

Humans as Co-creators: Co-owners as Well¹

By Rabbi Norman Lamm, PhD, Parshat Mishpatim

Parshat Mishpatim is dedicated by David and Marsha Nimmer, in the prayer of bequeathing a healthy world to our children.

In this week's Torah portion of Mishpatim, G-d commands the Jewish people concerning the laws of borrowing and guarding property.² The relations between G-d, people, and nature may be clarified by referring to the *Halakhah* (Jewish law) concerning the relationships between owner, material, and artisan. The Mishnah discusses the case of a man (owner) who gave some material to an artisan to fashion it. The artisan, instead of repairing, spoiled the object. The law is that the artisan must pay the amount of the damages to the owner.

The question then arises in the Babylonian Talmud: What is this object, which the owner gave over to the artisan, and the damages for which the latter must compensate the owner?³ Clearly, if it was a finished vessel, and the artisan broke it, the latter must pay the difference in value. But if the owner gave raw material to the worker, asking that he fashion it into a complete vessel, and the artisan did so, but then broke the very vessel he made, is the artisan obligated, in such a case, to compensate the owner for the difference in value between a perfect vessel and a broken one, or is he free of obligation since the broken vessel is no less in value than the raw material with which he began?

Who Owns "Improved" Material? The Debate Raged On

The question was in controversy amongst both Tannaim (early rabbinic sages) and Amora'im (later rabbinic sages) [i.e., for more than half a millennium, from the first century before the Common Era through the composition of the Babylonian and Jerusalem Talmuds]. Some held that *uman koneh b'shevah kelim*, that the artisan has a monetary right in the vessel by virtue of the improvement he effected in it in transforming it from, for instance, mere planks into a table. If the table belongs, then, to the artisan, he cannot be held responsible to pay the owner of the planks for damages to that table if he should later break it.

Others disagree: the improvement in the material is the property of the original owner, and if the artisan later destroyed the completed object, he injured the owner and must compensate him for the cost of the completed object. Most authorities decide the law in favor of the latter opinion: it is the original owner of the raw material who has proprietary rights in the completed artifact, not the artisan who invested his fabricative talents. The explanation for the artisan's legal responsibility for the finished product is contained in a Tannaitic [i.e. early, from the time of the teachers cited in the Mishnah] source: The artisan is to be considered a *shomer sakhar*, or paid trustee for the article he fashioned, and which belongs to the original owner, and as such he must pay for the object if he damaged it.⁴

What we learn from this, then, is that the artisan is paid by the owner for two functions: for improving the material by fashioning a vessel out of it, and for watching over and protecting that vessel once it is completed. This artifact which he created with his own hands, over which he labored with the sweat of his brow, into which he put his remarkable talents, this vessel

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must now be guarded by him for the owner from any damage it sustains in the course of his trusteeship over it. This is so, the Halakhah decides, because the artisan has no proprietary right in the article he created. It simply does not belong to him.

Vis-à-vis Nature, Humans Are Trustees

That people's role as co-creator with G-d must not be exaggerated we learn from the following Talmudic passage: "The Rabbis taught: man was created on the eve of the Sabbath. Why? So that the Sadducees (i.e., heretics) should not say that G-d had a partner in the act of creation of the world."⁵ This statement does not contradict that of Rabbi Akiva, who declared people's actions more beautiful, or suitable, than those of G-d, hence emphasizing the religious sanction of people's creative office. Humanity remains a partner of G-d in the ongoing creative process. However, here we must distinguish between two Hebrew synonyms for creation: *beri'ah* and *yetzirah*. The former refers to *creatio ex nihilo* and hence can only be used of G-d. The latter describes creation out of some preexistent substance, and hence may be used both of G-d (after the initial act of Genesis) and people. G-d has no "partners" in the one-time act of *beri'ah* with which He called the universe into being, and the world is, in an ultimate sense, exclusively His. He does invite people to join Him, as a co-creator, in the ongoing process of *yetzirah*. Hence, humanity receives from G-d the commission to "subdue" nature by means of the human *yetzirah*-functions; but, because people are incapable of *beri'ah*, they remain responsible to the Creator for how they have disposed of the world.

Let us now project the above case of owners and guardians onto the cosmic scene. G-d is the Owner, people the artisan, and the raw material is all the wealth of this world: nature, life, culture, society, intellect, family. Humanity was charged with applying to them the human *yetzirah*-creative talents. People were commissioned to improve the world, build it up, transform it, "subdue" it. If they do so, they are "paid" for their labors. But people never have title over their own creations; they have no mastery over the world. Despite their investment of labor and talent, the world, even as perfected by them, belongs to the original Owner.

Thus the widespread degradation of the natural world represents a problem theologically as well as ecologically. Ever since the publication of Rachel Carson's *The Silent Spring*⁶, the public has become more and more concerned about the possible consequences of humanity's unthinking interference in and disruption of the natural processes that make life possible on earth. Widespread deforestation, air and water pollution, global climate change - all of these place in jeopardy not only the quality of life, but the very survival of many or all species.

People, the *yetzirah*-creator, according to the teaching of halakhic Judaism, are responsible to G-d, the *beri'ah*-Creator, not only for the raw material of the natural world into which they were placed, but also for protecting and enhancing the civilization which they themselves created.

No matter how extensive and ingenious humanity's scientific and technological achievements in the transformation, conquest, and improvement of nature, people cannot displace the

rightful Owner who provided the material in the first place. And not only do people not have proprietorship over raw nature, they are not even the absolute master of their own creations, the results of their magnificent *yetzirah*. They may not undo what they themselves did, for once having done it, it belongs to the Owner and not to the artisan. People must never entertain the notion that because they labored over their own creations, they have the right to destroy them, to repeal their creativity. They remain a paid trustee over their very own products and must guard them and watch over them with the greatest care.

Suggested Action Items

- 1) To realize your responsibility as custodian of G-d's world, make a habit of cleaning up a bit of litter on the street each day. Alternatively, organize a neighborhood clean-up day. As you invest time and energy, remind yourself that you are fulfilling G-d's intention for humans to guard and protect the creation.
- 2) when building a house or other structure, keep in mind that the ultimate result is not entirely yours, and make sure that it is environmentally friendly. See <http://www.greenbuilding.com/> for more information.
- 3) Find out where you can safely dispose of electronic devices and batteries. The use of these objects of human ingenuity and craftsmanship places on you the responsibility to dispose of them carefully. In Israel used batteries may be brought to any government office such as the Interior Ministry or the Absorption Office. In the United States, you can find information about battery recycling and other hazardous materials at <http://earth911.org/>

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² Exodus 22:6-14

³ Bava Kama 98b

⁴ Tosefta Bava Kama, ch. 2

⁵ Babylonian Talmud Sanhedrin 38a

⁶ *Silent Spring* by Rachel Carson initially appeared in 1962, serialized in three parts in the June 16, June 23, and June 30 issues of *The New Yorker* magazine, and was published as a book that same year by Houghton Mifflin. Carson is often credited for launching the modern environmental movement with this book that focused on environmental problems caused by synthetic **pesticides**.