It is also permissible to destroy property and even plants for educational reasons. Relying on a talmudic passage that allows one to rip clothing or break pottery in order to demonstrate anger as an educational tool (although it is forbidden to do such acts out of anger),[19] Abraham Isaac Kook (1865–1935) argues that one is allowed to destroy when one is teaching that something is forbidden, so that two trees that are forbidden to be planted together under the laws of *kilayim* may be planted together and then uprooted to teach that such a planting is forbidden. The trees are deliberately planted and then uprooted to teach the halakhah.[20]

Maimonides is asked whether a tree may be cut down which is in danger of falling and damaging a mosque which lies underneath. Here it is a question of whether *bal tashchit* applies when social relations between Jews and Moslems might be jeopardized by not removing the tree. Maimonides, in keeping with his radically minimalist position, answers that it is permitted to cut the tree down not only when there is damage inflicted, but also when there is the potential for damage.[21] Elsewhere Maimonides allows for the removal of a tree that threatens to break off in a storm and injure those walking past in the adjacent public area.

Judah Rosannes (1657–1727) holds that the prohibition is only on the chopping down of the entire tree, and there is therefore no problem with *bal tashchit* when chopping down branches from the tree.[22] Baruch Wiesel gives permission in his *Makor Baruch* (1755) to destroy an older house and build a newer one.[23]

Indeed, the anthropocentric view of *bal tashchit*, which sees nature as having been created for the use of human beings, is a central theme in the literature. Naphtali Zvi Berlin (1817–93) states emphatically that the very purpose of a tree and its fruit is for it to be cut down for the use of human beings.[24] In his commentary on the Deuteronomy verse, Yaakov Tzvi from Kalenburg (d. 1865) states:

> It is not virtuous to use anything in a manner different from that which it has been created . . . [including] a tree, which was aimed in its creation to produce fruit as food for human beings to sustain them; it is forbidden to do anything to them which would harm human beings.[25]

Jonah ben Abraham Gerondi (1200–63) holds that the body of a human being is to be considered part of the world of creation, hence part of that to which *bal tashchit* is to be applied. One has no right to cause it harm.[26] Menahem Azariah Da Fano (1548–1620) states that, although in general one should choose to be stringent with oneself, when it comes to financial losses to oneself, one is forbidden to be severe in order not to transgress *bal tashchit*.[27] Here we see once again the theme of human needs as a concern of bal *tashchit*, which takes precedence over other needs. Ephraim Weinberger argues that any deprivation to the body's health is a transgression of *bal tashchit*:

> Even if he doesn't allow himself to eat foods that are good for his health and strengthen his body, although they are expensive, he transgresses the prohibition. Any abuse of bodily health in general is a transgression of *bal tashchit*.[28]

In a responsa about animal experimentation, Jacob Reischer states that even when there is only the possibility of medical or economic benefit, *bal tashchit* applied to human beings always takes precedence.[29] In the *Shulchan Arukh of the Rav*, in the laws of *bal tashchit* revealingly printed under "laws pertaining to the protection of the body and the spirit and laws of *bal tashchit*," Shneur Zalman of Lyady (1745–1813) states: "and also those that destroy anything that it is destined for human beings to enjoy transgress *bal tashchit*."[30]

The application of *bal tashchit* to the human being expresses the minimalist position quite well: although *bal tashchit* demands that nothing be wasted, it applies first and foremost to the human being. Although some have understood *bal tashchit* as applying to the preclusion of human needs, the most minimalist understanding maintains that preventing human pleasure by preventing human use of the world is an act of *bal tashchit*. The seemingly expansionist position that extends the precept of *bal tashchit* to all things, only to be circumvented by any human desire as the ultimate form of bal tashchit, is presented quite forcefully in both respects in *Sefer ha-Chinnukh*:

> The root reason for the precept is known (evident): for it is in order to train our spirits to love what is good and beneficial and to cling to it; and as a result, good fortune will cling to us, and we will move well away from every evil thing and from every matter of destructiveness. This is the way of the kindly men of piety and the conscientiously observant; they love peace and are happy at the good fortune of people, and bring them near the Torah, They will not destroy even a mustard seed in the world, and they are distressed at every ruination and spoilage that they see; and if they are able to do any rescuing, they will save anything from destruction, with all their power. . . . Among the laws of the precept, there is what the Sages of blessed memory said that the Torah did not forbid chopping down fruit trees if any useful benefit will be found in the matter: for instance, if the monetary value of a certain tree is high, and this person wanted to sell it, or to remove a detriment by chopping them down—for instance, if this was harming other trees that were better than it, or because it was causing damage in the fields of others. In all these circumstances, or anything similar, it is permissible.[31]

According to Zevi Ashkenazi (1660–1718), continuing the position alluded to by *Sefer ha-Chinnukh*, the purpose of *bal tashchit* is not to prevent destruction so much as to teach human beings sensitivity.[32] Nature has no inherent value apart from its use by human beings.

## THE MAXIMALIST TRADITION

Jacob Reischer is asked whether one may uproot trees from his garden which obstruct the view from his neighbor's house windows. Reischer rules that the trees are to be removed, but not before searching for another solution such as the replanting of the trees in an alternative location.[33] Jair Hayyim Bacharach, (1638–1702) is asked whether one can remove a fruit tree whose branches obscure the view from one's own window. Note that here permission is being asked to remove a tree which is a nuisance to oneself, as opposed to one which is a nuisance to one's neighbor. Bacharach makes two important points. The first is that since the nuisance can be dealt with through the pruning of the branches of the tree, which is not forbidden by *bal tashchit*, it is not permitted to chop the tree down. The second is that chopping down a tree is to be allowed for essential needs, but not for luxuries. Earlier, we saw that Rashba permitted the expansion of a house. Bacharach relies on this responsum to argue that, while there the chopping down of the tree was for an essential need, here it is not and therefore, based on the precedent of Rashba, it is not to be permitted.[34] Jacob Ettlinger is asked whether one may chop down elderly trees in order to build a home on the only piece of property which the individual is allowed to buy in town. Without having a home, he may not get a license to marry. Ettlinger allows for the trees to be chopped down, although he also points out that everything must be done to find an alternative, and that such permission is granted because not to grant it would prevent the man from marrying. Although permission is granted, the tenor is one of limiting the exceptions to *bal tashchit*, rather than extending them.[35] Similarly, Moses Sofer gives permission to uproot a vineyard that is losing money, and to use the land for field crops instead. Nevertheless, he states that although usually it is forbidden to uproot the vineyard, for this particular time, since the economic loss is so great, permission is given.[36] Ovadiah Yosef also gives permission to chop down a fruit-bearing tree, in this example to expand one's home, while limiting the exceptions. Yosef allows the expansion of the house in this case in order to allow room for a family that has been blessed with many children. However, he asserts that it is forbidden to chop down the trees if one is expanding one's home for luxury, or for landscaping or general beautification. Once again, a distinction is made between perceived needs and wants.[37]

Citing the danger involved in chopping down trees, Pinhas Hai Anu (1693–1765) refuses to give permission to cut down a fig tree in order to build a storage shed.[38] Yaakov ben Shmuel from Tzoyemer (end of the seveneenth century) simply states that it is forbidden to chop down trees in order to build a home.[39] Interestingly, the same Naphtali Zevi Judah Berlin who stated that the purpose of a tree is to be cut down for the use of human beings gives the most maximalist of the interpretations of *bal tashchit*. Asked whether a tree may be removed to build a home, his answer is no. Berlin



claims that one may cut down a tree only in cases explicitly spelled out by the Talmud: either when it damages other trees, in which case one tree has no precedence over another, or when it damages another's field.[40]

Berlin points out that there is a distinction between the chopping down of a tree and other transgressions of *bal tashchit* in that only the chopping down of a tree is punishable by flogging. Berlin also mentions the talmudic notion of there being danger involved in the chopping down of trees from the story of R. Hanina's son, as reason to be particularly cautious.

The vast majority of examples from the literature with regard to the cutting down of trees refers explicitly to fruit trees or do not mention the kind of tree being discussed. The original distinction between fruit-producing trees and non-fruit-producing trees seems to be maintained. The Tosafot, however, commenting on a passage from the Talmud that "one who cuts down good trees will never see blessing in his life" state—"One who cuts down even a non-fruit-producing tree." In other words, although not strictly forbidden, such an action will prevent the doer from being blessed in his life's deeds.[41] Although Greenwald (twentieth century) in his responsum makes a distinction between non-fruit-producing trees that have a use as trees for human beings, for example in providing shade, beauty, or even a pleasant aroma, and trees that have use only as firewood and should therefore be used for that purpose, the application of *bal tashchit* to non-fruit-producing trees is a direct rejection of Maimonides' holding that *bal tashchit* does not apply to them.[42]

In the discussion of conspicuous consumption, which as an issue is directly linked to the maximalist position, two responsa are of interest. In the first, Joseph Caro (1488–1575) warns against the wasting of public monies on extravagances.[43] In the second, the first chief Ashkenazic Rabbi of Israel, Abraham Yizhak HaCohen Kook, is asked whether there is any prohibition in the Torah to the improvement of the military cemetery. Kook answers that, while it is certainly a mitzvah to fix up the cemetery so that it is in honorable condition, it would be considered a violation of *bal tashchit* to invest large amounts of money in order that it be lavish.[44]

Finally, two different responsa apply *bal tashchit* to "ownerless property," which includes wild animals and vegetation, and abandoned property.[45] Such a view is in keeping with the idea that there is no such thing as ownerless property, since in fact all the world is ultimately the property of God: "Because the earth is Mine."[46] It is a theocentric utilitarianism. So too in the Sabbatical year, although all land becomes ownerless temporarily—that is, returned to God, its original owner—nevertheless *bal tashchit* continues to apply.

Although it is clear that even in those sources that have been attributed to a maximalist position there is a strong sense of a hierarchy in which human needs override other considerations, nevertheless in the maximalist position there are other considerations that need to be weighed against the human. In all cases, human needs outweigh other considerations. However, there is a debate that takes place as to what defines needs. In addition, there seems to

be a distinction made between trees, particularly fruit-bearing trees, and other properties. The halakhic principle of *bal tashchit* has been open to different, often contradictory interpretations. From its beginning, tension existed with regard to how to understand the prohibition: whether such a prohibition was to define the world in terms of human use or whether such a prohibition demanded an evaluation of use that took into account more than human wants.

## RELEVANCE TO CONTEMPORARY ENVIRONMENTAL ETHICS

Any analysis of the significance of *bal tashchit* must take into account both the content of the discussion—what has been said—and the context of the discussion—the cultural language of the debate. With regard to the content, several points can be made:

1. It is quite obvious from the survey of the literature that there is no one Jewish approach to *bal tashchit* and its application, but rather multiple approaches that are debated from within the tradition. In general, any claim to the Jewish view on an ethical situation should be held as suspect.
2. The discussion in many ways is remarkably similar to our contemporary discussion. Here too we see two poles on the continuum. The minimalist position has human needs and wants taking precedence over the rest of the creation; the maximalist position has human wants counterbalanced with the legitimate claims of the natural world. The tradition documents a debate between the two positions which has continued since rabbinic times.
3. The minimalist position is without question far more dominant within the tradition. This emphasis too parallels the contemporary debate. Those voices that question a utilitarian approach to the natural world are in the minority.
4. There is no hint in the maximal position of a holistic environmental ethic. This situation should not be particularly surprising, in that the holistic environmental position is based on the science of ecology and the concept of species, and on the assumption that human culture is a small part of the larger ecosystem. Premodern Aristotelian science, which is the scientific tradition within which *bal tashchit* developed, saw nature as static and species as eternal. *Bal tashchit* was applied on the level of the individual. Its concern was domesticated nature, nature in contact with day-to-day living.
5. There is also no hint in the halakhic tradition of *bal tashchit* of the romantic idea of reconnecting humans to their natural selves. At least within the halakhic discussion of *bal tashchit*, respect for nature in no way is connected to a desire to reconnect human culture with its natural, and truer, antecedents. I believe that the absence of such a tendency reveals a strong preference in Jewish ethical philosophy to see morality as transcendent of the natural world and not immanent within it. The pagan-Jewish debate in many significant ways is connected to a debate about whether morality is defined by "what is"—a naturalist perspective—or by "what should be"—an idealistic model of moral philosophy. Although natural metaphors and images are present in the Jewish textual tradition,[47] particularly in the Bible, nature is primarily not considered to be a pristine state of the world, but a temporal reality that needs to be redeemed.



With regard to the context, any comparison of the contemporary discussion on environmental ethics and the traditional Jewish perspective will be limited. We can only understand another cultural prespective through the prism of our own cultural categories, and therefore any attempt to enter another cultural perspective can only be partial.[48] Only those parts of the tradition that can be explicated in contemporary terms can be translated into a contemporary context. The other parts can only be rumored. What I have so far considered is the part of the traditional discussion that appears to translate relatively easily into the contemporary cultural language and thus can be easily compared. The content, therefore, seems to be similar only when understood as emerging from a similar cultural context. However, the Jewish discussion is in many ways a discussion that is different in kind from the contemporary discussion and that defies a simple comparison.

Because the cultural *contexts* involve very different assumptions, comparison of the two languages of discourse can help locate some of the different cultural assumptions and can teach us about the outlooks of both traditional Jewish and contemporary culture. It helps us to glimpse at that which is incapable of being translated into contemporary categories.

1. Although primarily presented here as a moral discussion, the discussion of the *halakhot* often seems legalistic to the modern ear, without regard to any ethical question. Although the discussion at times seems focused on the moral relationship to nature, with the biblical and rabbinic texts used as prooftexts for the ethical position, at other times the discussion seems to be internally focused, allowing the texts to develop apart from any moral discussion. In short, the discussion of *bal tashchit* hints at a different type of moral discourse, neither utilitarian nor rights-based, neither anthropocentric nor biocentric.
2. The legal assumptions of the halakhic tradition also sound strange to the modern individual. Much of the contemporary environmental discourse concerns the concept of rights. It has been pointed out by some legal historians that such an idea seems foreign to the traditional Jewish halakhic tradition. Rather than focusing on rights, the tradition

focuses on duties. Calling the *bal tashchit* system a system based on duties, rather than rights, is also a partial translation of traditional categories, but it suggests the underlying assumption from which the halakhic system works. The halakhah extends beyond that which is forbidden and legislates normative behavior.[49]

3. The strikingly particularistic nature of the halakhic discussion is also suggestive in terms of the demands of an environmental ethic. The halakhic discussion continually focuses on a particular incident about a particular animal or a particular tree in a particular place. The discussion in those cases no longer revolves around the theoretical question of the human relationship to the natural world, but rather the trade-offs between human and other interests in particular situations. Jewish ethical philosophy is embodied in the material world. Although certain general principles are clearly established from the particular discussion, it is the unique situation which forms the basis of the discussion.
4. The particular nature of Jewish halakhic discussion is connected to the centrality of community as a defining category. Mary Midgley points out in the debate about contemporary environmental ethics that traditional societies lived in "mixed communities" that allowed human sympathies to transcend the species boundary.[50] Callicott extends the concept of "mixed community" to the biotic community as well.[51] The halakhic discussions about *bal tashchit* are testimony to a functioning mixed community. The species barrier is clearly transcended, since discussion includes concern for the community's trees (and, even more centrally, animals)[52] in the deliberation. As Callicott suggests, such a model has various concentric circles of interest, from the most immediate connection of family, but extending out in lesser degrees of concern beyond the species to animals and eventually to the biotic community. It is a morality based on relationships that emerge from particular communities in particular places. Such a dynamic of morality—rooted in relationships between human beings, humans and God, humans and animals, humans and nature—will lead to a very different kind of moral discourse.

In this discussion, I have deliberately echoed a larger argument in ethics between rights-based ethics and the communitarian critique of the limits of such an approach. It should be noted, however, that communitarian positions on the environment nevertheless remain within an anthropocentric view of community, which does not transcend the species barrier.[53] A religious culture that can see creation as having value independent of its utilitarian worth to human beings will philosophically find it much easier to view creation as having inherent worth.[54] Whether that potential can be realized is one of the major challenges facing the Jewish environmental community today.



Contemporary environmental ethics has a rich and complex discourse to describe contemporary society's relationships with the natural world. Yet, we have compromised such rigorous research when treating other cultural perspectives. Doing so caricatures traditional cultures and provides no significant insights into other perspectives. If looking at other cultural perspectives is to be a meaningful stepping-stone in the rethinking of our own perspectives, we must recognize the limitations of cultural translation, while at the same time attempting to describe the culture from within its own cultural language. Only then will we be able to peek into a truly other cultural world and glimpse a different way of seeing. The investigation of *bal tashchit* is offered as both an insight into a Jewish perspective and a glance at what nature looks like through different cultural eyes.

## NOTES

From *Environmental Ethics* 19 (1997): 355–74.

The author thanks Jeremy Benstein for his feedback and insights, and Michal Smart, with whom he originally began to explore *bal tashchit*.

1. Although the term rabbinic has a more generic usage, in the context of this essay it refers to the individuals who wrote and codified the Mishnah and Talmud. The Mishnah is the name of the earliest major rabbinic works, first appearing toward the turn of the third century C.E. It is the core document of the talmudic tradition, composed in very terse language and arranged topic by topic over a wide range of subjects. The Talmud primarily refers to the Mishnah combined with its later rabbinic commentaries, the Gemara. The earliest one is the Jerusalem, or Palestinian, Talmud, dating from the first half of the fifth century. Some two centuries later, the Babylonian Talmud was compiled. All talmudic references in this paper are to the Babylonian Talmud.
2. For a literature survey of the contemporary debate on the relationship of Judaism to the environment, and a discussion of the theological/moral issues which are at the root of such a relationship; see Eilon Schwartz, "Judaism and Nature: Theological and Moral Issues to Consider While Renegotiating a Jewish Relationship to Nature" [reprinted in this volume, 297–308].
3. The *halakhah* is the set of rules often known as "Jewish law" which governs Jewish life. The *halakhah*, however, contains far more than what is usually suggested by the term law, as is demonstrated in this paper.
4. R. Solomon b. Isaac [RaShI] (1040–1150), perhaps the most influential biblical and talmudic exegete, French.
5. Samuel ben Meir, commentary on Deuteronomy 20:19, in *Torat Chaim* (Jerusalem: Hotzaat Mosad HaRav Kook, 1993). He is Rashi's grandson; one of the Tosafists, halakhic commentators on the Talmud in twelfth- to fourteenth-century France and Germany.
6. Nachmanides, commentary on Deuteronomy 20:19, in *Torat Chaim*.
7. Ibid.
8. All quotes from the Mishnah and the Talmud are taken from the Soncino translation, unless otherwise cited.

9. I have here changed parts of the Soncino translation, translating in a way similar to Adin Steinsaltz in his Hebrew translation of the Talmud.

10. Meir Ayele, "The Fear of Chopping Down Fruit Trees in the Responsa Literature," in *Tura: Studies in Jewish Thought* [Hebrew] (Tel Aviv: Kibbutz HaMeuchad, 1989), 135–40.

11. Moses Maimonides, *Mishneh Torah* [Hebrew] (Jerusalem: Hotzáat Mossad HaRav Kook, 1962), Laws of Kings 6:10, perhaps the most influential Jewish philosopher ever.

12. Maimonides, *Mishneh Torah*, Laws of Mourning 14:24.

13. Maimonides, *Mishneh Torah*, Laws of Kings 6:8–10.

14. Scholars whose efforts were concentrated on determining the halakhah in practice.

15. Tosefot *Baba Metzi'a* 32b.

16. Judah he-Hasid, *Sefer Ha Chasidim* (Jerusalem: Aharon Block, 1992), no. 339.

17. Ovadiah Yosef, *Yabiah Omer* (Jerusalem, 1993), Pt. 4, *Even HaEzer*, no. 9, former Sephardi Chief Rabbi of Israel.

18. Ovadiah Yosef, *Yabiah Omer*, Pt, 3, Yoreh Deah, no. 18. A mezuzah is a parchment scroll containing portions of the Torah, fixed to the doorpost.

19. *Shabbat* 105b.

20. Abraham Isaac HaCohen Kook, *Mishpat Cohen* (Jerusalem: HaAguda L'Hotzaat Sifrei HaRav Kook, 1937), no. 21, Zionist leader, first Ashkenazi Chief Rabbi of Palestine.

21. Maimonides, *Responsa* [Hebrew], trans. Jehoshua Blau (Jerusalem: Mekize Nirdamim, 1958), no. 112.

22. Judah B. Samuel Rosannes, *Mishneh la-Melekh*, commentary on Maimonides, *Mishneh Torah, Isurei Mizbeah* 7:3, as it appears in "*Bal Tashchit*," *Encyclopedia Talmudit* (Jerusalem: Hotzaat Encylopedia Talmudit, 1973), Turkish rabbi.

23. Baruch Baandit Wiesel, *Makor Baruch*, as cited in Ayele, "The Fear of Chopping Down Fruit Trees in the Responsa Literature," 138.

24. Naphtali Zevi Judah Berlin, *Meshiv Davar* (Jerusalem, 1993), ch. 2, no. 56.

25. Yaakov Tzvi from Kalenburg, *HaKatuv v'HaKabalah* (Nurenburg, 1924), on Deuteronomy 20:19.

26. Jonah ben Abraham Gerondi, *Sefer Sha'arei Teshuva* (Jerusalem, 1960), ch. 3, no. 82, Spanish rabbi and moralist.

27. Menahem Azariah Da Fano, *Responsa*, 129, as quoted in Meir Zichal, *Environmental Protection in Jewish Sources* [Hebrew] (Ramat Gan: The Responsa Project, 1989), 31, Italian rabbi and kabbalist.

28. Ephraim Weinberger, *Yad Ephraim* (Tel Aviv: HaVaad HaTziburi LiHotzaat Kitvei HaRav Weinberger, 1976), no. 14, former member of Tel Aviv rabbinic council.

29. Jacob Reischer, *Shevut Yaakov* (Jerusalem, 1972), pt. 3, no. 71.

30. Shneur Zalman of Lyady, "Laws of Protecting the Body and the Spirit and *Bal Tashchit*," *Shulhan Arukh of the Rav* (New York: Kehot Publication Society, 1975), 31b, founder of Habad Hasdism.

31. *Sefer Hachinukh: The Book of Education* (New York: Feldheim Publishers, 1989), no. 529.

32. Zevi Ashkenazi, Haham Zevi, as quoted in Zichal, *Environmental Protection in Jewish Sources*, 9.

33. Jacob Reischer, *Shevut Yaakov* (Jerusalem, 1972), Pt. 1, no. 159.



34. Jair Hayyim Bacharach, *Havvot Yair* (Jerusalem, 1968), no. 195, German talmudic scholar.

35. Jacob Ettlinger, *Binyan Zion* (Jerusalem: Davar Jerusalem, 1989), no. 61.

36. Moses Sofer, *Responsa of Chatam Sofer* [Hebrew], (Jerusalem: Hotzaat Hod, 1972), *Yoreh Deah*, no. 102.

37. Ovadia Yosef, *Yabia Omer* (Jerusalem, 1969), vol. 5, *Yoreh De'ah*, no. 12.

38. Pinhas Hai Anu from Ferrara, *Givat Pinhas*, Pt. 8, no. 2, as it appears in Meir Ayele, "*Givat Pinhas*: The Responsa of R. Pinhas Hal ben Menahem Anau of Ferrara," in *Tarbitz*, Northern Italian rabbi.

39. Yaakov ben Rabbi Shmuel from Tzoyemer, *Beit Yaakov* (Diehernport, 1696), no. 140.

40. Naphtali Zevi Judah Berlin, *Meshiv Davar* (Jerusalem, 1993), chap. 2, no. 56.

41. Tosefot on *Pesachim* 50b.

42. Greenwald, *Keren LeDavid* (Satmar, 1928), *Orech Chaim*, no. 30, Hungarian rabbi.

43. Joseph Caro, *Avatak Rochel* (Leipzig, 1859), no. 18, author of the *Shulchan Aruch*, the authoritative code of Jewish law.

44. Abraham Isaac Kook, *Daat Kohen* (Jerusalem: Mossad Harav Kook, 1969), *Yoreh De'ah*, no. 122.

45. Tzvi Pesach Frank, *Har Tzvi* (Jerusalem: Machon Harav Frank, 1973), *Orech Chaim* 2, no. 102; *Noda Yehuda, Yoreh De'ah*, no. 10.

46. Lev. 25:23.

47. It is quite significant that trees are a central metaphor in Judaism. As one example, the Torah, those parts of the Bible traditionally revealed directly to Moses on Mt. Sinai, is called "a tree of life." Trees played a central role in the economic life in the ancient land of Israel, and were thus proper metaphors for bridging between the socioeconomic life and the theological-moral one.

48. Michael Rosenak, *"Roads to the Palace": Jewish Texts and Teaching* (Providence and Oxford: Berghahn Books, 1995), 5.

49. Moshe Silberg, "Laws and Morals in Jewish Jurisprudence," *Harvard Law Review* 75 (1961–62): 306–31.

50. Mary Midgley, "The Mixed Community," in *The Animal Rights/Environmental Ethics Debate*, ed. Eugene C. Hargrove (Albany: SUNY Press, 1992), 211–25.

51. J. Baird Callicott, "Animal Liberation and Environmental Ethics: Back Together Again," in Callicott, *In Defense of the Land Ethic: Essays in Environmental Philosophy* (Albany: SUNY Press, 1989), 49–51.

52. Paralleling the discussion of *bal tashchit* is the rabbinic precept of *tza'ar ba'alei chayyim*, describing duties toward the prevention of animal suffering.

53. See Avner de-Shalit, *Why Posterity Matters: Environmental Policies and Future Generations* (London: Routledge, 1995).

54. This is perhaps the major point of Max Oelschlaeger, *Caring for Creation: An Ecumenical Approach to the Environmental Crisis* (New Haven: Yale University Press, 1994).

# Judaism and Environmental Ethics

## *A Reader*



Edited by Martin D. Yaffe

LEXINGTON BOOKS
*Lanham • Boulder • New York • Oxford*