

## Waste Not: Re-Empowering a Halakhic Environmental Principle

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Rabbi Yair Bacharach (1639-1702), one of the most important German halakhic decisors of the premodern era and author of the responsa, *Chavot Yair*, was a student of Rabbi Mendel Bass, (who was himself the student of Rabbi Yoel Sirkis, the Bach). The *Chavot Yair* was considered a leading halakhic authority of his time and was the rabbi of the German towns Koblenz, Mainz, and Worms, respectively. In addition to his halakhic expertise, he was also an authority in science, history, music, and poetry and actually authored a 46-volume encyclopedia that has yet to be published.

It is a truism in the halakhic community that the category of *bal taschit*, the prohibition on wanton waste, is totally irrelevant to questions of environmental protection. This is because Maimonides, echoing the early *midrashim*, says that in order for a behavior to fall into this category, it must be *derekh hashchata*, truly wanton, bearing no benefit to the person performing the action. Thus, deforestation to increase cropland, the use of unrecyclable plastics in a million consumer items, and burning coal to produce electricity to power our civilization would not be prohibited because of *bal tashchit* because all have immediate benefits.

This *teshuva* of the *Chavot Yair* seems, initially, to reinforce the sense that the prohibition of *bal tashchit* is easily overcome by the prospect of convenience or profit. Rav Bachrach is asked whether it is permitted to cut down a fruit tree that has grown in such a way as to block the windows of a house. In the very first paragraph, he immediately rules that this *is* permitted because *bal tashchit* does not apply in cases where the waste is not wanton. Even clearing the view from the window is sufficient motivation to allow one to destroy the tree.

However, Rav Bachrach doesn't leave the issue there. He takes steps to strengthen *bal tashchit*, noting that it is a Torah mitzvah and that small inconveniences do not constitute sufficient need to override it. For this reason, he suggests that rather than cutting down the entire tree, the owner ought to cut back the offending branches from the window, despite the fact that this method requires pruning the tree every time the branches grow back at the cost of some time and energy. A little bother, says the *Chavot Yair* does not exempt you from the

prohibition of wanton waste. This implies that when we have a choice between environmentally sustainable ways of meeting our needs and unsustainable practices, we should choose the sustainable way even if it requires more effort.

This position is bolstered by the words of the Talmud (*Bava Kamma 91b*), which are hinted at but not quoted explicitly in the *teshuva*.

*Since the Torah concludes that even a tree that produces fruit may be cut down (for profit), what do we learn from the Torah's statement that we may only cut down trees 'That are not trees for food?' It is to give precedence to cutting down a barren tree over a tree whose fruit is used for food.*

Our religious orientation should be to find ways that do not waste natural resources when it is possible. The contribution of the *Chavot Yair* is that this is required even when it may cause some extra effort and cost on our part. .

Rabbi Dov Linzer, President and Rosh Yeshiva of Yeshivat Chovevei Torah, has written:

The value underlying *bal tashchit*... speaks directly to the impact that our actions have on the life-sustaining resources of our planet, of which the climate itself is first and foremost. Yet the halakhic formulation of this prohibition takes on a more limited scope, and permits destroying objects when the destruction is not wanton and serves some human purpose, even one of mere financial benefit... The reason for this is that when an act serves a benefit it is not considered destructive ... Additionally, it may reflect halakha's desire to not overly restrict human behavior in a way that would be unduly burdensome.

This does [not] mean that a person has a blanket license to act in ways that destroy the planet's resources merely to... save her from the effort and expenses it would take to reduce her carbon footprint. Halakha is clear that we must prioritize using a non-fruit bearing tree to one that is fruit-bearing. When we act to serve our needs and desires, we must do so in a way that minimizes the impact on the life-sustaining resources of the planet...

It is indeed the role of halakha to balance between the ideal and the practical. However, regarding *bal tashchit*, the pendulum has swung too far toward permitting unsustainable practices. This Tu BiShevat, let us resolve to take on a little more bother and expense (just a little!) to find the sustainable way to meet our needs.

שאלה ע"ד אילן אפרסקין שעלה מאליו בחצירו ומאפיל עליו חלונו אי שרי למקצייה פשוט דשרי דכל שהוא לצורכו מותר כבב"ק ר"ד צ"ב לצורך עצים לבנין ויש לו ג"כ אלני סרק רק שעצי מאכל מעולה בדמים שדין ומינה דאם אין לו עצים זולת אילן מאכל דשרי לכרותו לבנין או לעצים ולא אסרה תורה רק דרך השחתה בלי צורך...

Question regarding a peach tree that has grown of its own accord in the courtyard and is darkening/blocking the window. Is it permitted to cut it? It is obviously permitted for everything that is done for [human] need is permitted as it says in Bava Kamma 92: [one can cut a tree down] if one needs wood for building. He also had non-fruit bearing trees but if the wood of fruit trees is worth more we take from it. If one doesn't have any trees except fruit trees, it is permitted to cut them down [to acquire wood] for a building or for trees. The Torah only forbid one who destroys for no purpose...

א"נ בצורך ואפשר לו להספיק צורכו באלני סרק וכן אמרינן שם דאם אילן מאכל זה יונק המחליש טעם אילן אחר החשוב ממנו מותר להכריתו וה"ה ה"נ מאפיל עליו דמש"נ מזיקו בחוש הטעם או בחוש הראיה וכ"ש הוא דהיזק חוש הראיה תדיר ויש קפידה טפי והרא"ש כתב שם דאם צריך למקום האילן ג"כ שרי לקצו. ומ"מ נראה דאם אפשר לו לתקן היזקו בחציצת קצת ענפיו המאפילים עליו לא יקצו אף על פי שבהמשך השנים חוזרים וגדילי' ויצטרך לחזור ולטרוח משום טרחו כל דהו לא נתיר מה שהוא סכנה עם /אם/ ל"ה דאוריית'. ונ"ל גם מ"ש הרא"ש להתיר לצורך מקום ר"ל שרוצה לבנות שם או לתקן לו במקומו דבר הנצרך לו מש"כ להרחיב חצירו ולצורך טיול ותוס' אור ורווח בעלמא לא אמר.

If so, it is done for a need, and it is possible for him to fulfill his needs with a tree that does not produce fruit and so it was said there that if a fruit tree is damaging another tree that is more important, it is permitted to cut it [the fruit tree] down. So too, the ruling is the same here where it is darkening/blocking the window, because what is the difference if it is damaging one's sense of taste or sense of sight. It is certainly the case that [the tree] damaging one's vision is more common and there is greater concern for it. Rosh wrote there that if one needs the place of the tree it is also permitted to cut it down. However, it appears possible that he could fix the damage by cutting off just some of the branches [rather than the entire tree] that is blocking the window and not the whole tree even though in the coming years the branches will grow and return and he will be bothered again to cut them. We do not permit [one to cut down the whole tree] in order to prevent a minor bother that which is a danger if its a biblical prohibition. It appears to me also that what Rosh wrote to permit [the cutting down of the tree] if one needs the space, this would only apply if one wants to build there or to put something there that one needs such as expanding a courtyard. For the need of traveling [through that space] or increasing the light and open space [in the area], he did not say [it was permitted].

ויש לי קצת מבוכה בהאי ל"ת דשרי רבנן במזיק אילנות אחרים או במעולה לבנין. ופשטן של דברי המקרא במ"ש רק עץ אשר תדע כי לא עץ מאכל אותו תשחית וכתובנית מצור וכו' משמע דמעץ זה בונה סוללות ומצור על העיר ומ"מ דוקא מאילני שאינם של מאכל ואיך נתיר לצורך בנין וטעם כל דהו. ונ"ל דגם חז"ל הרגישו בזה ובאשר בלתי מסתבר שתאסור התורה השחתת עץ מאכל אם נצרך למצור ולכיבוש השונא כ"ש אם

מלחמת מצוה הוא לכן פרשו בבריית' רק עץ אשר תדע זה אילן מאכל כי לא עץ מאכל הוא זה אילן סרק ור"ל דרישא דקראי אוסר השחתת עצי פרי דרך השחתה לנקום באויב כמו שאמר ג"כ בספרי שאין מונעים מהם אמת המים ונקטם הרמב"ם בהדדי ספ"ו ממלכים והדר אמר להתיר שניהם לצורך מצור. וקמ"ל שגם לצורך מצור יקדים סרק למאכל.

I have a bit of confusion regarding this biblical prohibition which the rabbis permitted in a case where the tree was damaging other trees or [the wood of the tree] was better for building. The straightforward meaning of the words of the Torah "Only trees that you know do not yield food may be destroyed; you may cut them down for constructing siegeworks against the city that is waging war on you, until it has been reduced" (Devarim 20:20) implies that only non-fruit bearing trees can be cut down. How is it that they [fruit trees] can be cut down if one needs to build or for any other minor reason? It appears to me that Chazal also felt that it was illogical that the Torah would forbid destroying a fruit tree if it was needed to lay siege and conquer the enemy. All the more so this would be the case regarding a divinely commanded war. Therefore, it was explained in the *braitta* that "only trees you know" these are fruit trees, "it is not a fruit tree" this is non-fruit bearing tree. What it means to say is as follows: the beginning of the verse forbids cutting down a fruit tree for no reason than to punish the enemy as it also says in the Sifrei that one cannot withhold the water wells [from the enemy]. Rambam paired these together at the end of Chapter 6 of the Laws of Kings and said it was permitted to do both for the needs of a siege. From this it can be concluded that even for the need of laying siege, one should [cut down] the non-fruit bearing tree before the fruit tree.

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