Judaism, environmentalism and the environment: Mapping and analysis
Gerstenfeld, M.

Citation for published version (APA):

General rights
It is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), other than for strictly personal, individual use, unless the work is under an open content license (like Creative Commons).

Disclaimer/Complaints regulations
If you believe that digital publication of certain material infringes any of your rights or (privacy) interests, please let the Library know, stating your reasons. In case of a legitimate complaint, the Library will make the material inaccessible and/or remove it from the website. Please Ask the Library: http://uba.uva.nl/en/contact, or a letter to: Library of the University of Amsterdam, Secretariat, Singel 425, 1012 WP Amsterdam, The Netherlands. You will be contacted as soon as possible.
Chapter Three

Environmental Attitudes in Halakha

A broad perspective on how classical Judaism relates to environmental issues can be obtained principally through reviewing the Halakha. This is the body of Jewish laws which prescribes rules to be followed by Jews in many areas of life, and relates to the actions of both the community and the individual. For the observant Jew, these laws are normative.

The Halakha's origin lies in both the written and oral Torah which, according to Jewish tradition, constitute the Divine revelation to Moses. The written Torah consists of 613 commandments which regulate all major aspects of Jewish life. These laws are specifically meant for the Jewish people. Judaism does not try either to impose them on non-Jews or to convince them to convert.

Nevertheless, non-Jews are expected to practice the seven Noachide laws at the very least. These forbid idolatry as well as the vain use of God's name, murder, sexual transgressions, theft and eating the flesh of live animals and command adhering to the law in general. Besides eating the flesh of live animals, two more of these laws are of relevance to the subject of this study: the recognition of God and the prohibition of idolatry. The latter includes revering nature — or part of it — as sacred.

According to Jewish tradition, God gave Moses not only the oral Torah, but also principles for interpreting the written Torah. The Oral Law which further developed over time was codified in the land of Israel around the year 200 by R. Yehuda the Prince. This codification is known as the Mishnah. Discussions of the Mishnah in Babylonia and the land of Israel led, respectively, to the writing of the Babylonian and the Jerusalem (or Palestinian) Talmud in the 6th century. These in turn became the basis for further halakhic discussions. Jews who required halakhic decisions referred their questions to Jewish scholars. Their answers, known as the responsa literature, extend Jewish law even further.

In the 12th century, Maimonides summarized the entire Jewish Law up to his time in a codex which he called ‘Mishneh Torah’, ‘the repetition of the Torah’.

106
Rabbi Yosef Karo, who lived in 16th century Palestine, compiled an updated codex called the *Shulhan Arukh* (‘the set table’). Over the centuries, this became the chief book for regulating the observant Jew’s life, mainly in Sephardi communities. Ashkenazi communities tend to follow the Halakha laid down in the Mappa commentary which Rabbi Moses Isserles wrote on Karo’s codex. Thus Halakha differs somewhat from community to community.

Additional Halakhot derive from responsa and rabbinical decrees in later periods. Many of these have been summarized in glosses on the *Shulhan Arukh*.

**Rabbinical authority**

For many centuries Judaism has not had a central, generally accepted halakhic authority. With the end of the Babylonian Gaonate in the 11th century, its hegemonic Halakha center disappeared. Several geographic centers developed, and the individual Jewish community became independent in its legislation.

Moreover, each rabbi is autonomous in answering his community’s halakhic questions. In the big Jewish agglomerations of the last centuries, Hasidim did not feel obligated by the responsa of the Mitnagdim’s rabbinical authorities, and vice versa.

The overall weakening effect of the community’s autonomy on the edifice of Jewish law is only partially mitigated by the accepted practice of rabbis’ addressing themselves, on difficult questions, to a limited number of important halakhic scholars. The latter often disagree. In dealing with contemporary Halakha, therefore, it is difficult to determine what is an authoritative rabbinic ruling, even if each generation had outstanding authorities who were internationally respected and consulted.

Moreover, with the emancipation of the Jews in the 19th century, some of them started to develop Jewish communities which did not accept the principle of halakhic authority. In recent centuries therefore, the overall authority of Halakha over Jews has weakened. While all Orthodox Jews accept a core of common Halakha, the rulings of rabbinical authorities differ on many issues without recourse to some mechanism for reaching a binding decision. In other words: observant Judaism has no High Court of Jewish Law with ultimate authority.

Many Halakhot refer to issues which we nowadays include in the field of the environment. A systematic review of Halakha will thus provide a detailed understanding of the observant Jew’s normative behavior toward the environment. It will also elucidate what the commonly-accepted positions are and where there is disagreement.
In view of the extent of the body of Jewish Law, such a study will require scholarly work for many years, especially as the references to environmental issues are so fragmented.

**Diversity of opinions**

Legal discussion leading to divergent positions has long existed in Judaism. Even in classical discussions, diverging opinions have been preserved. In the Mishnah, differing positions on the same legal issues are often noted. Within classical Judaism, there is a core of law which has been generally accepted, even if its boundaries are not defined exactly; but on other laws there is sometimes substantial disagreement.

This chapter relates to various categories of Halakhot with environmental aspects. In doing so, elements of disagreement are occasionally raised. Strategic conclusions, particularly those relating to broad issues such as the current subject, cannot be drawn from a series of contested positions. In order to be credible, they must be principally based on Halakhot on which there is a consensus of opinion.

As far as possible, therefore, analysis here is based on the core of Halakhot which are generally accepted. The common holds the potential for the conclusion; diversity gives it further perspective.

**Modern writings and environmental Halakha**

The aim of this chapter is to arrive at a strategic perspective on the Halakha’s attitude toward environmental issues. To do this, one has to identify a sample of Halakhot which refer to major environmental categories. Modern Jewish writings mention a cross-section of ‘environmental Halakhot’ which I consider large enough for this purpose.

So many Halakhot are mentioned in modern writings that reference here to all of them is not possible. In this chapter, therefore, a number of these Halakhot are grouped together. Even if much more material could be found by going through the halakhic literature, it is likely only to provide more details, rather than affect the conclusions. Besides the Halakhot quoted in modern writings, reference has also been made to additional primary sources. The latter was particularly necessary with regard to contemporary Halakha, as few secondary sources exist.

Categorizing and integrating this material laid the basis for the strategic review of the attitudes of Jewish law toward environmental issues. Nonetheless, a detailed assessment of Jewish attitudes toward environmental issues, as expressed in Halakha, will have to wait for the results of studies yet to be undertaken.
A number of categories of Jewish law relating to environmental issues will be defined, and examples given thereof. From an integrated analysis of these, a picture will emerge of where Judaism broadly stands on environmental issues.

However, the common core is much larger than any uncertainty in the margins. Even if one's analysis is based on the lowest common denominator, the broad conclusion will remain the same. This is even partly true for the most controversial field discussed in this chapter, vegetarianism.

Reasons for the commandments

While the Torah frequently does not explain the meaning or the value judgments underlying specific commandments, commentators attempt to identify them. The perspective on our subject can be sharpened by studying the writings of these commentators and trying to expand on their interpretations. However, rabbinical authorities have been in disagreement on what these value judgments are. Ancient sources distinguish between mishpatim and hukkim. Maimonides says that all commandments have a reason, i.e. a useful purpose. He defines mishpatim as those laws whose usefulness is evident to common people; in other words, that category of God-given law which, for its benefit, civil society would have instituted on a rational basis even if they were not of Divine origin. He defines hukkim as those whose usefulness is not evident to common men. Nachmanides also says that the hukkim are useful to humanity, but that man does not know in what way they are so.

Rabbinical authorities often disagree on the reasoning behind the commandments. A typical example are the so-called kilayim laws (constancy of species – see below) which belong to the category of hukkim. Here two of the greatest classical Jewish scholars hold opposing views. Rashi says that these laws are an order from the king [i.e. God] for which there seems to be no rational explanation. Maimonides explains that kilayim were forbidden because the mixing of species was an aberration practiced by pagans.

Three categories of environmental relevance

Three categories of Halakha of environmental relevance will be discussed below:

1. Classical Halakhot which relate to issues such as sustainability, environmental health, animal and nature protection, pollution control, environmental hygiene, allocation of space and many other environmental matters.
II. Recent and contemporary halakhic decisions on environmental problems. This is a much less developed subject in Jewish publications. Halakhic questions are often raised orally and answered in the same way by rabbinical authorities. Furthermore, large parts of the recent responsa literature are also not very accessible: much of what there is, therefore, remains unknown to contemporary halakhic scholars.

One pertinent issue which has drawn recent attention is smoking, including passive smoking. This is due to major new evidence about their harmful effects. This category also includes halakhic attitudes toward vegetarianism and animal experimentation. Several modern responsa refer to experiments on animals for medical purposes.

III. Indications as to the potential future development of Halakha on environmental issues. This category is quite undeveloped, and is only rarely mentioned in Jewish writings. One example refers to the extension of the bal tashhit principle regarding the permissibility of nuclear war.

This chapter deals mainly with the first category, although some attention will be given to the other two.

Furthermore, this chapter deals with another important issue: Halakha and hierarchy.

I. Halakhot in Classical Literature

As noted in Chapter One, recent publications list and interpret a number of halakhic principles which give broad indications for Jewish attitudes in several environmental areas. These break down into various sub-categories and issues:

a) Principles referring to the prohibition of wanton destruction: bal tashhit. The rabbinical decisions forbidding hunting as a sport can be considered partially related to this.

b) Halakhot in the broad area of nuisance limitation and health protection. One major principle is pikku’ah nefesh, ‘one should transgress rather than die.’ When endangered, life should take precedence over observance. With only three exceptions – murder, idolatry and incest – all commandments are superseded by preservation of life considerations. The principle that one should not unnecessarily put one’s life at risk expresses a similar attitude.

Nuisance limitation and health protection are dealt with in a variety of Halakhot. The Bible and Talmud also give many examples of pollution prevention and abatement to prevent hindrance to others. Some of these Halakhot can be seen as early environmental hygiene policies.
c) Laws concerning land policies and soil protection. These include the commandments concerning the sabbatical and jubilee years. The commandment prohibiting the raising of goats and sheep in the land of Israel may also be considered in this category.

d) Several Halakhot refer to the broad field of animal protection. *Za‘ar ba’alei hayyim*, the prevention of unnecessary pain to animals, is often quoted in modern publications. Another commandment is *shillu’ah baken* (sending away the mother bird that is sitting on fledglings or eggs in the nest, before taking these).\(^{14}\)

e) Constancy of species (*kilayim*) is another area which the Halakha refers to.

f) To some extent, the laws defining elements of the layout of Levite cities are precursors of modern concepts for sustainable cities. Some rules regarding refuge towns are also in this category.\(^{15}\)

g) The environmental aspects of the Shabbat laws comprise a sub-category of their own. Some writings here refer to laws which could be included in earlier sub-categories. The laws for holidays are largely similar to those for Shabbat.

h) Other issues with halakhic rules of environmental relevance include the dietary laws (*kasbrut*) and fasting.

### Halakhot and elements of environment

The various halakhic categories mentioned above can be related to the environmental elements as they are currently defined:

<table>
<thead>
<tr>
<th>Environmental Element</th>
<th>Halakbic Category</th>
</tr>
</thead>
<tbody>
<tr>
<td>Relating to nature:</td>
<td><em>Bal Tashhit</em></td>
</tr>
<tr>
<td></td>
<td>- Constancy of Species</td>
</tr>
<tr>
<td></td>
<td>- Hunting</td>
</tr>
<tr>
<td>Relating to animals(^{16}):</td>
<td><em>Za‘ar ba’alei hayyim</em></td>
</tr>
<tr>
<td></td>
<td>- Animal Welfare</td>
</tr>
<tr>
<td></td>
<td>- Constancy of Species</td>
</tr>
<tr>
<td></td>
<td>- Ritual Slaughter</td>
</tr>
<tr>
<td>Preservation of natural resources:</td>
<td><em>Bal Tashhit</em></td>
</tr>
<tr>
<td></td>
<td>- Sabbatical and Jubilee Years</td>
</tr>
<tr>
<td></td>
<td>- Animal Protection(^{17})</td>
</tr>
<tr>
<td></td>
<td>- Shabbat Laws</td>
</tr>
<tr>
<td></td>
<td>- Dietary Laws</td>
</tr>
<tr>
<td>Nuisance/pollution:</td>
<td><em>Nuisance Limitation and Health Protection</em></td>
</tr>
<tr>
<td>Allocation of space:</td>
<td>- Levite and Refuge Cities</td>
</tr>
</tbody>
</table>
We will now discuss the various sub-categories of environmental Halakhot.

a) Sub-category: The prohibition of wanton destruction

_Bal tashhit_ (‘do not destroy’) is the halakhic principle most frequently mentioned in contemporary Jewish publications to elaborate Judaism’s attitude toward the environment. Its origin is in the Torah: “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 ax against them. You may eat of them, but you must not cut them down. Are trees of the field human to withdraw before you into the besieged city? Only trees that you know do not yield food may be destroyed; you may cut them down for constructing siege works against the city that is waging war with you, until it has been reduced.”

The first verse indicates that, even in times of war, Divine commandments impose certain constraints. The second verse, however, permits the destruction of other parts of nature in wartime. War has signaled a period of destruction from time immemorial, from the poisoning of wells in ancient times through policies of ‘scorched earth’, the nuclear destruction of humans and the ecosystem in the bombings of Hiroshima and Nagasaki, to Iraq’s intentional pollution of water with oil, in the Gulf War.

In the next chapter, some examples will be discussed of how several Israelite Biblical leaders, both God-fearing and wicked, carried out destructive policies. Referring to these incidents, Lamm states: “The verses in Deuteronomy 20:19 & 20 are not altogether clear and admit a variety of interpretations. But this much is obvious, that the Torah forbids wanton destruction. Vandalism against nature violates a Biblical prohibition. Those few cases in scriptural history in which this norm was violated, are special cases.”

Many detailed rules have been deduced from the _bal tashhit_ principle, including the prohibition from wantonly destroying a tree’s fruit. One of the oldest collections of rabbinical traditions, the _Sifrei_, written around 300 C.E., already extends the legislation of wanton destruction to prohibit interference with water sources. The Talmud extends it to include an uneconomical use of fuel.

Maimonides mentions further extensions of the principle, pointing out that _bal tashhit_ refers not only to periods of war, but to all times. Whoever transgresses this prohibition is to be punished by flogging. However, he also states that it is not considered destruction to cut down a fruit tree which is causing damage to other trees or a field.
According to Maimonides, a tree that does not produce fruit may be cut down, as may fruit trees which produce very little fruit. (He indicates the quantities that define what is "very little fruit").

Maimonides also states that economic considerations allow the cutting down of a fruit tree (thereby already participating in the environment versus economy debate). According to commentators, this may be the case, for instance, if the building value of the land exceeds the value of the fruit. However, among later authorities there is disagreement between the rabbis as to whether one is allowed to pull down a fruit tree in order to build a house. One major halakhic authority, the Turey Zahav, allows it; another, the Netsiv from Wolozhyn, is much more restrictive. (Among contemporary rabbis, Ovadia Yosef also permits the cutting of fruit-bearing trees to facilitate building a house in their place.)

Furthermore, Maimonides lists as prohibitions included in the bal tashhit principle, the breaking of utensils, the tearing of clothes, the destruction of buildings, the blocking of wells, and the destruction of food.

The commandment of bal tashhit - so central in the thoughts of many contemporary Jewish writers - focuses first and foremost on that part of the environment which is useful to man, rather than on the preservation of the entire environment. Yehuda Feliks points out that this is a more general attitude in Halakha. So, for instance, the commandment of shillu'ah ha’aken refers only to birds which Jews are allowed to eat.

Extending the principle further

One of the most extended interpretations of the Biblical verse has been given by the 19th century scholar, Samson Raphael Hirsch. He sees in bal tashhit an example of the prohibition of the useless destruction of any object. He adds that this law: "becomes the most wide-ranging warning to man not to abuse the position he has been given in the world for moody, passionate or mindless destruction of things on earth. Only for the wise use has God put the earth at his feet, when He said: ‘Master it; rule over it.’"

In widening the prohibition, however, Hirsch may have combined two different issues. War is not an obvious inclusion in the category of ‘moody, passionate or mindless destruction’, as it may fulfill a specific purpose.

In the Middle Ages, the meaning of bal tashhit was interpreted by the author of Sefer haHinnukh: "The root of the commandment is in order to teach us to love the good and useful and be attached to it; and from there, the good will attach itself to us; and we will move away from bad and destructive things."
Sefer haHinnukh links the avoidance of destruction to religious practice: “And this is the way the pious and the people of good actions behave, they like peace, are happy in the well-being of others, bring them closer to the Torah, and will not destroy even a mustard seed from the world.”

A far-reaching interpretation of bal tashhit is already found in the Talmud. R. Hisda says: “Whoever can eat bread made from barley and eats bread from wheat, transgresses the prohibition of bal tashhit.” R. Papa says: “Whoever can drink beer and drinks wine, transgresses the prohibition of bal tashhit.” The Talmud indicates, however, that these opinions are not accepted, as one should not eat inferior food, but rather care more for one’s body than for money.

Maimonides applies the bal tashhit principle to what one places in the grave. He states that it is preferable to give clothes to the poor than “to throw them to the worms [in the grave]. Whoever puts too many clothes on the dead transgresses the prohibition of bal tashhit.”

On the other hand, the Talmud brings examples of destruction for the educational purposes of teaching people moderation and avoidance of falling into extremes: “Mar son of Ravina arranged a wedding feast for his son. He saw the sages who were extremely joyful. He brought an expensive cup, worth four hundred zuz and broke it in front of them. They became sad.” This is followed by a similar case: “Rav Ashi arranged a wedding feast for his son and saw the sages who were extremely joyful. He brought a cup of white glass and broke it in front of them. They became sad.” None of the major Talmud commentators raises the question of whether this transgresses the prohibition of bal tashhit.

Among contemporary writers, Gordis adds that bal tashhit has nothing to do with the sanctity of private property. One is forbidden to destroy not only the property of others, but also one’s own, or even ownerless property. This principle derives, in part, from the recognition that what we are wont to call ‘our’ property is not really our own, but God’s.

E. Schwartz reviews classical Jewish literature on bal tashhit from the point of view of environmental ethics. He finds that two different traditions can be identified in the interpretation of the verse in Deuteronomy by two important classical Bible commentators, Rashi and Ibn Ezra:

“Rashi separates human beings from nature and allows nature an existence independent of human rights and needs. Nature is not to be understood as human property with which one can do as one wishes. Ibn Ezra unites the human being with nature, and therefore demands that people evaluate their behavior towards nature in terms
of its ultimate effect on humans. It is radically anthropocentric because it determines nature’s worth in terms of its worth to human beings.”

Using the term ‘radically anthropocentric’ for Ibn Ezra’s position lays a misleading emphasis, in view of the many constraints Judaism puts on the Jew’s actions toward nature. Even if some classical commentators emphasize man’s interests over those of nature, as Ibn Ezra seems to do here, none argue that this overrides obedience to God. Their position is based on the view that man is the primary servant of the Creator.

Meir Ayali points out that, in the responsa literature, attitudes toward felling fruit trees seem to have become more restrictive over the centuries. He states that Maimonides decided without hesitation that a palm tree standing close to a wall near a public place should be cut down, because it might fall – thereby constituting a public danger.

Ayali claims that, in later responsa, rabbinical authorities were reluctant to allow fruit trees to be cut down for any reason, out of the fear that transgressors would be Divinely punished. He relates this to the story in the Talmud where R. Hanina says that his son Sikhath died before his time because of his untimely cutting down of a fig tree.

Chatam Sofer is asked by Rabbi Yakov Weiler whether one can fell grapevines in order to build houses on the land, thereby yielding a profit to the owner. The argumentation of the responsum indicates that Chatam Sofer sees this seemingly simple question as a complex issue. He replies that if the land is required, it does not fall under the prohibition of bal tashhit. He stresses that, where possible, the vines should be pulled out with their roots and some earth, to be planted elsewhere. Chatam Sofer underlines that one should be very sure of one’s economic calculations before pulling the vines out, because if no profit ensues from this act, it may come under the bal tashhit prohibition.

Hunting

Hunting is another issue which deals with destruction. Norman Solomon points out that “although Jewish religious tradition despises hunting for sport this is on ethical and ritual grounds rather than in the interest of conservation.” Halakhic scholar J. David Bleich states that the main reason is probably concern about the bad influence that hunting has on people, rather than concern for the animal victims. These views illustrate how Jewish scholars and environmentalists may arrive at similar practical attitudes for very different reasons.
Hunting as a sport was controversial in Jewish society long before modern environmentalism emerged, and was subject to halakhic ruling. One of the most-quoted responsa on this subject is that of the 18th century Rabbi Yechezkel Landau, known as the Noda biYehuda. When asked whether a Jew is permitted to hunt game with a rifle, he is surprised that anyone should ask this question. “The only hunters mentioned in the Torah are Nimrod and Esau. Hunting is not a sport for the children of Abraham, Yitzchak, and Yaakov... How can a Jew go to kill a living creature only with the purpose of hunting for pleasure?”

Rakover concludes that some rabbinic authorities consider the prohibition on hunting explicit, while others see it as implicit. All agree, however, that hunting is immoral and opposed to Jewish ethics. Among the halakhic objections mentioned are that it is wasteful, it is in the category of bal tashhit, it causes distress to the hunted animal, it is in the category of za‘ar ba’alei hayyim and one willfully slaughters in a non-kosher way even if the animal itself is kosher. In addition, hunting wastes time and the hunter exposes himself to unnecessary risks. It also is done in the company of undesirable people, and follows a non-Jewish way of life.

Much has been written on the halakhic issue of bal tashhit. Even if its exact limits cannot be determined, due to the lack of a central halakhic authority, there is a substantial core element of prohibitions which are implicitly accepted by all rabbinical authorities.

b) Sub-category: Health protection and limitation of nuisance

A variety of environmental conditions are currently perceived as ‘nuisance’. Many of these may have a negative impact on health, such as excessive noise, smells, excessive heat, creating conditions for contagious diseases, etc. There are several Halakhot relating to these diverse issues.

The Halakha also forbids a person to damage his own health. This goes beyond the conventional boundaries of environmental interest, which tends to limit itself to damage to third parties and not to what one does to oneself. Jewish thought often considers these two types of damage to be related.

Many halakhic decisions deal with issues of health protection. The general principle of pikku‘ah nefesh is central to maintaining life, overriding all religious commandments except murder, idolatry and incest. While all rabbinical authorities agree that the Shabbat may be desecrated to save life, there are significant disagreements about the value judgments behind this idea.

There have been many rabbinical debates as to how far the detailed rules deriving from the principle of pikku‘ah nefesh extend to preser-
vation of a person’s life. Mention is made of a rabbinic discussion on whether it is permitted to prepare medicines on Shabbat if no patient is in immediate need of them.⁵⁶

Another indication of the limits of pikku‘ah nefesh occurs with reference to autopsies: Halakha objects to them out of respect for the dead (kevod haberiyot). However, an autopsy is permitted if the life of a specific patient can be saved as a result of an autopsy. The pikku‘ah nefesh of that patient takes precedence over the kevod haberiyot of another person in certain opinions.⁵⁷ While an important scholar, Jacob Ettlinger,⁵⁸ held the opposite opinion, general halakhic practice did not accept this.⁵⁹

Noise control

In recent years noise has increasingly come to be considered a problem of health protection as well as nuisance. Over the centuries, various responsa have contained rulings forbidding noise pollution. The Mishnah states that neighbors can prevent the opening of a store in a common courtyard by claiming that they cannot sleep due to the noise of customers entering and exiting; however, they cannot object to the noise of a hammer or a grinding mill in a craftsman’s home; nor can they object to the noise children make if one of the courtyard’s residents is a religious school teacher.⁶⁰

Freudenstein refers to the extension of this principle by later rabbinical authorities, quoting commentators on Tur and Shulhan Arukh Hoshen Mishpat, section 156: “Later authorities extended this ruling to new craft workshops whose noise might constitute a nuisance. The Mishnah is interpreted as allowing exercise of such crafts only where they are already in existence at the time of the protest. New craftsmen must have the consent of the other dwellers of the compound.” ⁶¹

The Talmud says that if one has a house in a collective courtyard, one cannot let it to a medical doctor,⁶² a craftsman,⁶³ a weaver or a schoolteacher, whether Jewish or not. Most commentators, including Rashi, cite as the reason the noise of those entering and exiting.⁶⁴

Nuisance

Zvi Ilani has reviewed the way rabbinical sources deal with nuisance and whether the person who causes it may continue with it against payment.⁶⁵ He concludes that, while this is possible in some cases, the community cannot allow a nuisance which causes severe health problems, even against sizable payment by the perpetrator.⁶⁶

Another category for which there does not seem to be any buying-off by the perpetrator, is one that will cause serious suffering in the
future. A third category where financial compensation is impossible concerns nuisance which affects the whole community directly or indirectly. This is particularly the case when the agreement of all those affected cannot be obtained. A fourth category concerns nuisance that causes moral or religious damage to the public.

Eliezer Diamond has analyzed how Halakha relates to some aspects of the conflict between the requirements of the community and those of the individual, who often compete for the use of space and resources. He concludes that pre-modern “Halakha, faced with the prospect of nuisance or pollution on the one hand or economic deprivation on the other, accepts the former to avoid the latter.”

Diamond qualifies this, however, by underlining that the economic condition of both Jews and non-Jews in pre-modern times were radically different from the present situation. “Many more people were living at or near the subsistence level. Closing down someone’s mill or shop could have resulted in starvation for the owner or for members of his family.” A second qualification points out the position of Halakha that costs of pollution control have to be shared in an equitable way.

Other health aspects

Another important aspect of Jewish law in the field of health protection is the obligatory burial of excrement in the ground, even in time of war. “Further, there shall be an area for you outside the camp, where you may relieve yourself. With your gear you shall have a spike, and when you have squatted you shall dig a hole with it and cover up your excrement. Since the Lord your God moves about in your camp to protect you and to deliver your enemies to you, let your camp be holy; let Him not find anything unseemly among you and turn away from you.”

A different subject that the Mishnah mentions is that a husband cannot compel his wife to move from a middle-sized town to a large town. In the commentaries the reason given for this is environmental health protection: it is difficult to live in a large city where houses are close to each other, and where there is no fresh air.

In this category there are also a variety of references to domestic animals. One Mishnah mentions that it is forbidden to raise a dog unless he is held by a leash. Maimonides says that this warning is based on the damage a dog can cause. The 15th century Mishnah commentator Obadiah Bertinoro adds that this is because dogs bite and bark, and a pregnant woman may abort from fear.

In the Torah we find a Halakha which refers to nuisance limitation: after a priest has dealt with burnt offerings in the Temple, he is told
to “take off his vestments and put on other vestments, and carry the ashes outside the camp to a clean place.” 78 Commenting on this, Maimonides says that the remains should be protected in these places “from being dispersed by wind and pigs”; 79 Meiri comments that they should be kept “from being washed away by floods.” 80

Several Talmudic texts refer to nuisance limitation and also consider elements of health protection. Among these are laws which forbid polluting activities within Jerusalem: “One should not erect there a dung-heap. One should not build there a melting-oven, one should not establish vegetable and fruit gardens, with the exception of the rose garden which has been there since the time of the first prophets. One should not grow chickens there. One should not leave a corpse overnight there.” 81

There are many more examples in Mishnah and Talmud of Halakhot forbidding pollution at specified sites. One cannot open a bakery or a painter’s shop under somebody else’s granary, nor erect a cow shed there. 82 This is because the heat of the baker’s or painter’s ovens causes hindrance, as does the odor of the cows’ dung. 83

Although in Biblical times Jewish graves may have been close to individual dwellings, in later periods Jewish cemeteries had to be outside towns. 84 Like other potential pollution-causing hindrances, this is mentioned in the Mishnah: “One removes the place where dead animal bodies are gathered, the graves and the tanneries, for 50 cubits from the town. One only puts a tannery on the east side of town.” 85 Commentators explain that the east wind is hot and usually blows in so leisurely a manner that it does not convey odors to the town. Others explain that east winds blow infrequently in the Land of Israel. 86

Another type of hindrance concerns darkening the light of somebody’s window. The Mishnah states that it is forbidden to construct a wall within four ells of a neighbor’s window. 87 The Talmud explains that one should not block out the light coming in at his window. 88 Ritva 89 explains in his commentary that whoever builds a wall without keeping sufficient distance takes somebody’s else’s light “and the air in his possession which he enjoys and there is no greater damage than blocking somebody’s light.” 90

Specific nuisance cases

In the framework of overall relations between neighbors, we find a series of cases in the Shulhan Arukh of causing nuisance to one’s neighbor which seem to us to have an environmental character. 91 We do not know, however, how these cases were perceived at the time that they occurred. If one neighbor has the right to let the
rainwater from his roof run onto the land of another neighbor, this does not give him the right to let more noxious water run onto his neighbor’s land. Emanuel Quint, a contemporary commentator on the Shulhan Arukh, offers an example: if a person has the right to conduct rainwater onto his neighbor’s land, he cannot conduct dirty laundry water instead.92

The Shulhan Arukh states that a community can prevent a citizen from setting up his gutter pipes in such a way that the water from his roof is conducted into the public domain.93 Furthermore, it states that a person on the lower floor in a condominium may not maintain an oven in his apartment unless the ceiling is at least 7 feet above its top. The upper neighbor must provide a good floor of at least 11 inches beneath his stove or oven.94

A neighbor on a lower floor may not use machinery that causes movements or vibrations which may affect products stored by a neighbor on the upper floor.95

Apart from the ones already mentioned above, there are further limitations on the distance of noxious odors and particles from the nearest inhabitants. This also applies to food processing facilities and beehives.96

Another ruling forbids the nuisance caused indirectly by a person who works with blood or meat: the shrieking of birds attracted by the waste, or the filth caused by their bloody feet, may upset sick or sensitive neighbors.97, 98 Many similar prohibitions exist.

Responsa literature

The responsa literature has dealt with several specific nuisance cases. Congregants of a synagogue complain to Maharam99 that the smoke and odor of a bathhouse next to the synagogue is causing them severe nuisance. Maharam refuses their request for closure because the bathhouse functions only once a week, and the law forbidding smoke refers only to continual smoke. With regard to odors, he says that, as even the odor from covered toilets is permitted, there can be no reason to forbid the odor from the bathhouse.100

Rashba wrote a responsum that smoke caused by regular households should not be evaluated in terms of the Talmudic injunction permitting the forced removal of a furnace. The latter refers only to ongoing or serious smoke such as that caused by ‘industrial’ furnaces.101

One person tells Rosh102 that his neighbor, a blacksmith, is causing him damage: his house vibrates each time the neighbor strikes with his hammer, preventing him from sleeping, and creating dust and smoke with his work. Rosh responds that, as the neighbor is a
Halakha-abiding Jew and the problems are caused by the neighbor’s willful actions, he is entitled to tell him to stop his nuisance causing activities.  

Another responsum by Rosh refers to a case where a person has dug a well in his courtyard for collecting and storing rainwater. A lot of water has collected and overflowed into the neighbor’s cellar, making the courtyard stink. Rosh decides that the owner of the well has to repair it and pay for the damage caused.

In Ritva’s responsa, we find an indication that, while existent hindrance has to be accepted, it cannot be increased without the agreement of the person who will be increasingly disturbed. The question refers to a vineyard located within somebody else’s vineyard. The owner of the first vineyard owns an access road which passes through that of the second one. He then acquires additional vineyards next to the first one, which have access roads to the outside. However, he closes all of these and wants to use the existing access road for the new vineyards. In doing so, he considerably increases the traffic of workers and produce on that road, causing damage to the owner of the second vineyard.

Ritva replies that the second owner is entitled to stop the first one from using the road for any traffic other than the original vineyard. What is more, any damage which has already been caused should be paid for.

Terumat Hadeshen is of the opinion that neighbors cannot stop somebody from producing occasional smoke, nor can they prevent a neighbor from building a new oven which produces such occasional smoke.

One of the responsa of Radbaz refers to a person who uses medicinal incense. This causes a bad smell to reach a neighbor’s home, and may endanger his baby’s health. The decision of Radbaz is that, although the person causing the nuisance is doing so in his own home, he must move it far enough away that the smell will not reach the neighbor’s house even on the common wind (even if there is doubt whether wind will carry the smell). Radbaz insists on this because of the potential danger to human life.

Rivash is asked about two men, one of whom has opened a weaving unit in his courtyard. His neighbor claims that the beating of the cloth during production damages his wall, as well as his wine. Furthermore, his wife is sick and the noise gives her headaches. Rivash confirms that the damage has indeed been caused, and that the owner of the weaving unit must move his operation elsewhere.

Maharalbach, a 16th century chief rabbi of Jerusalem, is asked a question about two adjacent courtyards: in one of them, the owner
M. Gerstenfeld has introduced millstones.\textsuperscript{112} The owner of the second courtyard complains that this is destroying his walls and causing him damage; he thus requests removing it. The answer given is that a person can exercise his profession in his home in order to earn a living; however, he cannot receive customers in his home to sell his wares, because he can do so in the market thereby reducing noise hindrance to his neighbors.\textsuperscript{113}

A 16\textsuperscript{th} century responsum from Rabbi Shlomo Cohen\textsuperscript{114} refers to the case of a person living on the upper floor of a house; the pipe from his toilet descends through the wall of the apartment below, and from there the effluents flow into a ditch. A neighbor who buys the lower apartment wishes to close the pipe, claiming that he suffers from the smell. The rabbinical decision is that he has no right to close the pipe because it has been there for many years; the pipe is closed and the ditch is covered; neither is the smell very strong or continual.\textsuperscript{115}

In another responsum the same rabbi refers to the damage caused to the inhabitants of a town by the dyeing industry. He says that the economic interests of a city, dependent on the textile industry for its livelihood, take precedence over the damage caused to neighbors in the vicinity.\textsuperscript{116} However he comments that the owner of the business would do well to reduce the hindrance as much as possible. In Chapter One, a responsum in line with this is mentioned from the 17\textsuperscript{th} century Italian rabbi, Shimshon Morpurgo.

Chatam Sofer is asked by his son-in-law Rabbi Bunem about a case involving a potential future hindrance. Three people have inherited a house. One of them wishes to open a kind of pub on the upper floor; while one of the others living on the ground floor wishes to prevent this, claiming that it will cause him nuisance, mainly from noise. Rabbi Bunem says that there will be significant consequences if the complainant is judged to be in the right, as there are several shops in the community against which similar nuisance complaints might be launched, thereby affecting the livelihood of the owners. Chatam Sofer says that the Halakha is that the person on the upper floor should be prevented from opening the pub, where people would sit drinking wine. However, his opinion on this was not entirely clear-cut. Those selling wine and other goods from their homes cause less hindrance. Thus the case in question cannot be used as a precedent.\textsuperscript{117}

Meir Tamari, whose research has focused on economic aspects of Halakha, has attempted to draw a more general conclusion from Talmudic Halakhot and responsa on environmental nuisances. He considers that, in an independent Jewish state, planning should be carried out which permits the removal of sources of pollution: “The
community, being independent, should be able to allocate land and other resources in such a way as to provide for the common good this being the yardstick according to which ecological obstacles are considered in halakhic sources."  

**c) Sub-category: Land policies and soil protection**

The Torah sets out the commandment of the sabbatical year, *she-mittah*. Each seventh year the land had to rest and lie fallow. "Six years you shall sow your land and gather in its yield; but in the seventh you shall let it rest and lie fallow. Let the needy among your people eat of it, and what they leave let the wild beasts eat. You shall do the same with your vineyards and your olive groves." In the seventh year the Jew was not allowed to plow the land nor to sow seeds. What was growing in the sabbatical year by itself served as food for the poor and animals. From a modern environmental point of view, *shemittah* serves to prevent exhaustion of the land.

The law of *shemittah* applies only to the Land of Israel. Today adherence in Israel is almost total, even if generally symbolic. In Israel a national arrangement exists to fictitiously sell land to Gentiles. Secular agriculturalists adhere to this agreement for economic reasons: non-adherence would result in substantial loss of clientele.  

*Shemittah* was the subject of one of the first halakhic debates to arise in Palestine, in relation to the first Zionist settlements in the late 19th century. Aryei Fishman writes that, while rabbis in the Diaspora suggested selling land to Gentiles and allowing them to work it during the seventh year, rabbis in Palestine insisted that all work on land cease throughout this year, whether it was done by Jew or Gentile. The first option, that of the fictitious land sale, prevailed and is now the predominant practice in Israel.

In recent years, the religious kibbutz movement has begun to pay more attention to *shemittah* laws by "abstaining from new plantings and by circumventing the letter of the law through introducing automated sowing machinery. Every kibbutz also symbolically excludes one tract of land from the formal sabbatical sale of its land, and leaves it fallow." Some other religious settlements apply hydroponic cultures.

After each 49 years, a *yovel* year should be declared. In this Jubilee year the same prohibitions regarding working the land are applied as for the sabbatical year. In addition, all land sold during the preceding 49 years is returned to its original owner without compensation. This law is based on the Torah text: "The land shall not be sold in perpetuity, for the land is Mine; for you are strangers and sojourners with Me."
The sabbatical and yovel years can be interpreted in economic terms as ways of redistributing wealth and property. Gordis refers to both the social and the environmental aspects of these laws. The land lying fallow provided the poor with a source of food which he sees as "an important element... of social legislation for the underprivileged in ancient Israel." He adds: "But even more fundamental than the above agricultural and social functions, the law reaffirmed a deep religious principle: God was dramatically reasserting His ownership of the land, of which man is only a temporary custodian." The yovel year is not applied today, and it is not known whether it was ever practiced in the past.

Another prohibition mentioned in the Mishnah is relevant to land protection: it concerns raising small cattle – goats and sheep – in the land of Israel. The motivation has environmental aspects as they are currently defined: they destroy fields and vineyards. One part of domesticated nature is protected from another, even though the principal reason is to protect the property of the Israelite landowners.

d) Sub-category: Animal protection

Simultaneous with the growth of general environmentalist concerns in recent years, interest in animal protection has increased. This can be partially understood by the fear expressed by scientists that many species are facing extinction in the coming decades. The aggressiveness of certain sectors of the animal rights movement has also brought the subject to public attention.

In Jewish law there are numerous references to issues of animal welfare.

1) Za’ar ba’alei hayyim

One important halakhic principle of relevance to animal welfare is the prevention of suffering to living creatures – za’ar ba’alei hayyim. One central prohibition concerns ever min hahai, the prohibition from eating a limb of a living animal. The Halakha is related to the text of Deuteronomy 12:23: “But make sure you do not partake of the blood; for the blood is the life, and you must not consume the life with the flesh.” The prohibition of ever min hahai is equally relevant to all humanity, as it is part of the seven Noachide laws.

Gordis considers za’ar ba’alei hayyim and bal tashhit to be the two key ethical principles within Judaism’s environmental teachings. The former has several Biblical roots. He cites an example from the Torah: “Deuteronomy 22:10 forbids the farmer to plough with an ox and a donkey yoked together because the practice would obviously impose great hardship upon the weaker animal.”
Gordis also cites other texts. Many would not qualify them as ‘animal welfare’ *per se*, but rather conditions which include aspects that may limit animal suffering. One refers to the young ox or sheep: “No animal from the herd or from the flock shall be slaughtered on the same day with its young.” Another imposes the principle of *shillu‘ab haken*: “If, along the road, you chance upon a bird’s nest in any tree or on the ground, with fledglings or eggs and the mother sitting over the fledglings or on the eggs, do not take the mother together with her young. Let the mother go, and take only the young, in order that you may fare well and have a long life.”

A further example of the Biblical attitude toward animal welfare is found in the following text: “I will also provide grass in the fields for your cattle – and thus you shall eat your fill.” The Talmud derives from this the idea that one has to feed one’s animals before eating. Rabbi Eliezer Waldenberg, a member of Israel’s Supreme Rabbinical Court, states in a responsum that even if man fasts for one reason or the other, he must still feed his animals to prevent their suffering.

A text sometimes quoted in modern Jewish publications on animal protection is, “You shall not boil a kid in its mother’s milk.” The meaning of this verse, repeated in Deuteronomy, is unclear. Rabbinical tradition derives from it one of the central laws of *kashrut* (dietary laws), which is not to eat meat and milk together.

2) Animal welfare

There are several examples where Jewish law goes beyond the prevention and elimination of animal pain. One is the text of the Decalogue, which in Exodus reads most incisively: “Six days you shall do your work, but on the seventh day you shall cease from labor, in order that your ox and your ass may rest.”

The same commandment is repeated in Deuteronomy: “Six days you shall labor and do all your work, but the seventh day is a sabbath of the Lord your God; you shall not do any work... your ox or your ass, or any of your cattle.” Hertz comments: “Care and kindness to cattle are of such profound importance for the humanizing of man that this duty has its place in the Decalogue.”

Novak comments: “In rabbinical law this extends to riding on them, not just ‘working’ them in the strict agricultural sense.” Nor are animals to be slaughtered for food on the day of rest. Nevertheless, because a Jew is responsible for the well-being of his or her animals, they are to be fed on the Sabbath and, if necessary, to be milked so as not to suffer pain. “To indicate that this is for their sake and not our own, the milk taken from them is not to be used by us.”
Yet another example of the Bible’s concern for animals’ welfare is the commandment: “You shall not muzzle an ox while it is threshing.”

3) Vegetarianism

Vegetarianism is an issue which was debated by leading Jewish scholars well before the emergence of modern environmentalism. We will discuss this below.

4) Shehitah

Shehitah, ritual slaughter, is a subject on which much has been written: it has been under attack from animal protectionists for a long time. Gordis, however, points out that shehitah is “designed to keep alive the sense of reverence for life by forbidding the eating of blood and by minimizing the pain of the animal when it is slaughtered.”

Leading American vegetarian activist Richard Schwartz, claims that, in the Bible, meat-eating is connected with human lust. This idea is supported by the laws of shehitah which “implied a reprimand and served as an elaborate apparatus designed to keep alive a sense of reverence for life, with the aim of eventually leading people away from their meat eating habit.”

The late Sephardi Chief Rabbi of Israel, Benzion Meir Uziel, refers in a responsum to the request of animal protectionists to apply stunning by electroshock prior to the slaughter of animals. He forbids this. One reason he gives is that he does not believe that the Divine commandment of ritual slaughter causes suffering in animals, because it must be carried out according to a lengthy list of very precise rules. He believes that those who kill an animal in other ways make it suffer.

From these various sources it becomes clear that the Jew’s rights with regard to what he could do with or to animals were restricted long before such awareness emerged in Western society’s mainstream.

Sacrifices

Animals to be sacrificed were brought into the Tabernacle, which was established when the Jews crossed the desert after the Exodus from Egypt. Their ritual was regulated by a series of complex Halakhot. These also governed the sacrifices brought later to the temple in Jerusalem. Sacrifices ended with the Romans’ destruction of the Second Temple in 70 C.E., and have been supplanted by prayer. The ancient sacrifices stand in opposition to the concepts of the modern animal welfare movement. The classical Jewish vision is
different, as it sees in the animal's sacrifice an act of obedience to God as well as atonement for sins, which takes priority over the animal's survival. The Hebrew word for the sacrifice *korban*, from the root 'to bring near', is considered by some to reflect the idea that the sacrifice brings man nearer to God.

Classical Jewish commentators have looked for a rationale of the sacrifices. Maimonides writes that God ordered the Jews to bring sacrifices as this was the common type of worship in those days. Maimonides mainly sees in the sacrifices a necessary tool for reaching God's goal. He points out that the frequency of sacrifices—and places where they were permitted to take place—were very limited in comparison to prayer and supplication to God, which are permitted anywhere at any time.\(^\text{149}\)

Another law which tends to draw environmental objections is: "If a man has carnal relations with a beast, he shall be put to death; and you shall kill the beast. If a woman approaches any beast to mate with it, you shall kill the woman and the beast; they shall be put to death— their bloodguilt is upon them."\(^\text{13}\)

The Mishnah asks: if man has sinned, what is the guilt of the animal? Two answers are given: the first is that it has caused man to sin; the second is that the animal should be prevented from going into the market or the public space, because people will say "This is the animal on whose account that specific man has been put to death by stoning."\(^\text{151}\) In the Talmud the argument is developed further.\(^\text{152,153}\)

In his discussion on the quality of Jewish morality, Shubert Spero finds it a difficult text to explain.\(^\text{154}\) He considers the best explanation to be that "if the unfortunate beast is permitted to remain in the community, it serves as a constant reminder of the ugly incident, with its implied shame and indignity for man."\(^\text{155}\)

The following Biblical text also seems 'difficult': "But every firstling ass you shall redeem with a sheep; if you do not redeem it, you must break its neck."\(^\text{156}\) Hertz's comment indicates that the latter would never occur: "This requirement ensured the scrupulous execution of the law of redemption in regard to unclean animals, as everyone would prefer parting with a lamb to losing an ass."\(^\text{157}\)

The motif of executing animals also appears in other Bible texts; for instance: "When an ox gores a man or a woman to death, the ox shall be stoned to death and its flesh shall not be eaten, but the owner of the ox is not to be punished."\(^\text{158}\) The Hertz commentary sheds additional light on the hierarchical position of man and animal: "In order to implant horror against murder, even the beast, although it had not a moral sense, was to be removed from existence, since
it was the cause of the destruction of a human being, made in the image of God."

**e) Sub-category: Constancy of species**

In the Torah, mention is made twice of the concept of *kilayim*—perhaps best translated as ‘mixture’: “You shall not let your cattle mate with a different kind; you shall not sow your field with two kinds of seed; you shall not put on cloth from a mixture of two kinds of material.” And “You shall not sow your vineyard with a second kind of seed, else the crop – from the seed you have sown – and the yield of the vineyard may not be used. You shall not plow with an ox and an ass together. You shall not wear cloth combining wool and linen.”

As mentioned earlier, this law has been included in the category of *hukkim*. Its interpretation has raised difficulties. Various classical commentators have explained the text by stating that man is forbidden to improve Divine creation through the introduction of new species of animals or seeds. It is an approach with which some environmentalist currents may have an affinity, as they believe that man alters nature too much.

Some Talmudic sources claim that the prohibition of *kilayim* is among the Noachide laws and, as such, is applicable to all people. Sages from the house of Menashe exclude some of the commonly accepted commandments from this body of laws; it is interesting however, that they include not only *ever min hahai*, but also prohibitions of *kilayim* and castration. Rabbi Elazar also includes the prohibition of *kilayim* in the Noachide laws; he specifies, however, that this refers only to the mixed mating of animals and mixed grafting, not to mixed sowing or the wearing of certain fabrics.

Several new genetic engineering techniques are currently providing new challenges to the issue of constancy of species. Norman Solomon, one of the few modern Jewish writers to refer to this issue, is doubtful about the contribution that religion can make to determining ethics in this field, despite the fact that Judaism “has a distinct contribution to make to medical ethics.” He states: “it has yet to be shown that traditional sources can be brought to bear other than in the vaguest way (‘we uphold the sanctity of life’) on the problems raised even by currently available genetic engineering.”

**f) Sub-category: sustainable cities**

In contemporary Jewish literature singling out classical environmental attitudes, a frequently-quoted subject is the Levite cities. The Torah mentions 48 cities which, with their surrounding land, were
given to the Levites. This tribe lived off tithes it received, and devoted itself to God’s service.

The Levites had the right to live in specific cities which were spread over the territories of other tribes: “Instruct the Israelite people to assign, out of the holdings apportioned to them, towns for the Levites to dwell in; you shall also assign to the Levites pasture land around their towns. The towns shall be theirs to dwell in, and the pasture shall be for the cattle they own and all their other beasts. The town pasture that you are to assign to the Levites shall extend a thousand cubits outside the town wall all around. You shall measure off two thousand cubits outside the town on the east side, two thousand on the south side, two thousand on the west side, and two thousand on the north side, with the town in the center. That shall be pasture for their towns.” 166

Rashi explained this commandment in the sense that the open space was important from the point of view of urban planning. 167 He held that the prescribed open space around the city served to beautify it. It was forbidden to build houses there, plant vineyards, or till fields.

This approach is a precursor of modern town planning attitudes which try to apply strict ratios between built-up and open spaces.

Cities of refuge

Six of the Levite cities were also made available for those seeking refuge. A person guilty of manslaughter could flee to one of these: “The towns that you assign to the Levites shall comprise the six cities of refuge that you are to designate for a manslayer to flee to, to which you shall add forty-two towns. Thus the total of the towns that you assign to the Levites shall be forty-eight towns, with their pasture.” 168 Avengers could not pursue the manslayer into these cities. The manslayer had to stay there until the high priest died, after which he was free to leave.

The city of refuge fulfilled many requirements which would now be considered as part of the sustainable city concept. Emmanuel Levinas analyzes a Talmud text on this subject, and outlines both environmental and other aspects of the refuge city. 169

He stresses how much importance Jewish tradition attached to assuring the quality of life for the involuntary murderer in these cities. The refuge towns had to be medium-sized cities with independent water supply and markets. 170

In the Talmud there are also several references which express a negative attitude toward cities, some of which have a halakhic meaning. 171 I referred to one of these above when mentioning that
a man cannot force his wife to move from a middle-sized town to a large one. Daniel Elazar claims that the Bible “does not celebrate urban civilization in the manner of the Greeks and Romans. At the same time it is not anti-city per se. As in all things, however, it is realistic about cities and does not romanticize them.”

**g) Sub-category: Shabbat legislation**

Many Halakhot refer to the Shabbat. Some are acts of sanctification; others are prohibitions, the main one relating to work. This definition of work refers to those categories which were used in the construction of the Tabernacle.

Shabbat has become one of the hallmarks of Judaism. On Shabbat, for instance, observant Jews do not construct buildings, operate businesses or work machinery. Neither do they carry money, sell or purchase anything, make or extinguish fires, put lights on or off, drive a car, smoke etc. The list of Shabbat regulations which potentially impact on the environmentally relevant behavior of the observant Jew on that day is too long to be listed. The Shabbat laws are so incisive in the life of Jews that several scholars have asked what their environmental meaning is. A number of interpretations have been proffered.

Well before environmentalism became a mainstream interest, Abraham J. Heschel refers to the meaning of Shabbat in modern society with its ambiguous characteristics of technical civilization, whose forces seem to dominate man rather than being dominated by him.

“Is our civilization a way to disaster, as many of us are prone to believe?” he asks. He adds that humanity is proud of its “victories in the war with nature... landl of the abundance of commodities we have been able to produce. Yet our victories have come to resemble defeats.”

“The Sabbath is the day on which we learn the art of surpassing civilization” is Heschel’s answer. On that day many of the tools of modern society, which have become idols to be used easily for destruction, are set aside. He concludes: “is there any institution that holds out greater hope for man’s progress than the Sabbath.” As mentioned in Chapter Two, his pupil David Novak has developed this argument further when discussing nuclear war.

Ismar Schorsch, Chancellor of the Jewish Theological Seminary, considers that the role of the Shabbat is to humble man: “With its incessant strictures against work, Shabbat reminds man of his earthly status as tenant and not overlord. To rest is to acknowledge our limitations. One day out of seven we cease to exercise our power to tinker and transform. Wilful inactivity is a statement of subservience to a power greater than our own.”
From this Schorsch concludes that, while man can make the planet unfit for habitation, either through accidents or through continual destructive actions, Shabbat limits our activities, thus reminding us that we have to be responsible. He adds: “More immediately, how salutary for the environment if one day a week we turned off the engines to walk rather than drive, to cultivate our inner lives, to relate to family and friends. How much cleaner the air is in Jerusalem on Shabbat!”

Indeed, on Shabbat the observant Jew is limited to where his legs can take him: he cannot even go more than a certain distance beyond the town borders. He cannot travel on this day-off, and his car does not consume non-renewable fuel resources, the burning of which has a polluting effect.

The 1973 oil crisis created a new perspective on the Shabbat Halakhot. The Arab oil boycott, and the resulting fear of the scarcity of oil, induced the Israeli government – like many others – to forbid citizens to use their car one day a week, in order to conserve petrol resources. It then became even more evident that there was a sizable part of the population which already abstained from using cars on one day a week, for religious reasons.

More interpretations

Novak also refers to the relationship between Shabbat and technology. He claims that, while the Jew does not do any forbidden work on the Shabbat, he does not have to stop automated technology, as long as it does not require his intervention. He believes Shabbat observance to teach that a limit should be put on technology, but it should not be crippled or renounced.

Artson uses his interpretation of Shabbat’s meaning to prove that mankind is not the purpose of Creation: “Nor are we the Creation’s pinnacle; recall that the Sabbath Day is created after humanity. We exist to make the world sacred and decent. A part of creation we are also apart of creation.”

Opposing Sunday deregulation

The same motif emerges in statements by British Chief Rabbi Jonathan Sacks. Explaining why both he and his predecessor, Lord Jakobovits, oppose the proposed laws for Sunday deregulation, Sacks stresses that this is despite the fact that the religious members of their community, in particular, stand to benefit from it: “The Jewish Sabbath – Saturday – is a day on which we may neither work nor buy or sell and this carries with it significant disadvantages in a society in which Saturday is the principal shopping day... It meant that some individuals would find it easier to gain employment, since they were will-
ing to work on Sunday but not on Saturday. In terms of interests, therefore, the change in the law clearly benefited Jews...” 178

Sacks opposes Sunday trading because it would take from society its day of rest, the day on which one person could not force others to work, a day from which everybody benefits – irrespective of whether he is religious or not. He adds that the Biblical Shabbat was instituted by Judaism and has been adapted in a slightly different form by others because: “It was a time when relationships of power or exchange were suspended, when we were valued for what we were, not for what we owned or could buy.” It is not difficult to recognize here motifs which are also expressed in attacks by modern environmentalism on consumer society. 179

However, if analyzed from the viewpoint of an environmental impact assessment, the Shabbat laws are revealed as not entirely pro-environment. Many observant Jews put on some lights before Shabbat and let them burn for the entire time, the same goes for heating and cooking appliances. This can lead to a greater use of energy than would otherwise have been the case. To some extent, this counteracts the natural resources saved on the Shabbat, such as not using one’s car. (However, others use pre-set electric clocks to regulate the start and closure of lights and appliances during the Shabbat.)

This comes as an important reminder to the more apologetic voices, who would like to consider Halakha entirely pro-environment. A more correct definition, however, is that Halakha is the religious law for Jewish civil society and, as such, it focuses elsewhere.

The laws of the High Holidays and the holidays relevant to the environment are largely similar to the Shabbat laws. Specific laws with respect to the seven-day Sukkot holiday recall the 40 years of wandering in the desert after the Exodus. Jews commemorate a past that was closer to nature by living in the sukkah, a structure whose roof is covered with natural material, through which one must able to see the sky. The religious meaning, however, is remembering God’s favors on the occasion of the Exodus.

The other holidays, Pesach and Shavuot, also recall the people’s link with nature. On Pesach, the first fruits of the spring barley crop were brought to the Temple. On Shavuot, two loaves of bread from the first wheat crop were brought as part of the festival offering. The Halakhot emphasize a central message: nature is not an independent entity, but an instrument of God.

h) Sub-category: Dietary laws

Kashrut, the dietary laws, are another hallmark of observant Jews. They govern issues such as which animals may be eaten, how they
need to be slaughtered and prepared, and the avoidance of eating meat and milk products together.

The kashrut laws are considered to be primarily ritual ones. For this reason, aspects of these laws which may now be considered of environmental relevance have hardly been given attention by modern Jewish writers. Some of the observations made with respect to Shabbat could also be applied here: abstaining from certain foods because of Divine prohibitions helps people to see consumption as a responsible act, rather than limitless indulgence.

A similar argument can be made with respect to the Jewish fast days. Foregoing food on these days puts additional limits on consumption, and changes one's perspective. So does the prohibition from eating leavened food during the seven days of Passover.

Some modern non-Orthodox writers wish to modify kashrut to reflect modern environmental considerations. This 'eco-kashrut', however, has no roots in halakhic thinking.

The nazirite

The Jewish tradition knows a special case, already detailed in the Torah, of a nazirite, a person who vows to consecrate himself to God for a certain period of time. This vow has three main elements: abstinence from certain foods, not shaving one's hair, and avoidance of contact with dead bodies.

The dietary aspects of this concern grape products: “he shall abstain from wine and any other intoxicant; he shall not drink vinegar of wine or of any other intoxicant, neither shall he drink anything in which grapes have been steeped, nor eat grapes fresh or dried. Throughout his term as nazirite, he may not eat anything that is obtained from the grapevine, even seeds or skin.”

At the end of his period of abstention, the nazirite has to present a number of offerings. One of these is a sin-offering, which – according to one interpretation – indicates that the Torah frowns on those who go beyond Halakha and deny themselves what is not forbidden. The Babylonian Talmud quotes a baraita from R. Elazar Hakappar, who states that whoever denies himself permitted things, as the nazirite does, is a sinner. In his commentary Adin Steinsalz mentions other such sinners, including those who impose additional fast days upon themselves.

The idea of abstinence also appears in modern environmental writing. One may assume that those environmentalists who favor this would look positively on a nazirite. Judaism, however, does not necessarily view abstention beyond the expressly forbidden as a preferable way of life. (This argument also permeates the discussion...
on the Jewish attitude toward vegetarianism, see below.) However, a current of asceticism does exist in Judaism, and was particularly evident in the Middle Ages.\textsuperscript{185,186}

**II. Halakha and Contemporary Environmental Issues**

It is generally assumed that Halakha has given relatively little attention to environmental issues in the past decades. Little is yet known about the instances where these matters have been dealt with, as no bibliography of contemporary Halakha exists. Nonetheless, the questions which occupied generations before the emergence of the industrial/consumer society have continued to evolve. For example, contemporary halakhic responsa may deal with modern types of nuisance.\textsuperscript{187}

*Smoking*

One subject which has received attention in recent years, however, is smoking and passive smoking. This is particularly so since scientific data on its link with cancer have been confirmed. (Doing harm to oneself by smoking is not usually considered an environmental matter, although passive smoking is.) As this is predominantly a health issue, it also falls within the field of contemporary medical Halakha. The latter has enjoyed much more contemporary rabbinical interest than environmental Halakha *per se*.

Responsa opposing smoking go back four hundred years.\textsuperscript{188} One important 19\textsuperscript{th} century rabbinical authority, the Chafetz Chayim,\textsuperscript{189} considers that five transgressions are involved in smoking: injuring oneself, not taking care of one’s soul diligently, and wasting time, Torah study, and money.\textsuperscript{190}

Among contemporary authorities, there is an halakhic ruling by Rabbi Moshe Feinstein that forbids smoking in public places.\textsuperscript{191} He also explicitly forbids the smoking of marijuana.\textsuperscript{192}

David Novak discusses the difference between the use of marijuana and alcohol. He concludes that the latter has undergone an “historical process of socialization and sanctification”. By contrast, marijuana use has not only not undergone such a process but has also “become the symbol of a whole drug culture, a culture based on the hedonistic imperative, ‘If it feels good, do it!’ Can anything be more antithetical to Judaism, with all its emphasis on sacrifice and discipline?”\textsuperscript{193}

Other rulings have been issued against smoking by the late Sephardi Chief Rabbi of Tel Aviv, Chayim David Halevi, as well as Eliezer Waldenberg.\textsuperscript{194} Recently, spiritual leaders such as Israel’s for-
mer Sephardi Chief Rabbi Ovadia Yosef and the Bostoner Rebbe Levi Yitzhak Horowitz have also urged Jews to stop smoking.\(^{195}\)

In various responsa, Halevi refers to other aspects of smoking. In one of these, he concludes that when a son is asked to purchase cigarettes for his father, he must not do so.\(^{196}\) If the son sees the father smoking, he must politely warn him not only of the health risks, but also that he is transgressing a divine commandment.\(^{197}\)

In another responsum, Halevi is asked whether rabbis can release from his vow a person who has sworn not to smoke. His position is that a rabbinical court cannot release him from the vow, because smoking is forbidden for health reasons.\(^{198}\)

The rabbinical authorities do not view the rulings on smoking as part of the environmental debate. They concern one specific issue which comes under the broad category of health protection. As scientific knowledge about the dangers of smoking increases, some halakhic authorities have felt the need to refer to it.

To illustrate the complexity, the state-of-the-art and the lack of central authority in Halakha today: one finds even among ultra-Orthodox rabbinical scholars quite a few heavy smokers. (As smoking on Shabbat is forbidden, this diminishes enjoyment of the day for many of them.)

**Animal experimentation and fur coats**

Another contemporary issue to which some halakhic attention has been given is animal experimentation. R. Yechiel Ya'akov Weinberg, a 20\(^{th}\) century rabbinical authority, permits these activities, stating that the elimination of human pain and suffering are more important than the prevention of animal pain.

Eliezer Waldenberg also deems medical experimentation permissible, while also stressing that efforts must be made to minimize the animals' pain.\(^{199}\) In his view, medical or economic purposes override the prohibitions of both bal tashhit and za'ar ba'alei hayyim. Other rabbinical authorities have discussed this subject and have reached different conclusions.\(^{200}\)

A few years ago, the wearing of fur coats led a concerned Israeli to put a halakhic question to Halevi.\(^{201}\) The person posing the question wrote that he had attended a concert of religious cantors in Tel Aviv, where several women in the audience were wearing fur coats. Demonstrators outside the hall staged a protest against the wearing of fur. The questioner was surprised by the respective stances taken in the argument: the mainly religious concert-goers defended the practice, while the non-religious demonstrators stressed the issue of za'ar ba'alei hayyim.
He wrote: "Initially, also I sided with the opinion of the concert-goers that everything God created in his world was created for man, and thus man is allowed to hunt thousands of animals in order to dress. But my second thought was: is it permissible to kill thousands of animals because a woman wants an expensive fur? If they had worn woolen coats, they would have been equally warm."

In his answer, Halevi analyzes the Torah's attitude to animals. He states that this subject has an ideological-moral importance because God, who created man, also created the animals. Halevi states that many of the Torah's commandments underline its positive attitude toward animals. He adds that rabbinical decisions permit hunting for eating only, but not for enjoyment. Even those rabbis who allow hunting for furs do so only if the animal is killed fast, without suffering. Halevi writes that he has verified with an expert in the field that animals are often caught in very painful ways. He adds, that even if the animal is needed for medical purposes one may only use it provided it is caused as little pain as possible. In light of this, Halevi concludes that killing animals "in a painful way in order to beautify and warm oneself with their skins" is forbidden.

As mentioned in Chapter One, Ovadia Yosef condemns bullfights in a responsum: "The bullfight is in total contradiction to the spirit of our holy Torah. It is an expression of the culture of sinners and cruel people which Jews should not be." Yosef stresses that za'ar ba'alei hayyim is a very serious prohibition. He adds: "Whoever goes to the stadium to watch bullfighting and pays an entrance fee is an associate of destructive people and helps those who transgress."

Vegetarianism

In past decades, there has been some discussion on the Jewish attitude toward vegetarianism. This is a complex matter with many halakhic sources, which have been reviewed by Bleich.

He mentions that, in the past, there were indeed pious individuals who did not eat meat. However, he claims that many of these did so not out of ethical considerations, but because they were afraid that the lax standards of supervision of the Jewish dietary laws would make them transgress. He mentions in this category orthodox immigrants to the United States in the early years of the century.

Another group who preferred not to eat meat were some medieval scholars. They regarded "vegetarianism as a moral ideal, not because of a concern for the welfare of animals, but because of the fact that the slaughter of animals might cause the individual who performs such acts to develop negative character traits, viz., meanness and
cruelty. Their concern was with regard to possible untoward effect upon human character rather than with animal welfare.\(^2\)

Bleich also refers to the writings of Rabbi Kook, who is often quoted on this subject.\(^2\) Kook speaks of vegetarianism as an ideal and notes that Adam did not eat meat. However, according to Bleich, Kook makes those comments with reference to the Messianic era, when humanity will again live in a way similar to Paradise.

Bleich states that those who find meat consumption repugnant are expressing an aesthetic rather than a moral response.\(^2\) Such aesthetic vegetarianism is not incompatible with Jewish teaching. While Judaism does not command the eating of meat, it doesn’t see in vegetarianism a moral ideal.\(^2\)

He adds that there are several recommendations in classical Jewish literature to eat meat on Jewish festivals, as it adds to their festive character. He concludes, “even if there is no normative obligation to partake of meat on \textit{Yom Tov} (religious festivals), abstaining from meat on \textit{Yom Tov} because of considerations of vegetarianism would not have been looked upon with favor by the Sages.”\(^2\)

R. Schwartz points out Rabbi Kook’s stance that God allows humans to eat meat as a concession to human weakness, and considers vegetarianism preferable. Rabbi Kook himself seldom ate meat. Schwartz notes Kook’s explanation that God allowed Noah’s sons to eat meat because “they had sunk to an extremely low level of spirituality” and unable to restrain their lust, may have eaten human flesh.\(^2\) While Schwartz does not claim to be a scholar in the Jewish field, his book \textit{Judaism and Vegetarianism} has received rabbinical endorsement from Shaar Yashuv Cohen, the Chief Rabbi of Haifa.

The former chief rabbi of Ireland, David Rosen – another vegetarian – considers that eating meat today is halakhically forbidden. He writes: “The current treatment of animals in the livestock trade definitely renders the consumption of meat halakhically unacceptable as the product of illegitimate means.”\(^2\) The issue of whether elements of contemporary meat breeding and slaughtering affect the kashrut of a variety of meat products is an important one, and merits further halakhic discussion. Rosen has already reached his own conclusions.

In discussing man’s relationship with nature, Lamm also reflects on vegetarianism: “The Torah’s respect for non-human nature is evident in the restrictions that follow immediately upon the ‘subdue’ commandment: man is permitted only to eat herbs and greens, not to abuse the resources of nature. Vegetarianism yields to carnivorousness only after the Flood when, as a concession God permits the
eating of meat to the sons of Noah. Even then, the right to devour flesh is circumscribed with a number of protective prohibitions, such as the warnings against eating blood and taking human life. The laws of kashrut preserve the kernel of that primeval vegetarianism by placing selective restrictions on man's appetite for meat. His right to "subdue" nature is by no means unlimited. 215

R. Schwartz stresses that God's initial dietary law is a vegetarian one: "I have given you every herb yielding seed which is upon the face of the earth, and every tree, which is yielding seed - to you it shall be for food." 216, 217 He notes that manna, a non-meat food, was the preferred food in the desert. 218

Nachmanides writes that man was initially commanded to keep a vegetarian diet because "living creatures possess a moving soul and a certain spiritual authority which in this respect make them similar to those who possess intellect (people) and they have the power of affecting their welfare and their food and they flee from pain and death." 219

However, Alfred S. Cohen, an orthodox rabbi, asks: "Is it not presumptuousness bordering on blasphemy, to call an act sanctioned by the Torah (and perhaps mandated by Halakha) an act of cruelty, of inhumanity?" 220 He states that, for this very reason, vegetarianism as an ideology must be rejected by the observant Jew. However, he quotes Jonathan Wolf: "All the reasons that people become vegetarians are Jewish reasons." 221 It may be noted that some leading rabbinical scholars in this century have been vegetarians.

To conclude, vegetarianism is one example of authorities generally basing their arguments on the same sources, yet reaching a range of diverse conclusions.

Halevi's responsa

Other contemporary issues in the environmental sphere are referred to in Halevi's responsa. He is asked whether the destruction of surplus food in order to stabilize prices is permitted. 222 Halevi concludes that it is preferable to give the surplus away to poor people who certainly cannot afford to buy it. If this is impossible or there is no need for it, it is not forbidden to destroy the food "in a respectful way." 223

In this responsum, Halevi issues a warning that one should not throw unpackaged sweets or peeled nuts among the congregants on the occasion of a wedding or bar mitzvah, because much of this is broken and thus becomes inedible. 224

Another question addressed to Halevi deals with the use of food-stuffs in any way that makes them unfit for consumption and leads
to their being thrown away (for instance, cutting vegetables and painting them, the sticking of vegetables as a decoration in paintings, or the use of flour for making glue). Halevi considers this an unworthy use of food; it is forbidden if there is a suitable substitute.\footnote{225}

In another responsum, Halevi considers whether it is permitted to keep pets in a cage or fish in an aquarium.\footnote{226} He says that this is not forbidden, as man learns from looking at their behavior. The same goes for a zoo. One even gains an occasion to say a blessing praising God for his creation if one sees unusual animals.

In the past, he adds, the rabbinical authorities did not consider there to be any prohibition if the animals’ needs are provided for. Ovadia Yosef also says that going to the zoo is permitted, because it causes man to be impressed by God’s creation.\footnote{227}

A questioner tells Halevi that he has learned from studying Maimonides that it is permitted to cut down a tree that does not bear fruit, even if he has no need for it; he understands from this that Maimonides considers these trees “not useful and unimportant.”\footnote{228} He asks whether the Halakha has changed today “in view of the fact that ecological scientists have discovered that trees are important in the production of oxygen.”

Halevi answers that Halakha never changes. “God who has given the Torah knew everything and sees everything ahead of time.” Even if a clear scientific discovery is made which contradicts a certain Halakha “we will try with all our force to explain it and if we do not find an explanation we will decide that our intelligence is too weak to understand it [i.e. the Halakha].” However, Halevi interprets the Maimonides ruling in a very complex way; when there is no useful purposes, he scarcely differentiates between the tree without fruit and the fruit-bearing tree. From there he concludes that “the unnecessary cutting of trees that do not bear fruit is not permitted. That is the Halakha and it is in line with scientists’ claim that trees which do not bear fruit are also important.”\footnote{229}

Other contemporary issues

Another contemporary Israeli halakhic discussion deals with the complaint of one agricultural settlement against the other: their quality of life is badly affected by field irrigation with water from a sewage-contaminated reservoir close to their house. The method of irrigation through sprinkling causes a strong odor. The accused settlement claims that stopping this will cause them major economic loss.

Hosea Rabinowitsch rejects the complainants’ claim. He poses the argument that the reservoir was specifically built to collect both rain
and sewage water for irrigation purposes, and that the damage or
nuisance caused by the irrigation is infrequent. In addition, if no
law of the country is infringed, there is no way to make a claim.
Furthermore, even if nuisance has been caused, stopping the irriga-
tion cannot be enforced, due to the subsequent economic losses that
the accused settlement would suffer. Nonetheless, the latter must
make an effort to reduce the hindrance to a minimum.\footnote{Yosef
Gavriel Backhofer enquires whether recycling is a command-
ment, and whether those who do not follow it transgress bal tashhít.
He believes that if one recycles, one gains the reward of following
the bal tashhít commandment, but there is no active commandment.
There is no prohibition against destroying an object if the cost of
‘saving’ it would exceed its value. Adhering to bal tashhít in such a
case has prevented gain, but no destruction has been caused. If all
one has to do, however, is to sort waste and bring it to a collection
point close to one’s home, throwing it elsewhere might be considered
destruction.\footnote{Ovadia Yosef has issued a responsa with respect to laying flowers
on a coffin. This is a problem of adopting non-Jewish habits as well
as transgressing bal tashhít. He replies that it was a custom in Talmudic
times, and also among Egyptian Jews, to put spices and myrtle
branches on top of coffins. To avoid transgressing bal tashhít, he
recommends using only inexpensive wreaths.\footnote{A responsum where environmentalism and Judaism seemingly
meet for totally different reasons concerns the use of disposable
cups for kiddush, the ritual blessing over the wine on Shabbat and
holidays. Feinstein rules that a kiddush cup should be nice and
unblemished. A disposable cup does not meet these criteria and is
not worthy for this purpose. He adds the proviso that, perhaps when
there is no other cup available, it might be used.\footnote{A responsum where environmentalism and Judaism seemingly
meet for totally different reasons concerns the use of disposable
cups for kiddush, the ritual blessing over the wine on Shabbat and
holidays. Feinstein rules that a kiddush cup should be nice and
unblemished. A disposable cup does not meet these criteria and is
not worthy for this purpose. He adds the proviso that, perhaps when
there is no other cup available, it might be used.}}

Yosef Gavriel Backhofer enquires whether recycling is a command-
ment, and whether those who do not follow it transgress bal tashhít.
He believes that if one recycles, one gains the reward of following
the bal tashhít commandment, but there is no active commandment.
There is no prohibition against destroying an object if the cost of
‘saving’ it would exceed its value. Adhering to bal tashhít in such a
case has prevented gain, but no destruction has been caused. If all
one has to do, however, is to sort waste and bring it to a collection
point close to one’s home, throwing it elsewhere might be considered
destruction.\footnote{Ovadia Yosef has issued a responsa with respect to laying flowers
on a coffin. This is a problem of adopting non-Jewish habits as well
as transgressing bal tashhít. He replies that it was a custom in Talmudic
times, and also among Egyptian Jews, to put spices and myrtle
branches on top of coffins. To avoid transgressing bal tashhít, he
recommends using only inexpensive wreaths.\footnote{A responsum where environmentalism and Judaism seemingly
meet for totally different reasons concerns the use of disposable
cups for kiddush, the ritual blessing over the wine on Shabbat and
holidays. Feinstein rules that a kiddush cup should be nice and
unblemished. A disposable cup does not meet these criteria and is
not worthy for this purpose. He adds the proviso that, perhaps when
there is no other cup available, it might be used.\footnote{A responsum where environmentalism and Judaism seemingly
meet for totally different reasons concerns the use of disposable
cups for kiddush, the ritual blessing over the wine on Shabbat and
holidays. Feinstein rules that a kiddush cup should be nice and
unblemished. A disposable cup does not meet these criteria and is
not worthy for this purpose. He adds the proviso that, perhaps when
there is no other cup available, it might be used.}}

Ovadia Yosef has issued a responsa with respect to laying flowers
on a coffin. This is a problem of adopting non-Jewish habits as well
as transgressing bal tashhít. He replies that it was a custom in Talmudic
times, and also among Egyptian Jews, to put spices and myrtle
branches on top of coffins. To avoid transgressing bal tashhít, he
recommends using only inexpensive wreaths.\footnote{A responsum where environmentalism and Judaism seemingly
meet for totally different reasons concerns the use of disposable
cups for kiddush, the ritual blessing over the wine on Shabbat and
holidays. Feinstein rules that a kiddush cup should be nice and
unblemished. A disposable cup does not meet these criteria and is
not worthy for this purpose. He adds the proviso that, perhaps when
there is no other cup available, it might be used.\footnote{A responsum where environmentalism and Judaism seemingly
meet for totally different reasons concerns the use of disposable
cups for kiddush, the ritual blessing over the wine on Shabbat and
holidays. Feinstein rules that a kiddush cup should be nice and
unblemished. A disposable cup does not meet these criteria and is
not worthy for this purpose. He adds the proviso that, perhaps when
there is no other cup available, it might be used.}}

A responsum where environmentalism and Judaism seemingly
meet for totally different reasons concerns the use of disposable
cups for kiddush, the ritual blessing over the wine on Shabbat and
holidays. Feinstein rules that a kiddush cup should be nice and
unblemished. A disposable cup does not meet these criteria and is
not worthy for this purpose. He adds the proviso that, perhaps when
there is no other cup available, it might be used.\footnote{A responsum where environmentalism and Judaism seemingly
meet for totally different reasons concerns the use of disposable
cups for kiddush, the ritual blessing over the wine on Shabbat and
holidays. Feinstein rules that a kiddush cup should be nice and
unblemished. A disposable cup does not meet these criteria and is
not worthy for this purpose. He adds the proviso that, perhaps when
there is no other cup available, it might be used.\footnote{A responsum where environmentalism and Judaism seemingly
meet for totally different reasons concerns the use of disposable
cups for kiddush, the ritual blessing over the wine on Shabbat and
holidays. Feinstein rules that a kiddush cup should be nice and
unblemished. A disposable cup does not meet these criteria and is
not worthy for this purpose. He adds the proviso that, perhaps when
there is no other cup available, it might be used.}}

Thus contemporary Halakhic rulings do exist on some environ-
mentai matters. However, they are dispersed over many sources in
many places, and it seems difficult – if not impossible – to draw any
overall conclusion from these scattered responsa.

III. Expanding Environmental Halakha

The idea that the corpus of Halakha, with its multiple rules and
precedents, could be substantially extended to deal with contem-
porary environmental issues, is occasionally raised in modern pub-
llications.

Focusing on the law of bal tashhít, Helfand suggests that a number
of environmental issues be looked at. "Based on this analysis, numer-
ous common practices must come under scrutiny as possible violations. For example, it seems most likely that the pollution of waters by the use of detergents, especially those containing phosphates which upset the ecological balance and kill fish, is in violation of *bal tashhit*. "The same statement can be made about all activities that produce or cause harmful pollution, e.g. the use of leaded gasoline, the operation of inefficient incinerators, the dumping of factory and other waste, and the like. By further extension, the law might even include the purchase and disposal of all non-recyclable material within its jurisdiction."  

Novak wishes to extend *bal tashhit* to encompass nuclear war. He believes that this law teaches us that we must not destroy our enemies unconditionally and that, similarly, one must not destroy one’s environment unconditionally. "This is certainly the case in a situation like the nuclear threat today, where our destruction of somebody else’s environment would inevitably entail the destruction of our own environment. Indeed, even without the actual use of nuclear weapons, we have painfully seen from the ecological devastation wrought by Saddam Hussein and his Iraqi troops in the Persian Gulf in 1991 that Iraq itself did not escape its horrible effects."  

Quite a similar position on nuclear war was taken earlier by Louis Jacobs, without explicit reference to Halakha: “If the sole justification of war is to defend life, if the result of the war will be the eventual destruction of the defenders themselves as well as the attackers, such a war would be forbidden... Now if nations ever engaged in large-scale nuclear warfare it would be the end of civilization as we know it: millions of innocent human beings will be destroyed and the whole future of the human race placed in peril. In these circumstances there can be no justification for initiating nuclear warfare.”  

The potential of Halakha for dealing with current environmental issues goes far beyond the few examples quoted in the literature. Occasionally Jewish writers have debated how a Jewish state would function, in which the religious commandments would all be operational. In such a state, the basic environmental issues of our times would be decided according to Jewish law. However, this subject raised more interest in the founding years of the state than it does today.

*A trial ground for Halakha’s development potential?*

The codified system of Halakha has a history of over 2,000 years, based on rules and precedents. Rabbis have defined priorities in conflicting situations using legal, pragmatic and value considerations.
Applying the organically-expanded rules of such a system to contemporary environmental issues, where both value and pragmatic judgments have to be made, may yield Judaism's most important contribution in this field. This holds further importance for Orthodox Judaism, which must start to substantiate its claim that a modern state can function according to Halakha. For a variety of reasons, an area such as environmental legislation might provide a strategic trial ground for this.

Israel is behind the Western world in its environmental practice. Developing halakhic concepts could show that, on the domestic front, Halakha is able to confront complex modern problems not only incidentally, but also systematically. Due to the low environmental awareness in Israel, serious controversies are unlikely while halakhic experts rule on solutions to problems. (As only those who accept these halakhic rulings will be affected by them, and the general public is as yet unlikely to show much interest, the field could develop relatively undisturbed.)

The extant corpus of Halakha has been continuously developed in order to apply it to new cases. The contemporary proposals for further extension, such as 'eco-kashrut', are totally beyond the realm of organic Halakhic development. These are attempts to bring concepts into Judaism which have no roots in Jewish law.

Dealing with concrete problems

Why has so little been written on the potential development of Halakha in the environmental field? Several reasons may be considered. Firstly, most of the important contemporary halakhic scholars live in Israel, a country where many Western environmental concerns are not shared by large parts of the population, including many of the Orthodox. The communities that turn for guidance to halakhic scholars are concerned with issues of more personal relevance. Contemporary Halakha deals mainly with practical problems rather than potential ones. This is probably why environmental Halakha has developed much less than medical Halakha (for example).

Apparently, observant Jews are not particularly concerned with environmental issues from a personal viewpoint. They also seem to accept that these matters should be regulated by the general laws of the country concerned. (At first sight, these environmental laws also do not seem to conflict with Jewish laws.)

The limited interest of contemporary Jewish writers in environmental issues may also explain why so few suggestions for halakhic examination of possible subjects have come from modern publications. Several writers who are seriously interested in environmental...
issues are not familiar with the halakhic system; others do not accept it and largely invent for themselves what is Jewish. Again, others are more interested in abstract ethical discussions than practical regulations.

**Applying Halakha to modern society's problems**

In view of the importance of environmental issues in modern society, it is desirable for Judaism to develop Halakhot in this field. Besides halakhic decisions based on precedents, an important role may be played by takkanot (enactments). These are decisions that rabbinical authorities make in the public interest.

In the past, several such takkanot have dealt with hygiene. One is the takkana to wash hands before eating, which is said in the Talmud to have been introduced by King Solomon. The point was to encourage one to clean one's hands from ritual impurity prior to eating certain foods. The takkana was later extended, and today, observant Jews wash their hands and say a blessing before partaking of a meal which includes bread.

Ezra the scribe instituted another takkana, ordering that clothes be washed on Thursday. His aim was both religious and hygienic: to honor Shabbat with clean clothes.

One outcome of such an extended halakhic approach in the future will be that a Jewish position may be heard when governments make major environmental decisions. The viewpoints of rabbinical experts may also provide additional perspectives on current Western rulings, public policies and laws derived from activist pressure.

**Potential for future development**

Much systematic work needs to be done in defining on which environmental issues halakhic scholars could develop a body of contemporary Halakha. There are two possible approaches to this matter. One is that, one day, halakhic scholars may find environmental Halakha of interest, acquire specialized knowledge in this field, and start developing Halakha further. Another is that environmentally-concerned citizens will start to pose halakhic questions in relation to the subject, and will find rabbinical authorities willing to study and answer these questions.

The latter may be the beginning of a long process. There is a potential problem in putting complex environmental questions to rabbis who are unfamiliar with the field. This may initially yield some poor results. However, the point is to get the process started. Thereafter, know-how will increase and with this, the quality of the responsa will improve over the years. Once some rabbinical decision-
makers begin to specialize in the field, further advancement will be made.

Expansion of Halakha and elements of environment

A few examples are given below of questions (A-D) which may serve as a basis for the expansion of Halakha, defining environmental rules according to its principles. I have grouped these questions according to various environmental concerns, as the following table shows:

<table>
<thead>
<tr>
<th>Halakhic Question</th>
<th>Environmental Relevance</th>
<th>Question</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extended producer responsibility</td>
<td>pollution; conservation of natural resources</td>
<td>A</td>
</tr>
<tr>
<td>Responsibility for cleaning up ancient and hazardous waste sites</td>
<td>pollution</td>
<td>(A)</td>
</tr>
<tr>
<td>Limiting polluting activities in view of relatively sensitive persons or cost/benefit considerations</td>
<td>pollution</td>
<td>A, B</td>
</tr>
<tr>
<td>Permissibility of nuclear war and those technological threats which cause global warming</td>
<td>broad; covers protection of natural resources, nature and pollution</td>
<td>C</td>
</tr>
<tr>
<td>Giving nations property rights over their genetic resources</td>
<td>relation with nature; protection of natural resources</td>
<td>D</td>
</tr>
</tbody>
</table>

A) Producer responsibility

A broad area of potential halakhic investigation concerns the issue of responsibility for cleaning up pollution. In Western society, one abstract principle is often stated: the polluter pays. In many situations, however, it is unclear who the polluter is. Today, it seems evident that somebody who throws an empty beer can in a forest is a polluter and should pay a fine - if he can be caught - because he has polluted a public place. If he throws a can into his private rubbish container, he should pay a fee to the municipality which picks up the rubbish and has to bear the costs of burial and landfill operations. If he puts it into a municipal recycling basket, the price obtained for the recycled material may cover the costs of the recycling process.
However, in various Western European societies there is much discussion and, on several occasions, application of the ‘extended producer responsibility’ principle. This forces manufacturers to take responsibility for the recycling or taking back of certain products at the end of their useful life.

This kind of law could be looked at from the halakhic point of view, and analyzed as to whether a halakhically acceptable formula could be found to help solve this problem. How would Halakha deal with such a question? Can a residual obligation for the seller be included in the original purchase agreement, thus enforcing him to take back the product for recycling at the end of its useful life?

Another controversial allocation of obligations is found in the U.S. Superfund Law. Under this retroactive law, the government may force any former owner to clean up a hazardous waste site, irrespective of whether he caused the pollution or not. One may ask whether this is equitable under Jewish law.

In the discussion at the 1998 Harvard Conference on Judaism and the Natural World, one participant referred to a related case in the United States. A conflict arose between a gas-emitting plant and the neighboring community regarding how much pollution needed to be reduced. Corporate interests claimed that it should reach a level where it would not affect those with regular health. Its opponents insisted that the emissions should not hinder those who were particularly sensitive (such as those with a tendency to asthma). A case like this can also be considered an extension of the examples of hindrances referred to in the responsa mentioned earlier in this chapter.

B) The value of life

Yet another problem which often preoccupies policy-makers may also be a potential subject for halakhic inquiry. Certain risks can be eliminated by investing substantial sums of money. So, for instance, many lives can be saved by the addition of new railways and travelers’ consequent move from private car to rail transport. Not only is the railway generally more environmentally-friendly, but it also causes fewer accidents per passenger-kilometer than the car.

Decisions often need to be made in society as to which risks should be prevented at what price. Often these decisions are taken without deep and careful thought. Laws are then established with certain costs for society. Analysis of this reveals that, while some laws save a life at a very modest price, others involve extremely high costs. As this is rather a taboo subject in Western society, little is published on it.

Although little is made public about this, government policy-makers in some countries establish a maximum economic price to be
paid per life saved. This value is then factored into feasibility studies, for example, in relation to transport. Is such an approach compatible with Halakha? Are there Halakhic precedents for it in other areas, and has Halakha anything specific to say on the value of life? (A similar question may arise in the context of risk assessments of changing speed limits on highways.)

C) Risks associated with energy use

One far-reaching question to be asked is: If, in the coming years, the risk of global warming and related phenomena becomes more severe, does Halakha have anything to say about humanity’s behavior and the range of technological threats which may gradually eliminate human life? This may be considered an extension of the question asked by Novak with respect to nuclear war.

Could one then claim that reducing the emission of man-made greenhouse-gases becomes a halakhic matter, in view of the protection of life on earth?

Norman Solomon, one of the few modern writers to refer to these problems, is of the opinion that Jewish sources have little to say on issues such as the choice between nuclear, fossil and other energy sources. He considers that the technical matters involved in energy production in relation to issues like environmental damage and sustainability require scientific research and “have nothing to do with theology.” This position is valid in today’s reality where one can only speculate as to whether, in a halakhic state, rabbis would wish to get involved in such issues. Solomon adds: “The religious might perhaps have something to say about overall strategy. For instance, a religious viewpoint might suggest that scientists should pay more attention to find out how to use less energy to meet demands for goods than to finding out how to produce more energy. However, unless the religious are actually aiming to persuade people to demand fewer goods, such advice – viz. to seek more energy-efficient ways to do things – is merely the council of prudence, not dependent on any characteristically religious value.”

Similarly, Solomon claims that decisions with regard to global warming should be based on prudence – of which he considers that all religious Jews hold a positive view – rather than religious values. He wonders, however, whether Halakha has anything to say on the conservation of natural resources that provide us with energy.

Diamond develops a scenario of how a halakhist might deal with the problem of global warming. The latter would “turn to Western leaders and say, ‘Would you be willing to accept for yourselves the level of economic hardship that will be imposed on the developing
nations if they accept the levels of emissions control you are demanding. If not, you ought to be ready to compensate them for economic losses sustained as a result or to agree to shift more of the reductions to yourselves, given that you are more able to sustain such reductions financially.' " Diamond concludes: “It is always dangerous to speak in the name of others; nonetheless, I believe that such a response is a reasonable if not compelling extrapolation from halakhic sources.”

In this context, it is important to develop further the position Halakha takes toward technologies with an environmental impact.

D) Property rights relating to animals and plants

Bio-diversity, another significant environmental concern, also has aspects of halakhic relevance. The Biodiversity Convention of 1992, which gives nations property rights over their genetic resources, may be analyzed in this light.

Enrichment of Halakha

Halakha is enriched by the study of these and other contemporary issues, and the development of a Jewish position in their regard. It also helps to prepare the ground for further halakhic decisions in other areas of modern society.

This proposed approach may be a long shot. Nonetheless, it can provide some direction for dealing with potential issues that may develop into problems in the future.

A Jewish problem: Halakha has to be developed organically to address modern issues. A worldwide political problem: A more coherent policy and legislative approach has to be developed in the environmental field.

IV. Halakha and Hierarchy

The previous analysis of environmental Halakhot outlines where Judaism broadly stands on environmental issues. It also indicates that it may be possible to develop parts of a hierarchical map, setting out how various environmental elements fit into the Jewish value system. Like many other issues, environmental matters have their own particular relevance and importance in Jewish law. However, they cannot be seen in isolation from the other elements of Judaism.

A hierarchical map would demonstrate the priorities in Jewish thought and, most particularly, how central service of God is. Classical Judaism sees obedience to God’s commandments as one of the Jew’s main roles.
The observant Jew's life is ruled by Divine commandments. While he may transgress on almost all Divine laws if in danger, he should surrender his life rather than commit idolatry.

Animals and plants are clearly inferior to man in the Jewish hierarchy. Nonetheless, the Jew may not do anything he wants with them. In the case of conflict of interest, one has to determine what takes precedence. In Judaism, Halakha determines such priorities. So, for instance, Lord Immanuel Jakobovits, former chief rabbi of Great Britain, stated that Halakha itself teaches the Jewish priority of values: when there is a conflict of values, it determines which are to prevail.

The latter concept remains largely abstract. A monolithic Halakha would be required to give a coherent picture. From this one could even develop a thinking model. One could feed all Halakhot and their argumentation into a computer program based on this model, and a map of halakhic hierarchies could be constructed from that. My main claim is less far-reaching, though: the hierarchical mapping of Halakha, while severely limited by its fragmentation, still can make a useful contribution to understanding the place of environmental issues in Judaism.

By systematically analyzing hierarchies in the various types of classical Jewish sources, a larger map of Jewish views on the environment can be established. This can then be summarized in an integrated manner. Once again, this would require substantial scholarly work.

One could study, for example, how rabbinical decisions have been reached on conflicts concerning issues of relevance to the environment. Similar hierarchical mapping on the ethical and theological aspects of classical Judaism will yield a more complete insight into the attitude of Judaism toward the environment.

A few selected examples will clarify this concept of hierarchical mapping as applied to Halakha.

a) A dramatic example of hierarchy concerns *pikku'ah nefesh*, the principle that life takes precedence over Jewish law. As mentioned, when one's life is in danger all religious commandments – with three exceptions – can be superseded. Novak explains the possible thought process behind the ruling that man must surrender his life rather than serve idols. "When directly confronted by idolatry, both Judaism and Christianity have insisted upon martyrdom... namely death becomes the only affirmation of God possible; it is the only symbol left for the human person to express existentially his or her ultimate concern."

b) While to be fruitful and multiply is a Divine commandment, the Talmud presents the opinion of the sage Resh Lakish that, in
times of hunger in the community, it is forbidden to have sexual intercourse. 248

c) Several insights can be obtained from the Halakhot concerning *bal tashhit*. Maintaining fruit trees takes priority over the successful siege of cities; the latter supersedes maintaining trees that do not bear fruit. However, it was not permitted to even plant one type of tree, the *asherah*. This is a sacred pole – i.e. a tree – dedicated to idolatry: “You shall not set up a sacred post – any kind of pole beside the altar of the Lord your God that you make.” 249

When the Israelites entered the land of Israel, they were to destroy all the places where the pagan gods were worshipped, including the *asherah*: “You must destroy all the sites at which the nations you are to dispossess worshipped their gods, whether on lofty mountains and on hills or under any luxuriant tree. Tear down their altars, smash their pillars, put their sacred posts to the fire, and cut down the images of their gods, obliterating their name from that site.” 250

In one of Ovadia Yosef’s responsa on the tearing of one’s clothes when a family member has died, he says that this commandment takes precedence over the prohibition of *bal tashhit*. 251

It has been noted in this study that Judaism generally opposes wanton destruction. Yet, in the case of the city tainted with idolatry it says: “Put the inhabitants of that town to the sword and put its cattle to the sword. Doom it and all that is in it to destruction: gather all its spoil into the open square, and burn the town and all its spoil as a holocaust to the Lord your God. And it shall remain an everlasting ruin, never to be rebuilt.” 252

The classical Jewish interpretation of the principle of ‘wanton destruction’, however, does not match that of modern environmentalists. There is no mention of such an action’s ever being executed by a Jewish authority, and several sages declared that such a city never existed, nor is likely to exist. However, the ideas embodied in this text provide another indication of Judaism’s priorities in the Bible, and their rabbinic interpretation.

The confrontation of economic and environmental interests in modern society has become a major conflict of values. Precursors of these tensions are already demonstrated in the classical Jewish sources, with some decisions on the application of *bal tashhit* representing a hierarchy of values in this respect. The same is true for the buying-off of nuisances mentioned earlier.

d) The greatly debated text of Genesis 1:28 expresses a hierarchical concept. In the common Jewish view, its meaning is that man is superior to the animal and inanimate worlds. However, one cannot
conclude from that one text either the “right to wanton destruction of nature” or the “custodian concept.”

One may also read the story of Abraham’s sacrifice of his son Isaac as a hierarchical story. Man should not be sacrificed to God, but animals may. In pre-Jewish history, man brings animal sacrifices to God on his own initiative. Abel is the first and “the Lord paid heed to his offering”. Noah does the same and in this case, too, the sacrifice is well received.

When somebody is found murdered in open country, and the murderer’s identity is unknown, the elders of the nearest city break the neck of a young heifer in an uncultivated valley which is neither plowed nor sown. In the Talmud, the sage Mani asks about the killing of the animal: “When man has sinned, why has the animal sinned?” Once again, the hierarchical indication is implicit: the human community expiates the murder by killing an animal.

The fore-mentioned discussion between contemporary rabbis on the permissibility of animal experimentation also expands the hierarchical relationship between man and animals. Experimentation is permitted for human health purposes. Opinions only differ as to what purposes are meritorious and in which way animal experimentation should be carried out.

A further hierarchical insight on the man-animal relationship may be obtained from the Bible: “When you see the ass of your enemy lying under its burden and would refrain from raising it, you must nevertheless raise it with him.” Some may read this text to mean that the animal’s well-being takes priority over one’s enmity toward its owner. Other interpretations, however, suggest it mainly as a command to be charitable to one’s enemy. This follows from the previous verse, where one is told to return one’s enemy’s lost ox or ass to him.

e) Another example concerns hindrance legislation. A large number of hindrances have to be moved out of the city or away from neighbors’ facilities. However, neighbors cannot force a religious school out of their courtyard. In Jewish law, learning takes priority over preventing noise hindrance.

The rank accorded to learning in Jewish religious philosophy is well illustrated by an example from Mishnah Avot. R. Jakob says: “He who is walking by the way and rehearses what he has learnt, and breaks off from his rehearsing and says, How fine is that tree, how fine is that field, him the Scripture regards as if he were guilty against himself.” Reading this text from a hierarchical point of view it means: learning Torah is superior to admiring nature.

Also, existing nuisances often enjoy more legal protection than new ones not yet established. (Similarly, in contemporary general
legislation, the legislator is often more lenient with nuisance created by existing factories, for example, than with potential nuisance by new establishments that are yet to be built.)

Many more examples may be added to this list in the course of further research. The establishment of such an increasingly complex hierarchical map will be an important tool toward a more detailed definition of where Judaism stands with respect to environmental issues.\textsuperscript{262}

Conclusions

A number of conclusions can be drawn from the above.

1) A substantial corpus exists of ‘environmental Halakha’, based on rabbinic decisions issued over many centuries. Using today’s definitions of environmental issues, one could compile what Halakha had to say on them until – say – the beginning of the 19\textsuperscript{th} century. One would then find that Halakha held positions relevant to many of the major environmental issues in pre-industrial/mass consumption society. Some of these applied to Jews everywhere; others, only in the land of Israel.

2) It is reasonable to conclude from the Halakhot identified so far, that there is general Jewish concern for environmental matters as they are currently understood, even if the efforts to reach an integrated view of this have been limited. Hierarchical mapping is proposed as an important tool for clarifying the Jewish approach to environmental issues.

3) Many centuries ago already, Halakha limited the potential impact a Jew is allowed to make on various parts of the ecosystem and the environment. In some fields, modern environmentalism attempts to achieve results in line with what Judaism practiced. The practical attitude of Judaism does not make it a precursor of the ideological approach of modern environmentalism, as its mode of reasoning and its underlying values are very different.

4) A ‘Jewish environmental codex’ would refer \textit{inter alia} to the explicit halakhic prohibitions against causing pain to animals. There is general rabbinical agreement that one is not permitted to wantonly destroy fruit trees or other elements of nature, or anything else useful to man, including oneself. There is some disagreement as to what extent useful natural resources may be destroyed for one’s benefit and to what extent things may be destroyed which are not of benefit to man. Halakha is clearly in favor of moderation and opposed to conspicuous consumption.\textsuperscript{263, 264} Its multiple rules also set behavioral limits to such an attitude. However, man is permitted to supersede almost all laws, including those regarding nature, to save his life.
Man is also told to protect his own health and that of others. In a broader sense, Halakha limits man's power to act according to his inclinations. Shabbat limits man's activities, as do the laws of kashrut. There are also laws with regard to some sexual matters that are of environmental relevance.

5) The small number of modern Jewish publications on environmental issues, and the apparent lack in many writers of a broad background in the environmental disciplines, suggest that only a part of the rabbinical discussions in the Talmud and later literature relating to environmental concerns have been listed, even in the bibliographies.

6) The relevance of responsa literature to environmental issues remains wide open as a field for additional scholarly research. As contemporary responsa cannot be accessed systematically, it is difficult to know to what extent modern rabbinical authorities have dealt with environmental issues.

7) Against the background of the existing halakhic infrastructure, I claim that Halakha could further be developed organically to deal with a series of other contemporary environmental issues. The simplest way to set this process in motion may be by environmentally-concerned Jews' posing questions to halakhic authorities.

Notes for Chapter Three

1 There may be a second Jewish message to humanity with respect to a desirable attitude toward the environment. If they wish to, non-Jews can study halakhic rules and Jewish thoughts on environmental issues, and then evaluate what relevance these have for themselves or mankind in general. Although Judaism does not court converts, some Jewish thinkers claim that its spokesmen should take the initiative in conveying its ideas to the rest of the world. There is no consensus on this opinion. Those who hold this point of view would do well to present Jewish environmental attitudes from an overall perspective, rather than following the present fragmented trend. They could point to Judaism's stands on issues such as limiting humanity's freedom of action with regard to nature as well as other people.

2 Nature cannot be considered sacred but land can be, if God's presence is there: "And He said, 'Do not come closer. Remove your sandals from your feet, for the place on which you stand is holy ground.' " Exodus 3:5.

3 Throughout this thesis, unless explicitly stated, the word 'Torah' denotes the written law only.

4 Yosef Karo (1488–1575) was born in Toledo and died in Zefat.

5 Born in Krakow in 1510; died there in 1572.

6 "It is for this reason that after the tenth century we do not find any takkanot (enactments) that applied to Jews worldwide. Even the famous takkanot of Rabbenu Gershom, which included the prohibition against polygamy and the prohibition against opening a letter addressed to someone else, were not considered binding on significant segments of


9 Rabbi Salomo son of Isaac, the most popular Bible and Talmud commentator, who lived in France, 1040–1105.


12 No reference has been made in this study to the laws of cultural impurity, although certain aspects of these are concerned with health protection. These laws lend themselves to very diverse interpretations and should be analyzed as a specialized corpus. It should be noted, however, that most of the laws are no longer applicable.

13 Both idolatry and incest are mentioned among the "abhorrent things" done by the nations living in the land of Israel prior to the Israelites: they were "spewed out" by the land because of these activities. (See Leviticus Chapter 18.)


16 These are categories of Halakha which mainly refer to animals reared by man.

17 Particularly shillu'ah baken.

18 "No concept has been cited more often in the discussion of Jewish attitudes to nature than bal tashhit. It appears in virtually every article which attempts to articulate what constitutes the Jewish attitude to nature. Although it is based on a relatively small collection of sources, certainly in comparison to the Jewish attitude to animals, it has nonetheless been interpreted in different, and often contradictory ways." Eilon Schwartz, Tzar Ba'alei Chaim and Bal Tashchit: Two Jewish Perspectives on Environmental Ethics. Masters Thesis, 1994, p. 66.


20 "Thus, in the war against Sennacherib, Hezekiah stopped all the fountains in Jerusalem. He was taken to task for it by the Talmudic sages: the Sifre considered this a violation of the Biblical commandment equal to chopping down a fruit tree, and in another incident, Elisha counseled such a scorched earth policy; Maimonides considered this a temporary suspension of the law for emergency purposes (hora'at sha'ab), a tactic permitted to a prophet, but an act which is not normative." Norman Lamm, A Jewish View of the Environment and the Ecology. Lecture given at the Technion, Haifa, Israel, October 7, 1996.


22 Sifre 203 (Finkelstein edition) on Deuteronomy 20: 19. "From where do we know that one may not divert the arm of a river (which supplies water to a city)? Because it is said 'You shall not destroy (the city's) trees in any way. It is said, 'by swinging an axe against them.' This would seem to prohibit only the use of iron tools. From where do we know then not to divert the flow of water? Since it is said 'You shall not destroy its trees,' this includes all modes of destruction."

23 Bavli Shabbat 67b.


25 Ibid., 6:8.
26 Ibid., 6:9.
27 David ben Samuel Halevi (1586–1667) lived in various places in Eastern Europe. Best known for his commentary Turey Zahav on *Shulhan Arukh*.
30 Responsa *Yabia Omer* Part 5, Section 12. Hebrew.
32 Personal communication.
37 *Sefer batlaintukh*, commandment 529. This work was written by Rabbi Aaron Halevi from Barcelona around 1300. Jerusalem: Eshkol, 1946. Hebrew.
38 Ibid.
39 Bavli *Shabbat* 140b.
41 Bavli *Berakhot* 30b.
42 Bavli *Berakhot* 31a.
44 Abraham Ibn Ezra, a scholar in many fields, was born 1092 in Toledo, and died 1167 (perhaps in Rome). His best-known works are his Bible commentaries.
45 E. Schwartz, op. cit., p. 70.
46 Ayali’s approach in the field of *bal tasbhu* can be extended to another extensive area of future research: how have environmental Halakhot, as expressed in the rabbinical literature, developed over the centuries?
48 Bavli *Bava Kama* 91b.
49 Rabbi Moses Sofer was born in Frankfurt am Main in 1762 and died in Bratislava in 1839.
50 Responsa Chatam Sofer 2:102. Hebrew.
55 Rabbi Immanuel Jakobovits, op. cit., p. 89.
56 Dr. Shimshon Ettinger of the Hebrew University. In: ibid., p. 91.
57 Ibid
58 Jacob Ettlinger, born in 1798 in Karlsruhe, Germany. He died in 1871.
59 Ettlinger was asked about a patient with a rare disease of which another patient had already died. The doctors wondered whether a body can be operated upon in order to identify the cause of death and save a life. Ettlinger opposed the autopsy for a variety of reasons: the dead person has no obligation toward the living, while the living are obliged to respect the dead; and it is not certain whether the new patient’s life would
be saved by this action while it is certain that the dead body would be desecrated. Responsa Binyan Zion 170. Hebrew.

60 Mishnah Bava Batra 2:3. Hebrew.


62 According to Rashi, somebody who performs circumcisions.

63 According to Rashi, a bloodletter.

64 Bavli Bava Batra 21a.


66 For example, the case of the smell of medicinal incense mentioned in the Radbaz responsa below.

67 Ilani refers to the comment of Rabenu Tam – a 12th century French scholar – on Bavli Bava Batra 23a, where he says that even if somebody sold an asset to somebody else and it turned out that the buyer causes him nuisance, he can change his mind retroactively as this is an “erroneous transaction”. The seller thought that he could stand the nuisance but now it turns out that he cannot, and thus he can annul the transaction. Ibid.

68 See the examples mentioned in the Mishnah Bava Kama 7:7, one of which is the prohibition against raising small cattle in the Land of Israel, but not in its deserts.

69 Ilani refers here to a responsum of Rabbi Hayim Faladji which deals with a case where somebody wants to sell his courtyard to a Christian and the neighbors oppose this out of fear that a missionary school will be established there. Faladji mentions that one should give the neighbors financial assistance to buy the courtyard. He also mentions that he once helped people to buy out the courtyard of a non-Jewish prostitute. Responsa Ruach Chayim 2:155.7. Published in Izmir 1877.


71 Ibid.


74 Bavli Ketubot 110b and Rashi there.


76 Maimonides commentary on Bava Kama 7:7.


78 Leviticus 6:4.


80 Meiri, Pesachim 27. Hebrew. Menahem ben Salomo Meiri was a Talmud commentator who lived in Perpignan, 1249–1306.

81 Bavli Bava Kama 82b.

82 Mishnah Bava Batra 2:3. Hebrew.

83 Albeck on Bava Batra 2:3, op. cit.

84 The matter of burial at home is mentioned in I Samuel 25:1: “Samuel died, and all Israel gathered and made lament for him; and they buried him in Ramah, his home.” (The JPS translation here does not do full justice to the Hebrew text, which seems to indicate that he was buried at home.)


86 Rashi on Mishnah Bava Batra 2:9 explains that the east wind is hot and blows gently, and thus does not bring the wind to the town. Tosafot there says that the West wind is hard and will remove odors from the town. Maimonides in the Code, Laws of Neighbors,
Chapter 10:4, states that the East wind is hot and thus diminishes the nuisance of odors. Hebrew.


88 Bavli Bava Batra 22b.

89 Rabbi Yom Tov ibn Ashvili was born in Spain circa 1260; died in Seville circa 1328.


91 Shulhan Arukh Hoshen Mishpat, section 155. Hebrew.


93 Ibid.

94 Ibid., p. 137.

95 Ibid., p. 138.

96 Ibid., p. 143.

97 Ibid., p. 144.

98 For an example see Bavli Bava Batra 22b/23a.

99 Rabbi Meir ben Baruch of Rothenburg was born about 1215 in Worms, and died in Ansheim prison in 1293.


101 Rashba, Responsa 2:45. Hebrew.

102 Rabbanenu Asher born around 1250 in Germany and died in 1327 in Spain.


105 Teshuvot Ritva, no. 124. Hebrew.

106 Its author, Rabbi Israel ben Petachyah Isserlein, was born in Regensburg 1390 and died in 1460 in Vienna-Neustadt, where he was chief rabbi.


108 Rabbi David ben Solomon ibn Avi Zimra was born in Spain in 1479 and died in Palestine in 1573. He left Spain in 1492 when the Jews were expelled from there, and lived intermittently in Cairo and Zefat.


110 Rabbi Isaac ben Sheshet Perfet was born in Barcelona in 1326 and died in Algiers in 1408. He served as a rabbi in important communities in Spain and after 1391 fled to Algiers, where he became Chief Rabbi.

111 Responsa Rivash 196. Hebrew.

112 Rabbi Levi ben Chaviv, born in Zamora (Spain) around 1483, died in 1545 in Jerusalem.

113 Teshuvot Maharalbach Section 97. Hebrew.

114 Rabbi Shlomo Cohen, the Maharschach, lived in the Ottoman Empire, and died in 1602.


119 Exodus 23:10–11.

120 The ultra-Orthodox community and some of the modern Orthodox do not accept this transaction, and abstain from eating vegetables grown in the seventh year in Israel.

121 The issue also has political overtones. Israeli political scientist Shlomo Avneri argues that religion cannot be removed from the public sector, stating, "To believe that religion can be restricted to the individual, that it can be privatized, is to disregard the nature of religious faith as a sociological and anthropological phenomenon. Even in the most


123 Ibid., p. 126.

124 See also Talmudic Encyclopaedia, Vol. 22, columns 111–186.

125 "Jews were not to have a king before they acquired their land. Then they would know that from God they received it and not from a human majesty. Moreover, if after the coronation of a king the king might be inclined to forget this, he was to be annually reminded of his error, when all Jews would appear in the very city in which he held his court with their first fruits which they presented to the priests with a declaration of gratitude to God from Whom they received the gift of the land. And if feudalism might emerge later, as the king and others accumulated land unto themselves, the Law had its antidote in the form of a redistribution of the land every fifty years. Alienation of the land in perpetuity was well-nigh impossible." Emanuel Rackman, One Man’s Judaism. Tel Aviv: Greenfield, 1973, pp. 181–2.

126 Leviticus 25:23.

127 Gordis cites Psalm 24, which expresses the same principle: “The earth is of the Lord’s and the fullness thereof, the world and those who dwell therein.” Gordis, op. cit., p. 11.

128 Ibid.

129 Ibid.


132 Ibid.

133 Gordis, op. cit., p. 11.


136 Deuteronomy 11:15.


138 Exodus 23:19.

139 Exodus 23:12.

140 Deuteronomy 5:13–14.

141 Hertz on Deuteronomy 5:14.

142 Eliezer Waldenberg allows a cow to be milked on Shabbat by a gentile because it is better to transgress one of the rabbinical rules with respect to Shabbat than the Biblical prohibition of causing animal suffering. Ziz Eliezer 2:3. Benzion Meier Uziel says that if no gentile is available, a Jew is also allowed to milk on Shabbat for the same reason. Responsa Piske Uziel Besheelot Hazman 20.


144 Deuteronomy 25:4.

145 Gordis, op. cit., p. 10.

146 Richard Schwartz, Judaism and Vegetarianism. Marblehead, MA: Micah, 1988, p. 10. He adds that this point is echoed by Rabbi Solomon Efraim Lunichitz, author of *Kli Yakar*: “What was the necessity for the entire procedure of ritual slaughter? For the sake of self-discipline. It is far more appropriate for man not to eat meat; only if he has a strong desire for meat does the torah permit it, and even this only after the trouble and the inconvenience necessary to satisfy his desire.” Ibid., p. 11. Quoted from The Commandments and Their Rationale. Jerusalem: Abraham Chill, 1974, p. 400.
The laws for sacrifices of the individual, the community and the priests are given in Leviticus Chapters 1–7, while Leviticus Chapters 8–10 describe the start of worship in the tabernacle.


Leviticus 20:15–16.


This refers to the argument as to whether the animal enjoys the sin, and thus should be killed. It is argued that even trees which are used for idolatry have to be destroyed, and they certainly do not enjoy the sin. Bavli Sanhedrin 55a.

The Talmud perceives here that communities often do not wish to be reminded of criminal acts committed in their midst. This universal motif is also shown implicitly in the way in which returning Jews were received in The Netherlands after the Second World War. See J. Presser, Ondergang, The Hague: Nijhoff, 1965, Part 2, p. 505ff. Dutch.

Such views can only be subjective. Yehudah Levi comments: “The explanation seems eminently reasonable.” Private communication.

Spero, op. cit., p. 156.


Hertz, op. cit., p. 310.

Leviticus 19:19.

Deuteronomy 22:9–11.

Nachmanides gives the following reason for kilayim: God has created species which should not change for eternity as long as He wishes it so.

Bavli Sanhedrin 56b.

Ibid.

Solomon, op. cit., p. 44.

Numbers 35:2–5.

Rashi on Numbers 35:2.


Levinas points out that refuge towns could not be small because the avenger could easily penetrate them without encountering much resistance. Nor could they be too large, because the avenger could wander there unobserved. He also mentions that there should be sufficient inhabitants, so that a person attacked could call for help; if the number of inhabitants decreased, efforts should be made to find replacements. Many other precautions were made to increase the city’s livability and safety of the refugees. Levinas underlines the ‘humanitarian urbanism’ of these cities. People had to live there in the fullest sense of the word: “Life signifies that which merits that name; life in the plain sense of the term: exile, yes, but not prison, not jail, not concentration camps. Life that is life.” There is even a baraita that when a student has to be exiled in a refuge city, his teacher must go with him, because the right to instruction is an elementary requirement of life. Levinas observes: “Can one live without culture? Can one really live without Torah? Here, the Torah is part of the refuge city. Torah, for cultural needs, maybe, and not in its ultimate essence.” Ibid.

The sage Rava states that the community of Israel says: “Lord of the world, do not judge me as one judges people from the big city, explained by the medieval commentator Rashi as a big market town where there are merchants and peddlars] among whom
one finds robbery, adultery and perjury.” (Bavli Eruv 21b). The sage Rav says that it is preferable for people to move to relatively new towns where, because of their newness, sins are few (Bavli Shabbat 10b). Elsewhere he tells another Rabbi not to live in a town where no horse neighs and no dog barks (Bavli Pesahim 113a).

Daniel Elazar, A Biblical View of the City and the Walls Within It. Lecture given at the Department of Philosophy, University of Toronto and Holy Blossom Temple, 1995. Elazar adds: “It cannot be accidental that Cain, the first murderer, also founds the first city (Genesis 4:17). In some respects, this can be seen simply as the linkage between urbanization and violence upon which many have commented. But the Biblical story is more subtle than that. Cain murders out of passion, he is not a reasoned killer, not cold-blooded nor one who murders for the love of it. He simply cannot control his passions at a particular moment or in a particular situation. Significantly enough, cities are places where density and the pressures related to it lead people into uncontrollable acts of passion, acts which are often violent in character, far more so than rural areas. That is one dimension of the Biblical account. Another is that people who commit violence need to protect themselves against retribution.” Ibid.


Ibid.


Ibid., p. 201.

Gordis already saw this early on in the Jewish-environmental discourse: “The Hebrew dietary laws represent a complex of sources, practices and values which have as yet been incompletely explored.” Robert Gordis, A Basis For Morals: Ethics in a Technological Age. Judaism, Winter 1976, Vol. 25, No. 1, p. 36. This observation remains valid to the present day.


Bavli Nazir 19a.

There are ascetic traditions both in Judaism and in environmentalism, but a comparison is beyond the scope of this study.

However, death from alcohol use is usually considered outside the boundaries of specifically environmental concerns.


For example, that caused by a doctor’s practice in a condominium rather than the noise caused by a store in the courtyard (as mentioned in the Talmud). For a more detailed discussion of this issue, see Yitzhak Shiff, May a Doctor Open a Clinic in a Residential Building When the Neighbors Object? Assia- Articles, Summaries and Surveys on Matters of Halakha and Medicine. June 1981, Vol. 29–30, pp. 54–62.


Israel Meir Ha-Kohen, born 1838, died 1933.

As summarized by Slae, op. cit., p. 39.


Ibid. on Yore Deah 3: 35. Hebrew.

194  Slae, op. cit., p. 41.
196  Responsa Ase Lecha Raw Tome Six, Tel Aviv, 1985, 58. Hebrew.
197  Halevi states that there are two conflicting commandments with regard to this issue: on the one hand, one must honor his parents and on the other, it is prohibited to “put a hindrance before a blind man.” Ibid.
198  Ibid., Tome Two, 1979, 8.
200  Bleich, op. cit. The various rabbinical positions on this issue are described on pp. 231–232.
201  Responsa Mayim Chayim, Tome Two, Tel Aviv 1995, 50. Hebrew.
202  Ibid.
204  Ibid. Yosel states that za’ar ba’alei hayyim is a prohibition based on the Torah and therefore is more stringent than ba’al tashhit and rabbinical prohibitions concerning Shabbat.
205  Ibid. He also quotes the Talmud (Bavli Avodah Zarah 18b) where R. Simon ben Pazzi comments that the verse “happy is the man who has not... taken the path of the sinners” (Psalms 1:1) refers to those who do not go to contests between wild beasts or between wild beasts and man.
206  Ibid., pp. 237–250. Bleich makes the controversial claim that not only are Halakhot binding because their principles are Divinely revealed, but that the same goes for ethical principles. “Accordingly, even though Judaism certainly does not posit vegetarianism as a normative lifestyle, its value as a moral desideratum can be acknowledged only if support is found within the corpus of the Written or Oral Law.” (pp 237–238).
207  Ibid., p. 240.
209  I concur with this opinion from personal experience.
210  Bleich, op. cit., p. 246.
211  Ibid., p. 250.
212  R. Schwartz, op. cit., p. 4.
214  Rosen has not laid this down in a formal halakhic decision. (Personal communication.)
215  Lamm, Technion lecture, op. cit.
216  Genesis 1:29.
218  Ibid.
221  Ibid. Wolf is leader of the North American Jewish Vegetarian Society, an affiliate of the London-based organization.
223  Halevi quotes the Talmud, Bavli Ta'amit 20b. Every Friday, Rav Huna would send a messenger to the market to buy all the surplus vegetables remaining in the market. These would be thrown in the river. He did not give them to the poor, as they would
then count on it and this, in turn would affect market prices. He did not give them to
the animals, because one should not give human food to animals. R. Huna’s reason
for doing this was that, if he did not, the market people left with their wares would
no longer bring vegetables to the market. Ibid.
224 Ibid.
226 Ibid., 69.
227 Ibid.
228 Ibid., Tome 2, 65.
229 Ibid.
230 Hosea Rabinowitsch, Middat ba’Acharayut leNezek Ektologi beHalakha. Techumim 7.
231 Yosef Gavriel Backhofer, HaMichzur baHalakha, Techumim 16. Alon Shevu’t: Tsomet,
236 See Manfred Gerstenfeld, Environment and Confusion. Jerusalem: haKibbutz haMeu-
237 The medical field is one area where Halakha has developed in recent years, due to
the problems Jewish hospitals, physicians and patients face when confronted with
new techniques and technologies touching upon birth and death. Sickness is an obvious
personal concern of those who address questions to halakhic authorities.
238 The Talmud mentions that the eating of pig meat was allowed
during the seven years of Joshua’s conquest of the Land of Israel. Bavli Hullin 17a.
239 Novak, Social Ethics, op. cit., p. 59. Novak discusses a hierarchy of symbols. He quotes
the Talmudic principle that “the Sabbath was made for man, not man for the Sabbath”
(Bavli Yoma 85b) to illustrate this.
241 Bavli Bava Kama 82a.
242 Solomon, op. cit., p. 41.
243 Ibid.
244 Diamond, op. cit., p. 18.
245 Rabbi Immanuel Jakobovits. In: Etta Bick, ed., Judaic Sources of Human Rights. Proceed-
ings of an IDI colloquium. Tel Aviv: Israel-Diaspora Institute, [1988], p. 90.
246 There are other examples of prohibitions being temporarily abandoned in special
situations. For example, the Talmud mentions that the eating of pig meat was allowed
during the seven years of Joshua’s conquest of the Land of Israel. Bavli Hullin 17a.
247 Novak, Social Ethics, op. cit., p. 59. Novak discusses a hierarchy of symbols. He quotes
the Talmudic principle that “the Sabbath was made for man, not man for the Sabbath”
(Bavli Yoma 85b) to illustrate this.
248 Bavli Ta’anit 11a. Modern environmental reading might assume that this is in order
not to bring children into the world, when the carrying capacity is low. Rashi read it
differently saying that man should impose suffering upon himself in difficult times.
Rashi on Bavli Ta’anit 11a.
Deuteronomy, 16:21. The Jewish Publication Society translation does not render the idea of planting a tree very well. Rashi points out, based on Sifrei, that it is forbidden to plant such a tree even if one has no intention of worshipping it.

Deuteronomy 12:2–3.

Responsa Yabia Omer Part 6, section 32. Hebrew.


Hertz points out the ‘great negative message’ of the story, saying: “In that age, it was astounding that Abraham’s God should have interposed to prevent the sacrifice, not that He should have asked for it. A primary purpose of this command, therefore, was to demonstrate to Abraham and his descendants after him that God abhorred human sacrifice with an infinite abhorrence.” J.H. Hertz, ed. The Pentateuch and Haftorahs, 2nd ed. London: Soncino, 1961, p. 201. Hertz also refers to Moses’ warning not to follow the habits of the surrounding people, as written: “You shall not act thus toward the Lord your God, for they perform for their gods every abhorrent act that the Lord detests.” Deuteronomy 12:31.

Genesis 4:4.

Genesis 8:20–21.


Bavli Yoma 22b.

Exodus 23:5.


As Norman Lamm puts it: “This is not by any means an anti-esthetic statement. It is a ruling on the relative merits of seeking the Creator through His handiwork (nature) and through His revelation (Torah).” Torah uMadda: The Encounter of Religious Learning and Worldly Knowledge in the Jewish Tradition. Northvale, New Jersey: Jason Aaronson, 1994, p. 147.

Some attention should also be given to what is not said. According to Jewish tradition, all commandments must be respected. Nonetheless, it is considered that the ten commandments express the essential teachings of Judaism. The Decalogue deals with the Jew’s relationship to God, his family, fellow man, Shabbat and even animals. It does not contain a specific commandment not to pollute, to abstain from wanton destruction or to deal respectfully with nature.

Opposition to conspicuous consumption also overlaps with opposition to the accumulation of power. This is clearly stated in case the Israelites want to appoint a king: ‘Moreover he shall not keep many horses or send people back to Egypt to add to his horses, since the Lord has warned you, “You must not go back that way again.” ‘ Deuteronomy 17:16. For Biblical attitudes toward power, see Moshe Greenberg, Biblical Attitudes toward Power: Ideal and Reality in Law and Prophets. In: Edwin B. Firmage, et al., eds., Religion and Law: Biblical-Judaic and Islamic Perspectives. Winona Lake: Eisenbrauns, 1990, pp. 101–112.


The responsa of only a few of the leading contemporary halakhic authorities are available on the Bar Ilan University’s Judaic Library CD-Rom. Halevi for instance, is one of those who is not.