

Living Large: Sustainable Urban Development in Jewish Law

by

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Acknowledgements

I grew up in Shaker Heights, OH, and I remember going to baseball games with my family downtown. We would walk to the Rapid Transit station and patiently wait for the train to take us to the ballpark. I always loved taking the train, the feeling of gliding over the rails and through neighborhoods hidden from the major thoroughfares of the city. I still feel the same exhilaration every time I get on the subway in New York. These great public works exist because someone had a vision for a city that would grow and expand with people and those people would need to move as efficiently as possible – in turn attempting to create sustainable cities.

Sustainable urban planning became an obsession of mine because of the influences of people who I haven't met, like the Van Sweringen brothers, who designed Shaker Heights and incorporated light rail. My passion also arose from those who I know, my parents, friends, and teachers who instilled in me the values of community. At its core, as my thesis demonstrates, sustainable urban planning means placing the communal interests above an individual's desire. I have been blessed to be part of a holy community my entire life.

My parents Michael and Irene and my brothers Matthew and Jason continue to teach me and push me to be a better person in all aspects of life. They challenge my assumptions and encourage me to never settle with the status quo – inspiring me to dream of a utopian city. I would like to thank my HUC classmates, without whom I would never make it to ordination. Their compassion, humor, honesty and friendship form the cornerstone of my rabbinic colleagues. Finally, my advisor Dr. Michael Chernick enabled this project to happen. He went out of his way to assist me in my research and writing and helped me see this thesis to its end. Most importantly Dr. Chernick helped ensure that I saw meaning in my work, reminding me that while the laws may seem mundane, through them the Rabbis were striving to create a holy community. With the strength of everyone who helped me in this process I hope to create sustainable and holy communities wherever I go.

Introduction

Since settling in the land of Israel, Jews have engaged in the process of urbanization, and since the Tanakh, Jewish law has influenced how a community should build and expand its city. The laws of building a city in the Tanakh, Mishnah, and Mishneh Torah clearly show that environmental factors play a major role in urban life. The Rabbis understood that when humans live in close proximity to each other, the actions of one person affect everyone. Jewish laws addressed issues such as access to necessities, air and noise pollution, disturbances between two people, and privacy. Throughout these texts, covering over 3,000 years of Jewish history, the laws continually place communal good above individual autonomy. This establishes a precedent for sustainable urban development in Jewish law.

Sustainable urban development refers to the planning of cities that allows them to grow and expand while best meeting the needs of its residents. Certainly one person who lives in a field a great distance from his nearest neighbor can do as he pleases. However, when people live on top of each other and share walls, they must sacrifice some autonomy in order to have a good quality of life. Jewish law limits or compels an individual to act for the sake of the community. Throughout the development of Jewish law and continuing today, communal needs have changed based upon population growth or decline, new technology and location. This causes development that may have been previously sustainable to become outdated or require changes. Forward thinking design can help mitigate these changes but could never eliminate the need for future modifications.

Even though laws must evolve as technology changes, laws that favor community well-being and restrict individual volition help form cities that can expand and grow. As individuals with full autonomy, most people will make decisions that benefit only themselves – such as creating private streets, disconnected transportation networks, and buildings that negatively affect others. Sustainability laws, on the other hand, prevent residents from creating such obstacles to growth or encouraging them to engage in practice that benefit the entire community. The greatest example of a sustainable law in the Tanakh can be found in Deuteronomy 22:8. One must build a parapet on one's roof, not for their protection but so that others will not fall off. This law compels someone to take action for the benefit of the community, not for themselves.

In the Mishnah and Mishneh Torah, the Rabbis create a set of privacy laws that place the burden not upon the person inside the house to cover their windows, but upon others not to construct windows that look into their neighbor's property. Of all the laws discussed, these privacy laws differ from both modern laws and sustainable urban development theory. Privacy concerns outside of Judaism place the burden upon individuals to ensure their own privacy in normal situations, while Judaism takes the opposite approach. This highlights the main difference between Jewish law and modern Western laws. Planners are only thinking about the relationships between the residents of a city while the Rabbis were also thinking about creating holy communities who ultimately answered to God. This acknowledges God's role as the creator of people and the physical earth.

In order to contextualize the Jewish laws of the Tanakh and Mishnah, archaeological findings demonstrate how people put the laws into practice. Often the

archaeological evidence supports some of the basic urban planning laws, such as the construction of city walls, the placement of industrial centers and graves outside of those walls, and major public works projects. However, it is impossible to determine if ancient Jewish cities were built according to the Jewish law or whether the law reflected current customs. In the Mishneh Torah, Maimonides often notes that customs can override *halakhot*.

Within each chapter, I will also make relevant connections between historical law and modern laws that is the focus in Chapter 4. I grew interested in the topic of modern urban planning through the lens of environmentalism. The majority of people in our world are living in cities and mitigating cities' impact on the environment is essential to the future of our planet. In addition, as an avid bike-commuter I became further interested in urban transportation policy and how each modality directly effects quality of life. I therefore sought to investigate the Jewish laws of urban planning in order to integrate my two passions into my rabbinic career.

Even though modern cities do not resemble their ancient counterparts, whenever people live in close proximity to one another similar concerns still arise. Armed with the knowledge that Jewish law supports sustainable development, Jews can advocate for sustainable urban development that places communal good over an individual's right to act exclusively in his or her own interest.

Chapter 1 - Tanakh

The concept of a city first appears in the Tanakh in Genesis 4:17, when Cain founds the city Enoch. While the text provides no details about the city, this verse uses the word *'ir*' for the first time, denoting a special living situation different from the nomadic lifestyle. Later, in Genesis 18, the word *'ir*' appears again when God destroys the city of Sodom, where there are presumed to be more than fifty people living together, which contains gates and a public area.¹ As the of the Israelites change from a nomadic community into a kingdom in Israel, the word *'ir*' comes to represent a place where many people live close together, eventually in a place surrounded by walls,² with gates,³ public spaces, and separate agriculture fields.⁴ While the Tanakh sporadically includes laws about building practices, later Jewish texts⁵ will clearly enunciate the laws for constructing a city. The Tanakh mostly references attributes of existing cities that allow for an understanding about their functions in society. Studies of cities have shown that they indeed involve some sort of communal planning.⁶

The fact that these primitive cities display hints of planning lies at the core of sustainable development. Even though the cities probably had relatively small populations, they still needed access to food and water. Without adequate rules about how and where to fulfill the needs of residents living in close proximity, cities would not have been able to expand and meet the needs of constantly growing urban populations. According to the Encyclopedia Judaica article on cities, evidence of urban planning exists

¹ Genesis 18:28. As Abraham pleads with God, he challenges God to find fifty righteous people.

² Leviticus 25:29

³ Genesis 23:10

⁴ Deuteronomy 28:3. The text distinguishes between an *'ir*, and a *sadeh*. "Blessed shall you be in the city (*'ir*) and blessed shall you be in the country (*sadeh*)." (JPS Revised Translation)

⁵ cf. Baba Batra 2 in both the Mishnah and Talmud

⁶ Reviv, Hanoch. Gibson, Shimon. CITY. *ENCYCLOPAEDIA JUDAICA*, Second Edition, Volume 4. Pg. 738

in the fortification, gates, temples, and zoning of neighborhoods. According to the Encyclopedia, no real cities were created by the Israelites until they settled the land of Israel after its conquest from the Canaanites. Archeological data supports this claim as scholarship concludes that the Israelites formed cities beginning in the 10th Century B.C.E.⁷

Foreseeing the settlement of Israel, God instructs the Israelites to give cities (*ʿarim*, plural of *ʿir*) to the Levites because the Levites would not receive any land. The Bible provides a picture of what such a city should look like. It should have groups of buildings in a center surrounded by pastureland. Thus, the Torah expresses concern for urban planning by including specific measurements of two thousand cubits of open land on each side of each levitical city (Num 35:5). God also commands the Israelites to designate six cities of refuge for convicted man slaughterers so the blood avenger will not kill them.⁸ I will explore the function of these cities later.

The Torah also presents a law that, while not directly related to cities, offers insight into communal living and, one can assume, would be upheld in urban life as well. In Deut 23:13-15, God commands the Israelites to make a spot outside of their military camp for their excrement and to dig a hole and cover it up. The concept of waste management was part of a larger planning process necessary when large groups lived in proximity to each other. It displays a mindfulness that most likely extended to ancient villages and cities as well. The Bible also displays this same awareness concerning communal responsibility.

⁷ *ibid.* pg 739

⁸ Numbers 35:9-15

Deuteronomy 22:8 highlights the early notion of communal responsibility by the owner of property. When a house is constructed, the owner must build a parapet on the roof to prevent someone else from falling off. The fact that the law focuses on others, not the owner himself, shows that the Torah encourages the population to consider others. This is a key aspect of urban planning reflected later in rabbinic literature and modern laws. The fact that this law focuses on houses makes sense, as in its most basic form a village or city is just a collection of houses in close proximity to one another.

Archaeological evidence of the uniformity and placement of houses during biblical times uncovers what might be called an early form of urban planning. Unfortunately, due to primitive building materials and a greater focus on public structures, few houses from that period remain until the Iron Age, approximately the first millennia CE. In terms of biblical chronology, this also marks the beginning of the United Monarchy.⁹ The first evidence of houses dates to the Neolithic period, approximately until the fourth millennium BCE. These primitive houses were most likely domed huts formed from mud bricks. Their floors were dug out and actually below the ground. As building progressed, people began to work together and build near each other. These were the first examples urban planning.

Houses changed from domed huts to a large rectangular room with adjacent storage rooms.¹⁰ At Beit-Shean, an ancient city in Northern Israel, archaeologists have discovered several houses built around a shared courtyard, which functioned as a shared cooking space. As technology made complicated structures possible, people began to dig subterranean dwellings. These lasted until the Early Bronze age when rough stone began

⁹ Negev, Avraham. "Houses." Archaeological Encyclopedia of the Holy Land. SBS Publishing. Englewood, NJ. 1980. pg. 147

¹⁰ *ibid.* 148

to replace brick, first rough, then dressed stone. These houses added more rooms to the larger main room, usually with a subterranean floor. Eventually, by the middle bronze age, approximately the 2nd-3rd millennium BCE, complete stone structures replaced primitive mud bricks. These houses may have even had two stories, with the lower level used for industry or storage and the upper as a dwelling. Just like earlier houses, seen at Jericho, these houses were arranged around a courtyard and shared an oven.¹¹ Also in the middle Bronze Age, larger houses appeared belonging to nobles or other wealthy people. These consisted of larger numbers of rooms, two stories, and even a plastered cistern.

These earthen and stone structures, however, have not generally survived for two major reasons: First, these structures consisted of materials that archaeologists cannot necessarily identify amongst the many layers of destroyed or built-upon city. Early mud bricks did not last and would eventually decay and appear similar to the soil and earth around them. In addition, even as stone began to replace mud as the primary building material, the builders only saved the foundation¹². Second, few archeologists focus their attention on private dwellings during excavations. By the Iron Age, approximately 1,000 BCE, another type of house dominates.

Archaeologists have uncovered two major features of houses from this period that show people working together to create dwelling spaces. Many of these buildings follow a basic pattern of called the “four-room house.”¹³ These square dwellings contain one long room running the length of the building and three equal sized rooms on the other side. The center of these three rooms would often be a courtyard where most of daily life would take place. At Tel el-Farah, the biblical city of Tirzah, these four-room houses

¹¹ ibid 148

¹² ibid 147

¹³ Ibid. pg. 149

were built side-by-side and back-to-back, similar to modern town houses. This enabled neighbors to share the stones used for building shared walls. This is evidence that people worked together and planned their living spaces with one another.

Later houses from Roman period beginning at the end of the first millennia BCE, always contained a courtyard surrounded by rooms. This style of housing developed out of necessity based upon the climate, allowing residents to shade themselves from the sun and still engage in activities in the light.¹⁴ Cisterns, either under the ground floor or in the courtyards, reveal another major innovation for this period. The houses usually had flat roofs as evidenced by the biblical commandment to build a fence on them. Most of the houses in the biblical time were built primarily with either sun-dried bricks (prone to weathering) or rough stone.¹⁵ As building materials and practices developed it became possible to build increasingly complex structures. When tools capable of hewing stone were introduced in the Iron Age, new building structures greatly increased.

City walls are another major feature of cities during biblical times. These not only established the borders of the city but also provided communal protection. In Leviticus 25:29, during a discussion of the Jubilee year, the Bible distinguishes between a walled city and one without walls, implying that cities of each type existed. One must release property in a city without walls, while walled cities are exempt from this commandment. The Torah refers here to two different types of cities, a “*beit moshav `ir ha’choma*,” a dwelling house in a walled city, compared with a “*batei-ha’chatzeirim asher ein l’hem choma*,” houses surrounding a courtyard that do not have walls. The text classifies the latter as a farmland, implying that those who dwell in these houses rely on

¹⁴ Ibid.

¹⁵ Negev, Avraham. “Building Materials.” *Archaeological Encyclopedia of the Holy Land*. SBS Publishing. Englewood, NJ. 1980. pg. 59

agriculture for their income. In cities, residents developed crafts and traded for their goods.

The fact that the Torah differentiates between these two types of living situations highlights the different relationships residents had with land. Farmers depend on the land for their livelihood, and therefore in the Jubilee year they may return to their land.¹⁶ Furthermore, the cyclical nature of agriculture often required securing debts to purchase seeds and equipment in hopes of profits from future crops. If these crops did not yield the projected income, the farmers might have to sell their land or their labor.¹⁷ The Torah contrasts this lifestyle with those who live in cities. Their livelihood is not based on land. Individuals living in a walled city do not have their property returned in the Jubilee year.

Several descriptions of walls around cities exist in descriptions of battle. In Deuteronomy, the Israelites worry about the walled cities they must attack in the land of Canaan.¹⁸ In the famous story of Jericho, they rely on divine intervention to topple the walls: a large trumpet blast after a series of marches causes the walls to fall.¹⁹

Soon after Solomon becomes king, we learn that he remains in the City of David until the walls of Jerusalem are constructed.²⁰ This again shows the importance of walls from the point of view of defense and protection. Isaiah and other prophets reference walls in their prophecies many times, both literally and metaphorically, stressing the importance of walls to the people. Walls symbolize both the physical protection from enemies and God's protection from evil. While we do not have much physical evidence

¹⁶ Levine, Baruch A. *The JPS Torah Commentary: Leviticus*. The Jewish Publication Society, New York. 1989. Pg. 176

¹⁷ Ibid. Pg. 271

¹⁸ also c.f.: Deut 1:28, 3:5, 9:1

¹⁹ Joshua 6:4

²⁰ 1 Kings 3:1

of Biblical city planning, one major public works project from this time period remains today.

Hezekiah built a water tunnel to supply water to the City of David in 701 BCE, a date known both from archaeological dating and from an inscription found in the tunnel.²¹ The Bible refers to the tunnel three times, first in 2 Kings 20:20, where we read that King Hezekiah made a “conduit and brought water into the city.” 2 Chronicles 32:2 and 32:30 imply that Hezekiah made the tunnel for water so that the people could remain inside the protective city walls rather than venturing out to collect water. This critical public works project, still traversable today, provides great insight into the capabilities of engineers at the time to envision and implement a project that benefited the population of this city. A project of this magnitude demonstrates the idea that the leaders of cities must create public works in order to sustain a city and allow for future growth. Certainly, the basic necessity of water continues to be a critical part of city planning to this day.²² Cities grew and expanded during the time of both the unified and divided kingdom as technology developed.

As is the case today, the size of cities varied based upon location and popularity.²³ Excavations reveal that most cities were about 20 acres in size with populations around 3,000. Large cities, such as Jerusalem, may have contained between 10,000 and 20,000 people. As walled cities expanded, some people lived within the walls and others outside.²⁴ 1 Kings 20:30 contains an account of survivors of a battle fleeing inside walls,

²¹ "Hezekiah's (or Siloam) Tunnel Inscription, 701 BCE." The Center for Online Jewish Studies. Accessed 3/7/2012 <[http://cojs.org/cojswiki/Hezekiah%E2%80%99s_\(or_Siloam\)_Tunnel_Inscription,_701_BCE](http://cojs.org/cojswiki/Hezekiah%E2%80%99s_(or_Siloam)_Tunnel_Inscription,_701_BCE)>.

²² “City Water Tunnel No. 3” New York City Department of Environmental Protection. 2006. PDF

²³ Reviv 741

²⁴ Reviv 739

only to have the walls destroyed by the invaders who kill them. Walls were the last line of defense for a city's survival.

The Torah allocates forty-eight cities for the Levites within the territories of the other tribes, as the Levites were not to receive any land in *Eretz Yisrael*. These cities probably functioned as administrative and ritual centers throughout the land of Israel. However, some scholars believe these cities to represent a utopian ideal rather than a reality.²⁵ The Torah also prescribes six cities of refuge for the Israelites. The levitical cities also serve as more cities of refuge. Even though the cities of refuge do not indicate any special planning or construction, the fact that one would go there instead of into exile elsewhere shows that cities were able to provide for the needs of many residents. Cities also usually had a main gate or marketplace that served as a central gathering place for its residents.²⁶

The Tanakh refers to these marketplaces, or open spaces, as *rechovot*. One of the most notable references to *rechovot* in the Bible occurs in Neh 8:1, when Ezra stands upon a "wooden tower" in the open square that the people constructed in order for him to read the Torah so the people could hear him. Looking back at the previous chapter provides the details of planning that went into constructing the city of Jerusalem. In Neh 7:4 we read that "the city was broad and large, the people in it were few, and the houses were not yet built."²⁷ This text demonstrates that the city was planned from the ground up rather than on an already existing settlement. The planners first constructed city walls

²⁵ Reviv 739

²⁶ Reviv 741

²⁷ *JPS Hebrew-English Tanakh: The Traditional Hebrew Text and the New JPS Translation*. Philadelphia: Jewish Publication Society, 2003.

based upon an assumption of future settlement of the city, and then people came and built houses and other buildings.

Archaeologists cannot corroborate these accounts because for the biblical period no complete city has been uncovered. Well-known sites such as the southern-wall excavations at the Western Wall, Hezekiah's water tunnel, and other important historic places provide some insight into the period. These archaeological sites allow us to understand better how the Israelites and Romans lived, but they are isolated major projects rather than domestic settlements. The Tel Dan excavation currently underway in northern Israel seeks to uncover an entire city.

Shrewd academic use of evidence demonstrates that the Israelites living in the time of the Bible engaged in basic urban planning. Villagers as well as officials worked together to create organized living areas, commercial spaces, and impressive public works that have endured the test of time. The Torah offers scant laws directly relating to communal planning, but it does reveal a concern for public welfare when people live in close proximity. Archaeological discoveries offer further evidence of planning during this time period. The lack of solid building materials until the very end of the Israelite kingdom probably prevented people from living closer which would require further laws. Nonetheless, the urban world of the Israelites combined with that of outside nations created a solid platform of communal living arrangements for the Rabbis to build upon when creating *halakhah* that begins to form in the Mishnah. Most importantly, the Tanakh sets a standard for sustainable development by urging a high degree of communal responsibility over absolute individual rights.

Chapter 2 – Urban Planning in the Mishnah

In Baba Batra chapter 2, the Mishnah focuses on laws regarding the building and expansion of cities. The Rabbis established that the responsibility of building practices fell upon the owner of a property and required individuals who owned property to take necessary steps to prevent damage to a neighbor's house, field, livelihood, and the city at large. Some of these requirements involve two individuals, such as digging a refuse hole or building an oven. Other laws affect an individual and the entire community, such as distancing a tannery or a dovecote from other parts of the city. The laws regarding trees exist not only for planning purposes but also pertain to a tree that stands in the way of expansion. Similar to the laws of the Torah, analysis of the Mishnah reveals that early rabbinic law often placed the needs of the community above the claims generated by individual ownership.

One can see the communal nature of the laws in those regulations that deal with prevention of damage to one's neighbor's property. These laws fall into two categories: those affecting an individual's property and those affecting one's well being. The first and fourth mishnah of this chapter deal specifically with the effect of one's property on one's neighbors.

The first mishnah prohibits building a hole for water or refuse close to a neighbor's property. A water hole, in various forms could damage the structure of a wall or contaminate a neighbor's well or field. These laws apply to both cisterns and refuse pits. The Rabbis permit these holes so long as one digs them a certain distance from one's neighbor's wall and are plastered so that the water remains in the well and does not flow into the ground. This mishnah also contains details about certain objects that must be

distanced from one's neighbor's wall. For example, the Rabbis require a certain type of millstone design near walls in order to reduce the damage that a millstone could cause the wall. They also do not allow one to construct an oven close to the wall for the same reason. In the fourth mishnah, the Rabbis discuss the erection of a wall or building above the existing wall owned by a neighbor. If one wishes to build a window, one must place the window so that it cannot look over another's wall. This establishes that walls function both as boundaries and as privacy shields. As evidenced by this mishnah we learn that privacy affects how one must construct their house.

Whether or not they functioned as privacy shields, the Rabbis address the issue of trees near or touching a neighbor's property, an issue that persists today. During planting, the onus falls upon the owner of the tree to plant it a certain distance from his neighbor's vine or another tree. Once the tree exists, however, the Rabbis consider the various damages caused by the tree, often allowing an individual to cut only those parts of the tree as needed to serve the public welfare. The mishnah addresses three issues: roots growing into a field, into a place where a pit will be dug, or branches hanging into a neighbor's field. Depending on the type of tree – fruit, carob, sycamore, or other – one can cut the tree either according to the plumb line of the property line or in order to allow his neighbor to plow his field. The laws regarding trees differ from those regarding other property because once one plants a tree, the tree cannot be moved like a millstone or oven, it can only be cut down. The Rabbis discuss laws regarding trees at length when the tree affects a public space.

Whether physical property or trees, all of these laws put the responsibility on the individual who constructs new property to prevent damage to or otherwise hinder

another's way of life. This demonstrates that an individual has obligations to the greater community when building or expanding their private property. The same holds true for how an individual can use a space. In the second mishnah of the chapter, the Rabbis set boundaries for rooms with ovens that are presumably used for both cooking and heating. The laws make sense for safety reasons as well as for the comfort of those either above or below. The law requires four cubits separation above an oven if it is on a lower floor or a barrier of stones below it if the oven is on an upper floor. While this follows the law about ovens near walls from the first mishnah, here the Rabbis go a step further by requiring payment for damages even if one takes the necessary precautions (although R. Shimon disagrees). In the third mishnah the Rabbis discuss restrictions on shared spaces.

When people live near each other in shared spaces, whether in the same house or area, issues other than physical damage from trees or pits can affect the wellbeing of the residents. For example, one may not open a bakery or dyer's factory or cowshed under another person's storehouse. Using modern terms, the Rabbis address the air pollution caused by certain professions. Thus, we learn that the Rabbis were aware that issues other than physical damage affected life within a city. Presumably, the dyer's factory or cowshed would cause contamination of the warehouse above by way of airborne pollutants. The third mishnah addresses a third type of pollution, noise pollution. One may not have a store in the courtyard because another person could object and say, "I cannot sleep because of the noise."²⁸ One cannot object, however, if the noise comes from a hammer, a millstone, or babies. While one cannot always control the location of babies, this assumes that certain professions are essential to the community, an issue of importance to all city planners. The exemptions demonstrate the delicate balance

²⁸ Mishnah Baba Batra 2:3

between the needs of individuals and the need for productivity of a community. Just as noise pollution and air pollution can affect the livability of a community, this chapter addresses other such laws regarding public spaces.

The fifth mishnah contains the rule that dovecotes must be situated at least fifty *amot*, cubits, from a city and one can only build a dovecote if there are fifty *amot* on all sides. Rabbi Yehudah offers his opinion and provides a reason for the fifty *amot* provision. He rules that one must allow four *kurim*, a measure of space required to plant a certain amount of seed.²⁹ The Rabbis reasoned that one must provide space between dovecotes and farmland in order to prevent damage to crops or other items that pigeons might eat. Following the same principle the Rabbis ruled in the eighth mishnah that one may not have a threshing floor within fifty cubits of the city in every direction. Threshing floors require trampling or beating the grain stalks in order to remove the grain from the stalk. The thresher would then throw the stalks into the air and allow the wind to blow the chaff away, leaving only the usable grain.³⁰ Similar to the distancing of dovecotes, the Rabbis enacted this rule to prevent an individual from damaging another person or property by covering him or his property with chaff. Other items must be placed at least fifty cubits away from properties due to their negative effects on others.

Carcasses, graves, and tanneries must be at least 50 cubits from the city as well. Unlike the physical damages resulting from pigeons or a threshing floor, these items or places can all give off foul odors and spread diseases. The ninth mishnah further necessitates that a tannery must always be located to the east of a city, most likely because the odor from which would be very unpleasant if not unbearable if experienced

²⁹ Jastrow. pg 625

³⁰ Jones, Stephen. "Wheat." *The World Book Encyclopedia*. Vol. 21. 2011. Print.

too often. According to Albeck, eastern winds are not as strong as the other winds and therefore the odor will not enter the city.³¹ This is notable because it clearly only applies to a certain location where the laws are created. As Jewish communities spread, the local Rabbis would have to tailor the laws to account for the natural variances in each locale. While the early Rabbis did not label the odors specifically as air pollution, an identifiable odor represents some particulate matter in the air from a specific source. Similar to the laws regarding a tree's impact on personal property, the Mishnah also contains laws about the impact of a tree on a communal space.

The fourteenth and final mishnah in the chapter rule that a tree that extends onto a public space can be cut in order that a camel be able to pass on the street. Rabbi Yedudah extends this to a camel plus the camel's load. This rule's principle still applies to modern day cities, requiring a property owner, city, or utility to prune private and public trees in order to prevent interference with public needs.³² Pruning a tree prevents overhanging branches from interfering with individual or communal spaces, with no need for complete removal of the tree. Sometimes the entire tree must be removed in order to limit damage to a property or individual, and the Rabbis do find one case where they permit cutting down a tree.

³¹ Albeck, Hanoch. *Six Orders of the Mishnah*. Seder Nezikin, Masechet Baba Batra 2:9. Pg.123. Bialik Institute and Dvir Co. Jerusalem. 1959.

³² The North American Electric Reliability Corporation (NERC) has federal authority to maintain power lines, and has enacted a regulation to take preventative action to prune trees, effective April 7, 2006: "Standard FAC-003-1: Transmission Vegetation Management Program." North American Electric Reliability Council. 2006. *PDF*.

The Department of Environmental Conservation of New York State also has guidelines for communities to enact their own regulations regarding trees, used to both protect trees and residents from harm. "Tree Ordinances." The Department of Environmental Conservation of New York State. Accessed 8/28/2012. <<http://www.dec.ny.gov/lands/5276.html>>

Mishnah seven includes a law that one must distance a carob or sycamore tree 25 cubits from a city. Aba Shaul adds that all fruit bearing trees must be distanced 50 cubits. If, however, a tree exists within these boundaries, then the tree can be cut down. The Rabbis provide provisions for the owner of the tree depending on if the tree was planted before the city. If the city came first then, the owner receives no compensation for the loss of his tree. If the city was built after the planting of the tree then, the owner receives compensation. If doubt exists about which came first, then the owner receives no money. This ruling is particularly important for a sustainable city.

When expanding cities, planners and builders often must sacrifice different items and values. The Torah tells us not to cut down a tree even in the time of war,³³ yet here the Rabbis seem to agree that building legitimates cutting down a tree. In contrast to this ruling, the Rabbis decide that a tree has more value than a pit in mishnah 11.

The majority opinion rules that if a pit came before the problematic tree was planted, the tree should be cut down with no compensation to its owner. However, Rabbi Yosi concludes that the tree should never be cut down because each person has the right to plant and dig on his own property. His view is one of the few that privileges individual property rights over the rights of the public. Nevertheless, it follows from this argument and the majority ruling that a tree could be cut down for the sake of the city that the Rabbis prioritized communal needs over an individual's needs. We find this especially true when the action causes major or long lasting change, such as cutting down a tree or the placement of noxious or noisy activities.

The Mishnah, redacted circa 220 CE, contains many laws that either extend the commandments in the Torah or reflect customs that developed over time. An

archaeological survey of that period may provide insight into some of these laws.³³

While archaeological excavations from this period are on-going, we can learn that the laws from the Mishnah reflected some building practices found in cities at this time.

Even though the Romans ruled the Land of Israel as the state of Palestine, scholars agree that the cities of Tzipori (also known as Sepphoris) and Tiberius were mostly Jewish.³⁴

Ancient Palestinian cities were constructed with a marketplace as the center of communal life.³⁵ From a functional perspective, markets allow several people to make purchases from multiple vendors without travelling from place to place, much like the concept of a modern mall. While marketplaces may have developed out of convenience, later Jewish laws in the Mishneh Torah will demand that there be a separation of commercial and residential areas.

In addition to the marketplace, water systems were also standard feature of Palestinian cities. This follows from the archaeological analysis in chapter one that discussed ancient water delivery systems such as Hezekiah's water tunnel.³⁶ Sewer systems also helped improve sanitary conditions in these cities as well.³⁷ In fact, the Talmud references a famous toilet in Tiberius during a lengthy discussion about decorum in the bathroom.³⁸ In addition to mentioning `irrigation, and cisterns, the Mishnah also references several other public works projects, such as roads, and ritual baths.³⁹

³³ Deut. 20:19.

³³ Strack, H. L., Stemberger, Gunter. *Introduction to the Talmud and Midrash*. Bell and Bain Ltd., Glasgow. 1996. pg 109

³⁴ Sperber, Daniel. *The City in Roman Palestine*. Oxford University Press, New York. 1998. pg 190

³⁵ Sperber 9

³⁶ Sperber 14

³⁷ Sperber 137

³⁸ Talmud Bavli Brachot 62a

³⁹ Mishnah Moed Katan 1:2

Excavations at Tiberius revealed a bathhouse, further indicating their importance in cities at the time of the Mishnah.⁴⁰

In addition to these public facilities, Tiberius also had walls that originated from ancient time. Another set of walls was built by Rabbi Judah haNasi in the third century, though only one gate has been uncovered.⁴¹ The walls demarcated what was in the city and what was outside it. As indicated in the Baba Batra, graves were placed outside of the city walls. Also outside the city were industrial areas, although archaeologists have not discovered much evidence of this, and it is unclear whether they were excluded from the city because of regulations.⁴² These findings support some of the laws of the Mishnah and allow one to see that these laws were not always theoretical.

Chapter two of Baba Batra contains laws that prevent or permit individual action based upon the needs of the entire city. These laws fall into three categories that can affect a city or community: disturbances to others, noise pollution, and air pollution. Maimonides will discuss these categories and other issues in the Mishneh Torah, written about 1000 years after the Mishnah. He will refine these laws because technological advances had been made during this time. Yet his rulings, based upon the Talmud and other formative sources of Jewish law, will continue to place communal concerns above individual's desires.

⁴⁰ Sperber 58

⁴¹ Sperber 154

⁴² Sperber 170

Chapter 3 – Analysis of the Mishneh Torah

In Mishneh Torah, *Hilkhot Shekhenim*, Maimonides organizes several urban planning laws from the Talmud into several chapters. Following discussions that originate in the Tanakh, the Mishnah, and the Talmud these laws now reflect a Jewish population that has lived under outside rule for more than a millennia. Therefore Maimonides' title of this section, the laws of neighbors, reflects the notion that the Jews cannot plan and build entire cities but can only enact laws within a small area of houses or shops. The *halakhot* found in these chapters fall into five categories: damage because of sight, disturbances to others, division of shared property, payment for communal projects, and air pollution. Together, these laws represent issues arising from people living in close proximity to one another. Each topic supports sustainable development, a theme found in the Tanakh, the Mishnah, and the Talmud as the laws compel individuals to restrict or alter their activities for the good of the community.

Damage Because of Sight

The Rabbis of the Talmud were very concerned about mixtures. This was expressed in rules about different types of clothing material, food items such as milk and meat, Jews and non-Jews, and maintaining division between public and private domains. Most Jews are familiar with the public/private domain laws as they relate to Shabbat, especially the prohibition of carrying between the two domains⁴³. However, even today, we use the two domains for different activities and behave differently within each as well, just as Jews have done for thousands of years. The Rabbis took note of this fact and concluded that activities in a private domain might be unsuitable for others to see.

⁴³ Mishnah Shabbat 1:1.

The Rabbis expect each person to engage in personal matters inside of their homes and private domains, for example, bathing, removing clothing, and sex. Thus the onus falls upon the person who may be looking into a private domain not to do so, derived from the concept called "damage of sight," or in Hebrew *hezek re'iah*. This important concept requires further investigation because it will form the basis for many laws regarding sustainable urban development found in *Hilkhot Shekhenim*. According to the *The Talmud: The Steinsaltz Edition, A Reference Guide*, damage caused by sight arises when someone feels discomfort when someone can look at him in his private domain.⁴⁴

Based upon the law of damage because of sight, one could infer that each person should do his or her best not to look into other's private spaces via windows, a statement explicitly made in halakhah 5:6. This halakha prohibits someone from creating a window that looks onto a courtyard or a window or door across from a neighbor's window or door. This seems logical. If one opens a window onto a courtyard or across from others' window, then they will be able to look upon them when they are doing something in their private domain. The halakha continues to note that this only applies within private spaces. When someone enters into a public space they assume the risk that they will be seen by someone who is in his own private domain and vice versa. Someone who opens or doesn't shutter a window opening into a public domain is assuming responsibility should others see them.

The Mishneh Torah contains several laws to protect someone's privacy. For example, the first law Maimonides includes in this category, in halakha 2:14, regards a

⁴⁴ Steinsaltz, Adin. *The Talmud: The Steinsaltz Edition, A Reference Guide*. The Israel Institute for Talmudic Publications. 1989. pg 182.

shared courtyard that has been divided according to the law.⁴⁵ Each person who shares the courtyard after dividing it may compel the others to build a wall "so that one will not see the other person when he uses his portion."⁴⁶ The function of the wall is solely to prevent one neighbor from seeing another. Maimonides reinforces the fact that damage by sight is actual damage which means one could seek restitution for those damages.

Maimonides includes many other examples of how someone must act in order to prevent damage by sight. These include opening windows onto a courtyard⁴⁷ and constructing a courtyard next to a house that has windows on it.⁴⁸ In Deuteronomy 22:8 God commands the Israelites to build parapets on their rooftops. The Rabbis extend this prohibition. Whereas in the Tanakh the fence protected someone from falling off the roof, as clearly stated in Deuteronomy, the *ma'akeh*, guard rail, in the *Mishneh Torah* became an object to create privacy.⁴⁹ Two other situations are also notable because they affect how someone interacts between the private/public domains. The first is a prohibition against widening an entrance to a courtyard since, as the text indicates, one cannot hide his private activities if there is a large entrance.⁵⁰

The second law requires merchants to orient the entrance to their stores in a public domain so that they cannot not look directly into a courtyard or, by analogy, into an entrance to a house as well.⁵¹ The same halakha reasons that even though the courtyard entrance faces the public domain, people who walk past an entrance do not have reason to

⁴⁵ c.f. section Division of Shared Property

⁴⁶ Mishneh Torah, Hilchot Sch'enim 2:14

⁴⁷ ibid 5:6

⁴⁸ ibid Chapter 7:1

⁴⁹ ibid 3:5

⁵⁰ ibid. 5:10

⁵¹ ibid 5:7

linger in front of the entrance. But if a storefront faces a courtyard entrance, the clerk could be forced to look into the courtyard all day long and cause damage due to sight.

The fact that the Rabbis created so many building restrictions based upon the concept of damage by sight allows us to see that the Rabbis were concerned about privacy. These laws place the burden upon another to eliminate their ability to look into someone else's domain, allowing everyone to make full use of their house. Privacy issues are important because we behave differently when we are alone or with our family. We might become embarrassed or concerned that others would treat us differently if they have a literal window into our lives. For the Rabbis, this issue also impedes upon our sanctity as beings created *b'tzelem Elohim*, in the image of God. As we are all reflections of different attributes of God, no two are alike, no one should be forced to reveal certain aspects of his person or personality to others. In private homes, people take off their protective shells, both physical and figurative, allowing them to reveal their entire self. This could be viewed as the ultimate restriction on an individual for the sake of protecting someone else's sanctity and by extension the sanctity of the community as well.

Especially given that the Rabbis could not control every aspect of a city, these laws focused on small changes that one could make to one's own properties. In the next chapter, I will explore the relationship of these privacy laws to our modern laws and values. Similar to the laws from the Mishnah and Tanakh, laws related to damage caused by sight place restrictions on individuals for the sake of the communal good.

Division of shared property

The Tanakh refers to two types of living situations, an *ir* and a *sadeh*, which translate as city and field.⁵² These two words indicate how many people live within a certain space and how they use the space. In fields, people live further from one another and engage in farming and other sustenance activities. In a city, people live close to one another and engage in crafts such as tanning, dyeing, writing sacred and secular texts, and milling.⁵³ Historically humans were a nomadic people who only settled in one area when they learned how to farm. This freed up their time to pursue other activities. When this happened people begin to claim land, a process described in the Torah when the Israelites settled in the land of Israel.

In Num. 26, God instructs Moses and Eleazar to conduct a census of the Israelites in order to apportion the land. God instructs Moses to divide the land: "for larger groups, increase their share, for smaller groups reduce their share...the land is to be apportioned by lot."⁵⁴ After Moses divided the land, people took ownership of their properties. By the time of the Talmud and Mishneh Torah, the Jews lived under the rule of other nations and no longer controlled their own land. The laws reflect this change and therefore focus predominantly on smaller properties, such as a fields and courtyards.

Hilkhoh Shekhenim 1:1 opens by describing the laws of dividing a shared field. Two major ideas arise from this halakha. First, that property can be divided only if "enough land" exists to divide it into useful portions, and second, that one person in a

⁵² Deuteronomy 28:3

⁵³ Hilkhoh Shekhenim references each of these crafts

⁵⁴ Num. 26:52-56

partnership can compel the other to divide the land. In halakha 4, Maimonides defines how much land one needs depending on its purpose. He notes that a courtyard must be 4x4 cubits, but a field, a garden and an orchard are defined based upon the amount of land needed for a measurement of seed for planting called a '*kav*'. Thus, one cannot divide these types of land unless each person in the settlement receives enough to still refer to the portion by its original name. Maimonides notes that all of these standards originated in the land of Israel and "places similar." In Babylonia and elsewhere people may have different standards. This allows each locale to define its own space needs based upon the environment in its population lives.

In the rest of the chapter, the rulings about the size of the courtyard only apply if someone compels their partners to divide it. If each wants to divide the courtyard, they can create as small plots as they desire. Nevertheless, the basic assumptions in this section are that a courtyard must be at least 4x4 cubits to be useful.

In Chapter 2, Maimonides focuses on how to divide a courtyard for different tasks. He assumes, as we learned from the archaeological discoveries about houses at the time that all living quarters had some kind of courtyard, and that often in urban settings people would build many houses around a shared courtyard.⁵⁵ Halakhot 5:15-16 demonstrate that a courtyard could also refer to an open space in front of a house, which we today would call a front yard.

Even if the owners do not divide the courtyard, each home owner is entitled to have exclusive use of a 4x4 plot in front of his door.⁵⁶ Each person has use of this space

⁵⁵ c.f. Chapter 1.

⁵⁶ MT Hilkhoh Shekhenim 2:1-8.

so that he will have a place to put his load when he arrives home.⁵⁷ If the courtyard has enough space to be divided into spaces larger than 4x4 any of the joint owners can compel the others to divide it.

Regardless of whether one willingly or unwillingly divides the courtyard, if one divides a courtyard for privacy reasons, i.e. damage caused by sight, the law requires him to construct a wall.⁵⁸ Maimonides explains that everyone must contribute to the construction of a wall because of damage caused by sight. The rest of chapter two discusses how to construct the wall and that the land should be shared equally by the owners of the courtyard.

Laws relating to the division of property lie at the heart of urban planning. In order to create an urban setting, land must be divided and then subdivided to allow for greater population density. If everyone could act as they please, large properties combined with small, unusable sections would bifurcate other properties and would impede the natural growth and flow of the village or city. Without other adequate options, people need space to put their cart or place their load. Even though many of these laws place restrictions on individuals, they also place restrictions on communal properties in order to create sustainable cities.

Disturbances to Others

Moving to an urban setting brings different challenges than living spread out. While modern cities have grown exponentially larger than the Rabbis of the Talmud could have foreseen, when any amount of people live close to each other disputes arise. The cause of such disturbances might arise from noise and air pollution or building or

⁵⁷ This seems similar to modern zoning laws requiring parking in the next chapter.

⁵⁸ *ibid* 2:14

engaging in commerce on residential property. All these can adversely affect one's neighbors.

Chapters five and six of Mishneh Torah focus on disturbances to others in an urban setting. Maimonides primarily concentrates on activities taking place in the courtyard, as urban settings at this time involved houses built around a shared courtyard. He also discusses some of the differences between houses on a public street and those on a private street, i.e. one with cul-de-sac. Even though their vocabulary does not reflect the modern understanding of zoning, the Rabbis essentially separated private living spaces from commercial areas.

Maimonides often notes that the custom of the place supersedes formal halakhic rulings. In halakhah 5:3, Maimonides rules that those sharing a courtyard can prevent someone from bringing in live animals or a mill. These represent activities that would presumably create excess noise and even odors. The halakha continues to note that the other occupants of the courtyard may prevent anyone else from engaging in activities “that other people are not accustomed to do in their courtyards.” Maimonides includes an exception to this rule: one can never object to a neighbor doing her⁵⁹ laundry, “Because it is not the way of Jewish women to shame themselves at the riverside.”⁶⁰ This demonstrates that certain customs and halakhah will trump disturbances to others.

For all of the laws concerning bothersome activities, one must object to the activity, such as bringing an animal into the courtyard, or installing a mill, in order to prevent the activity from occurring. However, even if no one objected in the beginning,

⁵⁹ The use of the female pronoun reflects the gender in the text

⁶⁰ Hilkhoh Shekhenim 5:3

even after a long period, one still may issue a call to stop the activity.⁶¹ One can permanently establish their activity as permissible by constructing a wall at least ten handbreadths high. Maimonides argues in halakhah 5:5 that if neighbors saw that someone was constructing a wall and did not object then they have lost their right to object to the activity occurring on the other side of the wall. This makes sense, as it would be too risky to operate a livelihood under the threat that it could be stopped at any moment. These laws only apply to joint-owners of a courtyard. Someone who is renting the space can never achieve permanent residence for his activity even with an appropriate barrier.

The Rabbis created a separate law specifically preventing one of the joint owners of a courtyard from bringing in more people to live in his house.⁶² Maimonides reasons that more people living in a house will “increase traffic” in the courtyard. Maimonides does not engage in this discussion at length, however some modern laws restrict the number of occupants in buildings or housing communities for the same reason.⁶³ A second halakhah specifically refers to disturbances caused by a greater number of people in a courtyard. If someone owns a house that opens onto one courtyard and is situated adjacent to a second courtyard, the owner cannot open an entrance onto that second courtyard. This, similar to allowing more people to live in a house, could cause too many people to use the courtyard.⁶⁴

⁶¹ *ibid* 5:5

⁶² *ibid* 5:9

⁶³ c.f. New York City Real Property Law 235-f: “Landlords may limit the total number of people living in an apartment to comply with legal overcrowding standards.”

“New York City Rent Guidelines Board.” New York City Rent Guidelines Board. Accessed 3/5/2012 <<http://www.housingnyc.com/html/resources/faq/roommates.html>>.

⁶⁴ *Hilkhot Shekhenim* 5:8

Along similar lines, if someone or a group permanently closed a street to make it into a cul-de-sac, the owners of that street may prevent anyone from re-opening that entrance as it would allow outsiders to travel where they live.⁶⁵ While clearly intended to maintain a higher quality of life, these laws present the issues of accessibility and mobility found in a city since they require a more circuitous route for travel.

Modern zoning laws intended to reduce disturbances to neighbors may also reduce mobility in a city, as I will argue in chapter 4, by encouraging gated communities and private streets over mixed-use areas. Zoning laws seem to share much with rabbinic law. Neighbors can prevent each other from opening up a craftsman's stores on a lane since this would bring more people into their living space.⁶⁶ They can claim "you are ruining my livelihood," due to the noise pollution and over-crowding. However, if a shop or bathhouse already exists, they cannot protest. Maimonides reasons that in such a case additional stores will not increase traffic noticeably.

For houses on a private street, ostensibly, fewer people use the street and the neighbors can prevent the entrance of professions as well.⁶⁷ This list includes doctors, weavers, craftsman, and teachers of non-Jews. Along the same lines of reasoning as before, the halakhah indicates that commercial activity increases foot traffic beyond what residents expect of residential areas. These rules also apply to courtyards and in this case neighbors could even prevent a Jewish scribe from opening his business in their neighborhood.⁶⁸ Additionally in all three situations, a non-resident could be prohibited from engaging in all of these activities even if another business already exists. He may

⁶⁵ ibid 5:15

⁶⁶ ibid 6:8

⁶⁷ ibid 6:11

⁶⁸ ibid 6:12

decide to establish himself in the city by paying taxes and could then engage in business with the aforementioned restrictions.

Someone who chooses to live in an urban setting must learn to coexist with other people, as a resident or not. The Rabbis' rules sought to help people maintain a certain quality of life in residential centers and quiet streets. One can extrapolate from the fact that one could start a business in any location where one existed already that these Jewish villages probably contained one or more commercial areas. Again it is clear that the Rabbis understood that we must make restrictions on individuals in order to create sustainable communities.

Communal Payments for Improvements

In order to create an urban center people must incur certain communal costs even when only part of the community receives direct benefit. For example, street improvements might be necessary only on a few streets in any given year, but everyone will share the cost. Even if one does not live on a street, in order to create a functioning network for traveling, each street must be in good condition. In most cases, many people will derive benefit from an improvement directly or indirectly and therefore everyone shares the financial burden. In *Hilkhoh Shekhenim*, the halakhoh regarding communal fiscal responsibility includes both improvements made in the private domain as well as the public domain.

In the private domain, the specific improvements noted in *Hilkhoh Shekhenim* relate to shared courtyards. In halakhah 2:14 we learned that if one person wants to build a wall, then the wall can be built regardless of his neighbors wishes. Halakhah 2:15 extends this law and rules that even if only one person wanted a wall, both parties on

either side of the wall must contribute money and space to the construction of the wall. The wall in a courtyard must be four cubits tall, and the width depends on local customs. In contrast to shared land in a courtyard, if someone wants a wall separating his fields from another's he must build it solely on his property unless his neighbor wants to share the wall.⁶⁹ Maimonides notes that in either case a permanent fixture should be placed on the wall indicating who provided the stones and the space in case the wall falls or is removed later. Maimonides makes specific reference regarding walls that all laws follow local customs.

Even though everyone must contribute to a wall in a courtyard the owners of a shared courtyard need only construct a wall someone requests to build one. Law and/or local custom require some improvements in a shared courtyard for which everyone must contribute.⁷⁰ Several halakhot mention the need for security, including a door, bolt and lock.⁷¹ If someone lives in the house that shares a courtyard then he is responsible to pay for all of the required communal improvements. If, however, he does not live in that house full time, the law only requires him to contribute money for security improvements.

Other halakhot require communal payment for improvements and services not only for a shared courtyard but for the entire city or village. Since the Rabbis are writing for a specifically Jewish area, the halakhot require the Jewish community to have such items as a synagogue and Torah scrolls.⁷² *Hilkhot Shekhenim* also includes items such as walls, gates, and bolts, and anything else required by local law. The courts can compel

⁶⁹ Hilkhot Shekhenim, 2:16

⁷⁰ ibid 5:1

⁷¹ c.f. 5:1, 5:2, 6:1

⁷² ibid 6:1

someone who buys an entire city in Eretz Yisrael to build four paths in all directions to “encourage settlement.”⁷³ In addition, in the Holy Land, the courts can compel people who own fields to dig trenches to keep animals from leaving their designated spaces. One wonders if the courts ever implemented this law in the land or whether this was merely a rabbinic ideal. Nevertheless, the concern for public welfare in populated areas is clear.

If someone lives permanently in a city, the law requires that he pay for capital projects and ongoing improvements to the city.⁷⁴ Such capital expenses at the time of the Talmud included cisterns, caverns, and irrigation ditches used for water collection and storage. Maimonides does not mention specific ongoing improvements, but from previous halakhot one could assume that these include road improvements and sentries.⁷⁵ Someone who lives elsewhere most of the time but owns a house in the city only has to pay capital expenses.

In addition to whether one resides in a city full time or not, the Rabbis also consider a resident’s proximity to the improvement made to the city. Some inhabitants of a city will derive benefit from an expense no matter where they live, such as improved security to the city.⁷⁶ However, other improvements, such as dividing walls, irrigation, and new wells might only benefit those living near the improvement. Halakhah 6:4 uses the example of a wall to rule that if the government levies a tax to build a wall, those living closer to the wall must pay more than those who live further away.

⁷³ ibid 6:2

⁷⁴ ibid 6:3, 6:5

⁷⁵ ibid 6:6

⁷⁶ ibid 6:1

The Rabbis presume that one's proximity to a given improvement becomes an issue of whether or not he receives a benefit from the improvement or expense. Thus in halakhah 6:6 the Rabbis note that everyone, including orphans, must pay for security. The inclusion of orphans indicates that absolutely everyone must contribute. Torah scholars, Maimonides notes, are exempt from paying for security because the study of Torah protects them. In the same halakhah we learn that everyone, including Torah scholars must pay for improvements to streets because they also derive benefit from good streets.

Finally, the Rabbis consider what happens when people must pay for something communally but the project fails during construction. They use the example of irrigation. Everyone must pay for an irrigation system, however if no water comes then his or her money is returned.⁷⁷ Maimonides does not include any more discussion on this issue, such as who is responsible should this happen. This places the responsibility for public works on the people completing the project thus ensuring completed and quality projects.

Maimonides gathered several different examples of situations requiring the community to pay for improvements or ongoing expenses in a city, analogous to modern local taxes or homeowners' association fees. He makes distinctions between requiring payments in a private domain versus a public domain to show that if someone derives benefit from a project, then that person must pay. Maimonides neglects to mention the secondary benefits that everyone receives from public projects. This secondary benefit increases quality of life for everyone, including those who do not directly benefit from a project or expense. For example, in halakhah 6:6, we learn that Torah scholars do not need to pay for guards because they derive their protection from the Torah. Even though

⁷⁷ ibid 6:7

they are well protected, Torah scholars will probably have a higher quality of life if everyone else is safe and protected. Thus one could make the case that they should still pay for guards and protection for the city. Regardless of this omission, again we see that regarding communal payments Judaism places requirements that limit individuals for the sake of the community.

Air Pollution

In the previous chapter, I identified the basic laws enacted to preserve air quality in a city. In the Mishnah, the Rabbis identified air pollution caused by tanneries, dye shops, and disposal of animal carcasses.⁷⁸ While the Rabbis did not explicitly call this air pollution or identify the odors as toxic, they knew that the awful smell affected the quality of life for urban residents. The Mishnah called for owners of tanneries to construct them only on the east side of the city because the eastern winds were the weakest and therefore the smell would not envelop the city.⁷⁹ The Rabbis of the Mishnah also required that threshing floors have at least fifty cubits on either side to prevent the chaff from blowing into a neighbor's property or house. In all of these situations the laws required that the owner take precautions to limit the burden on others, continuing the notion that Judaism restricts individual action for the good of the community.

Maimonides compiles three halakhot that place further requirements on those who engage in activities that emit air pollution. These halakhot also explain the responsibility if wind causes damage by chaff. In *Hilkhot Shekhenim*, halakhah 11:1, if any activity creates dust or air pollution, such as a threshing floor, a latrine, or other work, the worker must distance himself from his neighbors so that they are not affected. In previous

⁷⁸ Mishnah Baba Batra 2:3, 2:8

⁷⁹ *ibid* 2:9

halakhot about disturbances to others, one's neighbors could prevent him from engaging in a certain activity and require him to move.⁸⁰ In halakhah 11:1 the Rabbis only require that a worker distance himself appropriately to reduce his impact. The Rabbis made clear the impact of the "damage" due to air pollution by equating it to damage done by arrows.

In spite of the fact that one who does not account for the wind causes damage, in halakhah 11:2 the Rabbis rule that if an ordinary wind comes and causes damage due to the chaff from a threshing floor or some other activity, no one pays damages because the wind caused the damage. This seems to contradict the previous halakhah, however its inclusion demonstrates that some professions or spaces, such as a latrine, are necessary even when they reduce the quality of life.

While one does not have to pay for damages caused by a normal wind, if one engages in an activity that causes excessive noise and damage occurs, perhaps from the vibrations of a millstone for example, he must pay restitution.⁸¹ In these situations, the person responsible could have stopped his activity at anytime he knew that the noise or vibrations were becoming excessive. The halakhah notes that one must move far enough away from his neighbor so as not to cause him such damage.

Even though the Rabbis do not call this damage noise or air pollution, they still knew that foul odors could make people sick and that loud noises affect quality of life in an urban setting. The responsibility, even when there exists no prosecutable offense, falls upon the person engaging in the activity to take action in order to improve the quality of life for all.

⁸⁰ Mishneh Torah Hilkhoh Shekhenim 5:3, 6:8, 6:11

⁸¹ *ibid* 11:3

Conclusion

In *Hilkhhot Shekhenim*, Maimonides gathered many halakhot related to urban living. Some of these laws focused on relationships between individuals in a private setting and other focused on an individual's impact on the larger community. Organized into five categories – damage because of sight, disturbances to others, division of shared property, payment for communal projects, and air pollution – these laws provide insight into the concerns of the Rabbis from the period of the Mishnah up until Maimonides' time. Each category sought to solve a different issue in an urban setting, and most accomplish their goal by restricting individuals in order to improve the community – a key tenet of sustainable development.

Not all laws related to urban planning uncovered in *Hilkhhot Shekhenim* necessarily encourage sustainable development. Laws related to *hezik re'iah*, damage due to sight, highlight that the Rabbis were concerned about Jews adherence to halakhah which may or may not lead to a higher quality of life. The Rabbis derived some laws from commandments in the Torah, yet others developed out of the milieu beginning in the time of the Mishnah, just as our modern laws are based upon historical conditions and a hope for the future. In the next chapter I will connect modern laws to those of the Rabbis and introduce some modern urban planning ideas.

Chapter 4 - Modernity

The first three chapters of this thesis explored the nature of urban planning in Jewish law. Tracing the evolution of these laws within the Tanakh, Mishnah, and the Mishneh Torah revealed that urban planning has always been a concern in our tradition. In each chapter I briefly touched upon the connection between Jewish and modern laws or urban planning concepts. The authors of our early Jewish texts could not have foreseen the incredible metropolises containing millions of people in a small geographical area. Nevertheless, even with our modern technology and soaring skyscrapers, many of the ancient Jewish laws uncovered in our texts provide guidance for modern laws. Jewish law restricts individual action for the communal benefit, which enables urban planners to create modern sustainable cities.

By placing community above the individual in order to create a higher quality of life the Rabbis inherently created a vision for a sustainable community. Even though we can find modern laws that focus on community, American society seems focused on individual rights trumping the welfare of a community. This has led to our massive urban sprawl, a car-dependent society, and infrastructure that is ill-suited to meeting the needs of an exponentially growing population. The Rabbis' vision for a community emphasized quality of life over productivity by restricting business and trade in certain areas. Jewish law supports this vision by regulating individual's actions.

Most of the laws uncovered in the Jewish texts rely on the fact that an individual or group can compel (*l'chof*) or prevent (*l'akeiv*)⁸² a neighbor or group of neighbors from engaging in certain activities, such as making improvements to their house, dividing

⁸² Kaf feh feh – to bend, compel, force (Jastrow 661). Prevent – ayin, kaf, vet, prevent or delay (Jastrow 1077)

shared property and using a shared courtyard. This allows for changes both at the beginning of a development project and also when someone lives in a space. Furthermore, the city planners can adapt their plans to people's different needs at various stages of urban development in order to create a city that can grow and expand sustainably.

In today's society we have analogous laws and rules that can prevent an individual from engaging in certain activities or compel him to take actions. City laws allow officials to prevent someone from disturbing his neighbors or starting a loud business in certain areas.⁸³ Other laws force an individual to act: often there are ordinances requiring parties to maintain their properties, prune trees, and creating accessible buildings.⁸⁴ Urban planners use zoning laws to enforce some of these regulations and create separate commercial, industrial, and residential centers which reflect many Jewish laws.⁸⁵ In many instances governments must enforce these laws as a city begins to expand beyond already established limits.

Zoning laws seek to separate land use in order to control building types and population density.⁸⁶ Modern zoning laws as we know them originated at the end of the 19th century in Europe and soon spread to the United States. Zoning laws accomplish their goals by differentiating between commercial, industrial, and residential areas. Jewish law addressed all three of these spaces in the Mishnah and Mishneh Torah

⁸³ From the City of Shaker Heights, OH website: "Noise from air conditioners, construction equipment, domestic power tools, explosives and firearms, loudspeakers, radios, televisions, and musical instruments is prohibited if it exceeds certain levels. In addition, excessive noise from motor vehicles, motorcycles, and motorized bicycles is not allowed."

"Law." City of Shaker Heights. Accessed 3/5/2012. <<http://shakeronline.com/about-shaker/faq/343>>.

⁸⁴ c.f. footnote 32

⁸⁵ "Zoning." *Encyclopedia Britannica Online*. Encyclopedia Britannica Inc., 2012. Web. Accessed 2/28/2012. <<http://www.britannica.com/EBchecked/topic/657885/zoning>>.

⁸⁶ *ibid*.

utilizing a basic form of zoning. In the Mishnah, the Rabbis constructed industrial zoning laws by requiring that residents situate tanneries, graves, and the carcasses of animals at least fifty cubits from the city due to their odor.⁸⁷ Furthermore, tanneries were specifically to be placed on the east side of the city where the weakest winds blow.⁸⁸ Similar to the Jewish laws, modern industrial zoning seeks to balance our need for industries that create excessive pollution, such as generating electricity and creating steel, with the fact that both noise and air pollution close to residential areas discourages development and causes a range of health issues.

According to the Mishneh Torah the Rabbis enacted many laws intended to keep commercial and residential areas separate. If a street contains only residential houses, a neighbor could prevent some from opening up a craftsman-type shop on the street because it reduces their quality of life.⁸⁹ Similar modern zoning laws exist primarily outside of city centers, which then create the classic suburban model of residential areas and strip-malls for commercial areas. Unfortunately, these practices, while reducing noise in the residential areas, mean that one has to travel far, often by automobile, in order to go shopping. Recently, urban planners have begun to question these practices in order to create sustainable urban centers.

In order to create sustainable cities, urban planners have shifted away from separately zoned commercial and residential areas and moved towards mixed-use developments.⁹⁰ Mixed-use design reduces travel, saves time and emissions, while at the same time providing access to basic necessities on a regular basis (allowing for fresher

⁸⁷ Mishnah Baba Batra, Chapter 20:8

⁸⁸ Mishnah Baba Batra, Chapter 2:9

⁸⁹ Mishneh Torah, Hilchot Shekhnim 6:8

⁹⁰ "Trip Generation Tool for Mixed-Use Developments." Environmental Protection Agency. <http://www.epa.gov/smartgrowth/mxd_tripgeneration.html>.

produce, for example).⁹¹ This allows a city to grow and accommodate the needs of a multiplying population without increasing the burden on the environment. An ancillary benefit of mixed-use development is that it enables an aging population who cannot drive to remain in their homes longer than in a car dependent society. However, transportation technology that we take for granted – cars, trains, even bicycles – were only invented in the past 200 years, and thus the Rabbis never conceived of the concept of urban sprawl.

Even though the Rabbis intended to separate commercial and residential space, they could never have imagined that a time would arrive when someone could not walk to their market or village center. Traditional Jewish areas today often contain mixed-use development and allow one to walk to a synagogue because of the rules prohibiting travel on Shabbat. Even though the Rabbis codified these laws to prevent desecration of Shabbat, they also created small sustainable communities. Modern Jewish thought that allows for travel on Shabbat, a practice allowed by both the Reform and Conservative movements, has the unfortunate consequence of allowing people to live far away from the synagogue.⁹² Consequently there is a breakdown of close knit communities and the mixed-use arrangements they foster.

Once officials zone an area for certain properties, developers must divide larger properties in order to maximize the use of space as cities expand. In the Mishneh Torah, *Hilkhos Shekhenim* chapter 1, the Rabbis enacted rules about dividing shared property when one partner compels the others to do so. Today, situations exist where these laws might be applicable as cities expand further and suburbs develop around them. However,

⁹¹ "Sustainable Urban Development." American Society of Landscape Architects. Accessed 2/15/2012. <<http://www.asla.org/ContentDetail.aspx?id=23720>>.

⁹² "Travel on Shabbat." Conservative Judaism. Vol 14, Num. 3. Spring, 1960. pg. 50

this expansion, often called sprawl by urban planners, is not sustainable.⁹³ People could continue to live in larger properties further away from their jobs, but transportation and quality of life become major burdens in these situations. Adapting the Jewish laws regarding division of properties to modern cities causes us to ask how much space we actually need and how to make the best out of our public and private spaces.

One could also apply Jewish law's insights to private spaces. For example, if someone forces another to divide their apartment, perhaps a certain dimension of room should be necessary to differentiate between a closet and a bedroom. If all partners voluntarily divide their space (or choose to take possession of an already divided space), they may act as they wish. Such cases abound in New York City where people often add walls to turn a one bedroom into a two or three bedroom apartment.⁹⁴ In *Hilkhot Shekhenim* chapter 1 Maimonides focused primarily on the division of private space; division of public spaces may follow from those laws.

Today, our elected government decides how we use shared public spaces including parks, sidewalks, streets and public buildings such as libraries and schools. Each time that our elected officials make a decision about our space they affect the sustainability of the city. Regarding street design, the modern concept of a sustainable city may differ from that of our Jewish texts based upon our current methods of transportation. Until very recently in Jewish history, people primarily travelled with the assistance of animals and had no need for dividing the street. These horses, donkeys,

⁹³ "Urban Sprawl." *Encyclopædia Britannica Online*. Encyclopædia Britannica Inc., 2012. Web. Accessed 3/4/2012 <<http://www.britannica.com/EBchecked/topic/962023/urban-sprawl>>.

⁹⁴ Santora, Marc. "The Fall of Temporary Apartment Walls." *The New York Times*, Online Edition. Accessed 3/4/2012. <<http://www.nytimes.com/2010/07/18/realestate/18cov.html>>.

mules, and camels would either carry the load on their backs or would be strapped to carts to carry both people and goods.

The fact that the Rabbis of the Mishnah ruled about the pruning of trees based upon the height of camel illustrates how transportation methods can affect many parts of a society. Today we can take a train, bus, or car from point to point within cities. Our government decides how to best divide our streets to allow for efficient transportation. Like the Rabbis who ruled on the smallest allowable size for a divided space, the government now decides how to allocate space to cars, bikes, trains and buses. In these situations, the government may restrict individual action in order to benefit the entire community and allow for its expansion. These restrictions might include innovations such as bus-only lanes, protected bike lanes, or banning certain types of transportation equipment such as a moped within a city.

In addition to regulating public space, the governmental enactments are often analogous to Jewish law in regard to division of private space. The Rabbis rule that those who jointly own courtyards can only compel another party to divide the space until the minimum area of 4x4 cubits per party. Maimonides explains that this is the amount of space needed to place a load upon returning home. Many cities in the United States have parking minimums, meaning that for each residence must include a certain number of parking spots. In some cities where cars may not be required many urban planners call for the government to remove this requirement when it acts as a barrier to sustainability.

Most people today do not construct their houses around courtyards as was done during the time of the Tanakh and Talmud,⁹⁵ but many homes do have other small spaces around them, such as backyards, driveways front lawns. All houses have some access to the street, which may be a public street or a private cul-de-sac. Some private streets have fences to further reduce the number of other people entering their space.⁹⁶ These different types of streets are found in the Mishneh Torah in those sections that discuss whether an individual can force others to open a street or construct a gate on a street. Unfortunately, gated communities and cul-de-sacs reduce mobility in a city. This might not impair a small village such as existed a thousand years ago, but today they require one to travel greater distances than if the streets were all interconnected to form a cohesive network. The perception that these separated areas create a high quality of life and privacy, further perpetuated by cheap fuel for travel purposes, causes many people to choose these living conditions. The reduced mobility of cul-de-sacs and gated communities do not allow for growth or expansion of a city and therefore urban planners do not include them in sustainable development.

As cities expand beyond small communities, residents need greater access to basic needs such as water, sanitation, and security. The Tanakh addresses several of these issues, such as walls for cities, water supplies, the idea that people should separate waste from living spaces.⁹⁷ The need for these projects continues to today. Major cities continue to expand their utilities to meet the needs of residents, such as a new major water tunnel into New York City, almost complete after 40 years of construction.⁹⁸

⁹⁵ c.f. chapter 1, pg. 4

⁹⁶ Mishneh Torah, Hilkhoh Shekhenim 5:14-15

⁹⁷ c.f. chapter 1

⁹⁸ "City Water Tunnel No. 3" New York City Department of Environmental Protection. 2006. PDF

These public works allow cities to continue to expand and grow and thus are crucial to sustainable development. In addition to these basic necessities, modern public utilities also include fuel supply, including natural gas and electricity, access to the Internet and communication networks. As these all incur associated costs, someone must pay for their realization.

In chapter three I explored the Jewish law that requires a community to pay for improvements to a city. The law rules that those who receive most benefit for the improvements must pay a larger amount. The text provides two examples: everyone, including the orphan, must pay for the improvements to walls for security but not Torah scholars who derive their protection from the Torah. However, even Torah scholars must pay for improvements to streets because they derive benefit from streets. These laws primarily address the direct beneficiaries of the improvements, that is, those who live on a street will benefit most from an improved street. While everyone who receives a direct benefit from a project should pay for its cost, sustainable urban development stresses both direct and indirect benefits to projects. Indirect benefits come from projects that improve the lives of others in the community in addition to those who receive direct benefit from a particular improvement or project. For example, improved streets in one part of a city facilitate a connected transportation network that allows all residents to reduce their travel times. Thus, the general taxes from the entire city should go to improving those streets rather than having the cost borne by only a few. With this in mind, more people may be expected to pay for costs that benefit the entire community.

Today, most societies use taxes to pay for communal projects. Often it is left to elected officials to make decisions about what projects should move forward, even when

a minority disapproves of the project. Similar to the examples in the Mishneh Torah, modern projects may also have both direct and indirect benefits such as my example of street improvements. Other projects, such as gates around a street or installing a phone line to one building might not benefit everyone and only those who live in those areas should have to pay. These modern laws mirror the concept of Jewish law that those who receive benefit from projects must finance them. Communal payment for projects shows how both Jewish and modern laws may compel or restrict an individual in order to benefit the community – a crucial aspect of creating sustainable urban development.

Since antiquity, as cities expanded people replaced trees with buildings. Trees were vitally important to the Israelites in the Torah, as evidenced by such laws which prohibit cutting down fruit trees during war.⁹⁹ Trees continued to be important to the Rabbis of the Middle Ages who even stated that if one is planting a tree and the Messiah arrives, first finish planting the tree and then go greet the Messiah.¹⁰⁰ In the Mishnah Baba Batra chapter two, the Rabbis created many laws regarding the pruning, placement, and cutting down of trees.¹⁰¹ The abundance of these laws demonstrates their importance to the society.

Today we value trees for the same reasons as the Rabbis and more. Modern understanding of trees regarding air quality and aesthetics has led to many more laws encouraging planting of trees and restricting the cutting of trees. As I explored in chapter 2, regulations that permit pruning trees over streets and power lines echo the laws in the Mishnah. Even though trees hold so much importance to us, both today and two thousand years ago, people recognized that we must sometimes sacrifice trees in order to

⁹⁹ Deut. 20:19

¹⁰⁰ Avot d'Rabi Natan 31

¹⁰¹ c.f. chapter 2

travel and live in a way that considers human need and comfort. As we now understand trees to be beneficial not only for their fruit but also for improving our air quality and aesthetics,¹⁰² several cities in the United States have begun tree planting campaigns.¹⁰³ While some people want, and often do, cut down vast quantities of trees for houses and front yards, some cities prevent residents and developers from cutting down trees without a permit.

Just as trees may prevent development of otherwise lucrative real estate, other laws restrict or force certain building practices. In the Tanakh, God commands the Israelites to construct a parapet on their roofs to prevent someone from falling off.¹⁰⁴ In Chapter 3 I explained how Maimonides and the Rabbis of the Talmud used the concept of building a barrier to ensure that homeowners maintained their privacy as well. The law from the Tanakh, however, represents a key aspect of urban planning because it takes other people into consideration. The law explicitly states in Deuteronomy that this barrier is not for the benefit of the owner of the house but for guests or other person who may be on his roof. It is an example of an ancient law that explicitly compels an individual to make a change for the benefit of the community.

Modern building regulations may force a homeowner to install protective devices, such as fences around pools, railings on stairs, and child safety bars in windows. The Biblical law could also provide a Jewish context to electricity safety regulations and other building codes. The Rabbis interpreted this law not only as a protective physical barrier but also in order to create privacy and these laws may be especially relevant to our

¹⁰² Sadio, Syaka & Negreros-Castillo, Patricia. "Trees outside Forests: Contributing Towards Sustainable Development." 2003 World Forestry Congress. Accessed 2/25/2012
<<http://www.fao.org/DOCREP/ARTICLE/WFC/XII/0866-B5.HTM>>.

¹⁰³ Ibid. Cities include New York City, Milwaukee, Tampa, Sacramento.

¹⁰⁴ Deut. 22:8

society in an age of buildings with exteriors constructed entirely out of glass. These buildings blur the lines between public and private space, especially at night when one can see another's entire apartment. This may lead to an invasion of privacy or to onlookers seeing something they would prefer not to.

In chapter 3 I explained a major concept in Jewish law called *hezik re'iah*, damage because of sight, which influences Jewish building laws found in the Mishneh Torah. This important law stressed the need for privacy and placed the onus upon viewers from looking in upon others. To understand this better we look at one of the examples in the Mishnah. Two people, parties A and B, are living in homes adjacent to each other with a wall separating them. If party B wishes to build an addition to his house, a situation could arise that he could now look out a window and over the wall and into the home of party A. The law requires that party B, the one who did the construction, to either increase the height of the wall or not to put in any windows that would look into part A's house.¹⁰⁵ This and other laws in the Mishnah and Mishneh Torah actually rule in opposition to most of our modern laws.

Today, the responsibility falls primarily upon the resident (part A in the above example) to close their drapes or shades in order to prevent someone from looking in. These laws stress the importance that an individual has the right to privacy in their own homes and that they can use their entire part of their homes that should be private.¹⁰⁶ Of the many types of laws and restrictions uncovered regarding urban planning in Jewish law these privacy laws contrast most with our society and values. Modern urban planners have adopted analogies to Jewish laws into their visions for a sustainable city, but they

¹⁰⁵ Mishnah Baba Batra 2:4

¹⁰⁶ This excludes parts of the home visible from established public areas.

have not taken privacy into account. Some modern laws allow for sanctions only in the most egregious cases of privacy infringement. For example, “Peeping Tom” laws exist in several states to punish those who take extraordinary measures to look into someone’s private home. For example, Georgia’s Peeping Tom law states:

“It shall be unlawful for any person...who peeps through windows or doors, or other like places, on or about the premises of another for the purpose of spying upon or invading the privacy of the persons spied upon and the doing of any other acts of a similar nature which invade the privacy of such persons.”¹⁰⁷

This modern law illustrates how damage because of sight is still considered to be actual damage, punishable in courts, although it does not affect how a city is constructed. While people might value privacy today, with this concept the ideal cities in Jewish and modern society begin to differ. Nonetheless, other modern laws exist to prevent disturbances between two people or disruptive situation generated when an individual’s behavior can affect a larger group.

In the Mishnah and Mishneh Torah, laws relating to noise pollution and air pollution could prevent an individual from engaging in an activity in a residential area. For example, one must distance their threshing floor so that the chaff will not blow into another’s house.¹⁰⁸ Several restrictions exist today in order to create a better quality of life, and also to reduce the health concerns caused by air pollution. Nationally, the United States enacted the Clean Air Act in 1990 because scientists demonstrated that not only is pollution unpleasant, but that it can lead to major health issues.¹⁰⁹ While industrial zoning prevents major polluters from constructing factories near residential

¹⁰⁷ “Peeping Toms.” National Center for Victims of Crime. Accessed 2/25/2012.
http://www.ncvc.org/src/main.aspx?dbID=DB_Georgia710.

¹⁰⁸ Hilchot Shekhnim 11:1. Mishnah Baba Batra 2:9

¹⁰⁹ “Clean Air Act.” Environmental Protection Agency. Accessed 3/5/2012.
<<http://www.epa.gov/air/caa/>>.

areas, local governments have created laws to limit individuals from polluting as well.¹¹⁰

People create noise pollution when they operate loud equipment, such as a mill or modern construction tools, or during gatherings where there is loud music or a large crowd.

Everyone tolerates noise at different levels and at different times during the day. Most local governments enacted noise ordinances to police egregious noise-polluters, such as Los Angeles. The Los Angeles Police Department recognizes the grey area regarding noise and notes, as the Rabbis did, that:

"Certain noise levels must be tolerated by all citizens in order for normal functions of urban life to continue. However, excessive, unnecessary, and/or annoying noise is subject to regulation."¹¹¹

Noise pollution and air pollution affect quality of life and the health of residents of urban areas. As people in cities live closer together the concentration of the pollution intensifies more than in rural settings, and thus regulations must be in place to reduce these pollutants. These laws help create sustainable cities by enabling more people to live together in a healthy environment.

¹¹⁰ "Air Pollution." New York City Department of Environmental Protection. Accessed 3/5/2012. <<http://www.nyc.gov/html/dep/html/air/index.shtml>>.

¹¹¹ "Noise Enforcement Guidelines." Los Angeles Police Department. Accessed 3/5/2012. <http://www.lapdonline.org/special_operations_support_division/content_basic_view/1031>.

Conclusion

Sustainable urban development allows cities to grow and expand to best meet the needs of their residents. Throughout my analysis I have claimed that biblical and rabbinic laws helped create sustainable cities because they restricted individual's actions for the good of the community. This derives from sustainable urban planning theory. Such theory favors such ideas as transportation that uses the lowest amount of energy, people living in proximity to each other but comfortably so, and reducing the burden of city-living on city dwellers. Reducing burdens such as noise, air pollution, and congestion improve quality of life. Modern laws do not yet reflect the most sustainable choices. Thus the methods we use to fund streets are insufficient for sustainable cities and other land use allowances encourage sprawl.

Some people dispute sustainable urban planning theory and argue that when left to their own devices, people make decisions that lead to better cities. Economics of space, however, dictate that only so many people can drive a car by themselves before a city becomes impossible to navigate. Furthermore, over time people will choose the cheapest form of energy rather than consider secondary costs such as air pollution and noise.

As the earth's population continues to grow exponentially and we begin to envision a planet with 10 to 20 billion people we must look at studies that have shown that our current rate of consumption is unsustainable. In fact, the average American consumes over five times as much energy as their European counterparts. The Europeans' conservation is due to the intentional creation of sustainable communities and urban development policy.¹¹² Without sustainable urban planning laws that restrict an

¹¹² "Making better energy choices." Worldwatch Institute – Vision for a Sustainable World. Accessed 3/5/2012. <<http://www.worldwatch.org/node/808>>.

individual's self-centered choices, our planet will run out of resources and become uninhabitable.

Finally, while many modern regulations mirror several of the Rabbis halakhot, few regulations exist concerning privacy.¹¹³ The laws regarding privacy stand out because they do not affect commerce or improve the productivity of a city. They serve only to improve quality of life, and thus highlight a major difference between modern laws and Jewish law. Jewish law, like sustainable urban planning theory, seeks to create cities that have a high quality of life and meet the needs of the community over the individual. Most of our current regulations do not seek to improve quality of life, but only to address individuals needs with little long-term planning. In order to move forward and create sustainable cities, we must look back to our Rabbis who recognized the inherent holiness in creating community that requires participation and commitment from its members.

These Jewish laws call Jews to advocate for sustainable urban development laws knowing that they are rooted in the Tanakh, the Mishnah, the Talmud, and the Codes of Jewish law. Modern Jews discuss the task of creating holy communities in their synagogues. These discussions should extend to the outside community as well. When we work to create sustainable communities, we work to increase the holiness of those communities as well.

¹¹³ outside of peeping tom laws

Appendix A - Selected Texts from the Tanakh

בראשית פרשת בראשית פרק ד

(יז) וַיֵּדַע קַיִן אֶת אֲשֶׁתוֹ וַתֵּהָר וַתֵּלֶד אֶת חָנוֹךְ וַיְהִי בִנָּה עִיר וַיִּקְרָא שְׁמָהּ הָעִיר כְּשֵׁם בְּנוֹ חָנוֹךְ :

בראשית פרשת וירא פרק יח

(כח) אוֹלִי יִחְסְרוּן חַמְשִׁים הַצַּדִּיקִים חַמְשָׁה הַתְּשׁוּחִית בַּחֲמִשָּׁה אֶת כָּל הָעִיר וַיֹּאמֶר לֹא אֲשַׁחִית אִם אֲמַצָּא שָׁם אַרְבָּעִים וַחֲמִשָּׁה :

ויקרא פרשת בהר פרק כה

(כט) וַאֲיֵשׁ כִּי יִמְכֹּר בֵּית מוֹשֶׁב עִיר חוֹמָה וְהִיָּתָה גְּאֻלָּתוֹ עַד תֵּם שְׁנַת מִמְכָּרוֹ יָמִים תִּהְיֶה גְּאֻלָּתוֹ :

בראשית פרשת חיי שרה פרק כג

(י) וַעֲפָרוֹן יֹשֵׁב בְּתוֹךְ בְּנֵי חַת וַיַּעַן עֲפָרוֹן הַחִתִּי אֶת אֲבִרְהָם בְּאָזְנֵי בְנֵי חַת לְכָל בָּאִי שֶׁעָר עִירוֹ לֵאמֹר :

דברים פרשת כי תבוא פרק כח

(ג) בָּרוּךְ אַתָּה בָּעִיר וּבָרוּךְ אַתָּה בַּשָּׂדֶה :

דברים פרשת כי תצא פרק כה

(ה) כִּי יֵשְׁבוּ אַחִים יַחְדָּו וּמֵת אֶחָד מֵהֶם וּבֶן אִין לֹא תִהְיֶה אֲשֶׁר תִּהְיֶה הַמֵּת הַחוּצָה לְאִישׁ זָר יִבְמָה יָבֹא עָלֶיהָ וּלְקַחְהָ לֹא לְאִשָּׁה וַיִּבְמָה :

במדבר פרשת בלק - פינחס פרק כה

(ט) וַיְהִיו הַמַּתִּים בַּמַּגִּפָּה אַרְבָּעָה וַעֲשָׂרִים אָלֶף :

(י) וַיִּדְבֹּר יִקְוֹק אֶל מֹשֶׁה לֵאמֹר :

(יא) פִּינְחָס בֶּן אֶלְעָזָר בֶּן אַהֲרֹן הַכֹּהֵן הַשֵּׁיב אֶת חַמְטִי מֵעַל בְּנֵי יִשְׂרָאֵל בִּקְנָאוֹ אֶת קִנְאָתִי בְּתוֹכָם וְלֹא כְלִיתִי אֶת בְּנֵי יִשְׂרָאֵל בִּקְנָאָתִי :

(יב) לָכֵן אָמַר הִנְנִי נֹתֵן לֹא אֶת בְּרִיתִי שְׁלֹם :

(יג) וְהִיָּתָה לוֹ וּלְזֶרְעוֹ אַחֲרָיו בְּרִית כְּהֻנַּת עוֹלָם תַּחַת אֲשֶׁר קָנָא לְאַלֹהֵיו וַיִּכְפֹּר עַל בְּנֵי יִשְׂרָאֵל :

(יד) וְשֵׁם אִישׁ יִשְׂרָאֵל הַמֶּכָּה אֲשֶׁר הִכָּה אֶת הַמַּדְיָנִית זָמְרִי בֶן סִלּוּא נָשִׂיא בֵּית אָב לִשְׁמֹעַי :

(טו) וְשֵׁם הָאִשָּׁה הַמֶּכָּה הַמַּדְיָנִית כְּזָבִי בַת צוּר רֹאשׁ אֲמוֹת בֵּית אָב בְּמִדְיָן הוּא :

דברים פרשת כי תצא פרק כג

(יג) וַיֵּד תִּהְיֶה לְךָ מַחוּץ לַמַּחֲנֶה וַיִּצְאָתָּ שָׁמָּה חוּץ :

(יד) וַיִּתֵּן תִּהְיֶה לְךָ עַל אֲזָנֶיךָ וְהָיָה בְּשִׁבְתְּךָ חוּץ וְחִפְרִיתָהּ בָּהּ וְשִׁבְתָּ וְכִסִּיתָ אֶת צִאָתָּךְ :

(טו) כִּי יִקְנֹךְ אֶלְהִיךָ מִתְּהַלֵּךְ בְּקֶרֶב מַחֲנֶיךָ לְהַצִּילְךָ וּלְתֵת אִיָּבֶיךָ לְפָנֶיךָ וְהָיָה מִחֲנֶיךָ קְדוֹשׁ וְלֹא יִרְאֶה בְּךָ עֲרֹת דָּבָר וְשָׁב מֵאַחֲרֶיךָ :

דברים פרשת כי תצא פרק כב

(ח) כִּי תִבְנֶה בַּיִת חֹדֶשׁ וַעֲשִׂיתָ מַעֲקֶה לַגֹּגֶץ וְלֹא תִשָּׂאִים דָּמִים בְּבֵיתְךָ כִּי יִפֹּל הַנֶּפֶל מִמֶּנּוּ :

דברים פרשת דברים פרק א

(כח) אָנָּה אֲנַחְנוּ עֲלִים אַחֲיֵינוּ הַמָּסוּ אֶת לִבָּבָנוּ לֵאמֹר עִם גְּדוֹל וְרָם מִמֶּנּוּ עָרִים גְּדֹלֹת וּבְצוּרֹת בְּשָׂמַיִם וְגַם בְּנֵי עֲנָקִים רָאִינוּ שָׁם :

דברים פרשת דברים - ואתחנן פרק ג

(ה) כָּל אֱלֹהֵי עָרִים בְּצֻרֹת חוֹמָה גְּבוּהָהּ דֹּלְתִים וּבְרִית לִבָּד מַעְרֵי הַפְּרָזִי הַרְבֵּה מְאֹד :

דברים פרשת עקב פרק ט

(א) שָׁמַע יִשְׂרָאֵל אֶת־הָעֵבֶר הַיּוֹם אֶת הַיִּרְדֵּן לְבָא לְרֶשֶׁת גּוֹיִם גְּדֻלִּים וְעַצְמִים מִמֶּדֶד עָרִים גְּדֹלֹת וּבְצֻרֹת בַּשָּׁמַיִם :

יהושע פרק ו

(ד) וְשִׁבְעָה כְּהֲנִים יִשְׁאוּ שִׁבְעָה שׁוֹפְרוֹת הַיּוֹבְלִים לִפְנֵי הָאָרוֹן וּבַיּוֹם הַשְּׁבִיעִי תִּסָּבּוּ אֶת הָעִיר שִׁבַּע פְּעָמִים וְהַכְּהֲנִים יִתְקְעוּ בַּשׁוֹפְרוֹת :

מלכים א פרק ג

(א) וַיִּתְחַתֵּן שְׁלֹמֹה אֶת פֶּרְעָה מֶלֶךְ מִצְרָיִם וַיִּקַּח אֶת בִּת פֶּרְעָה וַיְבִיאָהּ אֶל עִיר דָּוִד עַד כָּלְתּוֹ לְבָנוֹת אֶת בֵּיתוֹ וְאֶת בֵּית יִקְנֹק וְאֶת חֹמֶת יְרוּשָׁלַם סָבִיב :

מלכים ב פרק כ

(כ) וַיֵּתֶר דְּבָרֵי חֲזָקִיָּהוּ וְכָל גְּבוּרָתוֹ וְאַשְׁרַע שָׁהָ אֶת הַבְּרָכָה וְאֶת הַתַּעֲלָה וַיָּבֵא אֶת הַמַּיִם הָעִירָה הַלֵּא הֵם כְּתוּבִים עַל סֵפֶר דְּבָרֵי הַיָּמִים לְמַלְכֵי יְהוּדָה :

דברי הימים ב פרק לב

(ב) וַיֵּרָא יְחִזְקִיָּהוּ כִּי בָא סִנְחָרִיב וּפְנִיּוֹ לְמַלְחָמָה עַל יְרוּשָׁלַם :

(ל) וְהוּא יְחִזְקִיָּהוּ סָתַם אֶת מוֹצָא מַיְמֵי גִיחוֹן הָעֲלִיּוֹן וַיִּשְׁרַם לְמַטָּה מִעֲרֻבָה לְעִיר דָּוִיד וַיִּצְלַח יְחִזְקִיָּהוּ בְּכָל מַעֲשָׂהוּ :

מלכים א פרק כ

(ל) וַיִּנְסוּ הַנּוֹתָרִים אֲפָקָה אֶל הָעִיר וַתִּפֹּל הַחוֹמָה עַל עֹשְׂרִים וְשִׁבְעָה אֲלָף אִישׁ הַנּוֹתָרִים וּבֶן הַדָּד נָס וַיָּבֵא אֶל הָעִיר חֶדֶר בְּחֶדֶר :

נחמיה פרק ז

(ד) וְהָעִיר רַחֲבַת יָדִים וּגְדוֹלָה וְהָעָם מַעֲט בְּתוֹכָהּ וְאִין בָּתִּים בְּנוִיִם :

נחמיה פרק ח

(א) וַיִּאֲסְפוּ כָל הָעָם כְּאִישׁ אֶחָד אֶל הָרְחוֹב אֲשֶׁר לִפְנֵי שַׁעַר הַמַּיִם וַיֹּאמְרוּ לְעֹזְרָא הַסֹּפֵר לְהַבִּיא אֶת סֵפֶר תּוֹרַת מֹשֶׁה אֲשֶׁר צִוָּה יִקְנֹק אֶת יִשְׂרָאֵל :

Appendix B - Selected Texts from Mishnah Baba Batra, Chapter 2

משנה מסכת בבא בתרא פרק ב

משנה א

[א] לא יחפור אדם בור סמוך לבורו של חבירו ולא שיח ולא מערה ולא אמת המים ולא נברכת כובסין אלא אם כן הרחיק מכותל חבירו שלשה טפחים וסד בסיד מרחיקין את הגפת ואת הזבל ואת המלח ואת הסיד ואת הסלעים מכותלו של חבירו שלשה טפחים וסד בסיד מרחיקין את הזרעים ואת המחרישה ואת מי רגלים מן הכותל שלשה טפחים ומרחיקין את הרחים שלשה מן השכב שהן ארבעה מן הרכב ואת התנור שלשה מן הכליא שהן ארבעה מן השפה :

משנה ב

[ב] לא יעמיד אדם תנור בתוך הבית אלא אם כן יש על גביו גובה ארבע אמות היה מעמידו בעליה צריך שיהא תחתיו מעזיבה שלשה טפחים ובכירה טפח ואם הזיק משלם מה שהזיק רבי שמעון אומר לא אמרו כל השיעורין האלו אלא שאם הזיק פטור מלשלם :

משנה ג

[ג] לא יפתח אדם חנות של נחתומין ושל צבעין תחת אוצרו של חבירו ולא רפת בקר באמת בין התירו אבל לא רפת בקר חנות שבחצר יכול למחות בידו ולומר לו איני יכול לישן מקול הנכנסין ומקול היוצאין עושה כלים יוצא ומוכר בתוך השוק אבל אינו יכול למחות בידו ולומר לו איני יכול לישן לא מקול הפטיש ולא מקול הרחים ולא מקול התינוקות :

משנה ד

[ד] מי שהיה כותלו סמוך לכותל חבירו לא יסמוך לו כותל אחר אלא אם כן הרחיק ממנו ארבע אמות והחלונו מלמעלן ומלמטן ומכנגדן ארבע אמות :

משנה ה

[ה] מרחיקין את הסולם מן השוכן ארבע אמות כדי שלא תקפוץ הנמיה ואת הכותל מן המזחילה ארבע אמות כדי שיהא זוקף את הסולם מרחיקין את השוכן מן העיר חמשים אמה ולא יעשה אדם שוכן בתוך שלו אלא אם כן יש לו חמשים אמה לכל רוח רבי יהודה אומר בית ארבעת כורין מלא שגר היונה ואם לקחו אפילו בית רובע הרי הוא בחזקתו :

משנה ו

[ו] ניפול הנמצא בתוך חמשים אמה הרי הוא של בעל השוכן חוץ מחמשים אמה הרי הוא של מוצאו נמצא בין שני שובכות קרוב לזה שלו קרוב לזה שלו מחצה על מחצה שניהם יחלקו :

משנה ז

[ז] מרחיקין את האילן מן העיר עשרים וחמש אמה ובחרוב ובשקמה חמשים אמה אבא שאול אומר כל אילן סרק חמשים אמה אם העיר קדמה קוצץ ואינו נותן דמים ואם האילן קדם קוצץ ונותן דמים ספק זה קדם ספק זה קדמם קוצץ ואינו נותן דמים :

משנה ח

[ח] מרחיקין גורן קבוע מן העיר חמשים אמה לא יעשה אדם גורן קבוע בתוך שלו אלא אם כן יש לו חמשים אמה לכל רוח ומרחיק מנטיעותיו של חבירו ומנירו כדי שלא יזיק :

משנה ט

[ט] מרחיקין את הנבילות ואת הקברות ואת הבורסקי מן העיר חמשים אמה אין עושין בורסקי אלא למזרח העיר רבי עקיבא אומר לכל רוח הוא עושה חוץ ממערבה ומרחיק חמשים אמה :

משנה י

[י] מרחיקין את המשרה מן הירק ואת הכרישין מן הבצלים ואת החרדל מן הדבורים רבי יוסי מתיר בחרדל :

משנה יא

[יא] מרחיקין את האילן מן הבור עשרים וחמש אמה ובחרוב ובשקמה חמשים אמה בין מלמעלה בין מן הצד אם הבור קדמה קוצץ ונותן דמים ואם אילן קדם לא יקוצץ ספק זה קדם וספק זה קדם לא יקוצץ רבי יוסי אומר אף על פי שהבור קודמת לאילן לא יקוצץ שזה חופר בתוך שלו וזה נוטע בתוך שלו :

משנה יב

[יב] לא יטע אדם אילן סמוך לשדה חבירו אלא אם כן הרחיק ממנו ארבע אמות אחד גפנים ואחד כל אילן היה גדר בינתים זה סומך לגדר מכאן וזה סומך לגדר מכאן היו שרשים יוצאין לתוך של חבירו מעמיק שלשה טפחים כדי שלא יעכב את המחרישה היה חופר בור שיח ומערה קוצץ ויורד והעצים שלו :

משנה יג

[יג] אילן שהוא נוטה לשדה חבירו קוצץ מלא המרדע על גבי המחרישה ובחרוב ובשקמה כנגד המשקולת בית השלחין כל האילן כנגד המשקולת אבא שאול אומר כל אילן סרק כנגד המשקולת:

משנה יד

[יד] אילן שהוא נוטה לרשות הרבים קוצץ כדי שיהא גמל עובר ורוכבו רבי יהודה אומר גמל טעון פשתן או חבילי זמורות רבי שמעון אומר כל האילן כנגד המשקולת מפני הטומאה:

Appendix C - Selected Texts from the Mishnah Torah, Hilkhot Shekhenim

Hilchot Shekhenim Perek 1

רמב"ם הלכות שכנים פרק א

הלכה א

אחד הקונה מחבירו חצי שדה, או שנים שקנו מאחד שדה, או שירשו, או שנתנה להן במתנה, או שהחזיקו בה מן ההפקר, או נכסי גר, כללו של דבר כל שיש ביניהם שותפות בקרקע וביקש אחד מן השותפין לחלק וליטול חלקו לבדו, אם יש באותה קרקע דין חלוקה כופה את שאר השותפין וחולקין עמו, ואם אין בה דין חלוקה אין אחד מהן א יכול לכוף את חבירו לחלוק, וכן הדין במטלטלין, בד"א בשאין אחד מהן מכיר את חלקו במקום שהן שותפין בו אלא יד כולן משתמש בכל המקום, אבל אם היה אחד מהן מכיר חלקו אע"פ שאין בה דין חלוקה כופה כל אחד מהן את חבירו להבדיל בין חלקו לחלק חבירו.

הלכה ד

אי זהו דין חלוקה כל שאילו יחלק לפי השותפין יגיע לפחות שבהם חלק ששם הכל קרוי עליו, אבל אם אין שם הכל נקרא על החלק אין בה דין חלוקה, ד כיצד כל חצר שאין בה ארבע אמות על ארבע אמות אינה קרויה חצר, וכל שדה שאין בה כדי זריעת תשעה קבין אינה קרויה שדה, וכל גינה שאין בה כדי זריעת חצי קב אינה קרויה גינה, וכל פרדס שאין בו כדי זריעת שלשה קבין אינו קרוי פרדס, * לפיכך אין חולקין את החצר עד שיהיה ארבע אמות לכל אחד ואחד מן השותפין, ולא את השדה עד שיהיה בה כדי זריעת תשעה קבין [לכל אחד ואחד], ולא את הגינה עד שיהיה בה חצי קב לכל אחד ואחד, ולא את הפרדס עד שיהיה בו בית שלשה קבין לכל אחד ואחד, בד"א בארץ ישראל וכיוצא בה אבל בבבל וכיוצא בה אין חולקין את השדה עד שיהיה בה כדי חרישת יום לזה וחרישת יום לזה, ולא את הפרדס עד שיהיה בו ל"ו אילנות לזה [ול"ו אילנות לזה] כדי עבודת אדם אחד ביום אחד, ושדה שמשקין אותה ו בכלי עד שיהיה בה כדי שימלא הפועל יום אחד לזה ויום אחד לזה.

Chapter 2

רמב"ם הלכות שכנים פרק ב

הלכה א

חצרות הכפרים שכל אחד ואחד בונה לו בית ונמצאת החצר שבין שני הבתים משותפת לכל בני הבתים, הרי יש לכל פתח ופתח ארבע אמות לפניו ברוחב כל הפתח, והנשאר מן החצר אם יש בו ארבע אמות א על ארבע אמות לכל שותף ושותף חולקין אותה ואם לאו אין חולקין אותה שכל חצר שאין לה ארבע אמות על ארבע אמות אינה קרויה חצר כמו שביארנו, כיצד היו שני שותפין לזה שני ב בתים ולזה בית אחד זה שיש לו שני בתים מודדין לו מן החצר ארבע אמות לכל בית ובית על כל רוחב הפתח אפילו היה עשר אמות, וזה שיש לו בית אחד נותנין לו ארבע אמות ברוחב פתחו לפני פתחו, והנשאר מן החצר אם יש בה שמנה אמות כדי שיהיה לזה ארבע אמות על ארבע אמות ולזה ארבע אמות על ארבע אמות חוץ מן הפתחים יש בה דין חלוקה וחולקין, פחות מזה אין בה דין חלוקה.

הלכה ב

בית שיש לו פתחים רבים מכל רוחותיו יש לו ארבע אמות לכל רוח, ואם ייחד לו פתח אין לו אלא ארבע אמות כנגד פתחו. +/השגת הראב"ד/ בית שיש לו פתחים וכו' עד כנגד פתחו. א"א לא אמרו בגמ' יחוד מפקיע שאר הרוחות אלא בחפירה דסופלי והיחוד הוא תיקון כניסה ויציאה אבל בית שיש לו פתחים הרבה מארבע רוחות מה תיקון הם צריכין. +

הלכה ג

אכסדרה ג אם אפשר לו להכנס לתוכה במשאו אין לה ארבע אמות ואם לאו יש לה ארבע אמות, שלא אמרו שיש לכל פתח ופתח ארבע אמות אלא לפרק שם משאו.

הלכה ד

בית שער או מרפסת יש להם ארבע אמות, היו חמשה בתים פתוחים למרפסת והמרפסת פתוחה לחצר אין לה אלא ארבע אמות.

הלכה ה

לול של תרנגולים אין לו ארבע אמות.

הלכה ו

בית חציו מקורה וחציו שאינו מקורה בין שקרויו כלפי פנים בין שקרויו כלפי חוץ אין לו ארבע אמות.

הלכה ז

בית סתום יש לו ארבע אמות פרץ את פצימיו אין לו ארבע אמות.

הלכה ח

בית שאין בו ארבע אמות על ארבע אמות אין לו ארבע אמות בחצר אלא אם יש בחצר ארבע אמות לזה וארבע אמות לזה עד פתח הבית הזה חולקין, והזבל של חצר מתחלק לפי ד הפתחים, אבל אכסניא ה של מלך לפי בני אדם

רמב"ם הלכות שכנים פרק ב

הלכה יד

חצר השותפין שיש בה דין חלוקה, או שחלקה ברצונם אע"פ שאין בה חלוקה יש לכל אחד מהן לכוף את חבריו לבנות הכותל באמצע כדי שלא יראהו חבריו בשעה שמשמש בחלקו, שהיזק ראייה י היזק הוא ואין לו חזקה בחצר, אלא אע"פ שעמדו כך שנים רבות בלא מחיצה כופהו לעשות מחיצה בכל עת שירצה.

הלכה טו

רוחב מקום הכותל משל שניהם, וכמה יהיה רחבו, הכל כמנהג כ המדינה, ואפילו נהגו לעשות מחיצה ביניהם בקנים ובהוצין, ובלבד שלא יהיה אויר שיסתכל בו ויראה את חבריו.

הלכה טז

כמה גובה הכותל אין פחות מארבע אמות, וכן בגינה כופהו להבדיל גינתו מגינת חבריו במחיצה גבוהה עשרה טפחים, אבל בבקעה אין צריך להבדיל בקעתו מבקעת חבריו אלא במקום שנהגו, רצה להבדיל בקעתו מבקעת חבריו כונס לתוך שלו ובונה ועושה חזית כמו אמה בסיד מבחוץ כדי להודיע שהכותל שלו, לפיכך אם נפל הכותל המקום והאבנים שלו, ואם עשו מדעת שניהם בונים הכותל באמצע ועושים חזית מכאן ומכאן, לפיכך אם נפל הכותל המקום והאבנים של שניהן

Chapter 3

רמב"ם הלכות שכנים פרק ג

הלכה ה

וכן שני בתים זה בצד זה והיו גגיהן עשויין לדירה אפילו היו בשני צדי רשות ז הרבים זה עושה מעקה לחצי גגו שהוא דר בו וזה עושה מעקה לחצי גגו, וזה שלא כנגד זה ומעדיף כדי שלא יראו זה את זה, ואע"פ שבני ר"ה רואין אותו יכול כל אחד לומר לחבירו אלו אין רואין אותי אלא ביום בעת שאעמוד על גגי ואתה רואה אותי תמיד.

הלכה ו

גג הסמוך לחצר חבריו עושה לו מעקה גבוה ארבע אמות, אבל בין גג לגג משאר הגגין אינו זקוק לארבע אמות שאין בני אדם דרין בגגות לפיכך אין בגגות היזק ראייה, אבל צריך לעשות מחיצה בין שני הגגין גבוהה עשרה טפחים כדי שיתפוס אותו כנגב אם נכנס לרשותו

Chapter 5

רמב"ם הלכות שכנים פרק ה

הלכה א

חצר השותפין כל אחד מהן כופה את חבריו לעשות בה בית שער ודלת וכן כל הדברים שהחצר צריכה להם צורך גדול, או דברים שנהגו בני המדינה לעשותם, אבל שאר הדברים כגון ציור וכיור וכיוצא בו אינו כופהו, עשה אחד מהן מעצמו אם גילה השני דעתו שנוח לו במה שעשה חבריו מגלגלין עליו את א הכל ונותן חלקו בהוצאה.

הלכה ב

מי שיש לו בית בחצר אחרת בני החצר משעבדין אותו לעשות עמהם דלת ונגר ומנעול אבל בשאר הדברים אין משעבדין אותו, ואם היה שרוי עמהם באותה חצר משעבדין אותו על הכל.

הלכה ג

אחד מן השותפין בחצר שביקש להעמיד בה בהמה או רחיים או לגדל בה תרנגולין חבריו מעכב עליו, וכן שאר הדברים שאין דרך אנשי המקום לעשותן בחצרותיהן בכולן השותפין מעכבין זה על זה, חוץ מן הכביסה לפי שאין דרכן של בנות ישראל להתבזות על גב הנהר.

הלכה ד

* אחד חצר השותפין ואחד מבוי שאינו מפולש כל בני המבוי מעכבין זה על זה שלא להשתמש במבוי אלא בדברים שדרך בני המדינה להשתמש בהן במבואות.

הלכה ה

אחד מן השותפין בחצר שהעמיד בהמה או רחיים וכיוצא בהן בחצר ולא מיחה בו שותפו ה"ז מעכב עליו כ"ז שירצה, ואם העמיד בפני בהמה זו וכיוצא בה מחיצה גבוהה עשרה טפחים החזיק שהשותפין ב מקפידין על * המחיצה והואיל והניחו מחל, בד"א בחצר השותפין אבל בחצר חבירו אפי' העמיד בהמתו ועשה לו מחיצה לא החזיק שהדבר ידוע שאין זה אלא דרך שאלה, וה"ה לכל מעמיד תנור וכיריים ומגדל תרנגולין וכיוצא בהן, שאם תאמר החזיק אין לך אדם שמשאיל מקום לחבירו. +/השגת הראב"ד/ אחד מן השותפין וכו' בד"א וכו' עד מקום לחבירו. א"א הירושלמי חולק עליו א"ר אלעזר המגדל תרנגולין בחצר שאינה שלו הרי זה חזקה א"ר יוסי ויאות מה נפשך אם יש לו לגדל הרי זה גדל ואם אין לו לגדל הרי החזיק ואומר אני כל אלו המחילות שאמרו שאין עמהם טענת מכירה או מתנה אין מפסידין ממנו קרקע מתורת מחילה ואם רצה לבנות בית בחצירו בונה וחזקתו בטלה מאליה אלא כ"ז שהחצר כך החזיק זה בתשמישו ועל דרך זה יתקיימו דבריו, עכ"ל. +

הלכה ו

אחד מן ג השותפין שביקש לפתוח לו חלון בתוך ביתו לחצר חבירו מעכב עליו מפני שמסתכל בו ממנו, ואם פתח יסתום, וכן לא יפתחו השותפים בחצר פתח בית כנגד פתח בית או חלון כנגד חלון, אבל פותח אדם לרשות ד הרבים פתח כנגד פתח וחלון כנגד חלון, מפני שאומר לו הריני כאחד מבני ר"ה שרואין אותך.

הלכה ז

ואעפ"כ לא יפתח אדם חנות כנגד פתח חצר חבירו שזה היזק קבוע תמיד, שהרי בני ר"ה עוברים ושבים וזה יושב בחנותו כל היום ומביט בפתח חבירו.

הלכה ח

אחד מן השותפין בחצר שלקח בית בחצר אחרת אינו יכול לפתוח פתחו לחצר השותפין שלו, אפילו בנה עלייה על גבי ביתו לא יעשה לה פתח לתוך החצר לפי שמרבה עליהן את הדרך נעשה כמי שהיה לזה שכן אחד ונעשו לו שכנים הרבה, אבל פותח הוא פתח עלייה לתוך ביתו, ואם רצה לחלוק חדרו לשנים חולק.

הלכה ט

מכאן אתה למד שאחד מן השותפין שהביא אצלו לביתו אנשי בית אחרת יש לחבירו ה לעכב עליו מפני שמרבה עליו את הדרך, וכן המשכיר ביתו לבעל בית אחד ואח"כ הביא עמו קרוביו או מיודעיו לשכון עמו כאחד בבית זה הרי המשכיר מעכב עליו. +/השגת הראב"ד/ וכן המשכיר בית לבעל בית וכו' עד מעכב עליו. א"א בחיי ראשי נ"ל דבריו סותרים זה את זה שאמר תחלה שבונה עלייה על ביתו ופתוחה לביתו ואעפ"י שהם מרבים שכנים בדירות חלוקות ואיך ימנע ממנו שלא יכניס לביתו כל מי שירצה ואם ירצה לקבל אכסנאין לת"ת נמנע ממנו עכ"ל. +

הלכה י

היה פתח של אחד מן השותפין קטן אינו יכול להרחיבו שהרי שותפו אומר לו בפתח קטן אני יכול להסתר ממך בשעת תשמיש ואיני יכול להסתר ממך בפתח גדול, ואם היה הפתח גדול לא יעשנו שנים שהרי אומר לו בפתח אחד אני יכול להסתר בשנים איני יכול.

הלכה יד

מי שביקש לפתוח פתח במבוי שאינו מפולש בני מבוי מעכבין עליו מפני שמרבה עליהם את הדרך, ואם היה מבוי מפולש פותח כל פתח שירצה ו לכתחלה.

הלכה טו

היה לו פתח סתום במבוי שאינו ז מפולש ה"ז פותחו בכל עת שירצה, ואם פרץ את ח פצימיו בני מבוי מעכבין ט עליו, וכן אחד מבני מבוי שבקש לסתום פתחו ולהחזירו למבוי אחר בני מבוי מעכבין עליו שמא יבא עליהם מס ומתמעט מחלקן מן המס הקצוב על בני המבוי, לפיכך מקום שאין המס קצוב על בני המבוי ה"ז סותם פתחו בכל עת שירצה.

הלכה טז

חמש חצרות הפתוחות למבוי שאינו מפולש כולן משתמשות י עם החיצונה והחיצונה משתמשת לעצמה, וכן השנייה משתמשת לעצמה ומשתמש עם החיצונה ואינה משתמשת עם השאר, נמצאת הפנימית משתמשת עם כולן ומשתמשת לעצמה, לפיכך אם בעל השנייה בנה איצטבא כנגד פתחו וסתמו אין החיצונה כ יכולה לעכב עליו, אבל כל הפנימיות מעכבין עליו מפני שמרבה עליהן את הדרך

באורך שהרי מקיפין האיציטבא, וכן בעל השנייה שפתח לחצרו פתח שני בינו ובין החיצונה אין החיצונה מעכבת עליו שאין לו להשתמש אלא מפתחו ולחוץ, אבל אם פתח הפתח השני בינו ובין השלישי הפנימית מעכבת עליו שאין לו להשתמש במבוי אלא מפתח חצרו הראשון ולחוץ, וכן הדין בכולן.

Chapter 6

רמב"ם הלכות שכנים פרק ו

הלכה א

כופין בני העיר זה את זה לעשות חומה דלתים ובריה לעיר ולבנות להן בית הכנסת א ולקנות ס"ת ונביאים וכתובים כדי שיקרא בהן כל מי שירצה לקרות מן הצבור.

הלכה ב

מי שלקח עיר בארץ ישראל כופין אותו ב"ד ליקח לו דרך מד' רוחותיה משום יישוב ארץ ישראל, וכופין בני בקעה זה את זה לעשות ביניהם חריץ ובן חריץ.

הלכה ג

מי שיש לו חצר בעיר אחרת בני העיר משעבדין אותו לחפור עמהם בורות שיחין ומערות ואמת המים אבל בשאר כל הדברים אין משעבדין אותו, ואם היה שרוי עמהם באותה העיר משעבדין אותו על הכל.

הלכה ד

כשהן גובין מאנשי העיר לבנות החומה גובין לפי קריבת ב הבתים מן החומה כל הסמוך לחומה נותן יותר.

הלכה ה

וכל הדר בעיר ג י"ב חדש או שקנה בה בית דירה נותן עם בני העיר בכל ד הדברים הצריכין לתקון החומה והדלתות ושכר הפרשין השומרין את המדינה, וכל כיוצא בדברים אלו ששומרין את העיר.

הלכה ו

כל ה הדברים שצריכין לשמירת העיר לוקחין מכל אנשי העיר ואפילו מן היתומים חוץ מתלמידי חכמים, שאין ת"ח צריכין שמירה שהתורה שומרתן, אבל לתקון הדרכים והרחובות אפ"י מן החכמים, ואם כל העם יוצאין ומתקנין בעצמן לא יצאו תלמידי חכמים עמהן שאין דרך תלמידי חכמים להזדלל לפני עם הארץ.

הלכה ז

היו חופרין נהר להביא בו מים למדינה גובין אף מן היתומים שזו זכות להם כדי שישקו ממנו שדותיהם וכרמיהם, לפיכך אם אירע להם דבר שלא באו המים הואיל ולא נהנו מהן היתומים מחזירין להם כל מה שנלקח מהן, וכן כל כיוצא בזה.

הלכה ח

כופין בני מבוי זה את זה שלא להושיב ביניהן לא חייט ולא בורסי ולא אחד מבעלי אומניות, היה שם במבוי אחד מבני מבוי אומן ולא מיחו בו, או שהיתה שם מרחץ או חנות או רחיים ובא חבירו ועשה מרחץ אחרת כנגדו או טחון אחרת, אינו יכול למנעו ולומר לו אתה פוסק חיי, ואפילו היה מבני מבוי אחר ז אינן יכולין למנעו שהרי יש ביניהם אומנות, אבל גר ממדינה אחרת שבא לעשות חנות בצד חנותו של זה, או מרחץ מצד מרחץ של זה יש להן ח למנעו, ואם היה נותן עמהם מנת המלך אינו ט יכול למנעו.

הלכה יא

אחד מבני מבוי שאינו מפולש שביקש להעשות רופא אומן או גרדי או מלמד תינוקות של עכו"ם בני מבוי מעכבין עליו מפני שמרבה עליהם הנכנסין והיוצאין, וכן מי שיש לו בית בחצר השותפין לא ישכירנו לא לרופא ולא לאומן ולא לגרדי ולא לסופר כ יהודי שכותב השטרות ולא למלמד תינוקות של עכו"ם.

הלכה יב

חנות שבחצר יכולין השכנים למחות בידו ולומר לו אין אנו יכולין לישן מקול הנכנסים והיוצאין אלא עושה מלאכתו בחנותו ומוכר בשוק, אבל אינן יכולין למחות בידו ולומר לו אין אנו יכולין לישן מקול הפטיש או מקול הרחיים שהרי ל החזיק לעשות כן, וכן יש לו ללמד תינוקות של ישראל תורה בתוך ביתו ואין השותפין יכולין למחות בידו ולומר לו אין אנו יכולין לישן מקול התינוקות של בית רבן.

רמב"ם הלכות שכנים פרק ז

הלכה א

מי שהיתה לו חלון בכותלו ובא חבירו ועשה חצר בצדו אינו יכול לומר לבעל החלון סתום חלון זה כדי שלא תביט בי שהרי החזיק בהיזק זה, ואם בא חבירו לבנות כותלו כנגד החלון כדי שישור היזק ראייתו צריך להרחיק את כותלו מכנגד החלון ארבע אמות כדי שלא יאפיל עליו.

הלכה ב

היתה החלון למטה בכותל כופה את חבירו לבנות כנגדה ברחוק ארבע אמות ולהגביה הבנין ארבע אמות כדי שלא יביט בו מן החלון.

הלכה ג

היתה החלון למעלה בכותל ובנה חבירו כותל כנגד החלון מלמטה אם היה מראש הכותל שבנה עד החלון גובה ארבע אמות או יותר אינו יכול למנעו אע"פ שלא הרחיק מכותל החלון כלום שהרי לא האפיל עליו ואינו מזיקו בראייה, אבל אם נשאר גובה מראש הכותל עד החלון פחות מארבע אמות כופה למעט הכותל כדי שלא יעמוד על ראש הכותל וישקיף מן החלון או יגביה הכותל על החלון ארבע אמות ויהיה הכותל רחוק מן החלון ארבע אמות כדי שלא יאפיל ולא יציץ ויראה.

הלכה ד

בנה כותל אחד בצד החלון צריך להרחיק מן החלון א טפח ומגביה הכותל ארבע אמות ב על החלון או כונס ראש הכותל כדי שלא ישב עליו ויציץ ויראה.

הלכה ה

בנה שני כותלין משני צידי החלון, צריך להיות ביניהן רחב ארבע אמות והחלון ג באמצע הארבע, ולא יסכך על גביהן אלא א"כ הרחיק הסיכוך מן הכותל שיש בו החלון ארבע אמות כדי שלא יאפיל עליו, לפיכך מי שבא לפתוח חלון לחצר חבירו בין חלון גדולה בין חלון קטנה בין ד למעלה בין למטה בעל החצר מעכב עליו, שהרי אומר לו תזיק לי בראייה ואע"פ שהיא גבוהה תעלה בסולם ותראה.

הלכה ו

הרי שפתח חלון לחצר חבירו ומחל לו בעל החצר או שגילה דעתו שהניחו כגון שבא וסייע עמו, או שידע הנזק ולא ערער, הרי זה החזיק בחלון ואינו יכול אח"כ לחזור ולערער עליו לסתום, וכיצד ה דינה של חלון זה שהניחה לפתחה אם ראשו של אדם יכול ליכנס ממנה או שהיתה למטה ו מארבע אמות אע"פ שאין ראשו נכנס ממנה אין בעל החצר יכול לבנות כנגדה או מצדיה אלא א"כ הרחיק ארבע אמות כמו שביארנו. +/השגת הראב"ד/ וכיצד דינה של חלון זה וכו' או שהיתה למטה וכו' כמו שביארנו. א"א אין אנו משוים לא עמו ולא עם רבו בדרך זה שלא חילקו בגמ' בארבע אמות ולמטה מד' אמות שיהא חזקה אלא בחלון הצורי אבל בחלון המצרי לעולם אין לו חזקה וכן הסכימו כל רבותי. +

הלכה ז

היתה חלון ז קטנה שאין ראשו של אדם נכנס ממנה והיתה למעלה מארבע אמות בעל החצר יכול לבנות כנגדה ובצדדיה שהרי טוען ואומר לא הנחתך לפתוח אלא מפני שהיא קטנה וגבוהה, אבל שתחזיק עלי עד שארחיק הבנין לא הנחתי, בד"א בשפתחה לתשמיש או כדי שיכנס בה הרוח, * אבל אם פתחה לאורה אפילו היתה קטנה ביותר וגבוהה ביותר הואיל ולא ערער החזיק ח ואין בעל החצר יכול לבנות כנגדה או מצדדיה עד שירחיק ארבע אמות כדי שלא יאפיל עליו שהרי מחל לו על האורה, וכן מי שהיתה לו חלון מוחזקת ובא חבירו ובנה כנגדה או מצדדיה בלא הרחקה או סתמה ושתק בעל החלון אינו יכול לחזור ולערער לפתוח החלון או להרחיק הבנין, שכיון ששתק מחל ט שאין אדם עשוי שסותמין אורו בפניו ושותק אלא א"כ מחל. +/השגת הראב"ד/ וכן מי שהיתה לו חלון וכו' עד אא"כ מחל לו. א"א לפי דעתי יש הפרש בין סותם למאפיל שהסותם לאלתר והמאפיל לי יום עכ"ל. +

הלכה ח

מי שהיו לו חלונות למטה בכותלו ובא חבירו לבנות בפניהן ואמר לו אני אפתח לך חלונות אחרות בכותל זה עצמו למעלה מאלו הרי זה מעכב עליו ואומר לו בעת שתפתח החלונות תרעיד את הכותל ותקלקל אותו, ואפילו אמר אני אסתור כל הכותל ואבנה אותו לך חדש ואעשה בו חלונות למעלה ואשכור לך בית שתדור בו עד שאבנה יכול לעכב עליו ואומר לו אין רצוני שאטרח ממקום למקום, לפיכך אם לא היה שם טורח כלל ואין צריך לפנות אינו יכול לעכב עליו, וכופין אותו שיהיה חבירו סותם חלון זה שלמטה ממנו ועושה לו חלון מלמעלה שזו מדת סדום, וכן כל דבר שזה נהנה בו ואין חבירו מפסיד ואין חסר כלום כופין עליו.

הלכה ט

אבל בעל החלונות שרצה לשנות מקום חלונו בין למעלה בין למטה אפילו היתה גדולה ואמר אפתח אחרת קטנה ואסתום זו בעל החצר מעכב עליו, וכן אינו יכול להרחיב בחלון כל שהוא.
הלכה י

* שני אחין שחלקו חצר מדעתן ושמו הבנין והעצים זה כנגד זה ולא השגיוחו על שומת האויר, והגיע לאחד מהן בחלקו תרבוץ החצר ולשני האכסדרה אם רצה בעל החצר לבנות כותל בסוף חלקו בונה בפני י האכסדרה ואע"פ שמאפיל עליו שהרי לא שמו האויר.

Chapter 11

רמב"ם הלכות שכנים פרק יא

הלכה א

מי שעשה גורן בתוך שלו, או קבע בית הכסא, או מלאכה שיש בה אבק ועפר וכיוצא בהן צריך להרחיק כדי שלא יגיע העפר או ריח בית הכסא או האבק לחבירו כדי שלא יזיקו, אפילו היתה הרוח הוא שמסייע אותו בעת שעושה מלאכתו ומוליכה את העפר או נעורת הפשתן והמוץ וכיוצא בהן ומגיעתן לחבירו הרי זה חייב להרחיק כדי שלא יגיעו ולא יזיקו, א ואפילו על ידי הרוח מצויה שכל אלו כמי שהזיקו בחציו הן.

הלכה ב

אע"פ שהוא חייב להרחיק כל כך אם הוליכה הרוח המצויה המוץ ואת העפר והזיקה בהן פטור מלשלם שהרוח הוא שסייע אותו ואין נזק זה בא מכח מזיק עצמו.

הלכה ג

הכותש את הריפות וכיוצא בהן בתוך שלו ובעת שמכה מנדנד לחצר חבירו עד שנדנדה ב כסוי החבית על פי החבית הרי זה מזיק בחציו וחייב להרחיק כדי שלא ינדנד או יבטל מלאכתו שמזקת, ואם הזיק בעת הנדנד חייב לשלם שהרי מכחו ג בא הנזק.

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