



TOURO COLLEGE
JACOB D. FUCHSBERG LAW CENTER
Where Knowledge and Values Meet

Touro Law Review

Volume 36 | Number 4

Article 8

2021

Let the Earth Teach You Torah: Sustainability in Jewish Law

Itzchak E. Kornfeld

Follow this and additional works at: <https://digitalcommons.tourolaw.edu/lawreview>



Part of the [Dispute Resolution and Arbitration Commons](#)

Recommended Citation

Kornfeld, Itzchak E. (2021) "Let the Earth Teach You Torah: Sustainability in Jewish Law," *Touro Law Review*. Vol. 36 : No. 4 , Article 8.

Available at: <https://digitalcommons.tourolaw.edu/lawreview/vol36/iss4/8>

This Symposium: Jewish Law in Comparative Context is brought to you for free and open access by Digital Commons @ Touro Law Center. It has been accepted for inclusion in Touro Law Review by an authorized editor of Digital Commons @ Touro Law Center. For more information, please contact lross@tourolaw.edu.

LET THE EARTH TEACH YOU TORAH: SUSTAINABILITY IN JEWISH LAW

*Itzhak E. Kornfeld**

Table of Contents

I. INTRODUCTION	1004
II. THE TYPOLOGY OF “LETTING THE EARTH TEACH US TORAH”	1010
A. In the Beginning	1012
III. MODERN MAN’S UNNATURAL TREATMENT OF NATURE AND ITS SAD RESULTS	1014
A. The American Fight for Sustainability	1015
IV. THE JEWISH PERSPECTIVE ON SUSTAINABILITY	1023
A. The Creation: Aggadah	1025
B. Protecting Birds: Sustainability and the Balancing of Ecosystems	1026
C. I’ll Never Be Your Beast of Burden, Never, Never, Never Be	1030
i. Torahic Sources	1031
ii. Non-Torahic Sources	1032
D. Sustaining the Earth Itself	1036
E. Ba’al Tashchit	1041
F. Tikkun Olam	1044
i. Planting Trees and Forests in the Modern Era	1047
ii. The New Tikkun Olam	1049
V. CONCLUSION	1051

I. INTRODUCTION

“The goal of life is living in agreement with nature.”
— Zeno ~ 450 BC (from *Diogenes Laertius, Lives of Eminent Philosophers*)

It is, therefore, necessary for every man to behold himself throughout the whole year in a light of being evenly balanced between innocence and guilt, and look upon the entire world as if evenly balanced between innocence and guilt; thus, if he commit one sin, he will overbalance himself and the whole world to the side of guilt, and be a cause of its destruction; but if he perform one duty, behold, he will overbalance himself and the whole world to the side of virtue, and bring about his own and their salvation and escape, even as it is said: "But the righteous is an everlasting foundation"

Maimonides, Mishnah Torah, The Ways of Repentance at Chapter 3

Environmentalism,¹ sustainability,² and climate change³ have become important focal points for international organizations, such as the United Nations, countries, cities and for diverse groups of people. Indeed, a panoply of wide-ranging parties have taken up the mantle of learning how to live more harmoniously with the physical earth.

* Ph.D., Law, The Hebrew University of Jerusalem, LL.M. Georgetown University Law Center, J.D. Tulane University Law School. Lawyer and environmental consultant, Philadelphia, PA and Ma'alot Tarshicha, Israel. The author may be reached at itzchak.kornfeld@gmail.com. I wish to thank Rabbi Aaron HaCohen Gold, Sha"lita, Rabbi Joshua HaLevi Guttoff, HaRav Rabbi Menachem Kasher, Sha"lita z"l (my teacher) for their insights into the Torah and Gemara. This article is dedicated to my parents, Harav Avraham Moshe Kornfeld, z"l and Helena Chaya Aliza Kornfeld, z"l who survived the Holocaust, immigrated to Israel and showed the author the serenity of nature, my brother Yossi, z"l, to my wife and children, and to the Admor Rabbi Yehudah Aryeh Leib Alter (the Sfat Emet), of blessed memory. The author also expresses his thanks to the Law Review's editors for their assistance in improving this article. However, any errors are solely attributable to the author.

¹ See generally Rex Weyler, *A Brief History of Environmentalism*, GREENPEACE (Jan. 5, 2018), <https://www.greenpeace.org/international/story/11658/a-brief-history-of-environmentalism> ("Awareness of our delicate relationship with our habitat likely arose among early hunter-gatherers when they saw how fire and hunting tools impacted their environment. Anthropologists have found evidence of human-induced animal and plant extinctions from 50,000 BCE, when only about 200,000 *Homo sapiens* roamed the Earth.").

² Sustainability "means meeting our own needs without compromising the ability of future generations to meet their own needs." *What is Sustainability?* U. ALTA. OFF. SUSTAINABILITY, <https://www.mcgill.ca/sustainability/files/sustainability/what-is-sustainability.pdf> (last visited Nov. 4, 2020). With regards to sustainable development, see generally Gary W. Yohe et al., *Perspectives on Climate Change and Sustainability*, in CLIMATE CHANGE 2007: IMPACTS, ADAPTATION AND VULNERABILITY (2007), <https://www.ipcc.ch/site/assets/uploads/2018/02/ar4-wg2-chapter20-1.pdf>, and *Sustainable Development Goals*, U.N., <https://www.un.org/sustainabledevelopment/sustainable-development-goals> (last visited Nov. 4, 2020) ("The Sustainable Development Goals are the blueprint to achieve a better and more sustainable future for all. They address the global challenges we face, including those related to poverty, inequality, climate change, environmental degradation, peace and justice.").

³ See generally *Young People Are Boosting Global Climate Action*, U.N. CLIMATE CHANGE (Aug. 12, 2020), <https://unfccc.int/news/young-people-are-boosting-global-climate-action>; see also *What is the United Nations Framework Convention on Climate Change?*, U.N. CLIMATE CHANGE, <https://unfccc.int/process-and-meetings/the-convention/what-is-the-united-nations-framework-convention-on-climate-change> (last visited Nov. 4, 2020) ("The [United Nations Framework Convention on Climate Change] UNFCCC entered into force on 21 March 1994. Today, it has near-universal membership. The 197 countries that have ratified the Convention are called Parties to the Convention. Preventing 'dangerous' human interference with the climate system is the ultimate aim of the UNFCCC.").

Moreover, “there is universal agreement that urgent action needs to be taken if we are to save the planet.”⁴ In response to heightened concerns over the impacts of these life altering phenomena, can the Torah⁵ provide us with any guidance? This article addresses the issue of sustainability within the Jewish Canon.⁶ It provides several examples of the commandments in the Torah, and ethical principles from other sources for sustaining the earth and God’s other creations. It also addresses the Jewish concept of *Tikkun Olam*—repairing the world—which has its roots in the early stages of the Mishnah of the second century of the common era, and as later expanded in the Kabbala (Zohar). One aspect of this concept is that numerous Jewish sages, who lived during medieval times, also viewed the beauty of the created world in a broader sense as a path towards the love and contemplation of God. Maimonides and his son, Abraham, wrote that one may well come to love God by envisaging God’s great acts involving the creation of nature, and that such meditation regarding nature was in fact vital to one’s spiritual advancement.⁷

One caveat that must be noted is that many of the biblical statutes, particularly in the books of Numbers and Deuteronomy, were meant for an agrarian society. However, post the destruction of the Second Temple and certainly during Europe’s Medieval period, Jews, in the main, were forced to become merchants, or artisans, and were unable to own land.⁸ Moreover, Jews were not permitted to live freely, and were concentrated in ghettos.⁹ Thus, the use of these

⁴ *Sustainability and Climate Change: Sustainability is Our Responsibility*, SALISBURY, https://www.salisbury.sa.gov.au/Live/Environment_and_Sustainability/Sustainability_and_Climate_Change (last visited Oct. 15, 2020).

⁵ The Torah is the name that the Rabbis and Jewish people refer to as the Five Books of Moses (Old Testament), or the Pentateuch, the Greek for five. *Halakha*, GEO. UNIV. BERKLEY CTR. FOR RELIGION, PEACE AND WORLD AFFS., <https://berkeley-center.georgetown.edu/essays/halakha> (last visited Oct. 15, 2020).

⁶ A canon is a list of books considered an authority by a group of people. *See generally* TIMOTHY H. LIM, *THE FORMATION OF THE JEWISH CANON* (2013); Abraham Berkovitz, *Creating the Jewish Canon*, MY JEWISH LEARNING, <https://www.myjewishlearning.com/article/creating-the-jewish-canon> (last visited Oct. 15, 2020); Elon Gilad, *Who Decided What Books the Hebrew Bible Would Contain?*, HAARETZ (May 27, 2019), <https://www.haaretz.com/jewish/.premium-who-was-behind-the-canonization-of-the-hebrew-bible-1.7286146>.

⁷ Rabbi Daniel Swartz, *Israel Environment & Nature: A Brief History of Nature in Jewish Texts*, JEWISH VIRTUAL LIBR., <https://www.jewishvirtuallibrary.org/a-brief-history-of-nature-in-jewish-texts> (last visited Oct. 15, 2020).

⁸ *See* JOHANNES FRIED, *THE MIDDLE AGES 287-89* (Peter Lewis trans., 2015).

⁹ *See* ROBERT CHAZAN, *REASSESSING JEWISH LIFE IN MEDIEVAL EUROPE* 252 (2010).

commandments and rules remained solely a ritualistic¹⁰ and an academic exercise.¹¹ Once the State of Israel was established in 1948, and farming, as well as the ownership of land became prevalent in the many

¹⁰ By ritualistic, I mean that the Torah was and is read on the Shabbat and on Mondays and Thursdays. Accordingly, Jewish congregations across the world heard, and continue to hear, readings from the Torah and the Prophets, depending on the day.

The Torah is split up into 54 portions, called [parshiot]. The entire Torah is completed once per year, which works out to approximately one per week.

More precisely, though, there are 54 weekly portions in the Torah, but only 50 or 51 Shabbats in a year. In addition, there are at least two, and sometimes as many as 4 or 5, times when Shabbat falls on a holiday, and the normal weekly portion is not read that week.

Ask the Rabbi: Double Torah Portion, AISH.COM, https://www.aish.com/atr/Double_Torah_Portion.html (last visited Oct. 15, 2020).

¹¹ See generally Elchanan Reiner, *Yeshiva: The Yeshiva before 1800*, YIVO ENCYC. JEWS E. EUR., https://yivoencyclopedia.org/article.aspx/Yeshiva/The_Yeshiva_before_1800 (last visited Oct. 15, 2020) (“The yeshiva in Eastern Europe in the early modern period trained young men to study formative texts and traditions, especially the Babylonian Talmud, the commentaries on it, and the legal decisions that depended on it. In Eastern Europe in this period, the term *yeshiva* (Heb., more properly *yeshivah* from the root *yshb*, ‘to sit’) referred not only to the institution but also to everyone who studied Torah in the community.”).

kibbutzim¹² and moshavim,¹³ some of the commandments were put back into practice, by order of the Chief Rabbinate of the country.¹⁴

¹² A kibbutz is the Hebrew word for a communal settlement. The word originates from the root word “kovetz” meaning to gather, assemble or collect. Kibbutzim are the plural. These were originally agricultural collective communities, or *socialist Zionist farming communes*, established by a group of people who knew each other in Europe and in the main were in rural areas across Palestine and then Israel. They were focused on establishing both a foothold on the land that the members of the kibbutz or a third party purchased. Since the members were friends, they sought to establish an egalitarian, social justice and economically equal society. The members each had an equal share of the land, chattels, production and consumption. The first kibbutz, Degania Alef, was established in 1909, on land that was purchased by the Keren Kayemet Le’Israel, i.e., the Living/Perpetual Fund for Israel, known in English as the Jewish National Fund, on the southern banks of the Sea of Galilee. See generally *What Exactly is a Kibbutz*, JEWISH AGENCY FOR ISRAEL, <http://archive.jewishagency.org/first-home-homeland/program/16766> (last visited Dec. 9, 2020).

It was a paradox built on high ideals: European Jewish intellectual pioneers immigrating to Palestine and the newly established State of Israel to build and fortify the land with their bare hands.

A radical communal experiment, the kibbutz aimed for equality, where everyone shared everything, earned the same wages (the manager of the farm earned the same as the dishwasher, etc.) and every decision was made collectively as a group.

Sarah Levi, *The Revival of the Kibbutz: A Uniquely Israeli Institution*, JERUSALEM POST (Mar. 18, 2018, 8:07 PM), <https://www.jpost.com/magazine/a-uniquely-israeli-institution-543296>.

¹³ A moshav, or moshav ovdim (“a workers’ settlement”)—plural moshavim—are agricultural settlements where each party or household owns a plot of land, but all the land holdings are worked jointly and cooperatively. They are settlements that combine a number of the features of cooperative and private farming. See generally *Moshav or Moshav Ovedim*, ENCYCLOPEDIA.COM, <https://www.encyclopedia.com/religion/encyclopedias-almanacs-transcripts-and-maps/moshav-or-moshav-ovedim> (last updated Dec. 16, 2020).

The first moshav was established in the Jezreel, or Yizreel, Valley (Emeq, Yizreel is also seen as the Valley of Esdraelon in English) in 1921. In 1986 about 156,700 Israelis lived and worked on 448 moshavim, the great majority divided among eight federations. There are two types of moshavim, the more numerous (405) moshavim *ovdim*, and the moshavim *shitufim*. The former relies on cooperative purchasing of supplies and marketing of produce; the family or household is, however, the basic unit of production and consumption. The moshav *shitufi* form is closer to the collectivity of the kibbutz: although consumption is family-or household-based, production and marketing are collective. Unlike the moshavim *ovdim*, land is not allotted to households or individuals, but is collectively worked.

Israel: Kibbutz and Moshav, COUNTRY STUD., <http://countrystudies.us/israel/57.htm> (last visited Oct. 15, 2020).

This article proceeds as follows: Part II, The Typology of “Letting the Earth Teach Us Torah,” asks what it means to let the earth teach us the Torah. In responding to that question, the article focuses upon the story of creation. It points out that in the Book of Genesis the first entity that God created was the earth. Accordingly, the earth forms the basis or foundation for the rest of the world’s infrastructure (*i.e.*, the waters, fauna, and flora), and therefore, the Biblical norms that are meant to teach us how to treat the earth well, or sustainably, are founded upon the entirety of the “Torah” or canon of Jewish law. This canon is then explored.

Part III, titled *Modern Man’s Unnatural Treatment of Nature and its Sad Results*, discusses the Torah and sustainability. Although only studied and commented upon while they lived in the diaspora these precepts have never lived in a vacuum for the Jewish people. From the time of the destruction of the Second Temple, the Rabbis have sought to employ God’s commandments for each age that they and their co-religionists were living in. Consequently, the Jewish people have from time immemorial paid attention to the trends in the world around them, and fashioned everyday life around these commandments.

This article also addresses the fact that beginning in the 1600s and continuing into the twentieth century, the majority of Jews in Eastern Europe, the Middle East and in North America lived in cities, or shtetels; when they lived in the Pale of Settlement, issues relating to land and sustainability were not part of their daily cognizance, although many knew about the various commandments and rules about protecting nature. The article then moves to examine how secular or Christian authors, particularly American ones, were quite critical of their fellow citizens who despoiled and degraded the earth, relying on Genesis 1:26, which addresses humankind’s domination of the planet. The article then discusses how the Torah’s commandments are rooted in a paradigm that differs from the domination archetype.

Part IV, The Jewish Perspective on Sustainability, addresses the Torah’s commandments, rules and views within the Jewish canon. It

¹⁴ See generally *Chief Rabbinate of Israel*, GOV.IL , https://www.gov.il/he/departments/chief_rabbinate_of_israel (last visited Oct. 15, 2020); *Benjamin Netanyahu: Government Secretary Announcements*, GOV.IL (Jan. 1, 2014), <https://www.gov.il/en/Departments/publications/reports/govmes010614> (“The Cabinet discussed preparations by the Agriculture and Rural Development Ministry and the Religious Services Ministry for the 2014-2015 shmita (sabbatical) year.”).

begins with an Aggadah, or Rabbinic folklore, on the creation, which discusses how God forbade animals of prey to eat the rest of the animal kingdom to extinction. This part then addresses the protection of birds, and the concept *shiluach ha-kan*, sending a bird away from its nest, and underscores the notion of kindness to animals. It also explores Maimonides' interpretation of *shiluach ha-kan*, in which he shows God's mercy for His creations. Additional commentators' interpretations are also discussed.

The next section discusses the commandment of “*tza'ar ba'alei hayim*,”—“the prevention of causing pain or suffering to living creatures”—that forbids owners of domestic animals from burdening or harming them. It examines both Torahic sources and non-Torahic sources. This section then addresses the concept of *Shmita*—the resting or sustaining of the earth. The final part of this article ends with the Kabbalistic and modern concept of *tikkun olam*—the repair of the world—and the various practical steps for fixing both the current social and sustainability problems. It also addresses the issue of the creation of life, and how the *Eyn-Sof*, or the Endless One, *i.e.*, God, subdued the omnipotent, all-embracing Divine Presence. Finally, the article, *in toto*, argues that the Jewish canon's legal framework is tailored to promote sustainability and care for both animals and the earth, as well as environmental awareness and concern for the externalities associated with sustainability and the Torah's commandments.

II. THE TYPOLOGY OF “LETTING THE EARTH TEACH US TORAH”

What does one mean by the typology or the notion of “letting the earth teach us Torah”? That concept is embedded in the story of the creation, in which God is the main protagonist. Recall, that the first entity to be created, as noted in the biblical book of Genesis, was the earth.¹⁵ Consequently, the earth forms the basis or foundation for the rest of the world's infrastructure, *i.e.*, the waters, fauna, and flora.

The norms that are meant to teach us how to treat the earth well, or sustainably, are founded upon the entirety of the “Torah” or canon of Jewish law, which is not only the Pentateuch.¹⁶ Rather, it includes

¹⁵ Genesis 1:1, <https://www.sefaria.org/Genesis.1.1?lang=bi&with=all&lang2=en> (“When God began to create heaven and earth”).

¹⁶ The Pentateuch refers to what are also called the Five Books of Moses: Genesis, Exodus, Leviticus, Deuteronomy, and Numbers.

the 24 volumes that make up the Torah, the Nevi'im (Prophets) and Ketuvim (Writings), and their various interpretations across the span of the past two thousand years. Many of these norms are also found in the Mishnah,¹⁷ and Gemara,¹⁸ and the Aggadah (Agadot in plural) — mythical and folklore narratives authored by Chazal¹⁹ that do not necessarily deal with Halacha, *i.e.*, Jewish law—as well as the Midrash Rabba or the Great Midrash, or Bereshit Rabba (Genesis Rabba).²⁰

¹⁷ A type of biblical interpretation utilized and well-known in the Talmud. The term Midrash is also used to refer to a discrete corpus of commentaries of the Torah that utilizes this type of interpretation. See Haim Zalman Dimitrovsky, *Talmud & Midrash*, ENCYC. BRITANNICA, <https://www.britannica.com/topic/Talmud> (last visited Oct. 15, 2020); see David C. Flatto, *The King and I: The Separation of Powers in Early Hebraic Political Theory*, 20 YALE J. L. & HUMAN. 61, 67 (2008) (“[T]he Talmud, redacted in the sixth and seventh centuries, . . . presents a running commentary on the Mishnah.”). The Talmud is the primary source of Jewish law. See Adam Mintz, *Halakha in America: The History of City Eruvin, 1894-1962*, at 29-30 (Sept. 2011) (Ph.D. dissertation, New York University), <http://www.rabbimintz.com/wp-content/uploads/Mintz-Dissertation-Final.pdf>.

¹⁸ The Gemara was compiled through debates, discussions, and deliberations by various Rabbis in Palestine and Babylonia—who are known as the Amorim in Hebrew—during the three hundred years following the Mishnah’s compilation. See, *e.g.*, 7 ISIDORE SINGER & CYRUS ADLER, *THE JEWISH ENCYCLOPEDIA: A DESCRIPTIVE RECORD OF THE HISTORY, RELIGION, LITERATURE, AND CUSTOMS OF THE JEWISH PEOPLE FROM THE EARLIEST TIMES TO THE PRESENT DAY* 527-28 (1916); *Ancient Jewish History: Amoraim*, JEWISH VIRTUAL LIBR., <https://www.jewishvirtuallibrary.org/amoraim> (last visited Nov. 17, 2020).

¹⁹ Chazal is a transliteration of the Hebrew acronym חז"ל for Chachameinu Zichronam Liv'racha, which means “our sages of blessed memory.” Tracey R. Rich, *Sages & Scholars*, JUDAISM 101, <http://www.jewfaq.org/sages.htm> (last visited Nov. 17, 2020) (referring to the sages who transcribed the oral law into the Mishnah and who were the spiritual and Halakhic—Jewish law—leaders of the Jewish people—the Israelites who lived from the time of the last Prophets, Ezra and Nechemia through the Knesset Hagdolah, *i.e.*, the Great Assembly, and then continuing through the period of the Second Temple of Jerusalem, approximately 300 B.C.E., and finally extending to approximately 600 C.E., at the end of the compilation of the Babylonian Talmud—who compiled the Tanakh, the acronym of the Hebrew of the Torah, the Prophets, and the Writings or Hagiographa. The Tanakh is also known as the Mikra. The Writings consists of twelve volumes, including the Books of Ruth, Daniel, Ezra, Ecclesiastes, and Esther, as well as the Book of Psalms and the book of Mishlê, or Proverbs (of Solomon), particularly through the period of the Second Temple.). For further discussion on Chazal, see also RABBI MOSHE MEISELMAN, *TORAH, CHAZAL & SCIENCE* (2013), and Rabbi Ruth Adar, *Who or What is Chazal?*, COFFEE SHOP RABBI (May 26, 2019), <https://coffeeshoprabbi.com/2019/05/26/who-or-what-is-chazal>.

²⁰ Bereshit Rabba is a text from Judaism’s classical period, likely authored sometime between 300 and 500 C.E. It is a midrash—biblical exegesis by Chazal, utilizing a

The Mishnah is a compendium of the transcription of the oral law, which according to Jewish belief, God gave to Moses at Sinai, along with the written Torah, *i.e.*, the Five Books of Moses.²¹

method of interpretation analogous to that applied in the Talmud. The word Midrash implies “textual interpretation” or “study,” encompassing a collection of Rabbinical homiletical interpretations of the Book of Genesis (*Bereshit* in Hebrew). *See generally* KLEINMAN ED MIDRASH RABBAH: BEREISHIS VOL 1 PARSHIYOS BEREISHIS THROUGH NOACH (2014); JACOB NEUSNER, CONFRONTING CREATION: HOW JUDAISM READS GENESIS: AN ANTHOLOGY OF GENESIS RABBAH (1991).

Bereshit Rabba has been described as an

[e]xpository Midrash to the first book of the Pentateuch, assigned by tradition to the amora Hoshaiiah, commonly Osha’yah, who flourished in the third century in Palestine. The Midrash forms a haggadic commentary on the whole of Genesis, in keeping with the character of the Midrashic exegesis demanded by that age. . . . The *Bereshit Rabbah* contains many simple explanations of words and sentences, often in the Aramaic language, suitable for the instruction of youth; and also the most varied haggadic expositions popular in the public lectures of the synagogues and schools. According to the material or the sources at the disposal of the editor of the Midrash, he has strung together various longer or shorter explanations and haggadic interpretations of the successive passages, sometimes anonymously, sometimes citing the author. Again, he adds to the running commentary longer haggadic disquisitions or narratives, connected in some way with the verse in question, or with one of the explanations of it—a method not unusual in the Talmud and in other Midrashim.

Marcus Jastrow & J. Theodor, *Bereshit Rabbah*, JEWISH ENCYC., <http://www.jewishencyclopedia.com/articles/3056-bereshit-rabbah> (last visited Nov. 17, 2020).

²¹ The Torah

is divided into two separate parts: The written Torah, referred to in Hebrew as the “Torah Shebichtav” (literally translated from the Hebrew, as the “written Torah”), and the oral Torah, or “Torah Sheba’al Peh,” (literally translated from the Hebrew, as the “Torah in the mouth”) (footnote omitted). Jewish tradition holds that Moses received both at Mt. Sinai and that over the course of the Israelites’ forty-year trek through the desert, he imparted it to the people and that these were passed down through the generations.

Itzchak E. Kornfeld, *Equity in American and Jewish Law*, 36 TOURO L. REV. 109, 110 (2020), <https://digitalcommons.tourolaw.edu/lawreview/vol36/iss1/11>; *see also* Rabbi Julian Sinclair, *Torah Sheba’al Peh*, JEWISH CHRON. (Mar. 6, 2009, 12:32 PM), <https://www.thejc.com/Judaism/jewish-words/torah-sheba-al-peh-1.8061>; *Oral Torah vs. Written Torah*, TORAH.ORG, <https://torah.org/learning/basics-primer-torah-oral Torah> (last visited Nov. 18, 2020) (“Both have been with us, according to Jewish sources, for all of the past 3300 years. And without both, it is impossible to fully understand traditional Jewish teaching or thought. The Written Torah, [mentions] each of the Commandments, or Mitzvo[t], only in passing or by allusion. The Oral Law fills in the gaps.”).

A. In the Beginning

Not surprisingly, one's legal excursion, by necessity, must begin with the initial creation narrative, or chronicle, as set forth in the Torah's/Bible's first book, Genesis (Bereshit, in Hebrew). The first sentence of the creation story in the most common English translation of the original Hebrew text, declares the following: "*When God began to create* heaven and earth, the earth being unformed and void, with darkness over the surface of the deep and a wind from God sweeping over the water."²² In contrast, the standard Christian translation of that very first sentence in the Bible declares: "In the beginning God created the heavens and the earth. Now the earth was formless and empty, darkness was over the surface of the deep, and the Spirit of God was hovering over the waters."²³

The two translations are somewhat different: in the Hebrew version, "*God begins to create*," whereas in the Christian translation "*God has created*." Although these two accounts appear to offer different views of God's efforts in creation, for our purposes any distinction is not significant. Nevertheless, the underlying concept should be clear: The Lord was the creator of the world, beginning with the heavens and the earth. Note that neither translation states that there was a creation of the Universe, only the earth that we live on, our home.

However, it is worth noting that the phrase raised a question for Rabbi Don Isaac ben Yehuda Abarbanel (sometimes referred to as Abarvanel),²⁴ a fifteenth century Portuguese Torah scholar and

²² Genesis 1:1-2, <https://www.sefaria.org/Genesis.1?lang=bi&aliyot=0> (emphasis added).

²³ Genesis 1:1 (New International Version), <https://www.biblegateway.com/passage/?search=Genesis%201&version=NIV>.

²⁴ See Yitzhak Abarbanel, *Abarbanel on the Torah, Genesis 1:1*, SEFARIA, https://www.sefaria.org/Abarbanel_on_Torah%2C_Genesis.1.1.2?lang=he&with=all&lang2=he (last visited Nov. 18, 2020) (Hebrew commentary on the Book of Bereshit (Genesis)). R. Yitzhak Abarbanel, of which אב"ר is an acronym, (some prefer to write Abravanel), lived from 1437 to 1508-1509. He was born in Portugal and lived there through the spring of 1483, where he advised Queen Isabella and King Ferdinand of Spain through the summer of 1492, when the Jews were expelled from Spain and Portugal during the summer of 1492), first in Venice and then other Italian cities, although he died in Venice. *R. Yitzhak Abarbanel*, ALHATORAH.ORG., https://alhatorah.org/%20Commentators:%20R._Yitzhak_Abarbanel (last visited Dec. 9, 2020). See also Don Yitzhak Abarbanel (a/k/a Abarvanel), a fifteenth century Torah commentator, diplomat, financier, Mystic and Philosopher; Nissan Mindel, *Don Isaac Abravanel – "The Abarbanel"*, CHABAD.ORG,

commentator. He inquired: if indeed, God, initially created the earth and the heavens, why then was more creation necessary?²⁵ Unfortunately, one was unable to locate a response to Abarvanel's query, if he provided one. But, as is well known God, the creator, did not "feel" that the creation was complete without "His" other handiworks and designs, *e.g.*, fauna and flora, and man and woman. Moreover, when one considers the geological chronology of the earth, it is not Judaism's "intention to make science the handmaiden of religion nor religion the handmaiden of science. We do not believe in a scientific religion nor in a pseudo-science. We prefer to look upon science and religion as separate domains which need not be in serious conflict and therefore need no reconciliation."²⁶

The foregoing notwithstanding there is a wide gulf between the Jewish view, or ethos of Genesis 1:26, in the Torah and that of the Christian view. The latter, of course, is the perspective of the term "domination of the earth," which is addressed next.

III. *Modern Man's Unnatural Treatment of Nature and its Sad Results*

For Jews, the precepts of the Torah and sustainability have never existed in a vacuum. From the time of the destruction of the Second Temple, the Rabbis have sought to employ God's commandments for each age that they and their co-religionists were living in. Consequently, the Jewish people have from time immemorial paid attention to the trends in the world around them, and fashioned everyday life around these commandments.

https://www.chabad.org/library/article_cdo/aid/111855/jewish/Don-Isaac-Abarvanel-The-Abarbanel.htm (last visited Jan. 15, 2021); Yevette Alt Miller, *Rabbi Yitzchak Abarbanel, Renaissance Man*, AISH.ORG, <https://www.aish.com/jw/s/Rabbi-Yitzchak-Abarbanel-Renaissance-Man.html> (last visited Jan. 15, 2021).

²⁵ NATAN SLIFKIN, *THE CHALLENGE OF CREATION: JUDAISM'S ENCOUNTER WITH SCIENCE, COSMOLOGY, AND EVOLUTION* 116–19 (2012).

²⁶ Rabbi Dr. Samuel Belkin in his "inaugural address as the second president of Yeshiva College and the Rabbi Isaac Elhanan Theological Seminary delivered on May 23, 1944." Rabbi Hayyim Angel, *Controversies Over the Historicity of Biblical Passages in Traditional Commentary*, INST. FOR JEWISH IDEAS & IDEALS (2017), <https://www.jewishideas.org/article/controversies-over-historicity-biblical-passages-traditional-commentary>.

Moreover, since the majority of Jews in Eastern Europe, the Middle East and North America lived in cities, or *shtetels*,²⁷ particularly, when they lived in the Pale of Settlement—from the eleventh century through pre-World War II twentieth century—issues relating to land and sustainability were not part of their daily ken, although many learned about the various commandments and rules about protecting nature. This, however, could not be said of secular or believing Christian authors, particularly American ones. They were quite critical of their fellow citizens who despoiled and degraded the earth, while relying on the Bible, specifically Genesis 1:26, which addresses humankind’s domination of the planet. Genesis 1:26, in the Hebrew translation, provides the following: “And God said, ‘Let us make man in our image, after our likeness. *They* shall rule the fish of the sea, the birds of the sky, the cattle, the whole earth, and all the creeping things that creep on earth.’”²⁸

A full discussion of the “domination” tenet, or culture, as espoused in Genesis 1:26, is beyond the scope of this article. However, I offer the following examples, as a contrast to the Judaic Biblical ethos.

A. The American Fight for Sustainability

In the American sphere or consciousness, a diversity of authors and scientists, including, Henry David Thoreau, the philosopher, poet, and environmental scientist’s “Walden,” Aldous Huxley’s 1944 “The

²⁷ Samuel Kassow, *Shtetl*, YIVO ENCYC. JEWS E. EUR. (Oct. 18, 2010), <https://yivoencyclopedia.org/article.aspx/Shtetl>.

The Yiddish term for town, *shtetl* commonly refers to small market towns in pre-World War II Eastern Europe with a large Yiddish-speaking Jewish population. While there were in fact great variations among these towns, a *shtetl* connoted a type of Jewish settlement marked by a compact Jewish population distinguished from their mostly gentile peasant neighbors by religion, occupation, language, and culture.

Id.

²⁸ Genesis 1:26, <https://www.sefaria.org/Genesis.1.26?lang=bi&with=all&lang2=en> (emphasis added). Note the word “they” in the second sentence. It would appear that God expected “man” to multiply. The Christian New International Version of the Bible’s translation is not that different from the English Jewish translation of Genesis 1:26. “Then God said, ‘Let us make mankind in our image, in our likeness, so that they may rule over the fish in the sea and the birds in the sky, over the livestock and all the wild animals, and over all the creatures that move along the ground.’” *Genesis* 1:26 (New International Version), <https://www.biblegateway.com/passage/?search=Genesis%201%3A26&version=NIV>.

Crows of Pearblossom,” Aldo Leopold’s 1949, “A Sand County Almanac,” Rachel Carson’s 1962 book “Silent Spring,” and E. O. Wilson’s 1971, “The Insect Societies,” have fought to pry the hearts and minds of their fellow countrymen from the destructive ravages of industrialization, and to brawl for nature, while seeking to open people’s eyes to the negative impacts of the “ethos of domination over the world.” One of these extremely tragic scenes was described by the renowned author Aldous Huxley, prior to his death in 1963, when he returned to a valley in England where he had spent his childhood. In his youth it was a glade; but upon his return, the valley was overgrown with unattractive weeds because the rabbits that previously maintained these wild plants had for the most part perished from a disease, myxomatosis, a highly contagious viral disease in rabbits, spread by fleas, mites, and ticks, which is typically fatal, that was intentionally introduced by local farmers in order to reduce crop destruction by the rabbits.²⁹

Huxley’s story clearly demonstrates that all forms of life modify their environments. However, none as drastically as humankind. Whether filling in wetlands, clearing forests, overfishing, or hunting endangered species, people destroy environments and life with impunity. Indeed, in 1967, the historian Lynn White, Jr., published an exceedingly influential article, laying out the intellectual and philosophical roots of the environmental crisis. That calamity has yet to abate. In that piece, White noted that

ever since man became a numerous species, he has affected his environment notably. The hypothesis that his fire-drive method of hunting created the world’s great grasslands and helped to exterminate the monster mammals of the Pleistocene from much of the globe is plausible, if not proved. For 6 millennia at least, the banks of the lower Nile have been a human artifact rather than the swampy African jungle which nature, apart from man, would have made it. The Aswan Dam, flooding 5000 square miles, is only the latest stage in a long process. In many regions terracing or irrigation, overgrazing, the cutting of forests by Romans to build ships to fight Carthaginians or by Crusaders to solve the logistics problems of their expeditions, have profoundly

²⁹ Lynn White, Jr., *The Historical Roots of Our Ecologic Crisis*, 155 SCIENCE 1203, 1203 (1967).

changed ecologies. . . . Quite unintentionally, changes in human ways often affect nonhuman nature. It has been noted, for example, that the advent of the automobile eliminated huge flocks of sparrows that once fed on the horse manure littering every street.

But it was not until about four generations ago that Western Europe and North America arranged a marriage between science and technology, a union of the theoretical and the empirical approaches to our natural environment. The emergence in widespread practice of the Baconian creed that scientific knowledge means technological power over nature can scarcely be dated before about 1850, save in the chemical industries, where it is anticipated in the 18th century. Its acceptance as a normal pattern of action may mark the greatest event in human history since the invention of agriculture, and perhaps in nonhuman terrestrial history as well.³⁰

We know of course that mankind, beginning with the “Christian” industrial revolution, and then Jews in the modern land of Israel, drained swamps,³¹ thereby destroying precious wetland habitat;

³⁰ *Id.*

³¹ See, e.g., William B. Meyer, *When Dismal Swamps Became Priceless Wetlands*, 45 AM. HERITAGE (1994), <https://www.americanheritage.com/when-dismal-swamps-became-priceless-wetlands> (“To the conservation movement of the early 1900s, clearing a forest was a public offense, *but draining a marsh or a swamp was a public duty*. Even for conservationists, swamps still evoked the reactions they had evoked in the colonial period: disgust at their sight and smell, fear of malaria and yellow fever, and unease about rich resources running to waste within them. For the government scientist and prominent conservationist Marshall O. Leighton, writing in 1911, their drainage was the moral equivalent of war. He asked his readers to think of them as “a wondrously fertile country inhabited by a pestilent and marauding people who every year invaded our shores and killed and carried away thousands of our citizens, and each time shook their fists beneath our noses and cheerfully promised to come again. Then we learned to stop worrying and love the swamp.” (emphasis added)).

After nearly 120 years of planning, Lake Hula (Israel) and its surrounding swamps were drained in the 1950s to increase the farmable land area, eliminate the potential for malaria and reduce evaporative water loss. Over the following four decades, this drainage of the Hula created serious

farmed large contiguous parcels of land; built cities; and obliterated a great deal of nature.³² And, lest one forget Whaling, when in the 1700s and 1800s, Nantucket whalers would haul and process 40 to 50 whales in one day.³³ Part of that destruction is grounded in what White notes is a West European and North American, and therefore, a majority Christian ethos that man has dominion over the land and seas, which meant and continues to mean that humankind can do whatever it seeks to do to that land.³⁴

ecological and agricultural problems, such as underground peat fires, soil subsidence and inundation

K.D. Hambright & T. Zohary, *Lakes Hula and Agmon: Destruction and Creation of Wetland Ecosystems in Northern Israel*, 6 WETLANDS ECOL. & MANAGE. 83, 83 (1998), https://www.researchgate.net/publication/225211914_Lakes_Hula_and_Agmon_Destruction_and_creation_of_wetland_ecosystems_in_northern_Israel.

³² For a discussion on habitat destruction, see *The Global Impacts of Habitat Destruction*, NAT'L GEO. (Sept. 25, 2019), <https://blog.nationalgeographic.org/2019/09/25/the-global-impacts-of-habitat-destruction> (“Habitat destruction is one of the biggest threats facing plants and animal species throughout the world. The loss of habitat has far-reaching impacts on the planet’s ability to sustain life Habitat destruction, defined as the elimination or alteration of the conditions necessary for animals and plants to survive, not only impacts individual species but the health of the global ecosystem. Habitat loss is primarily, though not always, human caused. The clearing of land for farming, grazing, mining, drilling, and urbanization impact the 80 percent of global species who call the forest home. Approximately 15 billion trees are cut down each year.”).

³³ See generally Nathaniel Philbrick, *How Nantucket Came to Be the Whaling Capital of the World*, SMITHSONIAN MAG. (Dec. 2015), <https://www.smithsonianmag.com/history/nantucket-came-to-be-whaling-capital-of-world-180957198> (“During a typical voyage, a Nantucket whaleship might kill and process 40 to 50 whales. The repetitious nature of the work—a whaler was, after all, a factory ship—desensitized the men to the awesome wonder of the whale. Instead of seeing their prey as a 50- to 60-ton creature whose brain was close to six times the size of their own, . . . the whalers preferred to think of it as what one observer described as ‘a self-propelled tub of high-income lard.’ In truth, however, the whalers had more in common with their prey than they would have ever cared to admit.”).

³⁴ *Genesis 1:26* (“And God said, ‘Let us make man in our image, according to our likeness; and let them have dominion over the fish of the sea, and over the birds of the air, and over all the wild animals of the earth, and over every creeping thing that creeps upon the earth.’” (emphasis added)). Moreover, see *Genesis 1:28*, <https://www.sefaria.org/Genesis.1.28?lang=bi&with=all&lang2=en> (“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.’”). See also *Genesis 1:26* (King James) (“And God said, Let us make man in our image, after our likeness: and let them have dominion over the fish of the sea,

In fact, numerous interpreters of the Christian Bible observe that

[a] common position amongst young-earth creationists, and even the wider evangelical community, is that mankind has dominion on earth. This means that mankind has been given a special authority and rule over the creatures and the Creation. This concept is so widely applied and held that it has even earned a special doctrinal name, which is the dominion mandate.

From this concept, it has been inferred by many that a command was given to Adam, and all of his descendants, to have dominion and rule over all the animal kind, and the Creation. Therefore, all of humanity are recipients of this perceived Adamic dominion.

The dominion mandate, itself, is not named nor defined in Scripture, and so offering a deeper definition, which everyone can agree on, is not possible. However, it is possible to locate where the idea of the dominion mandate stems from. It is the biblical passage in Genesis 1:26–28.³⁵

Moreover, in his seminal article, Professor White observed that

[w]hile many of the world's mythologies provide stories of creation, Greco-Roman mythology was singularly incoherent in this respect. Like Aristotle, the intellectuals of the ancient West denied that the visible world had had - a beginning. Indeed, the idea of a beginning was impossible in the framework of their cyclical notion of time. In sharp contrast, Christianity inherited from Judaism not only a concept of time as nonrepetitive and linear but also a striking story of creation. By gradual stages a loving and all-powerful God had created light and darkness, the heavenly bodies, the earth and all its plants, animals, birds, and fishes.

and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creepeth upon the earth.”).

³⁵ Darek Isaacs, *Is There a Dominion Mandate?*, 6 ANSWERS RES. J. 1, 1 (2013), <https://assets.answersingenesis.org/doc/articles/pdf-versions/arj/v6/dominion-mandate.pdf>.

Finally, God had created Adam and, as an afterthought, Eve to keep man from being lonely. Man named all the animals, thus establishing his dominance over them. God planned all of this explicitly for man's benefit and rule: no item in the physical creation had any purpose save to serve man's purposes. And, although man's body is made of clay, he is not simply part of nature: he is made in God's image.

Especially in its Western form, Christianity is the most anthropocentric religion the world has seen. As early as the 2nd century both Tertullian and Saint Irenaeus of Lyons were insisting that when God shaped Adam he was foreshadowing the image of the incarnate Christ, the Second Adam. Man shares, in great measure, God's transcendence of nature. Christianity, in absolute contrast to ancient paganism and Asia's religions (except, perhaps, Zoroastrianism), not only established a dualism of man and nature but also insisted that it is God's will that man exploit nature for his proper ends.

At the level of the common people this worked out in an interesting way. In Antiquity every tree, every spring, every stream, every hill had its own genius loci, its guardian spirit. These spirits were accessible to men, but were very unlike men; centaurs, fauns, and mermaids show their ambivalence. Before one cut a tree, mined a mountain, or dammed a brook, it was important to placate the spirit in charge of that particular situation, and to keep it placated. By destroying pagan animism, Christianity made it possible to exploit nature in a mood of indifference to the feelings of natural objects.

It is often said that for animism the Church substituted the cult of saints. True; but the cult of saints is functionally quite different from animism. The saint is not in natural objects; he may have special shrines, but his citizenship is in heaven. Moreover, a saint is entirely a man; he can be approached in human terms. In addition to saints, Christianity of course also had angels and demons inherited from Judaism and perhaps, at one remove, from Zoroastrianism. But these were all as mobile as the saints themselves. The spirits in natural

objects, which formerly had protected nature from man, evaporated. Man's effective monopoly on spirit in - this world was confirmed, and the old inhibitions to the exploitation of nature crumbled.

When one speaks in such sweeping terms, a note of caution is in order. Christianity is a complex faith, and its consequences differ in differing contexts.

....

The Christian dogma of creation, which is found in the first clause of all the Creeds, has another meaning for our comprehension of today's ecologic crisis. By revelation, God had given man the Bible, the Book of Scripture. But since God had made nature, nature also must reveal the divine mentality. The religious study of nature for the better understanding of God was known as natural theology. In the early Church, and always in the Greek East, nature was conceived primarily as a symbolic system through which God speaks to men: the ant is a sermon to sluggards; rising flames are the symbol of the soul's aspiration. This view of nature was essentially artistic rather than scientific.³⁶

Indeed, a number of authors assert that Christianity cherry picks the Old Testament. For example,

According to a report in *The Christian Century* magazine, about 90 percent of the Old Testament and 50 percent of the New Testament fell under the missionaries' blue pencil in this version published in 1807.

Biblical cherry-picking is nothing new. This is just a guess, but I'd suspect almost everyone can find something in the Holy Scriptures they don't like. When that happens, the offending passages simply get ignored.

That Old Testament stuff about how God forbids eating pork and shellfish falls on deaf ears at meetings of the pork producer's association or the international fisheries consortiums. Both are big business, Scripture and the Almighty notwithstanding.

³⁶ White, *supra* note 29, at 1205-06.

Take the circumcision thing. Lately, this ancient practice has come under scrutiny from those challenging the long-held notion that it's not only scriptural but a positive health practice. Opponents call it the unkindest cut of all since it usually is performed on infants who feel the pain but who can't do much about it except scream. Truth be told, most modern-day Christians use the Bible as something of a theological smorgasbord. They pick and choose what seems right and truthful and not that hard to do and ditch the rest.³⁷

One should not take from the above that this author is suggesting that either he or Judaism are anti-Christian, or anti-development. Indeed, Jews, although a small portion of the world's inhabitants, have in the name of the Torah, also been responsible for the obliteration and the eradication of large swaths of nature. One classic example of this destructive propensity has to do with the number of children that Orthodox and Ultra-Orthodox Jews sire. Based on their reliance on the verse in Genesis 1:28, of the Torah, many families will have anywhere from six to twelve or thirteen children (from one mother).

Genesis 1:28 states: "God blessed them and God said to them, 'Be fertile and increase, fill the earth . . .'"³⁸ The orthodox and ultra-orthodox segment of the Jewish population takes this verse literally. With such large nuclear families, these parents and children require more housing, more concrete or asphalt streets, as the orthodox and ultra-orthodox, like everyone else, want to walk on sidewalks; they also require more furniture; use more electricity and natural gas; and build more schools. And, given modern medicine and the low incidence of child mortality, once the children grow up and marry, they

³⁷ Jim Ketchum, *Biblical Cherry-Picking is Nothing New*, TIMES HERALD (Apr. 18, 2019, 11:47 AM), <https://www.thetimesherald.com/story/opinion/2019/04/18/biblical-cherry-picking-nothing-new/3507396002>; see also Brett Salkeld, *Is Hell Good News?*, CHURCH LIFE J. (Nov. 2, 2020), <https://churchlifejournal.nd.edu/articles/is-hell-good-news> ("Both sides are able to cherry-pick support from Scripture and the Tradition of the Church" with regards to hell.); Patrick Mabilog, *Why you should avoid cherry-picking verses when reading the Bible Christian Today*, (May 29, 2016, 1:40 AM), <https://www.christiantoday.com/article/why.you.should.avoiding.cherry.picking.verses.when.reading.the.bible/86789.htm>.

³⁸ Genesis 1:28, <https://www.sefaria.org/Genesis.1.28?lang=bi&aliyot=0>.

too will have many children, requiring more land for building homes, and the cycle continues on and on and on.

Nevertheless, even considering the foregoing, White's assessment of humankind's domination, as a function of man's creation,³⁹ does not accord with the entirety of the Torah or the Jewish perspective and attitude of nature, at least since the time of the destruction of Solomon's Temple. First, the Israelites sojourned in Babylonia, the Roman Empire, and then were dispersed throughout the Middle East and North Africa, Portugal, Spain, England, and then to central, southern, and eastern Europe. As noted above, in none of these locales did they own land, nor were they permitted to do so, as a consequence of Antisemitism.

Given that factual predicate, they were unable to dominate the earth until the twentieth century, and almost entirely in one country, Israel. Accordingly, asserting that the "domination paradigm" is part of the Judeo-Christian ethos, or reproaching the Jewish people because, as White notes, "Christianity inherited from Judaism not only a concept of time . . . but also a striking story of creation [domination]," is both factually incorrect and morally baseless.⁴⁰ Unlike Christians, history demonstrates that Jews never sought to dominate animals or anyone else. Indeed, the Torah has numerous rules and commandments that require strict care of the earth and its creatures. For example, the Torah's mandate to be *shomrei adamah* (guardians of the earth), based on the admonition that we should "work the earth and guard it";⁴¹ or, teaching our children that, "The earth is the Lord's and the fullness thereof" (Psalm 24:1-2).⁴² There are still other commandments in the Torah that deal with sustainability. These are addressed next.

³⁹ White proclaims that "[m]an named all the animals, thus establishing *his dominance over them*. God planned all of this explicitly for man's benefit and rule. *Id.* (emphasis added). White also declares that "[e]specially in its Western form, Christianity is the most anthropocentric religion the world has seen." *Id.* (emphasis added).

⁴⁰ White, *supra* note 29, at 1205.

⁴¹ Genesis 2:15 states that "The LORD God took the man and placed him in the garden of Eden, to till it and tend it." Genesis 2:15, <https://www.sefaria.org/Genesis.2.15?lang=bi&aliyot=0>.

⁴² "Of David. A psalm. The earth is the LORD's and all that it holds, the world and its inhabitants. For He founded it upon the ocean, set it on the nether-streams." Psalms 24:1-2, <https://www.sefaria.org/Psalms.24.1-2?lang=bi>.

IV. THE JEWISH PERSPECTIVE ON SUSTAINABILITY

Unlike what appears to be some people's absolute focus on Genesis chapter 1:26, and its dominion over God's creations, Judaism's emphasis is on the entirety of the 613 commandments, or mitzvot—religious obligations—in the entire Torah,⁴³ *i.e.*, the Five Books of Moses. And relative to those mitzvot, a basic tenet of Judaism, spelled out in the Mishnah,⁴⁴ declares that one transgression, or sin—even, a minor one—leads to another transgression, or sin, and that these transgressions will likely encourage the individual to sin once again. Alternatively, if one commits a mitzva, or a good act, that effort will give rise to other, or further good acts. That is why every commandment in the Torah is critical to Orthodox/observant Jews. Indeed, Jews view their role on earth as God's guardians, or co-partners in the corporeal and spiritual upkeep of the world. Consequently, the safety

⁴³ The Talmud relates in the Tractate Makkot 23b, that a third century Palestinian religious leader, Rabbi Simlai, mentioned the 613 mitzvot in a sermon. Of these 613 commandments (mitzvot) in the Torah, 248 are positive commandments, *i.e.*, dos, and 365 are negative commandments, *i.e.*, do not. However, the Talmud does not provide us with a list of these commandments. And it took until the twelfth century, that Maimonides collated and recorded them in his *magnum opus*, the Mishnah Torah. See, *e.g.*, ISRAEL DRAZI, *MAIMONIDES AND THE BIBLICAL PROPHETS* 209 (2009); Babylonian Talmud, Makkot 23b-24a.

⁴⁴ Mishnah Pirkei Avot—literal translation from the Hebrew, Chapters of the Fathers—but known in English as the Ethics of the Fathers, was composed in Palestine/Israel circa 190 C.E.-230 C.E. This mishnah is part of the fourth order of the mishnah Nezikin, *i.e.*, Damages, which contains ten tractates, that addresses Jewish civil and criminal law.

Ben Azzai said: Be quick in performing a minor commandment as in the case of a major one and flee from transgression; For one commandment leads to another commandment, and transgression leads to another transgression; For the reward for performing a commandment is another commandment and the reward for committing a transgression is a transgression.

Mishna Pirkei Avot 4:2, https://www.sefaria.org/Pirkei_Avot?lang=bi.

Similarly, in chapter 2:1, the Mishnah notes that Rabbi Judah declared

[a]nd be careful with a light commandment as with a grave one, for you did know not the reward for the fulfillment of the commandments. Also, reckon the loss [that may be sustained through the fulfillment] of a commandment against the reward [accruing] thereby, and the gain [that may be obtained through committing] of a transgression against the loss [entailed] thereby.

Id. at 2:1.

of creation and its various ecosystems⁴⁵ is an essential component of these commandments.

What follows are a number of examples of sustainability and sustainable practices from the Jewish canon's and Torahic commandments. It begins with a discussion of Jewish folklore, or Aggadah.

A. The Creation: Aggadah

The Hebrew word “Aggada” (or Aggadah) means oral or written legends, folklore, and all forms of storytelling that are narrated and comprehended as Rabbinic, but post-Biblical Jewish literature.⁴⁶ These stories are nevertheless grounded in, or derived from the Scriptures, and are then spun into a story with a message or a teaching.⁴⁷ One of the celebrated legends or Aggadot deals with God's creation of the earth. Although it winds through a number of creation stories and subsequent destructions of those created worlds, for our purposes the relevant section follows in its entirety below.

Again, if God in His goodness had not given protection to the weak, the tame animals would have been extirpated long ago by the wild animals. . . . [A]t the time of the summer solstice, when the strength of behemot [large animals] is at its height, he roars so loud that all the animals hear it, and for a whole year they are

⁴⁵ As used herein “[a]n ecosystem is a geographic area where plants, animals, and other organisms, as well as weather and landscapes, work together to form a bubble of life.” *Ecosystem*, NAT'L GEO., <https://www.nationalgeographic.org/encyclopedia/ecosystem> (last visited Nov. 19, 2020).

⁴⁶ 1 LOUIS GINZBURG, LEGENDS OF THE JEWS: BIBLE TIMES AND CHARACTERS FROM THE CREATION TO JACOB, at IX (Henrietta Szold trans., 5th ed. 1912) (1909), <http://www.swartzentrover.com/cotor/e-books/misc/Legends/Legends%20of%20the%20Jews.pdf>.

⁴⁷ *Id.* at VII (“The term Rabbinic was applied to the Jewish Literature of post-Biblical times by those who conceived the Judaism of the later epoch to be something different from the Judaism of the Bible, something actually opposed to it. Such observers held that the Jewish nation ceased to exist with the moment when its political independence was destroyed. For them the Judaism of the later epoch has been a Judaism of the Synagogue, the spokesmen of which have been the scholars, the Rabbis. And what this phase of Judaism brought forth has been considered by them to be the product of the schools rather than the product of practical, pulsating life. Poetic phantasmagoria, frequently the vaporings of morbid visionaries, is the material out of which these scholars construct the theologic system of the Rabbis, and fairy tales, the spontaneous creations of the people, which take the form of sacred legend in Jewish literature, are denominated the Scriptural exegesis of the Rabbis . . .”).

affrighted and timid, and their acts become less ferocious than their nature is. Again, . . . at the time of the autumnal equinox, the great bird ziz flaps his wings and utters his cry, so that the birds of prey, the eagles and the vultures, blench, and they fear to swoop down upon the others and annihilate them in their greed. And, again, were it not for the goodness of God, the vast number of big fish had quickly put an end to the little ones. But at the time of the winter solstice, . . . the sea grows restless, for then leviathan spouts up water, and the big fish become uneasy. They restrain their appetite, and the little ones escape their rapacity.⁴⁸

The essence of this Aggadah is God's goodness. He protects all animals, whether on land, in the air, or in the seas. Indeed, God protects them from the evils of the world, and from extinction. Clearly, this Aggadah stresses that animals, of whatever kind, are barred from killing other species to the point of extinction. Moreover, as a story, it is one filled with evil and good, which is a theme throughout human history, including in modern Film Noir movies, cowboy movies, and the epic Star Wars franchise.

B. Protecting Birds: Sustainability and the Balancing of Ecosystems

Indeed, the Torah is categorical in underscoring the notion of kindness to animals. One example, Deuteronomy 22:6-7 states:

⁶ If, along the road, you chance upon a bird's nest, in any tree or on the ground, with fledglings or eggs and the mother sitting over the fledglings or on the eggs, do not take the mother together with her young.

⁷ Let the mother go, and take only the young, in order that you may fare well and have a long life.⁴⁹

Sending the mother away, before taking her eggs, or her chicks, is referred to as the mitzvah of shiluach ha-kan—Hebrew for sending away from the nest—it is a mitzvah, or the commandment which has

⁴⁸ *Id.* at 4-5.

⁴⁹ Deuteronomy 22:6-7, <https://www.sefaria.org/Deuteronomy.22.7?lang=bi&with=all&lang2=en>.

no explanation. The Torah's declaration that one must send the mother away, for Jews, applies solely to Kosher birds.⁵⁰ Although the Torah, in Deuteronomy, states that execution of this mitzvah is "good for you and will prolong your days,"⁵¹ it does not clarify the motivation behind the statement, or the commandment, and in fact, Chazal⁵² tell us that it is a decree that we do not understand.⁵³ Nevertheless, a number of commentators have attempted to offer several clarifications of the commandment. The initial account is likely from the Rishonim,⁵⁴ or "the first or early stages," who lived from the eleventh to the fifteenth centuries C.E., and who inquired why the Torah would charge the Jewish people to perform shiluach ha-kan.

Maimonides, or Rambam, for example, explains that shiluach ha-kan shows God's mercy for His creations. He recognized that this edict concerns the suffering and emotions of a mother bird seeing her

⁵⁰ Certain

fowl [are] forbidden, including birds of prey (eagle, osprey, hawk, falcon, owl); those that feed on carrion (vulture, buzzard, raven); certain water-birds (pelican, stork, heron, swan, sea gull); and other birds (ostrich, bat, lapwing). Poultry (goose, chicken, duck), pigeon and doves, and wild birds not on the above list were permitted. Only the eggs of clean fowl could be eaten.

Geoffrey Wigoder, *Food Laws in the Bible*, MY JEWISH LEARNING, <https://www.myjewishlearning.com/article/food-laws-in-the-bible/> (last visited Nov. 20, 2020) (referencing Leviticus 11:13-19 and Deuteronomy 14:11-18)

⁵¹ Rabbi Doniel Neustadt, *The Mitzvah of Shiluach Ha-Kein: Parshas Korach*, TORAH.ORG (2013), <https://torah.org/torah-portion/weekly-halacha-5773-korach>.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ The Rishonim included three of the most famous and important sages, who include Rashi, the acronym for Rabbi Shlomo Yitchaki, a French scholar born in 1040.

He is one of the most popular and prolific of the Medieval commentators. . . . [Next, is Maimonides], Rabbi Moshe ben Maimon, the Rambam, [one of the preeminent Jewish philosophers and one of the greatest Torah scholars] was one of the first codifiers of Jewish law." His fourteen volume Mishnah Torah covers all of Jewish law, belief and practice. He was born in Spain in 1135, lived most of his life in Egypt, and died there in 1185. [And finally] Nachmanides, Rabbi Moshe ben Nachman, is also known by his acronym "Ramban." . . . [He] immigrated there in his later years. Nachmanides wrote commentaries on the Five Books of Moses, the Talmud, and on a number of books of the Tanach. He is considered one of the greatest of the Kabbalists and his commentary on the Torah contains many mystical insights.

Rabbi Mordechai Becher & Rabbi Moshe Newman, *Post-Talmudic Period*, OHR SOMAYACH, <https://ohr.edu/judaism/survey/survey6.htm> (last visited Nov. 20, 2020).

eggs or hatchlings being taken away. Indeed, in his seminal book, “The Guide for the Perplexed,”⁵⁵ Maimonides says, “[t]here is no difference in this case between the pain of man and the pain of other living beings, since the love and tenderness of the mother for her young ones is not produced by reasoning, but by imagination, and this faculty exists not only in man but in most living beings.”⁵⁶

He similarly explains that mammals instinctively love their offspring or their young, in general, and suffer when they see them removed from their care or are selected for slaughter.⁵⁷ A later sage, Nachamides or the Ramban,⁵⁸ however, rejected Maimonides’ (Rambam’s) explanation, and declared that the disquiet is not for the animal’s feelings, but rather to instill compassion in people; to habituate in people acts of mercy towards each other.⁵⁹ Another Torah commentator, Rabbeinu Bechaya,⁶⁰ writes that this mitzvah epitomizes the concept that people ought to forestall acting in any manner that will destroy a species, since slaughter of both a mother and children on the same day is analogous to mass extermination.⁶¹ Finally, the Kabbalah

⁵⁵ See, e.g., Kenneth Seeskin, *Maimonides*, STAN. ENCYC. PHIL. (Mar. 15, 2017), <https://plato.stanford.edu/archives/spr2017/entries/maimonides>.

[Maimonides’] philosophic masterpiece, the *Guide of the Perplexed*, is a sustained treatment of Jewish thought and practice that seeks to resolve the conflict between religious knowledge and secular. Although heavily influenced by the Neo-Platonized Aristotelianism that had taken root in Islamic circles, it departs from prevailing modes of Aristotelian thought by emphasizing the limits of human knowledge and the questionable foundations of significant parts of astronomy and metaphysics.

Id.

⁵⁶ MOSES MAIMONIDES, THE GUIDE FOR THE PERPLEXED 496 (M. Friedländer trans., 4th ed., E.P. Dutton & Co. 1904) (C.E. 1186) (Moreh Nevuchim in Hebrew).

⁵⁷ *Id.* (“It is also prohibited to kill an animal with its young on the same day (Lev. xxii. 28), in order that people should be restrained and prevented from killing the two together in such a manner that the young is slain in the sight of the mother; for the pain of the animals under such circumstances is very great.”). See also Andrea M. Weisberger, *Animal Rights Within Judaism: The Nature of the Relationship Between Religion and Ethics*, 42 SOPHIA 77, 80 (2003).

⁵⁸ On Nachamides, see *supra* note 54.

⁵⁹ Neustadt, *supra* note 51.

⁶⁰ Rabbi Bachya ben Asher, (c.1290-c.1310 CE), who lived in Middle-Age Spain, authored a commentary on the Torah. His commentary, which “incorporates the literal meaning along with allegoric, Midrashic, and Kabbalistic interpretations.” See *Rabbeinu Bahya*, SEFARIA, https://www.sefaria.org/Rabbeinu_Bahya?lang=bi (last visited Nov. 20, 2020).

⁶¹ Neustadt, *supra* note 51. For an extensive explanation in video form, see Rabbi Moshe Walter, *The Mitzvah, Halachos, and Demonstration of Shiluach Haken*,

or Zohar⁶² explains that this mitzvah is meant to awaken and intensify God's mercy for His creations. The anguish that the mother bird bears when she is sent away from her nest, thereby being forced to forsake her eggs, or her chicks "awakens the forces of mercy in the world" and emits an outpouring of mercy from the heavens above which assuages all types of human suffering.⁶³

Note that each of these commentaries, whether applicable to animals or people, is rooted in mercy and compassion. Indeed, they are similar to the prohibition in Leviticus 22:28, against slaughtering a mother animal and her offspring on the same day, as animals instinctively love their young and suffer when they see them slaughtered or taken away.⁶⁴ Finally, the commandment may only be utilized for the mother bird, and only when she is roosting.

YOUTUBE (May 10, 2020), https://www.youtube.com/watch?v=TTDHnaUgS7g&feature=emb_title&ab_channel=MosheWalter.

⁶² Kabbalah [Reception, as in receiving] and Zohar [as in brilliance or shining was] composed in Middle-Age Spain (c.1100 - c.1400 CE).

The Zohar (Splendor or Radiance) is the foundational work in the literature of Jewish mystical thought known as Kabbalah. It is a group of books including commentary on the mystical aspects of the Torah (the five books of Moses) and scriptural interpretations as well as material on mysticism, mythical cosmogony, and mystical psychology. The Zohar contains discussions of the nature of God, the origin and structure of the universe, the nature of souls, redemption, the relationship of Ego to Darkness and "true self" to "The Light of God", and the relationship between the "universal energy" and man.

Kabbalah Zohar, SEFARIA, <https://www.sefaria.org/Zohar?lang=bi.h> (last visited Nov. 20, 2020).

⁶³ Neustadt, *supra* note 51. See also *Havot Yair, Teshuva 67*, SEFARIA, https://www.sefaria.org/Havot_Yair.67?lang=bi.

⁶⁴ Leviticus 22:28, <https://www.sefaria.org/Leviticus.22.28?lang=en&with=all&lang2=en>. ("However, no animal from the herd or from the flock shall be slaughtered on the same day with its young."); see also Babylonian Talmud Chullin 75a-81b. Maimonides reveals that animals instinctively "love" their offspring and seek to care for them; thus, they suffer when they see their young removed from their care, or to be slaughtered. Indeed, he declared that "[t]here is no difference in this case between the pain of people and the pain of other living beings, since the love and the tenderness of the mother for her young ones is not produced by reasoning but by feeling, and this faculty exists not only in people but in most living things." Richard Schwartz, *Jewish Dietary Laws (Kashrut): Rabbinic Teachings on Vegetarianism*, JEWISH VIRTUAL LIBR., <https://www.jewishvirtuallibrary.org/rabbinic-teachings-on-vegetarianism#4> (last visited Nov. 20, 2020).

C. I'll Never Be Your Beast of Burden, Never, Never, Never Be⁶⁵

God has imposed upon the Jewish people a series of laws barring cruelty to animals. Indeed, an entire canon of commandments known in Hebrew as “tza’ar ba’alei hayim,” translated as the requirement “to prevent the suffering of living creatures,”⁶⁶ which directs that animals be treated with kind-heartedness and benevolence.

One example is that Jewish people must not “pass by” an animal in distress or animals being mistreated, even on the Sabbath, when one must refrain from all work. Indeed, the Encyclopedia Judaica notes that, “[t]he Jewish attitude toward animals has always been governed by the consideration that they, too, are God’s creatures . . . [and] the obligation to respect and consider the feelings and needs of lower creatures. . . . The non-canonical . . . writings strongly urge kindness towards animals, declaring that one who harms an animal harms his own soul.”⁶⁷

Similarly, the Encyclopedia observes that “[i]n rabbinic literature . . . great prominence is given to demonstrating G-d’s mercy to animals, and to the importance of not causing them pain.”⁶⁸

The passage continues: Moral and legal rules concerning the treatment of animals are based on the principle that animals are part of G-d’s creation toward which man bears responsibility. . . . The Bible . . . makes it

Similarly, the Torah provides other edicts in Leviticus 22:27 and Exodus 22:29, which appear to address the emotional wellbeing of a mother and her offspring. Indeed, Leviticus 22:27 provides that “[w]hen an ox or a sheep or a goat is born, it shall stay seven days with its mother, and from the eighth day on it shall be acceptable as an offering by fire to the LORD.” These two passages require that a mother and her issue are to remain with each other for a minimal amount of time. Also related to the maternal-offspring bond, is Leviticus 22:28, which provides “[h]owever, no animal from the herd or from the flock shall be slaughtered on the same day with its young.”

⁶⁵ THE ROLLING STONES, BEAST OF BURDEN (Rolling Stones Records 1978).

⁶⁶ See DEEP ECOLOGY AND WORD RELIGIONS: NEW ESSAYS ON SACRED GROUND 155-56 (David Landis Barnhill & Roger S. Gottlieb eds., 2001; Noah J. Cohen, TSA’AR BA’ALEI HAYIM: THE PREVENTION OF CRUELTY TO ANIMALS: ITS BASES, DEVELOPMENT AND LEGISLATION IN HEBREW LITERATURE (2d ed. 1976).

⁶⁷ LEWIS REGENSTEIN, COMMANDMENTS OF COMPASSION: JEWISH TEACHINGS ON PROTECTING ANIMALS AND NATURE 4 (2008), http://www.humanesociety.org/sites/default/files/archive/assets/pdfs/faith/commandments_of_comp_3_08.pdf.

⁶⁸ *Id.*

clear not only that cruelty to animals is forbidden but also that compassion and mercy to them are demanded of man by G-d.⁶⁹

Consequently, Jewish law has not required a law protecting endangered species, because humankind bears the responsibility for protecting *all* animals.

i. Torahic Sources

The primary source for the commandments is, of course, the Torah and the following are examples of God's charges for the prevention of the suffering of living creatures. The first comes from Exodus 23:4-5, which provides that "[i]f you see the donkey of he who hates you [your enemy], lying under its burden, and you hesitate to [or 'desist from'] unload[ing] it – you shall surely unload it [and lift it up]."⁷⁰ Moreover, the Ten Commandments specifically mentions that cattle and donkeys must not be worked on the Sabbath. Indeed, in the twenty-third chapter of Exodus, several animal-protection statutes are given by God to Moses: "Six days you shall do your work, but on the seventh day you shall rest; that your ox and your ass may have rest . . ."⁷¹ Similarly, Deuteronomy 5:14 provides: "the seventh day is a sabbath to the Lord your God; in it you shall not do any work, you, or your son . . . or your ox, or your ass, or any of your cattle."⁷²

The edicts outlined in the Torah make it apparent that these laws which are designed to assist animals are intended for the sake of God's creatures, and not for the owner's benefit. One, therefore, is required to help animals that belong to one's enemies to whom no obligation is owed, as well as those of family or friends; again, one is forbidden to "pass by" an animal in distress. The Torah's laws, as set forth in the books of Exodus and Deuteronomy clearly impart to people that we must be compassionate and kind towards God's other

⁶⁹ *Id.*

⁷⁰ Rav Shimon Klein, "If You Encounter Your Enemy's Ox," ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH, <https://www.etzion.org.il/en/if-you-encounter-your-enemy-ox> (last visited Nov. 20, 2020). See also Deuteronomy 22:1 ("You shall not see your brother's ox or sheep straying and ignore them. [Rather,] you shall return them to your brother.").

⁷¹ Exodus 23:12 (Revised Standard Version).

⁷² Deuteronomy 5:14 (Revised Standard Version).

creatures, especially farm animals. Numerous enactments forbid the overworking of animals and require that stray and lost creatures be helped.

These include commandments concerning the treatment of working animals. For instance, Deuteronomy 22:10 declares, “[y]ou shall not plow with an ox and an ass [yoked] together.”⁷³ One rationale for this law is that it prevents suffering since animals of unequal strength working together causes one or both of them distress.⁷⁴ One recent commentator maintains that a reason for the commandment may be that when two species of farm animals live and work together, one or both may grow ill at ease simply because they are different.⁷⁵ Moreover, he explains that the eleventh century distinguished Spanish Torah commentator, Abraham ben Meir Ibn Ezra, noted that the yoking of two animals of unequal strength together certainly would trigger pain to the weaker one and annoyance or exasperation to the stronger one,⁷⁶ because the more physically powerful animal would likely yank the yokes more quickly or firmly than its less powerful partner. Finally, Deuteronomy 25:4 commands that one “shall not muzzle an ox while it is threshing [grazing].”⁷⁷ This is a coherent and practical edict, because when an ox, or any other animal, is muzzled, it cannot pull enough food into its mouth, nor can it chew comfortably.

ii. *Non-Torahic Sources*

Primary sources other than the Torah also focus on the requirement of being kind to animals as seen in the following examples. The first comes from the last verse in the Book of Jonah 4:11, which expresses how God determined to spare the city of Nineveh from destruction, saying, “And should not I care about Nineveh, that great city, in which there are more than a hundred and twenty thousand persons who do not yet know their right hand from their left, and many beasts [cattle, livestock] as well!”⁷⁸

⁷³ *Id.* at 22:10.

⁷⁴ 2 RABBI JOSEPH TELUSHKIN, A CODE OF JEWISH ETHICS: LOVE YOUR NEIGHBOR AS YOURSELF 301 (2009).

⁷⁵ SHUBERT SPERO, MORALITY, HALAKHA AND THE JEWISH TRADITION 154 (1983).

⁷⁶ *Id.*

⁷⁷ Deuteronomy 25:4, <https://www.sefaria.org/Deuteronomy.25.4?lang=bi&ali-yot=0>.

⁷⁸ Jonah 4:11, <https://www.sefaria.org/Jonah.4.11?lang=bi&with=all&lang2=en>.

Similarly, in Psalm 36:7, King David declares, “Your beneficence is like the high mountains; Your justice like the great deep; man, and beast You deliver, O LORD.”⁷⁹ Likewise, Proverbs 12:10 states, “A righteous man knows the needs of his beast, But the compassion of the wicked is cruelty.”⁸⁰ Furthermore, the prophet Isaiah proclaimed:

Justice shall be the girdle of his loins, And faithfulness the girdle of his waist. The wolf shall dwell with the lamb, The leopard [shall] lie down with the kid; The calf, the beast of prey, and the fatling together, With a little boy to herd them. The cow and the bear shall graze, Their young shall lie down together; And the lion, like the ox, shall eat straw.⁸¹

In addition, the Mishnah in the tractate of Bava Metzia recounts a homiletic story about Rabbi Judah the Prince, the redactor of the Mishnah, who was seated studying the Torah outdoors in front of a Synagogue in Sepphoris.⁸²

The Gemara stated that Rabbi Yehuda HaNasi’s suffering came upon him due to an incident. What was that incident that led to his suffering? The Gemara answers that there was a certain calf that was being led to slaughter. The calf went and hung its head on the corner of Rabbi Yehuda HaNasi’s garment and was weeping. Rabbi Yehuda HaNasi said to it: Go, as you were created for this purpose. It was said in Heaven: Since he was not compassionate toward the calf, let afflictions come upon him. [He was affected by a toothache for thirteen years].

The Gemara explains the statement: And left him due to another incident. One day, the maidservant of Rabbi

⁷⁹ Psalms 36:7, <https://www.sefaria.org/Psalms.36.7?lang=bi&with=all&lang2=en>.

⁸⁰ Proverbs 12:10, <https://www.sefaria.org/Proverbs.12.10?lang=bi>.

⁸¹ Isaiah 11:5–7, <https://www.sefaria.org/Isaiah.11.5?lang=bi&with=all&lang2=en>.

⁸² The city of Sepphoris [Zippori in Hebrew] is located on a hill in the Lower Galilee, midway between the Mediterranean and Lake Kinneret (Sea of Galilee). The city dates to the era of the Maccabees in the second century B.C.E., when it was founded by Alexander Jannaeus of the Hasmonean dynasty. Zippori was described by the first century C.E. Jewish historian, Josephus Flavius, as “the ornament of all Galilee.” The city may get its name from the Hebrew word “*tsipor*” (bird) because the view from the town gives a sense of flying. *Zippori*, JEWISH VIRTUAL LIBR., <https://www.jewishvirtuallibrary.org/vie-zippori> (last visited Nov. 21, 2020).

Yehuda HaNasi was sweeping his house. There were young weasels [*karkushta*] lying about, and she was in the process of sweeping them out. Rabbi Yehuda HaNasi said to her: Let them be, as it is written: “The Lord is good to all; and His mercies are over all His works” (Psalms 145:9). They said in Heaven: Since he was compassionate, we shall be compassionate on him, and he was relieved of his suffering.⁸³

The last non-Torah source, used herein, is a teaching from a pre-eminent Kabbalist, Rabbi Isaac Luria, who lived during the 1500s, in the Palestinian city of Sefad. Luria was universally known as the Arizal, an acronym for “The Godly Rabbi Isaac of Blessed Memory.” The Arizal,

taught that all four levels of creation—inanimate, vegetable, animal, and human—all have life force and consciousness, albeit on very different levels. All manifestations of reality are animated by a spark of G-d, and in this sense every point of creation has life force. Therefore, we can understand that the creations themselves are singing their particular song with whatever level of consciousness they have.⁸⁴

Finally, before closing this section, lest one think that Jews, particularly Orthodox or Ultra-Orthodox Jews, are pure as the driven snow when it comes to kindness regarding animals, there is a practice that has become abhorrent and controversial among Jews,⁸⁵ and likely

⁸³ Babylonian Talmud, Bava Metzia 85a:6-7, https://www.sefaria.org/Bava_Metzia.85a?lang=bi.

⁸⁴ Rabbi Yonatan Neril & Evonne Marzouk, *Compassion Toward Animals and Tza'ar Ba'alei*, JEWCOLOGY.COM, <http://canfeinesharim.org/wp-content/uploads/2014/05/Sources-Tzaar-Baalei-Chayim-studyguide-sourcesheet.pdf> (last visited Oct. 29, 2020).

⁸⁵ See Carol Kuruvilla, *Ultra-Orthodox Jews Defend Right to Kaporos, Ritual Chicken Slaughter, for Yom Kippur*, HUFF. POST (Oct. 3, 2014, 3:14 PM), https://www.huffpost.com/entry/kaporos-yom-kippur-orthodox-jews_n_5928086 ([F]or outsiders, it's a hard tradition to understand. . . . [I]n the Brooklyn neighborhood of Crown Heights, about 40 animal rights activists picketed the ceremony with signs, screaming out, “Murderers!”).

arises from pagan practice, an act called Kaparot or Kaporos,⁸⁶ which occurs just before Yom Kippur. In performing the act of Kaparot:

Believers grab hold of a live chicken and swing the clucking animal three times around their heads, symbolically asking God to transfer their sins to the birds. The chickens' throats are slit with a sharp knife, and the meat is then donated to the poor.

“The whole idea of atonement is to bring your heart. And when you do this, and a live being is going to die instead of your heart, it makes you more passionate. That’s why we use the animal,” said Suffolk County [New York] Hasidic Rabbi Berel Sasonkin⁸⁷

As noted above, sentiments expressed by people like Rabbi Sasonkin about the use of chickens in the atonement process have raised enormous concerns mostly in secular and non-ultra-orthodox Jewish communities.

Part of [the] objection is that the custom isn’t described in the Torah or the Talmud. It’s a tradition that’s part of rabbinical teachings, and because it’s not a legal obligation, they argue, it can be changed or abandoned. The [Alliance to End Chickens as Kaporos] group encourages Jews to swing coins rather than chickens, which is

⁸⁶ Kapara means penance, atonement, or forgiveness. Kaparot is the plural word that is generally used in Israel, as it follows modern Hebrew. Kaporos or kapures is the Yiddishized term, that was used in Eastern Europe and is retained by most Jews in countries outside of Israel, *e.g.*, the United States, Canada, etc.

The name for the Jewish holiday of Yom Kippur comes from the word “kapara.” When it means “atonement,” as it does when referring to the 2001 novel by Ian McEwan as well as to the one day of the Jewish calendar that is wholly dedicated to rehashing the year’s sins, Israelis pronounce “kapara” with the accent on the final syllable: ka-pa-RA.

. . . .

[L]ike the chicken to which one’s sins are symbolically transferred during *kaparot*, the traditional pre-Yom Kippur ceremony that involves a fowl being waved in circles around the head, those who use the term “kapara” [use the chicken as a] . . . scapegoat (scapechicken?) . . .

Shoshana Kordova, *Kapara! A Short History of One of the Most Israeli Slang Words*, HAARETZ, (Dec. 11, 2012), <https://www.haaretz.com/israel-news/.premium-word-of-the-day -kapara-1.5197738>.

⁸⁷ Kuruvilla, *supra* note 85.

already the custom in many communities. A minority of Orthodox Jews, however, still use live birds.⁸⁸

Similarly, Karen Davis, president of United Poultry Concerns told the New York Daily News that “[i]t violates Jewish teachings requiring compassion for animals. . . . This is really an affront to Judaism.”⁸⁹ Moreover, in 2017, Davis claimed that in 2016, “2,000 roosters died in their crowded cages, after being left starving and exposed to the elements for days. And instead of being donated, some chickens are merely thrown into garbage bags and shipped to landfills . . .”⁹⁰

In addition, a number of lawsuits have been filed against city agencies. For example, in New York State, in a mandamus action, filed in 2018,⁹¹ that went up to the state’s highest court, the Court of Appeals, the court in a memorandum opinion upheld the dismissal of plaintiffs’ suit by the Appellate Division, and reasoned that “[e]nforcement of the laws cited by plaintiffs would involve some exercise of discretion. . . . Moreover, plaintiffs do not seek to compel the performance of ministerial duties but, rather, seek to compel a particular outcome. Accordingly, mandamus is not the appropriate vehicle for the relief sought.”⁹² In closing, it should be clear that these protests and lawsuits are “by Jews, against Jews,”⁹³ who have different views and interpretations about a particular practice.

D. Sustaining the Earth Itself

The concept of “Shmita,” as expressed in the twenty-third chapter of the book of Exodus, is generally translated as the “Sabbatical Year.” However, its literal meaning in Hebrew is “release.” Exodus 23:11 provides the following: “Six years you shall sow your land and gather in its yield; but in the seventh you shall let it rest and lie fallow. Let the needy among your people eat of it, and what they leave let the wild beasts eat. You shall do the same with your vineyards and

⁸⁸ Emma Green, *Animal-Rights Groups Are Targeting a Jewish Ritual on Yom Kippur*, ATLANTIC (Oct. 11, 2016), <https://www.theatlantic.com/politics/archive/2016/10/animal-rights-groups-are-targeting-jews-on-yom-kippur/503690>.

⁸⁹ Kuruvilla, *supra* note 85.

⁹⁰ *Id.*

⁹¹ *All. to End Chickens as Kaporos v. N.Y.C. Police Dept.*, 114 N.E.3d 1070 (N.Y. 2018).

⁹² *Id.* at 1071.

⁹³ Green, *supra* note 88.

your olive groves.”⁹⁴ Shmita, then, is a time when agricultural lands are to be left fallow: they are released from their function in the previous six years, ostensibly to be rejuvenated.

Shmita is part of a series of cycles of the rhythm of “time” that are central within Jewish life. Just as the Sabbath marks and brackets the six-day work week, “so too the holidays punctuate the year.”⁹⁵ The cycles are fixed around the number seven: seven days, seven weeks,⁹⁶ and seven years. The span of time, wherein Jewish people, who follow the Torah’s commandments, are mandated to permit agricultural lands to rest, is also stressed in Leviticus 25:2-12, wherein God commanded Moses and Aaron to:

² Speak to the Israelite people and say to them: When you enter the land that I assign to you, the land shall observe a sabbath of the LORD.

³ Six years you may sow your field and six years you may prune your vineyard and gather in the yield.

⁴ But in the seventh year the land shall have a sabbath of complete rest, a sabbath of the LORD: you shall not sow your field or prune your vineyard.

⁵ You shall not reap the aftergrowth of your harvest or gather the grapes of your untrimmed vines; it shall be a year of complete rest for the land.

⁶ But you may eat whatever the land during its sabbath will produce—you, your male and female slaves, the hired and bound laborers who live with you,

⁷ and your cattle and the beasts in your land may eat all its yield.

⁸ You shall count off seven weeks of years—seven times seven years—so that the period of seven weeks of years gives you a total of forty-nine years.

⁹⁴ Exodus 23:10-11, <https://www.sefaria.org/Exodus.23.13?lang=en&with=all&lang2=en>.

⁹⁵ *What Is Shmita, the Sabbatical Year?*, MY JEWISH LEARNING, <https://www.myjewishlearning.com/article/what-is-shemita-the-sabbatical-year> (last visited Oct. 13, 2020).

⁹⁶ The period between Passover and Shavout (Pentecost), called the Omer, is seven weeks long. See Leviticus 23:15-16 (“And from the day on which you bring the sheaf of elevation offering—the day after the sabbath—you shall count off seven weeks. They must be complete: you must count until the day after the seventh week—fifty days; then you shall bring an offering of new grain to the LORD.”).

⁹ Then you shall sound the horn loud; in the seventh month, on the tenth day of the month—the Day of Atonement—you shall have the horn sounded throughout your land

¹⁰ and you shall hallow the fiftieth year. You shall proclaim release throughout the land for all its inhabitants. It shall be a jubilee for you: each of you shall return to his holding and each of you shall return to his family.

¹¹ That fiftieth year shall be a jubilee for you: you shall not sow, neither shall you reap the aftergrowth or harvest the untrimmed vines,

¹² for it is a jubilee. It shall be holy to you: you may only eat the growth direct from the field.⁹⁷

Shmita⁹⁸ and the year of Jubilee, fit neatly into the seven-year cycle noted above. They are part of the Biblical commandments to sustain the land in, or of Israel. The ethos of Shmita is expanded upon in the Mishnah. For example, in Mishnah Shevi'it (“seventh”) chapter 9:1,⁹⁹ the fifth tractate of Seder Zeraim (“Order of Seeds”), focuses on the laws requiring agricultural fields in the Land of Israel to lie fallow every seventh year, specifically the laws of wild and cultivated plants in the seventh year.

In addition, Maimonides (Rambam), who codified and analyzed Jewish laws on an array of topics, in his Mishnah Torah,¹⁰⁰ as

⁹⁷ Leviticus 25:2-12, <https://www.sefaria.org/Leviticus.25.2-12?lang=en&aliyot=0>.

⁹⁸ During the shmita year, agricultural lands are left to lie fallow, and the entirety of the agricultural process, which includes harvesting, planting, plowing, and pruning are forbidden.

⁹⁹ For an explanation of Mishnah Sheviit 9:1, see *English Explanation of Mishnah Sheviit 9:1*, SEFARIA, https://www.sefaria.org/English_Explanation_of_Mishnah_Sheviit.9.1.1?lang=bi&with=all&lang2=en (last visited Nov 21, 2020) (“Our mishnah teaches that there are certain types of produce that grow in the field which are not subject to the laws of sheviit. There are two such categories in our mishnah. The first are wild plants that people do not cultivate and store. The assumption automatically made with regard to these plants is that they are ownerless. The second category is plants that grow without being cultivated. If something grows on its own, it should be permitted to eat it on sheviit. However, we shall see that some rabbis were stricter on this matter.”).

¹⁰⁰ See Ben Zion Bokser, *Moses Maimonides: Jewish Philosopher, Scholar, and Physician*, BRITANNICA (July 15, 2020), <https://www.britannica.com/biography/Moses-Maimonides>

part of this compilation, named this part of the Mishnah Torah, the *Sefer Zera'im* (Book of Seeds), notes that although “Palestine . . . was in a depressed economic state,”¹⁰¹ his exegesis of the concept of Shmita, emerges as a practical mapping of Shmita, as follows:

Working of the land in the sixth year (of the Sabbatical cycle) is forbidden 30 days in advance of the seventh year, as an oral law given to Moses at Sinai, because he prepares it (for planting) in the Sabbatical year. By tradition, this labor is forbidden when the Temple is in existence, but the Rabbis legislated additional restriction, that people should not plow orchards in the eve of Sabbatical year during Temple times except until Shavuot [Pentecost], and grain fields only until Passover. When there is no Temple, it is permitted to work the land until New Year as in the law of the [written] Torah.

What defines an orchard? Three trees in a *beit seah* (plot of land 50 x 50 cubits), whether a non-fruit-bearing tree or a fruit bearing tree. Even if they belong to three different people, we view them as if they are fig trees. If they (fig trees of similar size or maturity) would be capable of producing a dried fig cake weighing sixty talents, it is permitted to plow the entire *beit seah* for them (the trees), as long as the distance between each tree is

The first of Maimonides' major works, begun at the age of 23, was his commentary on the Mishna, *Kitāb al-sirāj*, also written in Arabic. The Mishna is a compendium of decisions in Jewish law that dates from earliest times to the third century. Maimonides' commentary clarified individual words and phrases, frequently citing relevant information in archaeology, theology, or science. Possibly the work's most striking feature is a series of introductory essays dealing with general philosophic issues touched on in the Mishna. One of these essays summarizes the teachings of Judaism in a creed of Thirteen Articles of Faith.

He completed the commentary on the Mishna at the age of 33, after which he began his magnum opus, the code of Jewish law, on which he also labored for 10 years. Bearing the name of *Mishna Torah* (“The Torah Reviewed”) and written in a lucid Hebrew style, the code offers a brilliant systematization of all Jewish law and doctrine. He wrote two other works in Jewish law of lesser scope: the *Kitāb al-Farā'id* (Hebrew title: *Sefer ha-Mitzvot*; “Book of Precepts”), a digest of law for the less sophisticated reader, written in Arabic; and the *Hilkhot ha-Yerushalmi* (“Laws of Jerusalem”), a digest of the laws in the Palestinian Talmud, written in Hebrew.

Id.

¹⁰¹ *Id.*

sufficient for the ox with its utensils (yoke) to pass [between the trees].¹⁰²

One can see from the above, the minutia that Maimonides, one of the pre-eminent commentators of Jewish law, asserts for the Shmita commandment, so that the Jewish people are fastidious in fulfilling their obligations to this commandment. The final example comes from Midrash, which begins with the story of Noah and the arc.

And G-d remembered Noah and all the beasts and all the animals that were with him . . . (Genesis 8:1). Midrash: If a person traveling by ship encounters a great storm, he will throw his possessions and livestock overboard in order to save the passengers. He does not have the same degree of compassion for his animals and possessions as he does for other human beings. However, the Holy One, blessed be He, has compassion for animals just as He has compassion for humans. As it states, “His mercy is upon all His works” (Psalms 145:9). [Thus, the verse places G-d’s “remembrance” of the beasts and animals on the same plane as his remembrance of Noah].¹⁰³

The commandment to refrain from working the land and caring for trees in the seventh year, also applies to working of animals devoted to the agricultural process. It is a positive commandment, declaring, “and the land shall rest a Sabbath for the Lord’ (Leviticus 25:2).”¹⁰⁴ Moreover, Exodus 34:21 proclaims, “Six days you shall work, but on the seventh day you shall cease from labor; you shall cease from labor even at plowing time and harvest time.”¹⁰⁵ Consequently, any person who performs one of the forbidden labors, which include, working of the land or caring for trees during the sabbatical year, violates this positive commandment and therefore transgresses the commandment in

¹⁰² *Mishneh Torah, Sabbatical Year and the Jubilee 3:1-2*, SEFARIA, https://www.sefaria.org/Mishneh_Torah%2C_Sabbatical_Year_and_the_Jubilee.3.1-2?lang=en (last visited Nov. 21, 2020).

¹⁰³ Neril & Marzouk, *supra* note 84.

¹⁰⁴ *Mishneh Torah, Sabbatical Year and the Jubilee 1:1*, SEFARIA, https://www.sefaria.org/Mishneh_Torah%2C_Sabbatical_Year_and_the_Jubilee.1.1?lang=bi&with=all&lang2=en (last visited Nov. 21, 2020).

¹⁰⁵ Exodus 34:21, <https://www.sefaria.org/Exodus.34.21?lang=bi&aliyot=0> (last visited Oct. 7, 2020).

Leviticus 25:4, which declares, “in the seventh year the land shall have a sabbath of complete rest, a sabbath of the LORD: you shall not sow your field or prune your vineyard.”¹⁰⁶

The Torah’s commandments were construed by the Rabbis and commentators to relate specifically to the agricultural lands in ancient Israel. Since most Jews lived in the Diaspora, and did not own land, or farm, these principles did not figure into everyday Jewish life, for nearly 2,000 years. However, as Jewish people commenced their return to their ancient homeland in considerable numbers, during the latter part of the nineteenth and the first two decades of the twentieth centuries, the laws of Shmita and Jubilee reluctantly came to the fore. These laws caused a number of issues and obstacles for these settlers, who on the one hand sought to establish a life in a harsh region, much different from their homes in Europe, and on the other hand, were secular, *i.e.*, did not observe the commandments, but wanted to reestablish the Torah’s laws, in their newly adopted homes in Israel. Nevertheless, any further discussion of Shmita in modern Israel is beyond the scope of this article. We next move to the customs of war and the treatment of trees.

E. Ba’al Tashchit

Ba’al Tashchit is the Hebrew phrase for “do not destroy.” It arises from the Torah’s commandment for the prohibition of needlessly, or gratuitously killing or discarding useful objects. While the Torah explicitly references the pointless or senseless destruction of fruit trees during a siege of an enemy city, the Rabbis, particularly those of the Mishnaic and Talmudic periods, recognized the ban to embrace other kinds of senseless waste.¹⁰⁷ Thus, the Ba’al Tashchit commandment, applies to the sustainability of one type of tree, but not others, as can be seen in Deuteronomy 20:19-20, addressing the destruction of trees during times of war. The commandment declares the following:

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

¹⁰⁶ Leviticus 25:4, <https://www.sefaria.org/Leviticus.25.4?lang=bi&with=all&lang2=en>.

¹⁰⁷ See *Bal Tashchit*, SEFARIA, <https://www.sefaria.org/topics/bal-tashchit?tab=sources> (last visited Nov. 21, 2020).

them, but you must not cut them down. . . . 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.¹⁰⁸

The Ba'al Tashchit commandment was expanded upon by the Rabbis who redacted the Mishnah and the Talmud. For example, with regard to fruit trees with eatable fruit, the Talmud provides the following story:

Rabbi Hanina said: My son Shivhat did not die for any reason other than that he cut down a fig tree before its time. Ravina says: But if the lumber was greater in monetary value than its fruits, it is permitted to chop it down, and this does not violate the prohibition against destroying a tree. This *halakha* [Jewish law and jurisprudence] is also taught in a *baraita* [commentaries contemporaneous with but outside of the Mishnah]. The verse states: “Only the trees of which you know that they are not trees for food, them you may destroy and cut down” (Deuteronomy 20:20).¹⁰⁹

¹⁰⁸ Deuteronomy 20:19-20, <https://www.sefaria.org/Deuteronomy.20.19-20?lang=bi&aliyot=0>.

¹⁰⁹ Babylonian Talmud, Bava Kamma 91b:19-20, https://www.sefaria.org/Bava_Kamma.91b.19-21?lang=bi.

Halakha is

[t]he body of religious law which constitutes one of the three main divisions of Jewish oral tradition. Later, the singular form “halakah” was generally adopted, even in reference to a whole collection of halakot, just as “haggadah” took the place of “haggadot.” The Halakhot were codified by R. Judah ha-Nasi and formed the juridical body of his Mishnah. Thereafter the term “Mishnah” displaced the term “Halakhot,” except in Palestine, where, even after the codification, the use of the term “Halakhot” was continued, so that the Mishnah was known there as “Halakot” (Lev. R. iii.).

Max Schloessinger, *Halakot*, JEWISH ENCYC., <http://www.jewishencyclopedia.com/articles/7078-halakot> (last visited Nov. 21, 2020).

And Baraita is

[a]n Aramaic word designating a tannaite tradition not incorporated in the Mishnah; later it was applied also to collections of such traditions (“Barayata,” plural of Baraita). . . .

Another explanation of the term “Baraita” is the following: The Mishnah—that is, the collection of tannaite traditions compiled by Judah ha-Nasi—formed the authoritative subject of instruction in both the

Similarly, Maimonides declares in his Mishnah Torah, at Kings and Wars chapter 6:8

Fruit-bearing trees must not be cut down outside of the city nor do we block their irrigation water causing the trees to dry up, as it says, “*do not destroy her trees*” (Deut. 20:19). Anyone who cuts down a tree receives lashes. This is not only at times of a siege, but anyone at any time who chops down a fruit-bearing tree by for destructive purposes receives stripes. The tree may be cut down if it is damaging other trees or it is damaging another’s field, or because the tree is more valuable for its wood than its fruit. The Torah only forbids wanton destruction.¹¹⁰

However, the concept was expanded beyond fruit trees to certain types of constructive acts. For example, in the Mishnah’s tractate Shabbat 105b:8, “the Gemara asks:”

Say that you heard that Rabbi Yehuda rules that one is liable for performing a labor not needed for its own sake in the case of a constructive act; did you hear him deem one liable in the case of a destructive act? Rabbi Avin said: This case, where one rends his garment in anger, is also constructive, because in doing so he assuages his anger. Rending his garment calms him; therefore, it can be said that he derives benefit from the act of rending, and it is consequently a constructive act. . . .¹¹¹

Indeed, Maimonides, in his Mishnah Torah, at Mourning 14:24, buttresses the latter point as follows:

One should be trained not to be destructive, not to suffer a loss of garments by casting them into a devastating [grave]. It is better to give them to the poor rather than

Palestinian and the Babylonian academies; whereas the Baraitas were taught in private schools for the academies.

Marcus Jastrow & Lewis Ginzburg, *Baraita*, JEWISH ENCYC., <http://www.jewishencyclopedia.com/articles/2481-baraita> (last visited Nov. 21, 2020).

¹¹⁰ Mishneh Torah, Kings and Wars 6:8, https://www.sefaria.org/Mishneh_Torah%2C_Kings_and_Wars.6.8?lang=bi&with=all&lang2=en.

¹¹¹ *Bal Tashchit*, *supra* note 107.

casting them to worms and moths. Anyone who throws many garments upon the dead transgresses the prohibitive precept: “You shall not destroy” (Deuteronomy 20:19).¹¹²

As can be seen from the foregoing, the interpretation of the commandment embodied in the concept of B’al Tashchit, went through, what I would call, a radical transformation. The Torah declares that during war, no harm should come to fruit trees, period. However, in putting the commandment into practice, the Rabbis expanded God’s command to include the “wasting” of almost anything. This expansion by the Rabbis is a fairly common practice.

We now move to the next section, which focuses on the repair of the world, also known as Tikkun Olam.

F. Tikkun Olam

As we have seen, the safety of creation, including animals and various ecosystems,¹¹³ is an essential component of the foregoing commandments in the Torah, other primary sources, and their various interpretations in the Mishnah, Gemara, as well as other analyses. Another precept in the Jewish canon is known in Hebrew as Tikkun Olam—repairing, or healing the world, and mending, or improving society¹¹⁴—which is often understood to be the desire to act and behave ethically, fairly, and usefully.

The concept of Tikkun Olam dates back to the era of the Tannaim, the sages who compiled the Mishnah, *circa* 200 C.E. They were led by Rabbi Judah ha-Nasi (Judah the Prince) and his students. The notion grew out of the phrase *mip’nei tikkun ha-olam*, “for the sake of repairing the world,” which appears in Mishnah, Gittin 4:2.¹¹⁵

¹¹² Mishneh Torah, Mourning 14:24, https://www.sefaria.org/Mishneh_Torah%2C_Mourning.14.24?lang=bi.

¹¹³ *Ecosystem*, *supra* note 45 (“An ecosystem is a geographic area where plants, animals, and other organisms, as well as weather and landscapes, work together to form a bubble of life.”).

¹¹⁴ See generally RIGHTEOUS INDIGNATION: A JEWISH CALL FOR JUSTICE (Rabbi Or N. Rose et al. eds., 2008); TIKKUN OLAM: SOCIAL RESPONSIBILITY IN JEWISH THOUGHT AND LAW (David Shatz et al. eds., 1997); Mitchell First, *Aleinu: Obligation to Fix the World or the Text?*, 12 HAKIRAH 187 (2011).

¹¹⁵ See Mishnah Gittin 4:2, https://www.sefaria.org/Mishnah_Gittin.4?lang=bi, in which a “takkanah” of Rabban Gamliel is mentioned. “Takkanah” literally means

Moreover, beginning in the medieval era, the literature of the Kabbalah—Jewish mysticism—written by Rabbi Isaac Luria, expanded the view of *tikkun olam*, and its application.

Furthermore, the Kabbalists and Judaic belief in free will is deeply engrained in the principle of personal choice and self-determination.¹¹⁶ Free will, of course, governs human actions, including the choice of whether to dominate other animals and the earth itself. It is also what caused Adam and Eve to be banished from the Garden of Eden.¹¹⁷ They did not listen to God’s command and ate from the tree of knowledge because they had free will.¹¹⁸

“a fixing,” and it refers to a rabbinic decree which remedies a problematic situation. Although that Chapter of *Gittin* deals with divorce issues, it contains a list of *takkanot*, that were made, as a consequence of *tikkun olam*. “Today this concept has come to mean good deeds such as charity done in order to make the world a better place.” *English Explanation of Mishnah Gittin 4:2*, SEFARIA, https://www.sefaria.org/English_Explanation_of_Mishnah_Gittin.4.2?lang=bi (last visited Oct. 21, 2020).

¹¹⁶ See Babylonian Talmud, Berakhot 33b:23, <https://www.sefaria.org/Berakhot.33b.23?lang=bi&with=all&lang2=en> (“And Rabbi Hanina said: Everything is in the hands of Heaven, except for fear of Heaven. Man has free will to serve God or not, as it is stated: ‘And now Israel, what does the Lord your God ask of you other than to fear the Lord your God, to walk in all of His ways, to love Him and to serve the Lord your God with all your heart and with all your soul’ (*Deuteronomy* 10:12). The Lord asks man to perform these matters because ultimately, the choice is in his hands.”).

¹¹⁷ See Genesis 3:22-24, <https://www.sefaria.org/Genesis.22?lang=bi&aliyot=0>.

²² And the LORD God said, “Now that the man has become like one of us, knowing good and bad, what if he should stretch out his hand and take also from the tree of life and eat, and live forever!”

²³ So the LORD God banished him from the garden of Eden, to till the soil from which he was taken.

²⁴ He drove the man out and stationed east of the garden of Eden the cherubim and the fiery ever-turning sword, to guard the way to the tree of life.

Id.

¹¹⁸ See Genesis 3:1-6, <https://www.sefaria.org/Genesis.3.1-6?lang=en&aliyot=0>.

¹ Now the serpent was the shrewdest of all the wild beasts that the LORD God had made. He said to the woman, “Did God really say: You shall not eat of any tree of the garden?”

² The woman replied to the serpent, “We may eat of the fruit of the other trees of the garden.

³ It is only about fruit of the tree in the middle of the garden that God said: ‘You shall not eat of it or touch it, lest you die.’”

⁴ And the serpent said to the woman, “You are not going to die,

⁵ but God knows that as soon as you eat of it your eyes will be opened and you will be like divine beings who know good and bad.”

There is also another mystical concept in the Kabbalah, which weighs upon the Jewish notion of safeguarding or repairing the earth. Rooted in the infinite nature of God and human divinity, it is

the understanding that in creating life, the *Eyn-Sof*, or the Endless One [i.e., God] subdued the omnipotent, all-embracing Divine Presence for the sake of the realization of the Divine Will that there be other beings (*Etz Chaim* 1:1:2.) Our world, then is the sacred space that the Great Spirit gave as a gift to us, a space in which to be as human as divinely possible, and as divine as humanly possible.¹¹⁹

Undeniably, the kabbalists knew that in the Jewish understanding of God, His nature or character could not be understood by humankind. Nevertheless, they believed that God revealed specific elements that interact with each other and the world. We refer to these elements as the sefirot—spheres or levels.¹²⁰ According to the Kabbalah, there are ten sefirot that are connected in a multifaceted diagram that has been called the “Tree of Life,” an idiom that many Jews also use to describe the Torah. These aspects and the concept of Tikkun Olam, appear to mimic the various internal traits, or tendencies, of human personality, each of which interacts with its sister sefirot. Correspondingly, the kabbalists suggested that God is composed of numerous core attributes or “drives.” The imagery used to depict the sefirot and their connections are frequently “visual and physical, even sexual.”¹²¹

⁶ When the woman saw that the tree was good for eating and a delight to the eyes, and that the tree was desirable as a source of wisdom, she took of its fruit and ate. She also gave some to her husband, and he ate.

Id.

¹¹⁹ Benjamin Adler, *Introduction to Kabbalah: The Creation Myth*, SEFARIA, <https://www.sefaria.org/sheets/32246.2?lang=bi> (last visited Oct. 23, 2020).

¹²⁰ For a discussion on the doctrine of “Kabbalah,” see *Kabbalah: The Ten Sefirot of the Kabbalah*, JEWISH VIRTUAL LIBR., <https://www.jewishvirtuallibrary.org/the-ten-sefirot-of-the-kabbalah> (last visited Oct. 23, 2020) (“The Jewish mystical doctrine known as ‘Kabbalah’ (‘Tradition’) is distinguished by its theory of ten creative forces that intervene between the infinite, unknowable God (‘Ein Sof’) and our created world. Through these powers God created and rules the universe, and it is by influencing them that humans cause God to send to Earth forces of compassion or severe judgment.”).

¹²¹ See George Robinson, *What Are the Sefirot?*, MY JEWISH LEARNING, <https://www.myjewishlearning.com/article/sefirot> (last visited Oct. 23, 2020).

In the Kabbalists' view, human beings achieve *Tikkun* by means of their contemplative engagement.¹²² Indeed, the performance of each mitzvah, or religious undertaking entails reflective deliberation among the numerous aspects of the Divine in order to “raise up the fallen sparks.”¹²³ The focal point of the concentration is the internal underlying forces of the reorganization that occurs within the development of undertaking of devotional piety.¹²⁴

i. Planting Trees and Forests in the Modern Era

For approximately five-hundred years, when Jews were a subservient population in Europe, parts of the Middle East and North Africa, the concept of repairing the world lay dormant, and its survival or use was limited to its study by those learned in the Torah, the Talmud, Kabbalah, and the other holy books. However, in 1901, at the Fifth Zionist Congress in Basel, Switzerland, the delegates voted to establish a fund for the purchase of land in the then Ottoman Empire controlled Palestine. The fund was named the Keren Kayemet Le'Israel in Hebrew—the Fund for the Existence or Realization of Israel—but known in English as the Jewish National Fund (a/k/a as the JNF-KKL). The endowment's funders set only one material condition for its use. That proviso declared that the fund “shall be the property of the Jewish people as a whole.”¹²⁵ And it has been maintained as such.¹²⁶

¹²² Lawrence Fine, *Tikkun in Lurianic Kabbalah*, MY JEWISH LEARNING, <https://www.myjewishlearning.com/article/tikkun-in-lurianic-kabbalah> (last visited Oct. 23, 2020).

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Our History: 1901: It All Started with a Dream*, JEWISH NAT'L FUND, <https://www.jnf.org/our-history> (last visited Oct. 23, 2020).

¹²⁶ *See Our History*, KEREN KAYEMETH LEISRAEL JEWISH NAT'L FUND, <https://www.kkl-jnf.org/about-kkl-jnf/our-history> (last visited Oct. 16, 2020) (“Since its establishment in 1901, KKL-JNF has served as trustee in the name of the Jewish people over the Jewish lands of Israel.”); *see also The 21st Century: The Green Century*, KEREN KAYEMETH LEISRAEL JEWISH NAT'L FUND, <https://www.kkl-jnf.org/about-kkl-jnf/our-history/21st-century-the-green-century/> (last visited Oct. 16, 2020) (“By the start of the 21st century, KKL-JNF had become Israel's top green organization, as a result of its changing priorities in line with society's environmental needs. The policy of sustainable development merges well with growing environmental trends.”).

Initially, between 1903 and 1920, the Fund purchased a number of large tracts of land in Palestine, which prior to World War I, was controlled by the Ottoman Turks. One of its first purchases was near Hulda, in central Israel today the location of Kibbutz Hulda.¹²⁷ That parcel was purchased for a very singular purpose: the planting of olive groves, and with this effort the JNF-KKL began a new endeavor—afforestation.¹²⁸ That Tikkun Olam effort initiated a trend of planting trees and forests, in then Palestine and today, in Israel, that continues to this very day. For example, in 1928, the JNF-KKL planted two large forests: the Balfour Forest near Kibbutz Ginegar,¹²⁹ which is located southwest of Nazareth, and Mishmar HaEmek Forest, in the Jezreel Valley.¹³⁰ Indeed, by 1935, the fund “had planted 1.7 million trees over a total area of 1,750 acres.”¹³¹

Moreover, prior to, during, and after World War II, the Fund continued its efforts at *Tikkun Olam*, by building Kibbutzim, as well as outposts, and developed the Galilee.¹³² Indeed,

[o]ver the past century, the JNF family has planted over 240 million trees, built over 180 dams and reservoirs, developed over 250,000 acres of land, created more than 1,000 parks throughout Israel and educated students around the world about Israel and the environment. Through the support of donors around the world, the JNF family was able to ensure that Israel was the only nation in the world to end the 20th century with more trees than it had at the beginning. In addition, over the past decade, JNF has increased its water

¹²⁷ *Our History: 1901: It All Started with a Dream*, *supra* note 125.

¹²⁸ *Id.*

¹²⁹ Kibbutz Ginegar was formed on September 22, 1922, the eve of Rosh Hashana, near the Nazareth Mountains and the Jezreel Valley. Nadav Man, *Kibbutz Ginegar: After Declaration, Before Forest*, YNETNEWS.COM (Sept. 8, 2006), <https://www.ynetnews.com/articles/0,7340,L-3301456,00.html>. In 1969 the Kibbutz formed Ginegar Plastic Products, a world-leader in manufacturing “smart covers for intensive agriculture and horticulture applications,” and incorporating sustainable practices. Ginegar Smart Cover Solutions, *About Ginegar* (2021), <https://ginegar.com/about-us>.

¹³⁰ *Our History: 1901: It All Started with a Dream*, *supra* note 125.

¹³¹ *Id.*

¹³² *Id.*

resources to furnish water to more than 1.2 million Israelis.¹³³

ii. *The New Tikkun Olam*

Beginning in the 1960s a new chapter in the province of “*tikkun olam*,” ascended to the fore.¹³⁴ It took hold in the United States via the efforts of the Conservative, Reform and Reconstructionist movements of Judaism.¹³⁵ Currently, *tikkun olam* is used in a similar, but also in a disparate way from its use by the Kabbalists. Its current emphasis is much more about doing, as opposed to the more philosophical or mystical approach of the Kabbalists.

Nevertheless, although the modern-day use of the idiom shares a good deal with the rabbinic notion of *mipnei tikkun ha-olam* (best translated as “for the sake of repairing the world”),¹³⁶ it also seeks to “repair” a world that is severely fractured and cannot be fixed by God, but solely by human endeavor.¹³⁷ Moreover, unlike in yesteryear when the approach to *tikkun olam* sought to employ all of the mitzvot, today the efforts to repair the world focus on a specific category of mitzvot involving work for the improvement of society.¹³⁸

“*Tikkun olam*” remains linked to the human duty to fix what is amiss with the world.¹³⁹ Its aim today includes feeding the hungry, fighting for human dignity and rights, sheltering homeless persons and the like—a usage perhaps closer to the term’s classical rabbinic origins than to its longstanding mystical connotations.

However, as originally applied, its focus was upon tenets designed to eschew social confusion, specifically concerning diverse

¹³³ *History*, JEWISH NAT’L FUND, <http://support.jnf.org/site/PageServer?page-name=history> (last visited Oct. 28, 2020).

¹³⁴ See Curt Biren, *The Real Meaning of Tikkun Olam*, JEWISH J. (Aug. 18, 2016), <https://jewishjournal.com/judaism/189136> (“Rabbi [Raphael] Artz, in a 1967 address to Jewish educators, proclaimed, ‘The ultimate goal of man’s partnership with God is Tikkun olam.’”).

¹³⁵ See MLJ, *Tikkun Olam: Repairing the World*, MY JEWISH LEARNING, <https://www.myjewishlearning.com/article/tikkun-olam-repairing-the-world> (last visited Oct. 29, 2020) (“‘Tikkun olam’ has become such a commonly used term in liberal Jewish circles that it is the basis for a joke, in which an American Jew visiting Israel asks her guide, ‘How do you say tikkun olam in Hebrew?’”).

¹³⁶ See Mishnah Gittin 32a, <https://www.sefaria.org/Gittin.32a?lang=bi>.

¹³⁷ See MLJ, *supra* note 135.

¹³⁸ *Id.*

¹³⁹ *Id.*

kinds of personal status, which included procedures or rituals that were theoretically legal, but could lead to misunderstandings or misperceptions, regarding status.¹⁴⁰ For example, one issue that arose frequently, was whether a woman was still married under Jewish law; or whether a slave had, in fact, gained her/his freedom during the Jubilee year, both of which were done “for the sake of tikkun olam.”¹⁴¹ At times, the ancient rabbis employed the expression in a more general way, to be indicative of “making the world habitable and inhabited.”¹⁴²

Today, as noted above, numerous Jewish groups and agencies apply tikkun olam to contemporary social problems across the globe. For example, the organization T’ruah: The Rabbinic Call for Human Rights, declares that “[w]hile *tikkun olam* can be a useful framework for Jewish social justice work, T’ruah generally prefers the framing of *tzelem Elokim*—the belief that humans are created in the image of God.¹⁴³ Accordingly, as a human rights organization, its mission is founded upon the sacredness and inviolability of each distinct human being and flows outward to society’s “unjust structures and systems.”¹⁴⁴

V. CONCLUSION

Our world faces many environmental and sustainability problems that we ourselves have caused and are responsible for. What is required of those of us currently living on the planet is an ecological approach that will be executed consistently with the earth’s many natural ecosystems, and not contradict that ethos, as we are currently doing with climate change. The Torah and the Jewish canon offer a prescription for what ails the earth: a “tikkun olam” —“repairing the world,” or “making the world better,” that is thousands of years old. That concept provides us with the instructions needed to treat animals with kindness and provides us with the guidance to satisfy our hunger. Consequently, we may not take a bird’s eggs, and concomitantly harm the mother. Tikkun olam and the Torah also instruct us to provide

¹⁴⁰ Rabbi Jeremy Schwartz, *Tikkun Olam, Unpacked*, RECONSTRUCTING JUDAISM (Dec. 1, 2016), <https://www.reconstructingjudaism.org/article/tikkun-olam-unpacked>.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ Rabbi Lev Meirowitz-Nelson, *Tikkun Olam Today*, PROTOCOLS, <https://prtcls.com/article/tikkun-olam-today> (last visited Oct. 12, 2020).

¹⁴⁴ *Id.*

agricultural land with a sabbatical year, so that it can rest and replenish itself. Moreover, during that year, the land's owner cannot harvest any of the crops. Thus, these crops are meant to supply the poor with free food. Moreover, they are also intended to provide sustenance for domesticated and wild animals. Accordingly, the commandment furnishes the Jewish people and others with guidance about how to be "guardians" of the earth, rather than continuing on humankind's efforts of controlling or dominating it.

If every person on earth, not only the Jewish people, was to heed the instructions and directions in the Torah, and the analyses of these commandments by the preeminent commentators of the Mishnah, Gemara and other sources, we would be able to climb out of the morass that we currently find ourselves in and give the good earth a chance to truly thrive again, as it did a mere few thousand years ago. Clearly, as Aldous Huxley, Aldo Leopold, and John White—and the many other authors who sought and seek to teach us about nature—have demonstrated through their writings and advocacy, we cannot continue on the merry way that we have treated mother earth. Whether one believes in God is not the issue. We have a ready-made guidebook that informs and leads us in the direction of safeguarding the planet that we occupy, so why not use it?

In closing, the earth can teach us Torah, and the Torah can certainly teach us how to protect the earth. The only missing piece of the puzzle is human beings' willingness to do so. The Jewish birthright urges us to govern through the rule of law, "through regulation and systemic change that limits powerlessness, through checks and balances of multiple sources of power, and through the promotion of our moral obligations one to another."¹⁴⁵ Power comes in many forms, including social, economic, and political. While power has its appropriate usages and may at times be necessary, Judaism places a premium on the collaborative mutuality of the covenant with God and with one's fellow man—recalling what Rabbi Hillel said: "[t]hat which is hateful to you do not do to another; that is the entire Torah, and the rest is its interpretation. Go study [it]."¹⁴⁶

¹⁴⁵ Schwartz, *supra* note 140.

¹⁴⁶ Babylonian Talmud, Shabbat 31a, <https://www.sefaria.org/Shabbat.31a?lang=bi>.