



Fruit Trees, Access, and Equity

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In recent decades, Tu Bishvat has become a holiday for trees and to raise awareness and concern for our natural environment. This year, as we celebrate Tu Bishvat in the midst of a Shemittah year, it is a powerful opportunity to notice the ways Jewish laws on produce and agriculture come at the intersection of the natural environment and social equity. Particularly on Martin Luther King Jr. day, this intersection is especially poignant. Tu Bishvat is indeed a holiday centered around trees, but the main point of marking this New Year is to know how to divide up the trees' produce for tithes, the various taxes and gifts that landowners must give to those who don't have the same resources (Mishnah Rosh HaShanah 1:1).

In Jewish tradition, it is not just an abstract idea that those who have land and wealth must share it. Our Rabbis carefully thought through the details and difficulties of how the bounty of the land reaches those who need it. What policies could introduce more equality and equity in sharing resources? *Halakhot* spelled out in the Mishnah are useful for thinking about providing access to resources, as it is primarily addressed to householders (*ba'alei habayit*), who by default owned the major resource of its time: the land. Today, the Mishnah's system still speaks most poignantly to folks with extra resources, who must navigate the responsibility of sharing access. At the same time, the Mishnah also gives voice to the



perspectives of those who have less access, addressing the real experience and impact of *halakhot* aiming to achieve shared access. As we continue a struggle towards shared access to resources in contemporary American society, particularly across racial divides, spending some time with Jewish laws of agriculture reminds us of the potential—and pitfalls—of practices we may adopt in a trek towards equality.

Laws related to the Shemittah year make a radical leap towards equality in how people relate to the land and its produce. We see that there is a balance between an equalizing approach—where all people are bound by the same restrictions on use—and an approach focused more on equity—where different rules may be required to achieve a more equal outcome between those with more and those with less.

For example, it is forbidden to harvest and hoard during the Shemittah year. This also means that once a given kind of produce is no longer available in the field (once its season is over) one may not keep it in their home. Anything remaining of that item in one's home must be disposed of, a process called *bi'ur*.¹ What if items of this sort are not in anyone's private home, but are left lying about, ownerless? Who may eat of those?

משנה שביעית ט:ח

מִי שֶׁהָיוּ לוֹ פְּרוֹת שְׁבִיעִית וְהִגִּיעַ שְׁעַת הַבְּעוּר, מְחַלֵּק מִזֶּן שְׁלֹשׁ סְעֻדוֹת לְכָל אֶחָד וְאֶחָד. וְעֲנִיִּים אוֹכְלִין אַחֲרֵי הַבְּעוּר, אֲבָל לֹא עֲשִׁירִים, דְּבָרֵי רַבִּי יְהוּדָה. רַבִּי יוֹסִי אֹמֵר, אֶחָד עֲנִיִּים וְאֶחָד עֲשִׁירִים אוֹכְלִין אַחֲרֵי הַבְּעוּר:

Mishnah Shevi'it 9:8

One who has Shemittah fruit and the time for *bi'ur* arrives, they can distribute enough food for three meals for everyone. People who are poor eat after the *bi'ur*, but not those who

¹ We use the same term to refer to the removal of *hametz* before Pesah. Note that there is a debate among medieval interpreters about whether these items must actually be gotten rid of, or an owner must merely relinquish ownership, making them *hefker*.



are wealthy—words of R. Yehudah. R. Yose: Whether poor or rich they can eat after the *bi'ur*.

We see here the tension between two approaches to access. R. Yehudah suggests those who are wealthy may not eat even the ownerless items once their season has passed, but poor people may. R. Yose, on the other hand, wants a more equalizing policy, where everyone is treated the same—anyone can eat these ownerless items that remain after their season. The idea of the law in R. Yose's framework is that no one feels they are of a different status than anyone else. These diverging approaches can both serve towards more equitable outcomes when applied in strategically effective ways. In general, the Shemittah year may follow more in the R. Yose genre, where all become “equal” before God and no one really owns land. Even so, R. Yehudah points out that there could still be a need for differentiation to achieve the desired outcome.

While the radically equalizing vision of Shemittah may feel aspirational and unrelatable, this kind of balancing act must be part of our society's day to day approach toward greater shared access to resources. In particular, we have to be aware of when it seems like a certain gesture leads toward greater equality, but the outcome actually falls short, or even backfires. Black feminist scholar Patricia Hill Collins writes about the impact of access to a new labor market for Black Americans due to urbanization, noting that this came with a general benefit of shifting from conditions of live-in work to day work. But at the same time, there were new forms of exploitation.²

We see this kind of concern, where an attempt to introduce greater access is racked with obstacles, in one aspect of the regular agricultural laws in effect in all years, not just Shemittah. One of the gifts from one's produce is to leave the corners of the field (*pe'ah*)

² Patricia Hill Collins, *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment* (Routledge, 2008).



unharvested so that those who have no land can come and harvest it themselves (Leviticus 19:9). In an ideal vision, perhaps *pe'ah* allows for a level of agency, a sense of ownership, and connection to the land even for those who have none. They don't just receive a handout; they get a chance to pick the produce themselves. Yet, sharing this unharvested produce can pose a problem. What if one is unable to safely reach the fruit of the trees?

משנה פאה ד:א

הפאה נתנת במחבר לקרקע.

בדלית ובדקל, בעל הבית מוריד ומחלק לעניים.

Mishnah Pe'ah 4:1

Pe'ah is given from [the crop] while it is still connected with the soil.

But in the case of hanging vine-branches and the date-palm, the owner brings down [the fruit] and distributes it among the poor.

Commentaries explain that the problem with leaving the fruit of hanging vines and date palms is that they are too dangerous to access without proper equipment.³ So, for these, the owner has an obligation to ensure that the bounty is properly distributed. Otherwise, the “gift” may become a hazard. This specific *mishnah* about ensuring safe access to the gifts of trees teaches us that sometimes even willingness to share wealth isn't enough; that good intent may be wasted, or even destructive, if we haven't fully thought through the implications of access.

Having the good intention to give and share is a critical first step, but it is also fraught with danger. Folks might feel like they've done their part and relinquish any further responsibility when the actual outcome could be that the intended recipients get little or are worse off for trying to make do with an impossible situation. When Collins writes about difficulties that ensued in the new economic opportunity brought by urbanization, she stresses that there

³ See e.g. the commentary of Rabbi Ovadiah of Bartenura on this *mishnah*.



were different kinds of obstacles for Black women and Black men: “...both African-American women and men were disadvantaged in urban labor markets, with gender differences structuring distinctive patterns of economic vulnerability in employment.”⁴ Creating real opportunity requires careful and patient understanding of the real obstacles to opportunity. Then, there is a responsibility to structure the systems to respond effectively. Otherwise, the opportunity is not an opportunity at all.

Taking the extra step of harvesting and distributing *pe’ah* is not usually required of the owner. The Mishnah goes on to say that, even if there is a large public demand that the owner do so, it is ignored in situations where the harvest is easily accessible. Yet, in the case of inaccessible fruit, the Mishnah says clearly:

משנה פאה ד:ב

בְּדִלִית וּבְדִקְל אֵינוֹ כֵּן, אֶפְלוּ תִשְׁעִים וְתִשְׁעָה אוֹמְרִים לְבוֹז וְאֶחָד אוֹמֵר לְחִלֵּק, לָזֶה שׁוֹמְעִין, שְׁאֹמֵר כְּהִלְכָּהּ:

Mishnah Pe’ah 4:2

With hanging vine-branches and date-palm trees it is not so; even if ninety-nine [of the poor] say [to the owner] to leave it in the field and one says to distribute it, this latter is listened to, since they spoke in accordance with *halakhah*.

We live in a world where transactional responsibilities are largely dictated by market forces, and in that mindset one might assume that if 99% of people who are poor are willing to risk their safety to access dates, then the owner need not make the extra effort. But the Mishnah resists this kind of market determinism. Perhaps because it is aware of the ways that stress, uncertainty, and dire circumstances can encourage people to take risks for the sake of *parnassah* (livelihood), the Mishnah insists that the owner shoulder the burden of getting

⁴ *Black Feminist Thought*, p. 55.





these items safely to those in need. Otherwise, the owner cannot pretend they fulfilled their obligation of *pe'ah* at all.

As we celebrate Tu Bishvat of Shemittah this year, let's remember that we must build a world where blessings are not only shared, but shared in effective ways with those whose access may be riddled with obstacles and hazards. As we reflect on decades of attempting to address racism and unequal access in our own American culture and society, this is a day to pay attention to what real outcomes we as a society have achieved and what major work remains to be done. In particular, we have to be open to the reality that good intentions, and even initial steps, toward sharing wealth are not enough, and can sometimes make things worse. Strategies must be rooted in fully understanding the experiences of real people, aspects of individuals' identities and circumstances within existing societal structures that may pose obstacles not visible or obvious to people outside of these experiences. May good intentions lead to paying better attention and building deeper communication, paving a way toward shared access to the world's abundant blessings that is lasting and true.

