

Of Tragedies and Crises: Talmudic Views on Managing the Commons¹

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Abstract

Two classic essays have shaped the contours of environmental thought since its inception. Completely unrelated to each other, they were both published in the journal *Science* within the space of a year in the late sixties, though neither were articles in the natural sciences. Historian Lynn White Jr.'s essay, "The Historic Roots of Our Ecologic Crisis" has been a lightning rod for religious writing on the environment, for his analysis, which blames widespread environmental degradation on Western anthropocentric religious beliefs. Biologist Garret Hardin's oft-cited "Tragedy of the Commons" sees the situation as a tragedy, not a crisis, the fault being, not wrong belief, but the remorseless working of rational economic self-interest coupled with the lack of effective social coercion to manage local and global commons.

Most Jewish writers on the environment have followed the Christian lead, remaining largely within the terms of debate set by White. They focus on metaphysical questions of the human place in Creation (or, conversely, values and personal lifestyle), ignoring Hardin's challenge and more secular policy issues. But Talmudic *halacha* (Jewish legal teaching) deals extensively with such 'non-spiritual' issues as hazardous waste disposal. It suggests a different vision for managing the commons for our own day – regaining the proper balance between personal profit and the collective good.

Introduction: Of Tragedies and Crises – White and Hardin

Two classic essays – completely unrelated to each other – have shaped the contours of environmental thought since its modern day emergence. They were both published in the journal *Science* within the space of a year in the late sixties, and though one was indeed by a biologist, neither were articles in the natural sciences. Both gave rise to wide ranging debates that are lively to this day, but among almost completely non-overlapping groups of people. Both have provided seminal – yet flawed – definitions of the problem; and both suggest problematic – yet provocative – programmatic solutions. Both were by Californians.

¹ Presented at: "Exploring Religion, Nature, and Culture" the Inaugural Conference of the Society for the Study of Religion, Nature and Culture University of Florida at Gainesville, April 2006

One of the essays, the leading seminal article in the field of Western religion and nature, is “The Historic Roots of our Ecologic Crisis”, by medieval historian Lynn White Jr., a specialist in the history of technology.² White traces the roots of the environmental crisis to the religious underpinnings of the industrial and scientific revolutions. That is, the intellectual and technological developments of the 16th to 18th centuries were the proximate historical causes that enabled us to implement the anthropocentric world views inherent in the Biblical tradition (and brought to fruition by Western Christianity), ultimately generating the *current* crisis. Those views go back to the Creation story, the conception of humans as the *telos* of the world, and the natural world as created to serve us.

My purpose here is not to go into the details of that claim, its historical accuracy, textual veracity or predictive value, which many have done and still continue to do. Rather, I would like to focus on White’s meta-claims: the *type* of root causes that he singles out. White places the blame squarely in the realm of values, which he states come from religion – directly or indirectly, consciously or unconsciously. He writes:

What people do about their ecology depends on what they *think* about themselves in relation to things around them. Human ecology is deeply conditioned by *beliefs* about our nature and destiny – that is, by *religion*... Since the roots of our trouble are so largely religious, the remedy must also be essentially religious, whether we call it that or not. We must *rethink* and *re-feel* our nature and destiny... More science and more technology are not going to get us out of the present ecologic crisis until we find a new religion, or rethink our old one... We shall continue to have a worsening ecologic crisis until we reject the Christian axiom that nature has no reason for existence save to serve man.³

White’s significant use of the term *crisis* will be explored immediately.

The other, ‘complementary’ (or contradictory) essay was “The Tragedy of the Commons”, by noted biologist Garrett Hardin, which has become one of the most cited articles in all the social sciences.⁴ Hardin’s thesis was diametrically different from White’s. Briefly, Hardin says that environmental problems are a function of a built-in dynamic that determines how we relate to the world: we derive individual benefit from using its resources (think air pollution, resource depletion, waste, fishing, noise, and – his major example – over-population). But the price for that use is not paid by the individual user; it is distributed over us all. Each individual wants to benefit; nobody feels the immediate and full price of his/her actions – voila! The commons collapses (those familiar with game theory will notice that this is equivalent to “the prisoner’s dilemma”). In Hardin’s words:

² White Jr., Lynn, 1967, “The Historic Roots of Our Ecologic Crisis”, *Science*, vol. 155, pp. 1203-1207.

³ White, 1967 (*emphasis added*).

⁴ Hardin, Garrett, 1968, “The Tragedy of the Commons,” *Science*, vol. 162, pp. 1243-1248.

Therein is the tragedy. Each man is locked into a system that compels him to increase his herd without limit – in a world that is limited. Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons. Freedom in a commons brings ruin to all.⁵

Note the title: the *Tragedy* of the commons: this behavior is a tragic 'flaw' built into the world and our characters, and it will be our undoing unless we succeed in taking certain steps. It is not about values and the way we think about ourselves and nature, but about social relations and normative behavior. It is the "system that compels" each individual to behave the way she or he does. His solution? "Mutual coercion, mutually agreed upon," i.e. law and policy that restricts and controls how people act (not how they *think* about the big issues). The commons, from the empty lot next-door to the global atmosphere, need to be managed – norms changed and enforced by obligatory measures; for, in his chilling words: "Freedom in a commons brings ruin to all."

The idea that we need laws may not sound so radical, but note what's missing: education. Hardin explicitly rules out consciousness raising, appeals to values, inner work or any type of spiritual, intellectual or other cognitive initiative. He sees this as a waste of time. We have to change people's *behavior*, in his opinion, through 'de-incentivizing' environmental degradation. Depending on education to do the job, in his view, is essentially asking people to be dupes and sacrifice their own personal benefit for the good of the whole with no guarantee that everyone else is, indeed, doing the same.

Of course, Hardin, like White, has been criticized – White for his one-sided view of biblical religion and Hardin for his one-sided view of human beings, which treats rational self-interest and profit maximization as an unassailable foundation of human nature. Culture plays no role in Hardin's approach; behavior is, in essence, plain biology: hence, the tragedy.

For White, the current situation is a *crisis*, a critical juncture where spiritual choices and changes-in-course need be made, not a *tragedy* that emanates from character flaws that seal our fate. He does not say a word about law, policy, or incentives, economic or otherwise. The emphasis on beliefs and values (how and what we think about the human-nature relation) makes education the prime social instrument. And, since he speaks very explicitly about religious beliefs, he has been a lightning rod for religious writers on the topic of environment ever since – provoking either the *mea culpas* for when he is right, or the indignant rebuttals about how he is wrong.

Most writers on biblical religion and the environment have thus remained within the terms of debate set by White, i.e., the metaphysical questions regarding the human place in the created order as related to theological issues regarding a transcendent vs. an immanent

5 Hardin, 1968

God. They also examine the ethical values that flow from these discussions, as well as – finally – the tension between anthropocentrism and bio- or eco- centrism as philosophical stances and moral positions.

Jewish writers, too, have focused on values, such as the general issues of stewardship as a Biblical mandate, or other educational themes: fostering feelings of awe towards Creation, celebrating nature in the Hebrew calendar (including Sabbath and sabbatical years), or applying ethical discussions to personal lifestyle issues, such as consumption. In this, they have followed the Christian lead, ignoring Hardin and the huge policy questions of the commons and its management. These are deemed essentially 'secular' issues. But Jewish tradition, largely because of its 'nitpicking' *halachic* nature (so 'unspiritual', by Christian standards) has a lot to say about how to "manage the commons" – i.e. what the balance should be between personal privilege and the collective good. That is the focus of the rest of this paper.

1. Religion and Public Discourse (A Brief Comment)

Historically, of course, Jewish teaching had a great deal to say about the proper administration of community and society; but many factors contribute to the present-day perception of religious views – and Jewish values among them – as germane only to individuals and having little relevance to communal issues and decisions that need to take place on the level of the polity. Modern religion in the West has been largely privatized and (for justifiable reasons) separated from the mechanisms of state. The incursion of religiously-based values into public life is feared as representing a type of coercion that would not be 'mutually agreed upon' in our pluralistic societies. Likewise, religious law is often seen as arcane and archaic, with there being no call for backward, primitive jurisprudence in our advanced society. Moreover, civil law and policy in general are tagged as different, more secular, political categories and, therefore, a realm for politicians and professional experts – in Biblical terms, kings, not priests.

I do not intend to challenge all these issues and raise the specter of religious discourse in the public sphere (a significant problem in both Israel and the United States for similar but distinct reasons). What I would like to do is use the examples from Biblical and rabbinic literature in the context of grappling with environmental issues, to point up some shortcomings of standard neo-liberal thought, and to suggest the possibility of alternate models of private responsibility and the public good.

2. Of Pits and Piety: The Religious Importance Attached to Preventing Harm

According to the Babylonian Talmud, the foundational document of rabbinic Judaism that was codified in the 5th-6th centuries, one of the distinguishing characteristics of the truly pious (the *chassidim rishonim*) was being especially concerned about the proper disposal

of hazardous waste (this, according to the order of 'Damages' in the tractate called "Bava Kamma", literally, "The First Gate", pg. 30a). In general, Rav Yehuda said that the key to a truly spiritual life was scrupulous observance of the laws of Damages (*nezikin*):

ת"ר חסידים הראשונים היו מצניעים קוצותיהם וזכוכיותיהם בתוך שדותיהן ומעמיקים להן ג' טפחים כדי שלא יעכב המחרישה רב ששת שדי להו בנורא רבא שדי להו בדגלת אמר רב יהודה האי מאן דבעי למהוי חסידא לקיים מילי דנזיקין... (תלמוד בבלי, בבא קמא, דף ל.).

The rabbis taught: The early pious ones⁶ would hide their thorns and broken glass three hand-breadths deep in their fields, so they wouldn't hold up the plowing. Rav Sheshet would throw his in the fire, and Rava would throw his in the Euphrates River. Rav Yehudah said: whoever wants to be a chassid should observe the laws of damages (B. Talmud, "Bava Kamma", 30a).⁷

The point here is, of course, not to adopt their particular waste disposal solutions: burial, incineration, direct discharge into a river. In our current context, these are rarely sustainable policies. The materials they were dealing with were nettles and shards (not dioxins or petrochemicals), and so the principle at the heart of the matter is to implement the cardinal virtue of protecting life and health by keeping dangerous materials out of the public sphere, where they could do harm. Leaving waste or possessions that are potentially damaging or health-impairing in the public sphere would have been inconceivable. Personal example and education combine here in the fostering of personal commitment to recommended public norms.

3. Managing the Commons: The Legal Definitions of Personal Responsibility

What are the laws behind these norms? They do not merely regulate injury or harm inflicted by a person or their livestock on another person or their property, but they discuss the (ab)use of the environment as a medium for damage to others. If I dig or uncover a pit in the public domain, I am liable for damages that may ensue. Similarly, if I place a jug or barrel (or thorns or broken glass) in a communal place and someone is injured, again – I must make restitution. Even activities initiated on my property that spread and do damage elsewhere – a fire that gets out of control, an animal that gets away – are my complete

6 The Hebrew term used in the original text, *Chassidim*, has no connection to today's ultra-orthodox Jews known as *chassidim*, the latter whose roots are in the religious reforms of the 18th and 19th centuries in Eastern Europe. The principal characteristic of those who earned this Talmudic epithet was supererogation, the individual choice to go beyond the requirements of the letter of the law, thereby becoming a spiritual role model of piety, living a life of holiness.

7 All translations of rabbinic sources are by the author.

responsibility. These *halachic*⁸ rules are based on Biblical legislation whose source is the book of Exodus:

וְכִי-יִפְתַּח אִישׁ בּוֹר, אוֹ כִי-יַכְרֶה אִישׁ בֶּרֶךְ--וְלֹא יִכְסֶנּוּ; וְנָפַל-שָׁמָּה שׁוֹר, אוֹ חֲמֹר.
 לְדַבְעַל הַבּוֹר יִשְׁלֵם, כֶּסֶף יִשִּׁיב לְבַעְלָיו; וְהֵמֶת, יִהְיֶה-לוֹ (שְׁמוֹת כ"א לֵג)
 כִּי יִבְעֹר-אִישׁ, שָׂדֶה אוֹ-כָרֶם, וְשָׁלַח אֶת-בְּעִירָהּ, וּבְעֹר בְּשָׂדֶה אֲחֵר--מִיֵּטֵב שְׂדֵהוּ
 וּמִיֵּטֵב כָּרְמוֹ, יִשְׁלֵם. הֵ כִי-תִצָּא אֵשׁ וּמִצָּאָה קִצִּים, וְנִאֲכַל גְּדִישׁ, אוֹ הַקָּמָה, אוֹ
 הַשָּׂדֶה--שְׁלֵם יִשְׁלֵם, הַמִּבְעֵר אֶת-הַבְּעֵרָה (כ"ב ד).

When a man opens a pit, or digs a pit and does not cover it, and an ox or an ass falls into it, the one responsible for the pit must make restitution.; he shall pay the price to the owner, but shall keep the dead animal (Exodus 21: 33-34).⁹

When a man lets his livestock loose to graze in another's land, and so allows a field or a vineyard to be grazed bare, he must make restitution for the impairment of that field or vineyard. When a fire is started and spreads to thorns, so that stacked, standing or growing grain is consumed, he who started the fire must make restitution (Exodus 22: 4-5).

These verses are then translated in the Mishna¹⁰ from the essentially rural biblical context, with its particular emphasis on private property, such as fields and livestock, to the more urbanized settings of almost a millennium later, where the center of gravity is clearly the commons:

א המניח את הכר ברשות הרבים, ובא אחר ונתקל בה ושיברה--פטור; ואם הוזהק בה, בעל החבית חייב בנזקו. נשברה כרו ברשות הרבים, והוזהק אחר במים, או שלקה בחרסיה--חייב.

ב השופך מים ברשות הרבים, והוזהק בהן אחר--חייב בנזקו. המצניע את הקוץ, ואת הזוכית, והגודר את גדרו בקוצים, וגדר שנפל לרשות הרבים, והוזהק בהן אחר--חייב בנזקו.

8 *Halacha*, from the root *h-l-ch*, which means 'walk' or 'go' is the correct Hebrew term for what is referred to in English as 'Jewish law'. It is distinguished from the *aggada*, from the root *h-g-d*, which means 'say' or 'tell', and refers to essentially anything that isn't law or legal material: stories, philosophy, historical material, metaphysical speculations, etc. Thus *halacha* is essentially 'the path' or 'the way', though that term may call up spiritual associations with philosophies, such as the Dao, whereas *halacha* more correctly refers to a system of specific rules and norms, on occasion fairly intricate, which regulate both relations between humans and God (ritual law) and relations between humans (ethical responsibility, economic relations, torts, etc.).

9 Biblical translations: New Jewish Publication Society edition, Philadelphia, 1999

10 The authoritative concise statement of the Oral Law, which formed the basis of the teachings and disputes that later were redacted into the Talmud. Codified c. 200 C.E. in the Land of Israel by Rabbi Yehuda Hanasi ('Judah the Prince').

ג המוציא את תבנו ואת קשו לרשות הרבים לזבלין, והוזק בהן אחר--חייב בנזקו; וכל הקודם בהן, זכה. רבן שמעון בן גמליאל אומר, כל המקלקלין ברשות הרבים, והזיקו--חייבין לשלם; וכל הקודם בהן, זכה.

(משנה בבא קמא פרק ג)

3:1. One who places a jug in the public domain, if someone else comes, stumbles upon it and breaks it, that person is not liable; if that person is injured, the owner of the object is liable for restitution (responsible for the cost of the injury). If his jug is broken in the public domain, and someone slips on the water, or was hurt by its shards—the owner is liable.

3:2 One who spills water in the public domain, and someone else is injured thereby – the person (who spilled the water) is liable. One who hides thorns, or broken glass, or one who puts thorns atop his fence, or whose fence has fallen into the public thoroughfare, and someone else is injured thereby—is liable.

3:3 One who brings out his hay and straw to the public domain on the way to putting them on his fields, and someone is injured thereby – is liable for the damage. And, furthermore: (material left in the public sphere will be considered as ownerless and so) whoever takes possession of it first has acquired it. Rabban Shimon ben Gamliel says: Anyone who causes any sort of damage or harm in the public domain, where people are hurt – must pay restitution. And whoever takes possession (of the offending objects) first has acquired it (*Mishna*, “Bava Kamma”).

The Mishna (and therefore the *halacha* in general) doesn't limit itself to specific case law. From the prooftexts in Exodus it induces and enumerates different classes of damages (*avot nezikin*), differentiating between animate and inanimate, mobile and stationary. But the underlying principle is the same: the total responsibility for preventing damage beforehand and the liability incurred after the fact, rest on the individual.

א ארבעה אבות נזיקין--השור, והבור, והמבעה, וההבער. לא הרי השור כהרי המבעה, ולא הרי המבעה כהרי השור; ולא זה וזה, שיש בהן רוח חיים, כהרי האש, שאין בו רוח חיים; ולא זה וזה, שדרכן לילך ולהזיק, כהרי הבור שאין דרכו לילך ולהזיק. הצד השווה שבהן--שדרכן להזיק, ושמירתן עליך; וכשהזיק, חב המזיק לשלם תשלומי נזק... (משנה בבא קמא פרק א)

There are four archetypes of damages: the ox, the pit, the grazing flock, and the fire. The ox is different from the grazing animals, and these, which are living creatures, are different from the fire, which is not alive; and these, which can move from place to place and cause damage, are different from the pit, which cannot move about. What they have in common is that they

are all potential sources of damage, the burden of preventing that harm is upon you, and when they do in fact inflict damage, the owner is obligated to pay damages (*Mishna*, “Bava Kamma” 1:1).

Maimonides, in his great medieval restatement of *halacha*, the *Mishneh Torah* (in the section entitled *Book of Torts*, chapter 13), also legislates the above standards and categories into his authoritative code, and adds that:

שכל המפקיר נזקיו שאין לו רשות לעשותן מתחילה, חייב כאילו לא הפקירן.

Anyone who abandons harmful materials in the public sphere without prior permission, is liable as if he hadn't abandoned them (i.e., is obligated as if they were private property with total personal liability).¹¹

The modern sounding phrasing of this statement makes it read almost like a point of contemporary environmental policy, but note how far it is from most governmental legislation and enforcement. While the principle of “the polluter pays” is more widely accepted, individuals and commercial concerns ‘abandon’ (release, dump, spew, allow to flow, etc.) all kinds of solid, liquid and gaseous materials, which cause a wide range of damage to environmental quality and public health.

The correct economic way of understanding this ruling is that the *halacha* insists on internalizing all costs and collateral damages that are associated with production and consumption, whereas standard neo-classical economic theory sees these as externalities. More on the comparison of the Talmudic system and Western political and economic thought will be said below.

4. Some Additional Examples: Sewage, Water Quality, and Population

Similar values and concerns are expressed in matters of sewage treatment and water quality. As in the example of the *chassidim rishonim*, those who expressed their piety through attention to hazards and the protection from them, proper sewage treatment is seen as no less than holiness and godliness. Deuteronomy 23:13-16 states:

וְיָד תְּהִיָּה לָךְ, מִחוּץ לַמַּחֲנֶה; וַיֵּצֵאתָ שָׁמָּה, חוּץ. יָד וַיִּתֵּד תְּהִיָּה לָךְ, עַל-אַזְנוּגָה; וְהָיָה, בְּשִׁבְתְּךָ חוּץ, וַחֲפַרְתָּהּ בָּהּ, וְשָׁבַת וְכִסִּיתָ אֶת-צִאֲתָהּ. טו כִּי יְהוּה אֱלֹהֶיךָ מִתְּהַלֵּךְ בְּקָרֶב מַחֲנֶה, לְהִצִּילָהּ וּלְתַת אִיבֵיהָ לְפָנֶיהָ, וְהָיָה מַחֲנֶיהָ, קְרוֹשׁ: (דברים כ"ג - ג)

Further, there shall be an area for you outside the camp, where you may relieve yourself. With your gear you shall have a spike, and when you have squatted you shall dig a hole with it and cover up your excrement. Since

¹¹ Maimonides, *Book of Torts*, 13:5.

the Lord your God moves about in your camp to protect you and to deliver your enemies to you, let your camp be holy... (Deuteronomy 23: 13-15).

Maimonides, again, in his legal code the *Mishneh Torah*, develops this legislation, from a case involving hygiene in war time, expanding it into a general public principle:

י"ד ואסור להיפנות בתוך המחנה, או על פני השדה בכל מקום; אלא מצות עשה לתקן דרך שם מיוחדת להיפנות בה... ובין שיש עימהן ארון, בין שאין עימהן-- כך הם עושים תמיד, שנאמר "והיה מחנך, קדוש" (משנה תורה להרמב"ם, הלכות מלכים ומלחמות, ו': דברים כג, טו).

It is forbidden to relieve oneself inside the camp, or just anywhere in the field, and it is a positive commandment to create a special place and manner for that purpose... Whether the Ark (of the Covenant) is present in the camp or not, thus they are to do always, as it is written: "Let your camp be holy".¹²

Thus, sewage treatment becomes an absolute legal obligation, with the theological underpinning that, only *thus* can the collective achieve holiness. Moreover, as the medieval moral tract, *Sefer Hassidim* (673) notes, causing health threats, such as contaminating water with (unseen) contagions, is a violation of several moral imperatives: the prohibition of putting a stumbling block before the blind (Lev 19:14), as well as not loving your neighbor as you would yourself, and standing idly by when your neighbor is at risk (Lev 19:18,16). Applying these general moral precepts to situations such as this is relevant to all invisible health threats, including air pollution and radiation, to name just two.

Interestingly, Hardin's main example of ill-advised freedom in a commons was in regard to an issue that has been seen as one of the most recalcitrant in Western religious thought, namely, population growth. Within the framework of the general pronatalist values that Western society has inherited from the Bible, and, moreover, the joy and blessing attached to having children, fertility choices are largely personal; and yet the ramifications are societal: were everyone to seek to "maximize" their joy from a maximum number of children, our global home would indeed buckle under the weight.

A comprehensive discussion of reproductive policy in Judaism is well beyond the scope of this paper; but it is significant that, within a tradition that attaches supreme importance to fulfilling the Biblical mandate of being fruitful, multiplying and filling up the earth, there are significant texts that suggest awareness of the potentially problematic nature of this command. In particular, when there is a problem of a shortage of resources, such as the famine in Egypt, as well as on Noah's Ark, reproduction was deemed undesirable:

12 Maimonides, *Mishneh Torah*, "Laws of Kings and Wars", 6:14

אמר ריש לקיש אסור לאדם לשמש מטתו בשני רעבון שנאמר (בראשית מא) וליוסף ילד שני בנים בטרם תבוא שנת הרעב... תניא אידך בזמן שהצבור שרוי בצער אל יאמר אדם אלך לבייתי ואוכל ואשתה ושלום עליך נפשי (מסכת תענית, דף י"א).

Resh Lakish said: It is forbidden for a man to engage in marital relations during a famine, as it is written (Genesis chapter 41): "and Joseph begat two sons before the onset of the famine."¹³ It was also taught: When the public experiences calamity, let no one say, "I shall eat and drink and let peace be upon my own soul." (*B. Talmud*, Ta'anit 11a).

It is open to interpretation whether these are relevant prooftexts for the contemporary global situation; but the general principle of taking the larger societal situation into account when it comes to the most personal of choices is clear and unassailable.

Going back to the Bible, though, and in particular to the narrative portion, an example from a different area of commons management is the communal well and its access. In Genesis chapter 29, the story is told of Jacob coming to Haran and finding there the shepherds gathering to roll the heavy stone off the mouth of the well in order to water the flocks. Rachel's extraordinary beauty apparently sparks the adrenaline needed for him to display unusual prowess, and Jacob opens the well by himself. But, in general, the large stone is necessary to prevent any one shepherd from overusing the precious resource of water.

The use of water and its monitoring is collective and mutual. Here is an example of a *managed* commons, which was so prevalent in traditional and tribal societies and so different from Hardin's theoretical 'commons', which was crucially imagined as unmanaged, and therefore became a free-for-all. One of the great tragedies of Western-guided development projects in developing countries is the eradication of time-tested traditional management methods for common resources in favor of property privatization or commercialization. What critic George Monbiot writes of this phenomenon holds equally true for Biblical and Talmudic values and for social mechanisms. This is particularly true for what he says about the resultant archaic sounding nature of the traditional discourse around these issues:

The language in which the old laws were expressed gives way to the language of outsiders. With it go many of the concepts and cautionary tales encouraging people to protect their environment. Translated into the dominant language they appear irrational and archaic. As they disappear, so does much that makes our contact with the countryside meaningful: it becomes a series of unrelated resources, rather than an ecosystem of which

13 It is possible to interpret this to mean to refrain from sexual pleasure during a difficult period, rather than limiting reproduction in the face of limited resources. But a parallel text in the Jerusalem Talmud has, instead of 'forbidden marital relations', the phrase "keep you wife childless", making it clear that the intention is regarding reproduction.

we, economically, culturally and spiritually, are a part. For human beings, as for the biosphere, the tragedy of the commons is not the tragedy of their existence but the tragedy of their disappearance.¹⁴

5. Neo-Liberal Economic Thought in Environmental and Talmudic Perspective

Standard economic theory sees the commons, whether the resources of commercial input or the sink for industrial outputs, as just so much un-owned raw material – first come, first served. It belongs to no one and so can be appropriated by anyone for essentially any purpose. As Hardin pointed out in the aforementioned article, in situations of private profit at public cost (such as being able to dump waste in the public sphere), there is a built-in incentive to pollute: the polluter gets all the profit or convenience while the cost of the damage is shared by everyone. This is equally applicable to the factory owner, the fisherman tempted to overfish and to the private car owner whose exhaust comes out the rear and into everyone's air, but not into the driver's compartment...

Environmental concern then becomes irrationally altruistic, and anybody voluntarily solving problems or 'internalizing externalities' becomes a sucker. Hence, the need for compulsory legislation ('mutual coercion'). Yet, precisely this sort of legislation is difficult to pass in the context of prevailing individualistic liberal philosophy, which underlies so much of our culture and which sees the individual and his property as inviolable – a conception that has been extended to corporations with disastrous effects.

The underlying question is one of individual liberties versus the collective good. Traditional societies, Judaism included, held to a different level of private responsibilities for public welfare. Then came the classic economic notion of the 'invisible hand', which claimed that through enlightened self-interest, people working hard for themselves benefit everyone. Hardin's analysis of the 'tragedy of the commons' showed that in our world the opposite is the case, that unbridled accretion of private profit at public cost can lead to ruin for all. In our spaceship economy, as economist Kenneth Boulding has termed it, where all resources and sinks – the inputs and outputs of our material lives – have to be managed and husbanded with foresight and care, there are no 'invisible hands' coordinating everyone's efforts and assuring a benign outcome for all.

In traditional terms, using the commons inappropriately, through expropriating resources for private benefit or disposing of unwanted goods or waste carelessly, was seen as out-and-out theft of a possession that belonged to all. Several *Mishnaic*¹⁵ era teachings make this clear, even claiming that robbing the commons is a greater crime than robbing an individual:

14 Monbiot, George, "The Tragedy of Enclosure," *Scientific American*, January 1994.

15 This is reinforced by later authorities, who determine that anyone illicitly digging a hole in the public domain is guilty of robbing the public. Cf. R. Yehoshua Hirsch's 18th century Talmudic commentary *Pnai Yehoshua* to Bava Kamma 52b; and the *responsa* of the *Maharsham* (R. Shalom Mordechai Hacohen Shvadron, d. 1911), part

ב' ו: רבן שמעון בן גמליאל אומר כל המקלקלין ברשות הרבים מותרין משום גזל.
 י' ח: הגוזל את הרבים חייב להחזיר לרבים חמור גזל הרבים מגזל היחיד שהגוזל
 את היחיד יכול לפייסו ולהחזיר לו גזילו הגוזל את הרבים אין יכול לפייסו ולהחזיר
 להן גזילן (תוספתא, בבא קמא, פרק ב', י').

Rabban Shimon Ben Gamliel said: Anyone who causes any sort of damage or harm in the public domain, (his damaging goods) are permitted for all to take, on account of robbery (*Tosefta* “Bava Kamma” 2:6).

Whosoever robs the public must make restitution to the public. Robbing the public is a graver offense than robbing an individual, for one who robs an individual can appease that person and return what he stole, but one who robs the public cannot appease the public and return to all of them what was stolen from them (*Tosefta* “Bava Kamma” 10:8).

Compare this attitude toward the public's rights to public goods to a classic ditty from the era of the Enclosure Acts in England, where theft was looked at very differently:

The law locks up the man or woman
 Who steals the goose from off the common
 But leaves the greater villain loose
 Who steals the common from off the goose.¹⁶

The Talmud itself is a virtually seamless whole made of a variety of materials and genres, most importantly *halachic* (legal) and *aggadic* sources (philosophical or folkloric – see footnote 5). While specific cases and certain legal principles are exemplified in the *halachic* texts, the underlying values of the Talmudic approach are often expressed most clearly in the *aggadic* passages. For instance, the clearest expression of the nature of the commons and private responsibility for it, especially in contrast to private property, is the following tale, which appears in the same tractate alongside the other more legal sources quoted above:

ת"ר לא יסקל אדם מרשותו לרה"ר מעשה באדם אחד שהיה מסקל מרשותו לרה"ר ומצאו חסיד אחד אמר לו ריקה מפני מה אתה מסקל מרשות שאינה שלך לרשות שלך לגלג עליו לימים נצרך למכור שדהו והיה מהלך באותו רה"ר ונכשל באותן אבנים אמר יפה אמר לי אותו חסיד מפני מה אתה מסקל מרשות שאינה שלך לרשות שלך.

(תלמוד בבלי, מסכת בבא קמא, דף נ)

II, paragraph 210.

16 *Anon.* England, c. 1764

Once there was a man who was removing stones from his field to the public thoroughfare, when a *hassid*, (a pious one—see above), said to him: “Hey, you foolish man, why are you removing the stones from property that isn’t yours, to that which is?” The man laughed at the *hassid*. Later, when the man was forced to sell his field, he was walking along the thoroughfare and tripped over his old stones. “That *hassid* spoke well about removing the stones from property that was not immutably mine to that which is.” (*B. Talmud* “Bava Kamma” 50b).

That simple parable expresses the view that undergirds the legislative materials presented earlier: the commons as a sphere that is not nobody’s but everybody’s.¹⁷ Indeed, it also expresses the very non-Western notion that it is private property that is transient and therefore not possessable in a deep way.

Finally, another ancient *aggadic* source, which sums up well this ‘common’ nature of the commons, expresses the basic insight that we are indeed all ‘in the same boat’:

משל לבני אדם שהיו נתונין בספינה ונטל אחד מהן מקרח והתחיל קורח תחתיו. אמרו לו חביריו: למה את עושה כן? אמר להן: מה איכפת לכם, לא תחתי אני קורח? אמרו לו: מפני שאתה מציף עלינו את הספינה (מדרש ויקרא רבא ד:)

This may be compared to the case of the man on a ship who began to drill a hole under his place. His fellow traveler’s cried out: “What are you doing?” He said, “What is it to you? I am only drilling under my own place!” They replied, “Fool! The water will drown us all (*Midrash* “Leviticus Rabba” 4:6).

The environmentalist emphasis on the need for strong personal commitment and clear legislation protecting public welfare – even at the expense of curtailing certain primitive free-market notions of commercial liberty – speaks a common language of concern with Jewish tradition. These teachings can help us try to develop an ethical stance and spiritual worldview, which affirms that economic activity that leads to severe damage or depletion of the commons – whether a polluted stream or global warming – should be as illegal as it is impious.

Additional References

Blanchard, Tsvi, “Can Judaism Make Environmental Policy? Sacred and Secular Language in Jewish Ecological Discourse,” in Hava Tirosh Samuelson, *Judaism and Ecology: Created World and Revealed Word*, Cambridge: Harvard Univ. Press. 2002

17 The Hebrew term for the public domain or commons is *reshut harabim* – *reshut* meaning ‘ownership’ – and *rabim*, ‘many’. The *reshut yechid* (‘individual’) – is that owned by the individual; *reshut harabim* – that owned by the many, by the collective, by all.