

**THE JEWISH PROHIBITION AGAINST WASTEFULNESS:
THE EVOLUTION OF AN ENVIRONMENTAL ETHIC**

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Abstract

Bal tashhit, the Jewish prohibition against wastefulness and destruction, is considered to be an environmental ethic by Jewish environmentalists. This dissertation investigates whether this prohibition has the historical basis to be considered an environmental principle, or whether its environmental interpretation is mainly a contemporary development. To this end, the study uses the methodology of tradition histories. This research critically examines the conceptualisation of *bal tashhit* as it develops throughout history. The dissertation traces the evolution of *bal tashhit* through the examination of relevant passages dealing with wastefulness and destruction in Hebrew Scripture, rabbinic literature, *halakhic* codes, responsa, the accompanying commentary traditions, as well as the works of scholars in the field of Religion and Environment. It highlights the important stages in the development of the prohibition, notes the most influential scholars, and uncovers the critical vocabulary that emerges. The most significant finding of this research is that in the earliest stages of development (c. 1st-2nd centuries C.E.), the prohibition against wastefulness was conceptually linked with the prohibition against self-harm. This connection was rejected by sages of the Talmud (3rd-6th centuries C.E.) who asserted that these prohibitions are qualitatively different from one another. Ultimately, the separation between the two prohibitions became the predominant view, and their connection disappeared almost entirely from Jewish literature. When combined, these prohibitions create an environmental ethic: wastefulness and destruction are harmful to oneself; and in environmental terms: to harm the environment is to harm oneself.

In memory of my grandfather
and in honour of my family

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Table of Contents

Chapter 1 – Introduction.....	1
1.1 Introduction.....	1
1.2 Literature Review.....	10
1.2.1 Environmental Scholars.....	12
1.2.1.1 Group One.....	12
1.2.1.2 Group Two.....	18
1.2.2 Scholars of Rabbinics.....	23
1.2.2.1 Group One.....	24
1.2.2.2 Group Two.....	24
1.2.2.3 Group Three.....	25
1.2.2.4 Group Four.....	25
1.3 Purpose.....	27
1.4 Methodology.....	29
1.5 Chapter Breakdown.....	30
1.6 Review and Analysis.....	31
Chapter 2 – Bible and Bible Commentaries.....	37
2.1 Introduction.....	37
2.2 Goals.....	38
2.3 Deuteronomy 20:19-20.....	43
2.3.1 Context.....	44
2.3.2 <i>Midrash</i>	44
2.3.3 Post- <i>Midrashic</i> Commentary.....	50
2.3.4 Synthetic Analysis.....	67
2.3.4.1 Between Ecocentrism and Anthropocentrism.....	68
2.4 Genesis 9:5.....	78
2.4.1 Context.....	78
2.4.2 <i>Midrash</i>	79
2.4.3 Post- <i>Midrashic</i> Commentary.....	79
2.4.4 Synthetic Analysis.....	90
2.5 Leviticus 19:27.....	97
2.5.1 Context.....	97
2.5.2 <i>Midrash</i>	98
2.5.3 Post- <i>Midrashic</i> Commentary.....	99
2.5.4 Synthetic Analysis.....	103
2.6 2 Kings 3:19, 25.....	107

2.6.1 Context.....	108
2.6.2 Commentaries.....	108
2.6.3 Synthetic Analysis.....	109
2.7 Conclusions.....	111
Chapter 3 – Classical Rabbinic Texts.....	121
3.1 Introduction.....	121
3.2 Trees.....	123
3.3 General <i>Bal Tashhit</i>	130
3.4 <i>Bal Tashhit DeGufa Adif</i>	153
3.5 Idol Worship and Foreign Cultural Practices.....	157
3.6 New Testament.....	164
3.7 Conclusion.....	167
3.7.1 Idol Worship.....	170
3.7.2 New Testament.....	171
3.7.3 Wastefulness and Self-Harm.....	173
Chapter 4 – Codes and their Cognates.....	177
4.1 Introduction.....	177
4.2 Fruit Trees and Wastefulness/Destruction in General.....	179
4.3 Idolatry.....	187
4.4 Mourning.....	191
4.5 Self-Harm.....	197
4.6 Hunting.....	206
4.7 Ritual Slaughter.....	208
4.8 Education and Moralistic Issues.....	209
4.9 Conclusion.....	211
Chapter 5 – Responsa.....	215
5.1 Introduction.....	215
5.2 Fruit Trees.....	217
5.2.1 Analysis.....	224
5.3 Inculcation of Moral Dispositions.....	226
5.3.1 Analysis.....	228
5.4 Self-Harm.....	229
5.4.1 Analysis.....	233
5.5 <i>Derekh Hashhatah, Tzorekh, Hana'ah</i>	234

5.5.1 Analysis.....	238
5.6 Conclusion.....	240
Chapter 6 – Conclusion.....	244
6.1 Introduction.....	244
6.2 Morality and Rationality.....	254
6.3 Ecocentrism.....	256
6.4 Anthropocentrism.....	258
6.5 Economics.....	262
6.6 Religious vs. Environmental Approaches.....	264
6.7 Further Research.....	269
Bibliography.....	270
Appendix A: Appendix to Bible Chapter.....	293
Appendix B: Appendix to Rabbinic Chapter.....	300

Transliteration

Consonants:

Het = Ḥ

Kaf = K

Khaf = Kh

Kof = Q

Tzadi = Tz

Vowels:

Tzeireh maleh = ei

Sheva na and *Sheva nah* are generally not distinguished.

There are variant spellings for certain names and terms. My spellings are consistent throughout, but when they appear in a citation, or in the bibliographical details of a source, I have left them in the form they appear in those texts.

For forenames and surnames of individuals, there is some deviation from this system due to the commonly accepted spellings in English. For instance, Yitzhak is spelled with a k instead of a q, unless the bibliographical details provided in the source indicate a variant spelling.

Words with two or more vowels in a row have the syllables separated with an apostrophe (e.g. *hana'ah*).

Foreign words that have not been adopted by the English language are italicised.

Abbreviations

Rabbinic texts are often presented in their shortened form according to the following schema:

Mishnah = m, Tosefta = t, and Babylonian Talmud = b.

The Jewish Prohibition Against Wastefulness: The Evolution of an Environmental Ethic

Tanhum Yoreh

1.1 Introduction

Climate change, global food shortages, and extreme weather events are just a few of the topics to which the media, in all its forms, devotes almost daily coverage. Clearly, the environmental crisis has risen to prominence, vying for our attention. All these factors are compounded by enormous human population growth and political unrest. Religion continues to play a strong role in people's lives as they try to cope with the volatility of our times in hope of finding solace and enlightenment in age old traditions (occasionally including newly developed ceremonies). Environmentalists and scholars of the environment have also begun to turn their attention to religion, rereading traditional teachings in light of contemporary knowledge. Jewish and Christian wisdom – or lack thereof – on the environment has become a lightning-rod in current debate.

Those unfamiliar with the field of Religion and Environment often ask how the two are related. Roger Gottlieb, a scholar of Religion and Environment and the editor of *The Oxford Handbook on Religion and Ecology*, has defined the relationship in the following manner: “For as long as human beings have practiced them, the complex and multifaceted beliefs, rituals, and moral teachings known as religion have told us how to think about and relate to everything on earth that we did not make ourselves.”¹ Religions in the “Abrahamic” traditions are accompanied by codes of law and ethical systems about how humans should conduct themselves in reference to God, fellow humans, and the natural world. Some argue that these precepts are directly related to the way humans have related to their ecological surroundings over the past millennia.

¹ Roger S. Gottlieb, “Introduction: Religion and Ecology – What Is the Connection and Why Does It Matter?,” in *The Oxford Handbook of Religion and Ecology*, ed. Roger S. Gottlieb (New York: Oxford University Press, 2006), 3.

Indeed, in “The Historical Roots of Our Ecologic Crisis” – a seminal essay that sparked the development of the entire field of Religion and Environment – Lynn White Jr. argued that the Judeo-Christian tradition is to blame for the modern environmental crisis.² He based this position on Genesis 1:28: “God blessed them and God said to them, ‘Be fertile and increase, fill the earth and master it; and rule the fish of the sea, the birds of the sky, and all the living things that creep on the earth.’”³ More specifically, White Jr. argued that “Christianity...insisted that it is God’s will that man exploit nature for his proper ends,”⁴ and that “By destroying pagan animism, Christianity made it possible to exploit nature in a mood of indifference to the feelings of natural objects.”⁵

White Jr.’s argument elicited a lively academic debate, with many agreeing and disagreeing with him to varying degrees. In fact, an internet search indicates that his article is cited in academic scholarship over 3,000 times. In the four decades since the paper was published, Religion and Environment has been established as an academic field of study. Mary Evelyn Tucker and John Grim made significant headway in expanding the field through the creation of the Yale Forum of Religion and Ecology, which, among many other things, acts as a central academic resource for scholars in the area.⁶ A growing number of universities offer courses on the topic from a wide variety of approaches. White Jr.’s essay has remained central to the field over the years, and students in undergraduate university courses dealing with environmental thought from a religious or philosophical approach are often required to write a critique of the paper. Peter Harrison summarises the many ways in which White Jr.’s argument has been criticised:

Historians have pointed out that the exploitation of nature is not unique to the West; biblical scholars have maintained that the relevant passages of

² Lynn White Jr., “The Historical Roots of Our Ecologic Crisis,” *Science* 155, no. 3767 (1967): 1203-1207.

³ All quotes in English translation from the Hebrew Bible are taken from the NJPS version unless otherwise stated: *The Jewish Study Bible*, ed. Adele Berlin and Marc Zvi Brettler (New York: Oxford University Press, 2004).

⁴ White Jr., “Our Ecologic Crisis,” 1205.

⁵ *Ibid.*

⁶ See <http://fore.research.yale.edu>

the Judeo-Christian scriptures do not sustain the interpretation placed on them by White and his followers; social scientists have claimed that no correlation presently obtains between Christian belief and indifference to the fortunes of the environment.⁷

Those critiquing White Jr. make up the first wave of scholarship on Religion and Environment, which continues until today. Due to White Jr.'s attack on the environmental record of the Judeo-Christian tradition, adherents of these religions were the first to produce responses to his essay. Not surprisingly, given to the accusatory nature of White Jr.'s claims, these responses, written by both scholars and clergy, were often superficial and emotionally driven.⁸ Like White Jr., religious environmentalists and scholars of Religion and Environment have used biblical verses in a polemical manner to strengthen their arguments and deliver their messages. They highlighted biblical teachings that lend themselves more readily to demonstrating the environmental concern of the Bible through ideas such as stewardship and sustainability. However, by relying almost exclusively on scriptural sources to bolster their arguments, and not consulting the rich, millennia-long, interpretive traditions of these sources, their environmental readings of the primary texts often lack a historic basis.

Reading environmental themes into primary Hebrew texts, beginning with Scripture (written torah) but including Talmud (oral torah), and other legal and homiletical texts, allows for a new and important multilayered commentary tradition. It is, however, important to understand the extent to which environmental ideas are supported by tradition histories. Ultimately, if the commentary traditions do not sustain environmental readings of the primary texts, it is unlikely they will be as widely adopted as environmentalists may hope. At the very least, consulting the commentary traditions

⁷ Peter Harrison, "Subduing the Earth: Genesis 1, Early Modern Science, and the Exploitation of Nature," *Journal of Religion* 79, no. 1 (1999): 86-87.

⁸ For example, see N. J. Loevinger, "(Mis)reading Genesis: A Response to Environmentalist Critiques of Judaism," in *Ecology and the Jewish Spirit: Where Nature and the Sacred Meet*, ed. Ellen Bernstein (Woodstock, Vermont: Jewish Lights Publishing, 1998) 32-40, and R. C. J. Wybrow, *The Bible, Baconianism, and Mastery over Nature: The Old Testament and its Modern Misreading* (New York: Peter Lang Publishing Inc., 1991).

more widely will prevent many scholars from simply anachronistically embedding environmental ideas into primary sources in a purely ideological manner.

One of the most common critiques of White Jr. was that he neglected to acknowledge the “environmental” content of Genesis 2:15 found in the very next chapter of the Genesis narrative: “The Lord God took the man and placed him in the garden of Eden, to till it and tend it.” Within religious environmental discourse, scholars who highlight this passage argue that any dominion granted in Genesis 1:28 was tempered by Genesis 2:15, recasting the role of humanity as stewards, not dominators. Elsewhere, I have argued against such conclusions at length, primarily because these verses were not read that way traditionally.⁹ Although Jeremy Cohen has conducted a much more thorough study of the tradition histories of Genesis 1:28, he did not extend his study to Genesis 2:15, and therefore his disagreement with White Jr.’s thesis warranted revisiting the topic. In my own review of the Jewish commentaries on Genesis 1:28, I arrived at significantly different conclusions than Cohen concerning Lynn White Jr.’s position. In the introduction to his book, Cohen claims:

Although most readers of Genesis casually assumed that God had fashioned the physical world for the benefit of human beings, Gen. 1:28 evoked relatively little concern with the issue of dominion over nature. One might, of course, find that other biblical texts did evince such concern, but in the exegesis of Gen. 1:28 other issues so eclipsed the matter of dominion that the little attention it receives in this book might appear to be unfair or perhaps altogether unnecessary. Yet, the imbalance accurately reflects the data and itself comprises a significant result of this book.¹⁰

In my own work, I have argued that the vast majority of the commentators on this verse take what I termed a “dominionist” approach. While it is true that few had expanded this view with detailed glosses on what this dominion included, they nevertheless saw the

⁹ See Tanhum Yoreh, “Environmental Embarrassment: Genesis 1:26-28 vs. Genesis 2:15,” in *Vixens Disturbing Vineyards: Embarrassment and Embrace of Scriptures*, ed. Tzemah Yoreh, Aubrey Glazer, Justin Jaron Lewis and Miryam Segal (Boston: Academic Studies Press, 2010), 558-591.

¹⁰ Jeremy Cohen, *Be Fertile and Increase, Fill the Earth and Master It: The Ancient and Medieval Career of a Biblical Text* (Ithaca, New York: Cornell University Press, 1989), 5.

dominion of humans over the rest of creation as true mastery, one unmitigated by responsibilities of stewardship, at least in their readings of this specific verse. This does not mean that they necessarily condoned human devastation of the environment. Had they perceived the notion of dominion as limited by environmental responsibility, however, they would most likely have mentioned this responsibility specifically in the context of this verse. Moreover, some of the more detailed glosses on the dominion aspect of Genesis 1:28 come from the most influential and important historical Jewish scholars, whose impact on Jewish theory and practice is still felt today. This means that their focus on human mastery over the rest of the created world, and the lack of attention to issues of environmental responsibility, has had a significant effect on the reading of Genesis 1:28 over the centuries.

For instance, one such individual is Saadiah ben Yosef (882-942, Egypt and Babylonia), the head of the important Babylonian academy of Sura and the most important and influential Jewish thinker of his time. As Sarah Stroumsa states: “Saadya’s towering figure dominates the emergence of medieval Jewish scholarship in all fields: linguistics and poetics, philosophy and exegesis, polemics and law.”¹¹ Although his gloss on Genesis 1:28 is too lengthy to present here in full, Saadiah Gaon had by far the most detailed account of the ways in which humans hold dominion over the natural world. Some choice excerpts illustrate his approach:

...From the elephant teeth, bones, ivory [may be made] as is described of Solomon: “And Solomon made a large chair of ivory.” (II Chron. 9:17)...“Ruling” includes the [use of] equipment by which man may gain dominion over the animals. Over some of them [he has dominion] with mines and hobbles and over others with cords and reins and yet others with pits and collar [and]¹² hunting equipment...Others are with cages and towers and the like until God teaches {man} everything [about this]...[Ruling over] “Fish” includes [the use of] tactics in hunting fish from the bowels of the sea and rivers, preparing those permissible [for eating] with cooking utensils so that {one} can eat it, taking pearls from

¹¹ Sarah Stroumsa, “Saadya and Jewish *Kalam*,” in *The Cambridge Companion to Medieval Jewish Philosophy*, ed. Daniel H. Frank and Oliver Leaman (Cambridge, UK: Cambridge University Press, 2003), 71.

¹² All brackets in this quote, with the exception of these, belong to the translator.

the shell, benefitting from the parts of the skin and bones that one prepares, and whatever applies to this...“[Ruling over] the birds” accords the [various] tactics to hunt birds that fly in the air and to make them work for us until they [actually are used] to hunt each other...¹³

The dominion of humans over the rest of creation in Saadiah Gaon’s gloss to Genesis 1:28 is all encompassing and offers no hint of an accompanying ethic of stewardship to moderate human mastery.

Moses ben Naḥman (Naḥmanides/Ramban) (1194-1270, Spain and Land of Israel), the intellectual and spiritual leader of Iberian Jewry in the 13th century is another such figure. Yaakov Elman describes Naḥmanides as “one of the most influential scholars that Spanish Jewry produced, one whose versatility and scope still astonish.”¹⁴ Although his gloss to Genesis 1:28 is significantly shorter, its strong dominionist theme is abundantly clear:

He [God] gave them power and governance on the earth to do as they pleased with livestock and insects and all things that crawl in the dust; and to build, to uproot plants, to mine copper from the earth’s mountains and the like.¹⁵

A final example (although there are others) is Ovadiah Seforno, one of the prominent commentators included in publications of *Miqraot Gedolot*.¹⁶ Avraham Grossman describes Seforno as “one of the most important Bible interpreters of Italian Jewry and greatest scholars of the latter part of the Middle Ages and the Renaissance.”¹⁷ In his gloss on Genesis 1:28, Seforno wrote: ““And master it:’...and prevent the animals from entering your domain, and you will rule them...and subdue them with your nets to make them

¹³ Saadiah Gaon, *Rabbi Saadiah Gaon’s Commentary on the Book of Creation*, ed. and trans. Michael Linetzky (Northvale, New Jersey: Jason Aronson Inc., 2002) 113-115.

¹⁴ Yaakov Elman, “Moses ben Nahman/Nahmanides (Ramban),” in *Hebrew Bible/Old Testament: The History of Its Interpretation, Volume I: From the Beginnings to the Middle Ages (Until 1300), Part 2: The Middle Ages*, ed. Magne Saebo (Gottingen, Germany: Vandenhoeck & Ruprecht, 2000), 416.

¹⁵ Moses ben Naḥman, *Peirushei HaTorah LeMoshe ben Naḥman*, Ninth Edition, ed. Ḥaim Dov Chavel (Jerusalem: Mossad HaRav Kook, 1976), 28.

¹⁶ Scripture accompanied with translations and commentaries on the same page.

¹⁷ Avraham Grossman, “Rabbi Ovadiah Seforno,” in *Jewish Bible Exegesis: An Introduction*, Second Edition, ed. Moshe Greenberg (Jerusalem: Bialik Institute, 1992), 98.

surrender to your work.”¹⁸ Even though the three figures mentioned here are but a few of the many Bible commentators whose works are well-known, they are among the most important commentators of all time, whose interpretations cannot be dismissed as marginal. Their dominionist understanding of the verse has set the predominant discourse for the past millennium. Thus, at least insofar as the tradition histories of this particular verse, Lynn White Jr.’s thesis does merit consideration.

In my original essay on the tradition histories of Genesis 1:28,¹⁹ I did not include an important point raised by Peter Harrison. Harrison lauds Cohen, as do I, for his important analysis from a methodological perspective, yet critiques him for failing to extend his analysis of commentary on Genesis 1:28 beyond the medieval era. According to Harrison, “had Cohen extended his labours into the early modern period, a somewhat different picture of the influence of that text would have emerged.”²⁰ He argues that the rationalisation of human enterprise starting in the seventeenth-century fits much more closely with White Jr.’s thesis than his critics allow. Harrison writes: “The rise of modern science, the mastery of the world that it enabled, and the catastrophic consequences for the natural environment that ensued, were intimately related to new readings of the seminal Genesis text, ‘Have dominion’.”²¹

The above analysis demonstrates that if one were to look only at the tradition histories of Genesis 1:28, it would be more difficult to dismiss White Jr.’s argument. Yet, a single verse does not make a complete traditions history, and many of the critical responses to White Jr. pointed to another verse, Genesis 2:15. Here, too, the tradition histories, at least from a Jewish perspective, do not align with the favourable environmental perspective that contemporary environmentalists argue derives from the verse. As I state elsewhere, “there is ... little tradition of environmental interpretation for

¹⁸ Ovadiah Seforno, *Be'ur HaSeforno al HaTorah*, ed. Ze'ev Gotleib (Jerusalem: Mossad HaRav Kook, 1980), 16.

¹⁹ Tanhum Yoreh, “Environmental Embarrassment.”

²⁰ Harrison, “Subduing the Earth,” 96.

²¹ *Ibid.*

Genesis 2:15.”²² Although there are a few examples of glossators who offer a glimmer of an environmental ideology in their interpretations of Genesis 2:15,²³ these interpretations are rare and are often only implicit or contrived. In fact, when looking at the tradition histories of Genesis 2:15, it is even possible to find a commentary trajectory that reads Genesis 2:15 in light of Genesis 1:28 (contrary to contemporary environmentalists, who read 1:28 in light of 2:15). For instance, Bahya ibn Paquda (c. 1050- c. 1120 Spain) in his philosophical tome *Sefer Hovot HaLevavot (The Book of Direction to the Duties of the Heart)* 4:3 wrote:

For He has commanded man to work for his livelihood in this world, by tilling the soil, for instance, by ploughing and sowing, as it is said (Gen. 2:15: ‘And the Lord God took the man, and put him into the garden of Eden to dress it and keep it,’ by using the animals for his benefit and for his food, by building cities and preparing all kinds of food, by using women and their fertility for the sake of increasing one’s offspring – for all these is man rewarded, if he acts for the sake of God also, in his heart and intention, whether his act is completed or not...²⁴

In this dominionist (and misogynist) reading, the “keeping” of the garden entails no elements of stewardship. The opposite is the case; man’s keeping of Eden is through dominion and subjugation of the rest of creation, including women.

Using one verse to establish an entire paradigm without properly exploring and exposing its tradition histories is a precarious endeavour. Scripture can be taken out of context. Interpretation and reception of scripture is often different over generations and geographical locations. One verse can be used to counter another verse, and in such cases weak arguments may be deconstructed through equally weak counter-arguments. In my opinion, the way to establish strong arguments that can stand the test of time is through a critical analysis of the tradition histories of concepts and ideologies. The interpretation of Genesis 2:15 as an environmentally conscious verse is, by and large, an unsupported

²² Yoreh, 578.

²³ For instance, see Isaac Abarbanel’s gloss to Genesis 2:15, also found in Yoreh, 2010.

²⁴ Bahya ibn Paquda, *The Book of Direction to the Duties of the Heart*, trans. Menahem Mansoor (London: Routledge and Kegan Paul, 1973), 242.

modern environmental construct. Regrettably, the tradition histories of the verse do not wholeheartedly support their current usage. This is not to say that the environmentally oriented interpretations of Genesis 2:15 are wrong, only that they are not supported by any lengthy historical tradition.

Other verses and concepts, however, have a more solid historical basis, and hence possess the potential to be more useful for environmental ethics. One such concept is *bal tashhit*, usually translated as “do not destroy,” which is a prohibition against wasteful and destructive behaviour. This prohibition is understood to originate from Deuteronomy 20:19-20:

19: 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? 20: 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 on you, until it has been reduced.

At first glance, it might be difficult to see how these verses are the source of a general prohibition against wastefulness and destruction. The unstated assumption made by the rabbis (which, over the course of this study, will be examined in much greater depth) is that the Torah provided an extreme circumstance regarding fruit trees. If one is prohibited from engaging in a “scorched earth” policy against one’s enemies during a time of war, to cut down their fruit trees, then *a fortiori* cutting down fruit trees in times of peace is clearly also forbidden. Eventually, this prohibition was extended beyond fruit trees to include all forms of waste and destruction.²⁵

I have uncovered at least one other verse from Scripture, Genesis 9:5, that is strongly linked to the concept of the prohibition against wastefulness and destruction, and

²⁵ Most scholars considered non-fruit bearing trees outside the prohibition. This will be discussed in the body of the dissertation. Also, the concept of “*bal tashhit de gufa adif*” is introduced in the Talmud, which is literally translated that the prohibition of destroying one’s body takes precedence (over other forms of waste and destruction). This, too, will be related to in much greater detail in the body of the dissertation.

which is completely absent from the recent discourse surrounding *bal tashhit*. Indeed, even the historical commentary record demonstrates that only a handful of sources over the past 2,000 years identify such a link between Genesis 9:5 and Deuteronomy 20:19-20. Genesis 9:5 states: “But for your own life-blood I will require a reckoning: I will require it of every beast; of man, too, I will require a reckoning for human life, of every man for that of his fellow man.” Many biblical exegetes interpreted this verse as a prohibition against suicide. Unlike the idea of stewardship missing from the tradition histories of Genesis 1:28 and 2:15, the absence of a connection between Genesis 9:5 and *bal tashhit* in the tradition histories is for very different reasons. In the earliest stages of conceptualisation of *bal tashhit*, during the *tannaitic* era (c. 70-220 C.E.), there existed a strong link between self-harm and wastefulness. The relationship was defined in two different ways. 1) Through *a fortiori* reasoning: if a person is not permitted to waste or destroy material, how much more so is a person prohibited from wasting/destroying his own body. 2) Through analogy: if a person is prohibited to engage in self-harm, so too, is a person prohibited from wasting/destroying material. During the *amoraic* era (c. 220-550 C.E.) this relationship was severed and redefined, though not altogether eliminated. These key stages in the conceptualisation of the prohibition against wastefulness and the legal and exegetical ramifications of this severing of this connection will be greatly elaborated upon in the body of the dissertation. As such, only by analysing the prohibition through its tradition histories can each significant stage of its conceptualisation be charted.

1.2 Literature Review

Despite the relative dearth of scholarly materials dealing with Judaism and Environment, one topic that has, nevertheless, received a significant amount of attention in recent years is the concept of *bal tashhit*. The interest comes both from religious authors dealing with the *halakhic* (Jewish legal) aspects of the concept and, more

recently, from environmental scholars. In this section, I will review scholarly contributions on *bal tashhit*, by environmentalists,²⁶ and by scholars of religious studies.

Many of the environmentalists dealing with *bal tashhit* try to provide a review of traditional literature in order to demonstrate that one may find within the Jewish tradition a developed environmental ethic. They all describe *bal tashhit* within an environmental framework. Most of the writers of these studies present Deuteronomy 20:19-20, the text which forbids the destruction of fruit bearing trees in an offensive military siege, then cite a few talmudic passages, followed by Maimonides' (1138-1204, Spain, Morocco, Land of Israel and Egypt) rulings, and perhaps a few perfunctory commentaries on the biblical verse itself. Some even present material found in the responsa literature. These scholars include: Jeremy Benstein,²⁷ Ellen Cohn,²⁸ Eliezer Diamond,²⁹ Daniel B. Fink,³⁰ Barry Freundel,³¹ Manfred Gerstenfeld,³² Walter Jacob,³³ Norman Lamm,³⁴ Rachel S. Mikva,³⁵

²⁶ I include in this category those who have written about *bal tashhit* as an environmental concept. Most of these scholars are better known for their work in other fields; however, this does not preclude them from also being environmental scholars.

²⁷ Jeremy Benstein, *The Way Into Judaism and the Environment* (Woodstock, Vermont: Jewish Lights Publishing, 2006), 93-111.

²⁸ Ellen Cohn, "Growing an Environmental Ethic: The Conceptual Roots of *Bal Tashchit*," in *Compendium of Sources in Halacha and the Environment*, ed. Ora Sheinson and Shai Spetgang (Jerusalem: Canfei Nesharim Publication, 2005), 38-44.

²⁹ Eliezer Diamond, "Jewish Perspectives on Limiting Consumption," in *Ecology and the Jewish Spirit: Where Nature and the Sacred Meet*, ed. Ellen Bernstein (Woodstock, Vermont: Jewish Lights Publishing, 1998), 80-87.

³⁰ Daniel B. Fink, "The Environment in *Halakhah*," in *Judaism and Ecology* (New York: Hadassah, The Women's Zionist Organization of America, Inc. and Shomrei Adamah, 1993), 34-47.

³¹ Barry Freundel, "Judaism's Environmental Laws," in *Ecology and the Jewish Spirit: Where Nature and the Sacred Meet*, ed. Ellen Bernstein (Woodstock, Vermont: Jewish Lights Publishing, 1998), 214-224.

³² Manfred Gerstenfeld, *The Environment in the Jewish Tradition: A Sustainable World*, (Jerusalem: The Jerusalem Institute for Israel Studies, The Center for Environmental Policy, 2002) and *Judaism, Environmentalism and the Environment: Mapping and Analysis* (Jerusalem: The Jerusalem Institute for Israel Studies, The Center for Environmental Policy, 1998).

³³ Walter Jacob, "Eco-Judaism: Does It Exist? "The Earth Is the Lord's" versus "Everything Is Given into your Hand,"" in *The Environment in Jewish Law: Essays and Responsa*, ed. Walter Jacob and Moshe Zemer (New York: Berghahn Books, 2003), 1-23.

³⁴ Norman Lamm, "Ecology in Jewish Law and Theology," in *Torah of the Earth: Exploring 4,000 Years of Ecology in Jewish Thought. Volume One: Biblical Israel: One Land, One People*, ed. Arthur Waskow (Woodstock, Vermont: Jewish Lights Publishing, 2000), 103-126.

³⁵ Rachel S. Mikva, "When Values Collide: Economics, Health and the Environment," in *The Environment in Jewish Law: Essays and Responsa*, ed. Walter Jacob and Moshe Zemer (New York: Berghahn Books, 2003), 34-44.

Israel Rozenon,³⁶ David Vogel,³⁷ Arthur Waskow,³⁸ Moshe Zemer,³⁹ and Edward Zipperstein.⁴⁰ Surprisingly, in save but a few cases, the authors of these works do not indicate that they are in any way aware of each other, which leads to a fairly underdeveloped and repetitive discourse. Because of the repetition found in this literature, not all of these authors will be discussed in my review of the field. In contrast to the above-mentioned scholars, David Nir,⁴¹ Nahum Rakover,⁴² Eilon Schwartz,⁴³ and Akiva Wolff⁴⁴ stand out for having gone significantly further in their analysis of *bal tashhit*.

1.2.1 Environmental Scholars

The first group of environmental scholars commenting on *bal tashhit* discuss the prohibition in broad terms, whereas the second group has researched the concept in greater depth.

1.2.1.1 Group One

In an attempt to answer the question of whether or not Judaism is an environmentally friendly religion or not, David Vogel explores a wide variety of Jewish teachings perceived to have ecological significance by Jewish environmentalists. While

³⁶ Israel Rozenon, *VeHinei Tov Me'od* (Jerusalem: Yeshivat Beit Orot, 2001), 99-104.

³⁷ David Vogel, "How Green Is Judaism? Exploring Jewish Environmental Ethics," *Business Ethics Quarterly* 11, no. 2 (April, 2001): 349-363.

³⁸ Arthur Waskow, "Jewish Environmental Ethics: Intertwining *Adam* with *Adamah*," in *The Oxford Handbook of Jewish Ethics and Morality*, ed. Elliot N. Dorff and Jonathan K. Crane (New York: Oxford University Press, 2013), 401-418.

³⁹ Moshe Zemer, "Ecology as a Mitzvah," in *The Environment in Jewish Law: Essays and Responsa*, ed. Walter Jacob and Moshe Zemer (New York: Berghahn Books, 2003), 24-33.

⁴⁰ Edward Zipperstein, "Waste in the Judaic Tradition," in *Essays in Jewish Thought* (Los Angeles: private printing, 1989), 58-98.

⁴¹ David Nir, "A Critical Examination of the Jewish Environmental Law of *Bal Tashchit*," *Georgetown International Law Review* 18, no. 2 (Winter 2006): 335-353.

⁴² Nahum Rakover, *Eikhut HaSviva: Heibetim Ra'ayoniyim UMishpatiyim BaMeqorot HaYehudiyim* (Jerusalem: *Moreshet HaMishpat BeYisrael*, 1993) 32-41, and *Environmental Protection: A Jewish Perspective*, Policy Study No. 4 (Jerusalem: The Institute of the World Jewish Congress, 1996).

⁴³ Eilon Schwartz, "*Bal tashchit*: A Jewish Environmental Precept," in *Judaism and Environmental Ethics: A Reader*, ed. Martin D. Yaffe (New York: Lexington Books, 2001), 230-249.

⁴⁴ Akiva Wolff, "A Closer Examination of Deuteronomy 20:19-20," *Jewish Bible Quarterly* 39, no. 3 (2011) 143-152 and *Bal Tashchit: The Jewish Prohibition Against Needless Destruction*, Ph.D. Dissertation, Leiden University, 2009.

discussing many different ideas, his central focus is on *bal tashhit*. He presents Rashi and Abraham ibn Ezra's glosses on Deuteronomy 20:19 together with other sources and concludes that "Jewish concern for nature stops where the preservation of human life begins,"⁴⁵ and that "Judaism may contain 'green' elements, but it is not a 'green' religion."⁴⁶

Moshe Zemer would strongly disagree with Vogel. He claims that "This rule of *bal tash-hit* 'do not destroy' is extended to all objects that may have value. This prohibition includes killing animal life and destroying plants and even inanimate objects."⁴⁷ He then continues his argument with a polemic suggesting just how far reaching the application of *bal tashhit* should be:

Bal tash-hit sets the outer limits of the enfranchisement given to us to utilize all of the resources of nature for human purposes. When we cross these boundaries and demolish the works of God, we lose our delicate equilibrium with nature. Only by observing the guidelines of the *mitzvot* of ecology may we hope to regain this balance with the world around us.⁴⁸

According to Zemer, the laws for sustainability exist within Judaism. It is up to Jews to understand and observe them.

Like Zemer, Israel Rozenson takes for granted that *bal tashhit* is an environmental ethic. His interests, however, lie not in understanding *bal tashhit* as a broad concept, but in demonstrating the affinity of traditional Judaism for the natural world. He does not expand on the implications of Deuteronomy 20:19-20 to areas beyond the natural world. Rozenson states that "the prohibition of '*bal tashhit*' brought here has implications in a wide range of different topics, what is important [though] is [that] its first connection [is] specifically with the flora."⁴⁹ He leaves others to dwell on the conceptualisation or other manifestations of the prohibition.

⁴⁵ Vogel, "How Green Is Judaism?" 360.

⁴⁶ *Ibid.*

⁴⁷ Zemer, "Ecology as a Mitzvah," 26.

⁴⁸ *Ibid.*, 27.

⁴⁹ Rozenson, "*VeHinei Tov Me'od*," 102.

Norman Lamm offers a more hesitant approach. He states that although the meaning of Deuteronomy 20:19-20 is somewhat unclear, it is still obvious that the Torah prohibits wanton destruction. He goes on to discuss some of the commentaries on the verse, including *Sefer HaHinukh* (13th century, Spain), some talmudic sources, and some later legists that deal with *bal tashhit*. Lamm claims that “it should be pointed out that there is present [within the prohibition of *bal tashhit*] no indication of any fetishistic attitude, any worship of natural objects for and of themselves.”⁵⁰ As will be seen, this point is important for the connection that I will make later between idol worship and *bal tashhit*. Lamm also argues that:

[T]he prohibition is not essentially a financial law dealing with property (*mammon*), but religious or ritual law (*issur*), which happens to deal with the avoidance of vandalism against objects of economic worth. As such, *bal tash'hit* is based on a religio-moral principle that is far broader than a prudential commercial rule per se, and its wider applications may well be said to include ecological considerations.⁵¹

Bal tashhit is, in his opinion, not strictly an environmental ethic, nor an economic principle. Lamm sees *bal tashhit* as a religious principle with a moral dimension, which also happens to have environmental ramifications.

Manfred Gerstenfeld also discusses the economic and environmental parameters of *bal tashhit*. He claims that the concept of *bal tashhit* is very commonly discussed by contemporary Jewish environmental scholars, though he mentions very few of them. He cites some of the rabbinic sources, Bible commentaries, and responsa, and writes:

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.⁵²

⁵⁰ Lamm, “Ecology in Jewish Law,” 112.

⁵¹ *Ibid.*, 114.

⁵² Gerstenfeld, *Mapping and Analysis*, 113.

In his summary of Deuteronomy 20:19-20 he focuses on both the economic and environmental aspects of the verses:

In this instruction [Deuteronomy 20:19-20] there are “environmental” and economic motifs. The prohibition expresses two sub-categories of the “environmental” ethic: stewardship over elements of nature and also on the natural resources. The fruit of the tree serves as food for humans, and it is forbidden to harm the infrastructure for the livelihood of humanity in times of war. And even though fruit trees are a renewable resource it is fitting for humans to treat them with care, as it takes a long time until they grow and produce fruits. Not harming them denotes they can sustain you for the coming days, meaning that this will secure a food source for those besieging the city.⁵³

Gerstenfeld focuses on the human dimension of the prohibition, highlighting the value which humans derive from not cutting down the fruit trees. He views *bal tashhit* primarily as a commandment designed to benefit humanity rather than the natural world.

In contrast, Daniel B. Fink understands *bal tashhit* as a law that comes to create a balance between human needs and proper stewardship of the environment. Only after he establishes that *bal tashhit* is a conservation ethic, does he broadly define its parameters. He claims that Judaism is not against development, though it should be done keeping the environment in mind:

From this law [Deuteronomy 20:19-20] Rabbis extrapolated a general conservation ethic. If, they reasoned, one is not allowed to chop down the enemy’s fruit trees during war (the most inherently destructive of times), then surely during periods of peace one should not wantonly destroy any natural resources...*Ba’al [sic] tashhit* does not establish a “hands off” policy toward our environment. Jewish law allows for reasonable use (and even destruction) of natural resources.⁵⁴

Fink, however, does not sufficiently establish what “reasonable use” might entail.

⁵³ Gerstenfeld, *A Sustainable World*, 15.

⁵⁴ Fink, “Environment in *Halakhah*,” 37-38.

Tackling the prohibition from a different angle, Walter Jacob claims that the concept of *bal tashhit* needs to be “reinterpreted and expanded.”⁵⁵ He is aware of the problematic that exists in some of the traditional glosses to Deuteronomy 20:19-20, resulting in a severely limited utility when it comes to environmental ethics, and is dubious with regard to its contemporary utility. Jacob states:

Those who commented on the biblical verse interpreted it in its specific wartime setting. Most of the rabbinic literature that dealt with its halakhic setting provides a narrow interpretation by limiting it to fruit trees, by restricting it to times of war, and by stating that virtually any economic benefit, or threat of harm from it, may be sufficient reason for the destruction of the tree or trees.⁵⁶

Jacob concludes that although the concept of *bal tashhit* is useful, it is not sufficiently developed to suit the environmental circumstances and needs of modern times. He asserts:

The concept of *bal tash-hit* can become a more valuable tool, but we need to be aware of its limitations. The biblical verse is too narrow and does not lend itself readily to expansion. Those who have done so have largely used it to attack excessive consumption, which is hard to define.⁵⁷

Though his conclusion with regard to the “narrow” extent to which the traditional sources dealt with *bal tashhit* is inaccurate, as will be made apparent in this dissertation, he correctly points out that the Jewish world is lagging far behind in applying *halakhah* (Jewish law) to current scientific knowledge; in our case, specifically with regard to extending the prohibition against wastefulness.

Like Jacob, Arthur Waskow also questions the extent to which *bal tashhit* can be applied as an environmental principle. He claims that the concept was incorrectly used by environmentalists defending Judaism against claims that it supported the unmitigated exploitation of nature:

⁵⁵ Jacob, “Eco-Judaism,” 19.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*, 20.

Confronted in the twentieth century with the charge that biblical Judaism and Christianity had, through the teaching “Fill the earth and subdue it,” (Genesis 1:28) encouraged destruction of nature by human beings, some rabbis responded by citing *Bal tashhit*. But on careful examination, it was realized there was much more apologia than accuracy to this way of exculpating Judaism. Appeals to the biblical traditions cited above [Eden, Sabbath, Sabbaticals, festivals etc.] were much more accurate.⁵⁸

It is unclear exactly to what “careful examination” Waskow is referring. It is possible that he bases this claim on the critiques of *bal tashhit* made by other scholars presented here. Regardless, his conclusions are somewhat premature. This dissertation arrives at different conclusions with regard to *bal tashhit* as an environmental ethic and does not come as an apologetic to any accusations. Moreover, without critically analysing the biblical traditions to which he refers by using tradition histories, there is no basis with which to compare the efficacy of these ideas. As a result of his own conclusions, Waskow narrows his discussion of the prohibition to the biblical context of fruit trees, and the actions of destroying and planting trees in a contemporary framework.

Also taking a more action oriented approach, Jeremy Benstein presents a combination of talmudic, medieval and *halakhic* sources on *bal tashhit*. He traces *bal tashhit* throughout its appearances in some of the talmudic and *halakhic* sources, biblical commentaries and responsa and introduces the principle of *bal tashhit* in his book with the following statement:

Probably the best-known Jewish value concept and collection of *halachot* regarding environmental responsibility are those grouped under the heading of *bal tashchit* (literally, “do not destroy”), which prohibits many forms of waste, destruction, vandalism, and the like. The career of this mitzvah begins in the Book of Deuteronomy, develops in Tannaitic literature, expands in the Talmud, is refracted through the medieval commentaries and codes, and is applied in early and late Halachic responsa.⁵⁹

⁵⁸ Waskow, “Jewish Environmental Ethics,” 415.

⁵⁹ Benstein, *Way Into Judaism*, 93.

He then brings a range of sources to illustrate the basics of *bal tashhit*, and asks “what is the positive ideal of our interaction with the world?”⁶⁰ He concludes that this question is partially answered by the Jewish mystical concept of *tikkun* (repair, healing). He adds:

The act of creation is ongoing, and we have a role to play in developing and improving the raw materials God provides. This is the fundamentally activist stance that is at the root of the dynamic of dominion and stewardship, and which requires channeling and guidance in order to avoid degenerating into self-serving pillage.⁶¹

Benstein’s primary concern is with environmental activism, and with how Jewish ideas can ultimately be translated into practice.

Over the past few years there has been a mushrooming of online resources presenting *bal tashhit* as an environmental concept, many of them with an activist bent. It would be impossible to mention them all, and suffice to say that since none of them are more comprehensive in their analysis of *bal tashhit* than those already presented in this group of environmental scholars, it is unnecessary to do more than mention their existence and growth.

While the scholars in this group do a commendable job in broadly relating to the prohibition, the scholars in the next group have been considerably more thorough.

1.2.1.2 Group Two

Nahum Rakover claims that *bal tashhit* is one of many concepts found in the Jewish tradition for the protection of nature. He states that “The subject of the commandment is to not destroy objects that give benefit/enjoyment to humans. This prohibition includes the destruction of animals, plants and even inanimate objects.”⁶² Rakover presents a number of commentaries and *midrashic* sources on the matter, Maimonides, *Sefer HaHinukh* and a selection of choice responsa. He writes:

⁶⁰ *Ibid.*, 108.

⁶¹ *Ibid.*

⁶² Rakover, *Eikhut HaSviva*, 32.

The source of the prohibition of wasteful destruction is the biblical prohibition of cutting down fruit-bearing trees... The prohibition of wasteful destruction, however, is more comprehensive than the prohibition of destroying fruit-bearing trees and it extends to anything that has use. In other words, the prohibition includes the destruction of man-made objects, and is not restricted to the preservation of nature.⁶³

For Rakover, the ethic of not destroying extends beyond fruit trees to the preservation of all nature as well as objects produced by humans. Without acknowledging it, he mentions key aspects of the conceptualisation of *bal tashhit*. Specifically, he defines the prohibition in very human terms, by mentioning that *bal tashhit* applies to all things from which humans derive benefit or utility.

While Rakover's in-depth analysis of *bal tashhit* goes beyond that of the scholars of the first group, Eilon Schwartz and David Nir go even further, and have some of the most encompassing papers on *bal tashhit* to date. Schwartz states at the outset of his article:

No single Jewish concept is quoted more often in demonstrating Judaism's environmental credentials than the rabbinic concept of *bal tashchit* ("do not destroy"). It appears in virtually all the literature that discusses Jewish attitudes toward the environmental crisis. Yet, rarely are any more than a few sentences given to actually explain its history and its meaning. Such a superficial approach has been widespread in contemporary environmental ethics with regard to traditional cultures.⁶⁴

After exposing the shortfalls of the field, Schwartz analyzes a limited number of the medieval commentaries on Deuteronomy 20:19-20, discusses some of the talmudic texts dealing with *bal tashhit*, and then moves on to the responsa literature. He groups the responsa on *bal tashhit* into two different categories: the "minimalist" and the "maximalist."

⁶³ Rakover, *Environmental Protection*, 12.

⁶⁴ Schwartz, "Bal Tashchit," 230.

Two positions emerge from the discussion on *bal tashchit*. The first, which is clearly the dominant position, I describe as the minimalist position. It limits *bal tashchit* as much as possible to only those situations that are clearly proscribed by the biblical injunction in Deuteronomy...In contrast, the maximalist position does expand *bal tashchit* as a counterweight to human desires...Consumption should be limited to what is necessary, and the inherent value of the creation stands as a countermeasure to human usage.⁶⁵

Thus, he problematises the literature by stating clearly that not all legists take the same approach to *bal tashchit*. Schwartz is one of the few environmental scholars who present a number of sources connecting bodily harm and the prohibition against wastefulness. He claims:

The application of *bal tashchit* to the human being expresses the minimalist position quite well: although *bal tashchit* demands that nothing be wasted, it applies first and foremost to the human being. Although some have understood *bal tashchit* as applying to the preclusion of human needs, the most minimalist understanding maintains that preventing human pleasure by preventing human use of the world is an act of *bal tashchit*.⁶⁶

While there are certainly those within the tradition histories that embrace the positions mentioned by Schwartz, I present a more nuanced understanding of *bal tashchit* which analyses the prohibition as an evolving and continually developing concept. I argue that the authors of the earliest layers of the tradition understand wastefulness of material as a form of self-harm. Schwartz's reading of the material, however, is a perfect example of how this teaching was ultimately conceptualised in a way that marginalised this understanding and replaced it with a hierarchic and utilitarian view of the concept⁶⁷ that ignores the harmful effect on humans of wastefulness. Like Walter Jacob, one of Schwartz's conclusions is that "Only parts of the tradition that can be explicated in

⁶⁵ *Ibid.*, 239.

⁶⁶ *Ibid.*, 241.

⁶⁷ This understanding was reached in the 4th and 5th centuries CE, as will be demonstrated in the Rabbinic chapter.

contemporary terms can be translated into a contemporary context.”⁶⁸ Schwartz argues the meaning of *bal tashhit* and the translation of that ethic into action and policy remains one of the great conundrums of Jewish environmentalists.

Like Schwartz, Nir begins by critiquing the existing environmental scholarship on *bal tashhit*. He states that all too often people have used the concept in an incorrect manner by highlighting the environmentally positive aspects of the prohibition and glossing over the negative ones. He remarks:

The risk with such selective and highly interpretive understandings of *bal tashhit* is that they threaten to undermine the value that *bal tashhit* does have for those concerned with protecting the environment...An honest appreciation of Jewish law requires an acknowledgement of all relevant source material, both pro and con. Put another way, claims about what *bal tashhit* stands for are too easily punctured if they rest only on hand-picked examples.⁶⁹

Nir attempts to be more comprehensive and analyses the talmudic passages dealing with *bal tashhit* using legal, moral, economic and environmental frameworks. In his critique, Nir argues that *bal tashhit* does not have a place in determining macro environmental policies, but is still a useful concept for micro applications:

...While it may not be useful for deciding whether American national policy should favor drilling in the Wildlife Refuge, it *does* provide moral guidance on how we, as individuals and businesses, ought to *use* energy. Namely, *bal tashhit* advises conservation – if you are using more energy in your daily life than you have reason to, then you transgress the commandment.⁷⁰

Though he makes many salient points, Nir’s claim that *bal tashhit* cannot be applied on a global or even national scale seems unnecessarily restricting. Just because the framework is enlarged, does not mean there cannot be an underlying ethic guiding policies and actions. He concludes by stating:

⁶⁸ Schwartz, “*Bal Tashhit*,” 245.

⁶⁹ Nir, “Jewish Environmental Law,” 349-350.

⁷⁰ *Ibid.*, 351.

Bal tashchit may not function as a broad-based environmental ethic it is often mistakenly thought to be, but, properly understood, it is a more focused – and hence more useful – conservationist principle. As such, it can and should form a strong underpinning for the modern Jewish environmental movement.⁷¹

In his conclusions, Nir reduces *bal tashhit* from a broad environmental ethic to a limited conservationist principle. His call for *bal tashhit* to “form a strong underpinning for the modern Jewish environmental movement” is well taken, but limits the utility of the concept to a relatively small demographic. By focusing on the relationship between self-harm and wastefulness, this dissertation reaches different conclusions.

Akiva Wolff, from among all the environmental scholars to date, stands out as being the most comprehensive in his analysis of *bal tashhit*. In his analysis of classical texts he still falls far short of the most comprehensive works undertaken by the contemporary scholars of classical Jewish sources listed in the next section. His stated purpose, however, was simply to understand what *bal tashhit* is, how it can be applied, and what it can contribute to environmental management, making this deficiency lose its relevancy. Interestingly, he argues that *bal tashhit* can be broken down into two distinct categories, one being a principle and the other a legal prohibition:

The *principle* of *bal tashchit* prohibits the *needless* destruction of any created object – since the natural world was ultimately created for the benefit of man. Nevertheless, a *legal prohibition* can only operate within clear delineations. If there is not likely to be any tangible benefit to humans from a specific object, such as a wild animal in a distant forest, then the object is not protected under the legal prohibition.⁷²

While making this division may assist in simplifying the complexities of *bal tashhit*, it is not an entirely compelling distinction to make. First, it should be noted that the opinion that *bal tashhit* does not apply to ownerless objects, is not universally held among the legal authorities. Moreover, while it is true that certain legists have discussed the

⁷¹ *Ibid.*, 353.

⁷² Wolff, *Bal Tashchit*, 57.

difference between what we might call the letter of the law and the spirit of the law,⁷³ it is impossible to fully divorce these two categories from one another, as they constantly inform each other.

Wolff correctly asserts that the three most influential scholars on the conceptualisation of *bal tashhit* are Maimonides, the author of *Sefer HaHinukh* and Samson Raphael Hirsch.⁷⁴ As the focus of this dissertation is to analyse the prohibition in light of its tradition histories, we will pay much more attention to the important shifts in conceptualisation that may initially seem subtle, but throughout the generations prove to be monumental. As such, the list of the most influential scholars presented in this dissertation is significantly more comprehensive than the one offered by Wolff.

Wolff stands out from most other environmental scholars in that on a number of occasions he mentions that harm of the body is a significant part of *bal tashhit*. He uses the hierarchy found in the later layers of the Talmud to confirm that human interests rest on top of the pyramid. By neglecting to analyse this in greater depth, he fails to view the paramount significance of the connection between bodily harm and wastefulness that is fundamental to environmentalism. Harming the environment eventually equates to harming oneself by compromising the integrity of the resources and natural systems upon which human life depends.

1.2.2 Scholars of Rabbinics

As a well-developed religious concept, environmental scholars are not the only ones writing about *bal tashhit*. Scholars of rabbinics, however, differ in one significant aspect from their environmental counterparts. While a prohibition against wastefulness clearly has environmental ramifications regardless of how one perceives Judaism's approach to the environment, these scholars – save for one publication – do not indicate any awareness or interest in this prohibition as an environmental concept. They simply do not conceive of the environment in the same manner as environmentalists. The scholars

⁷³ For example, see Yehezkel Landau, *Noda BiYehudah, Mahadurah Tinyana, Yoreh De'ah* 10.

⁷⁴ Wolff, *Bal Tashchit*, 72.

of rabbinics dealing with *bal tashhit* can be broken down into four different groups. As I analyse large sections of the material they cover later in this dissertation, they will for the most part only be nominally mentioned here and categorised within one of the four groups.

1.2.2.1 Group One

The first group consists of scholars who have written about the prohibition specifically within the framework of fruit trees. These scholars include Meir Bransdorfer,⁷⁵ Shaar Yeshuv Cohen,⁷⁶ Moshe Gartenberg and Shmuel Gluck,⁷⁷ and Avraham Hillel Goldberg.⁷⁸ While it is clear that they are well aware that *bal tashhit* extends well beyond fruit trees, these scholars do not address the prohibition in broader terms. Within the context of fruit trees, all the scholars in this group have a much more comprehensive analysis than any scholar in the environmentalist groups.

1.2.2.2 Group Two

The second group consists of scholars who address *bal tashhit* as a general prohibition, beyond its biblical context of fruit trees. These scholars include Yaakov Bazak⁷⁹ and Yisrael Meir Lau.⁸⁰ This group also includes the *Encyclopedia Talmudit*, one of the best starting places for research on *bal tashhit*, as it lists and sources many of the key *halakhic* components of the concept.⁸¹ Importantly, the encyclopedia mentions bodily harm as one component of *bal tashhit*, something most other sources neglect to address sufficiently, if at all.

⁷⁵ Meir Bransdorfer, “*BeInyan Qetzitza Ilanei Peirot*,” *Or Yisrael* 18 (2000): 58-64.

⁷⁶ Shaar Yeshuv Cohen, “*Keritat Ilanot BiShe’at Milhamah UViShe’at Shalom*,” *Tehumin* 4 (1983): 44-53.

⁷⁷ Moshe Gartenberg and Shmuel Gluck, “Destruction of Fruit-Bearing Trees,” *Journal of Halacha and Contemporary Society* 38 (Fall, 1999): 86-99.

⁷⁸ Avraham Hillel Goldberg, “*Akirat Atzei Pri*,” *Noam* 13 (1972): 203-221.

⁷⁹ Yaakov Bazak, “*Ma’asei Vandalism VeIssur ‘Bal Tashhit’*,” *Tehumin* 1 (1980): 329-339.

⁸⁰ Yisrael Meir Lau, “*Issur Bal Tashhit BiMeqom Mitzvah*,” *Tehumin* 22 (2002): 293-300.

⁸¹ Shlomo Yosef Zevin (ed.), *Encyclopedia Talmudit LeInyanei Halakhah*, Volume Three, s.v. בל תשחית, (Jerusalem: *Hotza’at Encyclopedia Talmudit*, 1951), 335-337.

1.2.2.3 Group Three

This group of scholars are by far the most thorough and comprehensive in their analyses of *bal tashhit*. Even within this group, however, one must differentiate between Siman Tov David⁸² whose work is broad, but not nearly as comprehensive as Yitzhak Eliyahu Shtasman⁸³ and Moshe Yitzhak Vorhand.⁸⁴ All three of these scholars present the concept both as a prohibition against cutting down fruit trees and as a general prohibition against wastefulness. While their scope is comprehensive within the religious framework, and covers a wide variety of classical, medieval, and modern Jewish scholarship, their focus is inevitably narrowed as a consequence of limiting their analyses to the religious context alone. One of these scholars' goals was to collect the scattered teachings on *bal tashhit*. Therefore, it is not surprising that they make no mention of *bal tashhit* as an environmental issue. They do an excellent job dividing the extensive material on the prohibition by topic, and present numerous references to legal codes, commentaries, and responsa for a long list of specific cases. One shortfall of their work is that they are somewhat limited in their coverage of Bible commentaries, a gap filled by this dissertation. They also present dissenting opinions within the legal literature without attempting to decide the issue. It is also important to mention that all three of these scholars discuss *bal tashhit* in reference to self-harm. Shtasman and Vorhand, in particular, relate to the dissenting opinions from the Talmud onward regarding whether or not to include the prohibition against self-harm in the concept of *bal tashhit*.

1.2.2.4 Group Four

The fourth group, headed by Meir Zikhel in conjunction with the Bar-Ilan Responsa Project, is made up of scholars who work on environmental themes within

⁸² Siman Tov David, *Sefer Al Pakkim Qetanim: Hilkhoh Bal Tashhit* (Jaffa, Israel: S. M. Publishers, 2000).

⁸³ Yitzhak Eliyahu Shtasman, *Sefer Etz HaSadeh: BeDinei Bal Tashhit, Qetzitza Ilanot UVizui Okhalin* (Jerusalem: The Foundation for the Advancement of Torah Study, 1999).

⁸⁴ Moshe Yitzhak Vorhand, *Sefer Birkat HaShem: Leqet Dinei Issur Qetzitza Ilanei Ma'akhal, Bal Tashhit BiShe'ar Devarim, VeIssur Hefsed UVizui Okhalim* (Jerusalem: private printing, 2000).

Judaism.⁸⁵ They are arguably the group of scholars of classical Jewish sources who write most seriously about *bal tashhit* as an environmental concept. Grounded by rigorous training in classical Jewish texts, their analysis is at a very high level. They do not go into nearly as much depth as the scholars of classical Jewish sources of group three, but then again, this was not their objective as their publications deal with a number of topics beyond just *bal tashhit*. A case could be made to put Akiva Wolff – from the second group of environmental scholars in this group instead – but a significant portion of his dissertation focuses on turning *bal tashhit* into a legal and economic concept divorced from its religious origins, in turn relating it to major environmental issues such as water management.

Zikhel's group analyses the concept of *bal tashhit* using a broad range of sources, including commentaries and responsa. Perhaps the only weakness of their work is their explicit declaration that their "intention was to demonstrate the negative attitude that the *halakhah* has to the waste/destruction of anything that could have human utility."⁸⁶ They conclude their work on *bal tashhit* by stating: "One demand is common to all the sages of Israel – a strict preservation of nature and the environment and an attitude of respect for God's world."⁸⁷ Academically, one can critique their lack of objectivity and, indeed, scholars like Schwartz and Nir are critical of such scholarship for this reason.

Most of the environmental scholarship on the subject of *bal tashhit* has been superficial. For instance, none of the scholars mentioned in this literature review demonstrate an awareness of the connection between *bal tashhit* and Genesis 9:5, and the implications of this link for the meaning of the concept. The second group of environmental scholars are much more comprehensive than the first in their analysis of the religious scholarship, but still leave significant lacunae in certain areas. At the same time, the most comprehensive scholars of rabbinics neglect to address the environmental dimensions of the concept. Akiva Wolff and the team of scholars from the Bar-Ilan

⁸⁵ David Salomon, Yaakov Weinberger, Meir Batiste, Meir Zikhel, Menaḥem Slae, and Tzvi Ilani, *Eikhut HaSvivaḥ (Ecologia) BiMeqorot HaYahadut* (Ramat-Gan, Israel: Bar-Ilan Responsa Project, 1990), 7-36.

⁸⁶ David Salomon *et al.*, *Eikhut HaSvivaḥ BiMeqorot HaYahadut*, 35.

⁸⁷ *Ibid.*

Responsa Project headed by Meir Zikhel, have made significant progress in bridging the worlds of environment and religion with regard to the prohibition against wastefulness. I acknowledge my indebtedness to their pioneering efforts, while the limitations of their work provide the impetus for the present study.

1.3 Purpose

As can be seen, *bal tashhit* is a concept that arises frequently in Jewish legal scholarship as well as Jewish environmental discourse. Within the environmental discourse, scholars use *bal tashhit* as proof that Judaism fits with the teachings of environmentalism. This perspective is similar to the argument that Genesis 2:15 negates White Jr.'s critique of Genesis 1:28. *Bal tashhit*, however, is different in an important way. Scholars who build an environmental argument based on *bal tashhit* often present their position with some accompanying texts, instead of just using the concept as a counter-argument to Genesis 1:28 in the manner of verse versus verse. In other words, unlike in the case of the invocation of Genesis 2:15, there is a historical basis in the tradition for these scholars. The environmentalists can support their position by turning to some of the most influential scholars of the Jewish traditional sources.

Yet, the burning question arises: if *bal tashhit* makes for a sound environmental ideology, as held by environmentalists, why has the theory not been translated into practice? There is no shortage of wastefulness in Jewish communities.⁸⁸ Many Jews are, of course, non-observant, and as such one (perhaps) would not expect them to observe religious ordinances. Observant Jews, however, also do not live according to the *halakhic* dictates of the environmental theory. It is not that observant Jews go out of their way to

⁸⁸ See for example Tanhum Yoreh, "Ultra-Orthodox Recycling Narratives: Implications for Planning and Policy," *Journal of Enterprising Communities: People and Places in the Global Economy* 4, no. 4 (2010): 323-345, and Tanhum Yoreh, "Involuntary Simplicity: A Case Study of Haredi Consumption Patterns in Canada and Israel," in *From Antiquity to the Post-Modern World: Contemporary Jewish Studies in Canada*, ed. Daniel Maoz and Andrea Gondos (Newcastle upon Tyne, UK: Cambridge Scholars Publishing, 2011), 232-249.

circumvent the prohibition of *bal tashhit*, rather, there is a marked difference in how environmentalists and observant Jews conceive of the prohibition.

My research seeks to understand these differences, and to determine whether they can be reconciled or bridged. Specifically, I ask whether *bal tashhit* has the historical basis to be considered an environmental concept, or whether its environmental interpretation is mainly a contemporary development? What were the critical stages in the conceptualisation of *bal tashhit*? Were the towering exegetical figures of centuries and millennia past aware of environmental issues which concern us today? How did they interpret biblical passages and rabbinic texts that are used in contemporary environmental discourse? Did specific thinkers strongly influence the development of the concept and, subsequently, environmental thought? If so, from where do they originate and in what period did they live? Studying the evolution of *bal tashhit* allows us to gain insight into its historical and cultural development, and greatly expands our current understanding of this concept.

It is obvious that the exegetes did not have developed notions of what today can be considered environmental philosophies. In the past, people did not think in the same environmental terms as we do today. These exegetes did not live in a time of rampant over-consumption, global anthropogenically induced climate change, and severe environmental pollution. There are indications, however, that the theologically oriented conception of life of the exegetes made some aware of issues such as sustainability and wastefulness, and made them concerned for the environment –albeit on a much more local scale.

In addition to tracking the critical stages in the development of *bal tashhit*, in this dissertation I argue that, despite the strongly utilitarian lens through which the prohibition against wastefulness and destruction came to be viewed from the *amoraic* era onward, the earliest conceptualisations of *bal tashhit* are its strongest manifestations as an environmental ethic. Moreover, I argue that although *bal tashhit* has predominantly been

used throughout history as an economic concept, its ethical and environmental parameters always factored into its conceptualisation.

1.4 Methodology

Contemporary Jewish commentary employs the environmental lexicon that informs current environmental thought. In order to answer the questions mentioned above, it is necessary to analyse critically the vast corpus of Jewish scholarship that deals with the prohibition of *bal tashhit*. It is with this contemporary environmental lexicon that I will analyse the classic texts and examine whether environmental knowledge can be extracted from the material. Since earlier exegetes may have interpreted the texts similarly, but without employing the critical vocabulary, the task of searching for such readings often becomes more difficult. Biblical Hebrew, for example, lacks the word for nature, even though medieval and later Hebrew possess more than one (e.g. *teva*, *toledet*). This, of course, does not mean that there are no biblical or rabbinic texts relevant to a discussion about nature, but rather that one must dig deeper to find them. As a result, the language I use is often anachronistic, though I attempt to attribute environmental significance to texts and their interpretations only when justified.

In Hebrew there are a number of different words that could mean waste or destruction (e.g. *bizbuz*, *heres*). A preliminary analysis of these words in Jewish texts has not proven fruitful. Therefore, this dissertation is limited to the analysis of the root *sh.h.t.* (destroy) as attested in the various strata of the tradition. There is a very rich corpus of traditional Jewish literature that deals with wastefulness using this root. This more limited scope makes sense. *Bal tashhit* is more than just a prohibition; it is a concept, principle, or ethic. Therefore, most of the literature dealing with the prohibition against wastefulness *qua* concept or ethic will use the root *sh.h.t.* and not other roots that may have similar meaning. Expanding the study of *bal tashhit* by including the analysis of other roots is one direction for further research.

My use of tradition histories as a research methodology is informed by Jeremy Cohen's masterful study "*Be Fertile and Increase, Fill the Earth and Master It:*" *The Ancient and Medieval Career of a Biblical Text*. I trace the evolution of *bal tashhit* by looking at relevant passages dealing with wastefulness and destruction in Hebrew scripture, rabbinic literature, *halakhic* codes, responsa, and commentary traditions. In order to access much of this material, I employ the Bar-Ilan Responsa Project, an electronic database, although critical editions of the texts I cite are used when available. Though this research tries to be as comprehensive as possible, the data is too rich for me to cover it all. Throughout the dissertation, I will mention the limits in my scope at the beginning of each chapter.

1.5 Chapter Breakdown

2. **Bible and Biblical Commentaries** – In this chapter, I conduct a diachronic analysis of Jewish Bible commentaries on Deuteronomy 20:19-20 and examine and categorise the prohibition against cutting down fruit trees in wartime. The analysis in this chapter begins with the earliest rabbinic *midrashim* (plural of *midrash* – rabbinic Bible commentaries) and continues all the way to 21st century commentaries. I also conduct an extended analysis of Genesis 9:5 (the prohibition against self-harm/suicide/murder), Leviticus 19:27 (the prohibition against “destroying” facial hair), and 2Kings 3:19, 25 (a prophetically condoned violation of Deuteronomy 20:19).
3. **Classical Rabbinic Texts** – I examine the early legal compilations of Mishna, Tosefta, *Halakhic Midrashim*, Talmud, *Midrash* and other rabbinic compositions in this chapter, together with commentaries on them whenever relevant. These texts form a critical stage in the evolution of the prohibition against wastefulness and destruction, as the concept *bal tashhit* is named for the first time during this period. I pay particular attention to passages dealing with the cutting down of trees and wastefulness in general, as well as texts dealing with self-harm.

4. **Halakhic Codes and their Cognates** – This chapter addresses the ways in which Jewish codifiers understood and applied the legal aspects of *bal tashhit* in the post-talmudic era. It also examines the manner in which the concept has evolved over time, especially under Maimonidean influence, to the present. I survey important codes such as the *Mishneh Torah* (authored by Maimonides, 1138-1204, Spain, Morocco, Land of Israel and Egypt), the *Tur* (authored by Yaakov bar Asher, c. 1270-1343, Germany and Spain), and the *Shulhan Arukh* (authored by Yosef Karo, 1488-1575, Spain, Portugal, Turkey, Bulgaria and Land of Israel), as well as commentaries and compositions based on them. I have arranged this chapter by topic, and each topic is ordered chronologically.
5. **Responsa** – This chapter discusses some of the major trends in the responsa literature (legal rulings in the form of question/answer) that emerge with regard to *bal tashhit*. In particular, the impact of earlier conceptualisations of *bal tashhit* by Maimonides (*derekh hashhatah*), Meyuhas bar Eliyahu (*tzorekh* – need/purpose), the *Midrash Aggadah* (*hana'ah* – benefit/enjoyment), Bahya bar Asher (*to'elet* - utility), *Sefer HaHinukh* (*to'elet* and morality) are highlighted.
6. **Conclusions** – In this chapter, I outline the main stages in the evolution of the concept of *bal tashhit* and draw conclusions from a critical analysis of the previous chapters. I also discuss the moral and rational dimensions of the prohibition. Finally, I suggest directions for further research.

1.6 Review and Analysis

My research significantly expands the understanding of the concept of *bal tashhit*. In my critical analysis of the vast corpus of scholarship dealing with the prohibition against wastefulness and destruction, I chart the evolution of *bal tashhit* throughout its tradition histories, uncovering several important phases in its conceptualisation of the concept. These include:

1. The *Tannaitic* era (c. 70 - c. 220 CE), in which three different teachings connect the prohibition against wastefulness to the prohibition against self-harm:
 - a) Rabbi Eleazar ben Azariah's *baraita* (b*Baba Qama* 91b).
 - b) Rabbi Eleazar's student, Rabbi Akiva ben Yosef's mishnah (m*Baba Qama* 8:6).
 - c) An anonymous teaching from the Tosefta (anonymous, hence traditionally attributed to Rabbi Akiva's student, Rabbi Neḥemiah) (t*Baba Qama* 9:31).
2. The *Amoraic/Savoraic* era (c. 220 - c. 630 CE), in which three different teachings significantly alter the understanding of *bal tashhit*:
 - a) The *stam*'s (anonymous voice of the Talmud – likely a redactor) rejection of learning about the prohibition against self-harm from *bal tashhit* (b*Baba Qama* 91b).
 - b) Ravina's economic statement regarding the cutting down of fruit trees (“*me’uleh bedamim*” – “has greater value” (in a different form)), essentially transforming the prohibition into a utilitarian concept (b*Baba Qama* 91b).
 - c) Rabbah bar Naḥmani's statement that confirmed a hierarchy between the human body and other material regarding *bal tashhit* (*bal tashhit de gufai adif li* – the prohibition against wastefulness with regard to my body takes precedence for me over other forms of wastefulness concerning things) (b*Shabbat* 129a).
3. Maimonides (1138-1204, Spain, Morocco, Land of Israel and Egypt):
 - a) Explicitly turned *bal tashhit* into a general prohibition against wastefulness (*Sefer HaMitzvot LaRambam, Mitzvat Lo Ta'aseh* 57).
 - b) Definitively separated the prohibition against wastefulness and the prohibition against self-harm (*Mishneh Torah, Hilkhhot Melakhim*, 6:8-10 and *Hilkhhot Hovel UMeizik* 5:1).
 - c) Coined the term “*derekh hashḥatah*” (“destructive/wasteful manner”), introducing an element of subjectivity when it comes to what is included under the prohibition.

4. Meyuḥas bar Eliyahu (12th century), *Midrash Aggadah* (12th/13th centuries), Baḥya bar Asher (13th-14th centuries), and *Sefer HaḤinukh* (13th century):
 - a) In his gloss to Deuteronomy 20:19, Meyuḥas bar Eliyahu asserts that the prohibition of *bal tashḥit* applies to all things for which there is need/purpose (*tzorekh*).
 - b) The *Midrash Aggadah* (on Deuteronomy 20:19) claims that the prohibition applies only to things from which one can derive benefit/enjoyment (“*yesh alav hana’ah*”).
 - c) Baḥya bar Asher (on Deuteronomy 20:19) and *Sefer HaḤinukh* (529) express essentially the same sentiment, using the word “*to’elet*” (benefit).
 - d) *Sefer HaḤinukh* adds a moral dimension to the prohibition, saying that the righteous do not waste even a seed of mustard (*Sefer HaḤinukh* 529).
5. Samson Raphael Hirsch (19th century): Hirsch ushered in the environmental era of the conceptualisation of *bal tashḥit*, calling it “the first and most general call of God,” (*Horev*, 56).⁸⁹

As part of the process of mapping the most important stages in the development of *bal tashḥit*, I uncovered a conceptual link between Deuteronomy 20:19 and Genesis 9:5. The latter verse constitutes one of the main sources for the prohibition against self-harm, and has never been part of the contemporary Jewish environmental discourse on wastefulness. Moreover, self-harm has only very rarely been part of the historical discourse on *bal tashḥit*. When linked, however, these two prohibitions create an environmental ethic: wastefulness and destruction are harmful to oneself; and in environmental terms: to harm the environment is to harm oneself. The ethic is beautiful in its simplicity, and is relevant both historically and currently. Historically, the link between *bal tashḥit* and the prohibition against self-harm was first made by the sages Rabbi Eleazar ben Azariah and his student Rabbi Akiva ben Joseph (c. 1st-2nd centuries

⁸⁹ Samson Raphael Hirsch, *Horeb: A Philosophy of Jewish Laws and Observances – Volume Two*. 2nd Edition, trans. I. Grunfeld (London: The Soncino Press, 1968), 279.

CE, Land of Israel) and anonymously in the Tosefta. The connection was rejected by the sages of the Talmud who asserted that these prohibitions are qualitatively different from each other. Very little extant material on *bal tashhit* exists from the time of the canonisation of the Talmud at the very end of the 6th century CE until the 12th century. In the 12th century, Maimonides, one of the most influential figures in all of Jewish history, listed these prohibitions as separate entities in his code of Jewish law, the *Mishneh Torah*. Subsequently, only a handful of scholars until this very day have discussed the connection between them. Nevertheless, though muted, this connection was not entirely forgotten. For instance, Yonah of Gerona (d. 1263, Spain), Menaḥem HaMeiri (1249-1315, Provence), Solomon Luria (1510-1574, Poland), Abraham de Boton (c. 1560- c. 1605, Greece and Land of Israel), Shneiur Zalman of Liadi (1745-1813, Russia) Israel Lipschutz (1782-1860, Germany), Jacob Ettlinger (1798-1871, Germany) Shlomo Gantzfried (1802-1884, Hungary), Barukh Epstein (1860-1941, Belarus), and Yitzḥak Zilberstein (b. 1934, Poland and Israel), all among the greatest scholars of their periods, understood these prohibitions to be conceptually connected to each other.⁹⁰

Translating the prohibition against wastefulness from theory into practice is, of course, a process fraught with compromise, and it is not surprising that the theory behind the prohibition underwent an evolutionary process. After its expansion into a general prohibition against wastefulness, the major shift in the development of *bal tashhit* was the separation of the prohibition against self-harm from the prohibition against wastefulness. This conceptual shift resulted in a utilitarian understanding of the prohibition. Rediscovering this link uncovers what is one of the earliest conceptualisations of the prohibition of *bal tashhit* prior to it being problematised through real world situations, as will be demonstrated in the dissertation. Connecting Genesis 9:5 and Deuteronomy 20:19-20 allows us to move beyond considering *bal tashhit* as a religio-legal concept that has environmental ramifications, to an environmental ethic with religious origins. These currents exist side by side throughout history, with the utilitarian approach strongly dominating the discourse on *bal tashhit*, a tendency which is still the case today. The

⁹⁰ This list is by no means exhaustive.

second approach has been taken up and developed by several key figures over time. As will be made clear, these approaches do not contradict each other, but with the utilitarian paradigm governing the discourse, the environmental approach has not received the attention it deserves. In part, this is true because until now no one has conducted a tradition histories study of *bal tashhit*; as a result, scholars have not been fully aware of the impact the different layers of conceptualisation of *bal tashhit* has had on our understanding of the prohibition. As such, the idea that harming the environment is tantamount to harming oneself has not yet entered the environmental discourse on *bal tashhit*. This is a gaping hole in the current literature, in particular since the idea that harming the environment is equivalent to self-harm is now fundamental within mainstream environmental discourse.

This study sheds light on the prohibition against wastefulness and destruction and advances the field of Jewish environmental thought. Environmentalism has not made significant inroads into Jewish religious communities, something which has been hindered in part by the inability to find a common language between environmentalists and religious communities. While it is clear that *bal tashhit* does indeed merit being termed an environmental concept, until a full depiction of its environmental dimensions are brought into mainstream religious discourse – which is one of the goals of this dissertation – it is difficult to imagine that environmentalists will be able to successfully use it to influence behaviour and consumption patterns among (Jewish) religious communities. This study makes progress toward finding this common language, by creating a document that can be understood by both scholars of rabbinics and environmental scholars. Moreover, since *bal tashhit* is one of the first principles that might be construed as an environmental concept in Western thought, understanding the origins and development of this prohibition provides insight into the theoretical framework of environmentalism, the way people conceive of their environment and the obligations they have toward it. Thus far, the fascinating study of the evolving textual interpretations has only been conducted in limited areas in general and the evolution of Jewish environmental thought has scarcely been addressed. It is my intention that this

dissertation will make a significant contribution by establishing the analysis of tradition histories as a methodological standard for historical research in the field of Religion and Environment.

Chapter Two: Bible and Biblical Commentaries

2.1 Introduction

The Bible is a foundational document of Western culture. It gave birth to Judaism and later on Christianity, while also strongly influencing Islam. It has provided the world with the first recorded concept of monotheism. In its many books one can find the story of the creation of the world, the covenant between God and Abraham and later on his descendants the Israelites, their enslavement in Egypt and subsequent exodus and settlement in the land of Israel. It speaks of the monarchy and prophets, the building of the First Temple and its later destruction and exile of the Israelites. Perhaps most importantly, it provides a legal framework with universal laws applicable to all of humanity, as well as a lengthy set of laws which apply only to Israelites. Over the course of history these laws have been expounded and expanded. There has been and remains a drive to interpret the requirements of the laws, in order to live life according to what has been dictated by the Bible. The stories and laws of the Bible, however, are not always written in a straightforward manner that can be easily understood. Sometimes the language employed is esoteric or ambiguous. Sometimes the language is simply outdated and as such no longer understood. Sometimes the text contradicts itself and sometimes the heroes of the Bible act in ways which many would consider to be morally repugnant. For all these reasons, the Bible requires interpretation. Interpretation is not a static endeavour, and is highly influenced by factors external to the text being interpreted. As Michael Fishbane puts it:

As interpretations succeeded or complemented one another, a massive texture of texts and techniques formed the warp and woof of rabbinic culture, setting its patterns and forms for the ages. Each new period saw successive developments along these lines, even as radically new expressions emerged.⁹¹

⁹¹ Michael Fishbane, "Introduction," *The Midrashic Imagination*, ed. Michael Fishbane (Albany, NY: State University of New York Press, 1993), 1.

The prohibition of wastefulness and destruction in the Jewish tradition is almost universally seen to have originated from Deuteronomy 20:19-20, despite the fact that contextually these verses deal with trees and war. There is no doubt that these verses have shaped the legal discourse surrounding the prohibition of *bal tashhit*. As this prohibition has its foundations in Scripture, in order to fully understand its scope it is necessary to conduct a comprehensive study of the verses which form its basis.

2.2 Goals

The goals of this chapter are as follows:

1. To collect, analyse and synthesise the comments of as many glossators as possible.
2. To assess whether these verses have elicited comments on *bal tashhit* in general.
3. To make note of commentators who have a significant impact on the conceptualisation of *bal tashhit*.
4. To see whether there are exegetes who connect between the prohibition against wastefulness and the prohibition against self-harm.
5. To analyse whether any of the commentators have any profound environmental insights in their comments.

The chapter on biblical commentary precedes the chapter on the chronologically earlier classic rabbinic material.⁹² When deciding how the chapters in this dissertation should be arranged, the placement of the chapter on biblical commentary caused the greatest predicament. Initially, it made the most sense to approach the analysis of the concept of *bal tashhit* chronologically. After all, a study of the evolution of a concept should be traced in a linear manner. This is especially the case, since the vast majority of biblical commentators are grounded in the rabbinic tradition and base their interpretations

⁹² I use the term rabbinic to describe *tannaitic* and *amoraic* literature, even though the term could be used to describe some of the commentaries appearing in this chapter.

on it. Since Jewish biblical commentaries in their familiar style did not begin to appear until the 10th century C.E with Saadia, there are close to eight centuries of written rabbinic material to take into account. This is not to suggest that biblical commentaries did not exist prior to Saadia; certainly they did. In fact, this chapter includes a form of classic rabbinic exegesis called *midrash*.⁹³ Robert Brody, referring to Saadia and a number of the *geonim* who succeeded him, describes the main difference between rabbinic and *geonic* exegesis:

Geonic exegesis in general may be characterized as more disciplined and less fanciful than earlier rabbinic exegesis, and more concerned with a close, systematic reading of the biblical text, in which attention is devoted both to the smallest textual units and to the integrity of larger narratives.⁹⁴

In terms of the influence this type of exegesis had on subsequent generations, Brody writes:

In a broader sense, the work of the *Geonim* provided a precedent for the writing of systematic biblical commentaries in a form essentially different from that of classical rabbinic *midrash*, and doubtless provided inspiration and a sense of legitimacy to numerous commentators who had no direct access to their works.⁹⁵

The most important and influential compilations that use *midrash* are the *Talmudim* and to a much lesser extent Mishnah and Tosefta. These genres are the foundational texts of Jewish law, and are broadly arranged by legal topic. The relevant texts in these genres will be presented in the rabbinic chapter. The *midrashic* material that is of interest to us in this chapter is that which is presented in the form of a verse by verse commentary on the Torah. The majority of *midrashim* found in this chapter were likely extant in an oral form well before they were redacted around the 3rd-5th centuries C.E, though some are also from the medieval era. *Midrashim* in their various forms were collected in anthologies around the mid-late medieval era.

⁹³ For an introduction to the genre of *midrash* see H. L. Strack and G. Stemberger, "Part Three: *Midrashim*," in *Introduction to the Talmud and Midrash*, trans. Markus Bockmuehl (Edinburgh: T & T Clark, 1991), 254-393.

⁹⁴ Robert Brody, "The Geonim of Babylonia as Biblical Exegetes," in *Hebrew Bible/Old Testament: The History of Its Interpretation, Volume I: From the Beginnings to the Middle Ages (Until 1300), Part 2: The Middle Ages*, ed. Magne Saebo (Gottingen, Germany: Vandenhoeck & Ruprecht, 2000), 87.

⁹⁵ *Ibid.*, 88.

Even though the *midrash* could be presented in the chapter on rabbinic material it was decided not to do so. *Midrash* is in fact a form of biblical exegesis, and as such it was most appropriate to include it in this section. This is also due to the fact that such a significant number of the commentators' glosses given on the verses studied are grounded in *midrash*. Richard Kalmin offers a sound definition of *midrash* of which only part is sufficient for our purposes. He describes *midrash* as "A rabbinic interpretation, virtually always of a scriptural word, phrase, or verse, which searches, or ferrets out a meaning which is not immediately obvious upon first encounter with the text."⁹⁶ In other words, even though it could be argued that the majority of Bible commentators are grounded in rabbinic thought and the rabbinic chapter should precede the Bible chapter, for these particular verses they cite *midrashim* much more frequently than other rabbinic literature.

Another reason for deciding to deviate from the chronological approach has to do with the fact that when looking for the plain or simple meaning of the text (*peshat*)⁹⁷ the best place to start among classical Jewish sources is in Bible commentaries. Exegetes who are dedicated to *peshat* will offer glosses to the text that take into consideration grammar, syntax and context,⁹⁸ and usually offer an alternative interpretation to the *midrash* of the rabbis. After the greatest biblical commentators are examined, one may seek further clarity by consulting earlier rabbinic sources or later *halakhic* sources. Although there is room for critique, this is the methodological route chosen based on the above justifications.

Nevertheless, despite the slight deviation from the chronological approach, this chapter will maintain a historical sequence, and the biblical exegetes consulted will be

⁹⁶ Richard Kalmin, "Patterns and Developments in Rabbinic *Midrash* of Late Antiquity," in *Hebrew Bible/Old Testament: The History of Its Interpretation, Volume I: From the Beginnings to the Middle Ages (Until 1300), Part 1: Antiquity*, ed. Magne Saebo (Göttingen, Germany: Vandenhoeck & Ruprecht, 1996), 287.

⁹⁷ For more on *peshat* see Martin Lockshin, "Introductory Essay: *Peshat* and *Derash* in Northern France," in *Rashbam's Commentary on Deuteronomy: An Annotated Translation*, ed. and trans. Martin Lockshin (Providence, RI: Brown Judaic Studies, 2004) 24.

⁹⁸ *Ibid.*, 2.

listed according to a linear timeline. Here, too, many different methods could have been used to divide the glosses offered by the commentators. Groups could have been made based on geography, schools of thought (e.g. *peshat*, *derash*, etc.), historical eras (medieval vs. modern), or culture (Ashkenazi vs. Sephardi). It was decided to present the commentaries chronologically and only then to divide them into groups based on the actual comments. Each method of division has merits. The goal of this chapter is to uncover the manner in which the verses that are fundamental to the concept of *bal tashhit* are interpreted. As such, despite the fact that there is significant differential in the spheres of influence on an individual commentator, the primary concern of this chapter is the commentary and not the commentators. Only after the glosses have been analysed do the commentators themselves become a focus. Due to this distinction, and the fact that the comments are later broken down into groups based on their comments, it made sense to first present them chronologically.

The format of this chapter is as follows: each relevant verse is presented along with a paragraph explaining the biblical context in which the verse or verses emerged. Next, the *midrash* is brought, followed by a diachronic arrangement of all the biblical commentators and a synthesis of their comments. After all the glosses for a given verse are presented, an analysis of the commentaries is given, followed by an overall conclusion to the chapter. The verses covered in this chapter are Genesis 9:5, Leviticus 19:27, Deuteronomy 20:19-20, and 2 Kings 3:19, 25. These verses are pertinent to the development of the concept of *bal tashhit*.

This chapter makes no claim to have covered the entire gamut of Jewish biblical glossators, though an attempt was made to be as comprehensive as possible. One issue that arises is how to distinguish between the quality of one specific commentator and another. After all, as mentioned in the introduction, this was one of my major critiques of Jeremy Cohen. If no distinction is made here, then perhaps this work could be critiqued in the same manner. It is, therefore, pertinent to open this chapter with a number of important statements that address this issue. This dissertation is primarily interested in the

quality of the gloss and only secondarily in the quality of the glossator. The quality of a gloss is measured by two parameters. The first is through its environmental insight. By situating itself in the field of Religion and Environment, this dissertation is interested in the environmental concern demonstrated by particular individuals through their comments.⁹⁹ As such, certain scholars might stand out even though they are less acclaimed as biblical exegetes than others. The second area of interest is in the impact a gloss has on the conceptualisation of *bal tashhit*. By going beyond the historical timeframe which Jeremy Cohen prescribed to his work and taking the study of *bal tashhit* into the current era, this dissertation is able to observe if scholars from earlier times had a profound impact on the development of the concept and duly note it.

Bible commentaries from Saadiah onward are not always presented in the same format that he popularised. Some of the individuals appearing in this chapter are better known for scholarship in fields other than Bible. Nevertheless, they appear here because they either wrote a commentary on a part of the Bible, someone else extracted a commentary from the works of scholars who did not themselves write a biblical commentary, or because they wrote a work that is not a biblical commentary *per se*, but still comments on the Bible and fits better into this chapter than anywhere else in the dissertation. Due to the difficulties of collecting relevant material from this last group of writings, such literature is by and large (though not entirely) beyond the scope of this chapter. It must also be noted that there are many commentators for whom we have no extant comments available to be shared with the reader. At times this is due to the fact that even though we are in possession of their complete commentary, the exegete apparently thought it unnecessary to write a gloss on the passage in question. Other times there were commentators who only wrote commentaries on a particular book and not on another (for example on Genesis and not on Kings). In many cases, however, the reason for the absence in commentary is the result of incomplete, lost or missing manuscripts that have, unfortunately, made these texts unavailable to us. Only commentators for

⁹⁹ Again, as argued in the introduction, this is a very different enterprise to claiming that any of these historical figures was an environmentalist in the contemporary sense.

which there are relevant comments on the passages in question are included in the body of this chapter. The remaining commentaries are listed in Appendix A in order to illustrate the wide range of commentators analysed in this section. As might be expected when dealing with such a large body of commentaries, there are inevitable repetitions of material. One solution would have been to relegate commentaries with essentially nothing to add to the discourse to a footnote or appendix. In the end, however, it was decided that since one of the goals of this chapter is to be as comprehensive as possible, there is still utility in presenting these commentaries in the body of the dissertation.

2.3 Deuteronomy 20:19-20

Jewish Publication Society:

19: 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? 20: 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 on you, until it has been reduced.¹⁰⁰

King James:

19: When thou shalt besiege a city a long time, in making war against it to take it, thou shalt not destroy the trees thereof by forcing an axe against them: for thou mayest eat of them, and thou shalt not cut them down (for the tree of the field is man's life) to employ them in the siege: 20: Only the trees which thou knowest that they be not trees for meat, thou shalt destroy and cut them down; and thou shalt build bulwarks against the city that maketh war with thee, until it be subdued.¹⁰¹

The reason two different translations are presented is because they highlight the major divide within the tradition histories of the verses. The JPS translates the words “*ki ha’adam etz hasadeh*” as a rhetorical question: “Are trees of the field human...?” The

¹⁰⁰ *The Jewish Study Bible*, ed. Adele Berlin and Marc Zvi Brettler (New York: Oxford University Press, 2004).

¹⁰¹ *The New Cambridge Paragraph Bible, with the Apocrypha*, King James Version, ed. David Norton (Cambridge, UK: Cambridge University Press, 2005).

King James Bible, however, translates these words as a statement: “For the tree of the field is man’s life...” This will be expanded upon in depth in the analysis of this section.

2.3.1 Context

Chapter 20 of Deuteronomy instructs the Israelites on their obligations in a time of war. For the most part, the commandments found in this chapter are of an ethical nature.¹⁰² The chapter starts off by encouraging the Israelite army to put their faith in God who will ensure their victory. Those who have recently built a house but not lived in it, planted a vineyard but have not yet enjoyed it, were betrothed but have not consummated their marriage, or are simply afraid, are prohibited from participating in the battle. In the battle itself the Israelites are commanded to negotiate a peaceful surrender of their enemies. The inhabitants of the cities that surrender are not to be killed, but instead are to be subservient to the Israelites. The adult male inhabitants of the cities that do not surrender are to be put to death, but everyone and everything else can be taken as spoils of war. This is the procedure in cities that are of a distance from the Land of Israel. The text, however, does not provide the same leniencies to the seven nations of Canaan which were in close proximity to the Israelites. They were to be completely destroyed, men, women and children, even down to the last animal.¹⁰³ The reasoning behind this was so that the Israelites would not be influenced by their idolatrous practices. Finally, the chapter concludes with the two verses that are of interest to us and are cited above.

2.3.2 *Midrash*

Sifre (late 3rd century, Land of Israel) (Finkelstein Edition) *Shofetim* 203-204 – The *midrash* asked that if the text specifies the prohibition of cutting down fruit trees with an axe, how do we know that the Torah also prohibits killing off the trees by preventing water from reaching them? The answer being that since scripture uses the term “*lo tashhit*,” it implies all forms of destroying the tree.

¹⁰² It should be noted that at times biblical ethics and contemporary ethics differ greatly.

¹⁰³ The Jewish Bible commentary tradition by and large understood this edict to include men, women and children but not animals. As some grammarians have pointed out, and as the plain sense of the text indicates, the edict in Deuteronomy 20:16 includes animals.

Eating from the tree is considered to be a positive commandment (a commandment that an action must be taken to perform),¹⁰⁴ while not cutting it down is a negative commandment (a commandment requiring abstention from a particular action). *Ki ha'adam etz hasadeh* also comes to teach that human life is sustained by fruit trees. R. Yishmael (1st-2nd centuries CE, Land of Israel) taught that if God has compassion for the fruit tree, how much more so is his compassion for the fruit itself. If, however, the fruit trees are preventing the city from coming under effective siege, it is permissible to cut them down.

The *midrash* stated that the meaning of “only trees which you know” in verse 20 refers to fruit trees and “do not yield food” refers to non-fruit bearing trees. This part of the *midrash* is somewhat enigmatic, as it is not entirely clear what the purpose of this elucidation is. The *midrash* then asked if we ultimately allow even fruit trees to be cut down, why bother differentiating between the trees, to which it answered that the reason is to create a hierarchy between fruit trees and non-fruit bearing trees. Since fruit trees are more important, the non-fruit trees should be cut down first. Finally, the *midrash* asked whether this is the case even where the non-fruit bearing tree is of greater value than the fruit tree, to which it replied that scripture teaches us that “you shall destroy them and cut them down.” The enigmatic response does not indicate a clear course of action. This very same *midrash* is brought in *bBaba Qama* 91b-92a, but as will be seen in the next chapter, there the text is slightly different, making it clear (though perhaps reinterpreting the text) that a fruit tree can be cut down before a non-fruit bearing tree if the economics so suggest.¹⁰⁵

***Midrash Tannaim*,¹⁰⁶ Deuteronomy 20:19-20** – The *midrash* stated that the word “destroy” is a prohibition on cutting off the branches of the tree, while the words “putting an axe to them” indicate a prohibition on chopping down a tree with an axe. The words

¹⁰⁴ In this case the commandment is derived from the section of the verse that states “you may eat of them” (*ki mimenu tokhel*). This phrase could also be translated as “you will eat of them.”

¹⁰⁵ *Sifre Devarim*, Finkelstein Edition (New York: 1969).

¹⁰⁶ *Midrash Tannaim* was compiled by David Tzvi Hoffmann (1843-1921) from other *midrashic* anthologies illustrating that there existed a full *halakhic midrash* compilation on Deuteronomy.

“do not cut them down” refer to uprooting the tree, which is a transgression of all three. The *midrash* continued by asking how we know that the prohibition includes actions such as preventing water from reaching the tree, to which the answer is that “destroy” includes all forms of destruction. The *midrash* then asked what the meaning of *ki ha’adam etz hasadeh* is, to which it answered that humans see their enemy coming to kill them and run away. In other words, the statement is seen as rhetorical – the tree, of course, cannot escape from those wishing to cut it down.

Another interpretation is that the text includes within it two separate commandments, one positive and one negative. One should eat from the fruit tree (positive), while at the same time abstain from cutting it down (negative). *Ki ha’adam etz hasadeh* is also a statement indicating that human life is sustained by fruit from trees. Nevertheless, if a given tree is an obstacle in carrying out the siege it should be cut down. It is then asked, that if in the end it is permissible to cut down both fruit bearing and non-fruit bearing trees, why bother differentiating. The explanation is that the differentiation creates a hierarchy as to which tree should be cut down first. The text then asks what happens in cases where the lumber of a non-fruit bearing tree is more valuable than a fruit tree. In such cases fruit trees may be cut down before non-fruit bearing trees. Finally, a homiletic interpretation of the verses is offered that compares trees to humans. Fruit trees are compared to the righteous. If God holds fruit trees dear because of the fruits they produce despite the fact that they do not see, hear or speak, how much more so does God hold dear the righteous who can do the will of God. Non-fruit bearing trees, which in addition to not being able to see, hear or speak do not bear fruit and as such are not held dear by God, how much more so are the wicked not taken pity on by God.¹⁰⁷

Sifra (3rd century, Land of Israel) ***Qedoshim, Parashah 10, 10:6-7*** – Similar to what we see in *Sifre Devarim/Midrash Tannaim* 20:19, here there is the same comparison of trees to humans. Fruit-trees are equated to the righteous, while non-fruit bearing trees are compared to the wicked. Contextually, this homily is more at home in *Sifra*. Leading up

¹⁰⁷ *Midrash Tannaim al Sefer Devarim*, ed. David Tzvi Hoffmann (Tel- Aviv: Offset Israel-America, 1963).

to the tree-humanbeing analogy, the text offers a list of comparisons between humans and objects and creatures without rational faculties. The text starts off with dealing with the ethical conundrum of why the animal should be put to death (along with the transgressing human) when a human commits bestiality with that animal. The transgressor is clearly the human and not the animal. *Sifra*, however, explains that the animal is guilty of tempting the human and must be put to death. Whether or not we accept this logic, *Sifra* draws an *a fortiori* conclusion about humans. If an animal without rational faculties is put to death for tempting a human to transgress, then a human who does have rational faculties and tempts another human to transgress in such a grievous manner is even more culpable. The text eventually deals with the case of trees. If God holds fruit trees dear because of the fruit they produce in spite of the fact that they do not see, hear or speak, how much more so does God hold dear the righteous who can do the will of God. Alternatively, non-fruit bearing trees which in addition to not being able to see, hear or speak do not bear fruit and as such are not held dear by God, how much more so are the wicked not entitled to God's pity.¹⁰⁸

BeMidbar Rabbah (Moshe HaDarshan, 11th century, Narbonne) ***Pinḥas 21:6***¹⁰⁹ – The biblical text sets the scene for the Prophet Elisha's directive in 2 Kings 3 to destroy the trees of the Moabites. In Numbers 21 the Israelites are involved in idol worship and sexual immorality with the Moabites. After a brazen act of sexual transgression by an Israelite man with a Midianite woman and the priest Pinḥas' (Phineas') killing of them, God commanded the Israelites to kill the Midianites. Though they are two separate peoples, *BeMidbar Rabbah* drew a parallel between the Midianites and the Moabites, in terms of the directive to seek their destruction as opposed to living peacefully with them. As such, even though with other nations the prohibition on destroying fruit trees during a

¹⁰⁸ *Sifra*, Weiss Edition (Vienna, 1862).

¹⁰⁹ This text can also be found in *Midrash Tanḥuma al Hamishah Humshei Torah*, Volume Two, ed. Shlomo Buber (Jerusalem: Ortsel Ltd., 1964), *Pinḥas* 5

siege found in Deuteronomy 20:19-20 holds valid, with the Moabites the directive is to destroy them utterly including to enact a scorched earth policy.¹¹⁰

Tuvia bar Eliezer (*Midrash Leqah Tov, Pesiqta Zutarta*) (late 11th century, Byzantium) **Devarim – Shofetim 27a** – Tuvia bar Eliezer asserted that verse 19 includes a positive commandment, “eat of them”, and a negative commandment, “you must not cut them down.” He also claimed that the words *ki ha’adam etz hasadeh* indicate that human life is dependent on fruit trees. He then presented a *midrash* by the *tanna* Rabbi Yishmael, who stated that if the text demonstrates benevolence toward the fruit trees, then this extends *a fortiori* to the fruit itself. Tuvia bar Eliezer also stated that if the fruit trees are inhibiting the siege and delaying it, they may be cut down. Another interpretation offered for the words *ki ha’adam etz hasadeh* is that the statement is rhetorical: the tree is not a human. As such, it should not be cut down as it is not an enemy.

Devarim – Ki Tetze 41b – One of the social laws found in Deuteronomy 23, is allowing a labourer in a vineyard to eat their fill of grapes. At the same time, the text prohibits filling utensils with the fruit and removing them from the vineyard (Deut. 23:25). Tuvia bar Eliezer presented the view of Rabbi Elazar Hasma who claimed that the labourers are not to fill themselves beyond the equivalent value of which they laboured. The indicator for this is the language used in the text – *kenafshekha* – which has been translated as “your fill,” but could also mean “your person.” Tuvia bar Eliezer explained this as meaning that people should eat their fill, but just as people would not waste/destroy their own property, they are prohibited from wasting/destroying the property of another.¹¹¹

Midrash Aggadah (12th-13th centuries, anonymous) (Buber) **Devarim 20:19** – The prohibition of destroying fruit trees is an indicator that anyone who destroys something from which someone can derive benefit/enjoyment (*yesh alav hana’ah*) transgresses the prohibition of *lo tashhit*. *Ki ha’adam etz hasadeh* – if there is a non-fruit bearing tree it may be cut down.

¹¹⁰ *BeMidbar Rabbah*, Vilna Edition (Jerusalem, 1878).

¹¹¹ Tuvia bar Eliezer, *Midrash Leqah Tov HaMekhuneh Pesiqta Zutarta al Hamishah Humshei Torah – Devarim*, Volume Two, ed. Shlomo Buber (Israel, Books Export Enterprises Ltd., 1960).

This terse gloss is one the few to connect between the contextual prohibition of the verse and the general prohibition against wastefulness. More importantly, however, is his definition of the general concept of *bal tashhit*. As will be seen, his assertion that the prohibition applies to things from which benefit/enjoyment can be derived is a significant stage in the conceptualisation of *bal tashhit*.¹¹²

Yalqut Shimoni (Shimon HaDarshan, 13th century, Germany) ***Shofetim* 923** – Though very similar to other *midrashim* on Deuteronomy 20:19-20, *Yalqut Shimoni* offers one very significant addition. The *Yalqut* adds a section found further on in b*Shabbat* 67b which states: “Rav Zutra said: He who covers an oil lamp or uncovers a *naphtha* [lamp] infringes on the prohibition of wasteful destruction (*bal tashhit*).” This statement will be expanded on in the chapter on rabbinic material, but a few things need to be said about it here. To elucidate the statement, Rav Zutra said that anyone who causes a lamp to burn inefficiently is transgressing the prohibition on wastefulness. What makes this of particular interest is that it is one of the earliest instances in which a connection is made between the prohibition on cutting down trees, and wastefulness in general. The exact date and author of the compilation of *midrash* is unknown, but it includes *midrashic* material from the span of over a millennium. It is currently thought that the author lived in early 13th century Germany.¹¹³ Due to the relatively late date of the compilation, it does not come as a surprise that the *Yalqut* contains within it a large quantity of material for each verse of the Torah upon which it is commenting. The *Yalqut* is still one of the only sources to connect between the verse in Deuteronomy and an example of wastefulness that is not associated with trees. There are a number of instances in the Talmud where the concept *bal tashhit* appears, but never in the context of fruit trees.¹¹⁴

¹¹² *Sefer Midrash Aggadah al Hamishah Humshei Torah*, ed. Solomon Buber (Jerusalem: M. D. Bloom, 1961).

¹¹³ Jacob Elbaum, *Encyclopedia Judaica*, 2nd Edition, s.v. Yalkut Shimoni, ed. Michael Berenbaum and Fred Skolnik (Detroit: Macmillan Reference USA, 2007).

¹¹⁴ Shimon HaDarshan, *Yalqut Shimoni LeRabbeinu Shimon HaDarshan: Sefer Devarim, Volume One: Devarim – Shofetim*, ed. Aharon Heiman and Yitzhak Shiloni (Jerusalem: Mossad HaRav Kook, 1991).

2.3.3 Post-Midrashic Commentary

Saadia Gaon (*Rasag*) (882-942, Egypt and Babylonia) – Saadia wrote that fruit trees should not be cut down under the mistaken premise that they are like humans who can hide during a siege. In other words, Saadia interpreted the statement of *ki ha'adam etz hasadeh* as a rhetorical question.¹¹⁵

Shlomo Yitzhaki (*Rashi*) (11th century, Northern France) – Rashi saw the words *ki ha'adam etz hasadeh* as rhetorical; trees cannot escape the battlefield in the manner that humans can. Accordingly, why destroy them?¹¹⁶

Samuel ben Meir (*Rashbam*) (c. 1080-1174, Northern France) – Rashbam indicated that part of the process of laying siege to a city requires the cutting down of trees. For Rashbam, the initial reason to not cut down fruit trees in this context is because after a successful siege, the trees will provide sustenance to its new inhabitants. He was aware, however, that the trees themselves could be used to aid the enemy by impeding the advance of the troops, or by providing cover for the enemy. As such, the prohibition on cutting down fruit trees applies first and foremost to the fruit trees that belong to the city, but are sufficiently distant from it so as not to shield the enemy. The status of the fruit trees close to the city will be elucidated in the continuation. Regarding *ki ha'adam etz hasadeh*, Rashbam used the linguistic rule that anytime the word *ki* (but, when) appears after the word *lo* (no/negation) it should be read as “rather.” Lockshin, the editor of the Rashbam edition used here, states that while Rashbam’s gloss on these verses is difficult to understand in certain places, what is clear is that Rashbam was offering an alternative interpretation to the *midrashic* glosses that draw parallels between humans and fruit trees, and at the same time disagrees with the interpretations that viewed *ki ha'adam etz hasadeh* as a rhetorical question. Lockshin suggests that it is likely that the version of Rashbam we have is somewhat corrupted, but offers the possibility that Rashbam’s gloss

¹¹⁵ Saadia Gaon, “*Targum HaTafsir shel Rav Saadia Gaon*,” in *Torat Haim – Devarim*, ed. Yosef Kapah (Jerusalem: Mossad HaRav Kook, 1993).

¹¹⁶ Shlomo Yitzhaki, *Peirushei Rashi al HaTorah*, ed. Haim Dov Chavel (Jerusalem: Mossad HaRav Kook, 1982).

either meant that the enemy used the trees close to the city as a way of entering and exiting, or that the act of cutting down the trees close to the city will itself put the city under siege. Ultimately, this aspect of Rashbam's gloss is of less interest for our purposes. Rashbam interpreted verse 20 as meaning that any non-fruit bearing trees, regardless of their location in reference to the city, can be cut down and used in the siege-works. Fruit trees, however, are only to be cut down when they are in close proximity to the city, and only when they fit the criteria listed above.¹¹⁷

Abraham ibn Ezra (1089-1164, born in Spain, but lived and travelled all over the Mediterranean basin, Northern France and England) – Ibn Ezra analysed the term *ki ha'adam etz hasadeh* from a linguistic perspective. He mentioned that a great Sephardic scholar claimed that the text is shortened, and actually should be read as *hakhi ha'adam etz hasadeh*. This distinction would turn the text into a rhetorical question instead of a statement. The rhetorical question being – can a tree of the field truly run away from you in battle as a human would? Ibn Ezra rejected this interpretation by claiming that the text has no reason to ask this type of question. Instead, ibn Ezra offered an alternative interpretation, stating that because the life of the human is derived from the sustenance given by the tree of the field, the tree is equated to the human, a “you are what you eat” approach.¹¹⁸

Meyuḥas bar Eliyahu (1150-1200, Byzantium) – Meyuḥas bar Eliyahu began by claiming that the straightforward meaning of the text is that the trees are designated to become a food source and should not be cut down. He then presented the *a fortiori* interpretation offered in the *midrash* which claimed that if the fruit tree itself is prohibited from destruction, how much more so is the fruit itself prohibited from destruction. This, he claimed, is the source that indicates that the Torah is concerned with the waste of food. From this the rabbis derived both that one is prohibited from throwing out food and that one is prohibited from destroying anything that has utility (“*davar shehu tzorekh*” – a

¹¹⁷ Samuel ben Meir, *Peirush HaTorah LeRabbeinu Shmuel ben Meir. Volume Two: VaYiqra, BeMidbar, Devarim*, ed. Martin I. Lockshin (Jerusalem: Chorev Publishing House, 2009).

¹¹⁸ Abraham ibn Ezra, *Peirushei HaTorah LeRabbeinu Avraham ibn Ezra*, Volume Three, 2nd Edition, ed. Asher Weiser (Jerusalem: Mossad HaRav Kook, 1977).

thing which has usefulness/utility), such as utensils and animals. This is also seen as an indicator that God is concerned with the welfare of the world. It is here that the editor of this commentary, Yeḥiel Mikhel Katz, refers the reader to *tBaba Qama* 9, *bShabbat* 105b, and Maimonides' Laws of Kings 6:6, all of which will be discussed in depth in other chapters. Meyuḥas then commented that *ki ha'adam etz hasadeh* is a "*miqra mesoras*," meaning that the order of the words in the verse needs to be changed in order for it to be properly understood. The new arrangement indicates that humans, and in this particular case, enemies, are liable to end up besieged. Trees of the field, however, remain in the field at all times and should not be cut down. If, however, the trees impede the siege in some way, they should be cut down. The following verse is understood as establishing a hierarchy in terms of which trees are to be used in building siege-works. Non-fruit bearing trees are to be cut down before fruit trees, with two utilitarian caveats. The first being that if the non-fruit bearing tree is of greater value than the fruit bearing tree, then the fruit tree is to be cut down first. The second is that if the value of the lumber of a fruit bearing tree is greater than that of the fruit it produces, then it too may be cut down.¹¹⁹

Da'at Zeqenim MiBa'alei HaTosafot¹²⁰ (A collection of commentary by *ba'alei HaTosafot* – anonymous authors, c. 12th-14th centuries, France and Germany) – In their commentary they suggested that the word *ki* (of *ki ha'adam etz hasadeh*) be read as *ela* (rather). According to them this allowed for the verse to be read as an exception to the prohibition against cutting down fruit trees. This understanding states that if the enemy uses the trees to hide, it is permissible to cut them down. Another interpretation offered was that the prohibition encompasses using the fruit trees to lay siege-works. Rather, the trees should be used for food purposes and should not be cut down. The following verse (Deuteronomy 20:20) regarding cutting down non-fruit bearing trees was read by them *midrashically* based on *bTa'anit* 7a. The trees are equated to scholars; the suitable ones

¹¹⁹ Meyuḥas bar Eliyahu, *Peirush al Sefer Devarim*, ed. Yeḥiel Mikhel Katz (Jerusalem: Mossad HaRav Kook, 1968).

¹²⁰ *Tosafists* are a group of commentators on the Talmud and the Torah. They lived between the 12th-14th centuries in France and Germany. Some are known by name, but many are anonymous.

are seen as fruit bearing trees and should be cherished, while the others are seen as non-fruit bearing trees and should be avoided both as teachers and as students.¹²¹

Ephraim bar Shimshon (c. late 12th-13th centuries, France) – Bar Shimshon claimed that *ki ha'adam etz hasadeh* was a rhetorical question.¹²²

Moshe ben Naḥman (*Ramban*, Naḥmanides) (1194-1270, Spain and Land of Israel) – Naḥmanides accepted ibn Ezra's comment regarding the life of the human as being dependent upon fruit trees. Nevertheless, he took issue with it, because ibn Ezra's conclusion was contrary to the rabbinic position found in the Talmud. There, the rabbis permitted the cutting down of fruit trees in order to build siege-works and the only reason the matter is mentioned by the Torah is so that non-fruit bearing trees are cut down before fruit bearing trees. The text was seen by the rabbis as prohibiting the cutting down trees needlessly (i.e. for a purpose other than building siege-works), that is, prohibiting a scorched earth policy. When Israelites embark on a siege, they need to put their faith in God that the siege will be successful and that the fruit trees will be a source of sustenance for the future inhabitants of the city. There are, however, situations in which the cutting down of fruit trees is permitted, such as the city's inhabitants gathering lumber, or using the trees to hide in for purposes of ambush, or using the trees as a shield against projectiles.¹²³

Menahem Recanati (c. 1250-c. 1310, Italy) – Recanati presented the rabbinic statement that there is no creation on earth that is not connected to heaven. By destroying a creation on earth, its connection to heaven is also affected. He claimed that *ki ha'adam etz hasadeh* is to be understood in its plain sense. To this end he used the Talmud (*bBaba Qama* 91b) as evidence. There Rabbi Ḥanina claimed that his son died for cutting down a fig tree before its time. The implication here is that cutting down the fruit tree is

¹²¹ *Da'at Zeqenim MiBa'alei HaTosafot* (Jerusalem: HaMeir LeYisrael, 2008).

¹²² Ephraim bar Shimshon, *Peirush Rabbeinu Ephraim bar Shimshon UGedolei Ashkenaz HaQadmonim al HaTorah. Part Two: VaYiqra – BeMidbar – Devarim*, ed. Tzvi Yehoshua Leitner and Ezra Korah (Jerusalem: Orthodox Publications Co., 1992).

¹²³ Moshe ben Naḥman, *Peirushei HaTorah LeRabbeinu Moshe ben Naḥman*, Volume Two, 9th Edition, ed. Ḥaim Dov Chavel (Jerusalem: Mossad HaRav Kook, 1976).

commensurate to committing murder. He also cited *Pirqei deRabbi Eliezer* 33 which claimed that when a fruit tree is cut down its voice is heard from one end of the world to the other.¹²⁴

Asher ben Yehiel (*Rosh*) (1250 or 1259-1327, Germany, France and Spain) - Rosh claimed that any time *ki* appears after a negation its meaning switches to “rather.” He also claimed that while fruit trees may not be cut down, if the enemy is using them to hide or to prepare an ambush, then it is permissible to cut them down. Another interpretation suggested by Rosh would require a rearranging of the words in the verse and would end up meaning that only trees that are known to be non-fruit bearing trees should be cut down in order to build siege-works, while fruit bearing trees should be used as a source of sustenance. He then presented a *midrash* from *bTa’anit* 7a which equates a fruit bearing tree to a wise student from whom one should learn, and the non-fruit bearing tree to a student who is not learned and should not be learned from nor taught.¹²⁵

Bahya bar Asher (1255-1340, Spain) – Bahya stated that earlier commentaries viewed the term *ki ha’adam etz hasadeh* in a manner similar to ibn Ezra; the life of the human is dependent on sustenance from trees. Bahya, however, offered his own interpretation of the verse. Unlike humans, trees cannot escape during war. Wise people do not destroy things that have utility (*to’elet*) needlessly. As such, the fruit tree should be used for the utility it provides and not be destroyed. Destroying the tree would destroy its utility.¹²⁶

The idea of destroying things that have utility is very similar to the *Midrash Aggadah*’s gloss that the prohibition applies to all things that one can derive benefit/enjoyment from (*yesh alav hana’ah*). This conceptualisation of *bal tashhit* proves to have a significant impact on the tradition histories.

¹²⁴ Menahem Recanati, *Sefer Levushei Or Yaqar*, ed. Haim Yaakov HaCohen (Jerusalem: private printing, 1960).

¹²⁵ Ba’alei HaTosafot, *Sefer Hadar Zeqenim: al HaTorah*, ed. Avraham Forianti (Jerusalem: Herbert Zarkin Offset Institute, 1963).

¹²⁶ Bahya bar Asher, *Rabbeinu Bahya: Be’ur al HaTorah. Volume Three: BeMidbar, Devarim*, ed. Haim Dov Chavel (Jerusalem: Mossad HaRav Kook, 1974).

Ḥizqiyah bar Manoah (*Ḥizquni*) (13th century, France) – Ḥizqiyah offered Rashi's interpretation with regard to the words *ki ha'adam etz hasadeh*, that the language of the Torah is rhetorical and asks the besieging army if they think the tree can escape from them during war like a human. Because the tree cannot escape, it is prohibited to cut it down. Ḥizqiyah added that a dried out fruit tree should be considered in the same category as a non-fruit bearing tree. Another circumstance in which fruit trees can be cut down is if they are used to aid the enemy (for hiding or ambush). He then asked that if in the end even fruit trees can be cut down, why bother making the distinction. To this he offered the rabbinic harmonisation from *bBaba Qama* 91b-92a which stated that the reason for the distinction is to create a hierarchy between the different types of trees. Finally, he offered the interpretation stating that the tree is equated to human life because humans are sustained by fruit trees and as such should not be cut down.¹²⁷

Ḥaim Paltiel (c. 13th century, Germany) – Paltiel suggested that if the enemy uses fruit trees for hiding it is permissible to cut them down. He further stated that the trees are equated to humans due to the fact that humans derive sustenance from them.¹²⁸

Yaakov bar Asher (*Ba'al HaTurim*) (c. 1270-1343, Germany and Spain) – Yaakov bar Asher cited ibn Ezra's interpretation that fruit trees are the source of human life and should not be destroyed. He also cited Naḥmanides' opinion that fruit trees can still be used to build a siege, and that the reason the prohibition is mentioned in the first place is in order to create a hierarchy between fruit bearing trees and non-fruit bearing trees. The prohibition then is to engage in wanton destruction in the form of a scorched earth policy like other nations who cut down trees and block up springs. Israelites are meant to live in the city after the siege is successful and the city falls and they are to trust in God that this will be the end result.¹²⁹

¹²⁷ Ḥizqiyah bar Manoah, *Ḥizquni: Peirushei HaTorah LeRabbeinu Ḥizqiyah bar Manoah*, ed. Ḥaim Dov Chavel (Jerusalem: Mossad HaRav Kook, 1981).

¹²⁸ Ḥaim Paltiel, *Peirushei HaTorah LeRabbeinu Ḥaim Paltiel*, ed. Isaak Shimshon Lange (Jerusalem: private printing, 1981).

¹²⁹ Yaakov bar Asher, *Peirush HaTur al HaTorah LeHaRabbi Yaakov ben HaRosh. Volume Two: VaYiqra – Devarim*, ed. Yaakov Kapel Reinitz (Jerusalem: Feldheim Publishers, 2006).

Levi ben Gershom (*Ralbag*, Gersonides) (1288-1344, France) – Gersonides claimed that the text indicates that destroying a fruit tree is prohibited even when it belongs to the enemy. This edict is *a fortiori* with regard to fruit trees belonging to Israel. The text, however, only prohibits cutting down fruit trees in a destructive manner. It is permissible to cut down fruit trees for beneficial purposes (*to'elet*). It is also prohibited to destroy fruit trees in ways other than cutting them down, for instance by preventing water from reaching their roots. The words *ki ha'adam etz hasadeh* for Gersonides pose a rhetorical question: “Is the tree like a person who can escape from you on the battlefield?” For Gersonides, the prefix “*ha*” on the word “*ha'adam*” is indicative of a question rather than a definite article. Non-fruit bearing trees and fruit bearing trees that no longer produce fruit, for instance if they are dried out, can be cut down for the purposes of building the siege-works.¹³⁰

Nissim ben Moshe of Marseille (13th-14th centuries, South France) – Nissim ben Moshe claimed that the interpretation of *ki ha'adam etz hasadeh* given by Abraham ibn Ezra was the most fitting.¹³¹

Moshav Zeqenim (c. 13th-14th Centuries, Anonymous¹³²) – The *tosafists* interpreted this verse in light of on the difficulties raised by 2 Kings 3:19, where a directive is given by the prophet Elisha to destroy all the fruit trees of Moab. They concluded that Moab was the one exception to the prohibition of *bal tashhit* because of the specific directive to not seek peace with them.¹³³

Isaac Abarbanel (1437-1508, Portugal, Spain and Italy) – Abarbanel asserted that Israelites should not act as others during a time of war and should avoid enacting a scorched earth policy. There are two reasons why fruit trees should not be cut down

¹³⁰ Levi ben Gershom, *Peirushei HaTorah LeRabbeinu Levi ben Gershom (Ralbag), Volume Five: Devarim*, ed. Yaakov Leib Levi (Jerusalem: Mossad HaRav Kook, 2000).

¹³¹ Nissim ben Moshe, *Ma'aseh Nissim: Peirush LaTorah LeRabbi Nissim ben Rabbi Moshe MiMarseille*, ed. Howard Kriesel (Jerusalem: Mekitzei Nirdamim, 2000).

¹³² This is a compilation made up mainly of *Tosafists*. The compiler is considered to have lived around the time of Asher ben Yehiel.

¹³³ *Sefer Moshav Zeqenim al HaTorah*, ed. Saliman D. Sassoon (London: L. Honig and Sons, 1959).

unnecessarily during a siege. The first reason is that the trees are to act as a source of food. This reason is also seen as a promise from God that the siege will be successful and the fruit trees will be a future source of sustenance. Accordingly, it is not fitting to waste/destroy something from which one can derive benefit (*mah sheyo 'ileihu*). The second reason is that trees are unable to protect themselves and it is not fitting for the strong to subjugate the weak. Trees have no arms with which to engage in battle and are unable to escape a siege. In other words, it appears that Abarbanel agreed with Rashi's reading of *ki ha'adam etz hasadeh* as a rhetorical statement. The following verse then allows the cutting down of non-fruit bearing trees, and as Nahmanides stated, fruit trees themselves may be used for the purpose of the siege.¹³⁴

Avraham bar Yaakov Saba (*Tzeror HaMor*) (1440-1508, Spain, Portugal, Morocco, and Turkey) – Saba first related to the words *ki ha'adam etz hasadeh* by claiming that the statement is an indication that human life is sustained by fruit trees. He saw two reasons for the prohibition on cutting down fruit trees. The first reason is that humans eat the fruit of these trees and are sustained by it. This reason relates to the words “you may eat of them.” The second reason is that just like humans, trees have souls and should not be needlessly destroyed. This reason relates to the words “you must not cut them down.” To this end Saba presented a *midrash* (*Pirquei deRabbi Eliezer* 33) stating that when a tree is cut down, its cry can be heard from one end of the world to the other. This reasoning can also be argued *a fortiori*: if one is prohibited from cutting down the branches to preserve the fruit, how much more so is one prohibited from cutting down the entire tree. Saba also drew a parallel between humans who produce fruit and trees that produce fruit. The difference between them, he argued, is that humans have the intuition to escape from you during a battle, but trees do not. As such it is not fitting (*ein ra'u'i*) to destroy them. Trees that do not bear fruit, however, do not fall into this category and may be cut down and used in the siege. For this reason this text is adjacent to the text that deals with finding a dead body in the field (Deuteronomy 21). Just as the voice of the tree is heard from one end of the world to the other when it is cut down, so too is the voice of a human

¹³⁴ Isaac Abarbanel, *Peirush al HaTorah – BeMidbar, Devarim* (Jerusalem: Bnei Arbael Publishing, 1964).

heard when killed. Finally, Saba also mentioned the *midrash* that compared a fruit tree to a scholar who is worthy of respect and non-fruit bearing tree to the uneducated who is unworthy of respect.¹³⁵

Eliyahu Mizrahi (*HaRe'em*) (c. 1450-1526, Turkey) – Eliyahu Mizrahi dealt with Rashi's gloss on *ki ha'adam etz hasadeh* repeating his rhetorical statement that indeed trees cannot escape from war as humans can by running away, so why destroy them. He finished his own gloss by questioning Rashi's: if Rashi's gloss were indeed correct, the definite article "*ha*" of "*ha'adam*" becomes superfluous.¹³⁶

Ovadia Seforno (c. 1480-c. 1550, Italy) – Seforno contended that the text stipulated that cutting down fruit trees for no purpose but to harm the people of the besieged city is prohibited. He rationalised this by claiming that only armies that are uncertain of victory engage in scorched earth tactics, but an army that is guaranteed victory, such as the army of the Israelites, need not take such a drastic approach. While it is fitting to harm the enemy with tools of war, it is not fitting ("*ein ra'u i'*") to destroy the fruit trees, because their destruction will not bring about victory. According to Seforno, fruit trees that are damaged or are old and no longer produce fruit are included in the non-fruit bearing trees as those that can be cut down.¹³⁷

Moshe Alsheikh (1507-c. 1600, Turkey, Land of Israel and elsewhere) – Alsheikh started off by claiming that Deuteronomy 20:19 demonstrates that God has compassion not only for humans, but for all His creations. In Alsheikh's research into Scripture he found that the terms *etz hasadeh* (tree of the field) and *etz ha'aretz* (tree of the land) are used differently. *Etz hasadeh* is used to describe only non-fruit bearing trees, while *etz ha'aretz* is a term that can be used to describe both fruit bearing and non-fruit bearing trees. He then claimed that the prohibition against cutting down a fruit tree after eating

¹³⁵ Avraham bar Yaakov Saba, *Sefer Tzeror HaMor al Hamishah Humshei Torah* (Tel-Aviv: Offset Brody-Katz, 1975).

¹³⁶ Eliyahu Mizrahi, *Humash HaRe'em: Sefer Devarim*, ed. Moshe Filip (Petah Tiqva, Israel: private printing, 1992).

¹³⁷ Ovadia Seforno, *Be'ur al HaTorah LeRabbi Ovadia Seforno*, ed. Ze'ev Gottlieb (Jerusalem: Mossad HaRav Kook, 1980).

from it and deriving benefit/enjoyment (*hana'ah*) from it is similar to the prohibition against blocking up a well with earth after drinking from it (b*Baba Qama* 92b). Destroying something from which one derives benefit (*to'elet*), would indicate ingratitude. Nevertheless, Alsheikh then questions why God would show mercy for trees while at the same time allowing humans to be killed in the siege. It is here that the linguistic distinction comes into play; the phrase *ki ha'adam etz hasadeh* is used to describe humans as non-fruit bearing trees. As such, they may be cut down, especially because in addition to their lack of utility they can also be harmful and should be killed before they kill you.¹³⁸

Judah Loew ben Bezalel – (*Maharal*) (c. 1520-1609, Bohemia) – *Gur Aryeh* (Loew's supercommentary on Rashi) – Loew clarified that the reason there is a discussion concerning the length of the siege is because the enemy is given the opportunity to surrender peacefully. During these negotiations cutting down trees to build siege-works is not permitted and is unnecessary should there be a resolution. He continued with a discussion of *ki ha'adam etz hasadeh*, which he, like Rashi, saw as a rhetorical statement. The nuance that Loew offered, as suggested by his editor, Yehoshua David Hartman, was that while one might understand the text as imparting a lesson about trees by comparing them to humans, actually the lesson is about humans by comparing them to trees. If the trees could escape the battlefield by finding refuge behind the city walls and suffering from hunger and thirst like the inhabitants of the city, but choose to stay outside the city and not suffer then it would be permissible to destroy them. Due to the fact that they cannot actually escape, Loew explained, why wantonly destroy them? Humans, however, can escape, yet if they choose not to and are still shown mercy then the besieged city is unlikely to surrender.¹³⁹

Eliyahu ben Shlomo Zalman (*Gra*) (1720-1797, Lithuania) – Gra began by presenting the *midrash* that demonstrated that fruit trees are not to be destroyed in ways that do not

¹³⁸ Moshe Alsheikh, *Torat Moshe: Derushim, Peirushim UVe'urim LeHamishah Humshei Torah – Sefer Devarim*, ed. Makhon Lev Sameah (Jerusalem: H. Vagshel Ltd., 1990).

¹³⁹ Judah Loew ben Bezalel, *Humash Gur Aryeh HaShalem, Volume Eight: Devarim – Zot HaBerakha*, ed. Yehoshua David Hartman (Jerusalem: Makhon Yerushalayim, 1989).

involve cutting them down such as cutting off their water supply. He also presented the *midrash* equating a fruit tree with a wise student, which should be eaten from, and the non-fruit bearing tree which should be cut down. He then went into a lengthy mystical explanation of the verses according to the Zohar that equated fruit trees with the tree of life and the siege to the various disasters that occurred to the Jews in Jerusalem. Finally, he concluded by presenting the *midrash* regarding the hierarchical relationship between fruit trees and non-fruit bearing trees, and circumstances in which the lumber of the non-fruit bearing tree is more valuable than that of the fruit tree.¹⁴⁰

Herz Homberg (*HaKorem*) (1749-1841, Bohemia, Austria and Germany) – Homberg cited Rashi's rhetorical reading of *ki ha'adam etz hasadeh*, which also influenced Moses Mendelssohn's German translation of the Torah. He critiqued this interpretation, however, claiming that if this truly were the meaning of the text, then the question would have the tree as subject and the human as subject completion, whereas the verse reads the other way around. For this reason he considered the interpretation offered by ibn Ezra, which did not see the text as a question, but rather as a statement equating human life to the fruit tree which provides sustenance, as more likely.¹⁴¹

Samuel David Luzzatto (*Shadal*) (1800-1865, Italy) – Luzzatto started off by presenting various glosses on Deuteronomy 20:19. He began by listing a Christian interpretation of the verse, that of Clericus (likely Johannes Clericus, 1657-1736, Switzerland and Holland). He also cited Herz Homberg, the *Korem*. They contended that the fruit trees should not be cut down, because as the siege lengthens in days the army might require an additional food source. He then cited Abarbanel, Seforno and Abraham Menaḥem Rappaport who claimed that the fruit trees should not be cut down in order for the conquering army to have a food source after the city is subdued.

Luzzatto, however, was not satisfied with such interpretations, stating that the Torah does not deal with the minutiae of humans finding different ways in which to

¹⁴⁰ Eliyahu (Kremer?), *Humash HaGra: Devarim*, Weinreb Edition, ed. Dov Eliakh (Jerusalem: Makhon Moreshet HaYeshivot, 2004).

¹⁴¹ Herz Homberg, *Sefer Netivot HaShalom: Sefer Devarim* (Jerusalem: 1974).

benefit. Rather, the Torah is meant to increase human compassion even in ways that are not beneficial to humans. He was not alone in this approach as he asserted that Philo and Josephus Flavius also viewed this commandment as being a decree of compassion and the distancing of cruelty. For Luzzatto the main aspect of the commandment was to distance people from ungratefulness and teach them to love the things they derive benefit from (*sheyohav et hameitiv lo*), so that they do not cast them away after the benefit (*to'elet*) ceases. The case in point is that the fruit trees provided sustenance and it would be ungrateful to then destroy them. A parallel example, Luzzatto pointed out, can be found in *bBaba Qama* 92b, which states that people should not fill with earth a well from which they drank. Regarding the Prophet Elisha's directive to cut down every good tree during a war with the Moabites, Luzzatto explained that the prohibition only concerns fruit trees from which one has benefited. If the fruit trees were not used as a food source, then according to him they may be cut down, even wantonly.

Luzzatto then offered a gloss for the next part of the verse, *ki ha'adam etz hasadeh*. He mentioned a supercommentator on Rashi, presumably Eliyahu Mizrahi, who explained that the text should have been arranged differently so that the question asked is about the tree and not the person. Luzzatto rejected this position by stating that in Hebrew it is common to have the predicate precede the subject, whereas philosophers tend to have it the other way around. Luzzatto then went into a lengthy analysis of ibn Ezra, claiming that his interpretation of the verse was grammatically incorrect on several points. Most importantly, ibn Ezra's interpretation that human life is derived from the fruit trees that should therefore not be cut down, is rejected by Luzzatto. According to him, in time of war human life is hanging in the balance and building siege-works could make the difference between life and death. It is, therefore, highly implausible that the Torah would be concerned with the fate of fruit trees over the fate of humans. In fact, Luzzatto claims the exact opposite of ibn Ezra. It is precisely the cutting down of the trees that sustains those laying siege, and protecting them for concerns of sustenance in the future is irrelevant. According to Luzzatto's interpretation of the verse, however, which states that the reason not to cut down the trees is in order to reinforce good qualities and teach

gratefulness, such grammatical problems are solved. In other words, Luzzatto's interpretation allows for the cutting down of the fruit trees should it be necessary, but the reasoning behind trying to avoid such actions are not utilitarian. Rather, it is designed to encourage people to act with good character and be concerned with the general welfare of creation and not just their own.¹⁴²

Samson Raphael Hirsch (1808-1888, Germany and Moravia) – Hirsch claimed that it is forbidden to cut down fruit trees for the sole purpose of destroying them. Their fruit is to be eaten, which is an affirmative commandment, and they are not to be cut down, which is a negative commandment. Destroying a fruit bearing tree is a transgression of both of these commandments. The tree of the field is like a human insofar as it provides humans with sustenance. As such, securing the trees themselves are part of the objective of the siege and should be seen as part of securing the city. Only trees which are known to be fruit trees are prohibited from being cut down. This implies that it is permissible to cut down fruit trees if they are not recognised as such. Hirsch also provided a synopsis of some of the material found in the Babylonian Talmud and Maimonides. The discussion in the Babylonian Talmud (*Baba Qama* 91b) indicated that fruit trees that produce only a very small quantity of fruit are also excluded from the prohibition. The Talmud explicitly mentions that date trees that yield a *kav* of fruit and olive trees, which are considered more valuable, that produce a quarter *kav* are still prohibited from being cut down. The Talmud also adds that if the value of the lumber (for purposes such as building) is greater than the value of the fruit, the tree may be cut down. Maimonides in the Laws of Kings 6:8 stated that the Torah only prohibited the cutting down of fruit trees in a destructive manner. In circumstances where it would make no difference what kind of lumber is used, non-fruit bearing trees should take precedence over fruit bearing trees.

According to Hirsch the prohibition to cut down fruit trees during a siege should be viewed as an example of a prohibition against general wastefulness and destruction. The concept of *bal tashhit* indicates that purposeless destruction of anything is forbidden.

¹⁴² Samuel David Luzzatto, *Peirush Shadal – Rabbi Shmuel David Luzzatto al Hamishah Humshei Torah*, Tel-Aviv: Dvir Publishing, 1971).

The warning issued in the Torah should be seen as a comprehensive warning issued to humans not to abuse the position of having dominion over the world granted to them by God through the wasteful destruction of anything on earth. God only granted humans dominion over the rest of creation for the purposes of wise use. Accordingly, the text regarding the prohibition against destroying trees should be understood as including non-fruit bearing trees when the only thing achieved is destruction. The specific prohibition against destroying fruit trees should be seen in the twofold commandment mentioned above. Nevertheless, the cutting down of trees for constructive purposes is permissible. Hirsch writes that Maimonides asserted that the extension of *bal tashhit* to a general prohibition against wastefulness is a rabbinic prohibition derived from the Torah, but not from the Torah itself.¹⁴³

Meir Leibush bar Yeḥiel Mikhel Weiser (*Malbim*) (1809-1879, Ukraine, Poland, Romania and Prussia) – Weiser started his gloss by asking why the issue of cutting down trees is only brought up after the siege is a few days old. Logic would have it that the trees are cut down immediately in order for the siege-works to be built. This, he claimed, was answered by the rabbis who stated that even during a siege an opportunity is given for a peaceful resolution of the conflict. If, however, the enemy does not surrender peacefully, then siege-works are undertaken. He continued by stating that the reason the text indicates that the intention is to capture the city is because if the intention was to destroy the city, destroying the trees would be acceptable as was the case in 2 Kings 3. Moreover, he reasoned that the text did not specify the manner in which the trees could be destroyed in order to be inclusive of any form of destruction, such as diverting the trees' water source. Weiser also asserted that even in the instances where it is permissible to cut down fruit trees the activity should still be avoided when possible. *Pesikta Zutarta* and Nahmanides presented a somewhat different version which contended that it is permitted to cut down fruit trees in order to distress the besieged city. Weiser then added that the *Sifre* interpreted the difficult text of *ki ha'adam etz hasadeh* as meaning that the

¹⁴³ Samson Raphael Hirsch, *Hamishah Humshei Torah im Peirush Rashar Hirsch: Sefer Devarim*, 4th Edition, ed. and trans. Mordekhai Breuer (Jerusalem: Mossad Yitzḥaq Breuer, 1989).

life of humans is dependent upon fruit trees and that was ultimately the position of Weiser himself. He then presented Rashbam's gloss who claimed that instead of being destroyed, they should be used as a food source after the city is conquered. This interpretation is based on the linguistic rule that any time the word *ki* ("when" or "because") appears after the word *lo* (no) it should be read as *ela* (rather). As such, the verse should be read as fruit trees should not be cut down unless they are being used by the enemy to hide. Fruit trees sufficiently distant from the city, however, should not be cut down. The *Sifre* also added in an additional comment that if a fruit tree delays the siege it should be cut down.

Weiser also drew a distinction between fruit trees that are currently producing fruit and fruit trees that are either not in season or no longer produce fruit. Making this distinction would mean that the text would make more sense if it stated that "trees from which you will not eat can be cut down." Of course, this is not what the text states, and as such Weiser claimed that if this was all the text said then indeed it would be referring to trees that never bear fruit. The text, however, contains the words "which you know." Weiser made the assumption that everyone is able to distinguish between a fruit bearing tree and a non-fruit bearing tree. So what do these words come to elucidate? That only fruit trees that are known to no longer produce a sufficient amount of fruit (explained in *bBaba Qama* 91b) can be cut down. The text then makes it clear that there is a hierarchy between the trees that are to be cut down. First, one should cut down trees that never produce fruit. Once non-fruit bearing trees can no longer be found, one may cut down fruit trees, but only those which are known to no longer be food producing. In this manner Weiser claimed to have solved a disagreement between a number of legists (whose side he takes) and Maimonides. Maimonides' approach was to claim that things which are in doubt are permitted according to the Torah, whereas here it is clear that trees of a dubious nature cannot be cut down. Rather, only trees which one is certain no longer produce fruit in sufficient quantity may be cut down.

Finally, Weiser asked why verse 20 uses the word “destroy” instead of “cut down.” The use of the word “destroy” implies that this is not a simple cutting down, but rather that there is destruction involved in the process. The destruction implied by the text is that the tree loses value as it is transformed into lumber. Trees, however, that appreciate in value after being cut down are not considered to have been destroyed, and there is no prohibition against cutting down a fruit tree in such an instance.¹⁴⁴

David Tzvi Hoffmann (1843-1921, Slovakia, Austria and Germany) – Hoffmann asserted that Deuteronomy 20:19 charged humans with assuming benevolence not only toward humans, but to trees as well. This is both because trees provide sustenance for humans and because they cannot protect themselves as can the enemy soldiers. He then went through the various ways in which it is prohibited to destroy a tree, such as cutting off its branches, cutting it down with an axe and uprooting it. All these methods are specifically mentioned throughout various rabbinic texts. He cited Luzzatto who claimed that one should not cut down a tree whose fruit they have consumed, because such behaviour is considered ungrateful. Hoffmann also mentioned that the interpretations of *ki ha'adam etz hasadeh* have historically tended to fall into two categories. The first category viewed the text as being rhetorical in nature, from which can be deduced that indeed the tree is not like a human and cannot escape the dangers of the battlefield and therefore should not be cut down. This interpretation is shared by Onkelos, the Septuagint, the *Mekhilta* of Rabbi Yishmael, and Josephus among many others mentioned in this chapter but not listed by Hoffmann. Hoffmann claimed that in this prohibition is included a general lesson; if one is not to harm a defenceless tree, how much more so is one not to harm a defenceless human. The second position with regard to this text is that the trees should not be destroyed because human life is sustained by their fruit. This position is stated by Rabbeinu Hillel, *Sifre*, *Midrash Tannaim*, and ibn Ezra among others mentioned in this chapter, but again not listed by Hoffmann. In his gloss on verse 20, Hoffmann claimed that the *Sifre* and *bBaba Qama* 91a derive their

¹⁴⁴ Meir Leibush Weiser, *Otzar HaPeirushim al Tanakh, Miqraot Gedolot, Sidra 2, HaTorah VeHaMitzvah* (Tel-Aviv: Mefarshei HaTanakh, n.d.).

utilitarian exceptions to the prohibition of *bal tashhit* of allowing non-fruit bearing trees and fruit trees that are relatively unproductive to be cut down from the words “trees which you know.” In other words, this exception is based on human knowledge and judgement. Nevertheless, if trees must be cut down, non-fruit bearing trees should precede the fruit bearing trees. Finally, Hoffmann asserted that these verses are the source of the prohibition of *bal tashhit*, which forbids the destruction of anything of value (*Sefer Mitzvot Gadol*, prohibition 229). Hoffmann added that according to Maimonides the prohibition is rabbinic.¹⁴⁵

Barukh HaLevi Epstein (*Torah Temimah*) (1860-1942, Belarus) – In his gloss to the words *lo tashhit* Epstein presented the rabbinic opinion of *bal tashhit degufa adif*, which states that it is preferable to waste/destroy non-human things for the sake of human welfare. Epstein illustrated how the rabbis reached this edict. The first step was establishing that destroying fruit trees in a destructive/wasteful manner at any time is prohibited. The exceptions to this edict are if the trees are damaging other trees or a neighbour’s field, or if the lumber is more valuable than the fruit. He then went on to explain that “*ki ha’adam etz hasadeh*” demonstrates that human life is dependent on fruit trees and one should not destroy that which is necessary for human life. From this the rabbis established that it is not fruit trees alone whose destruction is prohibited, but also dishes, clothing, buildings, fresh water resources, and food. It is, however, permissible to destroy all these things if it is a question of human welfare, because even though destroying them is transgression of *bal tashhit*, it is still a greater transgression to destroy one’s own body. This, Epstein claimed, was due to the fact that the foundation of the prohibition is mainly to prevent the destruction/waste of things which have utility to humans. Epstein questioned why Maimonides did not bother mentioning *bal tashhit degufa adif*, and was even more perplexed as to why the *halakhic* compendium *Shulhan Arukh* neglected including the prohibition of *bal tashhit* altogether.¹⁴⁶

¹⁴⁵ David Tzvi Hoffmann, *Sefer Devarim* (Tel-Aviv: Netzah Publishing, 1961).

¹⁴⁶ Barukh HaLevi Epstein, *Hamishah Humshei Torah im Hamesh Megilot, Torah Temimah: Sefer Devarim* (New York: Avraham Yitzhak Friedman, 1962).

Gunther Plaut (1912-2012, Germany, U.S.A. and Canada) – Plaut mentioned that scorched earth policies were prohibited, save the one instance in 2 Kings 3:19 where God retracted the prohibition during the war against the Moabites. Plaut presented the words “*ki ha’adam etz hasadeh*” as both a rhetorical question and as an assertion. He specified that the text only prohibited the cutting down of fruit trees, whereas the other trees could be used for building siege-works. Plaut went on to assert that this principle places a limit on the dominion that humans were granted over the rest of creation in Genesis 1:28. He then explained that the rabbis expanded the prohibition found in this verse into the general prohibition on wastefulness, *bal tashhit*. Finally, he gave examples of this generalisation from the *midrash*, Talmud, and Maimonides.¹⁴⁷

ArtScroll – ArtScroll presented *Sefer HaHinukh*, a 13th century composition elucidating the rationale behind the various commandments. *Sefer HaHinukh* stated that good behaviour should be adhered to even in the most trying of times, to the degree that not even a mustard seed is wasted. This refers to the fact that all types of wastefulness are prohibited. The Artscroll then offered the reading of *ki ha’adam etz hasadeh* as both an assertion and a rhetorical question.¹⁴⁸

2.3.4 Synthetic Analysis

The first thing which strikes one studying the commentary tradition on Deuteronomy 20:19-20 is the absence of references to the general prohibition of *bal tashhit*. Save a few individuals, this connection is simply not drawn. While there is ample discussion of the prohibition on destroying fruit trees, the commentaries have by and large neglected to draw a connection between these verses and the prohibition on wastefulness/destruction. This is in spite of the fact that it is beyond doubt that they were fully aware of the existence of the prohibition. In other words, the commentary tradition focused its attention on the immediate context of the verses and not beyond. Since a

¹⁴⁷ Gunther Plaut, *The Torah: A Modern Commentary*, ed. Gunther Plaut (New York: Union of American Hebrew Congregations, 1981).

¹⁴⁸ *The Schottenstein Edition Interlinear Chumash: Deuteronomy*, ed. Menachem Davis (New York: Mesorah Publications Ltd., 2009).

general prohibition on wastefulness exists, and since there is a large body of Jewish legal literature dealing with it, this deficiency comes as a surprise. Though the commentaries deal with most every aspect of the verses, their major focus was on the words “*ki ha’adam etz hasadeh*,” the only part of these verses that is truly shrouded in a veil of mystery. The difference in approaches is reflected by the variant translations of the text (King James vs. JPS) and, of course, in the commentaries themselves.

Unlike many edicts in the Torah that come with no reasoning behind them and for which many have tried to rationalise over the course of history, this directive comes with an explanation. The problem, of course, is that the rationalisation, the words “*ki ha’adam etz hasadeh*,” is not so simple to understand. Their meaning has split the long list of commentaries presented here, with most interpreting the phrase either as a rhetorical question or as an assertion. Although both approaches can be found in the *midrash*, the tradition histories view each to be championed by a different towering exegete. The rhetorical approach was adopted by Rashi, while the approach of the phrase an assertion was taken up by ibn Ezra. The stature of these commentators was such that many who came after them and fell on one side or other of the debate attributed these positions to them. The rhetorical approach, which was adopted by the JPS translation of the Bible, views the words “*ki ha’adam etz hasadeh*” as a question. Since a tree cannot escape the battlefield and protect itself, why should it be cut down in a war between humans? The “phrase as an assertion” approach, adopted by the King James translation of the Bible, views the very same text as an assertion. Trees should not be cut down because they are the source of human sustenance. Destroying them would be equivalent to a pyrrhic victory. Even if the city is vanquished, its new inhabitants would not be able to survive without a food source. Thus, according to this approach, the tree of the field truly is like a human, as human life is dependent on it. Interestingly, the “phrase as an assertion” approach can be understood as a metaphor viewing humans both as trees and as those whose lives are dependent on trees.

2.3.4.1 Between Ecocentrism and Anthropocentrism

Understood outside of its immediate context and put into the contemporary discourse on wastefulness, the phrase “*ki ha’adam etez hasadeh*” touches upon one of the most important topics in environmental discourse – ecocentrism vs. anthropocentrism. It is important to note that this is by no means an argument that ancient or medieval commentaries viewed the world within an ecological framework and structured their comments with the environment in mind. Certainly they did not. It is not until the modern era when such claims can be made and even then the evidence is often dubious. Nevertheless, it is possible to extrapolate the stance the exegetes may have taken on the current discourse on wastefulness. After all, both the rhetorical question and the “phrase as an assertion” positions have significant implications for environmental ethics. While both contain within them the possibility of strong environmental readings, their environmental worldviews are considerably different. The rhetorical reading can be understood as leaning toward ecocentrism, while the “phrase as an assertion” reading can be seen as closer to anthropocentrism. As these terms have been used differently in various contexts, I will explain how they are used here. An anthropocentric approach places the human at the centre of the world. The closer something is to the centre, the more important it is relative to the human. If one were to generalise, a family member would be relatively close to the centre, while a material object, say a shirt, would be more distant from the centre. An ecocentric approach removes human beings from the centre and replaces them with the natural world. Such an approach does not see a hierarchical relationship between humans, flora, fauna and the inanimate world, but views them as coequal. The needs of one do not take precedent over the needs of another. These, of course, are theoretical constructs, because it would be exceedingly rare to find an individual who would not place human needs over the needs of other things. As Moshe

Sokol puts it: “Even the most sensitive environmentalist is unlikely to insist that the pneumonia which is suffocating her should not be treated by antibiotics.”¹⁴⁹

Certainly it is possible to understand the various interpretations to this verse outside of an ethical framework. Whether an assertion or a rhetorical question, the directive could simply be advice issued under the rubric of common sense. This, however, is unlikely. Deuteronomy 20:19-20 relates to human behaviour during war. More specifically, the verses relate to how humans should treat the non-human world in the most trying of times. Consequently, a reasonable assumption is that most of those belonging to the Jewish interpretive tradition have understood these verses within what might today be considered an ethical structure. This understanding is reinforced by the prohibition being taken well beyond its context of fruit trees and war and turned into a general principle, something which will be seen in the chapters to come. The rhetorical reading can be viewed as ecocentric because it implies that fruit trees have some degree of ethical standing. They are not solely bound to the needs and wants of humans, but must be considered in their own right. As such, it would be wrong to destroy them during a time of war as a means of causing the enemy grief. If only human needs and wants were taken into consideration it would seem reasonable in certain contexts to cut down these trees. After all, during wartime intimidating the enemy and causing them grief are fitting, something which Nahmanides believed to be a legitimate endeavour, at least in foreign lands.¹⁵⁰ Even though, as Nili Wazana cogently points out, reading *ki ha'adam etz hasadeh* as a rhetorical question is linguistically problematic, it does not change the evidence that such a reading exists and has been part of the tradition histories of the verse from the earliest of translations including the Septuagint, Vulgate, Syriac and various Aramaic *targumim*.¹⁵¹ Other sources sharing this approach are *midrashic* writings,

¹⁴⁹ Moshe Sokol, “What Are the Ethical Implications of Jewish Theological Conceptions of the Natural World?,” in *Judaism and Ecology: Created World and Revealed World*, ed. Hava Tirosh-Samuelson (Cambridge, MA: Harvard University Press, 2002), 270.

¹⁵⁰ Moshe ben Nahman, “*Hasagot HaRamban LeSefer HaMitzvot LaRambam*,” in Moshe ben Maimon, *Sefer HaMitzvot*, ed. Yitzhak Simḥah Horowitz (Jerusalem: 1927), *Shikhehat HaAsin, Mitzvah Vav*.

¹⁵¹ Nili Wazana, “Are Trees of the Field Human? A Biblical War Law (Deuteronomy 20:19-20) and Neo-Assyrian Propaganda,” in *Treasures on Camels' Humps: Historical and Literary Studies from the Ancient*

various commentators and some later translations of the Bible including the contemporary JPS translation presented above. The question that remains unanswered, as is pointed out by scholars like Nili Wazana and Eilon Schwartz, is: if indeed this is the preferred reading of the verse by such a large number of commentaries, how can we reconcile with this that only fruit trees are given this status, whereas non-fruit bearing trees are not?¹⁵² From the sources covered in this section, only Hirsch explicitly stated that non-fruit bearing trees also merit protection under the prohibition of *bal tashhit*. Nevertheless, seen outside of the context of fruit trees during war, this approach solidly resonates as a concern for the non-human world and subsequently as an environmental ethic. It states that the natural world must be taken into consideration even in the most extreme and trying of circumstances. This is precisely the *a fortiori* line of thinking adopted by the rabbis who turned this wartime directive into a general prohibition on wastefulness/destruction operational at all times. If even in the most perilous of times the non-human world must be taken into consideration, how much more so during peaceful times.

The “phrase as an assertion” reading can be viewed as anthropocentric, because it values the fruit trees only insofar as they are useful to humans. If fruit trees were not an important source of food, their status might have been similar to non-fruit bearing trees. It is their utility which provides them with protection, not their intrinsic worth. Such an approach does not necessarily view the fruit trees as having any inherent value whatsoever. Fruit trees provide humans with sustenance and contextually can benefit the army during siege by providing a food source, or can be an important source of food during post-victory colonisation. This approach still has environmental merit because, regardless of the reasoning, fruit trees are still provided with a protected status. From here it is possible to see how the prohibition could evolve into a utilitarian concept.

Near East Presented to Israel Eph'al, ed. Mordechai Cogan and Dan'el Kahn (Jerusalem: The Hebrew University Magnes Press, 2008), 276.

¹⁵² *Ibid.*, 277-278 and Schwartz, “*Bal Tashchit*,” 232-233.

The earliest post-*midrashic* source that dealt with the rationale behind not cutting down fruit trees was Saadiah Gaon. As Robert Brody argues, the methodology of interpretation used by Saadiah and the other *geonim* was to interpret the text literally unless it contradicted a different text, in which case it was to be understood metaphorically.¹⁵³ Saadiah Gaon also emphasised linguistic points as important in a biblical commentary. There are, of course, always inconsistencies to be found. It is pointed out by many commentators over the course of the tradition histories of this verse that the rhetorical reading of *ki ha'adam etz hasadeh* is inconsistent with the rest of the text. Tuvia bar Eliezer, who essentially provided his readers with a summary of the *midrash*, primarily offered the “phrase as an assertion” reading of the text, but also presented the rhetorical possibility. Certainly aware of both possibilities of interpreting *ki ha'adam etz hasadeh* found in the *midrash*, Rashi nevertheless chose to present the rhetorical reading. The magnitude of Rashi’s influence led many who came after him to attribute the rhetorical reading directly to him instead of to his predecessors. Others who shared the rhetorical reading include Ephraim bar Shimshon, Hizqiyah bar Manoah, Gersonides, and Judah Loew. Similar, but with a slight nuance, was Bahya bar Asher who claimed that trees cannot escape during war and wise people do not destroy things that have utility. The main difference between his view and Rashi’s is that Rashi’s rhetorical approach is replaced with a rhetorical utilitarianism. In this nuanced approach, trees should not be destroyed because they cannot escape the battlefield, but not for moral considerations. Rather, the trees should not be needlessly destroyed due to their value or utility. Eliyahu Mizrahi explained Rashi’s statement regarding the inability of trees to escape the battlefield, but simultaneously critiqued this as the interpretation of the verse due to linguistic difficulties. According to Mizrahi, if Rashi’s interpretation was correct, the definite article of “*ha*” on the word “*adam*” (human) is superfluous. Herz Homberg also rejected Rashi’s interpretation because in order to read the verse in this manner the tree would have to be the subject and the human the object, which is definitely not the case.

¹⁵³ Brody, “The Geonim of Babylonia,” 80-81.

Ibn Ezra was the first to reject reading the text as a rhetorical question, on both linguistic and logical grounds. He claimed that linguistically, the text has no interrogatory elements, and has absolutely no reason to engage in rhetorical questions. As such it would be erroneous to think that it did. Instead, ibn Ezra offered a reading of the text which equates humans with fruit trees as the rationale for not cutting them down, even during a time of war. Fruit trees are an important source of human sustenance and should be viewed as necessary to human life. This approach could be criticised insofar as if this parallel is taken literally, destroying the fruit trees would be equivalent to killing the enemy.

Commentators such as Naḥmanides, Yaakov bar Asher, Abarbanel, and Seforno approach this from a different angle by asserting that if the people of Israel put their faith in God, they will end up winning the war and colonising the city. As such, destroying the fruit trees would harm the besieging army and not the besieged populace. Others following ibn Ezra's plain sense exegetical approach include Menaḥem Recanati, Ḥaim Paltiel, Yaakov bar Asher, Nissim of Marseille, and Samson Raphael Hirsch. Some commentators like Abraham Saba, David Tzvi Hoffmann, Gunther Plaut and ArtScroll offered both Rashi's rhetorical reasoning and ibn Ezra's assertion as two possible non-conflicting readings of the verse.

Rashbam was one of the few to offer a non-*midrashic* interpretation of *ki ha'adam etz hasadeh*. For him these words were not the rationale behind not cutting down the fruit trees, but an elucidation of exactly which trees could or could not be cut down. In other words, only the fruit trees belonging to the city but still far enough away from it so as not to assist the enemy or act as a hindrance to the army laying siege were not to be cut down. This same logic is echoed later on by *Ba'alei HaTosafot*, a group to which Rashbam belonged. Meir Leibush Weiser also presented Rashbam's view in his gloss, but this did not preclude him from accepting the *midrash* as a valid interpretation.

Following the environmental overtones of Rashi's gloss, others also explicitly commented upon the major moral components of the verse that have been highlighted by

environmental scholars. For instance, Meyuḥas bar Eliyahu asserted that God has compassion for all his creations. This compassion comes despite his understanding of the prohibition to include all things which have human utility (*tzorekh*). In other words, God's compassion is independent of human utility and not limited to things which have utility to humans. Isaac Abarbanel also viewed the prohibition as encompassing a moral dimension. He claimed that the verse taught that one should not prey on the weak and helpless, in this case fruit trees. The main point of interest is that the weak and helpless do not have to be human, leaving significant room for the development of an environmental ethic. Avraham Saba understood trees as having souls (*nefesh*), and cutting them down needlessly would be inappropriate behaviour (*ein ra'u'i*), though it is unclear if this understanding included all non-sentient beings.

Ovadia Seforno presumably contains a similar approach to Rashi. His gloss is only implicit in this regard, claiming that it is not becoming to cut down fruit trees since it will not bring about victory. The words “not fitting” (*ein ra'u'i*) are precisely the same ones used by Saba and seem to imply that such behaviour would be morally reprehensible, and not a matter of mere utility. After all, the question of what is “fitting” and “not fitting” human behaviour goes beyond the legal dimensions of the issue. While it is possible that Seforno did not see the prohibition to cut down fruit trees as a question of morality, I argue that outside the sphere of utilitarianism the most likely way in which to view this prohibition is through the ethical scope.

Moshe Alsheikh, too, offered a unique non-*midrashic* interpretation of *ki ha'adam etz hasadeh*. Unlike the other commentaries, he focused on the various descriptions of trees throughout Scripture and concluded that the words *etz hasadeh* always insinuate a non-fruit bearing tree. This allowed Alsheikh to explain why it appeared that God took mercy on trees and not on the humans who were actually engaging in the battle. Drawing a parallel between humans and non-fruit bearing trees allowed for the necessity of killing during war. If humans were equated with fruit trees it would be prohibited to kill them even during a time of war. Alsheikh, however, understood humans to be equated with

non-fruit bearing trees which may be cut down. He also interpreted “*ki ha’adam etz hasadeh*” as an assertion, which viewed humans as trees. Unlike ibn Ezra, however, Alsheikh equated humans with non-fruit bearing trees, whereas ibn Ezra viewed humans as fruit trees.

As one of the later Bible commentaries, Luzzatto had the benefit of access to a rich selection of glosses. Luzzatto was also part of a milieu of scholars who approached the study of biblical exegesis in a scientific manner.¹⁵⁴ As such, Luzzatto presented an anthology of glosses on the verses that included exegetes from antiquity to the modern era, both Jewish and Christian. Luzzatto rejected ibn Ezra’s reading of the verse outright, by claiming that when human life is in the balance, the fate of a fruit tree is of little consequence. Implicitly, he was a proponent of Rashi’s rhetorical reading of Deuteronomy 20:19 and even criticised one of Rashi’s supercommentators, likely Eliyahu Mizrahi, for what he considered an incorrect critique of Rashi. For Luzzatto, however, the true reason that cutting down fruit trees should be avoided is because such behaviour is ungrateful (to the tree, and through the tree to God). Something from which a person derives benefit should not then be wasted or destroyed. Luzzatto’s approach is that the prohibition is meant to inculcate people with good character. This approach is environmentally oriented, but is strongly tempered by the fact that it does not extend to things from which humans do not derive benefit. An example of this is when the Prophet Elisha allows for the wanton destruction of the Moabites’ trees, fields and springs. It is difficult to imagine that Luzzatto believed one can indulge in wanton destruction and wastefulness and still develop a good character. Rather, it should be assumed that he understood there to be certain and very limited circumstances in which such behaviour was considered necessary. The ArtScroll translation and commentary also viewed the prohibition as a means to instill in people the value of good behaviour even in the most trying of times.

¹⁵⁴ For a fuller account of this phenomenon see Edward Breuer, “Jewish Study of the Bible Before and During the Jewish Enlightenment,” in *Hebrew Bible/Old Testament: The History of Its Interpretation, Volume II: From Renaissance to the Enlightenment*, ed. Magne Saebo (Gottingen, Germany: Vandenhoeck & Ruprecht, 2008) 1006-1023.

The *midrash* of *Sifre*, Hoffmann's *Midrash Tannaim* and Tuvia bar Eliezer's *Pesikta Zutarta* was echoed by a large group of later commentaries including Meyuḥas bar Eliyahu, *Ba'alei HaTosafot*, Naḥmanides, Asher ben Yeḥiel, Ḥizqiyah bar Manoah, Ḥaim Paltiel, and others who claimed that the trees that hinder the siege in any way should be cut down. This distinction demonstrates a rational approach to warfare. The initial idea is to be as careful as possible and not to destroy needlessly. If and when the fruit trees prove to be a hindrance, however, they may be cut down. Destroying fruit trees under such circumstances cannot be viewed as wanton destruction, because their removal serves a military function.

An interesting idea that deserves further consideration from an environmental perspective is the mention in *Sifre* (and in later commentaries) that the prohibition against destroying fruit trees includes taking action to prevent water from reaching the tree. The environmental cost of human activities is often neglected due to its indirect nature. In addition to the direct, obvious and immediate consequences of human actions, one could derive from this *midrash* the importance of understanding the indirect consequences of human actions. This will be discussed further in the concluding chapter.

Meyuḥas bar Eliyahu was the earliest post-Talmudic era exegete to relate this verse to the general prohibition on wastefulness/destruction in his gloss. He stands out in this regard, because no other medieval commentators make this attribution after him, save the *Midrash Aggadah* and Baḥya bar Asher. The *Midrash Aggadah* made this connection at around the same time period as Meyuḥas bar Eliyahu. The language used by the *Midrash Aggadah* (*hana'ah* – benefit/enjoyment) is used in later materials discussing the prohibition and thus clearly had an impact on the conceptualisation of *bal tashḥit*. The actual commentary, however, is much terser than Meyuḥas bar Eliyahu's gloss. Baḥya bar Asher introduced the term *to'elet* (benefit/utility) in his description of the prohibition against cutting down fruit trees implying that the prohibition extends to all things from which humans derive utility. Like the *Midrash Aggadah*'s *hana'ah*, the term *to'elet* also impacted the conceptualisation of the general prohibition against wastefulness. It is only

in the modern era that some exegetes, albeit few in number, made these associations. They include Samson Raphael Hirsch, David Tzvi Hoffmann, Barukh HaLevi Epstein, Gunther Plaut and the ArtScroll commentary. Hirsch was the first Bible commentator to make this association after Bahya bar Asher, close to 500 years later. He went into the greatest detail regarding the transformation of the specific prohibition found in the verse to the general prohibition of *bal tashhit*. His approach was strongly influenced by Maimonides who made the claim that the prohibition included only actions done in a destructive/wasteful manner. Hirsch referred to this as purposeless destruction. In addition, Hirsch related this prohibition to Genesis 1:28 and viewed the prohibition of *bal tashhit* as the ethic through which dominion over the rest of creation is to be executed. Hoffmann did not say much in this regard, but asserted that the prohibition of *bal tashhit* included the destruction/waste of anything of value. His approach highlights the utilitarian lens through which he viewed the prohibition. Epstein, similar to Hirsch, went into detail regarding how the prohibition from the context of the verse was eventually expanded to a general prohibition against wastefulness/destruction. Where they diverged was in their reasoning behind the prohibition. Hirsch viewed the prohibition as coming to put limits on human dominion over the rest of creation, whereas Epstein understood the prohibition to apply only to things which are useful to humans. Plaut, like Hirsch, also viewed Deuteronomy 20:19 in light of Genesis 1:28. In other words, Plaut understood *bal tashhit* as placing limits on the dominion granted to humans in Genesis 1:28. Meyuhas was also the first medieval commentator to discuss the utilitarian driven exceptions to the prohibition of cutting fruit trees found in the Talmud. Others include Menaḥem Recanati, Bahya bar Asher, Samson Raphael Hirsch, Meir Leibush Weiser, David Tzvi Hoffmann, and Barukh HaLevi Epstein.

Deuteronomy 20:19-20 is seen by environmentalists and *halakhists* as the source of a general prohibition against wastefulness/destructiveness. While it is relatively simple to understand how such a prohibition applies to material goods, it takes a somewhat deeper though certainly not illogical analysis to see the prohibition as extending to human life as well. This connection, however, is the direction towards which many of the

commentators on Deuteronomy 20:19 angled their glosses. If human life is dependent on the tree of the field, then destroying the tree is commensurate to destroying human life. It is through this understanding that one can begin to see an association between this verse and Genesis 9:5, which is understood to deal either with suicide or murder. The relationship between *bal tashhit* and self-harm is discussed in much greater depth in the rabbinic chapter. Again, it should be clarified that not every element of the commentators' glosses is summarised. Rather, the comments most relevant to the topics of interest in this dissertation are presented.

2.4 Genesis 9:5 (9:4-6)

4 You must not, however, eat flesh with its lifeblood in it. **5 But for your own life-blood I will require a reckoning: I will require it of every beast; of man, too, will I require a reckoning for human life, of every man for that of his fellow man!** 6 Whoever sheds the blood of man, by man shall his blood be shed; for in His image did God make man.

2.4.1 Context

The events of chapter 9 of Genesis take place following the Great Deluge. At this point the waters have subsided and Noah, his family and all the animals aboard his ark are now safely on dry land. The chapter begins with God establishing a new world order. As part of this new order Noah is explicitly given permission to consume the flesh of animals, something which has been understood by the majority of commentators to mean that flesh consumption was prohibited in the antediluvian world. This chapter is understood by Jewish exegetes to explicitly contain two of the seven Noahide Laws (ethical laws pertaining to all of humanity) – the prohibition against eating the flesh of a living animal (Genesis 9:4), and the prohibition against murder (9:5-6). God establishes a covenant with all of creation promising to never bring such a devastating flood upon the earth again. The sign God sets as symbolising the new covenant with the rest of creation is a rainbow. While Genesis 9:6 is an explicit prohibition against murder, the message of Genesis 9:5 is much less clear and has been debated throughout the commentary

traditions. Is this esoteric verse a prohibition against murder, or a prohibition against suicide? Does the prohibition concern humans, or does it concern animals?

2.4.2 *Midrash*

Sifre Zuta (3rd century, Land of Israel) **35:27** – In the context of the “blood avenger” found in Deuteronomy 19, the words “But for your own life-blood” from Genesis 9:5 are understood to mean that a reckoning will be required from anyone who murders.¹⁵⁵

Bereishit Rabbah (5th century, Land of Israel) (Albeck) ***Noah* 34, 9:5** – “But for your own life-blood” is seen by the *midrash* as a prohibition against committing suicide. The text mentions that the prohibition includes those who strangle themselves in order to include methods of suicide that do not actually shed blood. The text then goes on to give examples of various people who seemingly transgressed this prohibition, but are absolved by the *midrash*. These include Saul, who fell on his sword during his final battle with the Philistines, and Hananiah, Mishael and Azariah who entered a burning furnace (in the book of Daniel) as martyrs.¹⁵⁶

Tuvia bar Eliezer (*Midrash Leqah Tov, Pesikta Zutarta*) (late 11th century, Byzantium) – Tuvia bar Eliezer claimed that the verse is a prohibition against suicide, and includes death caused by means that do not draw blood. All have the responsibility to mete out justice – animals, Jews and Gentiles.¹⁵⁷

2.4.3 *Post-Midrashic Commentary*

Saadia Gaon (*Rasag*) (882-942, Egypt and Babylonia) – Saadia Gaon interpreted this verse as a prohibition against committing suicide. He then discussed King Saul who is called “God’s chosen” (2 Samuel 21:6) and who is later glorified by the rabbis (b*Sukkah* 52b), but appeared to commit suicide on the battlefield (1 Samuel 31:4-5). Finally, he

¹⁵⁵ *Sifre DeVeI Rav, Sifre Zuta*, ed. Haim Shaul Horovitz (Jerusalem: Wahrmann, 1966).

¹⁵⁶ *Midrash Bereishit Rabbah*, ed. J. Theodor and Ch. Albeck (Jerusalem: Wahrmann Books, 1965).

¹⁵⁷ Tuvia bar Eliezer, *Midrash Leqah Tov*.

claimed that while he did indeed fall on his sword intentionally, it was an Amalekite who dealt him the death blow (2 Samuel 1:6-9).¹⁵⁸

Shlomo Yitzhaki (*Rashi*) (11th century, Northern France) – Rashi explained that this verse clarifies that even though the taking of animal life is permitted, one is still prohibited from killing oneself. He understood the word “*nafshoteikhem*” as implying that even killing oneself in a manner which does not spill blood is prohibited. He claimed that the verse also warns both animals from killing humans and humans from committing murder.¹⁵⁹

Abraham ibn Ezra (1089-1164, born in Spain, but lived and travelled all over the Mediterranean basin, Northern France and England) – Ibn Ezra claimed that even though humans are permitted to kill all other beings, they are still prohibited from killing one another. He rejected the opinion that states the verse is a prohibition against committing suicide.¹⁶⁰

Yosef Bekhor Shor (12th century, France) – Bekhor Shor viewed this verse as a prohibition against committing suicide. He explained that the verse clarifies that one should not assume human blood can be shed just because animals were now permitted for consumption. The assumption made is that animals are permitted for consumption due to their being saved by humans (Noah). As such, the purpose of the verse is in order to prevent humans from making the assumption they could take their own lives because they govern themselves. Not only are humans prohibited from shedding their own blood, but even animals that kill humans will be judged, and to this end Bekhor Shor cited the example of an ox which gores a human (see Exodus 21:28).¹⁶¹

¹⁵⁸ Saadiah Gaon, *Peirushei Rav Saadiah Gaon LiVereishit*, ed. Moshe Tzucker (New York: Beit HaMidrash LeRabanim BeAmerica, 1984).

¹⁵⁹ Shlomo Yitzhaki, *Peirushei Rashi*.

¹⁶⁰ Abraham ibn Ezra, *Peirushei HaTorah LeRabbeinu Avraham ibn Ezra*, Volume One, 2nd Edition, ed. Asher Weiser (Jerusalem: Mossad HaRav Kook, 1977).

¹⁶¹ Joseph Bekhor Shor, *Commentary on the Pentateuch*, ed. Meir Frish (Jerusalem: Makor Publishing Ltd., 1978).

Meyuḥas bar Eliyahu (1150-1200, Byzantium) – Meyuḥas bar Eliyahu saw this verse as a continuation of the previous verse which permitted the eating of animal flesh. He stated that even though spilling the blood of animals is acceptable, spilling the blood of humans is not. He then went on to state that while the verse specifically mentions blood, there is still a prohibition against suicide done through means that do not literally spill blood such as strangulation. In other words, he viewed this verse as both a prohibition against murder and also against suicide. Justice will be demanded from animals and humans alike.¹⁶²

Ba'alei HaTosafot (*Otzar Peirushei Ba'alei HaTosafot*) (c. 12th century, France) – The *tosafists* claimed that this verse is a prohibition against self-strangulation. They then presented various examples of individuals who killed themselves and others in God's name as martyrs. These can be found in *Bereishit Rabbah*. *Ba'alei HaTosafot* indicated that there was no consensus on the matter, and that some claimed that these actions were transgressions, while others condoned them. They then went on to explain the verse contextually: the authorisation given to eat animal flesh is juxtaposed with a warning not to spill human blood. This prohibition comes in order to quash any assumption that because spilling animal blood is permitted spilling human blood is permitted as well, including one's own blood. In the postdiluvian era, the existence of animals is considered to be due to Noah's intervention. Having saved the animals from the Deluge changed the relationship between humans and animals – animal flesh became permitted for consumption. Humans, who sustain themselves through their own labours, should not understand this as authorisation to take their own lives. Additionally, animals were not granted reciprocal rights, and any animal which sheds the blood of a human will be held accountable as can be seen through the example of the goring ox.¹⁶³

David Qimḥi (*Radaq*) (1160-1235, Southern France) – Qimḥi claimed that this is actually a prohibition against animals killing humans. Even though the Torah permits humans to kill animals, animals are still prohibited from killing humans. He also

¹⁶² Meyuḥas bar Eliyahu, *Peirush Rabbi Meyuḥas al Bereishit*, ed. A. W. Greenup and C. H. Titterton (Jerusalem: private printing, 1967).

¹⁶³ Ba'alei HaTosafot, *Sefer Tosafot HaShalem: Otzar Peirushei Ba'alei HaTosafot, Part One: Bereishit – Noah*, ed. Yaakov Gliss (Jerusalem: Mifal Tosafot HaShalem, 1982).

presented part of the *midrash* of *Bereishit Rabbah* which states that the verse is a prohibition against suicide by using the example of King Saul and Hananiah, Mishael and Azariah.¹⁶⁴

Moshe ben Nahman (*Ramban*, Nahmanides) (1194-1270, Spain and Land of Israel) – Nahmanides offered a number of different interpretations for this verse. The first was that the words “*dimkhem lenafshoteikhem*” literally “the blood for your souls” should be understood as “the blood which is your soul.” This reading is nicely reflected in the JPS translation of “lifeblood.” He then suggested that another possibility was that “*lenafshoteikhem*” (for your souls) means “*benafshoteikhem*” (in your souls). He then claimed that the most correct interpretation is that the verse is referring to the spilling of not just any blood (such as blood that flows from a paper cut), but specifically the spilling of blood that results in death. He then mentioned that the sages viewed this as a prohibition against suicide, though he himself does not appear to take a stance on the matter. Nahmanides had difficulty understanding the phrase “I will require it of every beast,” due to the fact that according to him animals do not have the mental capacity for which they can be punished or rewarded for their actions. He suggested that perhaps the reference to animals means that should an animal kill a human, in return it too would be killed, regardless of whether they can be considered morally culpable or not.¹⁶⁵

Bahya bar Asher (1255-1340, Spain) – Bar Asher saw one of the lessons derived from this verse as a prohibition against suicide. This he derived from the word “*lenafshoteikhem*,” (for your souls) which he claimed should be read as “*menafshoteikhem*,” (from your souls) meaning the blood of the individual himself. For those who commit murder, justice will either be carried out by animals in cases where

¹⁶⁴ David Qimhi, *Peirushei Rabbi David Qimhi al HaTorah*, 2nd Edition, ed. Moshe Kamlher (Jerusalem: Mossad HaRav Kook, 1975).

¹⁶⁵ Moshe ben Nahman, *Peirushei HaTorah LeRabbeinu Moshe ben Nahman (Ramban) – Volume One: Bereishit Shemot*, ed. Haim Dov Chavel (Jerusalem: Mossad HaRav Kook, 1959).

there are no witnesses to testify in court, and by the courts for cases in which there are witnesses.¹⁶⁶

Ḥizqiyah bar Manoah (*Ḥizquni*) (13th century, France) – *Ḥizquni* repeated Rashi for the part of the verse that is of interest to us. In other words, *Ḥizquni* saw this verse as a prohibition against suicide, and like Rashi explained that it includes not only suicide that draws blood, but also suicide which does not involve shedding blood. Bar Manoah presented the *midrash* from *Bereishit Rabbah*. He then claimed that the shedding of blood also applies to animals as is clear from the case of the goring ox. He also offered another interpretation, stating that the verse comes as a clarification to those who may have been inclined to believe that cannibalism is permitted. Since Genesis 9:4 permits the consumption of animals but prohibits eating animals with their lifeblood still in it, one may have understood that this included humans. Genesis 9:5 clarifies that this is not the case. In other words, cannibalism is prohibited. He concluded by stating that God will require a reckoning both from those who commit suicide and from those who commit murder in secret. Those who murder in public will be judged in human courts.¹⁶⁷

Ḥaim Paltiel (c. 13th century, Germany) – Paltiel questioned the circumstances in which a person is culpable for committing suicide. He asked if people are culpable if they sacrifice themselves by intentionally submitting to a dangerous animal or to brigands. He presented the *midrash* to demonstrate that in these instances the individual is in fact culpable for suicide. In the first instance the animal is incapable of rational thought, and in the second instance human beings are still liable for intentionally endangering themselves.¹⁶⁸

Yaakov bar Asher (*Ba'al HaTurim*) (c. 1270-1343, Germany and Spain) – Like Naḥmanides, Yaakov bar Asher clarified that the words should be understood as “*benafshoteikhem*” and not “*lenafshoteikhem*.” The implication of this reading is that the

¹⁶⁶ Baḥya bar Asher, *Rabbeinu Baḥya: Be'ur al HaTorah, Volume One: Bereishit*, ed. Ḥaim Dov Chavel (Jerusalem: Mossad HaRav Kook, 1974).

¹⁶⁷ Ḥizqiyah bar Manoah, *Ḥizquni: Peirushei HaTorah LeRabbeinu Ḥizqiyah bar Manoah*, ed. Ḥaim Dov Chavel (Jerusalem: Mossad HaRav Kook, 1981).

¹⁶⁸ Ḥaim Paltiel, *Peirushei HaTorah*.

reckoning for murder is capital punishment, which is not the case for the spilling of blood that does not take life. Some manuscripts have bar Asher presenting the rabbis' opinion that the verse is a prohibition against suicide. He then cited Naḥmanides' deliberation regarding the reckoning required of animals which do not have a rational capacity. Naḥmanides concluded that any animal causing the death of a human would in due course be killed, such as the example of the goring ox (Exodus 21:29). In other words, anyone who spills human blood will require a reckoning whether the perpetrator is human or animal. Another possible interpretation suggested by Yaakov bar Asher is that animals, like humans, have the responsibility of meting out justice to murderers. He then claimed that the deeper meaning of the verse (*sod ha'inyan*). The nature of humans was to be vegetarian but this was changed after the Flood when flesh was permitted to both humans and animals. It was necessary, therefore, for God to instill fear of humans into the animals. This clarification became necessary to limit the consumption of flesh only to animal flesh; the prohibition to consume human flesh needed to be reinforced. Finally, Yaakov bar Asher presented the *midrash* that gave examples of characters from the Bible who killed themselves or were willing to martyr themselves. The implication suggested by him is that it is prohibited for humans to harm themselves.¹⁶⁹

Levi ben Gershom (*Ralbag*, Gersonides) (1288-1344, France) – Gersonides claimed that those who interpreted the verse as indicating that God would punish animals for harming humans were wrong, because animals do not have the mental faculties which make punishment relevant. He preferred the interpretation offered by some commentators that humans were culpable even if they used animals to kill other humans instead of committing the act themselves. Nevertheless, Gersonides rejected this interpretation as unsuitable linguistically. Grammatically speaking, the animals are the ones carrying out the action, not the humans. As such, the proper interpretation of the verse is that these animals are those who are to deliver justice. Why animals and not the legal system? In cases where the courts are unable to carry out a verdict or the case never reaches the

¹⁶⁹ Yaakov bar Asher, *Peirush HaTur al HaTorah LeHaRabbi Yaakov ben HaRosh, Volume One: Bereishit – Shemot*, ed. Yaakov Kapel Reinitz (Jerusalem: Feldheim Publishers, 2006).

courts but the individual is guilty, God continues to deliver justice through a variety of agents, and in this case the agents are animals. Gersonides expanded on this, explaining that the prohibition against murder was necessary at this point, because by permitting humans the consumption of animal flesh in the postdiluvian era, confusion may have arisen with regard to whether killing humans was also permitted.¹⁷⁰

Nissim ben Reuven Gerondi (*Ran*) (early 14th century-1380, Spain) – Nissim claimed that the reason this verse was necessary is because flesh is being permitted for consumption for the first time. As such, clarification was necessary in order that people not engage in murder. Among other things, he emphasised that any animal that kills a human will be inherently weakened so that in return it will be killed by any other animal that crosses its path. The same will be the case for a human that murders another human.¹⁷¹

Isaac Abarbanel (1437-1508, Portugal, Spain and Italy) – Abarbanel saw this verse as a prohibition against murder. He claimed that when there are no humans around to carry out justice, this task is administered by the animal kingdom. Abarbanel also questioned how Nissim ben Reuven Gerondi came to the conclusion that an animal becomes weakened after killing a human, as he saw no evidence for such a claim. He then asked how we know that a reckoning is not required for the spilling of animal blood, to which he answered that humans were created in the image of God but animals were not.¹⁷²

Avraham bar Yaakov Saba (*Tzeror HaMor*) (1440-1508, Spain, Portugal, Morocco, and Turkey) – Saba stated that the verse comes as a clarification that even though animals are now permitted for human consumption according to the new world order in the

¹⁷⁰ Levi ben Gershom, *Peirushei HaTorah LeRabbeinu Levi ben Gershom (Ralbag), Volume One: Bereishit*, ed. Yaakov Leib Levi (Jerusalem: Mossad HaRav Kook, 1992).

¹⁷¹ Nissim ben Reuven Gerondi, *Rabbeinu Nissim ben Reuven Gerondi (HaRan): Peirush al HaTorah*, ed. Leon Aryeh Feldman (Jerusalem: Makhon Shalem, 1968).

¹⁷² Isaac Abarbanel, *Peirush al HaTorah – Bereishit* (Jerusalem: Bnei Arbael Publishing, 1964).

postdiluvian era, human beings are not included in this category. Hence, murder is not permitted.¹⁷³

Eliyahu Mizrahi (*HaRe'em*) (c. 1450-1526, Turkey) – Eliyahu Mizrahi, as a supercommentary on Rashi, explained that since Rashi already interpreted the words “and from the hand of the person” (*umiyad ha'adam*) as murder, then the first part of the verse must be referring to suicide. He then went on to support Rashi's claim that the words “*lenafshoteikhem*” are there in order to be inclusive of those who strangles themselves (i.e. in situations where no actual blood is spilled). According to his explanation of Rashi, he asserted that since the words “*akh et dimkhem*” (but for your own blood)¹⁷⁴ already include the prohibition against suicide, the word “*lenafshoteikhem*” must come to elucidate something else. He claimed that if this word meant that the individual would be held accountable for their suicide, the text would have read “*minafshoteikhem*. Such a modification, however, is obvious, and therefore unnecessary, because it is implausible to assume that others would be held accountable for someone who kills himself. Therefore, “*lenafshoteikhem*” must mean strangulation (or other forms of non-blood spilling suicide).¹⁷⁵

Ovadhiah Seforno (c. 1480-c. 1550, Italy) – Seforno claimed that while humans are not held accountable for animal blood they spill, human life, which is precious, will be accounted for in two ways. A person who merits protection, will be protected from both animals and humans. If, however, a person does not merit Divine intervention they will not be saved. Then a person's murderers, however, will still be held accountable, unless they are animals, in which case they will not be held accountable.¹⁷⁶

Moshe Alsheikh (1508-c. 1600, Turkey, Land of Israel and Syria) – From the previous verses Alsheikh understood that the righteous individual casts his fear upon the animals

¹⁷³ Avraham bar Yaakov Saba, *Sefer Tzeror HaMor*.

¹⁷⁴ The JPS translation uses the word life-blood, but Mizrahi separated the words *dimkhem* (your blood) and *nafshoteikhem* (your life) in order to explain Rashi's exegesis.

¹⁷⁵ Eliyahu Mizrahi, *Humash HaRe'em: Sefer Bereishit*, ed. Moshe Filip (Petaḥ Tiqva, Israel: private printing, 1992).

¹⁷⁶ Ovadhiah Seforno, *Be'ur al HaTorah*.

and through this elevated status is permitted to eat them. Humans are inherently above animals insofar as they were created in God's image. Anyone who “*ḥata al hanefesh*” literally translated as “sinned on the soul,” presumably meaning a person who committed murder, however, is no longer above the level of animals and can be put to death even by animals. Even someone who has been killed by animals will be held accountable for diminishing the image of God.¹⁷⁷

Judah Loew ben Bezalel (*Maharal, Gur Aryeh* (Loew's supercommentary on Rashi)) (c. 1520-1609, Bohemia) – Like Eliyahu Mizraḥi, Loew's *Gur Aryeh* is a supercommentary on Rashi. As such, he concerned himself with analysing Rashi's commentary on the text as opposed to the text itself. Loew claimed that the version of the gloss we have for Rashi must be corrupt, and that there is no reason to believe that the text needs to distinguish literally between shedding blood and killing without bloodshed. Thus, he did not accept the position that the verse is referring to suicide, but understands it all as referring to murder. According to Rashi the word “*akh*” comes to delineate an exception to the prohibition, and in this particular case Loew claimed that the exception is to distinguish humans from animals whose flesh can now be consumed according to Genesis 9:4.¹⁷⁸

Solomon Dubno (1738-1813, Russia, Galicia, Holland and Germany) – Dubno asserted that the verse comes as a clarification of the permission granted to consume the flesh of animals, which until now had been prohibited. The first of the prohibitions is in verse 4 where the text prohibits the consumption of flesh from a live animal. Next, the text in verse 5 clarifies that the permission to spill the blood of animals does not extend to humans. From this it is understood that murder is prohibited, as is the killing of humans by animals.¹⁷⁹

Samuel David Luzzatto (*Shadal*) (1800-1865, Italy) – Luzzatto claimed that an animal which kills a human would eventually fall into human hands and justice would be served.

¹⁷⁷ Moshe Alsheikh, *Torat Moshe: Derushim, Peirushim UVe'urim LeHamishah Humshei Torah – Sefer Bereishit*, ed. Makhon Lev Sameah (Jerusalem: H. Vagshel Ltd., 1990).

¹⁷⁸ Judah Loew ben Bezalel, *Humash Gur Aryeh HaShalem, Volume One: Bereishit – Hayei Sarah*, ed. Yehoshua David Hartman (Jerusalem: Makhon Yerushalayim, 1989).

¹⁷⁹ Solomon Dubno, *Sefer Netivot HaShalom: Sefer Bereishit* (Jerusalem: 1974).

He held that it should be an *a fortiori* understanding that if an animal will be brought to justice for their transgressions, how much more so will humans be judged. He also claimed that the understanding of the rabbis of the verse as a prohibition against suicide is incorrect linguistically, as instead of “*lenafshoteikhem*” (to your flesh) it would have had to have been written “*minafshoteikhem*” (from your flesh).¹⁸⁰

Samson Raphael Hirsch (1808-1888, Germany and Moravia) – Hirsch differentiated between the flesh and soul of animals which were both created from the earth, and the flesh and soul of humans of which the former was created from the earth, but the soul was given directly from God. Animal flesh can transform into human flesh through consumption, but animal souls will never be permitted to become human souls. Animal blood, that is, the right to slaughter animals for food, and animal flesh belong to humans, but human life-blood belongs to God. God is considered to have deposited human blood in the individual and as such, human blood will always need to be accounted for. For Hirsch this is first and foremost a prohibition against suicide. Additionally, animals will need to provide a reckoning for any human blood they spill and humans will need to provide a reckoning for human souls. Humans are considered to be God’s representatives and must protect all the creations of this world according to the will of God. Recognition of the godly soul present in oneself will result in the recognition that it is also present in all humans. All humans are responsible for the soul of each human. Should even a moment of life be taken away from oneself or from another, judgment of the one responsible is in the hands of God.¹⁸¹

Meir Leibush bar Yeḥiel Mikhel Weiser (*Malbim*) (1809-1879, Ukraine, Poland, Romania and Prussia) – Weiser began his gloss by stating that although God permitted the killing of animals, the killing of fellow humans was still prohibited and there will be a reckoning for the murderer. He interpreted this verse as having two meanings. The first meaning is that the eternal animal soul of those who takes their own life (whether through

¹⁸⁰ Samuel David Luzzatto, *Peirush Shadal*.

¹⁸¹ Samson Raphael Hirsch, *Ḥamishah Ḥumshei Torah im Peirush Rashar Hirsch: Sefer Bereishit*, 4th Edition, ed. and trans. Mordekhai Breuer (Jerusalem: Mossad Yitzḥaq Breuer, 1989).

the literal shedding of blood (*dimkhem*) or through other means (*nafshoteikhem*)) will be held accountable. The second meaning is with regard to the responsibility of testifying in court after witnessing a murder. The sages interpreted this verse as indicating that a Noahide can be held accountable even by only one judge, with no warning, with only one witness, by a man but not a woman, and even by a relative.¹⁸²

David Tzvi Hoffmann (1843-1921, Slovakia, Austria and Germany) – Hoffmann started by asserting that human life is sacrosanct, something which he claimed needed to be especially clarified after permission was granted to consume flesh. Human life is sacrosanct for both humans and animals. A reckoning will be required from a human or an animal that takes a human life, which, according to Hoffmann, was correctly understood by the rabbis as including someone who takes their own life.¹⁸³

Barukh HaLevi Epstein (*Torah Temimah*) (1860-1942, Belarus) – For Epstein this verse indicated that Noahides who are accused of murder may be judged by one judge, and even through the testimony of only one witness; the witness, however, must be a man though he could be a relative. He also presented a *baraita* quoting Rabbi Eleazar found in *bBaba Qama* 91b interpreting the verse as a prohibition against harming oneself. He then claimed that the *amoraim* of the Talmud accepted this as a source for the prohibition against suicide but rejected it as a source for the prohibition against self-harm because they are qualitatively different from each other. Epstein, however, understood this rejection by the Talmud as a “*diḥui be’alma*” (a non-substantive casting aside of a proof). In other words, while it is indeed the case that the Talmud did not accept this proof, Weiser nonetheless holds that this is the simple meaning.¹⁸⁴

Menaḥem Mendel Kasher (*Torah Shlemah*) (1895-1983, Poland and Israel) – Kasher weighed in on the debate in the Talmud (*bBaba Qama* 91b) as to whether Genesis 9:5 is in fact a proof-text for the prohibition against self-harm or only a prohibition against

¹⁸² Meir Leibush Weiser, *Otzar HaPeirushim al Tanakh, Miqraot Gedolot, Sidra 1, HaTorah VeHaMitzvah* (Tel-Aviv: Mefarshei HaTanakh, n.d.).

¹⁸³ David Tzvi Hoffmann, *Sefer Bereishit* (Tel-Aviv: Netzah Publishing, 1969).

¹⁸⁴ Barukh HaLevi Epstein, *Hamishah Humshei Torah im Hamesh Megilot, Torah Temimah: Sefer Bereishit* (New York: Avraham Yitzhak Friedman, 1962).

suicide. He mentioned that *tBaba Qama* 9:31 presented a number of examples that clearly deal with self-harm and not suicide and use Genesis 9:5 as a proof-text. He, however, accepted the Talmud's rejection of this verse as the source for the prohibition against self-harm. He surmised that perhaps the *Tosefta* just uses Genesis 9:5 as an *asmakhta*, a scriptural support, for the prohibition against self-harm without it actually being the source.¹⁸⁵

Gunther Plaut (1912-2012, Germany, U.S.A. and Canada) – Plaut focused his comment on the animal factor appearing in the verse and claimed that even animals are held responsible for harming humans such as is the case for the goring ox (Exodus 21:28).¹⁸⁶

ArtScroll¹⁸⁷ - ArtScroll offered a range of possible interpretations for this verse, including the possibility that the text is a prohibition against both suicide and murder. Human life belongs to God and thus is not for humans to take. At the same time humans do have dominion over animal life. Animals that kill humans will be killed by Divine means. Another possible interpretation is that humans are prohibited from murder even when the killing is caused by animals and not directly by a human being. Moreover, animals will assist in carrying out justice for murder that is not meted out by human courts.¹⁸⁸

2.4.4 Synthetic Analysis

Despite the large number of exegetes who commented on this verse, the variation in the content of their glosses is quite small. In considering whether Genesis 9:5 is a prohibition against murder or suicide, a number of factors reinforce the notion that the verse is indeed a prohibition against suicide. First, the prohibition against murder found in Genesis 9:6 is presented in a very straightforward manner: “Whoever sheds the blood

¹⁸⁵ Menahem Mendel Kasher, *Humash Torah Shlemah*, Volume Two (Jerusalem: Levin-Epstein Bros and Partners Press, 1936).

¹⁸⁶ Gunther Plaut, *A Modern Commentary*.

¹⁸⁷ ArtScroll is an English translation and commentary of the Torah that is in wide use by English speaking Orthodox communities.

¹⁸⁸ *The Schottenstein Edition Interlinear Chumash: Genesis*, ed. Menachem Davis (New York: Mesorah Publications Ltd., 2006).

of man, [b]y man shall his blood be shed; [f]or in His image [d]id God make man.” In the opinion of traditional exegetes, the fact that Genesis 9:6 is an explicit prohibition against murder leaves Genesis 9:5 open to mean something else. After all, why would two prohibitions on murder be juxtaposed? Moreover, *tBaba Qama* 9:31 uses Genesis 9:5 as a proof-text for the prohibition against self-harm, while *bBaba Qama* 91a-b discusses the culpability of the individual in cases of self-inflicted harm and suggests the possibility that Genesis 9:5 is the source of this prohibition. Although the Talmud goes on to reject this verse as the source of the prohibition against self-harm, it does so by accepting it as a source for the prohibition against suicide.¹⁸⁹ Both Yaakov bar Asher and Barukh HaLevi Epstein share this notion by mentioning that this verse is the source of the prohibition against self-inflicted harm. This Talmudic discussion comes precisely in the same place as the discussion of the limits to the prohibition against cutting down fruit trees, a connection which will be discussed in great detail in the rabbinic chapter. Although we see both interpretations of murder and suicide emerge from the *midrash* (murder in *Sifre Zuta* and suicide in *Bereishit Rabbah*), something which is quite common, it is clear from the discussion in the Talmud (*bBaba Qama* 91b) that the rabbis favoured the understanding that the verse is a prohibition against suicide. This does not preclude the possibility that the verse is also a prohibition against murder; after all, suicide is *de facto* also a form of (self-)murder.

In spite of the rabbinic leaning toward the verse as a prohibition against suicide, there is a relatively even division among the commentators as to whether Genesis 9:5 deals with suicide or murder. While some of the exegetes who asserted that the verse is a prohibition against murder explicitly rejected the notion that the verse is a prohibition against suicide (Abraham ibn Ezra, Judah Loew ben Bezalel, and Samuel David Luzzatto), none of those claiming that the verse was a prohibition against suicide explicitly rejected the notion that the prohibition was against murder. This is possible since suicide is a form of (self-) murder, as mentioned above. Saadiah, for instance, interpreted the verse as referring to suicide, and explained the *midrash* in an apologetic

¹⁸⁹ This is significantly elaborated upon in the rabbinic chapter.

manner. The text in 1 Samuel clearly states that Saul fell on his sword thereby killing himself, while Saadiah defended Saul's honour by claiming that it was actually an Amalekite who ended up killing the king. If suicide was not prohibited, such apologetics would be unnecessary.

Abraham ibn Ezra, one of the best known proponents of *peshat*, or the straightforward meaning of the text, explicitly rejected the possibility that the text is referring to anything but murder. As a *peshat* commentator he would have less concern with rabbinic rules of exegesis and would not necessarily see it as problematic that two adjacent verses say the same thing. Yosef Bekhor Shor was the first to offer a contextual explanation of the text, by demonstrating that the verse needs to be read in light of the verse that comes before it (Genesis 9:4). Now that animals have been permitted for human consumption, Bekhor Shor claimed that it was necessary to elucidate that this permission did not also include human flesh. The rationale presented by Bekhor Shor while possibly redundant is still rational. The postdiluvian existence of animals is on account of humans (i.e. Noah) who saved them from the Deluge by providing them with shelter aboard the ark. Through this act the relationship between animals and humans was understood to have changed and animals became permitted for consumption. Like animals, humans are made of flesh. There is the possibility that some would have understood this new injunction as meaning that human life can be taken. Bekhor Shor understood this to mean suicide, possibly because murder was prohibited separately in the very next verse. The gloss from the compilation of *Ba'alei HaTosafot* echoes Bekhor Shor's comments, and may in fact have been his own words as he himself was a member of this group. Gersonides, an avid rationalist, also contextualised the verse, and understood that the establishment of the new postdiluvian world order necessitated a clarification that the permission to kill animals for consumption did not include the killing of humans. Unlike Bekhor Shor, however, he understood the prohibition as being against murder and not suicide.

Ḥizqiyah bar Manoah, who also interpreted the verse within its own context, had a different approach to the rationale behind the verse. While he, too, viewed the verse as a prohibition against suicide, from a contextual perspective he understood it as forbidding cannibalism. Similarly, Nissim ben Reuven Gerondi, Avraham bar Yaakov Saba, Judah Loew ben Bezalel, and Solomon Dubno all contextualise the verse, but view it as a prohibition against murder. Naḥmanides himself, while mentioning that the rabbis viewed this as a prohibition against suicide, does not appear to take a stance on this particular debate.

Beyond the debate of whether the verse is a prohibition against murder or suicide, there is also the issue of animals. Where do they fit into the narrative? This is a component that is not dealt with by the *midrash*, opening the door to a wider variety of interpretations by the exegetes who chose to incorporate this aspect of the verse into their glosses. Tuvia bar Eliezer and Meyuḥas bar Eliyahu insisted that animals, like humans, have the responsibility to carry out justice. Such an approach was shared by Baḥya bar Asher. For him, animals could be Divine messengers who carry out God's justice in cases where humans are unable to do so. For example, if a murder has no witnesses, the murderer is still punished, but through non-human means. In other words, bar Asher viewed the animals not as those upon which justice is delivered, but rather as those agents through which justice is delivered. The role of agency through animals was shared by Gersonides and Isaac Abarbanel. Moshe Alsheikh had a nuanced approach stating that those who transgress by committing murder are no longer superior to animals and therefore can be killed by them.

Others, such as Bekhor Shor, Ḥizqiyah bar Manoah, *Ba'alei HaTosafot* and Gunther Plaut explained that animals would be held accountable for killing humans, such as in the case of the "goring ox." David Qimḥi and Solomon Dubno also held this view, but without referencing the goring ox. The much earlier pseudo-epigraphal Aramaic translation of Scripture of Pseudo-Jonathan, known also as *Targum Yonatan* also held

this view.¹⁹⁰ While Yaakov bar Asher took a similar approach to the above exegetes in claiming that animals are held accountable for killing humans, he added that animals were also prohibited from eating humans. Although this might be implied by the other commentators, Yaakov bar Asher stated so explicitly. To this Nissim ben Reuven Gerondi added that the way in which the transgressing animal in the wild receives justice is through a divinely delivered weakening of the animal which results in that animal being killed by other animals. Samuel David Luzzatto also believed that animals would be punished for their transgressions against humans. In his rejection of the position that holds that the verse is a prohibition against suicide, Luzzatto argued that understanding the verse in that way is problematic from a linguistic perspective.

As mentioned above, Nahmanides believed that animals do not have the mental capacity through which they can be punished or rewarded. He nevertheless accepted the possibility of animals being punished for their actions. Gersonides, too, took issue with animals being considered to have rational faculties. He held that God would not punish animals for whom punishment was irrelevant. Gersonides believed that the only logical interpretation of the verse was that animals were used as God's agents to carry out justice when humans were unable to do so.

Samson Raphael Hirsch offered the most environmentally nuanced interpretation of Genesis 9:5. Aside from the positions that he held with regard to whether the verse deals with a prohibition against murder or suicide (in his opinion, both), Hirsch took a stance on animals and humans with regard to creation. He considered humans to be superior to animals, and as such humans were permitted to consume them. Animals were not granted reciprocal rights. Nevertheless, humans are held accountable for their treatment of both animals and humans. According to Hirsch, human life is sacrosanct and causing its diminishment for even a moment is a transgression, covered by the prohibition against both murder and suicide. This is with regard to humans. With regard to animals, humans are responsible as God's representatives on earth to protect all of creation. Such

¹⁹⁰ *Targum Yonatan*, ed. S. Wertheimer (Jerusalem: 1997).

an approach implies a prohibition against wastefulness/destruction. While this is still not an explicit affirmation that Genesis 9:5 is viewed as connected to *bal tashhit*, the implication seems clear enough. Interestingly, the notion of human responsibility for the protection of the rest of creation is something we might have expected to see in the debate regarding the (non-)environmental reading of Genesis 1:28 (“God blessed them and God said to them, ‘Be fertile and increase, fill the earth and master it; and rule the fish of the sea, the birds of the sky, and all the living things that creep on earth.’”). The fact that Hirsch’s gloss is much more closely associated with the concept of *bal tashhit* than with Genesis 2:15 (*leovda uleshomra* – “to till it and tend it”) is further proof that there are more suitable biblical passages that can be used to argue for an environmental ethic in Judaism rather than Genesis 1:28 vs. Genesis 2:15, as I argue elsewhere.¹⁹¹

In addition to Hirsch’s implicit connection between Genesis 9:5 and *bal tashhit*, three other commentators stand out in this regard. Yaakov bar Asher specifically stated that Genesis 9:5 is a prohibition against self-harm. Distinguishing this from the prohibition against suicide is important, because it is in this form that an association is made with the prohibition against wastefulness/destruction in *tBaba Qama* 9:31. By differentiating between the two, Yaakov bar Asher can be added to an exclusive list of scholars that form a tradent contributing to this narrative. No claim can be made that Yaakov bar Asher connected between the prohibition against self-harm and *bal tashhit*, but viewing Genesis 9:5 as the source of the prohibition against self-harm contributes to the ranks of scholars that held this view in spite of the arguments advanced by the *amoraim* in *bBaba Qama* 91b seen in the next chapter. To Yaakov bar Asher we can add Barukh HaLevi Epstein and Menaḥem Mendel Kasher. Epstein offered a much more elaborate claim than Yaakov bar Asher to his position that Genesis 9:5 is a prohibition against self-harm. He specifically mentioned the *amoraic* rejection of this understanding, but claimed that this rejection was nothing more than a *dihui be’alma* (a non-substantive casting aside of a proof) and held that the verse stands as the source for this prohibition.

¹⁹¹ See Tanhum Yoreh, “Environmental Embarrassment: Genesis 1:26-28 vs. Genesis 2:15,” in *Vixens Disturbing Vineyards: Embarrassment and Embrace of Scriptures*, ed. Tzemah Yoreh, et al. (Boston: Academic Studies Press, 2010), 558-591.

Kasher was also specific in his discussion of the rabbinic sources, but unlike Epstein he did accept their casting aside of Genesis 9:5 as the source for the prohibition against self-harm by claiming that this position was only buoyed by the verse but the prohibition in fact originated elsewhere.

In conclusion, the commentary tradition on Genesis 9:5 does not draw an explicit connection between the verse and the prohibition against wastefulness/destruction. In light of the fact that the link between Deuteronomy 20:19 and the general prohibition of *bal tashhit* is hardly apparent in the commentaries, this comes as little surprise. Nevertheless, through his claim that humans have the responsibility to protect God's creations, Hirsch made this connection implicitly. Together with Yaakov bar Asher and Barukh HaLevi Epstein who asserted that Genesis 9:5 is the source for the prohibition against self-harm, there is a basis upon which the ideas that arise in the following chapters can rest. Even though these connections will be analysed in light of the classical rabbinic tradition only in the next chapter, it is fitting to begin to address the theoretical premise. There are two ways in which one can develop a connection between Genesis 9:5 and *bal tashhit*. The first is that if a general prohibition against wastefulness is all encompassing, what could have more value than human life? Whether the prohibition in Genesis 9:5 is on murder or on suicide, both approaches view human life as sacrosanct. Both murder and suicide could be interpreted as the most extreme example of wastefulness/destruction. Seen in utilitarian terms, human life is so precious, monetary value cannot be placed on it. Indeed, there is little which humanity values more. Jewish law indicates that all laws are forfeit when it comes to preserving a human life, save the prohibition against murder, idolatry and sexual immorality.¹⁹²

There are a number of verses in the Torah that specifically deal with the prohibition against murder (for example, Genesis 9:6, Exodus 20:12, 21:12, Deuteronomy 5:16). Genesis 9:5 is much more vague in this regard, which is why it is compelling to view it as a prohibition against suicide and not murder. Needless to say, it

¹⁹² b*Sanhedrin* 74a.

is not the goal of this dissertation to choose which interpretation is most suitable. Rather, I am interested in understanding the role of Genesis 9:5 in the conceptualisation of *bal tashhit*. Conceptually, it makes sense to think of wastefulness as something not only applicable to material goods, but also to the body. In the Jewish traditions one is prohibited not only from wasting and destroying material goods but also human life. Objectively, human life is the most valuable thing in the world. Subjectively, however, it is not just any human life that is considered to be of greatest value, but one's own life. Certainly this assertion has its limitations, such as one valuing members of their family more than his/her own life, or an individual's willingness to die for a particular cause. These, however, should be seen as exceptions to the rule. Moreover, there is nothing that can be considered as belonging more to an individual than his/her own life. The directive of Genesis 9:5 asserts that even the thing that humans would assume belongs most to them, their own body, is not theirs to destroy. From this perspective, one can detect a theocentric guiding principle behind the ethic of *bal tashhit*. From a Jewish perspective, ownership, like life, is a transient condition. Neither one's own life nor one's material possessions is under exclusive human ownership. Never having complete ownership over anything makes any act of wastefulness/destruction of person or property a transgression.

2.5 Leviticus 19:27

“You shall not round off the side-growth on your head, or destroy the side-growth of your beard.”

2.5.1 Context

Chapter 19 of Leviticus is replete with what can be considered social and ethical laws, and includes a number of commandments found in the Decalogue. In addition, some of the laws relate to sacrificial practices. The specific commandment of not “destroying” one's facial hair comes with no rationalisation, and as such left ample room for rationalists and others to offer an explanation for this commandment.

The reason this verse is included in the analysis of the concept of *bal tashhit* is because it is the first of the two times the term *lo tashhit* appears in the Torah (the second, of course, being Deuteronomy 20:19).¹⁹³ In contemporary environmental literature dealing with the concept of *bal tashhit* this verse has been entirely overlooked. Seemingly, there is at most very little connection between the two verses in which these words appear. Contextually, the verse in Deuteronomy deals with obligations during war, while the verse in Leviticus is one of a long list of commandments that appears to have very little rationale. The only reasoning behind the commandment to not “destroy” one’s facial hair is provided in Leviticus 19:37, the final verse in the chapter: “You shall faithfully observe all My laws and all My rules: I am the Lord.” “I am the Lord” might be a good reason to fulfill the edict, and present sufficient motivation to do so, but is fundamentally lacking a rationale as to why one should fulfill it. Nevertheless, due to the fact that the very same language is used and the rarity of its use, analysing this verse is an essential component of the tradition histories of *bal tashhit*.

2.5.2 *Midrash*

Sifra (c. 3rd century, Land of Israel) – *Qedoshim, Parashah 3, 6:4-6* – The *midrash* started by stating the prohibition on “destroying” one’s facial hair. The *midrash* then asked if scissors were included in the prohibition, and concluded that they are not since they do not “destroy.” The *midrash* then asked whether one is culpable if he used a plane (a blade used by carpenters) or tweezers, to which the answer again is no, because these are not instruments that shave. Rabbi Eliezer, however, had a different approach and claimed that the use of a plane or tweezers was still a transgression of the prohibition. He also claimed that even if one removes the hair from all five different parts of the face he is still only liable to be punished once.¹⁹⁴

Tuvia bar Eliezer (*Midrash Leqah Tov, Pesiqta Zutarta*) (late 11th century, Byzantium) – Tuvia bar Eliezer stated that the prohibition only includes razors, because they are

¹⁹³ *Lo* and *bal* are synonymous.

¹⁹⁴ *Sifra*, ed. I. Weiss (Vienna: 1862).

destructive. One has not transgressed this edict if they cut their facial hair with scissors.¹⁹⁵

Yalqut Shimoni (Shimon HaDarshan, 13th century, Germany) – ***Qedoshim 19:690*** – The *midrash* began by defining exactly what is included in the side-growth of one’s beard, and concluded that it includes five different sections of the face. Rabbi Eliezer stated that if someone removes all of them at once he is still only liable for one punishment. The rabbis claimed that he is only liable if he removes his facial hair with a razor. Rabbi Eliezer claimed that one is also liable if he uses tools such as a plane or tweezers to remove one’s beard. What was the rabbis’ reasoning? They drew a parallel between the prohibition in Leviticus 19:27 and that in Leviticus 21:5 which states that priests should not shave their beards, but does not use the word “destroy.” The rabbis understood these prohibitions as synonymous, meaning that the prohibition on shaving one’s beard entailed destruction. Therefore, trimming one’s beard with scissors is permissible because it is a tool that does not destroy, while using a plane or tweezers is not a transgression of this particular prohibition (though possibly is a transgression of the prohibition on harming oneself) because a plane does not shave and tweezers do not destroy. According to Rabbi Eliezer who did not learn from one verse to the other and did not see them as equivalent even the use of scissors would be prohibited.¹⁹⁶

2.5.3 Post-Midrashic Commentary

Abraham ibn Ezra (1089-1164, born in Spain, but lived and travelled all over the Mediterranean basin, Northern France and England) – Ibn Ezra asserted that the beard should not be cut because it emulates Gentiles. Moreover, head and facial hair were created for purposes of splendour and as such should not be destroyed.¹⁹⁷

¹⁹⁵ Tuvia bar Eliezer, *Midrash Leqah Tov HaMekhuneh Pesiqta Zutarta al Hamishah Humshei Torah – VaYiqra*, Volume Two, ed. Shlomo Buber (Israel: Books Export Enterprises Ltd., 1960).

¹⁹⁶ Shimon HaDarshan, *Midrash Yalqut Shimoni: VaYiqra*, ed. Daniel Bitton (Jerusalem: HaMaor Institute, 2001).

¹⁹⁷ Abraham ibn Ezra, *Peirushei HaTorah LeRabbeinu Avraham ibn Ezra*, Volume Two, 2nd Edition, ed. Asher Weiser (Jerusalem: Mossad HaRav Kook, 1977).

Yosef Bekhor Shor (12th century, France) – Bekhor Shor claimed that the prohibition stems from differentiating oneself from idol-worshipping priests so as not to emulate them.¹⁹⁸

Meyuḥas bar Eliyahu (1150-1200, Byzantium) – Meyuḥas bar Eliyahu mentioned that shaving around one's temples is something that is practiced by Gentiles. One can deduce that he mentioned the practices of Gentiles in order to provide a rationale behind the prohibition. He stated further that the prohibition only includes a razor but not scissors, as there is no destruction (*hashḥatah*) through the use of scissors.¹⁹⁹

Elazar of Worms (1160-1237, Germany) – Elazar of Worms claimed that the reason for the prohibition is that God knew that in the future Christian priests would engage in such practices and God wanted to distinguish between the pure and the impure. He was also of the opinion that the use of scissors was a transgression of the prohibition.²⁰⁰

Ephraim bar Shimshon (c. late 12th-13th centuries, France) – For Ephraim bar Shimshon, the reason behind the prohibition is to separate the pure and the impure.²⁰¹

Menaḥem Recanati (c. 1250-c. 1310, Italy) – Recanati claimed that destroying one's facial hair results in the destruction of special elements of righteousness. These powers are missing from pagan priests who shave their faces.²⁰²

Baḥya bar Asher (1255-1340, Spain) – Baḥya bar Asher discussed the prohibition in terms of not eliminating a characteristic given by God to differentiate between men and women. He drew a parallel between engaging in such activity and *kilayim* (mixtures and creating hybrid species), by claiming that they are both opposed to God's intention. He continued by offering a rational explanation (*al derekh hasekhel*), claiming that each of

¹⁹⁸ Joseph Bekhor Shor, *Commentary on the Pentateuch*.

¹⁹⁹ Meyuḥas bar Eliyahu, *Peirush Rabbeinu Meyuḥas al Sefer VaYiqra*, ed. Yitzḥak Yaakov Har Shoshanim Weinberg (Bnei Braq: private printing, 2005).

²⁰⁰ Elazar of Worms, *Peirush Rabbeinu Elazar MiGermaiza Zal Ba'al Sefer HaRoqe'aḥ al HaTorah ve'al Megilat Ester*, ed. Yosef Gad (London: private printing, 1959).

²⁰¹ Ephraim bar Shimshon, *VaYiqra – BeMidbar - Devarim*.

²⁰² Menaḥem Recanati, *Sefer Levushei Or Yaqar*, ed. Ḥaim Yaakov HaCohen (Jerusalem: private printing, 1960).

the five corners of one's head from which hair may not be cut with a razor represent the five senses. The reason for the prohibition is that destroying the five corners is equivalent to destroying the five senses, which can be considered the same as destroying oneself. He, however, did consider trimming one's beard with scissors to be permissible.²⁰³

Yaakov bar Asher (*Ba'al HaTurim*) (c. 1270-1343, Germany and Spain) – Yaakov bar Asher offered a repetition of ibn Ezra's gloss indicating that there are two reasons behind the prohibition. The first reason is so as not to emulate the Gentiles and the second because the beard was created for splendour and as such it is not becoming to destroy it.²⁰⁴

Levi ben Gershom (*Ralbag*, Gersonides) (1288-1344, France) – Gersonides claimed that it was the practice of idol worshippers to shave their heads with razors, and the Torah prohibits emulating idol worshippers in any way. The reason for this is so that Jews are distanced as much as possible from the destructive practices of idol worshippers. For Gersonides, the prohibition only included the use of a razor.²⁰⁵

Nissim ben Moshe of Marseille (13th-14th centuries, Southern France) – Nissim ben Moshe claimed that he did not know any reason for this prohibition other than for Jews not to emulate Gentiles and to differentiate them from one another.²⁰⁶

Moshav Zeqenim (c. 13th-14th centuries, Anonymous) – The *tosafists* claimed that the prohibition includes razors, but the use of scissors is permissible. They then presented ibn Ezra's opinion that the prohibition is in order to distinguish Jews from Gentiles, as well as his gloss regarding the splendour of the beard, and that it was wrong to destroy something splendid. They also cited Elazar of Worms' gloss regarding God's knowledge

²⁰³ Bahya bar Asher, *Rabbeinu Bahya: Be'ur al HaTorah, Volume Two: Shemot, VaYiqra*, ed. Haim Dov Chavel (Jerusalem: Mossad HaRav Kook, 1974).

²⁰⁴ Yaakov bar Asher, *VaYiqra – Devarim*.

²⁰⁵ Levi ben Gershom, *Peirushei HaTorah LeRabbeinu Levi ben Gershom (Ralbag), Volume Three: VaYiqra*, ed. Yaakov Leib Levi (Jerusalem: Mossad HaRav Kook, 1997).

²⁰⁶ Nissim ben Moshe, *Ma'aseh Nissim*.

of the future and the fact that Christian priests and monks would shave their heads and the prohibition stems from not emulating them.²⁰⁷

Avraham bar Yaakov Saba (*Tzeror HaMor*) (1440-1508, Spain, Portugal, Morocco, and Turkey) – Saba stated that the reason that this prohibition appears where it does is because the context of the chapter is dealing with prohibitions associated with emulation of the Amorites.²⁰⁸

Ovadia Seforno (c. 1480-c. 1550, Italy) – Seforno claimed that the reason behind the prohibition is that such behaviour is the domain of fools, drunkards and Gentile priests. Also, the beard is considered a thing of splendour.²⁰⁹

Moshe Alsheikh (1508-c. 1600, Turkey, Israel and Syria) – Alsheikh related the verse to prohibitions that are connected to idol worship.²¹⁰

Naphtali Hirz Wessely (*Be'ur*) (1725-1805, Denmark, Holland, Germany) – Wessely went into a lengthy discourse about what tools can be used to shave and why. He claimed that the reason the act of using a razor is called destructive is because it eliminates the beard in one fell swoop, whereas other tools take more time and effort. He concluded that the prohibition is a combination of using a razor and “destroying” one’s beard. Since a razor both shaves and “destroys” it is prohibited, but scissors are permitted because they do not.²¹¹

Pinhas bar Tzvi Hirsch HaLevi Horowitz (*Panim Yafot*) (1730-1805, Poland) – Horowitz stated that using scissors is not considered a transgression of the prohibition. He also offered an allegorical interpretation stating that the various corners of one’s head represented the Thirteen Principles of Faith, which connected to the heavens and could either sustain the world or destroy it.

²⁰⁷ *Sefer Moshav Zeqenim al HaTorah*, ed. Saliman D. Sassoon (London: L. Honig and Sons, 1959).

²⁰⁸ Avraham bar Yaakov Saba, *Sefer Tzeror HaMor*.

²⁰⁹ Ovadia Seforno, *Be'ur al HaTorah*.

²¹⁰ Moshe Alsheikh, *Torat Moshe: Derushim, Peirushim UVe'urim LeHamishah Humshei Torah – Sefer VaYiqra*, ed. Makhon Lev Sameah (Jerusalem: H. Vagshel Ltd., 1990).

²¹¹ Naphtali Hirz Wessely, *Sefer Netivot HaShalom: Sefer VaYiqra* (Jerusalem: 1974).

Samson Raphael Hirsch (1808-1888, Germany and Moravia) – Hirsch presented the *halakhic* conflict regarding whether the prohibition at hand includes both a razor and scissors, or just a razor.²¹²

Meir Leibush bar Yehiel Mikhel Weiser (*Malbim*) (1809-1879, Ukraine, Poland, Romania and Prussia) – Weiser’s lengthy gloss dealt mostly with the precise contours of the head that are included in the prohibition on “destroying” one’s beard. He asserted that “destruction” of one’s beard only consists of the use of a razor, because it is the only tool that completely “destroys.” Weiser argued that the use of scissors, as evidenced from Scripture (Jeremiah 41), is not considered a transgression of this prohibition.²¹³

Bernard J. Bamberger (1904-1980, U.S.A) – Bamberger viewed the destruction of one’s beard a forbidden pagan practice.²¹⁴

ArtScroll – Claimed that it is prohibited to cut one’s sideburns even with scissors, though the prohibition on one’s beard is limited to razors because they destroy the beard.²¹⁵

2.5.4 Synthetic Analysis

After a thorough analysis of commentaries it is clear that none of them makes any explicit connections between the two instances in which this term appears. The entire gamut of commentaries analysed in the above section for Genesis 9:5 were also analysed for this verse. The vast majority of the commentators who did comment on this verse focused on explaining what the word “*pe’at*” means and what part of the head it includes. These glosses were of little interest insofar as they pertain to the subject of this dissertation. As such, these glosses and their authors were not included in the analysis of

²¹² Samson Raphael Hirsch, *Hamishah Humshei Torah im Peirush Rashar Hirsch: Sefer VaYiqra*, 4th Edition, ed. and trans. Mordekhai Breuer (Jerusalem: Mossad Yitzḥaq Breuer, 1989).

²¹³ Meir Leibush Weiser, *Humash Torah Sheleimah*, Volume Thirty-Two, ed. Menaḥem M. Kasher (Jerusalem: Beit Torah Shleimah Publishing, 1980).

²¹⁴ Bernard J. Bamberger, *The Torah: A Modern Commentary*, ed. Gunther Plaut (New York: Union of American Hebrew Congregations, 1981).

²¹⁵ *The Schottenstein Edition Interlinear Chumash: Leviticus*, ed. Menachem Davis (New York: Mesorah Publications Ltd., 2008).

this verse. The exegetes who do appear in this section are those that offered a rationalisation of the prohibition found in the verse, as well as those who dealt with the issue of destruction in a manner that implicitly connects Leviticus 19:27 to the greater theme of wastefulness/destruction. At this point, readers may be asking themselves: why bother dealing with the rationalisation behind the prohibition, if it is not associated with wastefulness/destruction *per se*? The answer to this would be that perhaps through the rationalisation of the prohibition found in the verse at hand, light would be shed on how the issue of wastefulness/destruction is understood by the commentators over time.

Those whose glosses included a rationalisation of the prohibition fell into two groups with some overlap between them. The first group rationalised not “destroying” one’s facial hair because such practices emulate Gentiles. Those who rationalised the prohibition in these terms were essentially engaging in anti-Gentile polemics. For some, the polemic was explicitly against Christians (Elazar of Worms and *Moshav Zeqenim*), for some against the Amorites (Abraham Saba), for some against idol worshipers or idol-worshiping priests (Yosef Bekhor Shor, Menaḥem Recanati, Ovadiah Seforno, Moshe Alsheikh, and Bernard J. Bamberger), and for some against Gentiles in general (Abraham ibn Ezra, Meyuḥas bar Eliyahu, Yaakov bar Ahser, Nissim ben Moshe of Marseille, and *Moshav Zeqenim*). Ephraim bar Shimshon who did not elaborate beyond his statement that such practices separate between the pure and impure can be assumed to also have been alluding to some form of the above. Regardless of who the target of the polemic was, this line of argument was the most common manner in which the prohibition was rationalised. Initially, it appears that these glosses are unrelated to the general prohibition against wastefulness/destruction. Nevertheless, after encountering the rabbinic material in the following chapter it will be seen that emulating Gentiles is part and parcel of the concept of *bal tashḥit*.

The rationalisation offered by the second group is more obviously connected to the prohibition of *bal tashḥit*. This group can be divided into two subgroups. The first is headed by Abraham ibn Ezra who claimed that the beard was created for purposes of

splendour and splendid things should not be destroyed. This group includes Yaakov bar Asher, the tosafist compilation of *Moshav Zeqenim*, and Ovadiah Seferno. The statement asserting that splendid things should not be destroyed can be understood as a generalisation beyond its contextual application to facial hair. Thus, there is a distinct possibility that the prohibition to destroy splendid things includes all splendid things, and not just facial hair. As we have seen above in the glosses of Meyuḥas bar Eliyahu, the *Midrash Aggadah* and Baḥya bar Asher (and others) on Deuteronomy 20:19, the general prohibition against wastefulness/destruction is understood to apply to the non-human world relative to human need (*tzorekh*), benefit/enjoyment (*hana'ah*), and utility (*to'elet*). It is possible that one might include splendid things in the category of benefit/enjoyment, but the categories are by and large economic. Ibn Ezra and the rest of those in his group, however, show no indication that their pronouncement is dependent on utilitarianism. Facial hair has no discernible market value. Its value, then, might be considered to be intrinsic, and can possibly be included in the category of things such as a beautiful landscape or an endangered species. These things have intrinsic value, and although this can also be translated to some degree to the marketplace, their value is primarily non-monetary. The understanding that there are material objects that have intrinsic worth is an essential part of environmental ethics.²¹⁶

The other group consists of Menaḥem Recanati, Baḥya bar Asher, and Pinḥas bar Tzvi Hirsch HaLevi Horowitz. Recanati claimed that the rationale behind not cutting one's facial hair is due to the special mystical elements that connect humans to God through their hair. Destroying the hair would also destroy this connection. In other words, the absence of these connections is harmful to the individual, something which goes against Genesis 9:5 which prohibits self-inflicted harm. Baḥya's allegorical gloss implicitly connects Genesis 9:5 with Leviticus 19:27. Though he did not mention the verse from Genesis specifically, he drew a parallel between "destroying" one's facial hair and destroying one's self. For him, each of the five corners of the head represented one of

²¹⁶ See Holmes Rolston III, "Value of Nature and the Nature of Value," in *Philosophy and the Natural Environment*, ed. Robin Attfield and Andrew Belsey (Cambridge: Cambridge University Press, 1994), 13-30.

the five senses, and “destroying” the facial hair was like destroying one of the senses. As we saw in the analysis of Genesis 9:5, many of the commentators understood the verse to be a prohibition against suicide, with a few commentators asserting that the prohibition includes even non-lethal forms of self-harm. As mentioned in the introduction, what makes *bal tashhit* a complete environmental ethic is the understanding that wastefulness is destructive not just to the environment but also to oneself. The understanding materialising through this is that even the “self,” the thing humans would most assume to belong to them, is not theirs to damage or destroy. By focusing on the aspect of self-harm, Baḥya may be said to have implicitly connected the *bal tashhit* of Leviticus 19:27 to the *bal tashhit* that eventually emerges from Deuteronomy 20:19. Horowitz took this one step further by suggesting that the corners of one’s head represented the thirteen principles of faith, which if destroyed could destroy the entire world. In other words, while Baḥya understood the issue at hand to be self-destruction, Horowitz viewed the act of “destroying” one’s facial hair cosmically to have the potential of destroying everything. In a general sense these two exegetes are conceptually similar, but Baḥya’s gloss is much closer in terms of actual content to Genesis 9:5. This is important from the perspective of finding links between the verses foundational to the concept of *bal tashhit*. The notion that the prohibition against “destroying” one’s facial hair is associated with self-harm can also be found in contemporary scholarship. For instance, in his discussion of human dignity, Amnon Shapira included in the category of the prohibition against self-harm the commandment in Leviticus 19:27 regarding the “destroying” of the beard.²¹⁷

The main topic of debate among the commentators included in this section, however, was whether the prohibition against destroying one’s facial hair *de facto* only includes the use of a razor or also scissors. On its surface, this debate appears to have little to do with the topic of wastefulness. The debate is focused on understanding what is encompassed by the prohibition and whether or not the prohibition is transgressed based on the tool used. The majority opinion was that the actions of shaving the face and

²¹⁷ Amnon Shapira, “‘Human Dignity’ [K’vod HaAdam] in the Hebrew Bible,” *Mo’ed: Annual for Jewish Studies* 19 (2009): 20.

“destroying” the beard must happen simultaneously for the transgression to occur. Trimming one’s facial hair with scissors, while “destroying” the beard, does not shave one’s face. In fact, during a careful trim, the scissors may not even come in contact with one’s face. Using a razor, however, has a completely different outcome. This is where the theoretical connection to the self-harm dimension of *bal tashhit* comes into play. When using even the most sophisticated of razors of the kind which are available today, and even if performed carefully, one is frequently left with nicks and scratches or in-grown hairs. The tools of antiquity were not nearly as sophisticated, and one can assume that the process was somewhat bloodier.

These abrasions which, like any break in the skin may become infected, are a form of self-harm. The example of shaving with a razor is relatively benign compared with some other forms of self-inflicted harm. Nevertheless, any degree of self-harm can be considered a transgression. As Samson Raphael Hirsch wrote: “Every smallest weakening is partial murder.”²¹⁸ It is not obvious from the rabbinic tradition and *halakhic* sources that the prohibition against using a razor to shave is because of the prohibition against self-harm, but the fact that a razor is prohibited and scissors are permitted raises this possibility.²¹⁹ Moreover, the fact that the terminology of destruction “*lo tashhit*” is used and the fact that some commentators understood this as being a form of self-harm reinforces this connection. While this evidence is still not definitive, it still creates a plausible enough narrative to merit further research into the matter.

2.6 2 Kings 3:19, 25

19: “You shall conquer every fortified town and every splendid city; you shall fell every good tree and stop up all wells of water; and every fertile field you shall ruin with stones.”

²¹⁸ Samson Raphael Hirsch, *Horeb: A Philosophy of Jewish Laws and Observances – Volume Two*, 2nd Edition, trans. I. Grunfeld (London: The Soncino Press, 1968), 300.

²¹⁹ This sits well according to the position of Rabbi Eleazar in the *midrash* who prohibits the use of any tool. For the sages who do permit the use of scissors, one would assume that the use of tools such as a carpenter’s plane to shave which according to them would not be a transgression of “*lo tashhit*” would still be transgressing the prohibition against self-harm due to the damage caused to one’s face.

25: “and they destroyed the towns. Every man threw a stone into each fertile field, so that it was covered over; and they stopped up every spring and felled every fruit tree.²²⁰ Only the walls of Kir Hareseth were left, and then the slingers surrounded it and attacked it.”

2.6.1 Context

In chapter 3 of 2 Kings the King of Moab, who was at this point a tributary of the Kingdom of Israel, rebelled against Israel by not paying his tribute. Yoram the King of Israel called upon Jehoshaphat the King of Judah, and the King of Edom to join him in attacking the Moabites. These three kings departed to face Moab through the desert and eventually were left without water. The kings eventually called upon the Prophet Elisha who happened to be with the army. Elisha prophesied that God would make water appear in the desert and that their army would vanquish the Moabites. In his directive given from God, in addition to conquering all the Moabite cities and towns, the kings are commanded to cut down every good tree, block up every spring, and ruin every good field. In other words, the kings are commanded to carry out a scorched earth policy contrary to the commandment of Deuteronomy 20:19-20 in which this policy is specifically prohibited. The kings then went ahead and destroyed the Moabites and carried out the scorched earth policy.

2.6.2 Commentaries

Shlomo Yitzhaki (*Rashi*) (11th century, Northern France) – Rashi stated that in spite of the prohibition of *lo tashhit* from Deuteronomy 20:19, cutting down the fruit trees in this instance was permissible because Moab is a despised nation. Deuteronomy 23:7 states that Israel should not seek out their (the Moabites’) peace (*shlomam*) and well-being (*tovatam*) which in this context means trees.²²¹

David Qimhi (*Radaq*) (1160-1235, Southern France) – Qimhi stated that even though there is the prohibition of *lo tashhit*, it is only applicable in the context of a siege and in

²²⁰ This could also be translated as “every good tree.”

²²¹ Shlomo Yitzhaki, *Nevi'im UKhetuvim HaMefo'ar Miqraot Gedolot: Melakhim – Volume Three* (Jerusalem: HaHumash HaMefo'ar, 1996).

this context there is no siege. Even though the rabbis understood the prohibition to include all fruit bearing trees at all times, the plain sense of the text is that it is only relevant to siege situations. The *midrashic* meaning, however, is that Moab is despised more than other nations, and when it says that Israel should not seek out their peace or well-being, the reference here is to good trees (fruit bearing trees).²²²

Aharon ben Yosef HaRishon (Karaites) – (*Mivhar Yesharim*) (c. 1260-c. 1320, Byzantium) – Aharon ben Yosef HaRishon claimed that the trees were all sorts of good trees such as cedars, cypresses, or other non-fruit bearing trees – because of the prohibition of *lo tashhit*.²²³

Levi ben Gershom (*Ralbag*) (1288-1344, France) – Gersonides claimed that despite the prohibition of *lo tashhit* found in the Torah, in this case it was God's specific commandment to strike Moab in this way, which included springs and fields.²²⁴

Isaac Abarbanel (1437-1508, Portugal, Spain and Italy) – Abarbanel claimed that even though there is the commandment of *lo tashhit*, in this case it is contradicted by *hora'at sha'ah* – a short-term edict. He also cited *Midrash Tanhuma* which taught that the kings themselves were concerned about the prohibition of *lo tashhit*, but the prophet told them that for all other nations this holds, but not Moab which is a despised nation.²²⁵

2.6.3 Synthetic Analysis

The number of commentaries on 2 Kings is quite limited.²²⁶ As might be expected, due to the problematic content of this passage, the commentaries were preoccupied with the issue of a prophet issuing a directive contradicting a specific

²²² David Qimhi, *Nevi'im UKhetuvim HaMefo'ar Miqraot Gedolot: Melakhim – Volume Three* (Jerusalem: HaHumash HaMefo'ar, 1996).

²²³ Aharon ben Yosef, *Mivhar Yesharim*, ed. Avraham ben Shmuel (Yevpatoria, Crimea: 1835).

²²⁴ Levi ben Gershom, *Nevi'im UKhetuvim HaMefo'ar Miqraot Gedolot: Melakhim – Volume Three* (Jerusalem: HaHumash HaMefo'ar, 1996).

²²⁵ Isaac Abarbanel, *Peirush al Nevi'im Rishonim* (Jerusalem: Torah VeDa'at, 1976).

²²⁶ To this short list we may add the exegetes who referenced this narrative in their glosses on Deuteronomy 20:19: Ba'alei HaTosafot in *Moshav Zeqenim*, Shmuel David Luzzatto, Meir Leibush Weiser, and Gunther Plaut.

commandment found in the Torah. The burning question that arises from this passage is: Why did the prophet Elisha (and ultimately God) issue an edict that transgresses *bal tashhit*? Since no explanation is offered in the text itself the commentators needed to reconcile the edict with the prohibition.

The assumption which must be made is that the words of the prophet Elisha are considered to be divinely sanctioned, something which is reinforced through the positive outcome of the war. The exegetes came up with a variety of interesting responses, all of which can be seen as apologetic resulting from embarrassment with the text.²²⁷ Due to the divinely sanctioned transgression, an excuse must be found for the edict. The majority of glossators found the answer in the nature of the particular foe. This was not just any enemy that Judah and Israel were warring against, but the nation of Moab. The special status of this enemy is evident from a different directive found in Deuteronomy 23:7 which prohibits seeking a peace treaty with Moab. As such, the standard requirements of behaviour during wartime are suspended. This approach was shared by Rashi, David Qimhi, and Isaac Abarbanel. Qimhi, however, considered this to be the *midrashic* understanding of the text. The *peshat* or simple meaning is that the directive of Deuteronomy 20:19-20 is only applicable in the context of a siege. Since in this particular war there was no siege, there was no reason to not engage in scorched earth tactics. Qimhi, admitted though that the rabbinic tradition viewed this as a prohibition on destroying fruit trees at any time. Gersonides, always the avid rationalist, claimed that Deuteronomy 20:19 is a commandment given by God, but then so is 2 Kings 3:19. One should understand Gersonides as meaning that Deuteronomy 20:19 is the rule, but sometimes there are exceptions to the rule, such as 2 Kings 3:19. In such cases the new directive should be followed, but in general the initial edict stands. Abarbanel also suggested that the edict in 2 Kings 3:19 should be considered a directive in a time of need, a legal status which allows certain transgressions in order to fill a need dictated by a particular circumstance. Aharon ben Yosef HaRishon, the only Karaite commentator

²²⁷ For more on the topic of embarrassment with Scripture see Harry Fox, "The Embarrassment of Embarrassment," in *Vixens Disturbing Vineyards: Embarrassment and Embracement of Scriptures*, ed. Tzemah Yoreh, *et al.* (Boston: Academic Studies Press, 2010), 5-18.

presented in this dissertation had a unique approach. He clearly rejected the idea that a “good tree” implies a fruit bearing tree. For him there can be many kinds of good trees which do not produce fruit. As a Karaite, ben Yosef HaRishon was not bound by the rabbinic tradition like the other exegetes. The important thing for him was that there not be contradictory directives in the Bible. Making a distinction between “good trees” and fruit bearing trees was a simple way in which to deal with a problem that needed to be reconciled in other ways by those beholden to the Oral Law. The rabbinic law of *bal tashhit* which generalises the prohibition on wastefulness and destruction would find all three types of destruction (trees, springs, and fields) problematic. For a Karaite a general law of *bal tashhit* would not necessarily exist and the only problem would be with the trees, something which is resolved by interpreting them as non-fruit bearing trees.

2.7 Conclusions

After a thorough analysis of the material it is possible to arrive at a number of conclusions. The simplest and most obvious will be dealt with first. There are a number of commentators who made implicit connections between the prohibition against self-harm in Genesis 9:5 and the prohibition against “destroying” one’s beard originating in Leviticus 19:27. None, however, explicitly connects these verses with Deuteronomy 20:19-20. In fact, none of the exegetes mentioned any explicit relationship between any of the verses. If Deuteronomy 20:19 and Genesis 9:5 are indeed the source of the general prohibition against wastefulness, one would expect the commentators to make mention of this, and illustrate a thematic connection between the verses. While this was surprising, it was not altogether unexpected. If the connection between these verses was obvious, it would have received a prominent place in the abundant literature on the topic. The fact is that these connections are rather obscure in the literature and a large part of my purpose in this dissertation is to expose these connections in order to enable a fuller understanding of the concept of *bal tashhit*.

What is more surprising, however, is that even the commentary on Deuteronomy 20:19-20, the verse which is considered to be the progenitor of the general prohibition

against wastefulness, is almost completely void of references to the general prohibition among the commentators analysed. Prior to the modern era, only Meyuḥas bar Eliyahu, the *Midrash Aggadah* and Bahya bar Asher (implicitly) mention this connection. From the beginning of the modern era until the present the handful of commentators that highlight this connection includes Samson Raphael Hirsch, David Tzvi Hoffmann, Barukh HaLevi Epstein, Gunther Plaut, and the ArtScroll commentary. In fact, even the Talmudic discourse on the prohibition of cutting down fruit trees, without reference to the general prohibition against wastefulness is hardly mentioned. Clearly, there is a plethora of issues that can be discussed in the interpretation of the verses in question, but the outright absence of this line of commentary is very difficult to understand.

The reason for the dearth in commentators making this connection remains an enigma, but I offer a theory as to why this might be the case. The connection between Genesis 9:5 and Deuteronomy 20:19-20 is one that is established during the rabbinic era. As will be seen in the rabbinic chapter, in the Talmudic discussions surrounding the destruction of trees there is also no mention of *bal tashhit*. Only with regard to wastefulness/destruction of things other than fruit trees is there reference to the concept of *bal tashhit*. One possible reason for this which was discussed in the introduction to this chapter can be derived from what the Bible commentator understood his role as an exegete to be. Many Bible commentators were focused on presenting the reader with the *peshat*, which would not necessarily include any aspect of *bal tashhit* as a general concept. This, however, is not an altogether satisfying answer, as many of the exegetes did engage the classic rabbinic material in their glosses.

The proliferation of commentaries dealing with a generalised and de-contextualised form of *bal tashhit* from the age of Enlightenment onward is to be expected. The Enlightenment brought with it new methods of biblical interpretation, and began to view the endeavour as a science instead of religiously motivated.²²⁸ It gave rise

²²⁸ For instance, see Breuer, "Jewish Study of the Bible," 1006-1023, and Edward Beuer and Chanan Gafni, "Jewish Biblical Scholarship Between Tradition and Innovation," in *Hebrew Bible/Old Testament: The History of Its Interpretation, Volume III: From Modernism to Post-Modernism (The Nineteenth and*

to what became known as *Wissenschaft des Judentums*, or Jewish Studies as an area of scientific and critical study. Understandings of the text not offered in the medieval era and early modern period were now being brought to life. In fact, all those who made the connection between Deuteronomy 20:19-20 and the general prohibition of *bal tashhit* in the modern era received a university education as well as their classical Jewish education, save Barukh HaLevi Epstein. In spite of the more critical approach to the biblical text, the number of commentaries dealing with the concept from the early modern period onward is hardly abundant.

Two exegetes emerge as *sui generis* with regard to *bal tashhit*: Meyuḥas bar Eliyahu in the medieval era, and Samson Raphael Hirsch in the modern era. Meyuḥas' commentary was in part marked with a concern with connecting the text of the Torah with rabbinic law. According to Katz, the editor of his commentary, Meyuḥas stands out as unique among Bible commentators for his approach that Torah and *halakhah* (Jewish law) are actually one cohesive unit around which he constructed his commentary.²²⁹ He posited that this was likely the result of a growing conflict between Jews following rabbinic law and the Karaites.²³⁰ If this assertion is correct, then it goes a long way in explaining the absence of reference to the general prohibition against *bal tashhit* in other commentaries. Regardless of the accuracy of Katz's claim, Meyuḥas bar Eliyahu had a novel understanding of *bal tashhit*. Aside from touching upon the connection between Deuteronomy 20:19 and the general prohibition against wastefulness, which on its own makes him stand out, he also discussed the prohibition as an indication that God has compassion on all his creations. Though centered on God, such a moral rationalisation carries with it a strong environmentally oriented cadence. Additionally, he defined the prohibition as encompassing all things for which humans have need (*tzorekh*), a term used in abundance by later scholars. Taken on its own it already furthers the

Twentieth Centuries). Part I: *The Nineteenth Century – A Century of Modernism and Historicism*, ed. Magne Saebo (Göttingen, Germany: Vandenhoeck & Ruprecht, 2013), 262-306.

²²⁹ Yeḥiel Mikhel Katz, "Introduction," in *Peirush Rabbeinu Meyuḥas al Sefer Devarim*, ed. Yeḥiel Mikhel Katz (Jerusalem: Mossad HaRav Kook, 1968), 12. It can, however, be argued that many Bible commentators had a similar approach.

²³⁰ *Ibid.*, 22.

conceptualisation of *bal tashhit* which had stagnated since the *amoraic/savoraic* eras. Taken together with his comment regarding God’s compassion, however, we encounter a developed moral rationalisation of the prohibition that goes well-beyond human utility. God’s compassion on all His creations is independent of human need. While this rationalisation resonates as “*Imitatio Dei*,” it does not preclude it from containing moral instruction for humans. As Moshe Sokol argues, ethics can be derived from theology, and the notion that the earth belongs to God is a good reason to protect it.²³¹

The *Midrash Aggadah* and Baḥya bar Asher also stand out in terms of the language they use to describe the prohibition (*hana’ah* and *to’elet* respectively). This language clearly had an impact on the tradition as will be seen in subsequent chapters. Each of the words used has its own nuances and contributes independently to the conceptualisation of *bal tashhit*, but they are still similar enough to Meyuḥas bar Eliyahu’s *tzorekh* to be considered derivatives of the same idea. This is not to say that the *Midrash Aggadah* and Baḥya bar Asher were aware of Meyuḥas bar Eliyahu’s gloss and were rewording it. Rather, due to the fact that they emerge after Meyuḥas bar Eliyahu and are not as expressive as him in their glosses, his contribution to the conceptualisation of *bal tashhit* surpasses theirs.

Hirsch stands out as a harbinger of the Jewish environmental movement. Not only was he the only one to offer an implicit connection between Genesis 9:5 and Deuteronomy 20:19-20, he phrased his commentary in language that is reminiscent of Jewish environmental attitudes. His gloss on Genesis 9:5 talked about human responsibility to protect the rest of creation, while his gloss on Deuteronomy 20:19 discussed a prohibition against the needless destruction of anything and the responsibility of humans to not abuse the dominion given to them over the rest of creation. This position is affirmed and significantly reinforced in his profound work *Horev*. There he described *bal tashhit* as “the first and most general call of God...when you realize

²³¹ Sokol, “Ethical Implications,” 279.

yourself as master of the earth.”²³² Hirsch continued his discussion of *bal tashhit* in *Horev* as follows: “Regard things as God’s property and use them with a sense of responsibility for wise human purposes. Destroy nothing! Waste nothing!”²³³ Establishing *bal tashhit* as an edict tempering the extent of human dominion is precisely the line of argumentation that the Jewish environmental movement took in response to Lynn White Jr.’s criticism that the source of today’s ecological crisis is the Judeo-Christian interpretations of Genesis 1:28.²³⁴ Though most who participated in this dialogue used Genesis 2:15 as their proof-text for a Jewish environmental approach, some used Deuteronomy 20:19-20. The fact that Hirsch had presented a deeply environmental approach to these texts a century before Lynn White Jr.’s accusation establishes him as a founding figure in the field of Jewish environmental thought. What emerges from Hirsch’s writings in *Horev*, however, is in fact a symbiosis of Deuteronomy 20:19 and Genesis 9:5. In *Horev*, the prohibition of *bal tashhit* and the prohibition against self-harm are both found in the section entitled “Statutes” (*Hukim*). Hirsch defined statutes as “Laws of righteousness towards those beings which are subordinate to man: towards earth, plant, animal, towards one’s own body, mind, spirit, and word.”²³⁵ In other words, the concept of *bal tashhit* and the prohibition against self-harm which are connected implicitly through his Bible commentary, are explicitly connected in *Horev*.

Samuel Chayen, writing with regard to the environmental thought in Hirsch’s writings, summarised Hirsch’s environmental approach as follows:

Hirsch’s educational guidelines included the following principles with regard to the environment: Human and environmental health, nature protection, abstention from animal harm and abstention from conspicuous consumption. These principles emerge from Hirsch’s understanding of the commandment of “love your neighbour as yourself.” In his interpretation of this commandment Hirsch explained that the love of God also necessitates human love

²³² Samson Raphael Hirsch, *Horeb*, 279.

²³³ *Ibid.*, 282.

²³⁴ See Lynn White Jr., “The Historical Roots of Our Ecological Crisis,” *Science* 155 (1967): 1203-1207.

²³⁵ Samson Raphael Hirsch, *Horeb*, 277.

for all of God's creations... Hirsch's commentary which viewed the commandment of "love your neighbour as yourself" as a principle relating to the love and concern of humans with all of creation is unique in the orthodox world. This approach, which still requires discussion and development, could act as a blueprint for a Jewish environmental ethic that would be adopted by contemporary Jewish orthodoxy.²³⁶

The next conclusion is that the vast majority of Bible interpreters based their glosses on the *midrash*. The *midrash* itself offered more than one possible interpretation for key aspects of Genesis 9:5 and Deuteronomy 20:19-20. For instance, in Genesis 9:5 the most significant issue with which the exegetes contended is whether the text is a prohibition against murder or suicide. The vast majority of those who commented on the verse fell in one camp or the other. The *midrash*, however, offered both interpretations. The interpretive style of the *midrash* allows for such conflicting interpretations to occur. The *midrash* is not concerned with asserting the possibility of only one understanding of the text. Rather, it offers an abundance of different interpretations with no regard for the possible contradictions that emerge as a result. For Leviticus 19:27 the debate that emerged between the commentators was with regard to whether the use of scissors was prohibited or whether the prohibition against destruction of the beard only referred to shaving with a razor. Both these approaches, however, appeared in the *midrash*.

In Deuteronomy 20:19-20 the chief interpretive conundrum was understanding the phrase "*ki ha'adam etz hasadeh*." Though there were some commentators that offered varying interpretations of these words, there were still two distinct camps that emerged; those who viewed this phrase as a rhetorical question and those who understood it as a statement. These are two vastly different interpretations. If the phrase is a rhetorical question, then these words emerge as meaning that the trees hold intrinsic value, and should not be destroyed on account of a war between humans. Trees are unable to remove themselves from battle and it would be unethical to subject them to the repercussions of warfare. This position provides an ethical framework through which fruit trees are

²³⁶ Samuel Chayen, *Svivaḥ, Hevrah VeKhalkalah BeHagutam shel HaRav Shimshon Raphael Hirsch VeDoctor Yitzhak Breuer*, Ph.D. Dissertation, Bar-Ilan University, (Ramat-Gan, Israel, 2010), 82-83.

protected. The other position views the phrase as a statement equating humans to fruit trees. While it certainly provides a degree of environmental protection for fruit trees, the reasoning is not one that provides trees with moral standing. Instead, the fruit trees are to be protected because of their utilitarian value. They provide humans with an important service. As an environmental ethic this approach is not as beneficial for the fruit trees even though it may produce the same outcome. The reason that even the outcome is not guaranteed, is that once one enters the world of utilitarianism, the status of the trees becomes dynamic. This debate is well established in the commentaries, with exegetes taking a position on the matter from Saadiah onward. The *midrash*, however, once again offered both these alternatives as possible explanations.

This, of course, is not to say that nothing new of interest has emerged over the past two thousand years in the understanding of the verses. Indeed, Rashbam and Alsheikh offer alternatives to the *midrash*, together with commentators such as Meyuḥas bar Eliyahu, Samson Raphael Hirsch, Samuel David Luzzatto and others who go beyond the *midrashic* rubric. Rather, while the general trend in interpretation has not varied greatly, the nuances offered by some of the exegetes become the focus of interest. In other words, what is of interest in the various interpretations of these verses cannot necessarily be found through a superficial reading of the glosses but rather by reading them through a magnifying glass such as we have demonstrated above.

In summary, we have seen the glosses of a very considerable number of exegetes on the relevant verses. Through these commentaries and interpretations we have seen the major and minor trends in the scholarship. None of the three key verses analysed had a single way of being understood. The original intention of the verses is beyond anyone's capacity to discern, which is possibly why there is no consensus with regard to their interpretation. This variety, while perhaps frustrating to the purist, is what creates the richness of the Jewish tradition histories.

Amidst all the various interpretations it is possible to hone in on the interpretive trajectory that connects the verses. The majority position was that Genesis 9:5 should be

understood as a prohibition against suicide, with a minority position in this group asserting that the prohibition includes all forms of self-harm. Even if understood as a prohibition against murder, this still does not preclude the interpretation of the prohibition to be against suicide, as suicide is *de facto* the murder of oneself. Just as harming someone is a step in the direction of murder, self-inflicted harm is a step toward the direction of suicide. Likewise, the majority position on “*ki ha’adam etz hasadeh*” in Deuteronomy 20:19 was that of the plain sense (*peshat*) commentators who view fruit trees as an extension of the self. Human dependency on food makes destroying it a step toward destroying humans, and as the expectation of the verse is that the Israelites will emerge victorious in the war, the fruit trees in question *de facto* belong to the them. As such, destroying these trees would be equivalent to harming oneself. In other words, destroying fruit trees would be a transgression of the specific prohibitions of Deuteronomy 20:19 and Genesis 9:5. Connecting the two specific prohibitions is a common principle: the general prohibition against wastefulness and wanton destruction. It can be argued that the connection between these two verses is facilitated by Leviticus 19:27. Understanding that the prohibition of *lo tashhit* in Leviticus is in fact a prohibition against self-inflicted harm (as Bahya bar Asher clearly does), strengthens the argument made above in two ways. First, it provides the prohibition against self-inflicted harm found in Genesis 9:5 with a name or category: *lo/bal tashhit*. Also, it facilitates the connection between Genesis 9:5 and Deuteronomy 20:19. The *lo tashhit* of Leviticus and Deuteronomy can be understood as two manifestations of what is in fact the same general prohibition.

Approaching Deuteronomy 20:19-20 after examining its tradition histories of Jewish Bible commentary it is possible to see *bal tashhit* as a holistic ethic. Deuteronomy 20:19-20 presents an example of a situation where tangible goods are protected from destruction in the most extreme of circumstances, in which the enemies’ property might be considered to hold no value whatsoever. By prohibiting suicide or self-harm, Genesis 9:5 prohibits the destruction of the thing of the greatest possible value, one’s own life.

One deals with things, the other with people. Together, these two extreme scenarios create a complete ethic regarding wastefulness/destruction.

The protected status given to fruit trees offered by the literal reading of the Deuteronomy 20:19 is in fact a more realistic form of environmentalism. With all the different forces at play in the real world, it is unlikely that anything but an anthropocentric form of environmentalism can truly work. When it comes to survival, evidence shows that humans would be willing to cut down even the last tree.²³⁷ In other words, ecocentrism, while a valuable environmental theory, simply does not work in practice. In order to work, environmentalism must provide for human needs and moderate human wants.

The interplay of both the ecocentric and anthropocentric approaches is necessary for a real-world setting. The anthropocentric/utilitarian approach allows for the flourishing of human societies and cultures. It allows for nature to be exploited, but only to a degree that does not jeopardise the integrity of human existence. Once over-exploitation occurs, the sustainability of human life itself is compromised, something which contradicts the preservationist notion presented in Deuteronomy 20:19. Confronting consumption and understanding when the transition from exploitation to over-exploitation occurs is nigh impossible. Also, adding to this difficulty is the reality of global inequality in an age of globalisation. Can limits be placed on someone in Africa who has not received their fair share of the environment's bounty while someone in North America has clearly exceeded theirs? This is where the ecocentric approach acts to balance the scales. As mentioned, ecocentrism can truly only work in a theoretical framework. Nevertheless, certain aspects of ecocentrism can be put into play in the attempt to set and enact limits on consumption. Humans will always need to exploit nature to some degree. Trees need to be cut down to build homes and mountains need to

²³⁷ See for example Jared Diamond, "Chapter Two: Twilight at Easter," in *Collapse: How Societies Choose to Fail or Succeed*, (New York: Penguin Books), 2011; Partha S. Dasgupta, "Population, Poverty and the Local Environment," *Scientific American* 272, no.2 (February, 1995): 40-45, and *Seeing the Forest and the Trees: Human-Environment Interactions in Forest Ecosystems*, ed. Emilio F. Moran and Elinor Ostrom (Cambridge, MA: The MIT Press, 2005).

be mined to secure resources essential to human survival in our time. At the same time, viewing the natural world both in terms of having value for humans and having intrinsic value instills an appreciation of the environment within humans. This appreciation can be a considerable force in moderating human desire to consume. Ecocentrism can create a buffer zone that prevents a strictly anthropocentric approach from exceeding reasonable limits and thereby reaching the point of overexploitation to the detriment of humans and the environment. Both ecocentrism and anthropocentrism can be found in Hirsch's writings. He did not advocate non-use, simply wise use. These approaches are included within theocentrism; all creation is imbued with Divine value. Only God has true ownership. Thus, even non-human creation cannot be wantonly wasted or destroyed.

The remaining biblical texts together with the rabbinic and *halakhic* texts that will be presented in the subsequent chapters all have their place in contributing to the tradition histories of the concept. Moreover, it is not just the interpretations which I highlighted that contribute to building *bal tashhit* as a concept, but also the entire range of other interpretations. Together, they all contribute to the evolving tradition histories of the concept. One must also take into consideration the wide variety of other verses that are beyond the scope of this work but at the same time have surely made their mark on the evolution of the concept of *bal tashhit*. Among these biblical texts one could include texts such as Isaiah 44:23 and 55:12, Psalms 96:12 and 148:7-12, and 1 Chronicles 16:31-33 that present trees together with other animate and inanimate creations as sentient beings that can rejoice and offer praise to God.

Chapter Three: Classical Rabbinic Texts

3.1 Introduction

While it is beyond the scope of this dissertation to discuss the historical attributes of the rabbinic era, it is still useful to open with some general comments. The rabbis became known as such in the wake of the destruction of the Second Temple in 70 C.E. They are generally understood to be the successors of the Pharisees. While the origins of an oral tradition are likely much earlier, the process of organising it and/or reaching a decision of which positions are authoritative is thought to have begun with Rabban Yoḥanan ben Zakkai in Yavne after the destruction.²³⁸ What makes the rabbinic material particularly pertinent to environmentalism is the evolution that takes place in the sages' thought and writings regarding the prohibition against wastefulness/destruction. Within these corpora of various canonical rabbinic literatures we observe the transition from an unnamed prohibition to a highly developed concept. Rabbinic literature spans several centuries, from c. 200-550 C.E., but includes oral traditions that are significantly older. This chapter will engage materials from Mishnah, Tosefta, Babylonian Talmud, the Minor Tractates and the commentaries on them. The earliest mention of *bal tashhit* is in the Babylonian Talmud. There are a number of statements attributed to *tannaim* in the Talmud that use the term *bal tashhit*; however, they do not appear in *tannaitic* sources (see below b*Baba Qama* 91b, b*Hullin* 7b, *Semaḥot* 9:23). This shift is indicative of what we might call a conceptual change or the development of an idea. Part of what this chapter does is analyse the early texts (*tannaitic*) relative to the later ones (*amoraic*) and make inferences based on the differences. Through this analysis I hope to demonstrate the following:

1. It was *tannaitic* rabbis who understood the prohibition against wastefulness/destruction to be integrally connected with the prohibition against harming oneself. Through these connections one can observe the existence of a

²³⁸ *tEduyot* 1:1. For more on the debate on the implications of this text see Isaiah Gafni, "The Historical Background," in *The Literature of the Sages – First Part: Oral Tora, Halakha, Mishna, Tosefta, Talmud, External Tractates*, ed. Shmuel Safrai (Philadelphia: Fortress Press, 1987), 18-19.

simple yet straightforward environmental ethic that harming the environment is harmful to oneself.

2. The *tannaitic* period highlighted the inherent connections between wastefulness and destruction, and idol worship and emulation of foreign cultural practices already extant during the biblical era. These connections were integral to the development of *bal tashhit*, insofar as the prohibition was in part designed to distance Jews/Israelites from such behaviour.
3. There is a marked shift in the development of the prohibition against wastefulness/destruction from the *tannaitic* to the *amoraic* periods. In particular, it was *amoraic* rabbis who introduced a conceptualisation of *bal tashhit* that can be categorised as utilitarian. *Amoraic* rabbis also defined the relationship between the prohibition against harming oneself and the prohibition against wastefulness through the development of the concept of favouring self-interest in avoiding personal harm (*bal tashhit degufa adif*).
4. Though specific *amoraim* directly reject both the connection between Genesis 9:5 and the prohibition against self-harm, and the connection between the prohibition against self-harm and *bal tashhit*, there is a tradition of scholars who accept the validity of these connections and kept this association alive (in their writings).

To achieve these goals this chapter does and does not do a number of things.

What this chapter does:

1. This chapter analyses every instance in which the term *bal tashhit* appears in the Talmud, save when it appears in reference to facial hair.
2. This chapter analyses most instances in which a Talmudic passage deals with the cutting down of trees.

What it does not do:

This chapter is not an exhaustive list of all the instances in which examples of wasteful behaviour are discussed in the Talmud. Listing every single example would take too

much time and space. In particular, passages dealing with wasting food are excluded. The texts connected with semen wastage and the flood story using the root *sh.h.t* will be mentioned but not dealt with in depth.

It would be unnecessarily confusing to present the Mishnah and then the entire Talmudic discourse surrounding it on the relevant passages. Instead, certain sections from the Talmud are quoted and their context explained – this way, the reader can appreciate the context in which the relevant material arises and still benefit from the partial citation. Only the central Talmudic passage will be presented in a more comprehensive format.

3.2 Trees

bBaba Qama 91b-92a

Context: The context is discussed in considerable depth in the section on *bal tashhit* as a general prohibition.

Rav said: A palm tree producing even one *kab* of fruit may not be cut down. An objection was raised [from the following]: What quantity [of fruit] should be on an olive tree so that it should not be permitted to cut it down? A quarter of a *kab*.²³⁹ Olives are different as they are more important. Rabbi Ḥanina said: Shibhath²⁴⁰ my son did not pass away except for having cut down a fig tree before its time. Ravina, however, said: If its value [for other purposes] exceeds [the value] for fruit, it is permitted [to cut it down]. It was also taught to the same effect: Only the trees of which thou knowest implies even fruit-bearing trees; that they be not trees for food, means a non-fruit bearing tree. But since we ultimately include all things, why then was it stated, “that they are not trees for food?” To give priority [for the cutting down of]...a non-fruit bearing tree over one bearing edible fruit. As you might say that this is so even where the value [of the non-fruit bearing tree] exceeds [the value of] fruit, it says “only (Deuteronomy 20:20).” Samuel's field labourer brought him some dates. As he partook of them he tasted wine in them. When he asked the labourer how that came about, he told him that the date trees were placed between vines. He said to him: Since they are weakening the vines so

²³⁹ The original context for this statement can be found in *mSheviit* 4:10, discussing the felling of fruit trees in a Sabbatical year.

²⁴⁰ The *baraita* regarding Rabbi Ḥanina's son also appeared above in the section on *bBaba Batra* 26a with a variant spelling.

much, bring me their roots tomorrow. When Rav Ḥisda saw certain palms among the vines he said to his field labourers: Remove them with their roots. [The produce of] vines can easily buy palms but [the produce of] palms cannot buy vines.’

This is the central passage in rabbinic literature concerning the prohibition against wastefulness. Even though there are other passages that deal with *bal tashhit* in relation to trees and in general, they only dealt with the prohibition in a passing manner. The other passages are of great significance when trying to understand the prohibition in *toto*, especially with concern to its tradition histories. Nevertheless, in order to appreciate the directions the concept has taken over the course of its evolution, it is essential to focus special attention on the literature that has had the most impact on the tradition of *bal tashhit*. This passage stands on its own, and for the time being will be analysed as such, but the context in which it emerged is of vital importance to the arguments advanced in this dissertation and will be revisited in the final analysis of this section.

The first thing to notice in this passage is that the prohibition against cutting down fruit trees has been removed from its context of war found in Deuteronomy 20:19 and viewed as a general ban on cutting down fruit trees during all times. On the face of it, it appears that this passage deals with the protection of fruit trees. After all, the Talmud explains that even fruit trees that produce an exceedingly minor amount of fruit still receive protected status. It would be more accurate, however, to view this passage not as a discussion of the protected status of fruit trees, but rather as dealing with the terms under which fruit trees can be cut down. Even according to the opening statements in this passage, it is permissible to cut down fruit trees that produce less than the amount of fruit listed. These unproductive fruit trees could be old or diseased, or barren for some other reason. Moreover, while the initial statement of the Talmud in this passage relates to quantity (one *kab*²⁴¹ of dates for palm trees), the next sentence affirms that we are in fact dealing with relative quantities based on economic value. Olive trees have greater market value than palm trees and in the economic realities of the time when, and place where,

²⁴¹ A *kab* or *kav* is a measure of volume equivalent to two dozen eggs. (Yitzhak Frank, *The Practical Talmud Dictionary* (Jerusalem: Ariel, United Israel Institutes), 1991.).

these laws were promulgated, olives were considered four times more valuable than dates. Perhaps if this comparison were being made today or at any other time/place the ratio may have been different. The idea that market value is highly contextualised and perhaps even culturally specific is evident from the demands made by Samuel and Rav H̄isda to uproot palm trees due to their negative impact on grapevines. Jacob L. Wright explains, for example, that in other Near Eastern cultures grapevines were considered inferior to date palms and olive trees due to the relative lack of nutrients and short time needed for them to reach maturity and bear fruit.²⁴²

Left unanswered is the chronological framework of this equation. Is the value of the fruit based on only one season's worth of production, or the entire projected lifespan of the tree? This information is of vital importance for making such a determination. The Talmud's silence on this matter is surprising, and with no official final decree the door was left open for leniency on the subject. Regardless, Ravina made this claim somewhat irrelevant by asserting that even fruit trees producing much larger quantities of fruit can be cut down if justified economically. In other words, any discussion of trees having intrinsic value is marginalised and replaced by monetary considerations. If the land is of greater value than the fruit tree, or if the fruit tree is worth more as lumber it becomes entirely permissible to cut it down. So much do the considerations become monetary that the Talmud imagined a scenario in which non-fruit bearing trees have greater economic value than fruit trees, making it permissible to cut down the fruit trees while the non-fruit bearing trees are left standing. The Talmud clarified that even though there always exist theoretical situations in which fruit trees can be cut down, in cases where a fruit tree and a non-fruit bearing tree are of equal value, the non-fruit bearing tree should be cut down first if one of these must be cut down. This strengthens the position viewing fruit bearing trees as having inherent value, though not nearly enough to overcome the damage done to the intrinsic worth of fruit trees by the utilitarian approach in which the value of a tree is based primarily on the monetary value placed on it by the market. It would, of course, be

²⁴² Jacob L. Wright, "Warfare and Wanton Destruction: A Reexamination of Deuteronomy 20:19-20 in Relation to Ancient Siegecraft," *Journal of Biblical Literature* 27, no. 3 (2008): 434.

very difficult for a society to function without the ability to make certain emendations to this law. Yet, to understand the ramifications of this approach it is useful to imagine an extreme circumstance. If the market is the only tool through which to value a fruit tree, it is possible to imagine a scenario in which even the last fruit tree in the world could be cut down if justified monetarily.²⁴³

Not to be forgotten is Rabbi Ḥanina's statement (also seen below in *bBaba Batra* 26a) in which he claimed that his son died for cutting down a fig tree prematurely. To add to the points made above, it is important to consider the context in which Rabbi Ḥanina's statement is presented. Here, permission is granted to cut down poorly producing fruit trees, but directly after this comes the warning of Rabbi Ḥanina urging the one taking such an action to think twice and proceed with caution. Throughout the *halakhic responsa* literature it becomes clear that when someone asks a rabbi whether it is permissible to cut down a fruit tree (in whichever one of many different contexts) the answer is almost always affirmative. Some rabbis added a warning with their response that cutting down fruit trees is dangerous due to Rabbi Ḥanina's sorrowful hortatory tale, and if there is any possibility the act can be avoided, steps should be taken in that direction, even though one may make an argument in favour of cutting such trees down.

***bBaba Batra* 26a²⁴⁴**

Context: The Mishnah preceding this passage dealt with the distance one must keep between one's own trees and one's neighbour's trees. The Mishnah presented a case in which two neighbours have a fence between them and both have planted trees adjacent to the fence and the roots of one person's trees grow into the property of the other. If the neighbour that has been invaded by the roots decides to dig a trench or pit adjacent to the fence it is permissible to destroy these roots during the process. The following emerged in the Talmud from a discourse on the Mishnah:

²⁴³ This would, of course, imply that other sources of food were available and sufficient for the population.

²⁴⁴ Unless otherwise stated, all the English translations are from the Soncino edition of the Talmud. Most citations have been slightly modified in order to provide the most straightforward reading possible. The capitalised letters in the text represent the voice of the Mishnah within the Talmudic text.

Rabba, son of Rav Ḥanan, had some date trees adjoining a vineyard of Rav Joseph, and birds used to roost on the date trees and fly down and damage the vines. So, Rav Joseph told Rabba, son of Rav Ḥanan, to cut down his date trees. The latter said: But I have kept them [four cubits] away! This, replied the other, applies only to other trees, but for vines we require more. But does not our Mishnah say that THIS APPLIES BOTH TO VINES AND TO ALL OTHER TREES? He said: This is so where there are other trees or vines on both sides, but where there are other trees on one side and vines on the other a greater space is required. Rabba, son of Rav Ḥanan said: I will not cut them down, because Rav has said that it is forbidden to cut down a date tree which bears a *kab* of dates, and Rabbi Ḥanina has said, “My son Shikhath only died because he cut down a fig tree before its time.” You, Sir, can cut them down if you like.

There are three noteworthy elements in this passage. The first is that the rabbis were dealing with the prohibition against cutting down fruit trees. This particular case emerged as part of a discussion on property rights and damages. The second thing of note is that the term *bal tashhit* is not mentioned. Finally, the example brought by Rabba of Rabbi Ḥanina’s son is indicative of a belief in the connection between the welfare of humans and the welfare of fruit trees as evidenced by Rabbi Ḥanina’s understanding that the sin of cutting a fig tree was the cause of the premature demise of his son. Had his son not transgressed by cutting down the fruit tree, then presumably he would not have died before his father.

With regard to the first noteworthy aspect, it is important to see that the rabbis took the prohibition in Deuteronomy 20:19, which specifically deals with cutting down fruit trees during wartime and applied the prohibition to everyday conduct. In other words, they understood the example from the Torah as being an extreme circumstance from which one must derive an understanding of acceptable legal behaviour in general. If it is prohibited to cut down fruit trees during wartime, then *a fortiori* it is prohibited to cut them down in times of peace. The rabbis, of course, understood that it is at times necessary to bypass this prohibition for reasons such as the one found in the above passage. They, therefore, attempted to create a legal framework in which this could be done. The second observation, that of there being no mention of *bal tashhit*, is important, but must be put aside at this time until the remaining material is presented. The third and

most interesting observation is the most important for understanding the possible connections between Deuteronomy 20:19 and Genesis 9:5 although there is no explicit mention here of the latter verse. The belief promoted here, that cutting down a fruit tree can result in a human death, has significant implications for the concept of *bal tashhit*. First and foremost this is indicative of a hyper-literal reading of the phrase “*ki ha’adam etz hasadeh*” found in Deuteronomy 20:19. If the human is indeed coequal to a tree of the field, then destroying the fruit tree is equivalent to destroying a human. This is precisely the claim made by Rabbi Hanina and accepted by Rabba. Moreover, such an act would be a transgression of the prohibition against suicide/self-inflicted harm found in Genesis 9:5. While there are alternative ways in which to understand these verses and Talmudic passage, there appears to be an integral, though still implicit, connection in the rabbinic sources between the two aforementioned verses and the concept of *bal tashhit*. This connection will be further discussed in the conclusion of this chapter.

bTa’anit 7a

Context: The Mishnah preceding this Talmudic discourse dealt with the time of the year when one ceases to pray for rain. This particular passage stands on its own and is not obviously connected to what precedes and follows.

Rabbi Jeremiah said to Rabbi Zera: Pray, Master, come and teach. The latter replied: I do not feel well enough and am not able to do so. [Then Rabbi Jeremiah said] Pray, Master, expound something of an aggadic character, and he replied: Thus Rabbi Yoḥanan said: What is the meaning of the verse, “*For is the tree of the field human* (Deuteronomy 20:19)?” Is then a human the tree of the field? [This can only be explained if we connect the verse with the words immediately before it] where it is written, “*For thou mayest eat of them, but thou shalt not cut them down* (Deuteronomy 20:19);” but then again it is written, “*It [the non-fruit bearing tree] thou shalt destroy and cut down* (Deuteronomy 20:20).” How is this to be explained? – If the scholar is a worthy person learn [eat] from him and do not shun [cut] him, but if he is not, destroy him and cut him down.

What is particularly important with regard to these passages is the fact that they attribute the specific prohibition to cut down fruit trees in Deuteronomy 20:19 to the

words “*lo tikhrot*” (do not cut down) as opposed to the words “*lo tashhit*” (do not destroy).²⁴⁵ It is entirely possible that the “cutting down” is the manner in which the “destruction” is carried out. This possibility becomes more likely when we take into account the *midrashic* text on this verse from *Sifra* presented in the previous chapter which asks if chopping down the fruit tree with an axe is the only way in which the prohibition is transgressed. To this the *midrash* replies no, because the text “*lo tashhit*” would include all forms of destruction. Based on the rabbinic principle that there is no redundancy in Scripture, it becomes necessary to explain why the verse uses both “*lo tikhrot*” and “*lo tashhit*.” One possible explanation is that the former applies to the specific context of the verse, while the latter expands the prohibition beyond the verse. This aids in explaining the absence of the term *bal tashhit* in the Talmudic passages dealing with the cutting down of fruit trees. Understood in this light, it also explains why the biblical commentators, save a few, neglected to connect this verse to the general prohibition of *bal tashhit* in their glosses. Regardless, the *midrash* appears to be the first point where we begin to see a methodological analysis of the verse enabling the development of a general ethic beyond fruit trees and war.

bPesahim 50b

Context: The Mishnah dealt with the issue of labouring before noon on the eve of the festival of *Pesah* (Passover). Though the prohibition on work only comes into effect after noon, towns had varying traditions on when they actually ceased their labours; some stopped prior to noon and others at noon. The rabbis of the Talmud asked why this issue was raised in the context of *Pesah*. After all, ceasing work prior to the Sabbath and to other festivals is applicable. The Talmud explained that the difference is that on the Sabbath and other festivals labour is prohibited only after the afternoon prayer, whereas on *Pesah* the prohibition begins precisely at noon. In all cases, the Talmud claimed, the transgressors will never see a blessing in their lifetime from any labour done after the

²⁴⁵ Yitzhak Eliyahu Shtasman in his book *Sefer Etz HaSadeh: BeDinei Bal Tashhit, Qetzitza Ilanot UVizui Okhalin* (Jerusalem: The Foundation for the Advancement of Torah Study), 1999, summarised the various approaches throughout Jewish literature with regard to the relationship of *lo tashhit* to *lo tikhrot* found in Deuteronomy 20:19.

deadline, but if labour is done on the eve of *Pesah* the transgressors are also ostracised from the community. The Talmud then discussed other instances where it is determined that those engaging in certain behaviours will also never be graced with blessings.

Our Rabbis taught: Traders in the market-stands and those who breed small cattle, and those who cut down beautiful trees, and those who cast their eyes at the better portion, will never see a sign of blessing. What is the reason? Because people gaze at them.

While it cannot be certain, it is most likely that the beautiful trees in question in this passage are in fact fruit bearing trees. This would be consistent with the approach of the commentaries on 2 Kings 3:19 where very similar language was used (*etz tov* in 2 Kings 3:19 vs. *ilanot tovin* here). What makes this passage of interest is the social stigma that is associated with the cutting down of these trees. The fact that people stare at people cutting down these trees is an indication that such behaviour is socially suspect. Consequently, those engaging in the described behaviours are condemned to an unblest life, likely as a way of discouraging such actions.

3.3 General *Bal Tashhit*

bYevamot 11b-12a

Context: Jewish law stipulates that if a married man dies childless, his paternal brother has an obligation to continue his lineage by marrying his widow. This act is called Levirate marriage. The brother can refuse in which case a ceremony called *halitzah* is performed by the woman. A woman who performs this ceremony is now eligible to remarry, but is prohibited from marrying a priest. The Talmud dealt with cases of polygamous marriages that terminated with the death of the man. The discussion of interest revolved around a hypothetical case in which the deceased had two widows. One of the widows had been married to the deceased then divorced and then was remarried to him. Such a marriage is prohibited by Jewish law if the man was a priest or if she were married to another in the interim. While this woman, who had previously been divorced, is prohibited from marrying a priest, the other widow is not. The brother is only required

to marry or release by *ḥalitzah* one of the women. The relevant passage in the Talmud stated that if the brother is uninterested in either woman, he must perform the *ḥalitzah* ceremony with the woman who is in any case prohibited to a priest due to the illicit nature of her marriage, instead of the one who would be permitted. Since the permitted woman never undergoes the ceremony of *ḥalitzah*, she is permitted even to a priest. The reason for performing the *ḥalitzah* on the forbidden woman is explained in the Talmud:

One must take into account the moral lesson of Rav Joseph. For Rav Joseph said: Here, Rabbi taught that a man shall not pour the water out of his cistern so long as others may require it.

Though the prohibition against wastefulness is not mentioned here by name, it is clear that this is the concept which Rav Joseph in the name of Rabbi is evoking. This concept lends itself, in my opinion, to an unnamed but existing environmental ethic. Contextually, the application of the moral lesson is that since the brother is not planning on marrying either one of his deceased brother's wives, why prevent the widow who could in theory still marry a priest from the ability to do so? As such, the Talmud advised that the *ḥalitzah* ceremony should be performed by the woman who was in any case ineligible to marry a priest. The context for the original moral lesson brought by Rabbi in the 2nd century is unknown, and could have been given directly in the context of wastefulness instead of in the analogous manner in which the statement was used by Rav Joseph, but speculation in this regard is futile. What is of relevance in the context of the discourse on wastefulness is the statement "so long as others may require it." In other words, the focus of the moral lesson is not on the intrinsic worth of water, but only its worth relative to the utility it provides to humans.

mBaba Qama 8:6 (bBaba Qama90b)

Mishnah:

If a man boxes another man's ear, he has to pay him a *sela*. Rabbi Judah in the name of Rabbi Jose the Galilean says that [he has to pay him] a *maneh*. If he slapped him [on the face] he has to pay him two hundred *zuz*; [if he did it] with the back of his hand he has to pay him four hundred *zuz*. If he

pulled his ear, plucked his hair, spat so that the spittle reached him, removed his garment from upon him, uncovered the head of a woman in the market place, he must pay four hundred *zuz*. This is the general rule: all depends upon the dignity [of the insulted person]. Rabbi Akiba said that even the poor in Israel have to be considered as if they are freemen reduced in circumstances, for in fact they all are the descendants of Abraham, Isaac and Jacob. It once happened that a certain person uncovered the head of a woman in the market place and when she came before Rabbi Akiba, he ordered the offender to pay her four hundred *zuz*. The latter said to him, rabbi, allow me time [in which to carry out the judgment]; Rabbi Akiba assented and fixed a time for him. He watched her until he saw her standing outside the door of her courtyard, he then broke in her presence a pitcher in which there was oil of the value of an *isar*, and she uncovered her head and collected the oil with her palms and put her hands upon her head [to anoint it]. He set up witnesses against her and came to Rabbi Akiba and said to him: Have I to give such a woman four hundred *zuz*? But Rabbi Akiba said to him: Your argument is of no legal effect, for where one injures oneself, though forbidden, he is exempt, yet, were others to injure him, they would be liable: so also he who cuts down his own plants, though not acting lawfully, is exempt, yet were others to [do it], they would be liable.

The above passage is the Mishnah upon which the central Talmudic discourse dealing with *bal tashhit* is based. As can be seen, the Mishnah covered instances in which a person inflicted damage upon another individual. The damage inflicted falls into a special category of damage in the form of embarrassment through physical contact. In other words, the damage inflicted is not just physical and not just embarrassing, but a combination of the two. The Mishnah then related a particular case in which a man removed the head covering of a woman in the marketplace. The man tried to get out of paying his fine by demonstrating through subterfuge that the woman would remove her own head covering in the marketplace of her own volition. Rabbi Akiva, who issued the fine, asserted that the man's argument was not valid due to the fact that even though there is a prohibition against the infliction of self-injury, one is still exempt from punishment. Others inflicting exactly the same injury are, however, liable and held accountable for their actions. Rabbi Akiva then drew a comparison between the infliction of injury and the cutting down of plants. Again, a person is prohibited from cutting down one's own seedlings, but is exempt from punishment. If anyone else were to cut down their

seedlings, however, they would be liable. Contextually, Rabbi Akiva rejected the man's argument, because the woman was exempt from liability for taking off her own head covering whereas the man was liable. The exemption from punishment to people harming themselves is intuitive; such a punishment would entail a fine, but owing oneself a fine is a meaningless concept.

The Mishnah is discussed in more depth in the Talmudic discourse that ensues, but there are a number of important things to note from this passage before engaging the Talmud. The first is that the name of this specific chapter in the Talmud is titled "*HaHovel*," literally translated as "the one who harms." The root *h.b.l.* is used throughout the Aramaic translations of the Bible when translating the root *sh.h.t.*, which is the root upon which the term *bal tashhit* is based. This in and of itself means very little. It is our contention, however, that an argument may be made that the prohibition against self-harm was once integrally connected to the prohibition against wastefulness/destruction, at least in the minds of some important thinkers.

Much stronger than the semantic connection, though still not definitive proof of an inherent connection, is the parallel drawn by Rabbi Akiva between self-harm and the cutting down of trees and ultimately wastefulness. It could be argued that the connection is random, and that the association being made is not between self-harm and trees, but rather between similar forms of exegesis. In other words, the basis for comparison could be on the rule of "though not acting lawfully, one is exempt, yet were others to do it, they would be liable," as opposed to the specific context to which the rule is being applied. Rabbi Akiva could have chosen any number of different examples with which to emphasise the point being made regarding self-harm. Nevertheless, the comparison he chose to make was with the prohibition against cutting down seedlings. This fits so well into the mould of the argument I make of a connection between these ideas and the ethic that they form, that it seems implausible that the association made by Rabbi Akiva is random. These are just a few points in a long list of many that reinforce the paradigm presented in this dissertation.

bBaba Qama 91a-91b

HE WATCHED UNTIL HE SAW HER STANDING OUTSIDE THE DOOR OF HER COURTYARD [. . . FOR IF ONE INJURES ONESELF, THOUGH IT IS FORBIDDEN TO DO SO . . .] But was it not taught: Rabbi Akiba said to him, You have dived into the depths and have brought up a potsherd in your hand, for a man may injure himself. Raba said: There is no difficulty, as the Mishnaic statement deals with actual injury, whereas the other text referred to degradation. But surely the Mishnah deals with degradation, and it nevertheless says: If one injures oneself, though it is forbidden to do so, he is exempt? It was this which he said to him: There could be no question regarding degradation, as a man may put himself to shame, but even in the case of injury where a man may not injure himself [he is still exempt], if others injured him they would be liable.

The Talmud questioned Rabbi Akiva's statement from the Mishnah declaring that one is prohibited from harming oneself due to the fact that there exists a *baraita* in which Rabbi Akiva declares the exact opposite. It is important to understand the basic way in which rabbinic methodology works. A *baraita* (plural *baraitot*) is a statement made by a *tanna* that was not included in the Mishnah. *Baraitot* are often brought as proof-texts to drive home an argument made by the rabbis of the Talmud. They are on the whole, however, considered to be less authoritative than the Mishnah, but still of greater authority than an *amoraic* statement. In this case there is a contradiction between the Mishnah and the *baraita*. It is, of course, possible that the transmission of the *baraita* was fragmented, and that the statement as found in the Mishnah is the correct one. Nevertheless, the rabbis of the Talmud made an attempt to reconcile the two statements. The rabbis ended up drawing a distinction between shaming someone and physically injuring them. The rabbis of the Talmud claimed that Rabbi Akiva indeed stood by the approach that one is permitted to shame oneself while others who shame an individual are liable. Even in the case of physical injury, where a person is prohibited from engaging in self-harm and nevertheless is not liable, nonetheless were someone else to harm this person, he/she would be liable. The Talmud then deliberated further on the question of whether a person was in fact permitted to engage in self-harm:

But may a man not injure himself? Was it not taught: You might perhaps think that if a man takes an oath to do harm to himself and did not do so he should be exempt. It is therefore stated: “*To do evil or to do good* (Leviticus 5:4),” [implying that] just as to do good is permitted, so also to do evil [to oneself] is permitted; I have accordingly to apply [the same law in] the case where a man had sworn to do harm to himself and did not do harm? Samuel said: The oath referred to was to keep a fast. It would accordingly follow that regarding doing harm to others it would similarly mean to make them keep a fast. But how can one make others keep a fast? By keeping them locked up in a room.

An attempt was made to prove that it actually is permissible to harm oneself. Leviticus 5:4 was used as a proof-text illustrating that someone who makes an oath, whether to do good or to do harm, and then does not follow through is liable. The fact that someone can make an oath to do a harmful act and then be liable for it is learned by analogy to benefitting oneself; since an oath is to be taken with the utmost seriousness, this is considered as an indication that it is indeed permissible to harm oneself. After all, the verse would not assert that one was liable for breaking an oath to do harm if doing harm was a transgression. Samuel, an *amora*, claimed that the harm referred to in the verse was not actually direct physical harm, but indirect harm such as fasting. Thus, the harm to others in this context refers to forcing someone to fast against their will. The Talmud continued its analysis by dealing with actual instances of physical harm:

But was it not taught: What is meant by doing harm to others? [If one says], I will smite a certain person and will split his skull. It must therefore be said that Tannaim differed on this point, for there is one view maintaining that a man may not injure himself and there is another maintaining that a man may injure himself.

A different Talmudic teaching (b*Shavuot* 27a) indicated that doing harm/evil to others specifically means physical harm. After clarifying this matter it becomes clear that attempts to reconcile both of Rabbi Akiva’s statements have not yet satisfied the rabbis of the Talmud at this point in the discussion. Though both *tannaim* being referred to in this instance happen to be Rabbi Akiva, the Talmud assumes that they come from different

traditions. The *tosafot*²⁴⁶ explained that in fact the argument was not between Rabbi Akiva and himself but rather between *tannaim* who were conflicted on how to understand Rabbi Akiva. This makes it easier to understand the trajectory of the argument which follows in the Talmud:

But who is the Tanna maintaining that a man may not injure himself? If you say that he was the Tanna of the teaching, “*And surely your blood of your lives will I require* (Genesis 9:5),” [upon which] Rabbi Eleazar remarked [that] it meant I will require your blood if shed by the hands of yourselves, [I would answer that that is not necessarily the case, for] perhaps killing [oneself] is different [from other forms of self-harm].

In the process of trying to deduce from which tradition the approach that a person may not injure himself comes, we enter the part of the deliberations that is of great significance to this dissertation. An effort is made to narrow down the possible source based on an undisputed teaching. Interestingly, Genesis 9:5 is brought as a possible source for the prohibition against injuring oneself. Rabbi Eleazar’s exegesis on Genesis 9:5, which claimed that a reckoning will be had for anyone spilling their own blood was offered as the primary argument by the anonymous voice of the Talmud (*stam* or *stama* with definite article in Aramaic). The *stam* then rejected this approach due to the possibility that suicide might be qualitatively different than other forms of self-harm.

Due to the possibility that this is indeed the case, the Talmud continued the deliberations with other possibilities. Nevertheless, for the purposes of this dissertation, we are not able to move on to the next option quite as quickly. As can be seen in the section on biblical interpretation, we have demonstrated that indeed the sources mostly understood Genesis 9:5 as either a prohibition against murder or a prohibition against suicide, with the rabbinic layers favouring the prohibition against suicide. There is no indication that Rabbi Eleazar understood Genesis 9:5 as including only a prohibition against suicide, but not a prohibition against self-harm in general. Due to the possibility that Rabbi Eleazar did in fact view them as substantively different from one another, the

²⁴⁶ The *tosafot*, literally translated as addenda, were a large group of commentators on the Talmud that emerged in France and Germany during the 12th and 13th centuries.

stam asserted that this teaching must not be the source of the prohibition against self-harm.

It is important to note that it was the *stam* who first offered the possibility that the source of the prohibition against injuring oneself could be Genesis 9:5. Regardless of how the Talmud went on to build its argument, by virtue of the fact that the *stam* offered it, the possibility of the existence of a tradition which viewed Genesis 9:5 as the source of the prohibition against harming oneself is confirmed. As demonstrated in the previous chapter, Yaakov bar Asher and Barukh HaLevi Epstein both asserted that Genesis 9:5 is in fact a prohibition against self-harm. This is of great importance with regard to building the case that Genesis 9:5 was instrumental in the development of the concept of *bal tashhit*. This allows for an understanding that the prohibition against injuring oneself is, in fact, an integral part of *bal tashhit*. At this point, however, it is still somewhat premature to continue the analysis of Genesis 9:5 and *bal tashhit*, because this particular Talmudic passage rejected such a connection.

Ultimately, the Talmud in this specific instance is not at all concerned with defending the possibility that harm and death fall under the same prohibition and looks for a solution elsewhere. The Talmud continued to search for a teaching that would allow them to attribute the position that a person is prohibited from causing self-harm to a specific tradition:

He might therefore be the Tanna of the following teaching: Garments may be rent for a dead person as this is not necessarily done to imitate the ways of the Amorites. But Rabbi Eleazar said: I heard that he who rends [his garments] too much for a dead person transgresses the command, “Thou shalt not destroy (*bal tashhit*),” and it seems that this should be the more so in the case of injuring his own body. But garments might perhaps be different, as the loss is irretrievable, for Rabbi Yoḥanan used to call garments my honourers, and Rav Ḥisda whenever he had to walk between thorns and thistles used to lift up his garments [s]aying that whereas for the body [if injured] nature will produce a healing, for garments [if torn] nature could produce no cure.

This is one of the most critical passages with regard to the development of *bal tashhit*. It starts off by mentioning a practice which has become part of Jewish law: tearing garments over the dead as a sign of mourning. The Talmud is quick to mention that this practice is not considered to be an emulation of the Amorite tradition. This stipulation is of importance and will be discussed in greater depth in the section dealing with foreign practices and idolatry.

Rabbi Eleazar reflected on the practice of tearing clothes as part of the process of mourning the dead. He stated that he was familiar with a teaching that placed limits on this tradition and that tearing clothes as part of mourning had to be done within reasonable parameters, otherwise the person tearing would be liable for transgressing *bal tashhit*.²⁴⁷ This could mean one of two things: either the limits in question are with regard to a single garment (i.e. the tear should not be too extreme) or to many garments (i.e. one should limit their tearing to a single garment so as not to tear multiple articles of clothing). Both of these options receive attention throughout Jewish scholarship. Regardless of which of these options is specifically being referred to by Rabbi Eleazar, our concern is with the *a fortiori* deduction made with regard to self-harm: if someone transgresses the prohibition of *bal tashhit* by destroying something which is material, how much greater is the transgression with reference to destroying/harming one's own body.

It must be noted that there is no clear consensus regarding the author of the *a fortiori* deduction mentioned above. I contend that it was Rabbi Eleazar himself that made the deduction, whereas others (for instance the Artscroll edition of the Talmud)²⁴⁸ claim that this deduction belongs to the *stam*. This difference is ultimately minor when viewed in light of the entire tradition histories of *bal tashhit*, but due to the fact that this

²⁴⁷ It should be noted that the *tosafot* ask why Rabbi Eleazar bothered mentioning such an obvious example. They concluded that this was to emphasise that *bal tashhit* still applies even in cases where destroying or wasting something is prescribed by a commandment. Even in such cases one should still fulfill the commandment within the parameters of the law; exceeding these parameters would be a transgression of *bal tashhit*.

²⁴⁸ Abba Zvi Naiman, *The Schottenstein Edition Talmud Bavli: Tractate Bava Kamma*. Volume Three, ed. Yisroel Simcha Schorr (New York: Mesorah Publications Ltd., 2001).

is a critical stage in the development of the concept, it is important to be as accurate as possible. As such, I will list the arguments supporting each position. Let us begin with the claim that Rabbi Eleazar is the one who makes the *a fortiori* argument from clothing to self-harm. Unfortunately, there are no parallel sources in other rabbinic texts for this specific *baraita* by Rabbi Eleazar, which means that our analysis is limited to the text in the Babylonian Talmud.

The first indicator that the words “*vekhoh sheken gufo*” (even more so in the case of bodily harm) in the Middle Hebrew of the *tannaim* belong to Rabbi Eleazar and not the *stam* is the overall structure of the *sugya*. The Talmud was concerned with finding the *tanna* who held the position that it is prohibited to engage in self-harm. The Talmud provided three options, rejected the first two and (as we will see) accepted the third. The language used in the rejection of the first option was “*dilma qetala shani*” (perhaps killing is different) in Aramaic, the language of the Babylonian Talmud. The same formula was used in rejecting the second option, “*dilma begadim shani*” (perhaps garments are different), again in Aramaic. Just as the voice of the *stam* began with the word “*dilma*” in the first case, it is reasonable to assume that the *stam* begins with the word “*dilma*” in the second case as well. The words “*vekhoh sheken gufo*” directly precede the “*dilma*” of the second case. As such, it is reasonable to assume that they belong to the *baraita* of Rabbi Eleazar, and not to the *stam*. This reading is reinforced by various translations of the Talmud. For instance, the Soncino translation into English and the Steinsaltz translation into Hebrew simply have a comma separating “*loqeh mishum bal tashhit*” (is liable for transgressing *bal tashhit*) and “*vekhoh sheken gufo*.” The same sentence division can be found in the vocalised Yemenite edition of the Talmud.²⁴⁹ This would suggest that the *baraita* ends after the word *gufo* and not after the word *tashhit*. Ezra Tzion Melamed’s translation of the text into Hebrew could go either way, as he

²⁴⁹ Yosef bar Aharon Amar HaLevi, *Masekhet Baba Qama, Talmud Bavli: Menukad al pi Masoret Yehudei Teiman*, ed. Yosef bar Aharon Amar HaLevi (Jerusalem: HaMenaked Publishing, 1980).

separates between the words “*loqeh mishum bal tashhit*” and “*vekhoh sheken gufo*” with a dash.²⁵⁰

Louis Jacobs, a prominent Jewish thinker from the past century and a Talmudist, clearly understood the words “*vekhoh sheken gufo*” to belong to the *baraita*. He wrote: “If a man, according to this Tanna, must not even destroy his clothes it must surely follow that he is not allowed to engage in such destructive practices as self-injury.”²⁵¹

As indicated above, there is also a linguistic argument to be made, insofar as the voice of the Talmud usually changes between Hebrew and Aramaic. Here this Hebrew would belong to the *baraita* and the Aramaic to the anonymous Talmud, the *stam*.

The counter argument can be approached from two different angles. The most obvious one is, if “*vekhoh sheken gufo*” in fact belonged to Rabbi Eleazar, the Talmud would have had to accept this *baraita* as the source of the prohibition against self-harm, which it clearly does not. This, however, is not necessarily the case. In the Talmud, legal positions are either held by a majority or by an individual (*da’at yahid*), such as is our case. In cases where an opinion is held by an individual, his position is not necessarily authoritative. The two positions used by the Talmud to refute the *baraita* as the source of the prohibition both belong to *amoraim*. As such, they do not carry with them the necessary clout to undermine the teaching of a *tanna*. Another *tannaitic* source, however, does have such authority. There is a *baraita* with multiple parallels which stated the following:

Rabbi Eliezer said: “And you shall love the Lord thy God with all your heart and with all your soul, and with all your might (Deuteronomy 6:5).” Since “with all your soul” is stated, why is “with all your might” stated? And, if “with all your might” is written, why also write “with all your soul?” For the man to whom life is more precious than wealth, it is written

²⁵⁰ Ezra Tzion Melamed, *Talmud Bavli: Masekhet Baba Qama*, trans. Ezra Tzion Melamed (Jerusalem: Dvir and Mesada Publishing, 1952).

²⁵¹ Louis Jacobs, *Religion and the Individual: A Jewish Perspective* (Cambridge, UK: Cambridge University Press, 1992), 60.

“with all your soul;” while he to whom wealth is more precious than life is bidden, “with all your might” [i.e. substance].²⁵²

In other words, some people hold their bodies more dearly than their possessions and some people their possessions more dearly than their bodies. At least when the *baraita* was being formulated, there was no definitive *halakhic* stance on the matter. The *tanna* of this *baraita* is Rabbi Eliezer, perhaps Rabbi Eliezer ben Hyrcanus. He was senior to Rabbi Eleazar and one of Rabbi Akiva’s teachers. It is entirely reasonable to assume that while Rabbi Eliezer himself did not hold an opinion on the matter, Rabbi Eleazar did.²⁵³ The fact is that Rabbi Yoḥanan and Rav Ḥisda did have a *tannaitic* source which would have allowed them to hold a different opinion than Rabbi Eleazar. All this comes to demonstrate that the “*vekhool sheken gufo*” could still belong to Rabbi Eleazar as a *da’at yahid*, even though the *stam* still rejected the *baraita* as the source of the prohibition against self-harm.

If this is the case, it can be justifiably asked why the Talmud bothered continuing this trajectory. The Talmud was looking for a *tannaitic* source for the prohibition against self-harm. Even if Rabbi Eleazar is a *da’at yahid*, he could still be such a source. In fact, we would not expect to find any consensus on this matter. After all, the Talmud clearly states that there is a *tannaitic* debate on whether it is permissible or prohibited to harm oneself. Rav Ḥisda clearly falls in the camp of those who permit self-harm. The Talmud would not cast aside the *baraita* of Rabbi Eleazar just because there are examples of individuals who hold opposing views. This opens the possibility that the reason the Talmud cast aside this particular *baraita* was not because Rabbi Eleazar does not hold the position that one cannot engage in self-harm. Menachem Fisch argues that the

²⁵² b*Sanhedrin* 74a with parallels in b*Berakhot* 61b, b*Pesahim* 25a, b*Sotah* 12a and b*Yoma* 82a.

²⁵³ The vast majority of Talmud manuscripts available through the Lieberman Database attribute this *baraita* to Rabbi Eliezer. There are a few manuscripts, however, that have the author of the *baraita* as Rabbi Eleazar (for instance, Munich 95 for b*Pesahim* 25a and Oxford Opp. Add. fol 23 for b*Pesahim* 25a and b*Yoma* 82a). The Vilna edition of b*Sotah* also lists the author as Rabbi Eleazar. The conflation of such similar names is not uncommon in rabbinic literature, and can be attributed to copyist errors or issues with oral transmission. Even if the author of this particular *baraita* is Rabbi Eleazar, the point made above still holds. In one *baraita* he could hold that there are people who hold different approaches to the importance of material and the self, while in a separate *baraita* he indicates where he himself falls on that spectrum.

Babylonian Talmud has two layers of meaning. The first layer is meant to convey the tools of pedagogy and the *halakhic* system at its face value. The second and less obvious layer, however, advances an anti-traditionalist agenda.²⁵⁴ Thus, in our case, the casting aside of the two *baraitot* of Rabbi Eleazar by the *stam* even though they appear to be more solid sources than the one that the *stam* eventually rests its case on, could very well be because of the *stam*'s agenda of advancing a different idea altogether. The most likely reason was that the Talmud wanted to assert that there is a qualitative difference between the human body and material possessions.

The second possibility is that the words “*vekhoh sheken gufo*” are superfluous and not actually needed to make the argument work. This would mean that the *sugya* flows in a logical way that makes sense independent of this phrase. This is certainly a possibility, and in fact there is at least one manuscript of this text that omits these words.²⁵⁵ Hananel bar Hushiel (c. 980-c. 1057, Tunisia), one of the earliest and most important commentators on the Talmud, did not appear to have the words “*vekhoh sheken gufo*” as part of the Talmudic text. For him, the rejection of this *baraita* as the source for the prohibition against self-harm was with the word “*dilma*.”²⁵⁶ The absence of the words “*vekhoh sheken gufo*” indicates that it is neither an essential component of the *baraita* nor of the *stam*. Nevertheless, the majority of extant Talmudic manuscripts from various geographical locations do contain this phrase, making it the more likely reading.

In my opinion, understanding the words “*vekhoh sheken gufo*” both as part of the text and not a scribal addition, and as part of the *baraita* of Rabbi Eleazar is the more compelling of the possibilities. In addition to the arguments advanced above, the approach that *bal tashhit* includes both the prohibition against self-harm and the prohibition against wastefulness belongs to a tradent. The progenitor of this approach

²⁵⁴ Menachem Fisch, *Rational Rabbis: Science and Talmudic Culture* (Bloomington and Indianapolis: Indiana University Press, 1997), 185-186.

²⁵⁵ See Hamburg 165 manuscript.

²⁵⁶ Hananel bar Hushiel, *Perushei Rabbeinu Hananel bar Hushiel LaTalmud*, ed. Yosef Mordekhai Dubowik (Jerusalem: Makhon Lev Sameah Publishing, 2011).

appears to have been Rabbi Eleazar ben Azariah.²⁵⁷ If the words “*vekhōl sheken gufo*” belong to Rabbi Eleazar, then his position was that one can learn about the prohibition against self-harm from the prohibition against wastefulness. He was a senior colleague of Rabbi Akiva. Rabbi Akiva’s position in the mishnah was just as a person may not engage in self-injury, so, too, may they not engage in the waste of material. These teachings reach the same conclusion from different angles; Rabbi Eleazar learns about the body from material and Rabbi Akiva learns about material from the body. The continuation of this tradent can be found in the *tosefta* text which will be discussed shortly.

Ultimately, the Talmud ended up rejecting the *a fortiori* argument because there are clearly exceptions to the rule, even if they are somewhat forced. For instance, just because Rabbi Yoḥanan called his clothes “my honourers,” does not mean that he considered them to be of greater import than his physical well-being, though the Talmud does not challenge the assertion. The example given with Rav Ḥisda is more substantive since he actually sacrifices his well-being for the sake of his clothes. There are a number of things that can be said in this regard. Most importantly, Rav Ḥisda, who takes a stance on this issue, does not yet make his opinion acceptable to others. In the case of this particular Talmudic deliberation, however, it seems to be sufficient to motivate the rabbis to continue in their search. It is entirely possible that his actions were subjective and based on his own convictions or life circumstances. His biography indicates that in his early years Rav Ḥisda was poor and might not have had a spare garment. Also, Rav Ḥisda took a stance with regard to scratches on his legs from thorns. Such injuries would easily heal as opposed to torn clothing that would be difficult or impossible to mend. Thus, the loss of property was considered to be greater than minor injury to oneself. Rav Ḥisda clearly fell on the side of Rabbi Eliezer ben Hyrcanus’ teaching that some hold their possessions more dearly than they do their bodies. There is a statement made by Rabbi Eleazar in this regard, namely that the righteous hold their possessions more dearly than their bodies, because they consider all things which come into their possession, even the

²⁵⁷ See Florence II-I-8 and Hamburg 165 manuscripts.

most minor, to be Divinely bequeathed.²⁵⁸ Nevertheless, this leaves us to question whether he would have held the same position if the injury was more severe or whether it occurred on a different part of his body, perhaps a visible part.²⁵⁹ Indeed, we do know that he assumed his legs would heal from the scratches; perhaps his approach would have been different in a case where he was less certain regarding the outcome.

The *stam* of the Talmud through the rejection of the first two possibilities may have played a significant role in distancing the association of the prohibition against self-harm from the prohibition against wastefulness thus impacting the further development of these connections.

He must therefore be the Tanna of the following teaching: Rabbi Eleazar HaKappar BeRabbi said: What is the point of the words: “*And make an atonement for him, for that he sinned regarding the soul* (Numbers 6:11).” Regarding what soul did this [Nazirite] sin unless by having deprived himself of wine? Now can we not base on this an argument *a fortiori*: If a Nazirite who deprived himself only of wine is already called a sinner, how much more so one who deprives oneself of all matters?

With the argument of Rabbi Eleazar HaKappar regarding the Nazirite, the Talmud is finally satisfied that it has found a *tanna* who holds that self-harm is forbidden. A Nazirite is considered a holy person who deprives himself of wine, does not cut his hair, and does not defile himself by coming into contact with the dead. Upon accidentally coming into contact with a corpse, the Nazirite is required to bring a sacrifice, a sin offering, to the Temple (Numbers 6:11). The plain sense of this verse as offered by Rashi and many others is that the sin offering is made due to the fact that the Nazirite came into contact with a corpse. There is a *midrash* given by Rabbi Eleazar HaKappar originating in *Sifre BeMidbar* (*Parashat Naso, Piska* 30) and reappearing in this Talmudic passage, however, which claimed that the reason that the Nazirite required a sin offering is because of depriving himself of wine.²⁶⁰ He then made an *a fortiori* deduction with

²⁵⁸ bHullin 91a.

²⁵⁹ See the responsum of Yitzhak Zilberstein in the responsa chapter.

²⁶⁰ *Sifre im Peirush Toledot Adam: Sefer BeMidbar*, ed. Moshe David Avraham Troyes Ashkenazi (Jerusalem: Mossad HaRav Kook, 1972). Here, however, the *midrash* is presented without mention of Rabbi Eleazar HaKappar.

regard to self-harm: if depriving oneself from the consumption of wine which is a luxury is considered sinful, how much more so is any type of action that actually harms the body. The Talmud accepted that we have now succeeded in finding one *tanna* who says that self-harm is prohibited and pursued the matter no further. One may argue, perhaps, that this argument also has its weak points.²⁶¹ These are not pursued, however, since all the Talmud was trying to do was find one *tanna* who said that self-harm is forbidden and it successfully did so. Nevertheless, this part of the discussion is beyond the scope of this dissertation as pursuing this critique does not contribute to the expounding of the prohibition against wastefulness.

Tosefta

The *Tosefta* is a compilation of laws that was recorded at approximately the same time as the Mishnah, in the early 3rd century. While there are differing approaches in the scholarship as to the exact date of its redaction, suffice it to say that its teachings, if not the final redaction, were the product of *tannaim*. It is divided in a similar manner to the Mishnah, but differs in the way it presents the material. While the Mishnah is considered to be the more authoritative of the two, the Talmud will often use the teachings of the *Tosefta* as proof-texts in its argumentation. The passage of interest in the *Tosefta* is thematically very similar in content to the above Mishnah and Talmud; it deals with humiliation, self-harm and wastefulness/destruction:

tBaba Qama 9:31

[If] he hit him with the back of his hand, with paper, a notebook, untanned hides, a volume of documents which he had in his hands, he pays him four hundred *zuz*. Now this is not because it is a painful blow, but because it is a humiliating one, as it is said, *Arise, O Lord, deliver me, O my God! For thou dost smite all my enemies on the cheek...* (Psalms 3:7). And it says *With a rod they strike upon the cheek the ruler of Israel* (Micah 5:1). And it says, *I gave my back to the smiters, and my cheeks to those who pulled*

²⁶¹ For instance, abstention and self-harm could be viewed as entirely different categories. Also, the idea that the sin offering be made due to abstention from wine is neither something for which there is consensus, nor is it the plain sense of the verse.

out the beard; I hid not my face from shame and spitting (Isaiah 50:6). And just as one is liable for injury done to his fellow, so he is liable for injury done to him by himself. For if he spit into his [own] face in the presence of his fellow, pulled out his beard, tore his clothing, broke his utensils, scattered his money in a fit of wrath, he is exempt from punishment by the laws of man, and his case is handed over to Heaven, as it is said, *For your lifeblood I will surely require a reckoning* (Genesis 9:5). Rabbi Simeon b. Eleazar says in the name of Rabbi Hīlpai b. Agra which he said in the name of Rabbi Yoḥanan b. Nuri, “[If] a person pulled out his [own] hair, tore his clothing, broke his utensils, scattered his coins in a fit of anger, he should be in your eyes as if he did an act of idolatry. For if his impulse should say to him, ‘Go, commit idolatry,’ he would go and do it.”²⁶²

It is important to note that just as in the Mishnah there is no specific mention of the concept *bal tashhit*, so too in the *Tosefta* there is no mention thereof. This is not to suggest that a prohibition against wastefulness did not exist, but rather that perhaps it was not a fully developed concept with the nomenclature/terminology. This argument will be elaborated upon in the continuation. Let us first understand the content of this passage. To begin with, we observe that the *tannaim* of the *Tosefta* issued an edict levying a fine for physical acts that cause humiliation. This much is also clearly stated in the Talmudic discourse. The rabbis brought three different passages from Scripture as proof-texts for their claim. All the passages deal with humiliation that has a degree of physicality to it. The narrative continues by asserting that one is liable not only for harming a fellow person, but also for harming oneself. While it appears that the central topic of this passage deals with physical forms of humiliation, it would be difficult to argue that this is the prevailing theme throughout the entire passage. Once the assertion is made regarding the prohibition to engage in self-harm, it would appear that there is a thematic shift away from humiliation toward other aspects of self-harm.

Now it could be argued that the self-harm being referred to at this point in the text is the same type of harm mentioned at the beginning of the passage: physical acts that are

²⁶² This is a modified version of Jacob Neusner’s *The Tosefta: Translated from the Hebrew, Fourth Division – Neziqin (The Order of Damages)* (New York: Ktav Publishing House Inc., 1981), 58. The modifications were introduced without alerting the reader and come in places where I consider the translation to be inadequate for our purposes.

humiliating. While this is certainly a possibility, the examples of harm presented in the text make this option highly unlikely. First, the examples used in the *Tosefta* regarding harm to others and harm to oneself are different. The examples with regard to the former are clearly all related to humiliation whereas for the latter only the first example obviously falls into this category, while the second one possibly does. The examples that come later deal with physical and monetary harm. Moreover, the text seems to suggest that the person engaging in self-harm only has an audience for the first example, that in which he spits in his own face. In order to humiliate oneself having an audience is essential, otherwise there is no foundation for embarrassment. With the latter examples damage still occurs whether there is someone else present or not, whereas if someone spits in their own face in private, the act cannot be considered damaging either physically or emotionally. In other words, the list of examples used by the *Tosefta* to illustrate self-harm appears to include a wide variety of different types of damage in addition to humiliation, specifically, physical harm and financial damage.

Most importantly for our argument, the verse used by the *Tosefta* as a proof-text to illustrate that engaging in self-harm is prohibited is Genesis 9:5. The significance of this has multiple layers. This passage from the *Tosefta* combines the themes of self-harm and wastefulness. First the *Tosefta* connects the prohibition of self-harm to Genesis 9:5 and then creates a conceptual link between harm of the body and of material by putting them both under the umbrella of the “self.” In other words, the notion of the “self” not only includes the physical body, but also extends to material possessions. Understood in this light, wasting or destroying one’s property is *de facto* wasting or destroying oneself.

The connection between all the different types of damage listed in the *Tosefta* is that they all fit under the category of self-inflicted harm. While it is possible that the list of examples of different types of self-harm is random, it seems more likely that they were purposefully chosen. To start, the examples that are mentioned in the *Tosefta* reappear on an individual basis in the Talmud. The example of tearing clothing can be found in b*Baba Qama* 91b and b*Qiddushin* 32a, breaking utensils in b*Shabbat* 129a, whereas b*Hullin* 7b,

b*Shabbat* 67b and *Semaḥot* 9:23 deal with further examples of the waste of material. The Talmud and the minor tractate of *Semaḥot* categorically refer to the destruction of said materials as a transgression of the prohibition of *bal tashhit*.

According to Talmudic tradition, any anonymous statement made in the *Tosefta* belongs to Rabbi Neḥemiah (c. 150 CE).²⁶³ Rabbi Neḥemiah was one of Rabbi Akiva's students. The connection made in the *Tosefta* between the prohibition against self-harm and the prohibition against wastefulness can thus be viewed as a part of a series of traditions starting with Rabbi Eleazar ben Azariah, continuing with Rabbi Akiva and then with Rabbi Neḥemiah in the following generation. The fact that these teachings are consistent over the course of three (or two and a half) generations of *tannaim* makes it possible to argue that understanding the two prohibitions as inherently linked to each other was a dominant position during this era.

The *Tosefta* also offers a possible solution to this problematic of why the Torah has similar terminology for the prohibition of destroying fruit trees during war and the prohibition of destroying one's beard (*lo tashhit*). One may perhaps argue that linguistic connections between these prohibitions are random and that there is no deeper association between them. This, however, would be an unsatisfactory conclusion. In the proof-texts brought in support of the fines levied for physically shaming someone in the first part of this passage, the verse from Isaiah stands out in particular because it relates to the tearing out of his beard. As the *Tosefta* transitions from the section dealing with the physical shaming of others into self-harm, one of the examples of a form of self-harm is the tearing out of one's hair. The Neusner edition of the *Tosefta* translated "hair" as "beard." This, of course, does not mean that his interpretation of "hair" as "beard" is correct, but contextually it makes sense that this is the type of hair the *Tosefta* had in mind when giving this specific example. It makes even more sense when keeping in mind the linguistic bonds shared by the various types of *bal tashhit*. This is by no means conclusive but it is suggestive of the possibility of a connection between the *bal tashhit*

²⁶³ See b*Sanhedrin* 86a.

of destroying one's beard, the *bal tashhit* of self-harm and the general *bal tashhit* of all things, since all three seem to appear together in this passage. This also suggests the possibility of the prohibition of destroying the beard as having implications well beyond the *halakhic* manifestation of the prohibition to destroy one's beard in Leviticus 19:27. At least contextually, the verse in Leviticus is associated with foreign blood rites and mourning practices. If we take into account the fact that some mourning practices included the "tearing of the cheeks,"²⁶⁴ we might consider that the biblical edict to "not destroy" the beard is directly connected with distancing Jews/Israelites from such traditions.

In spite of the rejection by the Talmud of the *baraitot* of Rabbi Eleazar, there were still a handful of post-talmudic scholars who explicitly accepted one or both of these *baraitot* as the source of the prohibition against self-harm. Through their writings they kept the association between *bal tashhit* and self-harm alive, and thus the link between Deuteronomy 20:19 and Genesis 9:5.

Yonah of Gerona (d. 1263, Spain)

Yonah of Gerona, in his ethical treatise "*Sha'arei Teshuvah*", *Sha'ar* 3:82, dealt with the prohibition against wastefulness systematically. He began with the prohibition against cutting down fruit trees, and continued by stating: "And so we were warned to not waste possessions without purpose, even those of the least *halakhically* significant value (*sheveh perutah*)."²⁶⁴ He then cited the rabbis from *bBaba Qama* 91b regarding the prohibition against the excessive tearing of clothing over the dead, to which he claimed that anyone breaking utensils in anger is liable *a fortiori* because he transgresses both *bal tashhit* and is governed by anger. With regard to being governed by anger he brought as a proof-text the *baraita* from the *Tosefta* which also appears in the Talmud. This text, *bShabbat* 105b, stated that a person who destroys utensils in a fit of anger should be

²⁶⁴ Erwin Rohde, *Psyche: The Cult of Souls and Belief in Immortality Among the Greeks*, trans. W. B. Hillis (New York: Books for Libraries Press, 1972), 164.

perceived as an idol worshipper. He then related the prohibition against wastefulness to that of causing self-harm by saying that those who engage in self-harm transgress the prohibition found in Genesis 9:5.²⁶⁵

There are a number of important things to take from Yonah of Gerona's writings. The process through which he arrived at this conclusion demonstrates a holistic and systematic understanding of *bal tashhit*. He started with the prohibition against destroying fruit trees, expanded the prohibition to include the destruction of all things. Most important, however, is the fact that he then related the prohibition against wastefulness to self-harm and connected all of the above to idol worship. It would appear that he understood the links between these ideas to be organic.

Menaḥem ben Shlomo HaMeiri (1249-1315, Provence)

Menaḥem HaMeiri in his commentary on the Talmud, *Beit HaBehirah*, bBaba Qama 91b, also understood the prohibition against self-harm to originate from Genesis 9:5. The connection he made between the prohibition against self-harm and the prohibition against wastefulness was somewhat different than that of Rabbi Eleazar advanced in the Talmud. Instead of claiming that we learn about the prohibition against self-harm as an *a fortiori* derivation from the prohibition against wastefulness, he viewed the relationship as an analogy (similar to the *Tosefta* and Rabbi Akiva): just as one is prohibited from engaging in self-harm, so too is one prohibited from engaging in wastefulness of material.²⁶⁶

Shlomo ben Yeḥiel Luria (1510-1574, Poland)

Shlomo Luria, in his Talmudic commentary *Yam shel Shlomo*, bBaba Qama 8:59, asserted that one is specifically prohibited from engaging in self-harm as part of the general prohibition of *bal tashhit*.²⁶⁷ He then went on to cite the opinion of Yaakov bar

²⁶⁵ Yonah of Gerona, *Sha'arei Teshuvah* (Venice: 1544).

²⁶⁶ Menaḥem HaMeiri, *Beth HaBehira on the Talmudical Treatise Baba Kamma*, 2nd Revised Edition, ed. Kalman Schlesinger (Jerusalem: private printing, 1961).

²⁶⁷ Shlomo Luria, *Sefer Yam shel Shlomo al Masekhet Baba Qama* (Prague: 1616-1618).

Asher (c. 1270-1343, Germany and Spain), the author of the *halakhic* code the *Tur*, who presented another great *halakhic* authority, Meir HaLevi Abulafia (c. 1170-1244, Spain), who accepted the first argument presented in the Talmud that a person is indeed permitted to harm oneself. Even Abulafia, however, acknowledged that such behaviour is only permitted in instances when harming oneself is necessary. This, Luria argued, was a unanimous opinion. Everyone agrees that any type of destruction, whether of the self or of material for no purpose is prohibited under the law of *bal tashhit*. There are instances, however, in which one is permitted to engage in wastefulness and destruction and just as this applies to material, so too, does it apply to the self.

Luria himself accepted Rabbi Akiva's ruling in the Mishnah that one is not permitted to engage in self-harm, even for monetary purposes. In other words, even when there is a hypothetical need to engage in self-harm it is prohibited. To this end he brought Genesis 9:5 as a proof-text that one is prohibited from taking their own life even if they are subjected to torture.²⁶⁸ He then presented a number of sources (he refers to as the elders of France) that make an exception to the prohibition, specifically when one fears that he will be coerced into engaging in blasphemous activities. This approach was rejected by Luria who countered with the *tosafist* Isaac ben Samuel's assertion that even when one fears they will be forced to abjure Judaism they are not permitted to engage in self-harm. One can allow oneself to be killed, or can even indirectly cause oneself to die (for instance setting the building they are in on fire), but one is not permitted to directly harm oneself, and certainly not others.²⁶⁹ The exceptions to this rule concerns more extreme circumstances where the lives of others are at stake, or for the sake of doing the king's bidding/honouring the king.

²⁶⁸ Although he initially brought this verse in the context of suicide, he later cited the *midrash* of Genesis *Rabbah* for this verse claiming that the *midrash* prohibited engaging in self-harm. This is of interest, because the text in the *midrash* specifically mentions suicide, but not lesser extents of self-harm.

²⁶⁹ Luria had in mind those who kill their children so that they not be brought up in a foreign religion. He claimed that children who are coerced to live in a different faith (one can assume that he had Christianity in mind) often come back to the Jewish fold after a number of years, and if not them then their children.

Abraham de Boton (c.1560- c.1605, Greece and Land of Israel)

Abraham de Boton in his commentary on Maimonides' *Mishneh Torah*, *Lehem Mishneh* (*Hilkhot De'ot* 3:1) discussed the Talmudic deliberations of *bBaba Qama* 91b. Among his assertions were that the prohibition against self-harm either originates from the prohibition of *bal tashhit* or from Genesis 9:5. As is evident, de Boton did not accept the Talmud's rejections of both of the *baraitot* brought in the name of Rabbi Eleazar as the source of the prohibition against self-harm. Although de Boton used the word "or" with regard to sourcing the prohibition against self-harm, the fact is that he considered both to be equally appropriate.²⁷⁰

Israel Lipschutz (1782-1860, Germany)

Israel Lipschutz in his commentary on the Mishnah, *Tiferet Yisrael* (*Yakhin*, *mBaba Qama* 8:6:39) asserted that the prohibition against self-harm falls under the prohibition of *bal tashhit*. More specifically, he claimed that there is no distinction between the body and garments with regard to the prohibition of *bal tashhit*.²⁷¹

Jacob Ettlinger (1798-1871, Germany)

Jacob Ettlinger the author of the commentary on the Talmud *Arukh LaNer*, added an interesting comment on this topic in his commentary on *bNiddah* 13a. The Talmudic discussion revolved around the prohibition against men handling their penis due to the fact that they are easily aroused. The Talmud presented a *baraita* by Rabbi Eleazar who claimed that someone who touches their member while urinating is said to be as one who has brought a flood to the world. Ettlinger cited Nahmanides, Shlomo ben Aderet and Nissim of Gerona as understanding this *baraita* as a proof-text that in addition to men, women are also prohibited from wasting male ejaculate. This is understood from the fact that both men and women perished in the flood. Ettlinger eventually came around to discussing the Talmudic discussion from *bBaba Qama* 91b. He argued that the text does

²⁷⁰ Abraham de Boton, "Lehem Mishneh," in Moshe ben Maimon, *Mishneh Torah hu HaYad HaHazaqah: Sefer HaMada* (Warsaw: Kalinberg and Partners, 1881).

²⁷¹ Israel Lipschutz, *Mishnayot Tiferet Yisrael, Yakhin veBoaz* (New York: Pardes, 1953).

not clarify what the exact transgression is from Numbers 6:11 (regarding the Nazirite). Hence, we still need to learn about the prohibition against self-harm from the prohibition of *bal tashhit*. Likewise, we learn in part about the prohibition against wasting semen from the prohibition of *bal tashhit*. There are two other places where Ettlinger asserted that the source of the prohibition against self-harm is indeed *bal tashhit*.²⁷²

Barukh Epstein (1860-1941, Belarus)

Barukh Epstein, author of the *Torah Temimah*, in his commentary on Genesis 9:5 rejected the Talmud's position that the verse only relates to suicide and not self-harm in general. He claimed that this approach is only a *dihui be'alma* (non-substantive rejection), and that in fact Genesis 9:5 included the prohibition against self-harm.²⁷³

3.4 Bal Tashhit DeGufa Adif

bShabbat 129a

Context: The Mishnah dealt with the ways in which one may assist an animal and a woman who give birth on the Sabbath. Though there are limits to the degree in which an animal may be helped, the Sabbath can be violated for a woman giving birth, because human life is more sacred than the Sabbath. The Talmudic discussion continued by relating to other circumstances in which one can violate various laws in order to mitigate the inherent risk in such situations to human life. The case of interest to us dealt with rabbis who had just undergone bloodletting:

A teak chair was broken up for Samuel; a table [made] of juniper wood was broken for Rav Judah. A footstool was broken for Rabbah, whereupon Abaye said to Rabbah, But you are infringing, *thou shalt not destroy (bal tashhit)*? “Thou shalt not destroy” in respect of my own body is more important to me (*bal tashhit degufai adif li*), he retorted. Rav Judah said in Rav's name: One should always sell [even] the beams of his house and buy shoes for his feet. If one has let blood and has nothing to eat, let him

²⁷² These two sources are *Arukh LaNer* (bYevamot 13b) and his Responsa *Sefer Binyan Tzion* (Altona: Gebruder Bonn, 1867), 137.

²⁷³ Barukh HaLevi Epstein, *Hamishah Humshei Torah im Hamesh Megilot, Torah Temimah: Sefer Bereishit* (New York: Avraham Yitzhak Friedman, 1962).

sell the shoes from off his feet and provide the requirements of a meal therewith.

Just as there are circumstances in which a fruit tree can be cut down despite the prohibition, so, too, there are instances when the general prohibition against wastefulness is overruled because of exceptional circumstances. *Bal tashhit degufa adif* is not a specific circumstance in which an exception to the prohibition of *bal tashhit* is made but a general rule; the welfare of the individual always trumps consideration for the non-human world. It is possible to claim that Rabbah's argument was a conviction held by him alone. After all, Rabbah's statement was subjective; he was speaking about the esteem in which he held his own body, and did not make a general statement with regard to the consideration all people should have regarding their personal health. Rav Judah, however, following the tradition of Rav, gave credence to Rabbah's position through his statement that the well-being of the body should always take precedence over material considerations. In the next *sugya* we observe a shift from the subjectivity of Rabbah to his position becoming the norm.

bShabbat 140b

Context: The Mishnah listed certain activities which are prohibited on the Sabbath, while at the same time delineating a manner in which such activities could be performed that did not violate the Sabbath. The Talmudic discussion eventually came around to rabbis sharing their worldly wisdom through snippets of savvy advice. One such saying relates to *bal tashhit*:

Rav Ḥisda also said: When one can eat barley bread but eats wheaten bread he violates, thou shalt not destroy (*bal tashhit*). Rav Papa said: When one can drink beer but drinks wine, he violates, thou shalt not destroy. But this is incorrect: Thou shalt not destroy, as applied to one's own person, stands higher.

The Talmud shared the opinions of two rabbis, Rav Ḥisda and Rav Papa, with regard to abstention from luxurious foods. They claimed that if one has recourse to both high quality food and low quality food, one should consume the lower quality option. The

reasoning, they claimed, was that consuming the higher quality food would be a transgression of *bal tashhit*, because of the waste of money. The anonymous voice of the Talmud, however, rejected their opinions by claiming that not harming one's body takes precedence over wastefulness and destruction of material goods (*bal tashhit degufa adif*). It is important to understand the prevailing ideas present in this passage that elicited the varying opinions. Rav Hisda and Rav Papa viewed the issue from a utilitarian lens. Wheat bread and wine are more expensive than barley bread and beer, and if all options satiate an individual to the same degree, it is a waste of money to opt for the more expensive options. The Talmud rejected this approach through the understanding that while more expensive, wheat and wine have higher nutritional qualities than barley and beer. The more expensive foods in this case are more nutritious (i.e. healthier).²⁷⁴ The ethic which prohibits wastefulness and destruction is overruled by the ethic which holds human welfare to be of greater importance.

The significant difference between b*Shabbat* 129 and b*Shabbat* 140b is that the subjective element used by Rabbah to convey his position in the first text is not present in the second text. The voice which rejected Rav Hisda and Rav Papa's positions belonged to the *stam*, and came at least a century later. By the time the text was being redacted Rabbah's position had become authoritative and no longer needed the subjective "li" (me).

bTa'anit 20b

Context: The Mishnah dealt with harrowing instances in which an alarm is raised calling people to fast and pray. Such instances could include drought, plague and infestations among other things. One occurrence that would elicit fast and prayer is the collapse of buildings in a particular city. The Talmud then went on to discuss meritorious individuals

²⁷⁴ See David E. Sulommm Stein, "Halakhah: The Law of *Bal Tashchit* (Do Not Destroy)," in *Torah of the Earth: Exploring 4,000 Years of Ecology in Jewish Thought*, ed. Arthur Waskow (Woodstock, Vermont: Jewish Lights Publishing, 2000), 100. Stein also argues that the concerns regarding wastefulness were that barley did not deplete the soil as much as wheat, and that brewing beer instead of wine was a more effective use of resources.

whose presence could prevent a building from collapsing. Eventually the Talmud came around to discussing the merits of a particular *amora*, Rav Huna:

Raba said to Rifram bar Papa: Tell me some of the good deeds which Rav Huna had done. He replied: Of his childhood I do not recollect anything, but of his old age I do. On cloudy [stormy] days they used to drive him about in a golden carriage and he would survey every part of the city and he would order the demolition of any wall that was unsafe; if the owner was in a position to do so he had to rebuild it himself, but if not, then [Rav Huna] would have it rebuilt at his own expense. On the eve of every Sabbath [Friday] he would send a messenger to the market and any vegetables that the [market] gardeners had left over he bought up and had them thrown into the river. Should he not rather have had these distributed among the poor? [He was afraid] lest they would then at times be led to rely upon him and would not trouble to buy any for themselves. Why did he not give the vegetables to the domestic animals? He was of the opinion that food fit for human consumption may not be given to animals. Then why did he purchase them at all? This would result in [the gardeners providing an] inadequate [supply] in the future.

While this particular passage does not mention *bal tashhit* by name, one of the issues that arises in it is the waste of produce. One must keep in mind that the central theme of this passage is the good deeds of Rav Huna. Since Rav Huna engages in the wastage of food, we must consider the reasons for which the act is justified. On the one hand, he wanted to ensure that the poor did not become reliant on charity, presumably so that if charity did not arrive they would not starve. On the other hand, he felt like he needed to balance that concern by ensuring that there would always be an adequate supply of food. Feeding animals with this surplus was abhorrent to Rav Huna (though we must also consider the fact that the Talmud asserted that “he was of the opinion,” opening the possibility that there may not have been consensus on this matter). When considering these justifications and their implied acceptance we see scenarios in which there are exceptions to the prohibition of *bal tashhit*. In this particular instance the exceptions (save the approach to animal consumption of food fit for humans) are primarily existential. In no way should a prohibition compromise human welfare, on both the micro and macro levels. Again, while there is no specific mention of *bal tashhit*, the principle at play in this particular context appears to be *bal tashhit degufa adif* – *bal tashhit* with

regard to the self takes precedence. Starvation and famine are practical and threatening issues as they result in death and in the context of justifying wastefulness, the concept in play would be *bal tashhit degufa adif*. If indeed our analysis is correct what makes this passage so important is that the concept of *bal tashhit degufa adif* is shown to take precedence even in hypothetical situations. Rav Huna could not have known the outcome of non-interference in the market (though he seems to possess the attribute of clairvoyance), yet he engaged in wastefulness due to the theoretical possibility that non-action could have resulted in real existential concerns. While the scenario is similar to the *bal tashhit degufa adif* of bShabbat 129a, the difference lies in the fact that Samuel and Rabbah after their bloodletting were in scenarios in which the consequences of not wasting at those given moments were actual rather than theoretically possible.

3.5 Idol Worship and Foreign Cultural Practices

A recurring theme in the texts that deal with wastefulness and destruction is that of idol worship and emulation of foreign cultural practices. For a monotheistic faith which finds the act of idol worship to be repugnant and for a people who has separated itself to varying extents throughout time and place from other cultures, the very fact that these issues arise in the context of *bal tashhit* is noteworthy. Let us consider the various texts mentioned in the dissertation thus far. Starting with Deuteronomy 20:19, we observe that many of the exegetes commenting on this verse mentioned that the prohibition of cutting down fruit trees comes in contrast to the practices of foreign nations who engage in scorched earth policies during warfare. Thus, from the outset, there is already a notable tradition regarding a prohibition against emulating foreign cultures emerging from or underlying one of the key verses connected to *bal tashhit*. This trend continues in connection with the second and only other time the term *lo tashhit* appears in the Torah: Leviticus 19:27. Here, too, we have already noted that there is a strong tradition connecting the prohibition against “destroying” one’s beard to a prohibition of emulation of foreign cultures and in particular idol worshipping clerics. Contextually, Bible historians have noted that the prohibition against “destroying” the beard emerges from a

tradition of surrounding cultures to engage in bodily mutilation as mourning customs. To this we can add the verse from Deuteronomy 14:1 prohibiting engaging in bodily mutilation while mourning. In his gloss to this verse Rashi, specifically mentioned that such practices are the mourning traditions of the Amorites and not becoming of the Israelites. Ibn Ezra claimed that these were Canaanite traditions and unworthy of emulation by the holy nation of Israel. Having these two exegetes, who are so often at odds methodologically, substantially agreeing on this issue makes a strong case for this position to be fairly consistent in the Jewish sources. Additionally, historical accounts of mourning practices in the Near East are consistent with the exegesis of Rashi and Ibn Ezra.²⁷⁵ Finally, the word used to describe body mutilation in this verse is “*titgodedu*,” from the root *g.d.d.* Rashbam, in his commentary to this verse, drew a linguistic parallel between this and the cutting down of the tree in Daniel 4:11. It is possible that all Rashbam was doing was helping the reader understand the meaning of an unusual verb. In my opinion, however, this parallel reinforces our argument in two ways. First, it illustrates the degree of physical violence assumed in the act of self-mutilation; after all cutting down a big tree is no small feat and this act is now being reproduced on a human face. Moreover, it makes a connection between the prohibition against self-harm and the cutting down of trees. In fact, so strong is the polemic against idol worship and emulation of foreign cultural practices that one of the very limited occasions in which wanton destruction is condoned and even prescribed is in reference to these very practices in Exodus 34:13: “You shall tear down their altars, break their pillars, and cut down their sacred groves.”

Rashi, Ibn Ezra and Rashbam are Bible exegetes from the 11th and 12th centuries. Additional links between the prohibition of *bal tashhit* and idol worship/foreign cultural practices can be found in the much earlier corpora of rabbinic literature. Let us begin by examining the *tannaitic* layers of rabbinic literature and work our way through to the Talmud. We have already established that nowhere in exclusively *tannaitic* literature do

²⁷⁵ For instance, see Rohde, *Psyche*, and Wolfram Grajetski, *Burial Customs in Ancient Egypt: Life in Death for Rich and Poor* (London: Gerald Duckworth and Co. Ltd., 2003).

we find primary sources using the term *bal tashhit*. What we do find, of course, are a number of *baraitot* in the Babylonian Talmud brought in the name of *tannaim* who use the term and the *Tosefta* whose content in the passage above illustrates beyond doubt a connection with the idea of what can be included in the conceptualisation of wastefulness and destructiveness. To start, let us analyse the *Tosefta* (*tBaba Qama* 9:31 cited above) with regard to idol worship. The illicit activities mentioned in the *Tosefta* which range from self-harm to wastefulness and destruction are equated, at least according to one tradition, to idol worship. There are a few noteworthy remarks with regard to this statement. First, it is only one tradition that draws this parallel, which is something that must be kept in mind at all times. Nevertheless, even though we are only dealing with one tradition, the tradition is brought in the name of three different rabbis (Rabbi Simeon b. Eleazar, Rabbi Hīlpai b. Agra and Rabbi Yoḥanan b. Nuri). While this only illustrates a line of transmission that is more intact than most, this very fact illustrates the strength of this approach and its continuity. It is again cited in *bShabbat* 105b, reinforcing the argument that this particular voice is well-established.²⁷⁶

***bShabbat* 67b**

Context: The Mishnah presented a debate between Rabbi Meir and the sages with regard to the use of certain types of charms on the Sabbath. Rabbi Meir permitted their use on the Sabbath, whereas the sages prohibited their use at all times in order to not emulate the practices of the Amorites. The Talmud then made a long list of practices that are prohibited because they emulate the Amorites and some practices that are prohibited because they are outright idolatrous. The passage dealing with *bal tashhit* arose in this context:

Rav Zutra said: He who covers an oil lamp or uncovers a *naphtha* [lamp] infringes on the prohibition of wasteful destruction (*bal tashhit*).

²⁷⁶ *bShabbat* 105b deals with whether one is liable for transgressing the Sabbath if they cause damage or do something destructive. The Talmud discusses this transgression specifically with regard to the Sabbath, and not in reference to the prohibition of *bal tashhit*.

The text itself does not reveal a direct association to idol worship, but as can be seen from the context, the passage is set among a list of customs that are prohibited due to their connection to Amorite culture practices. Whether the connection made to Amorite rituals is specifically connected with the example of the inefficient burning of fuel or wastefulness in general is irrelevant for this particular argument. What is relevant, however, is that the prohibition against wastefulness comes once again in the context of preventing the emulation of foreign cultural practices.

Next is the statement in the central Talmudic passage dealing with *bal tashhit* made by Rabbi Eleazar. The passage stated the following:

Garments may be rent for a dead person as this is not necessarily done to imitate the ways of the Amorites. But Rabbi Eleazar said: I heard that he who rends [his garments] too much for a dead person transgresses the command, “Thou shalt not destroy (*bal tashhit*),” and it seems that this should be all the more so in the case of injuring his own body.

Since there is a disclaimer stating that the tradition of the tearing of garments as an act of mourning over the dead is not an emulation of Amorite mourning traditions, it is highly likely that this form of behaviour is found within Amorite culture. It can be argued that Rabbi Eleazar’s statement should be understood in light of this. While indeed it is a Jewish custom to rend clothing as an act of mourning, here, too, there are limits. Exceeding these limits both with regard to the practice of tearing clothing or with regard to self-inflicted harm can be understood as an inappropriate exaggeration of mourning customs, something consistent with what one might find in the Amorite tradition. In fact, we observe that even the Greeks prohibited the tearing of the cheeks during mourning, which like the rabbinic approach was a distancing of themselves from barbaric customs.²⁷⁷ In other words, extremism, even in an act that is *halakhically* stipulated, in this case specifically with regard to wastefulness and destruction, is prohibited and considered an emulation of foreign cultural practices.

²⁷⁷ Rohde, *Psyche*, 164.

Warnings against extreme behaviour are also found in reference to other mourning customs. For instance:

Semaḥot 9:23²⁷⁸

Whosoever retrieves effects from the dead robs the dead. There is a time to retrieve and a time not to retrieve. So long as the effects cast before the dead have not come in contact with the coffin, they may be retrieved. Once they have come in contact with the coffin, they may not be retrieved. Even so, a man must be taught not to be wasteful, for has it not been said that whosoever heaps effects upon the dead transgresses the injunction against wanton destruction (*bal tashḥit*)? So [said] Rabbi Meir. Rabbi Eleazar bar Zadok says: “He disgraces him.” Rabban Simeon ben Gamaliel says: “It’s more worms that he’s inviting.” Rabbi Nathan says: “in the same clothes in which a man descends to Sheol will he appear in the age to come, for it is written: *It is changed as clay under the seal; and they stand as a garment* (Job 38:14).”

Semaḥot, Baraitot MiEvel Rabbati 4:11

It is prohibited to bury [the dead] in shrouds of silk and clothing embroidered in gold, even if they are a leader. Such an act is disgraceful, and wasteful, and idolatrous...

Though the custom of burying items with the dead is not specifically mentioned here in reference with foreign cultural practices, it is clear that this was quite common in the surrounding cultures of the region. The ancient Egyptians are known to have been buried in tombs with a range of possessions, based on their financial ability, including living slaves.²⁷⁹ The Greeks, too, were known to have buried the dead with “an ample provision of household implements and vessels.”²⁸⁰ While it is possible that the rabbinic stipulations were simply concerned with wastefulness, it is also possible that this warning is another attempt at differentiation from the surrounding cultures.

²⁷⁸ *The Tractate “Mourning” (Semaḥot)*, Yale Judaica Series, Volume Seventeen, trans. Dov Zlotnick (New Haven, CT: Yale University Press, 1966), 72.

²⁷⁹ See Grajetski, *Burial Customs*.

²⁸⁰ Rohde, *Psyche*, 166.

Another important passage reinforcing the connection between *bal tashhit* and idol worship or foreign cultural practices is the well-known passage from the Babylonian Talmud:

bḤagigah 14b

Our Rabbis taught: Four men entered the Garden (*Pardes*), namely, Ben Azzai and Ben Zoma, Aḥer, and Rabbi Akiba. Rabbi Akiba said to them: “When ye arrive at the stones of pure marble, say not, ‘water, water!’ For it is said: *‘He that speaketh falsehood shall not be established before mine eyes* (Psalms 101:7).” Ben Azzai cast a look and died. Of him Scripture says: “*Precious in the sight of the Lord is the death of His saints* (Psalms 116:15).” Ben Zoma looked and became demented. Of him Scripture says: “*Hast thou found honey? Eat so much as is sufficient for thee, lest thou be filled therewith, and vomit it* (Proverbs 25:16).” Aḥer mutilated the shoots. Rabbi Akiba departed unhurt.

This passage has merited an abundance of analysis over the course of history. Many have understood the venturing into the Garden or Orchard (possibly Paradise) as relating to the delving into mystical understandings of Scripture.²⁸¹ The pursuit of attaining such knowledge is conveyed as dangerous and even the well-educated but uninitiated do not emerge from such endeavours unscathed. While this line of discussion is interesting it remains beyond the scope of this thesis. What is of interest, however, is the manner in which the narrative presented “Aḥer’s” travails in the Garden. Aḥer, or “Other” is in fact a reference to Elisha ben Abuya, a rabbi who apostatised after being exposed to foreign teachings. Elisha’s encounter resulted in his destruction of the plantings in the Garden. This has been by and large understood metaphorically as subverting Jewish teachings or apostatising. Here, however, we focus only on the simple meaning from the context of the narrative. The connection between *bal tashhit* and foreign cultural practices in this passage is twofold. First, the plantings are being destroyed by an apostate and second, this is the result of his being influenced by foreign teachings. Connecting this to the material already presented in this section, we see that the story has apostates engage in

²⁸¹ For example, see Moshe Idel, “Between Authority and Indeterminacy: Some Reflections of Kabbalistic Hermeneutics,” in *Death, Ecstasy, and Other Worldly Journeys*, ed. John J. Collins and Michael Fishbane (Albany: State University of New York Press, 1995), 245-264.

varying examples of wasteful/destructive behaviour, including the destruction of trees. What allows us to understand the “shoots” in this passage to refer to fruit trees may be argued of two plausible hypotheses: 1) *Pardes* has the connotation of being a cultivated orchard. 2) Cutting down non-fruit bearing trees would not have been a transgression of Deuteronomy 20:19. The connection between wastefulness in general and the destruction of fruit trees through the medium of foreign cultural practices appears to be more than just serendipity.

The best indication we have of the connection between wastefulness and idolatry, however, is not in the texts that directly or indirectly deal with the prohibition against wastefulness and destruction, but rather philologically with the root *sh.h.t.* The following passage is found in *bAvodah Zarah 23b*.

bAvodah Zarah 23b

But the case of the red heifer is different; since a blemish renders it unfit, immoral use or idolatrous worship also render it unfit; for Scripture says, “*For their corruption is in them, there is a blemish in them; they shall not be accepted* (Leviticus 22:25),” and the School of Rabbi Ishmael taught: Wherever corruption [*hashhatah*] is mentioned it only means lewdness and idolatry: lewdness, as it is said, “*For all flesh had corrupted their way upon the earth* (Genesis 6:12);” and idolatry, for Scripture says, “*Lest ye deal corruptly, to make ye a graven image* (Deuteronomy 4:16),” and since a blemish renders the red heifer unfit, immoral use and idolatrous worship also render it unfit.²⁸²

As can be seen, this text is not brought in the context of the prohibition against wastefulness/destruction. This passage deals with specific circumstances in which a red heifer is disqualified for use in religious service. Nevertheless, what should be taken from this passage is not its context, but rather the general teaching from the tradition of the *tanna* Rabbi Ishmael. This tradition viewed the Scriptural use of the root *sh.h.t.* to be intrinsically associated with idol worship. This is not definitive proof that Rabbi Ishmael and his school of thought had the concept of *bal tashhit* in mind when they made this assertion, though at the same time there is no reason to assume he did not. This source is

²⁸² This *baraita* has parallels in *bSandhedrin 57a*, *bHullin 23a*, *bBekhorot 57a*, *bTemurah 28b*.

yet one more that solidifies the case connecting idol worship and foreign cultural practices as an influence in the development of the prohibition of *bal tashhit*.

3.6 New Testament

Although the New Testament is not a Jewish text *per se*, it contains within it valuable information regarding Jewish life in the early part of the Common Era. Analysis of Christian commentary is beyond the scope of this dissertation, however, and the narratives presented here are for illustrative purposes only. The narratives that follow are accounts from Jesus' life as told by the Gospels. The two narratives, which exist in parallel renditions in the Gospels, deal with accounts of wastefulness. These texts are another strong indicator that *bal tashhit* already exists as a concept, albeit only as part of oral tradition.

John 6:1-12 (Miracle of the Loaves)

In this narrative Jesus shows concern for leftover food procured in a miraculous manner. Even though the food came by way of miracle, Jesus is concerned that none of it should be wasted. As we have seen, the verses found in the Torah from which the prohibition against wastefulness/destruction is derived do not yet present the prohibition in a comprehensive manner. The prohibition against the destruction of fruit trees is not yet presented, though is likely understood, in Jewish literature as a general prohibition against wastefulness. This narrative, however, indicates the possibility of an oral tradition that predates the rabbinic era yet postdates the Hebrew Bible.

Jesus Feeds the Five Thousand

6:1 Some time after this, Jesus crossed to the far shore of the Sea of Galilee (that is, the Sea of Tiberias), 2 and a great crowd of people followed him because they saw the signs he had performed by healing the sick. 3 Then Jesus went up on a mountainside and sat down with his disciples. 4 The Jewish Passover Festival was near. 5 When Jesus looked up and saw a great crowd coming toward him, he said to Philip, "Where shall we buy bread for these people to eat?" 6 He asked this only to test

him, for he already had in mind what he was going to do.⁷ Philip answered him, "It would take more than half a year's wages[a] to buy enough bread for each one to have a bite!"⁸ Another of his disciples, Andrew, Simon Peter's brother, spoke up, ⁹ "Here is a boy with five small barley loaves and two small fish, but how far will they go among so many?" ¹⁰ Jesus said, "Have the people sit down." There was plenty of grass in that place, and they sat down (about five thousand men were there). ¹¹ Jesus then took the loaves, gave thanks, and distributed to those who were seated as much as they wanted. He did the same with the fish. ¹² When they had all had enough to eat, he said to his disciples, "Gather the pieces that are left over. Let nothing be wasted." ¹³ So they gathered them and filled twelve baskets with the pieces of the five barley loaves left over by those who had eaten.

Synopsis:

In chapter 6 of John, Jesus delivered a sermon to a crowd of 5,000 people on a mountainside in the Galilee. There were only five loaves of bread and two fish with which to feed the large number of people. By way of miracle, Jesus was able to distribute this food among all those present so that they ate their fill and even had leftovers. Jesus then directed his disciples to collect all the leftovers so that no food be wasted.

Mark 14:1-9; Matthew 26:6-13; John 12:1-8 (Anointing of Jesus)

Mark 14:1-9

¹ Now the Passover and the Feast of Unleavened Bread were only two days away, and the chief priests and the teachers of the law were looking for some sly way to arrest Jesus and kill him. ² "But not during the Feast," they said, "or the people may riot." ³ While he was in Bethany, reclining at the table in the home of a man known as Simon the Leper, a woman came with an alabaster jar of very expensive perfume, made of pure nard. She broke the jar and poured the perfume on his head. ⁴ Some of those present were saying indignantly to one another, "Why this waste of perfume? ⁵ It could have been sold for more than a year's wages and the money given to the poor." And they rebuked her harshly. ⁶ "Leave her alone," said Jesus. "Why are you bothering her? She has done a beautiful thing to me. ⁷ The poor you will always have with you, and you can help

them any time you want. But you will not always have me. 8 She did what she could. She poured perfume on my body beforehand to prepare for my burial. 9 I tell you the truth, wherever the gospel is preached throughout the world, what she has done will also be told, in memory of her."

Matthew 26:6-13

6 While Jesus was in Bethany in the home of a man known as Simon the Leper, 7 a woman came to him with an alabaster jar of very expensive perfume, which she poured on his head as he was reclining at the table. 8 When the disciples saw this, they were indignant. "Why this waste?" they asked. 9 "This perfume could have been sold at a high price and the money given to the poor." 10 Aware of this, Jesus said to them, "Why are you bothering this woman? She has done a beautiful thing to me. 11 The poor you will always have with you, but you will not always have me. 12 When she poured this perfume on my body, she did it to prepare me for burial. 13 I tell you the truth, wherever this gospel is preached throughout the world, what she has done will also be told, in memory of her."

John 12:1-8

1 Six days before the Passover, Jesus arrived at Bethany, where Lazarus lived, whom Jesus had raised from the dead. 2 Here a dinner was given in Jesus' honor. Martha served, while Lazarus was among those reclining at the table with him. 3 Then Mary took about a pint of pure nard, an expensive perfume; she poured it on Jesus' feet and wiped his feet with her hair. And the house was filled with the fragrance of the perfume. 4 But one of his disciples, Judas Iscariot, who was later to betray him, objected, 5 "Why wasn't this perfume sold and the money given to the poor? It was worth a year's wages." 6 He did not say this because he cared about the poor but because he was a thief; as keeper of the money bag, he used to help himself to what was put into it. 7 "Leave her alone," Jesus replied. "It was intended that she should save this perfume for the day of my burial. 8 You will always have the poor among you, but you will not always have me."

Context: Though it is possible that there is more than one anointing of Jesus that occurs in the narratives presented thereby resolving their contradictions, it is more likely that these texts refer to one incident. Both Mark and John have the incident occurring just

prior to Passover and Jesus' death. A woman anoints Jesus with very expensive perfume, and there is an outcry among those present regarding the supposed waste of the perfume. Jesus in return rebukes the critics by claiming that the woman was anointing his body in preparation for burial. The purported betrayal of Jesus by Judas and his subsequent crucifixion at this stage is imminent.

These parallel narratives each present a slightly different account of the anointing of Jesus. Scholars have been uncertain as to whether the above accounts are actually describing the same events, or whether events with a wide number of similarities occurred a number of times. J. H. Bernard in the International Critical Commentary states:

From the second century to our own time the comparison of these narratives has been attempted by critical readers, and various answers have been given to the questions which arise. Were there three anointings or only two? Or did one incident furnish the material for all three stories?²⁸³

While this is an interesting question, it takes us beyond the scope of the reason these narratives were presented in this chapter. Our concern is to demonstrate that Jesus' disciples are taken aback by his supposed waste of perfume. Jesus and his disciples are mainly Jewish, and as such followed Jewish law. The disciples are alarmed when they perceive their teacher to be transgressing the law, indicating the existence of *bal tashhit* at this point in Jewish history.

3.7 Conclusion

Bal tashhit underwent a considerable degree of conceptualisation in the *tannaitic* and *amoraic* periods. We begin by making some general observations. Firstly, the passages in the Babylonian Talmud dealing with cutting trees do not mention the term *bal tashhit* even once. Moreover, the passages that do mention the concept *bal tashhit* by name do not do so in the context of destroying trees. This is of great significance with

²⁸³ J. H. Bernard, *The International Critical Commentary: A Critical and Exegetical Commentary on the Gospel According to St. John*, Volume Two, ed. A. H. McNeile (Edinburgh: T & T Clark, 1942), 409.

regard to the evolution of the concept. After all, it is largely in the Talmudic literature that the prohibition against wastefulness is developed. Since the sources we have analysed appear to be silent in this regard, it is necessary to offer a possible explanation.

A wide variety of texts concerning either specific examples of the prohibition against wastefulness or the destruction of fruit trees were presented in this chapter. These texts were not presented in chronological order, but arranged in a way that exposes the reader to certain nuances with regard to the development of the concept of *bal tashhit* in the form of a narrative. The first texts presented were those concerning the cutting down of fruit trees. As mentioned above, the concept of *bal tashhit* is not mentioned by name in these passages. While surprising, after experiencing a similar trend in the biblical chapter, this was not entirely unexpected. After all, the vast majority of Bible commentators were immersed in Talmudic learning and if the term *bal tashhit* did not appear in reference to trees in the Talmud, then why would it appear in the exegesis of the Torah? To a degree, this was clarified above in b*Ta'anit* 7a where it was elucidated that there exists a rabbinic approach that the specific prohibition of cutting down fruit trees found in Deuteronomy 20:19 emerged from the words “*lo tikhrot*” translated as “do not cut down.”

The next set of texts specifically mention the term *bal tashhit*. Although the term is used with regard to particular situations, it is still implicit that *bal tashhit* is concerned with wastefulness/destruction in a general sense. Moreover, the texts that use the term make it clear that *bal tashhit* is a general prohibition against wastefulness/destruction. Although none of the seven passages that use the term *bal tashhit* presented in this chapter appear in the Mishnah or *Tosefta*, three are presented in the name of *tannaim* (b*Baba Qama* 91b, b*Hullin* 7b, and *Semaḥot* 9:23). While it initially may have appeared that the term itself was an *amoraic* formulation, since there exist three separate texts attributed to three different *tannaim*, this makes a very solid case that the term *bal tashhit* is pre-*amoraic*. From the three texts attributed to the *tannaim*, two deal with specific examples of wastefulness to which the prohibition of *bal tashhit* is applied. The third, the one attributed to Rabbi Eleazar, is the one that is of particular interest. To recall, we

argue that he is the *tanna* who inferred that just as one is prohibited from wasting/destroying material which has value, so too *a fortiori* one is prohibited from harming oneself. In the *Tosefta* we observed a similar line of reasoning but from the other direction: just as one is prohibited from harming oneself, so too is it prohibited to waste/destroy material which has value. The relationship between human value and material is not purported to be on the same level, nor would we imagine it to be. The *a fortiori* argument is only offered in one direction. Nevertheless, the two texts lead to the same place but from different points of origin: we learn about self-harm from wastefulness and about wastefulness from self-harm. This relationship can be defined in terms of an environmental ethic: being wasteful and destructive is harmful to oneself, and harming oneself is wasteful and destructive. Or to simplify further: harming the environment is harmful to oneself. The ethic is beautiful in its simplicity, and is relevant both historically and contemporarily.

This ethic appears to be in its simplest form in the *tannaitic* era. At this point in its development, the *amoraim* have not yet problematised the concept. The relationship between self-harm and wastefulness is at its clearest point in the history of the evolution of the ethic of *bal tashhit*. This is especially the case in the *Tosefta*, but also strongly reinforced through the two *baraitot* in *bBaba Qama* 91b brought in the name of Rabbi Eleazar. The *Tosefta* (*tBaba Qama* 9:31) and Rabbi Eleazar's *baraita* on Genesis 9:5 illustrate a firm connection between the verse and the prohibition against self-harm. At the same time, the *Tosefta* and Rabbi Eleazar's *baraita* on *bal tashhit* indicate an integral connection between Genesis 9:5 and the prohibition against wastefulness/destruction.

These connections are muted by the *amoraim* in the Talmud. It would seem to me that one of the tasks the *amoraim* took upon themselves was to problematise the *halakhic* statements presented in the Mishnah. This they accomplish by bringing the abstract nature of the *tannaitic* discourse back into the real world, where pure legal precepts no longer operate in a vacuum. Let us begin by analysing the *amoraic* approach to fruit trees. We observed above that the *amoraim* established parameters through which fruit

trees could be cut down. At first we encounter the opinion of Rav, a first generation *amora*, who based the decision of whether a fruit tree could be cut down on the productivity of the tree. Ravina, a fifth/sixth generation *amora*, expanded these parameters to include any instance in which the relative value of a fruit tree as a producer of fruit was less than that of said fruit tree for other purposes (for instance as lumber or for the land on which the tree is growing). Ultimately, these modifications to the *halakhah* in its simplest form are essential. After all, realistically it would be very difficult to function as a society if there was no flexibility within this law. From the perspective of the environment, however, neglecting to consider fruit trees as something which have intrinsic value beyond their market value severely weakens the ethic upon which the prohibition to cut them down was initially based. As mentioned above, through this understanding it is possible to imagine a scenario in which even the last tree in the world is cut down. The removal of intrinsic value from the equation and replacing it with an economic based utilitarian parameter that emphasises relative worth results in a significantly weakened principle from an environmental perspective.

3.7.1 Idol Worship

How can we account for the insistence on the issue of idol worship being enmeshed with the prohibition of *bal tashhit*? If indeed *bal tashhit* is an environmental ethic, should not the impetus behind the ethic be less involved with concern over the survival of the uniqueness of the Israelite/Jewish nation and more connected to the environment? The key to understanding *bal tashhit* as an environmental ethic can be found in the question itself. As mentioned above, the ethic of *bal tashhit* came into existence at a time when people did not yet have a macro-awareness of the environment or the capacity to inflict large-scale damage on natural ecosystems. This, however, did not prevent them from having a keen awareness with regard to their local environments. It is more than just eisegesis to claim that there was awareness within the Israelite and later rabbinic cultural sphere, that wastefulness and destructive behaviour are not sustainable practices. An embellishment to this statement would be to say that they were

able to foresee the global consequences of such behaviour. This is simply not the case, nor does it need to be true for *bal tashhit* to be considered an environmental ethic. At its root, the prohibition against wastefulness was an ethic concerned with survival. The limited scale of its application is much narrower than what environmentalism has become today. Within this scope, *bal tashhit* could be considered an ethic of survival.

Such an ethic is clearly concerned with sustainable practices. Wastefulness and destruction are in direct opposition to this. The extremes of such behaviour put the very survival of humans at peril. All this still needs to be understood within the Jewish monotheistic framework. As such, the ethic of *bal tashhit* is primarily concerned with the behaviour of Jews and their survival. Their physical survival can be viewed in more universal terms. The survival of humans who engage in wastefulness and destruction is just as much at peril whether they are Jews or Gentiles. The survival of Jews *qua* Jews, however, is dependent not only on the physical or human dimension of their survival, but also uniquely on their perseverance as Jews. If Jewish identity is compromised to the degree that it completely disintegrates, then physical survival becomes moot. As such, within the Jewish context, the prohibition against wastefulness is concerned with creating boundaries that address both the existential threat to human survival but, more specifically, to Jewish survival. Again, this does not detract from *bal tashhit* as an environmental ethic. Rather, it helps explain the cultural context in which it evolved and developed.

3.7.2 New Testament

Though the focus of this dissertation is the concept of *bal tashhit* in the Jewish tradition, the narratives in the New Testament concerning Jesus are of interest as the Jesus movement at this point is still largely a Jewish movement. The Gospels contain narratives that specifically deal with the topic of wastefulness. Though there are a number of narratives in the Gospels that deal with the destruction of fruit trees, they have been by and large interpreted metaphorically and therefore are not presented in this dissertation. In addition, for the moment the Christian commentary tradition is beyond the scope of

this present research endeavour. The ramification of these limits is my awareness that a rich body of tradition is ignored as it does not fit under the focus on Jewish sources being the rubric of this dissertation. Nevertheless, the presentation of the bare narratives themselves allows some special insights. Most importantly, the “Miracle of the Loaves” narrative indicates Jesus’ concern with the waste of food. Even though the food was procured by miraculous means, Jesus nonetheless was concerned with wasting even a morsel. This concern is indicative of a well-established ethic concerning the wasting of food. It becomes clear that this ethic extends beyond food when Jesus’ disciples question his supposed contradictory wastefulness of perfume. The implication of their outcry is that the established ethic concerning the wastage of food is, in fact, an ethic that clearly extends to all things of worth. The connection between the food and the perfume is that they are both things which have material value. Regardless of what the implications are for Jesus’ approach to wastefulness, or for that matter the Christian approach to wastefulness, one thing is abundantly clear. At the beginning of the first millennium C.E. there was a well-established notion that wastefulness was abhorrent. From a rational perspective, the idea that wastefulness was repugnant at this time in history makes complete sense. This was not the throw-away society in which we currently live. This was not a time of mass produced goods. Rather, most people lived on a subsistence diet from hand to mouth. People did not necessarily need a law prohibiting wastefulness; the mere thought of wasteful behaviour would have been reprehensible. Nevertheless, it is important to take into consideration the socio-religious context in which Jesus and his companions lived. From the miraculous story mentioned above it is apparent that they did not live during a time of great abundance. They lived in Judaea during the time of the Second Temple when Jewish custom (though difficult to determine) must have been the norm. As such, there is extremely good reason to suggest that the views Jesus and his disciples held were directly related to its antecedent status within Jewish custom and law. In conclusion, what makes these narratives so compelling for the Jewish context is that these are the earliest examples of Jews putting the prohibition on wastefulness into practice. Moreover, it is quite clear that Jesus and his disciples take the prohibition

seriously. This lends credence to the non-anachronistic nature of attributions to early *tannaim* in the Babylonian Talmud where *tannaitic* sources, apparently well-known to them but not us, are cited.

3.7.3 Wastefulness and Self-Harm

Finally, the connection between wastefulness and self-harm must be addressed. This is also a relationship that was transformed during the *amoraic* period. Let us first consider that Genesis 9:5 and *bal tashhit* as possible sources for the prohibition against self-harm were rejected by the Talmud. By virtue of these rejections the connection between self-harm and wastefulness was weakened. Moreover, we are introduced to the *amoraic* construct of *bal tashhit degufa adif* (b*Shabbat* 129a and 140b). This nuanced version of *bal tashhit* takes the relationship between the prohibition against self-harm and the prohibition against wastefulness and turns it on its head. I argue that these prohibitions were on relatively equal footing during the *tannaitic* period, with material considered to be an extension of the self. Hierarchically speaking, of course the self was considered to be of higher standing, but from the texts presented here there is reason to assume an awareness that harming material is in fact an indirect way of harming oneself. *Bal tashhit degufa adif* was an *amoraic* way through which the hierarchical element of the relationship between material and the self is highlighted and translated into a legal norm from which various ethical postulates might be inferred. It is used in the Talmud to create a paradigm in which the value of the self always trumps the value of material. In other words, whereas the nuance between direct and indirect harm to one's own body is not strongly differentiated by the *tannaim*, it is differentiated to a great extent by the *amoraim*. This is not to say that the *tannaim* would have considered material to be on par with the self. If they were faced with the scenarios presented in b*Shabbat* 129a of destroying furniture in order to provide a fire for individuals who had just undergone bloodletting, it is safe to assume that they would also have allowed for the furniture to be burned. The difference then rests in the fact that the *amoraim* legislated that preventing

direct harm to the body always takes precedence over preventing indirect harm, even if the indirect harm has the potential to cause greater damage.

From an environmental perspective of long-term sustainability, this approach can be critiqued as being somewhat short-sighted. It allows for short-term gratification with disregard for the potential impact that such actions may cause. This is not to say that this nuanced approach condones unsustainable practices. Instead, it shifts the focus from long-term sustainability to immediate preservation. The biggest problem with this modified ethic is that its boundaries were not legislated. For instance, whereas there would be little disagreement regarding the actions taken in the example of *bShabbat* 129a, the discourse of *bShabbat* 140b, the only other example we have where this nuanced version of *bal tashhit* is presented, is not as clear cut. We are presented with two individuals who claim that when one has the choice of consuming inferior or superior products, choosing the superior products is a transgression of *bal tashhit*. Their approach is rejected by the Talmud because of the principle of *bal tashhit degufa adif*. It certainly is possible that the superior products mentioned in *bShabbat* 140b do indeed have greater health benefits than the inferior products. Nevertheless, used in this context *bal tashhit degufa adif* demonstrates the potential for a slippery slope that would tolerate unsustainable practices for the purpose of self-gratification. Again, this is not to say that the rabbis of the Talmud had such practices in mind when this principle was created. Still, since parameters were not established the door is opened for this possibility. This may point to a bigger issue of a law-based approach to environmental challenges, which may require more contextual flexibility rather than added layers of rigid law.²⁸⁴

As can be seen, the transition from the the *tannaitic* to the *amoraic* approach to *bal tashhit* is fraught with compromises. The impact of the parameter of self-harm on the development of *bal tashhit* established by the *tannaim* was subsequently muted by the *amoraim*. The commoditisation of material further distanced the *amoraic* approach to *bal tashhit* from its place in *tannaitic* thought. As will be seen in the *halakhic* literature that

²⁸⁴ My thanks to Eric Lawee for raising this possibility.

arose in the wake of the Talmud, the stage set by the *amoraim* of Babylon endures over the course of history, especially as seen from the Maimonidean lens through which it was summarised. The relationship between self-harm and wastefulness was all but forgotten. Nevertheless, there exists a series of voices throughout Jewish history where these connections lived on. These voices belonged to Yonah of Gerona, Menaḥem HaMeiri, Solomon Luria, Abraham de Boton, Israel Lipschutz, Jacob Ettlinger, and Barukh Epstein, all among the greatest scholars who lived in their time.²⁸⁵

The question remains, however, why these specific scholars stand out in this regard. Is there something about their times and places that contributed to their making a connection between *bal tashḥit* and self-harm? It is interesting to consider their circumstances, even though ultimately they shed little light on the matter. Both Yonah of Gerona and Menaḥem HaMeiri hailed from the same Spanish region of Catalonia (HaMeiri moved there from Provence) and their lives overlapped by a few years, they likely did not overlap there long enough to involve any direct transmission of knowledge. Ta-Shma and Derovan claimed that even though HaMeiri referred to Yonah of Gerona as his teacher, this could just be because he studied his teachings as opposed to a direct transmission of knowledge.²⁸⁶ At any rate, in his later years Yonah of Gerona lived in Toledo while HaMeiri spent his life in Perpignan. In his earlier years Yonah of Gerona played a prominent role in the rejection of Maimonides' teachings. After Maimonides' writings were turned over to the Christian authorities in an effort to prevent their dissemination, and burned along with other Jewish texts he underwent a transformation "from a Franco-German provenance to a more mixed one."²⁸⁷ The strong anti-Jewish response may have inspired him to change his approach to one held by Maimonides.²⁸⁸

²⁸⁵ There are other scholars that belong to this group, but they will only be presented in the next chapters.

²⁸⁶ Israel Moses Ta-Shma and David Derovan, *Encyclopaedia Judaica*, 2nd Edition, s.v. Meiri, Menahem ben Solomon, ed. Michael Berenbaum and Fred Skolnik (Detroit: Macmillan Reference USA, 2007).

²⁸⁷ Gideon Rothstein, "Working Towards Accommodation: Rabbenu Yonah Gerondi's Slow Acceptance of Andalusian Rabbinic Traditions," *Journal of Jewish Thought and Philosophy* 12, no. 3 (2003): 91.

²⁸⁸ *Ibid.*, 90.

Jacob Ettlinger was the only one in this group who received university education.²⁸⁹ Aside from being a renowned *halakhist* he clearly was immersed in secular knowledge as well. Most important is the fact that one of his most prominent students was Samson Raphael Hirsch.²⁹⁰ Hirsch, as we have seen in the chapter on Bible, was one of the harbingers of the Jewish environmental movement and had without a doubt the most environmentally mature understanding of *bal tashhit* up to the rise of the contemporary Jewish environmental movement. While it is true that Hirsch does not make a direct association between the prohibition against self-harm and the prohibition against wastefulness/destruction as does his teacher, he was still the only Bible commentator who drew an implicit connection between Genesis 9:5 and *bal tashhit*.

In the end, however, it is likely beyond our capacity to understand why these scholars kept this voice alive. Though they were clearly prominent within their immediate communities and beyond, their approaches to *bal tashhit* are not the basis of their fame. In fact, expounding *bal tashhit* was likely no more than a marginal footnote in the prolific careers of these scholars, nor should we expect it to have been otherwise. It is only with Ettlinger's student Samson Raphael Hirsch, where we see a shift that put *bal tashhit* into the spotlight. Hirsch called *bal tashhit* "the first and most general call of God."²⁹¹ It is possible that Hirsch understood the ethical implications of Ettlinger's position and greatly expanded them. One should note, however, that he does not reproduce Ettlinger's approach in his own writings. Nevertheless, Ettlinger's propagation of the approach that the prohibition against self-harm and the prohibition against wastefulness/destruction are one and the same may have influenced Hirsch.

²⁸⁹ Shlomo Eidelberg, *Encyclopaedia Judaica*, 2nd Edition, s.v. Ettlinger, Jacob, ed. Michael Berenbaum and Fred Skolnik (Detroit: Macmillan Reference USA, 2007).

²⁹⁰ *Ibid.*

²⁹¹ Samson Raphael Hirsch, *Horeb*, 279.

Chapter Four: Codes and their Cognates

4.1 Introduction

The next stage in charting the evolution of the prohibition against wastefulness/destruction is to look at how it developed throughout history in the various codes of Jewish law. Unfortunately, there is not enough extant material from the *geonim* of Babylonia to chart their contributions to the evolution of the prohibition in the centuries after the redaction of the Babylonian Talmud. Since the positions of the *geonim* are not mentioned with regard to *bal tashhit* in the scholarship that succeeded them, it is possible that they did not play a significant role in the conceptualisation of the prohibition and the ethic that flows from it. Despite this lack, the codes of Jewish law had a considerable and lasting impact on the development of *bal tashhit*.

Outwardly, the Talmud appears to have a topical arrangement. The rabbis, however, often went off on tangents, making the material confusing and giving it a disorderly appearance. The goal of the authors of the codes was to present Jewish law in a more direct, effective, and accessible manner than the Talmud. For instance, Maimonides, stated that his *Mishneh Torah* would be the only book anyone would need to access knowledge of Jewish law.²⁹² His approach was both criticised and lauded throughout history for many reasons. Important for our purposes is the fact that in his code he presented only the law without the Talmudic discussion. This is of particular importance for the development of the concept of *bal tashhit*. Due to Maimonides' stature, his presentation of any given law influenced its subsequent reception. As Isadore (Yitzḥaq) Twersky writes: "Their [Maimonides' writings] influence, direct as well as indirect, reflected through many works in various genres by a host of authors, was global."²⁹³ As we will see with regard to *bal tashhit*, the aspects of the *tannaitic* and

²⁹² Moshe ben Maimon, *Mishneh Torah: Hu HaYad HaHazaqah LeRabbeinu Moshe ben Maimon, Haqdamat HaRambam, Sefer HaMada*, Volume Two, ed. Mordekhai Dov Rabinovitz (Jerusalem: Mossad HaRav Kook, 1958), 15.

²⁹³ Isadore Twersky, *Introduction to the Code of Maimonides (Mishneh Torah)* (New Haven, CT: Yale University Press, 1980), 1.

amoraic deliberations that Maimonides chose to mute or highlight had an enduring impact.

Not all the codes had the same approach as Maimonides in their presentation of *halakhah*. Their goal was similar to Maimonides, insofar as their quest was for a simplified version of Jewish law, but unlike him not all of them limited themselves to merely stating the law. They, to varying degrees, presented some of the deliberations found in the traditional sources with regard to these laws. This procedure allowed for an understanding of the process through which they reached their conclusions and illustrated that there is not always consensus on a particular legal decision.

The goal of this chapter is to illustrate the ways in which the various codes developed the prohibition against wastefulness and wanton destruction. Specifically, this chapter will highlight the aspects of *bal tashhit* that are retained from the rabbinic sages by the authors of the major codes and the ways that their conceptualisation of the prohibition contributed to its evolution. Only the most influential codes, those with the greatest impact on the Jewish tradition, are presented here.²⁹⁴ These codes include Maimonides' (1138-1204, Spain, Morocco, Land of Israel and Egypt) *Mishneh Torah*, Moses ben Yaakov of Coucy's (13th century, France and Spain) *Sefer Mitzvot Gadol*, Yaakov bar Asher's (c. 1270-1343, Germany and Spain) *Arba'ah Turim (Tur)*, and Yosef Karo's (1488-1575, Spain, Portugal, Turkey, Bulgaria and Land of Israel) *Shulhan Arukh*. Maimonides' preamble to his code, *Sefer HaMitzvot*, and a cognate of his code, *Sefer HaHinukh* (13th century, Spain) of anonymous authorship, often attributed to Aharon HaLevi of Barcelona, but decisively proved to be authored by his brother Pinhas HaLevi,²⁹⁵ are also included in this chapter.

Part of the evolution of *bal tashhit* as a concept occurs through its extended use in the codes and their commentaries. It would be too lengthy a process to deal with every single instance in the codes and their commentaries that deals with

²⁹⁴ It was decided not to include Yitzhak Alfasi's (*Rif*) (1013-1103, North Africa and Spain) *Sefer HaHalakhot* due to a lack of relevant material.

²⁹⁵ Israel Ta-Shma, "Meḥabro HaAmiti shel Sefer 'HaHinukh'," *Kiryat Sefer* 55 (1980): 787-790.

wastefulness/destruction. Indeed such an endeavour is unnecessary in demonstrating the trends that are important to the scope of this dissertation. Instead, this chapter focuses on collecting and analysing the material that demonstrates either continuity or change from the understanding of the prohibition against wastefulness found in earlier material. In order to assist readers in charting their way through the material, this chapter is organised typologically (as is the chapter on responsa), and diachronically within each topic. A number of the subjects dealt with in this chapter were not discussed in the rabbinic chapter. This is generally because the terminology used in the earlier rabbinic texts was not the terminology of *bal tashhit*.

4.2 Fruit Trees and Wastefulness/Destruction in General

Maimonides, *Sefer HaMitzvot LaRambam* (Book of Commandments) – *Mitzvat Lo Ta'aseh* 57

The 57th commandment is that when laying siege upon a city we were warned not to destroy the fruit trees for the purpose of harming its inhabitants and tormenting their hearts. God commanded (Deuteronomy 20:19): “You must not destroy its trees...you may eat of them, but you must not cut them down.” And so too is all wastefulness included in this commandment, such as burning a garment for no purpose or breaking a utensil for no reason; these too are transgressions of “do not destroy” (*lo tashhit*) and the transgressor is liable. In *bMakkot* 22a it is clarified that anyone who cuts down good trees is liable, the forewarning being (Deuteronomy 20:19): “for you may eat of them, but you must not cut them down.” The clarification of this commandment has already been included in the discussion in chapter 2 of *bBaba Batra*, (26a).²⁹⁶

Following the rabbinic precedent, Maimonides expanded the specific commandment of not cutting down fruit trees during wartime to the general prohibition against wastefulness and wanton destruction. Special attention needs to be paid to the language used by Maimonides in the expansion of the prohibition from fruit trees to all things. He defined wastefulness as an act which is done for no purpose, in other words,

²⁹⁶ Moshe ben Maimon, *Sefer HaMitzvot: Book of Commandments*, Volume One, ed. Mordekhai Yehudah Leib Zaqaš, trans. Yosef Kapah (Jerusalem: Mossad HaRav Kook, 1958).

wantonly. This suggests the possibility that an act of wastefulness or destruction is permitted if it has a purpose. In his *Mishneh Torah*, Laws of Kings presented directly below, this purposeless destruction is conceptualised through a term coined by Maimonides, “*derekh hashḥatah*” (a destructive manner), and is elaborated upon below.

Maimonides, *Mishneh Torah, Hilkhot Melakhim UMilḥamoteihem, (Laws of Kings and their Wars) 6:8-10*

6:8: Fruit bearing trees outside of the national borders are not to be cut down and they must not be deprived of their water source in order that they dry out, as it is written (Deuteronomy 20:19): “You must not destroy its trees,” and anyone who cuts down such trees is liable. This is applicable not only during siege, but in any place where a person cuts down a fruit tree in a destructive manner the person is liable. It is, however, permissible to cut down a fruit tree if it is damaging other fruit trees, or it is damaging someone else’s field, or if it has greater value cut down; the Torah only prohibited cutting down such trees in a destructive manner (*derekh hashḥatah*).

6:9: Any non-fruit bearing tree may be cut down even for no purpose, as may a fruit bearing tree that has aged and produces such a small quantity of fruit that it is not worth the effort that it requires to tend to it. How much must an olive tree produce so that it is not cut down? Such a tree must produce [at least] a quarter *kab* of olives, while a palm tree that produces [at least] a *kab* of dates must not be cut down.

6:10: And not only are fruit bearing trees included in this prohibition, but so too anyone who breaks utensils, tears garments, destroys a building, blocks a spring of water, and wastes food in a destructive manner (*derekh hashḥatah*) transgresses *lo tashḥit*, but is only liable for lashes for transgressing a rabbinic edict [and not a biblical commandment].^{297,298}

This is the central Maimonidean text dealing with the prohibition against wastefulness and wanton destruction. As demonstrated in the introduction, it is often

²⁹⁷ This distinction is made because there is no explicit commandment in the Torah prohibiting wastefulness, whereas there is an explicit commandment prohibiting the cutting down of fruit trees.

²⁹⁸ Moshe ben Maimon, *Mishneh Torah: Hu HaYad HaḤazaqah LeRabbeinu Moshe ben Maimon, Sefer Shofetim*, Volume Seventeen (Jerusalem: Mossad HaRav Kook, 1959).

cited in environmental writings discussing *bal tashhit*, and it is one of the main texts of reference in the responsa literature. This is based on Maimonides' stature as one of the greatest Jewish scholars of all time. Another significant reason is the simplicity and clarity of its presentation. Since this dissertation is concerned with the tradition histories of the ethic of *bal tashhit*, it is important not only to demonstrate what Maimonides contributed to advance the concept, but also to illustrate the way in which he changed the concept from its manifestation in the Talmud. In order to accomplish this goal, each of the three *halakhot* is analysed, illustrating the ways in which it is similar to the rabbinic understanding of the prohibition, and the manner in which the prohibition evolved into what might be called the Maimonidean trajectory.

In Laws of Kings 6:8, we observe a number of important elements. First, Maimonides expanded the prohibition against cutting down fruit trees through his exegesis of Deuteronomy 20:19. He removed the prohibition from its wartime context and expanded it to include fruit trees in all places. From our analysis of the prohibition as it appeared in rabbinic texts, it is clear that the prohibition was already understood to apply to contexts beyond warfare. Even though this is clearly implied in the *tannaitic* and *amoraic* literature, nowhere is it explicitly mentioned. The examples brought by Maimonides all appear in the Talmud: fruit trees may be cut down if they are damaging other fruit trees (b*Baba Batra* 26a and b*Baba Qama* 92a), if they are damaging someone else's field (b*Baba Batra* 26a), or if they are more valuable cut down than as trees (b*Baba Qama* 91b). Thus, through his assertion that, "This is applicable not only during siege, but in any place where a person cuts down a fruit tree in a destructive manner he is liable," we see that Maimonides expanded the parameters of the prohibition in an explicit manner. The rabbis of the Talmud understood this implicitly, but nowhere prior to Maimonides do we see this idea explicitly articulated. Through this assertion, however, he created new parameters for the prohibition that do not appear in the Talmud even implicitly, namely that *bal tashhit* only applies in situations where the act is done in a destructive manner (*derekh hashhatah*). Maimonides implied that such acts are committed with the intent to destroy.

There are a number of indicators that support the claim that Maimonides was referring to destructive acts that are deliberately wasteful/destructive. First and foremost, a person is only ever liable for capital or corporal punishments for intentionally committed transgressions. All unintentional transgressions either go unpunished, or are liable for fines or various offerings at the Temple.²⁹⁹ For example, in *Hilkhhot Shegagot* (Laws Concerning Unintentional Transgressions) 1:1 Maimonides asserted that all unintentional transgressions of prohibitions for which one is liable for *karet* (untimely death by heaven) must sacrifice a sin offering in lieu of punishment. Thus, because Maimonides clarified that a person is liable for corporal punishment for acts committed *derekh hashḥatah*, he must have been referring to acts that were deliberately destructive (either the act itself or the direct consequences of the act).

The notion that an action can be punished on the basis of intent is reinforced in Maimonides' *Hilkhhot Shabbat* (Laws Concerning the Sabbath) 1:17. In this law, Maimonides asserted that a person who ruins/destroys (*meqalqel*) items on the Sabbath is exempt from punishment for desecrating the Sabbath (but is still liable for transgressing the prohibition against wastefulness/destruction). In his conclusion to this commandment, Maimonides added the words "*ho'il vekavanato leqalqel*" (because his intent was to destroy), affirming that there is only a transgression when there is intent. The person either had to deliberately desecrate the Sabbath, or deliberately commit a destructive act. If a person is not deliberately engaged in destruction, but rather is intending to desecrate the Sabbath, the person would be liable for desecrating the Sabbath (even though his action was also unintentionally destructive). If, however, a person is intending neither to desecrate the Sabbath nor to intentionally be destructive, they would not be liable at all. Maimonides' statement "*ho'il vekavanato leqalqel*" demonstrates not only that Maimonides was clearly concerned with the intent of the individual committing the act, but was specifically concerned with the motive of wastefulness/destruction. With regard to *bal tashḥit*, if a person's intention was not to be destructive/wasteful (*derekh*

²⁹⁹ For a fuller description of the parameters of unintentional transgressions see Moshe ben Maimon, *Mishneh Torah – Hilkhhot Shegagot* (Laws Concerning Unintentional Transgressions).

hashhatah), the person is not liable. Finally, understanding Maimonides' *derekh hashhatah* as destructive intent is supported by four different translations of the *Mishneh Torah* into English. All these translations translate the term *derekh hashhatah* either as destructive intent, or as deliberate destruction.³⁰⁰

Maimonides took the various examples in the Talmud that discussed the prohibition against cutting down trees and added to them the parameter of destructive intent. While it can be argued that this is implied in the Talmud, the generalisation suggested by Maimonides appears to expand the exceptions to the prohibition. The generalisation offered in the Talmud by Ravina (b*Baba Qama* 91b), who claimed that as long as a fruit tree is worth more cut down than planted it is permissible to remove it, is still confined within economic parameters. The parameters of destructive intent offered by Maimonides include the economic variable, but go significantly further in providing allowances for the cutting down of fruit trees. One can easily imagine a scenario where the cutting down of a fruit tree comes at an economic loss but the act is not done with destructive intent.³⁰¹ Thus, the Maimonidean creation of the concept of *derekh hashhatah* resulted in a much more lax system than the one found in the Talmud insofar as fruit trees are concerned.

Halakhah 9 also shows a strong deviation from the prohibition against wastefulness as found in the rabbinic tradition. Maimonides asserted that a non-fruit bearing tree may be cut down under any circumstance, even needlessly. The only way to understand such an extreme position in reference to non-fruit bearing trees is to go back to the verses in Deuteronomy. The prohibition in Deuteronomy 20:19 with regard to fruit

³⁰⁰ Moshe ben Maimon, *The Code of Maimonides – Book Fourteen: The Book of Judges*, trans. Abraham M. Hershman (New Haven, CT: Yale University Press, 1949), Moshe ben Maimon, *Kings, their Wars and the Messiah: From the Mishneh Torah of Maimonides*, trans. H. M. Russell and J. Weinberg (Edinburgh: Royal College of Physicians of Edinburgh, Publication No. 61, 1987), Moshe ben Maimon, *Maimonides, Mishneh Torah: Hilchot Melachim U'Milchamoteihem – The Laws of Kings and Their Wars*, trans. Eliyahu Touger (New York: Maznaim Publishing Corporation, 1987). Moses Hyamson did not translate this part of the *Mishneh Torah*, but in his translation of Maimonides' *Hilchot Yesodei HaTorah* 6:7, he translates the term *derekh hashhatah* as destructive intent. Moshe ben Maimon, *Mishneh Torah: The Book of Knowledge*, ed. and trans. Moses Hyamson (Jerusalem: Boys Town Publishers, 1965).

³⁰¹ For instance, a fruit tree might be blocking a window, but providing shade at the same time. Cutting it down would unblock the window, but also raise the electricity bills due to increased air conditioning.

trees is juxtaposed in the very next verse with a directive to cut down non-fruit bearing trees in their stead. Contextually, the verse indicates that non-fruit bearing trees are to be cut down for the purpose of building siege-works, but removed from its context the verse can be taken to mean that it is permitted to destroy non-fruit bearing trees without reason, that is, wantonly. It is difficult to understand his approach to non-fruit bearing trees in any other way, especially in light of the very next clause.

Halakhah 10 is an extension of *bal tashhit* to include other forms of wastefulness and wanton destruction. Even though Maimonides does not specifically state in the *Mishneh Torah* that the prohibition includes all things, his position on the general applicability of *bal tashhit* is clear from what he wrote in *Sefer HaMitzvot*, cited above. The specific examples presented as included under *bal tashhit* appear to be a collection from earlier sources including Scripture: breaking utensils (*tBaba Qama* 9:31), tearing garments (*tBaba Qama* 9:31 and *bQiddushin* 32a), and blocking a spring (*2Kings* 3:19), while the waste of food appears in multiple places in *bBerakhot*.³⁰²

Sefer HaHinukh

Although *Sefer HaHinukh* is anonymous it has been attributed by many to Aharon HaLevi of Barcelona. As mentioned above, Israel Ta-Shma convincingly claimed that the work belonged to his older brother, Pinhas HaLevi. Though not much is known about HaLevi the elder, Aharon HaLevi was one of Yonah of Gerona's students. As we saw in the rabbinic chapter, Yonah of Gerona was one of the few voices in a fragmented line of transmission keeping the connection between wastefulness and self-harm alive. His position (cited below) views the prohibition against wastefulness as an issue of human morality. His approach, however, does not, for obvious reasons, illustrate an underlying awareness of global environmental issues, nor does he tie the prohibition against wastefulness to the prohibition against self-harm.

³⁰² The examples of wastefulness in *bBerakhot* do not mention the specific prohibition of *bal tashhit* even though it is implied. These examples have not been presented and are beyond the scope of this dissertation.

Sefer HaHinukh (529): The author claimed that we learn from Deuteronomy 20:19 not only about the prohibition against cutting down fruit trees during wartime, but that all forms of wastefulness and destruction are included under the umbrella of this prohibition. He asserted that the purpose of this commandment was to instruct our inner selves to embrace goodness and usefulness. Through the love of good things one is distanced from evil and destruction. Most importantly he claimed that:

...this is the way of the righteous and people of deeds who love peace and delight in the goodness of human beings and draw them near to the Torah; they do not waste even a grain of mustard in this world. Their instinct when encountering wastefulness and destruction is to try to prevent it with all their strength...³⁰³

Sefer HaHinukh is one of the only sources to discuss the rationale behind the prohibition against wastefulness/destruction. As can be seen, his rationalisation could be construed as being in step with an environmental ethic. Those who pursue goodness and peace avoid even the smallest degree of wastefulness. Even the most minute wastefulness conceivable, described here as “a grain of mustard,” is seen as a diminishment of the extent to which one should aspire to observe this commandment. *Sefer HaHinukh* understood *bal tashhit* to be a theoretical ideal, perhaps never fully possible to achieve, but certainly something toward which to aspire. According to the author, those who attempt to uphold this ethic are pursuers of goodness, while those who transgress it have an evil inclination. To reinforce this point he presented the *baraita*³⁰⁴ which states that those who engage in destructive behaviour also have the propensity to worship idols.

He built on the theory with practical guidelines based on those established by the rabbis of the Talmud. These guidelines outline the application of the prohibition into the real world, at least in part. Within this transition *Sefer HaHinukh* asserted that the prohibition only applied to the cutting down of fruit trees in a destructive manner (*derekh hashhatah*). In other words, when there are utilitarian reasons for cutting down a fruit tree, it is permissible. Thus, in a practical sense, the prohibition was understood only to

³⁰³ Pinhas HaLevi (?), *Sefer HaHinukh*, ed. Haim Dov Chavel (Jerusalem: Mossad HaRav Kook, 1952).

³⁰⁴ See *tBaba Qama* 9:31 and *bShabbat* 105b found in the previous chapter.

apply to the intent of the individual, and not only with regard to fruit trees, but to all things. One can assume, of course, that the author understood the utilitarian exceptions through which one is permitted to engage in wastefulness/destruction to be under the moral sway of the theory on which they are based.

Interestingly, like Maimonides, the only things that can be destroyed, even wantonly, are non-fruit producing trees. Again, this exception can really only be understood in light of Deuteronomy 20:20 in which permission is granted to destroy non-fruit bearing trees. Contextually, the plain sense of the verse indicates that one is only permitted to “destroy” non-fruit bearing trees for the purpose of building a siege, meaning that their destruction is not wanton. However, because the Torah granted permission “*lehashhit*” (to destroy) the non-fruit bearing trees, this was incorporated into *halakhah* and stands out as an exception to the rule. Samson Raphael Hirsch addressed this issue, as has been shown in the Bible chapter. Hirsch was clearly aware of the problematic that arose from the wording of the text, and its subsequent appearance in Maimonides’ code. Hence he asserted that non-fruit bearing trees cannot be wantonly destroyed. This assertion would not have been necessary if Maimonides, and subsequently *Sefer HaHinukh*, had not specifically listed non-fruit bearing trees as an exception to the prohibition.

Moses of Coucy, *Sefer Mitzvot Gadol* 229

Moses of Coucy approached the prohibition of *bal tashhit* in a systematic manner. He began by stating the contextual prohibition found in Deuteronomy 20:19 and discussed the expansion of the prohibition insofar as it related to fruit trees. He mentioned the glosses of various exegetes on the verse such as Rashi and Rashbam, the Talmudic deliberations, and then Maimonidean codification of the prohibition to cut down fruit trees. After demonstrating that the sources understood the prohibition against

cutting down fruit trees beyond the immediate context of the verse in which it appears, he then asserted that the prohibition applies not only to fruit trees, but to all things.³⁰⁵

4.3 Idolatry

Maimonides, *Sefer HaMitzvot LaRambam* (Book of Commandments) – *Mitzvat Aseh* (Positive Commandment) 185

The 185th commandment is that we have been commanded to eliminate all forms of idol worship and its houses in all manners of elimination and destruction: breaking, burning, ruining, and cutting down; each type should be destroyed by the method that suits it best. Meaning, whatever method is most expeditious in eliciting its destruction. The intention is that we should not leave any trace of them. And He, may He be praised, said [Deuteronomy 12:2]: “Utterly destroy all the places in which idols are worshiped...” God also commanded [Deuteronomy 7:5]: “Break down their altars...” and [Deuteronomy 12:3]: “Break down their altars...” Since the phrase “a positive commandment” is mentioned in the Talmud concerning idolatry, a question is posed in b*Sanhedrin* [90a]: what possible positive commandment is there concerning idol worship? The answer was given by Rav Hisda, that one is commanded in the Torah “Break down their altars...” The *Sifre* (*Re’eh*) stated, “How do we know that if an Asherah tree is cut down and replanted even ten times it is still obligatory to cut it down? From what was written [Deuteronomy 12:2]: ‘Utterly destroy.’” It is also stated there [Deuteronomy 12:3]: “And you shall wipe out their names from that place.” In the Land of Israel you are commanded to pursue them, but you are not commanded to pursue them outside of the land [of Israel].³⁰⁶

This passage in *Sefer HaMitzvot* is connected to the argument in the previous chapter regarding the inherent relationship between the prohibition against wastefulness and idolatry. The exception that is made to the prohibition is specifically with regard to idol worship; one is prohibited to engage in destructive/wasteful behaviour, save with regard to idolatry.³⁰⁷ The vehemence with which Maimonides describes the obligation of

³⁰⁵ Moses of Coucy, *Sefer Mitzvot Gadol, Volume One: Lo Ta’aseh* (Jerusalem: Offset Brody-Katz, 1973).

³⁰⁶ Moshe ben Maimon, *Sefer HaMitzvot*.

³⁰⁷ There are, of course, other exceptions, but they are the products of the conceptualisation of *bal tashhit* and not explicit directives in Scripture.

eradicating idol worship from the Land of Israel (“breaking, burning, ruining, and cutting down; each type should be destroyed by the method that suits it best.”) is not his own, but can already be found in Scripture (Deuteronomy 7:5): “This is what you are to do to them: break down their altars, smash their sacred stones, cut down their Asherah groves, and burn their idols in the fire.” The destruction of objects associated with idol worship is connected to the general rabbinic prohibition of *bal tashhit*, but the destruction of the Asherah is more closely related to Deuteronomy 20:19 and the prohibition against cutting down fruit trees. Though it is not entirely clear what type of tree the Asherah is, Yosef Karo understood that a fruit tree could be an Asherah.³⁰⁸ This would make the act of destroying the Asherah almost a direct transgression of the Scriptural origin of the prohibition against wastefulness.³⁰⁹ The command to utterly destroy idol worship, which is one of the three most significant transgressions, stands as an exception to *bal tashhit*. It is interesting to point out that Yaakov bar Asher in *Tur, Yoreh De’ah, Hilkhot Avodat Kokhavim* and Yosef Karo in the *Shulhan Arukh, Yoreh De’ah, Hilkhot Avodat Kokhavim* asserted that it is prohibited to derive enjoyment from things associated with idol worship, but did not go as far as Maimonides with regard to the obligation to utterly destroy such accoutrements. Yaakov bar Asher did mention that if wood from an Asherah tree is used in an oven that the oven needs to be destroyed,³¹⁰ but he remained silent on the tree itself.

Maimonides, *Mishneh Torah, Hilkhot Avodat Kokhavim VeHukot Ovdeihah* (Laws Concerning Idolatry) 7:19

If a knife that has been used for idol worship is used [by a Jew] for slaughter, [the meat] is permitted because the act [of killing an animal] is destructive. But if the animal slaughtered was sickly, it is prohibited, because [the act of killing the animal] is an improvement derived from the effects of idolaters. And so, too, is it prohibited to cut meat with the knife because the act [of cutting the meat] is beneficial. And if he cut the meat

³⁰⁸ See *Shulhan Arukh, Yoreh De’ah, Hilkhot Avodat Kokhavim* 142:12.

³⁰⁹ The reason it cannot be considered a direct transgression is that a certain degree of exegesis is required in order to extend the prohibition of Deuteronomy 20:19 beyond wartime.

³¹⁰ See *Tur, Yoreh De’ah, Hilkhot Avodat Kokhavim* 142.

in a wasteful and destructive manner (*derekh hefsed vehashhatah*) [the meat] is permitted.³¹¹

Yosef Karo, *Shulhan Arukh, Yoreh De'ah, Hilkhoh Avodat Kokhavim (Laws Concerning Idolatry) 142:2*

If a knife that has been used for idol worship is used [by a Jew] for slaughter, [the meat] is permitted because the act is destructive. But if the animal slaughtered was sickly, it is prohibited, because [the act of killing the animal] is an improvement derived from the effects of idolaters. And so, too, is it prohibited to cut meat with the knife, because the act of [cutting the meat] is beneficial. And if he cut the meat in a wasteful and destructive manner (*derekh hefsed vehashhatah*), [the meat] is permitted.³¹²

The premise is that benefit may not be derived from the tools of idolatry. If benefit is derived from the knife, a transgression occurs and the transgressor is liable for punishment. Maimonides, and later, Yosef Karo had almost identical approaches to the use of a knife belonging to an idolater. Both clarified that there are exceptions to this rule. They indicated that if an animal is slaughtered using the knife of an idol worshiper, the meat of the animal is still permitted for consumption, because the issue surrounding the knife stems from the prohibition of benefiting from the effects of idol worship. In this case, the knife is used for a detrimental activity, (that is, the killing of an animal). The act of using the knife for this purpose, therefore, does not render the flesh of the animal unsuitable for consumption. Preparing the meat of the animal by cutting it with such a knife, however, is prohibited because the act is beneficial. This is discussed in the Talmud (*bHullin* 8a-b) and at considerable length in some of the commentaries on the *Mishneh Torah*. These discussions are beyond the scope of this dissertation, but what is important for our purposes is that both Maimonides and Karo agreed that if the meat is prepared in a wasteful/destructive manner (*derekh hashhatah*) it is permissible to benefit from it. This addendum is not found in the Talmud, though perhaps it can be argued that

³¹¹ *Ibid.*

³¹² Yosef Karo, *Shulhan Arukh: Yoreh De'ah, With All Commentaries*, Volume Two (New York: Grossman's Publishing House, 1954).

it is implied. Maimonides, and later Karo, shifted the discussion surrounding a specific prohibition regarding the use of a knife belonging to an idolater to a discussion of waste versus benefit.³¹³ Understood in the context of *bal tashhit*, the implication is that one can engage in illicit activities and not be punished for them as long as there is waste and destruction involved in the process. One can assume, however, that they would still be liable for the transgression of *bal tashhit*. This shift is indicative of the expanded understanding of *bal tashhit* promulgated by Maimonides.

These laws were directly contrasted with the treatment required for Jewish holy items:

Maimonides, *Mishneh Torah, Hilkhoh Yesodot HaTorah* (Laws Concerning the Foundation of the Torah) 6:7

Anyone who tears down even one stone from the tabernacle, Temple or Temple Court in a destructive manner is liable, as it is said with regard to idol worship [Deuteronomy 7:5]: “Break down their altars,” and it is written [Deuteronomy 12:4]: “You shall not do thus unto the Lord your God.” And so, too, one who burns consecrated wood in a destructive manner (*derekh hashhatah*) is liable, as it is stated [Deuteronomy 12:3]: “Burn with fire their Asherah groves,” and it is written [Deuteronomy 12:4]: “You shall not do thus unto the Lord your God.”³¹⁴

Just as preventing idolatrous practices is seen as a valid exception to the prohibition against wastefulness, so too is behaviour associated with glorifying Judaism. For instance, Yehudah ben Shmuel HeḤasid (1140-1217, Germany) (*Sefer Ḥasidim*, 884³¹⁵) claimed that if a person writes a book (presumably a Torah scroll) and one of the pages is of inferior quality, it is permitted to replace it with a better one. He specifically stated that such an act is not a transgression of *bal tashhit*.³¹⁶ Avraham bar Yehiel Mikhel Danziger (1748-1820, Poland, Bohemia and Lithuania) (*Ḥayei Adam, Hilkhoh Tzitzit* 11:32) and Yisrael Meir HaCohen (1839-1933, Poland) (*Mishnah Berurah, Hilkhoh Tzitzit* 15:3) permitted the removal of kosher fringes from a *tallit* (prayer shawl) in order

³¹³ Yaakov bar Asher did not include this parameter in the *Tur*.

³¹⁴ Moshe ben Maimon, *Sefer HaMada*.

³¹⁵ 883 in some editions.

³¹⁶ Yehudah ben Shmuel HeḤasid, *Sefer Ḥasidim* (Bologna: 1538).

to replace them with nicer ones, specifically claiming that such a practice was not a transgression of *bal tashhit* because the act is not performed in a destructive manner (*derekh hashhatah*).³¹⁷ Danziger used Herod's renovation and improvements of the Temple described in *bBaba Batra* 4a as a proof that in all instances when holy or religious articles are being upgraded, even though they were already fully functional, the act is permitted, and not considered a transgression of *bal tashhit*. These exceptions appear only to extend to religious contexts and not beyond.

4.4 Mourning

As we have already observed in the Rabbinics chapter, mourning is one of the times when *bal tashhit* becomes a major issue. The rabbis were concerned with preventing Jews from emulating the foreign cultural practices of their neighbours. We have already seen in the previous chapter that wastefulness and destruction, including self-harm, were practices that the rabbis wanted to deter. Many of these laws add little to our knowledge of the prohibition of *bal tashhit*. What is of particular interest, however, is that in some instances the laws which were only implicitly connected to *bal tashhit* by the sages, are explicitly presented in such terms within this new framework.

Maimonides, *Mishneh Torah, Hilkhot Evel* (Laws of Mourning) 4:2

It is prohibited to bury a person in shrouds of silk and clothing embroidered in gold, even if they are a leader of Israel. Such conduct is considered to be loutish and wasteful (*hashhatah*) and the act of idolaters.³¹⁸

Maimonides, *Mishneh Torah, Hilkhot Evel* (Laws of Mourning) 14:24

A person should be taught not to be destructive (*hablan*) and not to destroy (*lo yafsid*) utensils or discard them in a wasteful manner. It is better to give them to the poor than to send them to rot and worms. And

³¹⁷ Avraham bar Yehiel Mikhel Danziger, *Hayei Adam* (Vilnius: Menaḥem Mann and Simḥah Zimel publishers (sic 1799) 1829, and Yisrael Meir HaCohen, *Sefer Mishnah Berurah, Oraḥ Ḥaim*, Volume One (Jerusalem: Va'ad HaYeshivot BeEretz Yisrael, 1972).

³¹⁸ Moshe ben Maimon, *Sefer Shofetim*.

anyone who buries the dead with many effects transgresses the prohibition against wastefulness (*lo tashhit*).³¹⁹

Yaakov bar Asher, *Tur, Yoreh De'ah, Hilkhoh Aveilut (Laws of Mourning) 349*

...A person is taught not to be wasteful (*hablan*) for it was said, anyone who buries the dead with many effects transgresses the prohibition against wastefulness (*bal tashhit*), these are the words of Rabbi Meir.³²⁰

Yosef Karo, *Shulhan Arukh, Yoreh De'ah, Hilkhoh Aveilut (Laws of Mourning) 349:4*

And anyone who buries the dead with many effects transgresses the prohibition against wastefulness (*bal tashhit*).³²¹

These two commandments were taken by Maimonides directly from Tractate *Semaḥot, Baraitot meEvel Rabbati* 4:11 and *Semaḥot* 9:23 respectively. The first of these two laws is discussed in *bMo'ed Qatan* 27a. In the Talmud, the burying of the dead in costly garments is prohibited due to the shame that it causes those who cannot afford to lavish such riches upon their dead. Already in *Semaḥot* there is a shift from the Talmudic premise of embarrassment to that of wastefulness and idolatry as the reasons to avoid such practices. It is very difficult to analyse the reasons for this shift. *Semaḥot* is a post-Talmudic compilation, though it contains within it earlier material. There is the possibility that around the time *Semaḥot* was being compiled there was also an expanding conceptualisation of *bal tashhit*, thereby increasing the range of circumstances in which the concept is brought to bear. With regard to *Hilkhoh Evel* 14:24, there is also no significant Maimonidean development of the prohibition against wastefulness. The one nuance that Maimonides added to this commandment was a dose of rationalisation, “It is better to give them to the poor than to send them to rot and worms.” In *Semaḥot* 9:23 the sages mention that burying the dead with too many effects is “disgraceful” and “invites more worms”, but there is no mention of giving these items to the poor. Yitzhak Twersky

³¹⁹ *Ibid.*

³²⁰ Yaakov bar Asher, *Tur: Yoreh De'ah*, Volume Two (Jerusalem: Makhon Hatam Sofer, 1972).

³²¹ Yosef Karo, *Shulhan Arukh: Yoreh De'ah*, Volume Three (New York: Grossman's Publishing House, 1954).

argues that adding an ethical dimension to the commandments even when there is no pressing need is a characteristically Maimonidean attribute.³²²

Maimonides, *Mishneh Torah, Hilkhot Evel (Laws of Mourning) 14:25*

[They] castrate a horse which had been ridden on by a king who dies. [He] removes the hooves of the calf [heifer] which had pulled the cart in which he sat from the knee downwards in a manner that does not render it unfit for consumption...³²³

Maimonides, *Mishneh Torah, Hilkhot Evel (Laws of Mourning) 14:26*

They burn the bed and all the effects of a king or leader who dies, and doing so is not an emulation of the Amorites, and is not considered wasteful, as it is stated [Jeremiah 34:5]: “Thou shalt die in peace; and with the burnings of thy fathers, [the former kings] that were before thee, so shall they make a burning for thee.”³²⁴

In these two laws Maimonides dealt with ways in which kings or rulers are to be mourned. On its surface, the first of these two laws appears to be a violation of the prohibition against harming animals (*tza'ar ba'alei hayim*). It appears that an exception is made to this law due to the fact that honouring the king is of greater import. Though this is certainly an ethical issue with significant environmental ramifications, it remains beyond the scope of this dissertation. What is relevant to our discussion, however, is the discourse surrounding the difference in treatment of the king's horse and his calf [heifer]. This issue is discussed already in *bAvodah Zarah* 11a. A horse is an unclean animal, but a calf in theory can be eaten if ritually slaughtered. Rashi explained that while it is prohibited to render a clean animal unclean, cutting the calf below the knee does not make it unfit for consumption. Even though this particular calf is prohibited for consumption because it belonged to the king, it is still not permissible to render it unfit. Yosef Karo in his *Kesef Mishneh, Hilkhot Evel* 14:25 explained that the prohibition in question is in fact *bal tashhit*:

³²² Yitzhak Twersky, “On Law and Ethics in the *Mishneh Torah*: A Case Study of *Hilkhot Megeillah* 11:17,” *Tradition: A Journal of Orthodox Thought* 24, no. 2 (1989): 138.

³²³ Moshe ben Maimon, *Sefer Shofetim*.

³²⁴ *Ibid.*

[They] castrated a horse which had been ridden on by a king who dies, etc.: And what was written [with regard to removing the hooves of the calf] in a manner that does not render it unfit for consumption is so that the prohibition against wastefulness is not transgressed (*bal tashhit*).³²⁵

The *Tosafot* (b*Avodah Zarah* 11a) claimed that in the case of kings, an exception is made to the prohibition of *bal tashhit* in deference of their stature.

Barzilai Yaabetz (d. 1760, Turkey) in his *Leshon Arumim, Hilkhot Evel* 14:25: had a very lengthy discussion with regard to this practice contradicting the prohibition against wastefulness and the prohibition against harming animals. In part, he reconciled the matter by explaining, as clarified by Maimonides in *Laws of Kings* 6:10, that *bal tashhit* with regard to all things other than fruit trees is considered only to be a rabbinic prohibition. In order to honour the king one is permitted to “transgress” rabbinic edicts, but not scriptural ones. Yaabetz circumvented this problem by stating that since the prohibition is only understood to be transgressed through acts of what Maimonides coined as being performed in a destructive manner (*derekh hashhatah*), and since honouring kings is not a destructive act, *bal tashhit* is not truly transgressed.³²⁶ Raphael Ashkenazi, (d. 1825, Turkey), in *Mareh HaNogah, Hilkhot Evel* 14:25, attempted to reconcile Rashi with *Tosafot*. He claimed that even though it is permitted to destroy in order to honour the king, once this has been done sufficiently, anything superfluous is in fact a transgression of *bal tashhit*. As such, mutilating a clean animal to the extent that it becomes unclean no longer honours the king and enters the domain of wanton destruction.³²⁷

Yaakov bar Asher in his code the *Tur, Yoreh De'ah, Hilkhot Aveilut* 348-349 and 352 did not add much that was novel to what was already written by Maimonides with regard to *bal tashhit* and mourning practices.³²⁸ He did, however, make explicit in section

³²⁵ Yosef Karo, *Kesef Mishneh: Sefer Shofetim*, in Moshe ben Maimon, *Mishneh Torah: Hu HaYad HaHazaqah LeRabbeinu Moshe bar Maimon Za"l, Sefer Shofetim*, Volume Twelve, ed. Shabse Frankel (New York: Congregation Bnei Yosef, 1998).

³²⁶ Barzilai Yaabetz, *Leshon Arumim*, Friedberg Edition (Jerusalem: 2006).

³²⁷ Raphael Ashkenazi, *Sefer Mareh HaNogah* (Salonika: Sa'adi HaLevi Ashkenazi, 1840).

³²⁸ Yaakov bar Asher, *Tur: Yoreh De'ah*, Volume Two.

348 that while it is permissible to burn valuable items in order to honour kings and leaders, doing so to honour a simple person is considered to be haughty and wasteful. This can be found in t*Shabbat* 7:18, and is perhaps implied by Maimonides, but is only explicitly mentioned by one of the commentaries on the *Mishneh Torah*.³²⁹ The major innovation by both Maimonides and Yaakov bar Asher is that they framed this practice (or the prohibition thereof with regard to the simple person) in terms of wastefulness. Maimonides asserted that it is not considered wasteful to burn the effects of kings and leaders, while Yaakov bar Asher approached the issue from the other direction by claiming that burning the possessions of a simple person is considered wasteful. Conceptualising these mourning practices through the lens of the prohibition against wastefulness is novel and not found in the *Tosefta*.

Yosef Karo, *Shulḥan Arukh, Yoreh De'ah, Hilkhot Aveilut (Laws of Mourning) 348:1*

The bed and effects of the king are burned, but this is prohibited for the simple person.³³⁰

The vagueness of this law is surprising, especially considering that both Maimonides and Yaakov bar Asher elaborated that this practice is not considered to be a transgression of *bal tashhit*. This void is filled in part by the commentaries and compositions on the *Shulḥan Arukh*. For instance, Mordechai Yaffe (1530-1612, Poland), in his *Levush, Yoreh De'ah* 348:1,³³¹ Shabbetai bar Meir Cohen (1621-1662, Lithuania and Bohemia), in his *Sifte Cohen (Shakh), Yoreh De'ah, Hilkhot Aveilut*, 348:1,³³² and Avraham bar Yehiel Mikhel Danziger, (1748-1820, Poland and Lithuania) in his *Hokhmat Adam, Sha'ar HaSimḥah, Hilkhot Aveilut* 155:27,³³³ clarified that burning the items of kings is not an emulation of Amorite practices and is not considered to be a transgression of *bal tashhit*. They, together with Haim Yosef David Azulai (*Hida*),

³²⁹ Moshe ben Yosef Trani (1500-1580, Greece and Turkey), in his *Qiryat Sefer, Hilkhot Evel* 14, contended that *bal tashhit* does not apply when burying kings and princes. Moshe ben Yosef Trani, *Qiryat Sefer* (Venice: 1551).

³³⁰ Yosef Karo, *Shulḥan Arukh: Yoreh De'ah*, Volume Three.

³³¹ Mordechai Yaffe, *Sefer Levush Malkhut, Part Three: Levush Ateret Zahav*, A. H. A. P. P. Edition (Israel: 2000).

³³² Shabbetai Cohen, *Sefer Sifte Cohen: Yoreh De'ah* (Krakow: Menaḥem Naḥum Maizlish, 1646).

³³³ Avraham Danziger, *Sefer Hokhmat Adam*, Part Two (Jerusalem: A. Bloom Books, 1992).

(1724-1806, Land of Israel, but travelled extensively) in his *Birkei Yosef, Yoreh De'ah, Hilkhoh Aveilut* 348:2,³³⁴ and Yeḥiel Mikhel bar Aharon HaLevi Epstein (1829-1908, Russia) in his *Arukh HaShulḥan, Yoreh De'ah, Hilkhoh Aveilut* 348:1,³³⁵ also asserted that it is prohibited to do the same to honour a simple person because doing so would be haughty and wasteful. In other words they were simply repeating what they likely read in the *Mishneh Torah* and the *Tur*. Epstein also added that this is where we learn that it is prohibited to be excessive with regard to burying clothing with the dead. Only what is necessary is permitted.

Tearing clothing over the dead is another part of the mourning process in which the issue of *bal tashḥit* arises. This practice is documented already in Genesis where Jacob tears his clothes upon hearing of Joseph's death (Genesis 37:34). The connection between this practice and the prohibition against wastefulness was seen in the rabbinic chapter and is found in the *baraita* in *bBaba Qama* 91b, where a statement is made in the name of Rabbi Eleazar that he heard that anyone who rends their clothing over the dead too much transgresses the prohibition of *bal tashḥit*. Interestingly, although they discuss the parameters of tearing clothing as mourning for the dead, Maimonides (*Mishneh Torah, Hilkhoh Evel* 9-10),³³⁶ Yaakov bar Asher (*Tur, Yoreh De'ah, Hilkhoh Qeriaḥ* 340),³³⁷ and Yosef Karo (*Shulḥan Arukh, Yoreh De'ah, Hilkhoh Qeriaḥ* 340)³³⁸ did not discuss this act with regard to the prohibition against wastefulness. Many of the commentaries on the *Tur* and *Shulḥan Arukh* brought up the issue of *bal tashḥit* in the context of tearing clothing as mourning for the dead. For instance, Yosef Karo (*Beit Yosef, Yoreh De'ah, Hilkhoh Qeriaḥ* 340:7),^{339,340} and Yoel Sirkis (*Bayit Ḥadash, Yoreh*

³³⁴ Haim Yosef David Azulai, *Sefer Birkei Yosef* (Livorno: Vincenzo Falorni, 1776).

³³⁵ Yeḥiel Mikhel Epstein, *Sefer Arukh HaShulḥan: Yoreh De'ah*, Volume Two.

³³⁶ Moshe ben Maimon, *Sefer Shofetim*.

³³⁷ Yaakov bar Asher, *Tur: Yoreh De'ah*, Volume Two.

³³⁸ Yosef Karo, *Shulḥan Arukh: Yoreh De'ah*, Volume Three.

³³⁹ It is interesting to note that Yosef Karo in his commentary on the *Tur* did bring up *bal tashḥit*, but in his own code, the *Shulḥan Arukh*, he did not.

³⁴⁰ Yosef Karo, *Beit Yosef: Yoreh De'ah*, in Yaakov bar Asher, *Tur: Yoreh De'ah*, Volume Two (Jerusalem: Makhon Ḥatam Sofer, 1972).

De'ah, *Hilkhot Qeria*h 340:17),³⁴¹ commentators on the *Tur*, discussed *bal tashhit* in terms of tearing clothing for a person for whom tearing is not required, and tearing for the wrong person accidentally.

The commentaries on and compositions around the *Shulhan Arukh* also discussed *bal tashhit* with regard to tearing over the dead in a wide variety of contexts. For instance, Haim Yosef David Azulai in his *Birkei Yosef* (*Yoreh De'ah* 340:13) discussed the prohibition of excessive tearing.³⁴² Avraham Tzvi Hirsch Eisenstadt (1813-1868, Lithuania) in his *Pithei Teshuvah*, *Yoreh De'ah*, *Hilkhot Aveilut* 340:1, also discussed *bal tashhit* with regard to tearing that is excessive.³⁴³ Mordechai Yaffe, in his *Levush*, *Yoreh De'ah* 402:4,³⁴⁴ and Yeḥiel Mikhel bar Aharon HaLevi Epstein in his *Arukh HaShulhan*, *Yoreh De'ah*, *Hilkhot Aveilut* 402:3,³⁴⁵ brought up *bal tashhit* in reference to those who tear over individuals for whom they are not obligated to tear. Shlomo Gantzfried (1802-1884, Hungary), in his *Qitzur Shulhan Arukh* 195:3,³⁴⁶ discussed the degree to which it is permissible to tear before the tearing becomes a transgression of *bal tashhit*, tearing upon hearing about the death of a relative or a great scholar, the extent one can tear depending on who died, and the time frame after the death when it is still permissible to tear clothing upon hearing of it.

4.5 Self-Harm

In the Rabbinic chapter we observed an *amoraic* splitting of the prohibition against self-harm from the *tannaitic* understanding of the prohibition against wastefulness. In that chapter we also noted that there were a small but qualitatively important group of tradents who understood the prohibition against self-harm to be a sub-

³⁴¹ Yoel Sirkis, *Bayit Hadash: Yoreh De'ah*, in Yaakov bar Asher, *Tur: Yoreh De'ah*, Volume Two (Jerusalem: Makhon Hatam Sofer, 1972).

³⁴² Haim Yosef David Azulai, *Birkei Yosef*.

³⁴³ Avraham Tzvi Hirsch Eisenstadt, *Pithei Teshuvah*, in *Shulhan Arukh: Yoreh De'ah*, Volume Three (New York: Grossman's Publishing House, 1954).

³⁴⁴ Mordechai Yaffe, *Sefer Levush Malkhut, Part Three: Levush Ateret Zahav*, A. H. A. P. P. Edition (Israel: 2000).

³⁴⁵ Yeḥiel Mikhel Epstein, *Sefer Arukh HaShulhan: Yoreh De'ah*, Volume Two (Jerusalem: 1973).

³⁴⁶ Shlomo Gantzfried, *Qitzur Shulhan Arukh*, Volume Two, ed. Elyaqim Shlanger (Bnei Braq, Israel: Seminar Be'er Yaakov, 1978).

category of *bal tashhit*. Due to the severing of this connection by the *amoraim*, it is not clearcut how subsequent generations of scholars would relate to these prohibitions. This section analyses various passages found in the *halakhic* codes and the commentaries and compositions on these works in order to see the manner in which they understood the prohibition against self-harm. In particular it examines whether any connections were made between the prohibition against self-harm and *bal tashhit*, or if the earlier muting of this relationship held fast.

Maimonides, *Mishneh Torah, Hilkhot De'ot* (Laws of Ethical Behaviour) 1:1³⁴⁷

Every human being is characterised by numerous moral dispositions which differ from each other and are exceedingly divergent. One man is choleric, always irascible; another sedate, never angry; or, if he should become angry, is only slightly and very rarely so. One man is haughty to excess; another humble in the extreme. One is a sensualist whose lusts are never sufficiently gratified; another is so pure in soul that he does not even long for the few things that our physical nature needs. One is so greedy that all the money in the world would not satisfy him, as it is said, “He who loveth silver shall not be satisfied with silver.” (Eccles. 5:9). Another so curbs his desires that he is contented with very little, even with that which is insufficient, and does not bestir himself to obtain that which he really needs. One will suffer extreme hunger for the sake of saving, and does not spend the smallest coin without a pang, while another deliberately and wantonly squanders all his property. In the same way, men differ in other traits. There are, for example, the hilarious and the melancholy, the stingy and the generous, the cruel and the merciful, the timid and the stout-hearted, and so forth.

Maimonides, *Mishneh Torah, Hilkhot De'ot* 3:1³⁴⁸

If a person states that “due to the fact that lust and honour and their like set one on a path of evil and remove the individual from the world, I will separate myself from these desires as much as possible and distance myself from them,” until that person does not eat meat or drink wine, does

³⁴⁷ Moshe ben Maimon, *The Book of Knowledge*, ed. and trans. Moses Hyamson (Jerusalem: Boys Town Jerusalem Publishers, 1965).

³⁴⁸ Some emendations to the standard Hebrew text were made based on the MS. Huntingdon 80.

not marry a woman, does not dwell in a nice abode, and does not wear fine clothing but rather wears rags and coarse wool and their like as do the priests of Edom [Christian priests], this too is a bad path and it is prohibited to follow it. The person following this path is called a sinner, as it is written with regard to the Nazirite (Numbers 6:11): “and make expiation on his behalf for the guilt that he incurred through the corpse.” The sages stated that if a Nazirite who did nothing but abstain from wine requires a sin offering, how much more so does anyone who denies themselves anything. In light of this the sages commanded that a person should abstain only from the things that the Torah prohibited, but not prohibit for themselves through oaths and vows that which is permitted. Thus sages declared: “Are the prohibitions of the Torah insufficient that you deny yourself other things?” Similarly, those who habitually afflict themselves are not on a good path. The sages prohibited individuals from being ascetics through fasting. And with regard to all these things and their like, Solomon commanded (Ecclesiastes 7:16): “So do not overdo goodness and do not act the wise man to excess, or you may be dumbfounded.”³⁴⁹

In these passages Maimonides advocated the path of moderation. In *Hilkhot De'ot* 1:1 he listed a wide number of different excessive tendencies that characterise all people. In *Hilkhot De'ot* 1:3 he asserted that should anyone find themselves drifting toward one of the excesses, they should rectify their behaviour and return to the “straight path.” This law sets limits on excessive behavior, implying that one should always take the middle path and shy away from extremes. The idea of the “Golden Mean” can also be seen much earlier in Aristotelian thought (Nicomachean Ethics, Book II), one of Maimonides’ greatest influences. Even though Maimonides separated the prohibition against self-harm and the prohibition against wastefulness in general, *Hilkhot De'ot* is a place where the two prohibitions once again emerge together. Excess can be found in waste of material just as it can be found in ascetic or other self-harming behaviours. According to Maimonides, the reason that we are to avoid excesses is for the purpose of emulating God, which in turn he understood as walking “the straight path” (*Hilkhot De'ot* 1:5).

³⁴⁹ Moshe ben Maimon, *Sefer HaMada*.

In *Hilkhot De'ot* 3:1, he asserted that one should avoid extremism in the form of asceticism. This *halakhah* quashes the notion that one should adopt an extreme lifestyle in the form of asceticism in order to avoid the temptation of sin. As such, asceticism is in itself sinful. The example presented by Maimonides of a person engaging in an ascetic lifestyle and inflicting self-harm through their asceticism is the Nazirite. As we have already observed in the previous chapter, Numbers 6:11 concerning the Nazirite is the proof-text that was used by the sages to demonstrate that it is prohibited to engage in self-harm.

Abraham de Boton (c.1560-c.1605, Greece and Land of Israel), in his commentary on Maimonides' *Mishneh Torah*, *Lehem Mishneh*, *Hilkhot De'ot* 3:1, understood the prohibition against self-harm to be derived from different origins.³⁵⁰ He asserted that the prohibition against self-harm either originates from the prohibition of *bal tashhit* or from Genesis 9:5 (and not from Rabbi Eleazar HaKappar's *midrash*). Although de Boton used the word "or" with regard to identifying the source of the prohibition against self-harm, he considered both to be equally appropriate. This position is of great importance and discussed in the rabbinic chapter, but here it serves yet another purpose. De Boton offered another way of understanding the ethic of moderation to that of Maimonides. It can be argued that for him, the excesses on either side of moderation are one and the same. In other words, both asceticism (self-harm) and over-indulgence (wastefulness) lead to the same place: waste/destruction of the self. This view appears to be consistent with the *tannaitic* approach found in *tBaba Qama* 9:31.

Even though some assumptions must be made in order for the above statements to be validated, there are a number of things that are clear. First, we observe the fact that Maimonides accepted the *amoraic* conclusion that the prohibition against self-harm is derived from the sinning Nazirite. This is reinforced by commentaries on the *Mishneh Torah* such as Moshe ben Yosef Trani (*Qiryat Sefer*, *Hilkhot Hovel UMeiziq* 5)³⁵¹ and

³⁵⁰ Abraham de Boton, "Lehem Mishneh," in *Mishneh Torah hu HaYad HaHazaqah: Sefer HaMada* (Warsaw: Kalinberg and Partners, 1881).

³⁵¹ Moshe ben Yosef Trani, *Qiryat Sefer* (Venice: 1551).

Masoud Hai Roqeah (1690-1768, Turkey, Land of Israel and Libya) who in his *Ma'aseh Roqeah, Hilkhot Hovel UMeiziq 5:1* asserted that the source of the prohibition may be derived either from the *midrashic* interpretation of the Nazirite abstaining from wine or from the commandment of “take good heed unto yourselves” (Deuteronomy 4:15).³⁵² Moreover, this prohibition is separate and exclusive from the prohibition against wastefulness. This specific *halakhah* is the only place in which a conceptual connection is made between these prohibitions but even though, as mentioned above, achieving this connection requires a certain amount of exegesis. Another noteworthy matter is that once again, the connection to idolatry/foreign cultural practices is highlighted, as Maimonides specified that the reason behind this *halakhah* is distancing oneself from emulating the practices of Christian priests.

The Maimonidean *halakhah* seen above focuses on moderation and deals with self-harm only indirectly. Below are the laws in the various codes that deal explicitly with the prohibition against self-harm. It is important to note that nowhere in these sources are these laws connected to fruit trees or to wastefulness in general.

Maimonides, *Mishneh Torah, Hilkhot Hovel UMeiziq* (Laws Regarding Those who Cause Injury to People or Property) 5:1

A person is not allowed to harm himself or others...³⁵³

Yaakov bar Asher, *Tur, Hoshen Mishpat, Hilkhot Hovel BaHavero*, 420

A person who harms himself, even though he is not permitted [he is not liable for punishment], others who harm him are liable. Meir HaLevi Abulafia (*Ramah*) wrote that this is not the *halakhah*. Rather, a person is permitted to harm himself.³⁵⁴

³⁵² Masoud Hai Roqeah, *Sefer Ma'aseh Roqeah*, Part Four (Bnei Braq, Israel: Samuel Akiva Schlesinger, 1964).

³⁵³ Moshe ben Maimon, *Mishneh Torah: Hu HaYad HaHazaqah LeRabbeinu Moshe ben Maimon, Sefer Neziqin*, Volume Fourteen, ed. Moshe Reich (Jerusalem: Mossad HaRav Kook, 1959).

³⁵⁴ Yaakov bar Asher, *Tur: Hoshen Mishpat*, Volume Two (Jerusalem: Makhon Hatam Sofer, 1972).

Yosef Karo, *Shulhan Arukh, Hoshen Mishpat, Hilkhot Hovel BaHavero, 420:31*

A person who harms himself, even though he is not permitted [he is not liable for punishment], others who harm him are liable.³⁵⁵

Moshe bar Yaakov of Coucy, *Sefer Mitzvot Gadol, Aseh 70*

A person is prohibited to harm himself or others...³⁵⁶

Even though Yaakov bar Asher himself asserted that a person is not allowed to engage in self-harm, he presented Abulafia's opinion showing that there is no consensus on the matter. Yosef Karo in his *Beit Yosef, Hoshen Mishpat 420:21*, discussed Yaakov bar Asher's mention of Abulafia's rejection of the claim that there is a prohibition against harming oneself.³⁵⁷ Even though we know that Yosef Karo accepted the position that one is prohibited from engaging in self-harm (as cited above, *Shulhan Arukh, Hoshen Mishpat, Hilkhot Hovel BaHavero, 420:31*), he justified Abulafia's position by stating that nowhere do we find Rabbi Eleazar HaKappar's approach with regard to Nazirites abstaining from wine as *halakhah*. Yoel Sirkis in his *Bayit Hadash, Hilkhot Hovel BaHavero 420:21*, also discussed Abulafia's assertion that it is permitted to engage in self-harm by claiming that Rabbi Eleazar HaKappar's opinion is his alone, that it goes against the majority, and the majority opinion rules.³⁵⁸ These statements are of particular importance, because they reinforce the approach that not everyone accepted the *amoraic* conclusion that the prohibition against self-harm is derived from Rabbi Eleazar HaKappar's *midrash*.

Sefer HaHinukh, 467³⁵⁹

The context in which Pinhas HaLevi discussed the prohibition against self-harm was the commandment of *lo titgodedu*, "you shall not gash [mutilate] yourselves." This

³⁵⁵ Yosef Karo, *Shulhan Arukh: Hoshen Mishpat*, Volume Two (New York: Grossman's Publishing House, 1954).

³⁵⁶ Moses of Coucy, *Sefer Mitzvot Gadol: Volume Two, Aseh* (Jerusalem: Offset Brody-Katz, 1973).

³⁵⁷ Yosef Karo, *Beit Yosef: Hoshen Mishpat*, in Yaakov bar Asher, *Tur: Hoshen Mishpat*, Volume Two (Jerusalem: Makhon Hatam Sofer, 1972).

³⁵⁸ Yoel Sirkis, *Bayit Hadash: Hoshen Mishpat*, in Yaakov bar Asher, *Tur: Hoshen Mishpat*, Volume Two (Jerusalem: Makhon Hatam Sofer, 1972).

³⁵⁹ Pinhas HaLevi (?), *Sefer HaHinukh*.

prohibition arises in Deuteronomy 14:1 in the context of forbidden mourning practices. Pinḥas HaLevi, whose goal was to rationalise the commandments, explained that this act is prohibited because it emulates idolatrous practices. In his discussion he took the act of self-harm outside of the context of mourning practice and made the general statement that “destroying our bodies and ruining ourselves is not good for us and is not the way of the wise and intelligent.” Although he did not explicitly connect the prohibition against self-harm to *bal tashḥit*, there are implicit connections. For instance, he mentioned that Naḥmanides, in his Bible commentary, claimed that *lo titgodedu* is what the sages meant when they stated that one is not to mourn too much (*yoter midai*) over the dead. The notion of over-reacting while mourning is connected in more than one source to *bal tashḥit*. As we observed in *bBaba Qama* 91b, Rabbi Eleazar claimed that he heard that anyone rending their clothing excessively (*yoter midai*) as a sign of mourning was transgressing the prohibition of *bal tashḥit*. In *Semaḥot* 9:23 it is asserted that anyone who buries the dead with an excessive amount (*yoter midai*) of effects transgresses the prohibition of *bal tashḥit*. Thus, there exists a conceptual connection between self-harm and wastefulness through the idea of excessive behaviours. This fits precisely within the framework discussed above in Maimonides’ ethic of moderation found in *Hilkhot De’ot* 3:1 and expounded on by Abraham de Boton.

Those contributing the most to the tradition connecting the prohibition against self-harm to the prohibition against wastefulness are Shneiur Zalman of Liadi (1745-1813, Russia) and Shlomo Gantzfried (1802-1884, Hungary). Most telling is the framework in which Shneiur Zalman brought up the prohibition against wastefulness. In ***Ḥoshen Mishpat, Hilkhot Shemirat HaGuf (Laws of Protecting the Body) clause 14*** he wrote:

Just as he must be careful with his body so that he does not destroy it, ruin it, or harm it, so too must he be careful with his property so that he does not destroy it, ruin it or harm it. Any person who breaks utensils, or tears clothing, or destroys a building, or blocks up a spring, or wastes food or drink, or renders them unfit for consumption (or throws money away), and anyone who ruins anything from which people can derive

benefit/enjoyment transgresses a negative commandment, as it was said (Deuteronomy 20:19): “Do not destroy its trees...” (and if the Torah issued a warning with regard to [the possessions] of Gentiles with whom they are warring, this applies *a fortiori* to the possessions of Jews or even ownerless items).

This applies even if his purpose is to demonstrate anger and wrath and to project his fear/awe on insubordinate household members.³⁶⁰

Shlomo Gantzfried, *Qitzur Shulḥan Arukh*, 190:3

Just as a person must be careful with his body so that he does not destroy, ruin or harm it, as it was said (Deuteronomy 4:9): “Give heed to yourself and keep your soul diligently,” so too must a person be careful with his possessions not to destroy, ruin or harm them. Any person who breaks utensils, or tears clothing, or wastes food or drink, or renders them unfit for consumption, or throws money away, and anyone who ruins anything from which people can derive benefit/enjoyment transgresses a negative commandment, as it was said (Deuteronomy 20:19): “Do not destroy its trees...”³⁶¹

The most obvious difference between these two works and the *Shulḥan Arukh* is that they describe *bal tashḥit* as a general ethic, and not just as one that applies to specific circumstances. In this aspect they resemble much more closely Maimonides’ description of *bal tashḥit*, especially in their lists of behaviour to which *bal tashḥit* applies. They differ from Maimonides in two key aspects. The first is that they both viewed the prohibition against wastefulness as being intrinsically connected to the prohibition against self-harm while Maimonides made no connection between the two, save implicitly in *Hilkhot De’ot*. In fact, the language that they use to link self-harm with general wastefulness is “just as...so too.” This formulation is used in abundance throughout rabbinic literature and is indicative of an analogous relationship between two categories. The second is through their generalisation of the prohibition. After listing the specific behaviour which would result in a transgression of *bal tashḥit*, they generalised the prohibition by stating that the transgressor includes “anyone who ruins anything from

³⁶⁰ Shneiur Zalman, *Shulḥan Arukh HaRav: Part Six, Hoshen Mishpat* (Jerusalem: Even Yisroel Publishing, 2011).

³⁶¹ Shlomo Gantzfried, *Qitzur Shulḥan Arukh*, Volume Two, ed. Elyaqim Shlanger (Bnei Braq, Israel: Seminar Be’er Yaakov, 1978).

which a person can derive benefit/enjoyment.” This is a qualitatively different assertion from that of Maimonides who in his generalisation of the prohibition stated “And so too is all wastefulness included in this commandment.”³⁶²

Even though Maimonides did not include a human parameter in his description of *bal tashhit* found in *Sefer HaMitzvot*, he defined the prohibition in his *Mishneh Torah* as applying only in situations when the act is done in a destructive manner (*derekh hashhatah*). In other words, while Maimonides at first appears to be more inclusive in his definition of the prohibition, by adding the parameter of *derekh hashhatah* he in fact becomes much more lenient in his definition of what behaviour is included in the prohibition of *bal tashhit*. In light of this, when compared to Shneiur Zalman and Gantzfried, it can be understood that Maimonides may allow the destruction of something from which an individual can derive benefit/enjoyment as long as the act is not performed in a destructive manner. Alternatively, Shneiur Zalman and Gantzfried may theoretically allow something from which humans do not derive benefit/enjoyment to be destroyed in a destructive manner.

While on its surface Shneiur Zalman and Gantzfried appear to have similar approaches to the relationship between the prohibition against self-harm and the prohibition against wastefulness, there is one significant difference. Gantzfried attributed the prohibition against self-harm to a specific verse in Scripture (Deuteronomy 4:9), while Shneiur Zalman did not provide a reference. This is noteworthy insofar as this is yet another verse from which the prohibition against self-harm is thought to be derived (even though contextually the verse is a warning against idolatry). From the various verses suggested, this perhaps is the most obvious one insofar as it is the verse that requires the least amount of exegesis to derive this prohibition. The variety of verses associated with the prohibition against self-harm poses no difficulties for the theory of the connection of this prohibition with the prohibition against wastefulness. The environmental ethic resulting from the association of these two prohibitions does not

³⁶² Maimonides, *Sefer HaMitzvot LaRambam – Mitzvat Lo Ta'aseh 57*.

depend on which verses they are derived from, but rather on the fact that they are conceptually connected, as they are in the writings of Shneiur Zalman and Gantzfried. What makes these scholars stand out in particular is that this association does not exist in the major codes, most notably in the *Shulḥan Arukh* upon which they are based.

The notion that *bal tashḥit* applies only to things from which humans derive benefit/enjoyment is a continuation of the utilitarian approach found in the Talmud and seen in the rabbinic chapter, but is not connected to self-harm. It is a conceptualisation that enables *bal tashḥit* to work in real situations. After all, there are times when destroying is a necessary part of the creative process. Defining the prohibition in strictly human parameters (“anything from which a person can derive benefit/enjoyment”), however, places limits on the strength of *bal tashḥit* as an environmental ethic by revoking the intrinsic value of the non-human material world. Perhaps, however, this is not as detrimental to the environmental cause as it may seem upon first glance. Subjectively, it is easy to imagine certain things that one does not derive benefit/enjoyment from and could theoretically be destroyed or wasted without further consideration and with no fear of transgressing *bal tashḥit*. Objectively, however, both Shneiur Zalman and Shlomo Gantzfried iterate that the person deriving benefit/enjoyment is not a specific person, but people in general. In other words, just because I do not derive benefit/enjoyment from a particular tree, or animal, or food, or any natural resource for that matter, does not mean that there are no people who do so, thereby revoking my license to wantonly destroy/waste that particular thing. While this still phrases the ethic in anthropocentric terms and does not take into consideration intrinsic value of the non-human world, by defining the parameters of the prohibition in objective terms, the end result still grants the non-human world a significant measure of protection.

4.6 Hunting

There are those, however, for whom benefit/enjoyment can only be defined in monetary terms. For instance, Yeḥezkel ben Yehudah Landau (1713-1793, Poland and

Bohemia), was asked whether hunting animals is permissible.³⁶³ Landau approached the query by discussing whether hunting falls under the prohibition of *tza'ar ba'alei hayim* (harming living creatures) or *bal tashhit*. He concluded that since the animal is not being made to suffer, this could not be a reason for prohibiting hunting, and since, in his opinion and contrary to Shneiur Zalman's, *bal tashhit* does not apply to ownerless things it would not be a transgression of *bal tashhit* to engage in such activities. He also asserted that since there is value in the hide of the animal, killing is not considered a violation of *bal tashhit*. He did, however, have difficulty with permitting hunting, due to the cruelty of hunting as a sport and for the danger the hunter puts himself in by hunting dangerous animals. He concluded by permitting it for those who hunt for a living, but not for sport. From a strictly legal perspective he could find no problematic issue with hunting, but when taking into account other considerations such as morality and inherent danger he was able to prohibit it.

Avraham Tzvi Hirsch Eisenstadt (1813-1868, Russia and Lithuania) in his work on the *Shulhan Arukh, Pithei Teshuvah, Yoreh De'ah, Hilkhoh Shehitah* 28:10, summarised Landau's position.³⁶⁴ In his explanation as to why killing an animal through hunting is not *bal tashhit*, Eisenstadt claimed that the prohibition only applies to the destruction of things which have value, and animals have value only insofar as humans can derive benefit/enjoyment from them. He claimed that while alive, the wild animal has no value to humans, but when dead, the animal's hide and flesh have value. In other words, Eisenstadt qualified benefit/enjoyment solely in monetary terms.

While both Landau and Eisenstadt assert that it is permissible to wantonly destroy things from which humans do not derive benefit, they are both careful to add that in this particular case value is accrued through the death of the animal.³⁶⁵ By adding this they are doing two important things. The first is that they are making an assumption that the

³⁶³ Yehezkel Landau, *Sefer Noda BiYehudah, Mahadurah Tinyana, Yoreh De'ah* 10, Part One, ed. David Aharon Freundlich (Jerusalem: Makhon Yerushalayim, 2004).

³⁶⁴ Avraham Tzvi Hirsch Eisenstadt, *Pithei Teshuvah*, in *Shulhan Arukh: Yoreh De'ah*, Volume One (New York: Grossman's Publishing House, 1954).

³⁶⁵ Also, see above regarding the discussion of slaughtering a sickly animal with a knife used for idolatry.

hunter will use the hide and/or flesh of the dead animal. The second is that part of their justification for permitting an act which they consider abhorrent is that the hunter is doing a service by creating value out of something which, in their eyes, has none. In other words, the hunter is transformed from being unethical to making a positive contribution to human welfare.

4.7 Ritual Slaughter

The economic parameter is also the decisive factor in other *halakhic* deliberations. For instance, for a *halakhically* kosher slaughtering, the blood of the slaughtered animal must be ceremoniously covered. Yosef Karo in his *Shulḥan Arukh, Yoreh De'ah, Hilkhoh Sheḥitah* 28:21 asserted that if one does not have earth with which to perform this ceremony, it is forbidden to slaughter the animal.³⁶⁶ This issue becomes a reality in situations when one wants to eat meat in places where no earth is available such as aboard a ship or in a desert or in rocky mountains. Karo in his *Beit Yosef, Hilkhoh Sheḥitah* 28:36, dealt with *bal tashḥit* in the context of slaughtering animals while on a journey.³⁶⁷ He claimed that one can rip a piece of cloth off of their *tallit* (a garment), or even burn a coin to create ash (which in this context is considered to be earth) to use in the ceremonial burial. This is permissible as long as the value of the slaughtered animal has a greater value than the object being burned. Otherwise, the destruction and waste by burning would be considered a transgression of *bal tashḥit*. Karo disagreed with what was considered the authoritative position given by Mordekhai ben Hillel (1250-1298, Germany)³⁶⁸ and others on the issue, which stated that instead of using earth or creating ash, a person can soak up the blood with his clothing, and when they reach a place with earth, they can rinse the blood out of the clothes and bury it. Karo took issue with this position by virtue of the fact that if indeed one could soak up the clothing and defer the

³⁶⁶ Yosef Karo, *Shulḥan Arukh: Yoreh De'ah, With All Commentaries*, Volume One (New York: Grossman's Publishing House, 1954).

³⁶⁷ Yosef Karo, *Beit Yosef: Yoreh De'ah*, in Yaakov bar Asher, *Tur: Yoreh De'ah*, Volume One (Jerusalem: Makhon Hatam Sofer, 1972).

³⁶⁸ Mordekhai ben Hillel, *Sefer Rav Mordekhai, Masekhet Hullin, Pereq Kisui HaDam* (Riva di Trento, Italy: 1559) 1053 (654 in the Vilna Edition).

ceremonial burial to a more convenient time and place, then how could the burning of a *tallit* or coin be permissible? With an alternative solution available, such burning would be considered a transgression of *bal tashhit*. Yoel Sirkis (1561-1640, Poland) in his *Bayit Hadash, Yoreh De'ah, Hilkhoh Shehitah* 28:18 however, claimed that Karo's concerns were unfounded, because there is still a clear preference for an immediate ceremonial burial with earth or ash, which trumps the prohibition of *bal tashhit* when the economics work out in terms of relative value of all items involved.³⁶⁹

4.8 Education and Moralistic Issues

The Talmud in b*Qiddushin* 32a seen in the previous chapter discussed *bal tashhit* in the context of the commandment of honouring one's parents. In the Talmudic narrative Rav Huna tested his son to see if he would observe the commandment even in extreme circumstances. Rav Huna tore an expensive garment in the presence of his son Rabbah to observe what his reaction would be. The *stam* (the anonymous voice of the Talmud) asserted that such behaviour is a transgression of *bal tashhit*, but then retorted that Rav Huna tore the garment along the seam in a manner that is easy to repair. As such, Rav Huna cannot be considered to have transgressed the prohibition against wastefulness. Interestingly, this example and others are used as proof-texts that it is permissible to engage in wastefulness/destruction for educational purposes, and more specifically for the sake of establishing decorum in one's household. For example, Eliezer ben Samuel of Metz (d. 1175, France) asserted that wastefulness is permitted in such circumstances, because the value gained in having a peaceful household is greater than the expense of the destruction.³⁷⁰ Shneiur Zalman of Liadi, however, held that the prohibition applies even in circumstances where the "purpose is to demonstrate anger and wrath and to

³⁶⁹ Yoel Sirkis, *Bayit Hadash: Yoreh De'ah*, in Yaakov bar Asher, *Tur: Yoreh De'ah*, Volume One (Jerusalem: Makhon Hatam Sofer, 1972).

³⁷⁰ Eliezer ben Samuel of Metz, *Sefer Yere'im HaShalem*, Volume Two (Jerusalem: Makhon Hatam Sofer, 1973), 382.

project his fear on insubordinate household members.”³⁷¹ Eliezer of Metz’s position, however, appears to be the more commonly accepted one.

For example, when describing the tradition of the *havdalah* ceremony (the ceremony marking the transition from the holy Sabbath to the mundane week) Moshe ben Yisrael Isserles, (1520-1572, Poland) stated that “a home in which wine has not been spilled like water is not blessed.”³⁷² David HaLevi Segal (1586-1667, Poland and elsewhere) indicated that this tradition is not to outright spill the wine after the blessing, which would be disgraceful, but rather to allow the cup to overflow.³⁷³ Spilling wine is outright wasteful, but allowing the cup to overflow signifies the blessing of abundance. Segal went one step further in explaining the tradition by mentioning that spilled wine is usually a reason for anger and anger is a disruption to the tranquility of a household. As such, intentionally spilling the wine preemptively prevents the anger from occurring. In other words, the outcome of wasting the wine is considered to be of greater value than the cost of the wine itself.

This is not the only instance that we see a *halakhic* ruling in favor of maintaining peace. Yeḥiel Mikhel Epstein ruled that when dividing property, one can divide it even if the total value of the property decreases due to the division.³⁷⁴ He asserted that the decrease in value is not considered a transgression of *bal tashḥit* if those involved believe they will be happy with the outcome.

To be sure, there are other instances where *bal tashḥit* arises, yet not all of them can be presented. As a final example in this section, we turn to one of the most universally known Jewish traditions, that of the breaking of a glass under the wedding canopy. The ceremony is performed in order to remember Jerusalem and its destruction.

³⁷¹ Shneiur Zalman, *Shulḥan Arukh HaRav: Part Six, Hoshen Mishpat, Hilkhoh Shemirat HaGuf* (Jerusalem: Even Yisroel Publishing, 2011), 14.

³⁷² Moshe Isserles, *Rama al HaShulḥan Arukh*, in *Shulḥan Arukh: Oraḥ Ḥaim*, Volume One (New York: Grossman’s Publishing House, 1954), *Hilkhoh Shabbat*, 296:1.

³⁷³ David HaLevi Segal, *Turei Zahav*, in *Shulḥan Arukh: Oraḥ Ḥaim*, Volume One (New York: Grossman’s Publishing House, 1954), *Hilkhoh Shabbat*, 296:1.

³⁷⁴ Yeḥiel Mikhel HaLevi Epstein, *Sefer Arukh HaShulḥan: Hoshen Mishpat, Hilkhoh Ḥalukat Shutafut*, Volume One (Jerusalem: 1973), 171:8.

The codes themselves do not raise the issue of *bal tashhit* in this context, yet a number of their commentaries and cognates do. Yosef bar Meir Teomim (1727-1792, Poland and Germany),³⁷⁵ Pinhas bar Tzvi Hirsch HaLevi Horowitz (1730-1805, Poland and Germany),³⁷⁶ and Yisrael Meir HaCohen, (1839-1933, Poland)³⁷⁷ and others declared that such practice was not included under the prohibition of *bal tashhit* due to its symbolism and educational nature.

4.9 Conclusion

This chapter was divided into a number of categories that highlight the directions in which the concept was taken in the Jewish codes of law and their cognates. These categories include *bal tashhit* as a general prohibition against wastefulness/destruction, idolatry and religious practices, mourning, and self-harm. Other categories that emerged through the discussion of these issues were hunting, ritual slaughter, and educational/moralistic issues. While the Talmud first introduced us to the prohibition against wastefulness and destruction as “*bal tashhit*” and greatly expanded the parameters of the prohibition, the conceptualisation of the prohibition in the codes is yet one order of magnitude greater. The single greatest advance in the conceptualisation of *bal tashhit* is the fact that it is explicitly expanded into a general concept. The array of circumstances in which the term is used in the Talmud indicates that it was perceived of as a general prohibition, but nowhere in the corpus of classic rabbinic scholarship is it defined as such. Maimonides changed this in his *Sefer HaMitzvot*. As far as we know, he was the first to define *bal tashhit* in an explicit manner. Possibly because he was the first, and perhaps because of his stature as one of the greatest Jewish legists of all time, but certainly because of the two together, his influence on the scholarship that succeeded him was considerable. As such, his generalisation of the prohibition is not the only important

³⁷⁵ Yosef bar Meir Teomim, *Sefer Pri Megadim, Mishbetzot Zahav, Oraḥ Haim* (P.P. Dader, Prussia: Grila Publishers, 1787).

³⁷⁶ Pinhas bar Tzvi Hirsch HaLevi Horowitz, *Sefer HaMaqneh* (Offenbach, Germany: Tzvi Hirsch Spitz, 1824).

³⁷⁷ Yisrael Meir HaCohen, *Sefer Mishnah Berurah, Oraḥ Haim, Hilkhot Tishah BeAv VeSha'ar Ta'anivot*, Volume Six (Jerusalem: Va'ad HaYeshivot BeEretz Yisrael, 1973), 560:2:9.

impact he had on the trajectory of the concept, but also and perhaps more importantly, the manner in which he defined that generalisation.

In his definition, Maimonides coined the term *derekh hashḥatah* (destructive manner), asserting that one only transgresses the prohibition of *bal tashḥit* if they do things in a destructive manner. The importance of this cannot be overstated. *Bal tashḥit* emerged from the Talmud largely as an economic concept; “wastefulness” was permitted so far as the end result was something of greater value than the original product. Even though the Talmudic discussion revolved around fruit trees, Maimonides clearly understood the economic parameters as part of a general rule applying to wastefulness in all its forms. The idea of *derekh hashḥatah*, however, made the prohibition largely subjective. According to Maimonides’ novel approach, people only transgress *bal tashḥit* if their intention is to be wasteful/destructive. In other words, with one hand Maimonides broadened the circumstances in which the prohibition applies, and with the other he weakened the possibility of transgressing it by necessitating wasteful/destructive intent to accompany wasteful/destructive actions. This may be consistent with his desire that we lead a life of moderation as expressed in *Hilkhot De’ot*.

The issue of intent puts into question the applicability of the economic parameter. If someone’s actions result in a decrease in value of something, but at the same time the action is not done in a destructive manner, is this a transgression of *bal tashḥit* according to Maimonides? It seems clear, however, that any action that is done with foreknowledge that it will result in a decrease in value of an object means that it was undertaken with the intent to be wasteful/destructive. There are those who followed Maimonides’ approach who found exceptional circumstances in which a particular action was performed knowing that the end result would be a decrease in value, but was not considered a violation of the prohibition.³⁷⁸

³⁷⁸ Examples of this can be found above. For instance, see Epstein on the division of property and Segal on wine (both on p. 210). For Reischer this issue arises in his responsum on fruit trees (Yaakov Reicher, *Sefer She’elot UTeshuvot Shevut Yaakov*, Part One (Jerusalem: Luḥot Frank, 2004), 1:159.).

The relationship between the prohibition against self-harm and the prohibition against wastefulness/destruction was severed by Maimonides by virtue of the fact that he listed these as completely separate commandments and without so much as hinting that there is a connection between them. The separation of the prohibition against self-harm from the prohibition against wastefulness is further reinforced by virtue of the fact that the codifiers do not address the *amoraic* concept of *bal tashhit degufa adif* (the prohibition of the destruction of the body takes precedence [over non-human objects]). Barukh Epstein (1860-1941, Belarus), in his comments on Deuteronomy 20:19, expressed considerable surprise that Maimonides did not relate to this dimension of *bal tashhit* whatsoever.³⁷⁹

One of the most surprising elements found in this body of literature is the scant attention given to *bal tashhit* by Yaakov bar Asher and Yosef Karo. It is possible that since Karo's *Shulhan Arukh* is based in part on Yaakov bar Asher's *Tur*, and that since Yaakov bar Asher did not deal with this particular prohibition extensively, neither did Karo. This lacuna did not go unnoticed by later scholars. For instance, David HaLevi Segal,³⁸⁰ and Barukh Epstein³⁸¹ expressed surprise that earlier codes did not address the prohibition of *bal tashhit*. As can be seen above, Yaakov bar Asher and Yosef Karo clearly did mention *bal tashhit* occasionally. Yet the limited scope of their coverage of the prohibition, is somewhat surprising. Unlike Maimonides, they did not include *bal tashhit* as a separate prohibition in its own right. Rather, they used *bal tashhit* in a manner reminiscent of the Talmud. Instead of explaining that *bal tashhit* is a general prohibition against wastefulness, they used the term to indicate that certain behaviours were prohibited. More specifically, these behaviours are the excessive burial of effects with the dead and the spilling of wine left over from someone's cup. They claimed that these actions would be a violation of *bal tashhit*, but nowhere did they explain what *bal tashhit*

³⁷⁹ Barukh HaLevi Epstein, *Hamishah Humshei Torah im Hamesh Megilot, Torah Temimah: Sefer Devarim* (New York: Avraham Yitzhak Friedman, 1962).

³⁸⁰ David HaLevi Segal, *Turei Zahav: Yoreh De'ah – Hilkhhot Ma'akhalei Avodat Kokhavim*, in Yosef Karo *Shulhan Arukh: Yoreh De'ah*, Volume Five (Jerusalem: Mifal Shulhan Arukh HaShalem, 2010), 116:6.

³⁸¹ Barukh HaLevi Epstein, *Sefer Devarim*.

actually entails. In other words, like in the Talmud, their use of the term implies that *bal tashhit* is a broad prohibition, but they themselves only use the expression narrowly with specific examples. As codifiers of Jewish law the expectation is that the laws they list are elucidated. Why bring scattered examples of how a particular law is applied instead of explaining the law in its own right in an organised manner? Due to the fact that they did mention *bal tashhit* in the above circumstances, it is impossible to claim that they simply forgot about this law in its entirety. While I have no good explanation for this lack, in the two most significant *halakhic* codes after Maimonides it resulted in strengthening Maimonides' influence with regard to this specific prohibition and reinforcing his approach.

Maimonides generalised the prohibition against wastefulness, confirmed its economic parameters, asserted that its extended application was only rabbinic and not directly from the Torah, divorced *bal tashhit* from the prohibition against self-harm, and added the parameter of intent through the coining of the term *derekh hashḥatah*. Most subsequent scholars addressed the prohibition within this Maimonidean framework. What this means is that the economic dimension of the prohibition is almost exclusively the angle from which *bal tashhit* is analysed at the cost of a weakened environmental approach. The term *derekh hashḥatah* is now commonplace in the literature, and from Maimonides to the present almost no one made an association between self-harm and wastefulness. The exceptions in this corpus of literature are Shneiur Zalman of Liadi and Shlomo Gantzfried. Even though the vast majority of literature had guided scholars away from making this particular association, they nonetheless made it in a matter-of-fact manner. To them this connection was so obvious that it required no special explanation, even though its appearance in the literature that preceded them was exceedingly rare. They stand out as those in this particular genre of Jewish scholarship who understood there to be a relationship between *bal tashhit* and self-harm, and kept this association alive in their writings.

Chapter Five: Responsa

5.1 Introduction

Scripture and classic rabbinic literature did not, and could not, always sufficiently cover every legal situation that arose. Specific contexts that were not mentioned in the existing scholarship and new circumstances brought about by cultural changes and technological advances at times left Jewish communities uncertain about how to behave. In addition, the legal structure is largely theoretical. The transition from theory into practice is not always straightforward. Real-world contexts are often quite different than pure legal holdings. We saw this manifest itself in the Talmud, where the theory of never cutting down a fruit tree was first developed and then revisited. There are times when one simply must cut down a fruit tree for a variety of reasons. For example, a fruit tree might be old, diseased, unproductive, or taking up space needed for a different purpose. If the legal system, however, asserts that cutting down a fruit tree is prohibited, how does one go about cutting it down while at the same time not transgressing the law? The Talmud went through a number of different stages discussing the degree of productivity for a fruit tree to still be considered viable before Ravina, a late *amora*, asserted that it was simply a question of economics. If the fruit tree is more valuable cut down than planted, it is permissible to cut it down. In other words, in order to aid the transition from theory into practice with regard to fruit trees Ravina created a new legal tool meant to simplify the deliberations.

Not every religious Jew, however, was able to understand or access the vast Talmudic corpus. Moreover, even though sages like Ravina attempted to ease the transition from theory into practice, it was impossible to cover all possible scenarios, especially in a continuously evolving and developing world. As such, the genre of Responsa emerged in which a question was posed to a Jewish legist and an answer was issued. This process is described by Menachem Elon:

Questions submitted to a respondent arose in the factual context of the time, and the responsum had to resolve the issues in a manner consonant

with the contemporaneous circumstances. The subjects of the questions generally related to social, economic, technological, and moral conditions, which differed from period to period and from place to place.³⁸²

These answers set legal precedents and were often quoted by legists in succeeding generations when faced with similar yet slightly nuanced questions.

The major evolutionary shifts in the prohibition against wastefulness occurred in the classic rabbinic era and in the codes. While this genre of scholarship is not highlighted by major changes in the understanding of *bal tashhit*, it does illustrate how the existing understanding of the prohibition is applied to new circumstances. As seen in the chapter on codes, Maimonides had the greatest impact on the conceptualisation of *bal tashhit*. This chapter will demonstrate that the Maimonidean approach to *bal tashhit* became dominant. Maimonides took Ravina's economic theory with regard to fruit trees and applied it to the general prohibition against wastefulness.

The three most recent *halakhic* publications on *bal tashhit* mentioned in the literature review do an excellent job of covering this genre of scholarship.³⁸³ This chapter does not aim to recreate the fruit of their labours. Writing in 1990, Haym Soloveitchik wrote that there are over 8,000 volumes of responsa.³⁸⁴ It would be too great a task to tackle the entire genre, or even every legist who dealt with matters concerning wastefulness. Instead, a select number of responsa are discussed in order to illustrate the breadth of issues the scholarship has dealt with regarding practical applications of *bal tashhit*. Some of the topics presented here are very modern issues such as plastic surgery and smoking. Such topics could not have been dealt with historically due to the scientific and medical advancements that had to occur prior to their becoming a reality that needed

³⁸² Menachem Elon, *Jewish Law: History, Sources, Principles. Volume Three: The Literary Sources of Jewish Law*, trans. Bernard Auerbach and Melvin J. Sykes (Philadelphia: The Jewish Publication Society, 1994), 1461.

³⁸³ See Siman Tov David, *Sefer Al Pakkim Qetanim: Hilkhos Bal Tashhit* (Jaffa, Israel: S. M. Publishers, 2000), Yitzhak Eliyahu Shtasman, *Sefer Etz HaSadeh: BeDinei Bal Tashhit, Qetzitza Ilanot UVizui Okhalin* (Jerusalem: The Foundation for the Advancement of Torah Study, 1999), and Moshe Yitzhak Vorhand, *Sefer Birkat HaShem: Leqet Dinei Issur Qetzitza Ilanei Ma'akhal, Bal Tashhit BiShe'ar Devarim, VeIssur Hefsed UVizui Okhalim* (Jerusalem: private printing, 2000).

³⁸⁴ Haym Soloveitchik, *The Use of Responsa as Historical Source: A Methodological Introduction* (Jerusalem: Zalman Shazar Center, 1990), 12.

to be addressed *halakhically*. Most significantly, this chapter will highlight questions and answers that use the terminology and ideas of Maimonides (*derekh hashḥatah*), Meyuḥas bar Eliyahu (*tzorekh*), the *Midrash Aggadah (hana'ah)*, Baḥya bar Asher (*to'elet*) and *Sefer HaHinukh (to'elet and morality)* in order to demonstrate the lasting influence their ideas had on the conceptualisation of *bal tashhit*.

It was difficult to divide the responsa in this chapter into categories. Due to their relatively late historical timeframe, many of the responsa reference multiple topics. It was ultimately decided to present the material under the following categories: fruit trees, inculcation of moral dispositions, self-harm, and specialised terminology (*derekh hashḥatah, tzorekh, hana'ah, and to'elet*). As such, the division is not always perfect, though in my estimation, entirely adequate for our purposes. It should also be noted, that in the synthesis of these responsa some of the details were left out in order to provide a coherent section for the reader. This method of presentation does not diminish the capacity to understand them, nor does it alter their overall meaning.

5.2 Fruit Trees

*Teshuvot HaRambam, 112*³⁸⁵

Maimonides was asked whether it is permissible to cut down a problematic palm tree. In this specific circumstance the tree was at the edge of a garden belonging to a Jew, adjacent to a fence separating the garden from publicly owned land. On the other side of the public property was a mosque and a garden belonging to Muslims. During stormy weather there was fear that the tree would be toppled and destroy adjacent property. Moreover, when harvesting the fruit, people would throw stones at the tree to try and knock down the fruit thereby littering the garden and even causing bodily harm to people.

Maimonides responded that indeed the tree could be cut down in order to prevent the types of damage already delineated in the query. In his response, Maimonides went

³⁸⁵ Moshe ben Maimon, *Teshuvot HaRambam*, ed. and trans. Yehoshua Blau (Jerusalem: Mekitzei Nirdamim Publishers, 1958).

beyond the question at hand and asserted that it is permissible to cut down a fruit tree if one wants to benefit from the area in which the tree is planted (for other reasons), or from the value of the tree (presumably as lumber), then it becomes permissible to cut it down. According to him, the Torah only prohibits the cutting down of fruit trees in a destructive or wasteful manner (*derekh hashḥatah*).

Tzemaḥ Tzedek (HaQadmon) 41³⁸⁶

In this responsum Menaḥem Mendel bar Avraham Krokmal (1600-1661, Poland and Moravia) was asked whether it is permissible to cut down an unwanted nut tree that was harming a vineyard. Krokmal first mentioned two reasons why such a tree would not be cut down: it produces more than the minimum amount under which it would be permissible to cut it down (*bBaba Qama* 91b) and cutting down a tree before its time is a life endangering act as can be seen from Rav Ḥisda's son Shivḥat (*bBaba Batra* 26a). Krokmal argued, however, that in this particular case there are a number of factors that make cutting down the nut tree permissible. First, the tree was harming the vines and decreasing their value. To this end he presented the example of Shmuel (*bBaba Qama* 92a) who upon touring his land holdings, seeing palm trees and vines planted in close proximity to each other and tasting the flavour of the grapes in the dates, decreed that the palm trees should be uprooted. This was because they were diminishing the value of the grapes which are of far greater value by weakening their flavour. His only hesitation was that perhaps the example presented by Shmuel was limited to situations where the flavour of the grapes was definitively impacted and did not just have the potential to impact. In other words, the damage had to be discernible, not just potential. Second, it is permissible to cut down a fruit tree if the space is needed for something else. Krokmal did not grant outright permission to cut down the nut tree, instead claiming that in a situation where the nut tree was being replaced by more vines it was certainly permissible to cut it down.

³⁸⁶ Menaḥem Mendel Krokmal, *She'elot UTeshuvot Tzemaḥ Tzedek* (Jerusalem: Alter Shmuel Stefansky, 2008).

Ḥavot Yair 195³⁸⁷

Yair Ḥaim ben Moshe Shimshon Bakhrakh (1638-1702, Moravia and Germany) was asked whether a peach tree that grew without it having been planted but was blocking a window could be cut down. He responded that it was certainly permitted to cut it down, because the prohibition against cutting down fruit trees only applies if it is done in a wanton destructive manner (*derekh hashḥatah beli tzorekh*). Bakhrakh added that if he was able to prune the branches of the tree in order to rectify the situation without cutting down the tree that would be preferable.

Divrei Ḥaim, Yoreh De'ah 2:57³⁸⁸

Ḥaim bar Aryeh Leib Halbershtam (1793-1876, Poland and Galicia) was asked by the residents of a town whether they were allowed to cut down fruit trees in order to build a ritual bath (*mikveh*). He opened his responsum by stating that the issue had already been covered by David HaLevi Segal, who stated that it is permissible to cut down fruit trees when the space where they are planted is needed.³⁸⁹ He nevertheless went into a lengthy discussion of the matter. As part of his justification he mentioned that in this particular context there is no doubt that cutting down the trees is permissible and there is no danger³⁹⁰ due to the fact that the act provides a necessary public service. In fact, in the tradition of Maimonides' Laws of Kings 6:10 he asserted that *bal tashḥit* only truly encompasses actions undertaken in a deliberately wasteful/destructive manner (*derekh hashḥatah*). In this particular context, Halbershtam argued that there is an additional justification because not only will it not be done in a destructive/wasteful manner, but the trees would also be cut down for the sake of a *mitzvah*.

³⁸⁷ Yair Ḥaim Bakhrakh, *Sefer She'elot UTeshuvot Ḥavot Yair*, ed. Shimon ben-Tzion HaCohen Kots (Ramat-Gan, Israel: Makhon Akad Sefarim, 1997).

³⁸⁸ Ḥaim bar Aryeh Leib Halbershtam, *Sefer She'elot UTeshuvot Divrei Ḥaim: Yoreh De'ah*, Part Two (New York: Mosdot Babov, 2002).

³⁸⁹ See David HaLevi Segal, *Turei Zahav, Yoreh De'ah* 116:6.

³⁹⁰ The issue of danger arises in reference to Shikheḥat from b*Baba Batra* 26a, or alternatively Shiveḥat from b*Baba Qama* 91b.

Interestingly, Halbershtam concluded his responsum by addressing an issue we saw in the previous chapter regarding kosher slaughtering of an animal when no earth is available to ceremonially cover the blood (*kisui hadam*). He cited Alexander Sender Schorr (1673-1737, Poland) who stated that it is permissible to burn a gold coin in order to use the ash created for the purposes of a ceremonial covering of the blood, as a subjective measure, i.e. if the person values the meat more than he values the gold. This approach is a deviation from Yosef Karo's ruling seen in the previous chapter in which one is permitted to create ash in this manner only if the chicken being slaughtered is of higher value than the item destroyed to create the ash.

Shevut Yaakov 1:159³⁹¹

Yaakov ben Yosef Reischer (c. 1670-1733, Prague, Bavaria, Germany and France) was asked whether it is permissible to cut down fruit trees that were planted and came to block the neighbour's window. He began stating that it was indeed permissible to cut down the trees. He then cited the Talmud from *bBaba Qama* 91b-92a and Yaakov bar Asher who stated that if the location of the tree is needed for other purposes, it is permissible to cut it down. He continued his justification that the prohibition is transgressed when there is wastefulness/destruction, but in this case the cutting down of the trees is in fact the righting of a wrong and not an act of destruction. Among other sources, he also cited Maimonides' Laws of Kings which claim that cutting down a fruit tree is only prohibited if done in a destructive manner (*derekh hashḥatah*). He concluded by stating that if it is possible to resolve the issue by pruning a number of the trees' branches so that sunlight still reaches the neighbour's window, this would be the preferable solution.

³⁹¹ Yaakov Reischer, *Sefer She'elot UTeshuvot Shevut Yaakov*, Part One (Jerusalem: Luhot Frank, 2003).

Binyan Tzion 61³⁹²

Jacob Ettlinger (1798-1871, Germany) also dealt with the question of cutting down fruit trees. He was told that in order for an individual to get married he needed to buy land and build a house, but the only plot available had a number of old fruit trees that would be needed to be cut down in order to accomplish this goal. He was asked whether under such circumstances it would be permissible to cut down these trees. He cited a number of different *halakhic* positions dealing with the nuances of cutting down fruit trees and concluded that the Torah only prohibits the cutting down of fruit trees in a destructive manner (*derekh hashḥatah*). He asserted that the prohibition does not hold when the act of cutting down the fruit tree has utility (*to'elet*), either through the lumber or through the land use. He suggested that the best practice would be to uproot the trees and replant them elsewhere, previously suggested by Moshe Sofer (1762-1839, Germany). In this particular case Ettlinger assumed that this would be unnecessary since the trees were already old. He also suggested that the trees be cut down by gentiles. He then stated that the best option would be to have the gentiles uproot the trees and replant them prior to the Jew buying the land. He concluded, however, that as the end result would be marriage, it would be permissible even for a Jew to cut down these trees.

Mashiv Davar 2:56³⁹³

Though the exact question was not included in his writings, Naftali Tzvi Yehudah Berlin (1817-1893, Russia and Poland) was asked whether it is permissible to cut down fruit trees in order to use the space for other purposes (presumably to build a house). He suggested that the questioner rely on David HaLevi Segal's ruling (*Turei Zahav, Yoreh De'ah* 116) that it is permissible to cut down fruit trees in order to build a house. Berlin, however, also suggested that he proceed with extreme caution and only cut down the trees if the product is of greater value than the fruit. If the benefit (*hana'ah*) is not greater

³⁹² Jacob Ettlinger, *Binyan Tzion HaShalem*, Volume One, ed. Yehudah Aharon Horowitz (Jerusalem: Devar Yerushalayim Publishers, 2002).

³⁹³ Naftali Tzvi Yehudah Berlin, *Shu"t Mashiv Davar*, Parts One and Two (Jerusalem: private printing, 1968).

through their destruction, it would be prohibited under *bal tashhit*. As a proof-text he referenced b*Shabbat* 129a, claiming that if not for the concept of *bal tashhit degufa adif*, it would be prohibited to destroy anything for the benefit (*hana'ah*) of the body. Berlin claimed that cutting down fruit trees is particularly severe, because there is an inherent danger in destroying them (presumably he was referring to the case of Rabbi Ḥanina's son Shiveḥat/Shikheḥat). Moreover, according to Maimonides, the Torah treats the cutting down of trees more stringently than the waste/destruction of other material, because of difference in punishment (*malkot* vs. *makat mardut*).

He claimed that the quantities of fruit that the Talmud stipulated as giving a tree protected status are so miniscule that they speak to the severity of the prohibition. So much so, that virtually any other benefit (*hana'ah*) or purpose (*tzorekh*) for the fruit tree would be of greater value than the fruit. Nevertheless, Berlin asserted that the prohibition stands, not because of issues of value, but because of the severity of the prohibition; only the cases delineated by Maimonides are considered reasonable exceptions to the rule. Cutting down a fruit tree for any other reason is prohibited. In fact, Berlin claimed that according to Maimonides, Ravina's assertion that a fruit tree may be cut down if the lumber is of greater value than the fruit (b*Baba Qama* 91b) holds only in cases where the lumber itself is being benefited from. If the tree is cut down for the purpose of any other benefits (*hana'ot*), doing so is considered a transgression of *bal tashhit*. Berlin did acknowledge the fact that Asher ben Yehiel permitted the cutting down of fruit trees if the space is needed for other purposes. This position is very similar to that of David HaLevi Segal, and Berlin opened his responsum by saying that Segal's ruling should be accepted. Nevertheless, he qualified this approach with his final statement. In it, he evoked rabbinic sources (b*Megillah* 26b and m*Kilayim* 2) which indicate that one should first perform a constructive act before a destructive act. Since circumstances are wont to change, if the destructive act is performed first, it is possible that the constructive act will simply never occur, leaving only the destruction.

Har Tzvi, Orah Haim, Part Two, 102³⁹⁴

Tzvi Pesah Frank (1873-1960, Lithuania and Land of Israel) was asked whether it is permitted to cut down a fruit tree in its first three years (when the fruit it bears is forbidden from consumption) when the space is needed to build a *sukkah*.³⁹⁵ Frank replied that there are two issues with cutting down a fruit tree. First, Deuteronomy 20:19 prohibits cutting down fruit trees. Second, the case of Rabbi Hanina in *bBaba Qama* 91b demonstrates that there is considerable danger in cutting down fruit trees. He then cited Maimonides (Laws of Kings 6:8) where the prohibition is said to include only the cutting down of fruit trees in a destructive manner (*derekh hashhatah*). He also presented the opinion of Asher ben Yehiel (*Rosh al bBaba Qama* 8:15) who claimed that if the space occupied by the fruit tree is needed to build a house, then it is permissible to cut it down. He then brought the opinion of David HaLevi Segal who claimed that it is permissible to cut down a fruit tree if the space is needed to build a house. Yaakov Emden, however, qualified this position by stating that the house must be of greater value than the fruit tree. As such, Frank determined that the same must hold for the *sukkah*, which is problematic, because as a temporary structure the *sukkah* has very little value. He reasoned, however, that building a *sukkah* is an actual commandment (as opposed to building a house) and *bal tashhit* does not apply under such circumstances. Basing his opinion on the *Tosafot*, he asserted that as a negative commandment *bal tashhit* is only superseded by positive commandments.³⁹⁶ This only holds, however, in cases where it is not possible to carry out the positive commandment in a non-transgressive manner. Yehudah HeHasid, however, held the position that a negative commandment can be superseded even for the sake of enhancing a positive commandment. In the case of *bal tashhit*, the action undertaken to glorify the positive commandment would not even be considered destructive/wasteful. After continuing his deliberations somewhat further, he concluded that while in this particular case the act is permitted (i.e. cutting down the

³⁹⁴ Tzvi Pesah Frank, *Sefer Har Tzvi: Orah Haim, Part Two* (Jerusalem: 1973).

³⁹⁵ A *sukkah* is a temporary structure that is built for the Festival of Booths (*Sukkot*).

³⁹⁶ Negative commandments prohibit certain actions, whereas positive commandments require certain actions to be carried out.

young fruit tree in order to use the space to build a *sukkah*), one should still proceed with caution because of the danger involved (i.e. premature death). As such, he recommended that the cutting down be done by a Gentile, but even the request to the Gentile should be phrased in a way that explicitly states that the act is carried out exclusively by the Gentile and not under the volition of the owner.

5.2.1 Analysis

As can be seen relative to the material in the previous chapters, the questions posed were by and large nuanced situations in which it was not always clear how the context fit under the established *halakhah*. How does one judge a situation in which a fruit tree causes damage or potential damage? How does a person's well-being or convenience measure up to the importance of not cutting down a fruit tree? Does a fruit tree whose fruits are forbidden for consumption fall under the prohibition of *bal tashhit*? Is it permissible to cut down fruit trees for the purpose of building something in its place? What if the building has a religious function? After having read the earlier chapters, it is possible that some of the responses to such questions could be anticipated. Nevertheless, these issues were of great enough concern to the questioners that they made the effort to seek out a *halakhic* solution.

The first major noticeable element in the responsa that deal with fruit trees is that Maimonides applied his concept of *derekh hashḥatah* when questioned with regard to a nuanced situation regarding a fruit tree. Maimonides' innovation moved from the realm of theory in his *Mishneh Torah* to the sphere of practice in his responsa. He was, of course, not the only one to use this term when dealing with the issue of cutting down fruit trees; Ḥaim bar Aryeh Leib Halbershtam, Jacob Ettlinger, Yaakov Reischer and Tzvi Pesah Frank, among others not presented in this chapter, also applied the idea of *derekh hashḥatah* in their responsa.

Derekh hashḥatah was not the only major concept that had been adopted from previous scholars and was now being applied to new contexts concerning *bal tashhit*.

Jacob Ettlinger used the term *to'elet* when claiming that any time there is utility in cutting down a fruit tree it is permissible. This essentially took Ravina's statement from *bBaba Qama* 91b and reframed it. Naftali Tzvi Yehudah Berlin did not agree with this interpretation of Ravina's statement. He limited what appears to be a very general statement and determined that it applies only to actual lumber and not to other uses, though this position does not appear to be widely accepted. Berlin used the term *hana'ah* when claiming that the only reason that we are permitted to destroy/waste anything for the benefit of the body is because of the concept of *bal tashhit degufa adif*.

It should be noted that while some of the legists were more stringent than others, ultimately, they all gave permission for the trees in question to be cut down. In a number of cases, suggestions were offered that the questioners take action to prevent the cutting down of the trees, but in the end permission was granted. When a tree is blocking a window, the branches should be trimmed (Bakhrakh and Reischer). When a tree needs to be cut down, a Gentile should be the one who performs the action (Frank). When a tree is harming other trees, it should be cut down only if it is being replaced with plantings that are not harmful (Krokhmal and Ettlinger).

While the above responsa show significant elements of continuity, Halbershtam's responsa presents novel ideas. In essence, his approach suggests that the entire notion of what is wasteful or destructive is open to interpretation. While this sounds like a contextualised manifestation of the ruling that destructive/wasteful acts from which humans derive benefit are not considered a transgression of *bal tashhit*, there is more that can be learned from this nuanced approach. Schorr (and Halbershtam through his citation of Schorr's position) removed the prohibition of destruction/wastefulness from the realm of rationality and opened the door of subjectivity in the application of the law. According to this approach each individual can determine for themselves which actions constitute wastefulness and are prohibited, and which do not and are permissible.

5.3 Inculcation of Moral Dispositions

*Shu"t Hakham Tzvi 26*³⁹⁷

Tzvi Hirsch ben Yaakov Ashkenazi (1660-1718, Moravia, but travelled throughout Europe) offered his opinion on a *halakhic* dispute Shlomo ben Yeḥiel Luria (1510-1574, Poland) had with Maimonides. Maimonides held the position that Jews are accountable for their actions towards Gentiles, just as they are towards Jews. Luria, however, contended that the Torah was only given to Israel and the laws within it are only applicable to Jews in relation to other Jews (unless otherwise stated). Ashkenazi rejected Luria's position, by explaining that even though Gentiles may rob and mistreat Jews, it would be inappropriate to reciprocate. He based this approach in part on Maimonides' Laws of Kings (6:7-8) which states that when one is besieging a city one side should be left open to allow those who want to escape with their lives to do so. To this he added examples of the prohibitions against cutting down trees and harming animals and concluded that leaving these unharmed is not for the sake of plant and animal life, but for the sake of the individual – "...for ourselves, so that we instill in our souls true opinions and good and honest qualities for our merit in order to better ourselves..."

*Torah LiShmah 400*³⁹⁸

Yosef Ḥaim ben Eliyahu (1834-1909, Iraq) was asked whether it is permissible for a husband to destroy his wife's immodest clothes. The background to the question was that a man bought some expensive silk at the market and gave it to his wife for her to have a dress made from the material. The problem was that the silk was so fine that it was sheer, and due to its fine quality it attracted attention. The man pleaded with his wife that she not wear the garment for reasons of modesty, but on occasion she would defy his request. The questioner asked whether it would be permissible to secretly burn the

³⁹⁷ Tzvi Hirsch Ashkenazi, *Sefer She'elot UTeshuvot Hakham Tzvi HaShalem*, (Tel-Aviv: Leon Publishing, 1963).

³⁹⁸ Yosef Ḥaim ben Eliyahu, *Sefer Torah LiShmah* (Jerusalem: Offset Re'em, 1976).

garment in a way that would not be noticed or would doing so be a transgression of the prohibition against wastefulness. Yosef Haim ben Eliyahu claimed that doing so would not be a transgression of *bal tashhit*. He based his reply on b*Berakhot* 31a, in which certain expensive items were destroyed in order to temper the joy of the sages.³⁹⁹ He reasoned that if their actions were not a transgression of *bal tashhit*, then destroying things for the sake of fulfilling a commandment is permissible. He suggested that the man act in a discreet manner in order to avoid bringing strife into his marriage. He then presented a number of other examples where it is considered permissible to act in a wasteful/destructive manner in order to perform commandments or even to do so in an exalted manner. The examples included the burning of expensive clothing to honour Rabbi Shimon bar Yoḥai on the festival of *Lag BaOmer*, and keeping candles lit during the day in the synagogue when their light is unnecessary. Basing himself on Maimonides (Laws of Kings 6:8-10), he concluded that *bal tashhit* is only a transgression of biblical law with regard to destroying fruit trees; all extensions of *bal tashhit* beyond this are rabbinic law.

***Mishneh Halakhot* 17:170⁴⁰⁰**

Menasheh Klein (1923-2011, Ukraine, U.S.A and Israel) was asked whether it is prohibited to treat non-sentient material such as plants or non-living material disgracefully, or whether the prohibition only applies to sentient animals. Klein answered that the *halakhah* states that anyone who embarrasses their fellow in public does not merit the world to come. There are, however, exceptions to the rule. In particular, it does not apply to a person who shames someone who feels no shame, such as a fool (b*Baba Qama* 86b). Such a case might indicate that it is indeed permitted to disgrace non-sentient material. However, he then mentioned the connection made in *BeMidbar Rabbah* 17 of the Israelite spies who spoke poorly of the land of Canaan and as a result the Israelites ended up wandering the desert for forty years. Klein also presented another *midrash* from

³⁹⁹ The sages asserted that all joy in the world should be tempered so long as the Temple is destroyed.

⁴⁰⁰ Menasheh Klein, *Sefer Mishneh Halakhot*, Part Seventeen (New York: Machon Mishneh Halachos, 2009).

b*Berakhot* 62b in which Rabbi Yose bar Ḥanina stated that David could not keep warm in his old age (1Kings 1) due to the fact that he had cut off part of Saul's garment (1Samuel 24). In other words, because he disrespected the garment by cutting it, garments no longer provided him with warmth.⁴⁰¹ These *midrashic* narratives indicate that it is prohibited to disrespect non-sentient material. To reinforce this position he claimed that the interpretation of *mAvot* 4:3⁴⁰² is that the entire created world has value and should not be disgraced. He presented the work of Yonah of Gerona who claimed that a righteous person is aware of the purpose (*tzorekh*) of all things in the world; there is nothing superfluous in the world as it all the fruit of God's creation. Finally, Klein concluded that in books of ethics the sources discuss someone who needlessly (*lelo tzorekh*) tears the leaf off a tree, calling such an action a transgression of the prohibition against wastefulness. These sources assert that everything in God's world was created for a purpose (*tzorekh*). As such, there is no difference between a person or non-sentient material; defiling either is transgressive.

5.3.1 Analysis

In discussing relations between Jews and Gentiles, Tzvi Hirsch Ashkenazi claimed that even if mistreated, Jews should not reciprocate. He compared this law to the prohibitions of *bal tashhit* and *tza'ar ba'alei hayim*, justifying his approach on moral grounds. He asserted that though trees and animals have no intrinsic value, abstaining from harming them instills good qualities in human beings. Though *Sefer HaḤinukh* is not mentioned in the responsum by name, its author was the first to apply the aspect of morality and human embetterment through humane treatment of the non-human world to the rationalisation of *bal tashhit*.

Menasheh Klein took a very different approach to the issue of morality with respect to *bal tashhit*. He brought examples from the *midrash* of instances where those who, whether by actions or by words, treated the non-sentient world disgracefully, and

⁴⁰¹ This is an example of *middah keneged middah* (measure for measure).

⁴⁰² *mAvot* 4:3: He [Ben Azzai] used to say: Despise not any man, and discriminate not against any thing, for there is no man that has not his hour, and there is no thing that has not its place.

were punished measure for measure. The reason for the legal standing of the non-sentient world was not in order to inculcate humans with good character, but because of their intrinsic value. In other words, the prohibition comes not to imbue humans with moral qualities, but the righteous who already have such qualities are inherently aware that these things are imbued with divine purpose (*tzorekh*).

A third approach to moral issues concerning *bal tashhit* can be found in the responsum of Yosef Haim ben Eliyahu. He had to balance a number of factors in the case presented to him; modesty, marital relations, and the prohibition against wastefulness. He presented modesty as a moral issue and by weighting the various parameters he created a hierarchy of values. Issues of modesty together with the stress caused to the marriage as a result justified for ben Eliyahu the destruction of an expensive garment.

5.4 Self-Harm

*Shevut Yaakov 3:71*⁴⁰³

Yaakov Reicher (1670-1733, Bohemia, Bavaria, Germany and France) was asked whether it is permissible to test medicines on animals that are impure (i.e. not kosher even if ritually slaughtered) prior to administering them to a human. Reicher replied that it has already been established by Binyamin Aharon Solnick (1550-1620, Poland), David HaLevi Segal (1586-1667, Poland and elsewhere), Gershon Ashkenazi (c. 1620-1693, Poland, Moravia, Austria, and France) and Yaakov ben Shmuel (17th century, Poland) that anything that is done to fulfil a need (*tzorekh*) or that is done for the sake of health or for material advantage (*hanaat mamon*) is not considered a transgression of *bal tashhit*. Based on these authorities, he further asserted that it is permissible to kill an animal for medicinal purposes, even if the medicinal benefit is only in potential. This, he claimed, is because the prohibition against destroying the body stands higher than the prohibition against destroying material (*bal tashhit degufa adif*). He did, however, express surprise that none of the authorities cited the case from b*Hullin* 7b where the prohibition against

⁴⁰³ Yaakov Reischer, *Sefer She'elot UTeshuvot Shevut Yaakov*, Part Three (Jerusalem: Luhot Frank, 2003).

harming animals and the prohibition against wastefulness were used as excuses by Rabbi Pinḥas to not eat at the house of Rabbi.⁴⁰⁴ This would seem to indicate that it is not permissible to transgress these commandments for the sake of human benefit or utility. Reicher concluded, however, that Rabbi Pinḥas just evoked these prohibitions for other reasons because he did not want to eat at Rabbi's house as he had already invited danger into his home by having the white mules. Ultimately, Reicher concluded that this type of animal experimentation was permissible, and it would not be a transgression of any prohibition; indeed anything that has human utility and benefit casts these prohibitions aside.

Yabia Omer 8, Ḥoshen Mishpat 12:1⁴⁰⁵

Ovadia Yosef (1920-2013, Iraq, Egypt and Israel) was asked whether a woman can perform plastic surgery in order to beautify herself or whether doing so is a transgression of the prohibition against self-harm. He started by presenting the Talmudic discourse on the prohibition (*bBaba Qama* 91a) and then brought the codes and a large number of *halakhic* authorities on whether it is indeed prohibited to engage in self-harm or not. One of the sources he brought, which fell on the side of self-harm being permissible was Bezalel Ashkenazi (c. 1524- c. 1594, Egypt and Land of Israel) who brought the opinion of Meir Abulafia (c. 1170-1244, Spain) who stated that the position that Rav Ḥisda took, that of lifting his garments so that the thorns scratched his legs instead of his clothing was authoritative because his opinion came later. Ovadia Yosef then presented the opinions of Maimonides and Yosef Karo who prohibit self-harm. He himself claimed that one must distinguish between various types of harm, and that in the case of the woman in question, it would be permissible to undergo the operation, because it is done with anaesthetics and the benefit is long term. This, he claimed, is reinforced in a case where a woman is so ashamed of her appearance that her embarrassment is continuous. He then cited Maimonides who claimed that self-harm is only prohibited when done *derekh nitzayon* and *bizayon*, in a quarrelsome and shameful manner. Finally,

⁴⁰⁴ This text can be found in Appendix B.

⁴⁰⁵ Ovadia Yosef, *Yabia Omer: Volume 8, Ḥoshen Mishpat*. Jerusalem: 1995.

Ovadia Yosef compared Maimonides' ideas of *derekh bizayon* and *derekh hashhatah*, asserting that just as wastefulness is only prohibited when done *derekh hashhatah*, so too, self-harm is only prohibited when done *derekh bizayon*. Due to the fact that the self-harm that the woman is undergoing is for the exact opposite reason, Ovadia Yosef ruled that it is indeed permissible.

Mishneh Halakhot 12:23⁴⁰⁶

Menasheh Klein was asked if a son is permitted to buy his father tobacco products under the obligation of “honouring one’s parents,” or whether such a request be treated in the same manner as a parent who asks his son to transgress the commandments of the Torah. Klein responded that each case must be treated in its own right. According to him, a person who does not already smoke is certainly prohibited from starting for the following reasons: it causes self-harm, it is a waste of time, it transgresses *bal tashhit*, and it habituates people to lusts and cravings. If, however, a person is already addicted to smoking and cannot quit, smoking should then be treated as a bodily necessity. Klein then addressed the issue of whether giving the father a cigarette or lighting a cigarette for him is a transgression of “not putting a stumbling block before the blind.” This, too, he claimed is dependent on the specific case. For a healthy person, opium is a deadly drug, but for the ill person it can be medicinal. Similarly, sugar can be deadly for diabetics, but in certain cases, even for the diabetic, sugar intake is essential. He then claimed that smoking is no worse than any other thing which a son could give his father that causes bodily harm. Finally, he presented Maimonides’ opinion (Laws concerning Ethics 4:9) that there are many foods that should be considered deadly that one should avoid, but are still not outrightly prohibited from consumption. As such, he concluded that the matter is not straightforward and there are conflicting opinions.

⁴⁰⁶ Menasheh Klein, *Sefer Mishneh Halakhot – Mahadurah Tinyana*, Part Twelve, (New York: Makhon Mishneh Halakhot Gedolot, 2000).

Hashukei Hemed, bBaba Qama 90b⁴⁰⁷

Yitzhak Zilberstein (b. 1934, Poland and Israel) asked (or was asked) whether a person who has a tooth causing him pain can have it pulled out if they cannot financially manage the cost of treatment to repair the diseased tooth. He presented the *baraita* of Rabbi Eleazar who claimed that tearing too much over the dead is a transgression of *bal tashhit* and the *stam*'s rejection of this through the example of Rav H̄isda's protection of his garments while walking through thorns. Since tearing a garment too much as an act of mourning is considered a transgression of *bal tashhit*, Zilberstein claimed that an act of self-harm is prohibited even when it has utility (*to'elet*). In other words, because we learn *a fortiori* from material about the body, and because it is prohibited to tear too much over the dead even though there is utility in the act (the utility being the psychological assuagement that contributes to the healing process), so too is it prohibited to engage in self-harm, even when the act has utility. He then asserted that the *sugya* in the Talmud teaches us that it is permitted to engage in self-harm that is reversible, it is prohibited to engage in self-harm that causes permanent damage under the prohibition of *bal tashhit*. The *a fortiori* reasoning of prohibiting self-harm that emerges from the prohibition to destroy material stands when the damage is permanent. Thus, pulling out a tooth (causing permanent damage) would be a transgression of *bal tashhit*. Zilberstein added, however, that in cases in which there is a great need (*tzorekh*) it is permissible to engage in wastefulness. For Zilberstein, an example of great need includes someone who would be mentally unable to endure the healing process. He did not consider poverty to be such a cause and even gave suggestions on how a person could finance treatment. He claimed that the dentist was prohibited to pull out the patient's tooth even if requested, because a person's body does not actually belong to him but to God. In his concluding line, however, he claimed that when there is the need (*tzorekh*) to pull a tooth for the sake of

⁴⁰⁷ Yitzhak Zilberstein, *Hashukei Hemed al Masekhet Baba Qama* (Jerusalem: 2009).

the health of the body it is permissible to do so, because *bal tashhit* does not apply in cases where there is utility (*to'elet*).⁴⁰⁸

5.4.1 Analysis

Yaakov Reicher based himself on a long line of earlier authorities who asserted that any case necessitating waste/destruction for the purposes of human health, need (*tzorekh*) or benefit (*hana'ah*) is not considered a transgression of *bal tashhit*. His innovation was that *bal tashhit degufa adif* can be applied in circumstances where the benefit is uncertain, such as in the case of animal experimentation.

Menasheh Klein dealt with the issue of smoking, and while not prohibiting smoking for those already addicted, he did prohibit encouraging one to develop the habit. He considered smoking to be harmful to a person's health, as well as a waste of time and money. Neither Reicher nor Klein explicitly stated that the prohibition against self-harm comes as part of *bal tashhit*, but in their specific cases they list both as reasons to either permit or prohibit their respective issues.

In dealing with the question of whether plastic surgery is permitted for aesthetic reasons, Ovadiah Yosef made an important comparison with regard to two different Maimonidean terms. He justified the surgery in this case because just as *bal tashhit* is only prohibited when done *derekh hashhatah*, so too, is self-harm only prohibited when done *derekh nitzayon* and *derekh bizayon*. In other words, if someone engages in self-harm and their intention is neither to be quarrelsome nor to cause themselves shame, the act is permissible.

Through his responsum, Yitzhak Zilberstein offered a nuanced explanation to the *stam*'s rejection of Rabbi Eleazar's *baraita*; Rav Hisda's position only holds in cases where the damage is reversible. Thus, the prohibition against irreversible harm is still

⁴⁰⁸ Zilberstein's conclusions appear to be somewhat contradictory. He first claims that self-harm is prohibited even when the act has utility and then asserted that self-harm is included under *bal tashhit*. He then concluded that *bal tashhit* does not apply in circumstances that have utility. The cases, however, should not be understood as contradictory, because the second case is qualified as being a *tzorekh gadol* (a great need) making it permissible.

learned from the prohibition against the waste/destruction of material. This allowed him to hold that pulling out the tooth is prohibited unless there is great need. Through his use of the terms *tzorekh* and *to'elet*, Zilberstein demonstrates the continued use of the contributions to the conceptualisation of *bal tashhit* offered by Meyuḥas bar Eliyahu and Baḥya bar Asher and the *Sefer HaHinukh* to the present day.

5.5 *Derekh Hashḥatah, Tzorekh, Hana'ah*

***Shu"t Maharashda"m, Yoreh De'ah 51*⁴⁰⁹**

Samuel de Medina (1506-1589, Greece) dealt with whether a Jew slaughtering an animal for a Gentile can do so with an imperfect knife, which would result in a non-kosher slaughtering, and concluded that *prima facie*, it is permissible. Although the question itself is not presented by de Medina, it appears that the questioner suggested that one reason for the prohibition could be *bal tashhit*. In response, de Medina referenced *bHullin 2a* which discusses the prohibition to slaughter animals that applies to deaf people, simpletons and youngsters. The Talmud did not offer an explanation as to why this is the case, leaving open the possibility that the prohibition emerges from *bal tashhit*. De Medina asserted that the reasoning behind the prohibition to eat an animal slaughtered by this group was correctly argued by Rabbeinu Tam in the *Tosafot* being that it is possible that a Jew would inadvertently come to eat from their slaughtering. He rejected the possibility that their slaughtering would be a transgression of the prohibition of *bal tashhit*, because *bal tashhit* is only transgressed when an action is done in a destructive or wasteful manner (*derekh hashḥatah*). In other words, de Medina rejected the possibility that a deaf person, a simpleton and a youngster cannot slaughter animals because of *bal tashhit*. He did, however, suggest that the use of an imperfect knife could still relate to the issue of *bal tashhit* by virtue of the fact that as a result of the slaughtering, the animal would now certainly be prohibited for consumption by Jews. This would be similar to the

⁴⁰⁹ Samuel de Medina, *She'elot UTeshuvot Maharashda"m: Oraḥ Haim, Yoreh De'ah*, ed. David Avitan (Jerusalem: Zikhron Aharon, 2009).

prohibition against spilling out well-water, while others are in need of water (b*Yevamot* 44a).

Tzemah Tzedek (Lubavitch), Oraḥ Ḥaim 20⁴¹⁰

Menahem Mendel Schneerson's (1789-1866, Russia) response deals with whether or not it is permissible to knock down the wall of a synagogue in order to expand the women's sanctuary. The question rests on the issue of whether it is permissible to destroy in order to create something useful. He stated that b*Baba Qama* 91b indicates that it is permissible to destroy something as long as the final product is of greater value than the original item destroyed. He concluded that as long as it is not done in a destructive manner (*derekh hashḥatah*), it is permissible. One of the main issues was that in order to gain the added space the wall would lose its thickness and its strength would be diminished. This he justified by claiming that such an act was not a complete ruining of the wall, which would remain thick enough and that at any rate there was danger to the health of the women from overcrowding.

Divrei Ḥaim, Oraḥ Ḥaim 2:13⁴¹¹

Ḥaim bar Aryeh Leib Halbershtam (1793-1876, Poland and Galicia) dealt with the question of whether one is allowed to destroy a synagogue wall in order to increase the size of the women's section. In other words, he was asked whether it is permissible to destroy something holy in order to improve upon it. He problematized the issue by referencing Maimonides' discussion from the Laws Concerning the Foundation of the Torah (6:7) which concerns the prohibition against damaging even one stone from the tabernacle in a destructive manner (*derekh hashḥatah*). He also presented Yosef Karo's position (*Shulḥan Arukh, Yoreh De'ah*, Laws of Slaughtering 28:21) regarding the ceremonial covering of blood for an animal that is slaughtered in a circumstance where there is no earth available to cover the blood. As has been seen, burning gold in order to

⁴¹⁰ Menahem Mendel Schneerson, *Sefer Tzemah Tzedek: She'elot UTeshuvot MiShulḥan Arukh Oraḥ Ḥaim* (New York: Otzar HaḤasidim, 1994).

⁴¹¹ Haim bar Aryeh Leib Halbershtam, *Sefer She'elot UTeshuvot Divrei Ḥaim: Oraḥ Ḥaim*, Part Two (New York: Mosdot Babov, 2002).

create ash for the sake of ceremonial blood covering is permitted when the value of the gold is less than that of the animal. Halbershtam then drew an analogy between the waste/destruction of the gold to the destruction of the tabernacle which is priceless. If it is prohibited to burn the gold when it is of greater value than the animal, how much greater is the prohibition of destroying even one stone of the tabernacle which is priceless?⁴¹² The main difference between the two cases is, of course, that the tabernacle is holy, while gold is not. The question then remains – how is it possible to destroy something holy like the synagogue wall during renovation? Halbershtam based his conclusion on David HaLevi Segal (*Taz*) who ruled that such an action is permitted, because it is not done in a destructive manner (*derekh hashḥatah*) and because the end result is an improved product once the renovation is completed. Due to the controversial nature of destroying something which is imbued with holiness, Halbershtam suggested that the wall be sold to a Gentile prior to its renovation.

Torah LiShmah 76⁴¹³

Yosef Haim ben Eliyahu (1834-1909, Iraq) was asked whether it is permissible to put extra oil in the Sabbath candles in order that they burn for the entire Sabbath. Basing his responsum on b*Shabbat* 67b, he concluded that doing so would be a transgression of *bal tashhit* because the candle is only of use when it is dark. Burning the candle during the day is of no benefit (*hana'ah*) and is wasteful.

Melamed LeHo'il Part Two, Yoreh De'ah 148⁴¹⁴

David Tzvi Hoffmann (1843-1921, Slovakia, Austria and Germany) was asked whether an old well with water unsuitable for drinking could be closed off. Hoffmann

⁴¹² Above (p. 220) it appears that Halbershtam accepted Alexander Sender Schorr's position on the subjective nature of *bal tashhit*, while here it appears he accepted Yosef Karo's contradictory ruling on the same issue. One possible way to reconcile this is by considering the qualitatively different scenarios. Above, Halbershtam was dealing with the cutting down of fruit trees, and could take a more lenient position. Here, however, the scenario involves destroying something imbued with holiness, which would require a more stringent approach.

⁴¹³ Yosef Haim ben Eliyahu, *Sefer Torah LiShmah*.

⁴¹⁴ David Tzvi Hoffmann, *Shu"t Melamed LeHo'il, Part Two: Yoreh De'ah* (Jerusalem: David Tzvi Hoffmann, 2010).

claimed that the only source which would potentially disallow such an action is b*Yevamot* 44b where it states that a person should not spill out (waste) the water of their well while another person is in need of water. Hoffmann argued that this only applies to water that is suitable for use. He then claimed that all the Jewish legists follow the opinion of Maimonides who in the Laws of Kings 6:8-10 ruled that if an action is not performed in a destructive manner (*derekh hashḥatah*), then it is not prohibited under the law of *bal tashḥit*.

Shu"t HaRaba"z, Part Three, Hoshen Mishpat 88⁴¹⁵

Ḥanokh Henikh Safran (1887-1959, Romania and Israel) was asked to clarify a difficulty in b*Ta'anit* 31a. In the Talmud it states that the axes used to cut down trees for the altar were broken after the 15th of the month of Av. This appeared to be a clear transgression of *bal tashḥit*. Why destroy the axes? Specifically, the difficulty was phrased in the following manner:

Why did they break the axe with which they cut down trees for the altar, thereby scornfully transgressing *bal tashḥit*, which commands us to not destroy anything which has utility [is necessary] (*yesh bo tzorekh*) to humans, for the sages have said, “Anyone who destroys utensils with destructive intent (*derekh hashḥatah*) transgresses the prohibition of *bal tashḥit*.”

It is unclear whether Safran was directly quoting the person who posed the question or whether he was paraphrasing. Ultimately, Safran asserted that the breaking of these axes was not a transgression of *bal tashḥit* as it was used for items which were consecrated; it would be improper to use the same axes for anything profane. This is based on the logic from b*Avodah Zarah* 11a: the utensils of the sovereign must be burned so others not use them and this is not a transgression of *bal tashḥit*.

⁴¹⁵ Bezalel Ze'ev Safran, *Sefer She'elot UTeshuvot HaRaba"z*, ed. Ḥanokh Henikh Safran (Bnei Braq, Israel: private printing, 1979). This particular responsum belongs to Bezalel Ze'ev Safran's son, Ḥanokh Henikh Safran.

Mishneh Halakhot 12:432⁴¹⁶

Menasheh Klein (1923-2011, Ukraine, U.S.A and Israel) was asked whether it is permissible to fish for pleasure. Klein claimed that such sport is forbidden for two reasons; the first, because it transgresses the prohibition against harming animals (*tza'ar ba'alei hayim*) and this unnecessarily harms the fish, and the second because it transgresses the prohibition of *bal tashhit*. He elaborated that it is prohibited to waste/destroy anything, and this is so *a fortiori* in the case of a living animal. He also argued that the fish were given to humanity in order to consume and not to needlessly destroy. With regard to harming animals he asked rhetorically, when a fish is caught unnecessarily (*lo letzorekh*) how can there be benefit/pleasure in it (*hana'ah*)? He then brought up the question of whether *bal tashhit* applies to ownerless items. He concluded that it did, referencing the interaction between Rabbi and Rabbi Pinhas from bHullin 7b. Rabbi suggested a number of solutions to solve the predicament of the white mules. He said he would renounce ownership of them, which Rabbi Pinhas rejected, because the mules were a liability. He then said he would kill them, but Rabbi Pinhas rejected this too because of *bal tashhit*. Klein claimed that if it were permissible to destroy ownerless items then Rabbi would have disowned the mules and then killed them. That he did not do so, proves, according to Klein, that *bal tashhit* still applies to ownerless items.

5.5.1 Analysis

The concept of *derekh hashhatah* was applied well beyond the realm of fruit trees. The term apparently first coined by Maimonides was also used more generally; any act of destruction/wastefulness that is done with intent is a transgression of *bal tashhit*. The examples presented in this chapter demonstrate the broad application of the term, both in terms of the scenarios and in terms of historic usage. Samuel de Medina used the term to reject the notion that an animal slaughtered by a deaf person, a simpleton or a youngster would be a transgression of *bal tashhit*. While he did not claim that animals slaughtered by this group were permissible, he very clearly rejects *bal tashhit* as the reason their

⁴¹⁶ Menasheh Klein, *Sefer Mishneh Halakhot*, Part Twelve.

slaughtering is prohibited. In order to transgress *bal tashhit*, the act needs to be carried out *derekh hashhatah*, meaning with intent.

Both Menaḥem Mendel Schneerson and Ḥaim bar Aryeh Leib Halbershtam used the term to justify tearing down part of a synagogue in order to expand the women's sanctuary. The end result was constructive, so the destructive means were legitimate. On the similar issue of destroying sanctified objects, Ḥanokh Henikh Safran discussed the case of the axes destroyed after the Temple was destroyed. While Schneerson and Halbershtam discussed cases where sanctified items cannot be destroyed (even though they both end up justifying it in their particular cases), Safran dealt with a sanctified item that must be destroyed due to its status. He based his answer on the directive that necessitates the destruction of a deceased sovereign's effects so that they are not used by anyone else. In his response he used both Meyuhas bar Eliyahu's term, *tzorekh*, claiming that *bal tashhit* only applies to things which have utility, and Maimonides' term, *derekh hashhatah*, claiming that even when an item which has utility is wasted/destroyed, for there to be a transgression the act must be done in a destructive manner.

In a case similar to the hypothetical situation found in the Talmud, Yosef Ḥaim ben Eliyahu contended with whether prior to the Sabbath an oil lamp could be set up with enough fuel to burn for the entire duration of the day (approximately 25 hours). He compared the burning of the lamp unnecessarily during the day to the case in the Talmud that prohibits the inefficient burning of a candle under the prohibition of *bal tashhit*. He used the terminology of the *midrash aggadah* by claiming that there is no benefit (*hana'ah*) to the burning of the lamp during the day, and doing so would transgress the prohibition against wastefulness.

David Tzvi Hoffmann related to the specific prohibition of not wasting water while other people are in need of it. The water in question was fetid, and the very fact that someone would ask about it shows the seriousness with which the law was being followed by the questioner. After all, the Talmud already stipulates other people's need as the determining factor, and it seems clear that such water does not have extensive

utility, especially in the time the question was posed. Hoffmann concluded that since the act would not be performed in a destructive manner (*derekh hashḥatah*) it is permissible.

Menasheh Klein's rejection of partaking in fishing for pleasure highlights both Meyuḥas bar Eliyahu and Baḥya bar Asher's innovations. Any action which functionally serves no need and has no benefit is prohibited because of *bal tashḥit*. Klein, of course, was making his own judgement call on what defines benefit, rejecting offhand the possibility that the pleasure gained from the fishing could offset the prohibition. Without explicitly stating so, it seems clear that Klein would define benefit within economic parameters. He then shifted his response to discuss ownerless items (in this case the fish), making the claim that destroying/wasting them would be a transgression of *bal tashḥit*. This is an important voice countering Yeḥezkel Landau and Avraham Tzvi Hirsch Eisenstadt's claim seen in the previous chapter that hunting could not be prohibited on the grounds of *bal tashḥit*, because the prohibition does not apply to ownerless items.

5.6 Conclusion

Bal tashḥit continues to prove itself a highly nuanced concept. For instance, as we observed in the previous chapter, there is a debate in the traditional scholarship as to whether the prohibition against wastefulness applies to ownerless items. In the Responsa literature Menasheh Klein argued that it does, whereas Yeḥezkel Landau argued that it does not. Clearly, from an environmental perspective, Landau's approach puts the understanding of *bal tashḥit* as an environmental ethic into question. His position completely rejects the notion of non-human material having any intrinsic value. Nevertheless, his position is certainly not the dominant one, and even those who do reject the idea of non-human material having value independent of their utility to humans might still hold that such acts are to be avoided due to their corruption of human morality. The prime advocate for *bal tashḥit* as a measure for human morality was the author of *Sefer HaḤinukh*. His approach clearly left a legacy, as can be seen in the responsa dealing with moral aspects of the prohibition against wastefulness.

The very different approaches to how morality is read into the prohibition against wastefulness is reminiscent of the earlier debate encountered in the Bible chapter regarding ecocentric and anthropocentric readings of Deuteronomy 20:19. Rashi's ecocentrically leaning gloss of the verse is echoed in Menasheh Klein's responsum regarding the inherent value in all of God's creations. Similarly, ibn Ezra's anthropocentric reading of the verse resonates in Tzvi Hirsch Ashkenazi's responsum which metes out value based on human utility.

The legacy that Maimonides left on the conceptualisation of *bal tashhit* is apparent in no place more than in the responsa literature. The use of the term “*derekh hashhatah*” is commonplace throughout the responsa dealing with *bal tashhit*, and is often used without any reference to its progenitor. Of particular note is David Tzvi Hoffmann's claim that the idea of *derekh hashhatah* is universally accepted. Whether or not this is the case (and there is no reason to believe it is not), Hoffmann clearly understood it as such. Almost all the responsa presented in this chapter eventually give the questioner the green light to engage in whatever action they had doubts about, confirming that such behaviour would not be a transgression of *bal tashhit*. The permissive nature of the majority of the responsa can be attributed to the concept of “*derekh hashhatah*.” As demonstrated in the previous chapter, to do something in a destructive manner requires intent. Intent is an essential component of culpability for transgressions. If someone takes the time to write to a *halakhic* authority and wait for a response, they are unlikely to have any destructive intent. Subsequently, it is not surprising that most of the behaviour in question was permitted.

Of great significance are the legacies left by Meyuhas bar Eliyahu, Bahya bar Asher, the *Midrash Aggadah* and *Sefer HaHinukh*. The expressions of *tzorekh*, *hana'ah* and *to'ellet* have been widely adopted in the responsa scholarship concerning *bal tashhit*. Interestingly, save *Sefer HaHinukh*, these individuals are simply not part of the discourse on the prohibition against wastefulness. While it could be argued that such expressions are necessary for dealing with the aspects of the prohibition and therefore there is nothing

special about their use, such an approach is not compelling. After all, *bal tashhit* as a concept required a significant degree of conceptualisation before it became so economically focused. Nevertheless, the mere fact that the prohibition is evoked in such a variety of circumstances, including economics, moral issues, and self-harm among others shows definitively that *bal tashhit* is not a mere prohibition but a broadly applied concept.

Also of importance was Klein's statement regarding the transgressive nature of treating the non-sentient world disgracefully. He asserted that there was no difference between defiling humans or material. This is reminiscent of the early *tannaitic* stages of the conceptualisation of *bal tashhit*, in which the prohibition against wasting/destroying material emerges analogously from the prohibition to harm oneself (t*Baba Qama* 9:31) and the prohibition against self-harm emerges *a fortiori* from the prohibition to waste/destroy material (b*Baba Qama* 91b). At this stage, a firm hierarchy of the body over material had not yet been established allowing for each prohibition to be learned from its counterpart. The fact that Klein can claim that there is no difference between humans and material in this case does not imply a rejection of the manner in which the prohibition was conceptualised by the *amoraim* and later authorities. Rather, it demonstrates that not every idea that is cast aside by one generation of thinkers is also cast aside by subsequent ones.

The responsa dealing with the relation between self-harm and wastefulness offered different perspectives on the matter. Yaakov Reicher evoked the concept of *bal tashhit degufa adif* to justify animal experimentation for medicinal purposes. This *amoraic* concept that confirms a hierarchy between the human body and material is used as a license to justify wastefulness and not prevent it. Ovadiah Yosef justified cosmetic surgery on the grounds of Maimonides' *derekh hashhatah* and *derekh nitzayon vebizayon*. In other words, both these legists used various conceptualisations of *bal tashhit* to allow certain behaviours.

Yitzhak Zilberstein is the most recent legist to hold the position that *bal tashhit* encompasses both the prohibition against wastefulness/destruction and the prohibition against self-harm. To the best of my knowledge, he is the also the only individual who explicitly differentiated between permanent and temporary injuries with regard to the *amoraic* exemplum of Rav Hisda. His position demonstrates the continuity of the approach from the *tannaitic* era that *bal tashhit* as an umbrella prohibition includes within it the prohibition against self-harm.

Chapter Six: Conclusion

6.1 Introduction

This dissertation had a number of goals. First and foremost among these goals was to chart the evolution of *bal tashhit* as a prohibition over the course of its tradition histories; from Scripture to the classic rabbinical era through the Codes, Responsa, and finally, the environmental era in which we find ourselves. A dissertation, of course, can neither include every single mention of the concept nor relate the nuances therein. This project should be viewed as research within the field of Religion and the Environment. The three contemporary works which have gathered and synthesised a large amount of the vast corpus of *halakhic* material on *bal tashhit* have done a highly commendable job. It was not the goal of this dissertation to repeat their efforts. The questions of whether *bal tashhit* as a general prohibition against wastefulness is *de'oraita* (derived from the Torah) or *derabbanan* (derived through rabbinic exegesis), or whether it makes a difference if a fruit tree is cut down by a Jew or Gentile, or if one is required to regurgitate food which they consumed without a blessing, are certainly interesting. These questions and others like them have been sufficiently covered elsewhere. Rather, this dissertation has been concerned with understanding the evolving nature of the concept, its compatibility with environmental values throughout its tradition histories and through these, its utility as a contemporary environmental ethic.

The contributions of this research to the field of Religion and the Environment generally and Judaism and the Environment specifically are numerous. Most important is the highlighting of the link between self-harm and wastefulness. This link is critical for the advancement of environmental discourse within the purview of Jewish thought. In spite of the abundant use of *bal tashhit* within Jewish environmental discourse, this link has hitherto not been adequately addressed. It is my hope that its historic basis as demonstrated in this dissertation, its perseverance despite its marginalisation, and its remarkable similarity to mainstream environmentalism, makes it a likely focal point for future environmental discourse.

This dissertation is also a first attempt to connect between the use of *bal tashhit* in reference to beards and *bal tashhit* in terms of self-harm and wastefulness. Though nothing conclusive can be said in this regard, the possibility of a connection raises intriguing possibilities and should certainly be analysed with greater scrutiny in further research. The same must be said for the association of wastefulness and wanton destruction with idolatry and foreign cultural practices.

Aside from making the rich variety of Hebrew and Aramaic sources covered in this dissertation more widely accessible through their translation into English, this research demonstrates the benefit and necessity of using the methodology of tradition histories in the field of Religion and the Environment. *Bal tashhit* as a concept has undergone a number of significant evolutionary phases. As human innovation continues, I assume there will be new circumstances and situations to which the prohibition will be applied. As such, it is never entirely static as a concept, and needs to be revisited continually. Some historical periods left their imprint on the concept more than others. At times this was due to historical events such as the emergence of rabbinic Judaism, the Enlightenment or the age of environmentalism, and at other times change occurred as the result of individual thinkers who were highly influential, such as Maimonides or Samson Raphael Hirsch.

I see three major phases in the post-biblical evolution of *bal tashhit*. The first is the classic rabbinic period. It is problematic to assert that a particular teaching originated with a particular sage even if the teaching is attributed to one and there are no competing traditions suggesting an alternative. Entering this debate is beyond the scope of this dissertation. In spite of the difficulties, the earliest and most important contributors to the conceptualisation of *bal tashhit* were Rabbi Eleazar ben Azariah and his student Rabbi Akiva (1st-2nd centuries CE, Land of Israel) and an anonymous teaching from the Tosefta.⁴¹⁷ As mentioned in the rabbinic chapter, at least a rudimentary version of the prohibition against wastefulness existed as early as the Jesus narratives in the New

⁴¹⁷ According to the Talmudic tradition, any anonymous statement made in the Tosefta belongs to Rabbi Neḥemiah (c. 150 CE). See b*Sanhedrin* 86a.

Testament and likely prior to that as well. The latest contributor in this era to the discourse on *bal tashhit* was Ravina (d. 421), considered one of those who began the process of compiling the Talmud. It is possible and even likely, however, that the arrangement of the narrative in which Ravina appears to have the final word was done by the *Savoraim*, (c. 550-c. 630).

There are a number of rabbis throughout the Mishnah, Tosefta and Babylonian Talmud that make contributions to the collection of teachings and narratives on the cutting down of trees, self-harm and other forms of wastefulness. Rabbi Eleazar taught:

I heard that he who rends [his garments] too much for a dead person transgresses the command, “Thou shalt not destroy (*bal tashhit*),” and it seems that this should be the more so in the case of injuring his own body (b*Baba Qama* 91b).

Rabbi Eleazar was the earliest known rabbi to use (or have attributed to him) the term *bal tashhit* with regard to wasteful/destructive behaviour. His *a fortiori* statement claimed that we learn about the prohibition against self-harm from the prohibition against wastefulness. While he linked the prohibitions to each other, he also established a hierarchy between humans and non-human creation. While the link between the prohibitions is maintained by Rabbi Akiva and the *Tosefta*, the hierarchy established by Rabbi Eleazar is absent.

In his defence of a woman who had been publically embarrassed, Rabbi Akiva taught:

[W]here one injures oneself though forbidden, he is exempt, yet, were others to injure him, they would be liable. So also he who cuts down his own plants, though not acting lawfully, is exempt, yet were others to [do it], they would be liable (m*Baba Qama* 8:6).

Rabbi Akiva made an analogy between the prohibition against self-harm and the prohibition against cutting down one's own trees. Rabbi Akiva did not attribute the prohibition against self-harm to any specific verse, but his parallel teaching regarding the prohibition to cut down plantings is implicitly derived from Deuteronomy 20:19. The

Tosefta attributed the prohibition against self-harm to Genesis 9:5 and applied it to a general prohibition against wastefulness. The Tosefta did not specifically mention *bal tashhit* by name, but was clearly referring to the prohibition against wastefulness, and made an analogy between self-harm and wanton destruction. In other words, if physical and emotional self-harm is prohibited, then so too must the harm of one's material possessions be forbidden. The second part of the Tosefta which connects acts of wanton destruction to idolatry is attributed to Rabbi Yoḥanan ben Nuri (late 1st–early 2nd centuries), a friend and colleague of Rabbi Akiva (d. 135 CE), and there is certainly the possibility of a shared ideology on this matter. In summary, the earliest conceptualisations of the prohibition against wastefulness associated the prohibition against self-harm with the prohibition against wastefulness.

Over the course of a few hundred years and through the *Amoraic* era, the conceptualisation of *bal tashhit* underwent a significant evolution. The teachings of the later sages of this era indicate just how radical the shift in understanding of the prohibition was. Ravina took *bal tashhit* in its rawest manifestation, the prohibition against cutting down fruit trees, and turned it into a utilitarian idea. Instead of never being able to cut down fruit trees, now fruit trees could always be cut down as long as it could be justified economically. If the fruit tree is worth more cut down than it is growing, it became permissible to cut down. As has been discussed, at least in theory this created an avenue for the cutting down of the last tree in the world. From this point forward, almost all considerations of *bal tashhit* have been economically oriented.

The relationship between self-harm and wastefulness was also addressed by the rabbis of the Talmud. The passage in b*Shabbat* 129a presented a list of rabbis who had expensive furniture broken and turned into firewood in order to create a source of heat after bloodletting. The list began with Samuel (c. 165-257, Babylonia), continued with his student Rav Yehudah bar Yeḥezkel (c. 220-299 CE, Babylonia), and ended with Rabbah bar Naḥmani (c.270-c. 330 CE, Babylonia). Rabbah's nephew and student Abaye asked whether such an action was a transgression of *bal tashhit*, to which Rabbah replied,

“*bal tashhit degufai adif li*,” meaning, “the prohibition against destroying my body is more dear to me.” In other words, when faced with the problem of wasting a fine piece of furniture or potentially harming his body, he chose his body as being of superior concern. It is possible that such an approach comes to counter the teaching found in *bSanhedrin* 74a stated in the name of Rabbi Eliezer (possibly ben Hyrcanus (c. 1st-2nd centuries CE, Land of Israel)) that the possessions of the righteous are more dear to them than their own bodies. This view was embodied by Rav Hisda in *bBaba Qama* 91b, who preferred to let his legs be scratched by thorns than to let the thorns tear his clothes.

The subjective element of Rabbah’s statement is important. As far as we know, Rabbah was not relying on an earlier teaching, but was rather stating his own perspective on the matter. For him, the health of his body was more important than a piece of furniture, but for others such as Rav Hisda, perhaps not. Shortly after Rabbah’s generation this approach became the standard. In response to Rav Hisda and Rav Papa’s statements in *bShabbat* 140a that one should eat barley (bread) instead of wheat (bread) and drink beer instead of wine, the *stam*, the anonymous voice of the Talmud, declared that these positions did not hold because of the overriding concept of “*bal tashhit degufa adif*” or “the prohibition against destroying the body is more dear.” The subjective element added by Rabbah was removed. In other words, his position had already become authoritative.

To summarise, over the course of a few hundred years, *bal tashhit* evolved from a Scriptural verse dealing with an anti-scorched earth policy, to a general prohibition against wastefulness. This transition was unspoken. Nowhere in the classic rabbinic sources do we find anything articulating the shift; it simply happened. Catherine Hezser argues that such a phenomenon is not surprising, as the rabbinic authors were not interested in creating general rules or principles, but dealt with each issue on a case by case basis.⁴¹⁸ In other words, that the Talmud offers examples of when *bal tashhit* applies

⁴¹⁸ Catherine Hezser, “Roman Law and Rabbinic Legal Composition,” *The Cambridge Companion to the Talmud and Rabbinic Literature*, ed. Charlotte Elisheva Fonrobert and Martin S. Jaffee (Cambridge: Cambridge University Press, 2007), 145.

but does not discuss it *qua* a concept is not exclusive to *bal tashhit*. Nevertheless, just because the rabbis never discussed the conceptualisation process, does not mean that they were not intimately involved in it. Though they never use the term *bal tashhit*, the Tosefta and Rabbi Akiva present the idea behind the prohibition against wastefulness and the prohibition against self-harm to be one and the same. A few hundred years later, the *stam* of the Talmud reframed the relationship between wastefulness and self-harm: the well-being of the body takes precedence over other forms of wastefulness. In other words, it became permissible to cause waste and destruction if there were competing bodily interests. In fact, *bal tashhit degufa adif* is only ever used in order to permit the destruction of material. Together with Ravina's establishment of an economic framework through which to enact *bal tashhit*, the prohibition evolved in the *tannaitic* era into what might be today considered a powerful environmental concept, and left the *amoraic* era environmentally weakened and with a strong economic focus.

To be certain, the rabbis themselves did not view *bal tashhit* as an environmental ethic. Environmental awareness such as we have today is a very recent phenomenon. The rabbis, however, would have been aware of their local environment, and occasionally understood that their actions did have an impact on it. This distinction is a prelude to the position that the understanding reached by the rabbis toward the end of the *amoraic* era regarding the prohibition against wastefulness was not through any conscious anti-environmental trend whatsoever. Instead, the continued evolution of *bal tashhit* was a conscious effort by the rabbis to find a balance between the limits on human behaviour caused by the prohibition and the creation of allowances for human needs. As such, it rapidly became a thoroughly anthropocentric concept.

As far as we know, no significant changes to the understanding of *bal tashhit* manifested themselves in the *geonic era*. The next major stage in the evolution of the prohibition came in 12th century Egypt advanced by one of the greatest Jewish thinkers of all time, Moses Maimonides. Maimonides made order of the Talmud, whose great wealth of material proved inaccessible to the uninitiated layperson simply looking for guidance

on how to live their lives as Jews. Maimonides collected the laws scattered throughout the Talmud and presented them as general principles in his code the *Mishneh Torah*. As such, he was the first person to articulate *bal tashhit* as a general prohibition against wastefulness, even though it is clear that the sages of the classic rabbinic era also understood it in a similar light. Of great importance is not just the novel framework in which he showcased the prohibition against wastefulness, but also the nuanced manner in which he articulated it.

While Maimonides very much kept the economic aspect of the prohibition against wastefulness alive, he created a new framework for the prohibition based on subjectivity and intent. He asserted that an action had to be done in a destructive manner (*derekh hashhatah*) in order to be considered a transgression of *bal tashhit*.⁴¹⁹ The magnitude of Maimonides' impact on the conceptualisation of *bal tashhit* can be seen through the vast number of times the term is used in subsequent scholarship. How does one properly define what doing something in a destructive manner entails? What is it that Maimonides meant when he decreed that unless something is done in a destructive manner, there is no transgression? *Halakhah* tends to reflect what is permitted and what is prohibited, and not communal values. It is possible that Maimonides had in mind a notion which, based on the communal Jewish values of his day, would be an objective understanding of “*derekh hashhatah*.” This, however, is not reflected in his writing, *de facto* implying that just as actions are carried out by individuals, so too are they the judges of their own actions. If an individual does not consider or intend for his/her actions to be wasteful or destructive, then they are not. This is supported by the fact that Maimonides asserted that the punishment for actions done in a manner of “*derekh hashhatah*” are punished with lashes. Intent makes a world of difference in *halakhah*. One is only ever liable for capital or corporal punishments for intentionally committed transgressions. All unintentional transgressions either go unpunished, or are liable to fines or various offerings at the Temple.

⁴¹⁹ Laws of Kings 6:8, 10.

The idea of subjectivity is reflected in later sources as well, giving credence to this position. One such example is the case mentioned in earlier chapters of the individual aboard a ship who wants to eat a chicken, but has no earth with which to ceremonially cover the blood. Various authorities decreed that the individual is permitted to create ash for this purpose by burning a gold coin. According to Yosef Karo (1488-1575, Spain, Portugal, Turkey, Bulgaria and Land of Israel) such an act would only be permissible so long as the chicken is worth more than the coin.⁴²⁰ Karo's position understood the necessary calculations made with regard to *bal tashhit* as being strictly economic. If the chicken is worth more than the gold coin there is no transgression and if it is not then there is a transgression, if the act is carried out. There is no consensus, however, with regard to Karo's position, and there are contradicting *halakhic* rulings basing themselves on *bal tashhit* as a subjective principle. For instance, Alexander Sender Schorr (c. 1673-1737, Poland) asserted that the issue is entirely based on subjectivity.⁴²¹ A rich person might have no qualms about wasting/destroying something if the end product is of greater importance for that person than the item they destroyed in order to achieve it. Schorr claimed that even if the gold is worth more than the chicken then the act could still be permissible. For him, the only calculation necessary is whether the individual values eating the chicken more than he values the gold. If one were to extrapolate, for a particularly wealthy person, this could be taken to an extreme; a small fortune could be burned so long as the individual values the meal more than the money. His ruling demonstrates the extremes to which a subjective understanding of the parameters of *bal tashhit* can be taken.

Another important stage in the conceptualisation of *bal tashhit* is the assertion that the prohibition applies only to things for which humans have need (*tzorekh*). This innovation belonged to Meyuhas bar Eliyahu (1150-1200, Byzantium). Other similar conceptualisations of the parameters of *bal tashhit* emerged over the course of the next century or two. Solomon Buber's critical edition of *Midrash Aggadah* (12th or 13th

⁴²⁰ Yosef Karo, *Shulhan Arukh, Yoreh De'ah, Hilkhoh Shehitah* 28:21.

⁴²¹ Alexander Sender Schorr, *Sefer Simlah Hadashah, Tevuot Shor, Bekhor Shor*, (Jerusalem: Levin-Epstein Inc. Publishing, 1966), 28:36.

century) to Deuteronomy 20:19 states that the prohibition against cutting down fruit trees extends beyond its context to prohibit the waste/destruction of anything from which one can derive benefit/enjoyment (*hana'ah*). This idea can also be seen in Baḥya bar Asher's (1255-1340, Spain) gloss on the same verse, in which he asserted that the prohibition is based on the understanding that a wise and intelligent person would not waste/destroy something needlessly but would rather derive utility (*to'elet*) from it. This is addressed by Pinḥas HaLevi, the author of *Sefer HaHinukh* (13th century, Spain), from a different angle. He claimed that it is, of course, permissible to cut down a tree if one would derive utility (*to'elet*) from such an action. In other words, the prohibition is not absolute; the one exception being the ability to derive benefit from the destroyed item. It would be very difficult to make an accurate argument regarding the progenitor of this idea. Nevertheless, it is likely that this conceptualisation of *bal tashhit* emerged during this time period, and was widely adopted in later sources dealing with the prohibition. This is of profound significance, because it further weakened the claim of intrinsic value within the non-human parts of the created world, and with it the efficacy of *bal tashhit* as an environmental ethic. Most notable in this regard is Yeḥezkel Landau's (1713-1793, Poland and Bohemia) responsum discussed in the Codes chapter, in which he asserted that a wild animal (and ownerless items in general) has no value unless it is killed and its pelt becomes a commodity.

After *Sefer HaHinukh* in the 13th century and until today, Samson Raphael Hirsch (1808-1888, Germany and Moravia) is without a doubt the person who has made the greatest impact on the conceptualisation of *bal tashhit* after Maimonides. Hirsch expanded the moral dimension of *bal tashhit*, and described the prohibition as the most fundamental aspect of human interaction with God. He called *bal tashhit* “the first and most general call of God.”⁴²² The profundity of such a statement cannot be overstated. As a commandment not mentioned explicitly in the Decalogue, or in the Torah and only in passing in codes such as the *Tur* and *Shulḥan Arukh*, this is an incredibly bold statement.

⁴²² Samson Raphael Hirsch, *Horeb: A Philosophy of Jewish Laws and Observances – Volume Two*, 2nd Edition, trans. I. Grunfeld (London: The Soncino Press, 1968), 279.

Through such statements and others noted in the Bible chapter where the connections he drew between the prohibition against wastefulness and human responsibility of stewardship (Deuteronomy 20:19), and where he drew a connection between the prohibition against self-harm and human responsibility toward the rest of creation (Genesis 9:5), he establishes himself as one of the most fundamental thinkers of Jewish environmental thought. As such, Hirsch must be considered one of the founding fathers of the field of Judaism and the Environment.

Today there has been a proliferation of the use of the term *bal tashhit* as a Jewish environmental ethic. A simple internet search shows just how many environmentally leaning organisations use the term as part of their activist, religious or educational agendas. Over the past few years alone scores, if not hundreds, of new groups have evoked the concept from an environmental approach. As mentioned in the literature review, very few have made an attempt to fully understand the concept. Even those who can be considered as having contributed on a scholarly level to the field of Judaism and the Environment have only rarely analysed the concept in any depth. Instead, it is taken for granted that *bal tashhit* is an environmental ethic.

This study places itself within the academic scholarship on Judaism and the Environment. As the conclusions demonstrate, it does not come to undermine the environmental understanding of *bal tashhit*, but to reinforce it. By using established methodological tools, it charts the evolution of *bal tashhit* as a concept and anchors it firmly within the Jewish tradition. Such an approach accomplishes two things. First, it provides a solid foundation upon which scholars and activists can build. This document acts as an accessible resource that can be understood by religious practitioners, environmental scholars and activists. The presentation of the material strives to be as nuanced and as objective as possible enabling the readers to formulate their own opinions on the subject matter. Second, by presenting the tradition histories of *bal tashhit*, it is assumed the conclusions reached may be more palatable for religious practitioners. Demonstrating that the religious and environmental approaches are not in conflict with

one another, but rather that on this subject they complement each other, should help advance the joint discourse.

6.2 Morality and Rationality

As can be seen throughout this dissertation, the prohibition against wastefulness encompasses a considerable number of daily life circumstances. The prohibition sets behaviour parameters which define the way it expects humans to interact with the practical world. *Bal tashhit* is not merely a prohibition with a fixed set of parameters to which a Jew is expected to adhere. Rather, due to the scope of the circumstances to which the prohibition applies, particularly with regard to people's day-to-day routine, it is, at least in theory, a way of life. The fact that this is a prohibition which one must keep in mind on an almost constant basis led people to attempt to rationalise its purpose and imbue it with ethical meaning. These rationalisations can be seen throughout the various genres of literature covered in the different chapters. As such, in the conclusion to this work it is useful to summarise these rationalisations.

Though rationalising the prohibition can be found throughout the various genres of literature, the sources have for the most part focused on the practical dimensions of the prohibition. This makes a considerable amount of sense since for the most part people have been concerned with defining the legal parameters of *bal tashhit* in light of the fact that it is first and foremost a prohibition. In other words, the prohibition has been seen as a guide to direct people's behaviour, but understanding the purpose of the prohibition has not been a primary concern. This is not to say that people have not written about the rationale behind the prohibition, as indeed many have. Rather, those who have explicitly written about the ethical dimensions of *bal tashhit* in detail are limited in number.

There are two main approaches that can be found in the literature. One views the prohibition as coming to protect human interests and the other to protect non-human interests. The second approach distances itself from a human-centered outlook and sees value in all of God's creations such that they should not be needlessly wasted or

destroyed. If one were to define these approaches using technical environmental jargon the terms ecocentric and anthropocentric would be appropriate. Both are also theocentric, as the prohibition itself is a divine directive and ultimately, the offence in transgressing the prohibition is against God.

These different rationalisations for *bal tashhit* are in part reflected in the Scriptural interpretations of Deuteronomy 20:19. One need only look at the number of Bible commentators that weighed in on the meaning of the phrase “*ki ha’adam etz hasadeh*” from Deuteronomy 20:19 to see that the issue has received considerable attention. The two dominant approaches found in the Bible commentaries are those of Rashi and Abraham ibn Ezra. Their positions have been analysed in depth in the Bible chapter. If we were to extrapolate a broader approach from Rashi’s comments we might conclude that he understood the prohibition against wastefulness to be concerned with the intrinsic value of the non-human world. Why should the non-human world suffer on account of unrelated human affairs? This approach comes with a number of problems and has already been critiqued so will not be repeated here. This is one way in which Rashi could be read. As we have seen, the idea of attributing intrinsic value to the non-human world is not uniquely his own, so Rashi would not be *sui generis* in this regard. This is important because if he were the only one advancing such an idea, it would be significantly more difficult to argue that this is what he meant.

Ibn Ezra understood the verse in a significantly different, much more human-oriented light. Fruit trees should not be cut down because they are a future food source from which benefit can be derived. Ultimately, the fruit trees themselves are not what matter, but rather the benefit they provide to humans is what is important. A broader ethic can be extrapolated from ibn Ezra’s gloss, which is in fact the dominant force behind most *halakhic* rulings on *bal tashhit*, namely that anything from which humans can benefit should not be wasted. Both Rashi and ibn Ezra’s opinions can be found elsewhere, with ibn Ezra’s approach being much more widely applied. This, of course,

should come as no surprise considering that it is based on an idea that is much more readily translated into practice.

These medieval giants are not the first to express these ideas. Both of their approaches can be found in *Sifre Devarim* and *Midrash Tannaim leSefer Devarim*. Among Bible commentators, however, they are certainly the ones who popularised them. Ibn Ezra's approach appears to be more pragmatic while Rashi's is morally inclined. The conclusions from the chapter on Bible interpretation indicate that while the commentaries offered explanations as to what the above phrase meant, it was almost always exclusively within the context of why one should not cut down fruit trees. Only very rarely did any of the exegetes explicitly extend their glosses to include the general prohibition against wastefulness. Thus, it takes a certain degree of deduction to apply these glosses more widely than the context of the verse. There are, however, other sources which do rationalise the prohibition against wastefulness in much more explicit terms.

6.3 Ecocentrism

There are many instances in Scripture and elsewhere where the intrinsic value of non-human creation is assumed. Some examples from Scripture include Psalms 114 in which inanimate entities such as rivers and mountains become animated or Psalms 104 which describes God sustaining all of creation independently of human involvement. Another source, *Pereq Shirah*, has a long list of non-human creations singing praises of God by quoting verses from Scripture (mainly Psalms).⁴²³ The same is true for the Sabbath and holiday liturgy which recites the prayer *Nishmat kol Hai* (the soul of all living things). Moreover, in *Birkat HaMazon* (Grace after Meals) the opening paragraph relates to God's providing of sustenance for all of creation. Moses Maimonides himself was a strong proponent of seeing intrinsic value within the created world:

I consider therefore the following opinion as most correct according to the teaching of the Bible, and best in accordance with the results of philosophy;

⁴²³ *Pereq Shirah* is a pseudoepigraphical writing whose authorship has been attributed to King David and King Solomon, but is more likely to be a medieval text.

namely, that the Universe does not exist for man's sake, but that each being exists for its own sake, and not because of some other thing.⁴²⁴

Another example can be found in *Genesis Rabbah* (*aggadic midrash* from the 5th or 6th centuries): “Rabbi Simon said: There is no grass or greenery that does not have a sign (*mazal*) in heaven that strikes it and tells it: grow!”⁴²⁵ Naḥmanides (1194-1270, Spain and Land of Israel) used this *midrash* as a rationale for the prohibition against hybrid species (*kilayim*) adding that: “whosoever fixes hybrids or plants [seeds] in a way such that they feed off of each other nullifies the laws of heaven.”⁴²⁶ More recently, a biography on Aryeh Levine (1885-1969, Lithuania and Israel) discussed Avraham Yitzḥak Kook’s (1865-1935, Latvia and Israel) understanding of this *midrash* as a reason not to engage in wastefulness and wanton destruction.⁴²⁷ These examples illustrate an established tradition attributing intrinsic value to the non-human world, making it more readily acceptable that this position could exist also with regard to *bal tashḥit*. This may be reflected in the strong anti-hunting tradition within Judaism which is also evident in the many Passover *Haggadot* which identify the prototypical evil son (*rasha*) as a hunter.⁴²⁸

While illustrating the intrinsic value of the non-human world is an important backdrop to an ethical understanding of *bal tashḥit*, the point strikes home through examples that demonstrate such an understanding vis-à-vis human behaviour. This approach can be found in Psalms 145:9: “The Lord is good to all, and His mercy is upon all His works.” The verse itself is a continuation of the theme of intrinsic value but is connected by David Qimḥi (1160-1235, Provence) to wastefulness and wanton destruction in his gloss:

⁴²⁴ Moses Maimonides, *The Guide for the Perplexed*, 2nd Edition, trans. M. Friedlander (London: Routledge and Kegan Paul Ltd., 1904), 3:8, 274.

⁴²⁵ *Bereishit Rabbah* (Albeck Edition), *Parashat Bereishit* 10.

⁴²⁶ Naḥmanides, Leviticus 19:19.

⁴²⁷ Simḥah Raz, *Ish Tzadik Hayah: Masekhet Hayav shel Rabbi Aryeh Levine* (Jerusalem: Zak and Partners Publishing, 1982), 74.

⁴²⁸ As I have observed in dozens of *haggadot*.

The Lord is good to all: He is even kind and compassionate to the animals, beasts and fowl. Thus, it is worthy for humans to walk in [good and compassionate] paths and avoid damaging or destroying life, other than when it is necessary.⁴²⁹

Another example can be found in Moshe Alsheikh's (1507-c. 1600, Turkey, Land of Israel and elsewhere) gloss to Deuteronomy 20:19. Among other things he stated: "...Behold and see how great the mercy of the Blessed one is; not only does He have mercy on humans, but also on every fruit tree in the place which you conquer..." Not only do humans have value, but so do the fruit-trees in their own right. Alsheikh derived from this statement that if God has compassion on lesser creations such as fruit-trees then *a fortiori* God has compassion on humans. While Alsheikh's bottom line focuses on humans, he clearly held the position that God has compassion even on the non-human world, indicating that all of God's creations have intrinsic value.

A final example, though undoubtedly there are others, relating specifically to the cutting down of fruit trees and thus to the core of Deuteronomy 20:19, is the *midrash* from *Pirquei deRabbi Eliezer* 33 (Higger edition). The *midrash* stated that there are six things which evoke a cry that can be heard from one end of the world to the other. One of the six on the list is the fruit bearing tree that is cut down.

6.4 Anthropocentrism

The anthropocentric approach can be broken down into two groups, united by a focus on the human dimension of the prohibition. The first group views the rationale for the prohibition as instilling good moral values in humans. The other group rationalises the prohibition through economic considerations; wastefulness and wanton destruction have a harmful economic impact on humans and consequently should be avoided.

Phrasing the prohibition as a moral issue is best represented by the 13th century work of *Sefer HaHinukh* already quoted in the codes chapter:

⁴²⁹ David Qimhi, Psalms 145:9.

[Observing the prohibition against wastefulness] is the way of the righteous and people of deeds who love peace and delight in the goodness of humanity/creation and draw them near to the Torah; they do not waste even a grain of mustard in this world. Their instinct when encountering wastefulness and destruction is to try to prevent it with all their strength...⁴³⁰

This view does not broach the topic of whether or not the non-human created world has value beyond what it has to offer the human world. *Sefer HaHinukh* asserted that the prohibition comes to instil humans with good values, something which might be described as moral education. Presumably, the assumption is that if humans are concerned even with the most minor of things, how much more so they should be concerned with the most significant aspects of life, such as God, Torah, and fellow humans. The focus of the prohibition for him, however, is grounded in human morality. There is no indication that *Sefer HaHinukh* attributes any value to the non-human creations and the world beyond what it has to offer humans on a moral level. The view that the non-human world is only valuable insofar as it can offer something to humanity, however, would not be uniquely his. This approach appears very similar to the one found in *Ecclesiastes Rabbah*:⁴³¹

Behold God's creation, for who could fix it if it was marred? At the time when God created the first man he took him to review each and every tree in the Garden of Eden and told him: "Behold my creations how pleasant and praiseworthy they are. All that I created, I created for you. Pay heed that you do not ruin and destroy My world. For if you ruin it, there is no one after you who will fix it..."⁴³²

The concern both in *Ecclesiastes Rabbah* and in *Sefer HaHinukh* is first and foremost with preventing wastefulness and wanton destruction. There are two key elements in the *midrash*, however, that shape the way in which the prohibition is viewed. The first is "All that I have created, I created for you." All non-human creations were created for the sake of humans and for their utility. The second is that that the *midrash* emphasises that while

⁴³⁰ Pinhas HaLevi (?), *Sefer HaHinukh*, ed. Haim Dov Chavel (Jerusalem: Mossad HaRav Kook, 1952), 529.

⁴³¹ This *midrash* is found in many contemporary writings in the field of Judaism and Environment.

⁴³² *Qohelet Rabbah* (Vilna Edition), 7:13.

all of God's creations were made explicitly for humans, they still belong to God ("My world"). God is the ultimate owner, implying that use is permitted, but wastefulness and wanton destruction is not. Even though the *midrash* and *Sefer HaHinukh* do not explicitly reject the idea that the non-human world has value of its own accord, they do nothing to suggest that this is the case. Rashi's gloss on a *baraita* in *bSukkah* 29a stating that the luminary eclipses are caused by four human actions, one of which is the cutting down of trees, takes a very similar approach. While Rashi was unclear about the purpose of the eclipses, he claimed that the reason for this was because such people are destructive and appear to be "rejecting God and His good blessing."

A somewhat different angle, but along the same line of moral approaches to *bal tashhit* is the concept of "*hakarat hatov*" or "awareness of [God's] beneficence." This is a well-known idea in classic Jewish literature that also happens to arise in the context of the prohibition against wastefulness. To illustrate the connection, a few examples are helpful. The first is a question posed by Rava (c. 280-c. 352 CE, Babylonia) to his teacher Rabba bar Mari (approximately the same time period) found in *bBaba Qama* 92b:

Rava said to Rabba bar Mari: 'From whence is the popular saying: 'A well that you have drunk from you should not throw dirt into'?' He said to him 'As it is written in the Torah (Deuteronomy 23:8): 'Thou shalt not abhor an Edomite, for he is thy brother; thou shalt not abhor an Egyptian, because thou wast a stranger in his land.'

This adage offers a nuanced approach to *bal tashhit*. As can be seen by Rabba bar Mari's response, the answer is not simply because of the prohibition against wastefulness. It is not merely another example of a specific application of *bal tashhit*. Rather, the prohibition applies to a situation in which someone benefited from something and as a result of that benefit that something acquires a protected status. The *Midrash Tanhuma* (4th-5th centuries CE, Land of Israel) drew a more overt connection in this regard by bringing the very same adage to explain why Moses did not want to be personally involved in the war against the Midianites: "Due to the fact that he grew up in Midian he

said: ‘It is unjust that I harass them in light of the good they did unto me’.⁴³³ Samuel David Luzzato (1800-1865, Italy) applied this wisdom to his gloss on Deuteronomy 20:19. There he claimed that the prohibition against cutting down fruit trees comes in order to distance Israelites from ungratefulness and teach them to love the things from which they derive benefit. A food source from which benefit was derived should not then be destroyed. By mentioning ungratefulness, Luzzato explicitly connected the idea of “*hakarat hatov*” to *bal tashhit*. As we saw, Ecclesiastes *Rabbah* asserted that all non-human creation was created for the benefit of humans. Thus, understood in a meta sense, by virtue of this relationship, all non-human creation is under this protected status.

Another *midrash* dealing with similar ideas is based on the well known narrative of Jacob’s wrestling with the angel (Genesis 32:25). The *baraita/midrash* (b*Hullin* 91a) explains that the reason that Jacob returned to his previous campsite to see if he forgot “*pakkim qetanim*” defined by Markus Jastrow as “small flasks.”⁴³⁴ Returning to the campsite was a dangerous endeavour, for Jacob to put himself in such danger for almost worthless items is confounding. The *midrash* capitalises on this by stating that the righteous are more concerned with their belongings than their welfare. For our purposes, the *midrash* is best explained by Samson Raphael Hirsch on this verse:

According to the sages “he returned for small flasks” (b*Hullin* 91a). After crossing the stream with all his possessions he returned to see that he had not forgotten anything. “From here we see that the righteous are more concerned with their possessions than their bodies. And why is this so? Because they do not extend their hands to robbery.” Property that was acquired honestly by a righteous person, even if it has no value whatsoever, is considered holy in his eyes. He will not waste it or wantonly destroy it and is responsible for its efficient use. Thousands of *zuzim*⁴³⁵ are in his eyes as a shoestring when they are being spent for a worthy cause, while the value of a shoestring is worth thousands of *zuzim* when it is being wantonly wasted. Whosoever “does not extend his hand to robbery,” and calls his own only what he succeeding in acquiring

⁴³³ *Midrash Tanhuma al Hamishah Humshei Torah*, Volume Two, ed. Shlomo Buber (Jerusalem: Ortsel Ltd., 1964), *Matot* 5

⁴³⁴ Markus Jastrow, *Dictionary of the Targumim, the Talmud Babli and Yerushalmi and Midrashic Literature*, Peabody, MA: Hendricks Publishers, 2006), s.v. ַפּ.

⁴³⁵ A monetary unit.

through his honest efforts, will experience supervising grace over all items which he acquires. Whether a thread or a shoestring, it all comes to him through the honest sweat of his brow, is divinely blessed and is of inestimable value.⁴³⁶

While Hirsch describes the ultimate righteous person as someone who is concerned with even the smallest of items, this concern stems not from the intrinsic value of the item, but rather from the relationship of the individual to God. Part of the way in which this relationship manifests itself is through the material world, and the respect shown to material is in fact a respect of God and not the material itself.

6.5 Economics

The other side of the anthropocentric approach is economic. Having a human centered approach often requires viewing issues and ideas from an economic perspective. The prohibition against wastefulness and wanton destruction is no exception to this. The vast majority of sources dealing with *bal tashhit* had an economically oriented approach to the prohibition. This approach is based on Ravina's assertion in the Talmud seen above. Even though Maimonides' greatest impact on the conceptualisation of *bal tashhit* is through its generalisation and the coining of the term *derekh hashḥatah*, the very fact that he affirmed the economic dimension of the prohibition undoubtedly had a significant impact on its perseverance and predominance in the discourse. Adding to this the nuanced approaches of Meyuḥas bar Eliyahu (*tzorekh*) Buber's *Midrash Aggadah (hana'ah)*, *Sefer HaHinukh (to'elet)*, and Bahya bar Asher (*to'elet*) mentioned above, one can see the development of the utilitarian manner in which *bal tashhit* manifests itself.

This makes a great deal of sense. Translating *bal tashhit* from theory into practice necessitates a certain degree of compromise. Sometimes trees need to be cut down, food thrown out, and clothes retired. When building urban infrastructure, safety measures are a standard part of the design process. In the developed world, roads, bridges, tunnels and buildings are often built to withstand the forces of nature to a certain extent. History tells

⁴³⁶ Samson Raphael Hirsch, *Ḥamishah Ḥumshei Torah im Peirush Rashar Hirsch: Sefer Devarim*, 4th Edition, ed. and trans. Mordekhai Breuer (Jerusalem, Israel: Mossad Yitzḥaq Breuer, 1989).

us that severe weather events come once every certain number of years. For instance, we might have one severe storm every 10 years, one very severe storm every 50 years and one extremely severe storm every 100 years. The financial cost of building safety measures goes up in a commensurate manner for every increase in the order of magnitude of storm severity. Naturally, the more severe the weather event is, the greater the economic damage and potential for the loss of life. How does one proceed in such a circumstance? Do you plan for the 50 year storm? The 100 year storm? The 1,000 year storm? Clearly, at some point there needs to be a cost/benefit analysis and an assessment made, even when it is known that such decisions quantify, to some extent, the value of human life.

From an environmental perspective multiple approaches have the potential to offer positive outcomes with regard to the way humans interact with the environment. Wastefulness and wanton destruction can be prevented whether it is out of concern for human morality, because of the intrinsic value of the non-human world, or even by taking into consideration long-term economics. If indeed waste is prevented, then the outcome is the same regardless of the underlying ideological motivators. The ideological premise for behaving a certain way does, however, become an issue when translated into practice. Translating theory into practice is often fraught with compromise and *bal tashhit* is no exception. Such claims are best illustrated with examples. Imagine a situation in which you are scheduled to host a feast. The plan is to serve beef and for this very purpose you purchase a cow from your neighbour's farm. You know that you will only require half of the cow for the purpose of your feast and are planning to freeze the remainder of the cow for future consumption. Prior to the arrival of the butcher the local power generator blows a fuse and you are told that it will be days before power returns. You can still host your feast by candlelight and cook your food on gas burners. Freezing the unused beef, however, is no longer an option, and you are certain that it will spoil. You have enough food to feed your guests without the beef, but as a result the meal will not be quite as festive. Do you still go ahead with slaughtering the cow, keeping in mind that you are concerned with the prohibition against wastefulness? If your ethical reasoning behind the

prohibition is that the cow has intrinsic value, and wasting a significant portion of it would disregard that value, then you might decide against slaughtering it. If, however, you are primarily concerned with making sure your feast is still a feast and you are willing to accept the economic loss, then perhaps you might still go ahead with slaughtering the cow. This is by no means a perfect example, nor does it occur in a vacuum, as there are clearly other factors that would influence your decision. Nevertheless, this example demonstrates the possibility of different outcomes based on one's moral understanding of *bal tashhit*.

Until now, we have framed these as separate and perhaps even competing moral approaches to the prohibition against wastefulness. This, however, is not necessarily the case. It is possible to subscribe to more than one approach, as they are not necessarily in competition with each other. One can be concerned with the intrinsic value of the non-human world, while simultaneously caring about instilling humans with good morals and still being mindful of the economic factors at play. The *midrash* itself presented both approaches as possible interpretations of Deuteronomy 20:19. Though it is not uncommon for *midrash* to have conflicting approaches to an issue on the same page, a second possible interpretation does not necessarily mean an opposing idea. Perhaps the fact that it is simpler for an individual approach to be governed by a single governing premise as opposed to multiple ones, especially if they can come into conflict with each other, led to an inherent narrowing of the application of *bal tashhit*.

6.6 Religious vs. Environmental Approaches

One of the best examples illustrating the different approaches of religious thinkers and environmentalists can be found in Moshe Yitzhak Vorhand's *halakhic* statement regarding the use of disposable dishes (despite his disclaimer in the introduction to his book that all of his own *halakhic* statements should be taken merely as suggestions and not as *halakhah lema'aseh* [practical *halakhah*]).⁴³⁷ He claimed that discarding items

⁴³⁷ Moshe Yitzhak Vorhand, *Sefer Birkat HaShem: Leqet Dinei Issur Qetzitzat Ilanei Ma'akhal, Bal Tashhit BiShe'ar Devarim, VeIssur Hefsed UVizui Okhalim* (Jerusalem: private printing, 2000), 11.

such as disposable dishes, even though in theory they could be washed and used again, would not be a transgression of *bal tashhit*. His reasoning was that the very function of disposable dishes is one time use. As such, using the dishes once and discarding them is in fact a fulfillment of their purpose, and no special effort needs to be made in trying to salvage them for additional use.⁴³⁸ Though Vorhand frames the issue as a *halakhic* statement, it could easily have been posed as a question/answer (*responsa*) form: is it necessary to reuse disposable dishes in order to avoid transgressing *bal tashhit*? Such a question is indicative of a very different frame of reference than that of environmentalists. An environmentalist would ask whether the use of disposable dishes to begin with is a transgression of *bal tashhit*. With this example in mind, the gap between the theory and practice of the prohibition against wastefulness becomes a little easier to understand. This example is relatively straightforward because disposable dishes and plastic waste in general are issues that receive considerable attention in environmental discourse.

Other examples are somewhat more obscure, but still serve as clear ways to illustrate the difference between environmental and religious approaches. For instance, Siman Tov David stated that a (Jewish) woman who has become religious can throw out her immodest clothing without transgressing *bal tashhit*.⁴³⁹ Vorhand and Yitzhak Eliyahu Shtasman dealt with the same issue from a somewhat different approach but with the same conclusion: a man is permitted to destroy his wife's immodest clothing and does not transgress *bal tashhit* in doing so.⁴⁴⁰ As we have seen, these rulings can be found in the works of earlier *halakhists*, but David, Vorhand and Shtasman have compiled the various sources dealing with this issue. A final example is the question of whether it is permissible to cause oneself to vomit in order to eat a mandatory meal (such as *matzah* during Passover or one of the three Sabbath meals) or simply in order to feel better, or

⁴³⁸ *Ibid.*, 153-154.

⁴³⁹ Siman Tov David, *Sefer Al Pakkim Qetanim: Hilkhhot Bal Tashhit* (Jaffa, Israel: S. M. Publishers, 2000), 75.

⁴⁴⁰ Vorhand, *Sefer Birkat HaShem*, 159 and Yitzhak Eliyahu Shtasman, *Sefer Etz HaSadeh: BeDinei Bal Tashhit, Qetzitza Ilanot UVizui Okhalin* (Jerusalem: The Foundation for the Advancement of Torah Study, 1999), 151-152.

would such an action be a transgression of *bal tashhit*.⁴⁴¹ These sources discuss the instances when induced vomiting would be permissible and when not.

On the one hand, these examples and others illustrate the wide variety of circumstances to which *bal tashhit* has been applied. On the other hand, each of these circumstances is very narrowly focused and makes little effort to view the issue of wastefulness as part of a broader issue. In other words, much like how *bal tashhit* is presented in the Talmud, the concern tends to be whether or how to apply the prohibition to a particular case, instead of understanding the case as part of an environmental paradigm. The prohibition has been used mostly to address the issue of causing waste, but creating waste has not yet found its place in *halakhic* discourse regarding *bal tashhit*. This distinction is important. Causing waste is the more obvious of the two. If I have an object and I discard it, I have caused that object to be wasted. Yet, the act of discarding an item does not mean that it ceases to exist. The item still exists as material and that material, perhaps now in a different form, continues to have an impact on the environment. The immediate and most obvious forms of wastefulness have been addressed by legists, but little attention has been given to more abstract and removed forms of wastefulness. This frame of mind has caused the prohibition to focus on issues like the waste of food, but at the same time has neglected to extend that concern to the disposable dish upon which the food might rest.

The “hidden” costs of wastefulness have not been taken into consideration in *halakhic* discourse. This issue is not unique to *halakhah*. Only the most forward-thinking societies have been able to advance far reaching environmental legislation such as the principle of “polluter pays.” The cost of pollution extends well beyond an individual product. Until recently, environmental costs were not (and in most cases are still not) part of the cost/benefit analysis of products and services. The environmental cost of emissions, effluents, extraction and disposal are not fully taken into account, if addressed at all. Yet, “waste” in this form has significant environmental consequences and

⁴⁴¹ See David, *Sefer as Pakkim Qetanim*, 64, Shtasman, *Sefer Etz HaSadeh*, 236-237, and Vorhand, *Sefer Birkat HaShem*, 287-291.

detrimental health effects that come at great economic cost. For instance, an increase in air pollution causes an increase in incidents of respiratory illnesses, polluted water needs to be purified at great expense before it can be used, to say nothing about the unimaginable cost of human-caused climate change. It is extremely, difficult, however, to quantify these external costs. How can cause and effect be accurately measured? Life does not occur in a vacuum. Sometimes the answer is simple, but in many, if not most cases, it is very difficult to attribute diseases such as cancer to a specific source. Understanding that it is necessary to take all stages in the lifecycle of a product into consideration is a relatively recent breakthrough. Thus, just as it is difficult to create appropriate policy and legislative measures to deal with environmental issues, so too, is it difficult to create a *halakhic* framework for them.

The *halakhic* framework of *bal tashhit*, however, has been primed to deal with wastefulness as an economic problem. Thus, if the benefit derived from a given product is greater than the cost of the entire lifespan of a specific product, then using (and creating) the product is not a transgression of *bal tashhit*. The problem, however, is that *halakhah* in the area of *bal tashhit* is as of yet a few steps behind the scientific communities. In order to create up-to-date *halakhic* rulings that are in-line with the current scientific knowledge, “hidden” environmental costs and the need to incorporate a full lifecycle assessment of products must be acknowledged and addressed.

Those advancing the religious sphere of *bal tashhit* tend not to be avid environmentalists, and environmentalists tend not to be *halakhic* experts and authorities. It is possible that reemphasising the connection between wastefulness and self-harm (and harm of others) and bringing it back into mainstream discourse will create a bridge between the world of *halakhah* and environmentalism. The global community has embraced environmentalism not because of its concern with this or that particular plant or animal species. Rather, environmental concern comes first and foremost through a concern for humans, their health and well-being. These are also among the prime concerns of *halakhah*. It is no accident that “*bal tashhit de gufa adif*” came into

existence. In Judaism, humans sit atop the hierarchy of the created world. Thus, when put in the position where a decision needs to be made between human and non-human well-being, human interests take precedence. After defining the relationship between the human and non-human as hierarchical, the idea that human well-being is dependent on non-human integrity was marginalised. As emphasised throughout this dissertation, however, this idea was nonetheless kept alive through the writings of a small number of Jewish thinkers throughout the course of history. To sages such as Rabbi Akiva and scholars such as Yonah of Gerona (d. 1263, Spain), Menaḥem HaMeiri (1249-1315, Provence), Solomon Luria (1510-1574, Poland), Abraham de Boton (c. 1560-c. 1605, Greece and Land of Israel), Shneiur Zalman of Liadi (1745-1813, Russia) Israel Lipschutz (1782-1860, Germany), Jacob Ettlinger (1798-1871, Germany) Shlomo Gantzfried (1802-1884, Hungary), Barukh Epstein (1860-1941, Belarus) and Yitzḥak Zilberstein (b. 1934, Poland and Israel), the connection of *bal tashḥit* to self-harm was obvious, just as it is fundamental to environmental wisdom today.

Now, more than any time in history, it is essential to re-establish the Jewish noetic connection between humans and the environment. Humans are dependent on the environment and harming the environment is commensurate to harming oneself, or humankind as a whole. This value is at the core of *bal tashḥit*. Sometimes harm manifests itself over the short-term, but often the timescale is longer and harm is more difficult to discern and to directly attribute to human behaviour. Through scientific progress these connections have gradually been elucidated and become more widely established. Perhaps amazingly, Judaism does not need to be reinvented in order to align itself with such progress. If it did, the ethos would likely meet resistance and not be universally accepted. Highlighting the existing age-old tradition and demonstrating that on this fundamental principle, Jewish thought and environmental thought are on the same page, makes it possible to bridge these worlds and motivate religious communities to create positive environmental change.

6.7 Further Research

The intention of this research is not to be the final word on the topic of wastefulness in the Jewish tradition. There are many different ways in which this research could be expanded, some of which have been mentioned in this dissertation. A most significant step forward would be to conduct similar research in the other great “Abrahamic” traditions. The prohibition against wastefulness can be found in Christianity and Islam and offers a common point of reference between East and West. As such, *bal tashhit* has potential for interfaith research and discourse. Environmentalism has not made significant inroads into religious praxis, due, in part, to the inability to find a common language between environmentalists and religious communities. The prohibition against wastefulness merits being termed an environmental concept. Until its environmental dimensions are brought into the mainstream discourse, however, it is difficult to imagine that environmentalists will be able to use it to influence behaviour patterns among religious communities. By creating documents that can be understood by both religious and environmental scholars this study hopes to make significant progress toward activating this latent environmental potential in religious communities. It is my hope that the findings of this research, and those that are modeled after it, enter current religious and environmental discourses and help create bridges between these different spheres.

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This dissertation follows the Chicago Manual of Style. Full form is used in the first instance that a source is cited in the footnotes in the body of the dissertation. Short form is used for all subsequent citations of the same source. This is done anew for each chapter.

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Yoel Sirkis. “*Bayit Hadash: Yoreh De’ah*.” In Yaakov bar Asher. *Tur: Yoreh De’ah*. Volume One. Jerusalem: Makhon Hatam Sofer, 1972.

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Yosef ben David. *Peirush al HaTorah LeRabbeinu Yosef ben David MeSaragossa*, edited by Leon Aryeh Feldman. Jerusalem: Makhon Shalem, 1973.

Yosef Dov Ber HaLevi Soloveitchik. *Sefer MiShulḥano shel Beit HaLevi*, edited by Y. Hershkovitz. Jerusalem: private printing, 2004.

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Yosef Karo. “*Beit Yosef: Hoshen Mishpat*.” In Yaakov bar Asher, *Tur: Yoreh De’ah*. Volume Two. Jerusalem: Makhon Hatam Sofer, 1972.

Yosef Karo. “*Kesef Mishneh: Sefer Shofetim*.” In Moshe ben Maimon, *Mishneh Torah: Hu HaYad HaHazaqah LeRabbeinu Moshe bar Maimon Za”l*. *Sefer Shofetim*. Volume 12, edited by Shabse Frankel. New York: Congregation Bnei Yosef, 1998.

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Baba Qama 9:31, *Eduyot* 1:1, *Shabbat* 7:18, 20

Babylonian Talmud

Avodah Zarah 11a, 23b, *Baba Batra* 4a, 26a, *Baba Qama*, 86b, 91a-92a, *Bekhorot* 57a, *Berakhot* 31a, 61b, 62b, *Ḥagigah* 14b, *Ḥullin* 7b, 8a-b, 23a, 91a, *Qiddushin* 32a, *Makkot* 22a, *Megillah* 26b, *Mo'ed Qatan* 27a, *Pesaḥim* 25a, 50b, *Sanhedrin* 57a, 74a, *Shabbat* 67b, 105b, 129a, 140b, *Shavuot* 27a, *Sotah* 12a, *Sukkah* 29a, *Ta'anit* 7a, 20b, 31a, *Temurah* 28b, *Yevamot* 11b, 12a, 44a-b, *Yoma* 82a.

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Semaḥot, Baraitot meEvel Rabbati 4:11

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Mark 14:1-9

Matthew 14:1-9

Appendix A

Appendix to Bible Chapter

Deuteronomy

Aḥai Gaon (c. 680-c. 752, Babylonia) – Missing/no comment.⁴⁴²

Shmuel ben Ḥofni Gaon (c. 10th-11th centuries, Babylonia) – Missing/no comment.⁴⁴³

Ḥananel bar Ḥushiel (c. late 10th-11th century, Southern Italy and Kairouan (North Africa)) – Missing/no comment.⁴⁴⁴

Shlomo ibn Gevirol (1021-c. 1050, Spain) – Missing/no comment.⁴⁴⁵

Samuel of Rossano (11th-12th centuries, South Italy) – Missing/no comment.⁴⁴⁶

Yehudah HaLevi (*Kuzari*) (1075-12th century, Spain, Egypt and possibly Land of Israel) – Missing/no comment.⁴⁴⁷

Yosef Bekhor Shor (12th century, France) – Missing/no comment.⁴⁴⁸

Yehudah HeḤasid (12th century-1217, Italy and Germany) – Missing/no comment.⁴⁴⁹

David Qimḥi (*Radaq*) (1160-1235, Southern France) – Missing/no comment.⁴⁵⁰

⁴⁴² Aḥai Gaon, *Sheiltot DeRav Aḥai Gaon, Volume Five: BeMidbar, Devarim*, ed. Shmuel Kalman Mirski (Jerusalem: Sura Institute for Research and Publication and Yeshiva University, 1977).

⁴⁴³ Shmuel ben Ḥofni Gaon, *Peirush HaTorah LeRav Shmuel ben Ḥofni Gaon*, ed. and trans. Aaron Greenbaum (Jerusalem: Mossad HaRav Kook, 1979).

⁴⁴⁴ Ḥananel bar Ḥushiel, *Peirushei Rabbeinu Ḥananel al HaTorah*, ed. Ḥaim Dov Chavel (Jerusalem: Mossad HaRav Kook, 1972).

⁴⁴⁵ Shlomo ben Gevirol, “*Peirush al HaTorah LeRabbeinu Shlomo ben Gevirol Zal*,” in *Peirush Menahem Meiri al HaTorah*, ed. Yosef Gad (London: Hachinuch, 1957).

⁴⁴⁶ Samuel of Rossano, *Sefer Rushaina: Peirush al Sefer BeMidbar – Devarim LeRabbeinu Shmuel MiRussiah*, ed. Moshe Weiss (Jerusalem: Mossad HaRav Kook, 1996).

⁴⁴⁷ Yehudah HaLevi, “*Peirush Qitzur MiSefer HaKuzari al HaTorah*,” in *Peirush Rabbeinu Yosef Bekhor Shor, Part Two*, ed. Joseph Gad (London: HaMadfis, 1960).

⁴⁴⁸ Joseph Bekhor Shor, *Commentary on the Pentateuch*, ed. Meir Frish (Jerusalem: Makor Publishing Ltd., 1978).

⁴⁴⁹ Yehudah HeḤasid, *Peirushei HaTorah LeRabbi Yehudah HeḤasid*, ed. Isaak Shimshon Lange (Jerusalem: Daf Ḥen Ltd., 1975).

Elazar of Worms (1160-1237, Germany) – Missing/no comment.⁴⁵¹

Yonah Gerondi (early 13th century-1263, Spain and France) – Missing/no comment.⁴⁵²

Shlomo ben Aderet (*Rashba*) (1235-1310, Spain) – Missing/no comment.⁴⁵³

Menaḥem Meiri (1249-c. 1310, France and Spain) – Missing/no comment.⁴⁵⁴

Yeshayah DiTrani (*Rid HaZaqen*) (13th Century, Italy) – Missing/no comment.⁴⁵⁵

Nissim ben Reuven Gerondi (*Ran*) (early 14th century-1380, Spain) – Missing/no comment.⁴⁵⁶

Yosef ibn Ḥabib (14th-15th centuries, Spain) – Missing/no comment.⁴⁵⁷

Talmid HaRan (an anonymous student of Nissim ben Reuven Gerondi) – Missing/no comment.⁴⁵⁸

Yitzḥak Arama (*Aqedat Yitzḥak*) (1420-1494, Spain then Italy) – Missing/no comment.⁴⁵⁹

Yoḥanan bar Aharon Luria (*Meshivat Nefesh*) (c. 1440-c. 1514, France and Germany) – Missing/no comment.⁴⁶⁰

⁴⁵⁰ David Qimḥi, *Peirushei Rabbi David Qimḥi al HaTorah*, 2nd Edition, ed. Moshe Kamlher (Jerusalem: Mossad HaRav Kook, 1975).

⁴⁵¹ Elazar of Worms, *Peirush Rabbeinu Elazar MiGermaiza Zal Ba'al Sefer HaRoqe'ah al HaTorah ve'al Megilat Ester*, ed. Yosef Gad (London: private printing, 1959).

⁴⁵² Yonah of Gerona, *Derashot UPheirushei Rabbeinu Yonah Gerondi LeḤamishah Ḥumshei Torah*, ed. Shmuel Yerushalmi (Jerusalem: H. Vagshel Inc., 1980).

⁴⁵³ Shlomo ben Aderet, *Peirushei Shlomo ben Aderet VeRabbeinu David bar Yosef Qimḥi al Ḥamishah Ḥumshei Torah*, ed. Joseph Gad (London: L. Honig and Sons Ltd., 1962).

⁴⁵⁴ Menaḥem Meiri, *Peirush Menaḥem Meiri al HaTorah*, ed. Yosef Gad (London: Hachinuch, 1957).

⁴⁵⁵ Yeshayah DiTrani HaZaqen, *Peirush Rabbeinu Yeshayah DiTrani HaZaqen al HaTorah ve'al Nach*, ed. Joseph Gad. London: L. Honig and Sons Ltd., 1957).

⁴⁵⁶ Nissim ben Reuven Gerondi, *Rabbeinu Nissim ben Reuven Gerondi (HaRan): Peirush al HaTorah*, ed. Leon Aryeh Feldman (Jerusalem: Makhon Shalem, 1968).

⁴⁵⁷ Yosef ben David, *Peirush al HaTorah LeRabbeinu Yosef ben David MeSaragossa*, ed. Leon Aryeh Feldman (ed.), Jerusalem, Israel: Makhon Shalem, 1973.

⁴⁵⁸ Talmid HaRan, *Peirush al HaTorah Meyuḥas LeTalmid Rabbeinu Nissim bar Reuven (HaRan)*. Leon Aryeh Feldman (Jerusalem: Makhon Shalem, 1970).

⁴⁵⁹ Yitzḥak Arama, *Sefer Aqedat Yitzḥak*, Volume Five, ed. Avigdor Katz (Jerusalem: Independent Publishing, 1961).

Yitzhak bar Yosef Caro (*Toledot Yitzhak*) (1458-1535, Spain, Turkey and Land of Israel) – Missing/no comment.⁴⁶¹

Shlomo ben Moshe HaLevi Alqabetz (c. 1505-c. 1584, Land of Israel) – Missing/no comment.⁴⁶²

Moshe ben Yisrael Isserlis (c. 1525-1572, Poland) – Missing/no comment.⁴⁶³

Shlomo Ephraim of Luntshitz (*Keli Yaqar*) (1540-1619, Poland and Prague) – Missing/no comment.⁴⁶⁴

Abraham Joshua Heschel (*Hanukat HaTorah*) (c. 1595-1663, Poland) – Missing/no comment.⁴⁶⁵

Ḥaim bar Moshe ibn Atar (*Or HaḤaim*) (1696-1743, Morocco, Algeria and Land of Israel) – Missing/no comment.⁴⁶⁶

Yosef bar Meir Teomim (*Teivat Gomeh*) (1727-1792, Poland and Germany) – Missing/no comment.⁴⁶⁷

Moses Schreiber (*Hatam Sofer*) (1762-1839, Germany and Austria) – Missing/no comment.⁴⁶⁸

⁴⁶⁰ Yoḥanan Luria, *Sefer Meshivat Nefesh: Be'urim al HaTorah Me'Et Rabbeinu Yoḥanan Luria Zatzal*, ed. Yaakov Hoffmann (Jerusalem: Mifal Torat Ḥakhmei Ashkenaz, Makhon Yerushalayim, 1993).

⁴⁶¹ Isaac Caro, *Toledot Yitzhak* (Jerusalem: Makor Publishing Ltd., 1978).

⁴⁶² Shlomo ben Moshe HaLevi Alqabetz, "Peirush Rabbeinu Shlomo Alqabetz HaLevi," in *Peirush Rabbeinu Yeshayah DiTrani HaZaqen al HaTorah ve'al Nakh*, ed. Joseph Gad (London: L. Honig and Sons Ltd., 1957).

⁴⁶³ Moshe ben Yisrael Isserlis, "Peirush Rabbeinu HaRama al HaTorah," in *Peirush Rabbeinu Yeshayah DiTrani HaZaqen al HaTorah ve'al Nakh*, ed. Joseph Gad (London: L. Honig and Sons Ltd., 1957).

⁴⁶⁴ Shlomo Ephraim of Lunshitz, *Sefer Keli Yaqar HaShalem, Part Two: VaYiqra, BeMidbar, Devarim* (Jerusalem: Orot Ḥaim Publishing, 2001).

⁴⁶⁵ Abraham Joshua Heschel, *Sefer Ḥanukat HaTorah*, ed. Ḥanokh Henikh Erzahan (Jerusalem: private printing, 2008).

⁴⁶⁶ Ḥaim bar Moshe ibn Atar, *Ḥamishah Ḥumshei Torah im Peirush Or HaḤaim: Sefer Devarim*, ed. Yisrael Yosef Friedman (Jerusalem: Mossad HaRav Kook, 2008).

⁴⁶⁷ Yosef Teomim, *Sefer Teivat Gomeh*, ed. Shmuel Einstein (Bnei Braq: private printing, 1998).

⁴⁶⁸ Moses Schreiber, *Sefer Hatam Sofer al HaTorah: Devarim*, ed. Yosef Naphtali Stern (Jerusalem: Makhon Ḥatam Sofer, 1978).

Yosef Dov Ber HaLevi Soloveitchik (*Beit HaLevi*) (1820-1892, Lithuania) – Missing/no comment.⁴⁶⁹

Meir Simḥah bar Shimshon Qelonimus HaCohen (*Meshekh Hōkhmah*) (1843-1926, Lithuania) – Missing/no comment.⁴⁷⁰

Genesis

Aḥai Gaon (c. 680-c. 752, Babylonia) – Missing/no comment.⁴⁷¹

Shmuel ben Ḥofni Gaon (c. 10th-11th centuries, Babylonia) – Missing/no Comment.⁴⁷²

Ḥananel bar Ḥushiel (c. late 10th-11th century, Southern Italy and Kairouan (North Africa)) – Missing/no comment.⁴⁷³

Samuel of Rossano (11th-12th centuries, South Italy) – Missing/no comment.⁴⁷⁴

Yehudah HaLevi (*Kuzari*) (1075-12th century, Spain, Egypt and possibly Land of Israel) – Missing/no comment.⁴⁷⁵

Samuel ben Meir (*Rashbam*) (c. 1080-1174, Northern France) – Missing/no comment.⁴⁷⁶

Menahem bar Shlomo (*Sekhel Tov*) (Written in 1139, most likely in Italy) – Missing/no comment.⁴⁷⁷

Yehudah HeḤasid (12th century-1217, Italy and Germany) – Missing/no comment.⁴⁷⁸

⁴⁶⁹ Yosef Dov Ber HaLevi Soloveitchik, *Sefer MiShulḥano shel Beit HaLevi*, ed. Y. HersHKovitz (Jerusalem: private printing, 2004).

⁴⁷⁰ Meir Simḥah HaCohen, *Meshekh Hōkhmah*, ed. Cooperman (Jerusalem: 2002).

⁴⁷¹ Aḥai Gaon, *Sheiltot DeRav Aḥai Gaon, Volume One: Bereishit*, ed. Shmuel Kalman Mirski (Jerusalem: Sura Institute for Research and Publication, Yeshiva University and Mossad HaRav Kook, 1960).

⁴⁷² Shmuel ben Ḥofni Gaon, *Peirush HaTorah*.

⁴⁷³ Ḥananel bar Ḥushiel, *Peirushei Rabbeinu Ḥananel*.

⁴⁷⁴ Samuel of Rossano, *Sefer Rushaina: Peirush al Sefer Bereishit LeRabbeinu Shmuel MiRussiah*, ed. Moshe Weiss, Jerusalem: Mossad HaRav Kook, 1977).

⁴⁷⁵ Yehudah HaLevi, “*Peirush Qitzur MiSefer HaKuzari*.”

⁴⁷⁶ Samuel ben Meir, *Peirush HaTorah LeRabbeinu Shmuel ben Meir, Volume One: Bereishit, Shemot*, ed. Martin I. Lockshin (Jerusalem: Chorev Publishing House, 2009).

⁴⁷⁷ Menahem bar Shlomo, *Midrash Sekhel Tov al Sefer Bereishit VeShemot*, ed. Shlomo Buber (Berlin:1900).

Avraham ben HaRambam (1186-1237, Egypt) – Missing/no comment.⁴⁷⁹

Ephraim bar Shimshon (c. late 12th-13th centuries, France) – Missing/no comment.⁴⁸⁰

Yonah Gerondi (early 13th century-1263, Spain and France) – Missing/no comment.⁴⁸¹

Shlomo ben Aderet (*Rashba*) (1235-1310, Spain) – Missing/no comment.⁴⁸²

Menaḥem Meiri (1249-c. 1310, France and Spain) – Missing/no comment.⁴⁸³

Menaḥem Recanati (c. 1250-c. 1310, Italy) – Missing/no comment.⁴⁸⁴

Asher ben Yeḥiel (*Rosh*) (1250 or 1259-1327, Germany, France and Spain) – Missing/no comment.⁴⁸⁵

Yeshayah DiTrani (*Rid HaZaḡen*) (13th Century, Italy) – Missing/no comment.⁴⁸⁶

Nissim ben Moshe of Marseille (13th-14th centuries, South France) – Missing/no comment.⁴⁸⁷

Moshav Zeqenim (c. 13th-14th Centuries, Anonymous⁴⁸⁸) – Missing/no comment.⁴⁸⁹

Yosef ibn Ḥabib (14th-15th centuries, Spain) – Missing/no comment.⁴⁹⁰

⁴⁷⁸ Yehudah HeḤasid, *Peirushei HaTorah*.

⁴⁷⁹ Avraham ben HaRambam, *Peirush Rabbeinu Avraham ben HaRambam Zal al Bereishit VeShemot*, ed. Saliman D. Sassoon (London: L. Honig and Sons Ltd., 1958).

⁴⁸⁰ Ephraim bar Shimshon, *Peirush Rabbeinu Ephraim bar Shimshon UGedolei Ashkenaz HaQadmonim al HaTorah, Part One: Bereishit – Shemot*, ed. Tzvi Yehoshua Leitner and Ezra Korah (Jerusalem: Orthodox Publications Co., 1992).

⁴⁸¹ Yonah of Gerona, *Derashot LeḤamishah Ḥumshei Torah*.

⁴⁸² Shlomo ben Aderet, *Peirushei Shlomo ben Aderet*.

⁴⁸³ Menaḥem Meiri, *Peirush Menaḥem Meiri*.

⁴⁸⁴ Menaḥem Recanati, *Sefer Levushei Or Yaqar*, ed. Ḥaim Yaakov HaCohen (Jerusalem: private printing, 1960).

⁴⁸⁵ Ba'alei HaTosafot, *Sefer Hadar Zeqenim: Tosafot VeHaRosh al HaTorah*, ed. Avraham Forianti (Jerusalem: Herbert Zarkin Offset Institute, 1963).

⁴⁸⁶ Yeshayah DiTrani HaZaḡen, *Peirush Rabbeinu Yeshayah DiTrani*.

⁴⁸⁷ Nissim ben Moshe, *Ma'aseh Nissim: Peirush LaTorah LeRabbi Nissim ben Rabbi Moshe MiMarseille*, ed. Howard Kriesel (Jerusalem: Mekitzei Nirdamim, 2000).

⁴⁸⁸ This is a compilation made up mainly of *Tosafist* commentaries. The compiler is considered to have lived around the time of Asher ben Yeḥiel.

⁴⁸⁹ *Sefer Moshav Zeqenim al HaTorah*, ed. Saliman D. Sassoon (London: L. Honig and Sons, 1959).

Talmid HaRan (an anonymous student of Nissim ben Reuven Gerondi) – Missing/no comment.⁴⁹¹

Yitzhak Arama (1420-1494, Spain then Italy) – Missing/no comment.⁴⁹²

Yoḥanan bar Aharon Luria (*Meshivat Nefesh*) (c. 1440-c. 1514, France and Germany) – Missing/no comment.⁴⁹³

Yitzhak bar Yosef Caro (*Toledot Yitzhak*) (1458-1535, Spain, Turkey and Land of Israel) – Missing/no comment.⁴⁹⁴

Shlomo ben Moshe HaLevi Alqabetz (c. 1505-c. 1584, Land of Israel) – Missing/no comment.⁴⁹⁵

Moshe ben Yisrael Isserlis (c. 1525-1572, Poland) – Missing/no comment.⁴⁹⁶

Shlomo Ephraim of Luntshitz (*Keli Yaqar*) (1540-1619, Poland and Prague) – Missing/no comment.⁴⁹⁷

Abraham Joshua Heschel (*Hanukat HaTorah*) (c. 1595-1663, Poland) – Missing/no comment.⁴⁹⁸

Ḥaim bar Moshe ibn Atar (*Or HaḤaim*) (1696-1743, Morocco, Algeria and Land of Israel) – Missing/no comment.⁴⁹⁹

Eliyahu ben Shlomo Zalman (*Gra*) (1720-1797, Lithuania) – Missing/no comment.⁵⁰⁰

⁴⁹⁰ Yosef ben David, *Peirush al HaTorah*.

⁴⁹¹ Talmid HaRan, *Peirush al HaTorah*.

⁴⁹² Yitzhak Arama, *Sefer Aqeidat Yitzhak*, Volume One, ed. Avigdor Katz (Jerusalem: private printing, 1961).

⁴⁹³ Yoḥanan Luria, *Sefer Meshivat Nefesh*.

⁴⁹⁴ Isaac Caro, *Toledot Yizhak*.

⁴⁹⁵ Shlomo ben Moshe HaLevi Alqabetz, “*Peirush Rabbeinu Shlomo Alqabetz*.”

⁴⁹⁶ Moshe ben Yisrael Isserlis, “*Peirush Rabbeinu HaRama*.”

⁴⁹⁷ Shlomo Ephraim of Lunshitz, *Sefer Keli Yaqar HaShalem, Part One: Bereishit, Shemot* (Jerusalem: Orot Haim Publishing, 2001).

⁴⁹⁸ Abraham Joshua Heschel, *Sefer Hanukat HaTorah*.

⁴⁹⁹ Haim bar Moshe ibn Atar, *Ḥamishah Ḥumshei Torah im Peirush Or HaḤaim: Sefer Bereishit, Bereishit – Ḥayei Sarah*, ed. Yisrael Yosef Friedman (Jerusalem: Mossad HaRav Kook, 2008).

Yosef bar Meir Teomim (*Teivat Gomeh*) (1727-1792, Poland and Germany) – Missing/no comment.⁵⁰¹

Pinḥas bar Tzvi Hirsch HaLevi Horowitz (*Panim Yafot*) (1730-1805, Poland) – Missing/no comment.⁵⁰²

Moses Schreiber (*Ḥatam Sofer*) (1762-1839, Germany and Austria) – Missing/no comment.⁵⁰³

Yosef Dov Ber HaLevi Soloveitchik (*Beit HaLevi*) (1820-1892, Lithuania) – Missing/no comment.⁵⁰⁴

Meir Simḥah bar Shimshon Kelonimus HaCohen (*Meshekh Ḥokhmah*) (1843-1926, Lithuania) – Missing/no comment.⁵⁰⁵

⁵⁰⁰ Eliyahu (Kremer?), *Ḥumash HaGra: Bereishit*, Weinreb Edition, ed. Dov Eliakh (Jerusalem: Makhon Moreshet HaYeshivot, 2004).

⁵⁰¹ Yosef Teomim, *Sefer Teivat Gomeh*.

⁵⁰² Pinḥas HaLevi Horowitz, *Sefer Panim Yafot HaShalem al HaTorah, Part One: Sefer Bereishit* (Jerusalem: private printing, 1998).

⁵⁰³ Moses Schreiber, *Sefer Ḥatam Sofer al HaTorah: Bereishit*, ed. Yosef Naphtali Stern (Jerusalem: Makhon Ḥatam Sofer, 1978).

⁵⁰⁴ Yosef Dov Ber HaLevi Soloveitchik, *Beit HaLevi*.

⁵⁰⁵ Meir Simḥah HaCohen, *Meshekh Ḥokhmah*.

Appendix B

Appendix to Rabbinic Chapter⁵⁰⁶

bMakkot 22a

Context: The Mishnah discussed instances where an individual transgresses more than one law with one action. The question that the rabbis debated was whether such an individual is liable for all the various transgressions, or just for one. A number of rabbis offered examples, including the cutting down of fruit trees.

Ravina demurred: Why not include [in the list of prohibitions for which one receives a flogging] also one who cuts down good [fruit] trees, whilst proceeding [with the plough], the forewarning being, *for thou mayest eat of them, but thou shalt not cut them down* (Deuteronomy 20:19)?

bHullin 7b

Context: The Mishnah dealt with the issue of who is permitted to conduct ritual slaughter of animals for consumption. The Talmudic text dealing with the topic of *bal tashhit*, however, is part of a digression from the original topic.

When Rabbi heard of the arrival of Rabbi Phinehas, he went out to meet him. □ Will you please dine with me? asked Rabbi. Certainly, he answered. Rabbi's face at once brightened with joy; whereupon Rabbi Phinehas said: You imagine that I am forbidden by vow from deriving any benefit from an Israelite. Oh, no. The people of Israel are holy. Yet there are some who desire [to benefit others] but have not the means; whilst others have the means but have not the desire, and it is written: "*Eat thou not the bread of him that hath an evil eye, neither desire thou his dainties; for as one that hath reckoned within himself, so is he: Eat and drink, saith he to thee; but his heart is not with thee* (Proverbs 23:6-7)." But you have the desire and also the means. At present, however, I am in a hurry for I am engaged in a religious duty; but on my return. I will come and visit you. When he arrived, he happened to enter by a gate near which were some white mules. At this he exclaimed: 'The angel of death is in this house! Shall I then dine here?' When Rabbi heard of this, he went out to meet him. 'I shall sell the mules,' said Rabbi. Rabbi Phinehas replied:

⁵⁰⁶ These texts mention *bal tashhit*, and though they appear to contribute little to the discussion it is nevertheless worthwhile to present them.

“*Thou shalt not put a stumbling block before the blind* (Leviticus 19:14).”
 ‘I shall abandon them. You would be spreading danger. ‘I shall hamstring them. ‘You would be causing suffering to the animals. ‘I shall kill them. There is the prohibition against wanton destruction (*bal tashhit*). Rabbi was thus pressing him persistently, when there rose up a mountain between them. Then Rabbi wept and said. ‘If this is [the power of the righteous] in their lifetime, how great must it be after their death!

bQiddushin 32a

Context: The Mishnah declared that a mother is absolved from commandments for which the father has responsibility toward his son.⁵⁰⁷ A child, however, has responsibility to both his father and his mother regarding commandments for which a child has responsibility toward his parents.⁵⁰⁸ The Mishnah then continued by stating that women are absolved from performing positive commandments that are time dependent.⁵⁰⁹ Both men and women, however, are responsible for fulfilling positive commandments that are not time dependent.⁵¹⁰ Similarly, both men and women are responsible for not transgressing negative commandments be they time dependent or not. The exceptions to this rule are the commandments of *bal takif* (the prohibition against rounding the hair on one’s head), *bal tashhit* (in this context the reference is the prohibition of destroying one’s facial hair), and *bal titamei lametim* (the prohibition against defiling oneself through contact with a corpse). *Bal tashhit* in its more general meaning is brought up in the Talmudic discussion of the degree one is obligated to fulfill the commandment of honouring one’s parents.

Come and hear: Rabbi Eliezer was asked: How far does the honour of parents [extend]? – He said: That he should take a purse, throw it in his presence into the sea, and not shame him. But if you say at the father’s expense, what does it matter to him? – It refers to a potential heir. As in the case of Rabbah son of Rav Huna: Rav Huna tore up silk in the presence of his son Rabbah, saying, “I will go and see whether he flies into a temper or not.” But perhaps he would get angry, and then he [Rav Huna] would violate, “*Thou shalt not put a stumbling-block before the*

⁵⁰⁷ E.g. Circumcision.

⁵⁰⁸ E.g. Honouring one’s parents.

⁵⁰⁹ Such commandments include building a *sukkah* during the festival of *Sukkot*, or putting on phylacteries.

⁵¹⁰ E.g. honouring one’s parents.

blind (Leviticus 19:14)?” – He renounced his honour for him. But he [Rav Huna] violated, Thou shalt not destroy (*bal tashhit*)? – He did it in the seam. Then perhaps that was why he displayed no temper? – He did it when he was [already] in a temper.