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## **The environment in Jewish law**

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The Environment and Property Rights

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## THE ENVIRONMENT AND PROPERTY RIGHTS

*Walter Jacob*

**QUESTION:** My family owns a tract of land adjacent to a national park. This land is also part of a major watershed and is among the few old forests left in this region outside national parks. The government would now like to purchase this land in order to protect the park itself. We would like to hold it and eventually develop it as a tourist site. I know that this matter will be adjudicated in the federal courts, but I am interested in seeing what Judaism has to say about environmental protection versus property rights. (C.D.S., Philadelphia, PA)

**ANSWER:** The Jewish tradition has very little to say about wild lands. While it deals with protection of nature, it concerns itself exclusively with developed areas. That is true of the famous section in Deuteronomy (20:19f.), which demands that fruit trees not be destroyed in a time of siege. In other words, although there is temporary advantage to be gained by the destruction of fruit trees, both in making the siege easier and in depriving those settled in the city of access to food, this destruction is to be denied in order to protect the land for the longer term. What is at stake here is not really an interest in the natural world, but a desire to look at long-term human concerns versus immediate gain. Fruit trees, after all, in contrast to wheat and barley fields, take years to mature and so should not be destroyed.

This biblical passage has generally been interpreted narrowly by the subsequent rabbinic tradition and the rare discussions in the responsa literature (*Yad, Hil. Melakhim* 6,8; *Teshuvot Rambam*, Vol. I #112; *Tur, Shulhan Arukh, Yoreh Deah*). It was restricted to trees that produced edible fruit and limited to the Land of Israel.

We should be able to transfer this kind of narrow interest to modern concern. The federal government wishes to protect the watershed and the future recreational value of the land. It is true that some national parks are isolated and rarely visited now, but in the future such unspoiled landscapes will be much rarer and will eventually be visited and enjoyed by a large number of individuals. As we are dealing with very old growth, in other words, trees and natural habitats which have developed through a period of thousands of years, we are also dealing with something akin to the fruit trees. In other words, this is not a forest that can be readily replaced by new growth. Seen in the light of our modern environmental concerns, the biblical law could include these kinds of natural habitats as well.

Now let us turn to the second part of the question, the rights of the private owner versus the broader interests of the larger community. We will only view this narrowly and will not deal with the broader question. Can an individual destroy an orchard or cut down a tree because it is personally useful, although the broader community objects? These kinds of questions, of course, have arisen only with individual trees rather than with an entire forest of several thousand acres as you have described. If a tree is a nuisance and stands on the owner's property, it may be cut down. Furthermore, it may be cut down if the owner wishes to develop the land; even if it is a fruit tree, it may also be trimmed back (*Hatam Sofer, Responsa, Yoreh Deah* 102; *Shevet Halevi* 1:112).

There is a difference of opinion when we are dealing with trees that are in the broader public domain and also on the issue of whether an obligation to plant a replacement tree exists.

We should note that the rabbinic literature is not friendly to the natural world nor concerned with it, despite various blessings to be recited on seeing natural phenomena. There are statements in the Mishnah that argue for planting trees and gardens in towns (*Meg.* 5b; *Taan.* 4b) while others prohibits the planting of trees within fifty yards of a city. (*B.B.* 2:7). Did the latter problems reflect a concern for beauty or for the physical safety of the



inhabitants, as trees and brush are a good place for bandits and robbers to hide themselves?

The natural world was of no great interest to the tradition. We, in our own time, feel differently and have expanded Judaism's protection of the natural world. This is an area of modern concern in which strong differences of opinion prevail, as in secular law, and the basis for a Jewish environmental law is still developing. However, in this area of the *halakhah*, the interpretation of the tradition is shifting toward protecting the natural world and its public use rather than the narrower property rights.