

# Jewish Economics in the Light of Maimonides

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## Introduction

Hebrew National has a famous advertisement which reads as follows:

- VOICE 1. Government regulations say we can make our Hebrew National beef hot dogs from frozen beef.
- VOICE 2. We don't.
- VOICE 1. The government says we can use artificial colouring.
- VOICE 2. We don't.
- VOICE 1. They say we can add meat by-products.
- VOICE 2. We don't.
- VOICE 1. They say we can add non-meat fillers.
- VOICE 2. We can't. We're Kosher, and we have to answer to an even Higher Authority.

The last two words are spoken in a quavering voice, indicating more lofty, profound and other-worldly concerns than those imposed by the government of the day.

To generalise from this example, one of the most attractive elements of religion in general, and of Judaism in particular, is that it provides an alternative perspective to the views of the state. This is vitally important, in my view, since we live at a time when the role played by government in our lives has become increasingly more and more intrusive.

However, I should like to turn matters around. Instead of using theological insights as a platform from which to criticise secular ones, I shall utilise an academic discipline to analyse religious teachings. Specifically, to examine Talmudic insights into economics and business law from the vantage point of a particular type of economic philosophy, which may best be characterised as economic conservatism, or economic libertarianism, or perhaps classical liberalism of the 19th century variety. (Parenthetically, there is a bit of poetic justice, or at least poetry in this choice, since many of the leading exponents of the free enterprise system — such as Ludwig von Mises, Milton Friedman, Irving Kristol, Murray Rothbard, Gary Becker, Ayn Rand and Israel Kirzner — happen to have been born of the Jewish faith.)

Before beginning this examination, we would do well to sketch out, at least in broad outline, what an economy based on these principles would look like. One way to describe it is that such an economic system would be somewhat similar to our own, except that taxes would be far lower, business regulations far less all-encompassing, and government would play a far smaller role. Another way is in terms of principles: in a pure free enterprise system, the only role

for government is to protect persons and property against theft and aggression, whether foreign or domestic. Taxes, and government holdings of property (for courts, police, legislatures, armies) would be as small as is consistent with this one purpose. There would be laws against assault, battery, rape, murder, theft, trespass, fraud, and other such attacks on the person or his property, but these would exhaust the scope of legislative enactment. All other social tasks, whether providing for necessities such as food, clothing and shelter, or luxuries such as recreation, would be undertaken by individuals co-ordinating their co-operative efforts implicitly through markets, or explicitly through organisations such as synagogues, clubs, community groups, etc. Help for the poor would come from private charity; government would be used only as a last resort.

The watchword of this system would be voluntary co-operation and interaction. The realm of the coercive would be reduced as far as possible.

With this thumbnail sketch on the table, I turn to a consideration of the Talmudic and Halachic traditions of business regulation.

In the second and third sections of this article I discuss the Talmudic treatment of laws dealing with price fraud, and the satisfaction of specific payment obligations required in religious ceremonies. In the fourth section I consider Rambam's interpretation of price, wage and profit controls, and in the fifth section his views on the legitimacy of rulers, based on currency circulation in their kingdoms. Finally, comes the conclusion.

## Price Fraud

According to Rabbi Levine, a Professor of Economics at Yeshiva University of New York, and a Talmudic commentator[1], there are three degrees of *ona'ah*, or price fraud.

First is where the discrepancy between the sale price and the market price is more than 16.66 per cent. Here the sale is voidable. Secondly, where the sale and market price differ by exactly this amount. In such a case, the transaction may not be undone, but the victim is entitled to restitution of the full amount of the *ona'ah*. In the third alternative, there is less than a one-sixth discrepancy between sale and market price. As a result, the sale is binding, and the injured party has no claim to compensation.

Where does Maimonides enter the picture? According to Rabbi Levine, Rambam held that barter constituted an exemption to the law of *ona'ah*. Why so?

The difference between a money exchange and barter, according to this line of reasoning, is that in the former case "the clear intent of the parties involved is to exchange equal objective values" while, in the latter case, "the intent of each party is clearly to acquire something of greater subjective value to himself than what he has to offer in exchange". This reasoning, I confess, is a bit unclear to me. As far as I am concerned, the purpose of *all* trade, whether of the barter variety or for money, is to improve one's lot in life. If I trade you my tie for your wrist-watch, it is because I value your timepiece more highly than my article of clothing; my gain is the difference to me between these values. You, for your part, agree to this trade owing to an opposite evaluation: in your estimation, my tie is worth more to you than is your wrist-watch. Without this opposite or inverted set of evaluations, no voluntary trade could take place.

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But the motivation is identical in the case of a trade where one side uses money, and the other a good or service. If you purchase my tie for \$20 it is because you place a greater value on this object than you do on \$20. I sell it to you for this amount because I rate the \$20 as preferable to keeping the tie. Similarly, if we agree to a sale of your watch to me for \$25, it must be true that I regard the timepiece more highly than the money, and you rank them in inverse order.

So, I fail to see the case for an exemption based on barter. And the same applies to other exclusions mentioned in the literature, such as household articles intended for personal use, scrolls of law, draught animals and pearls. If it is truly fraud to sell something for more than 16.66 per cent above the market value, this prohibition should hold in all instances: barter or sale for money.

More important, however, the argument for *ona'ah* itself is far from compelling. First of all, what is so holy about the fraction one-sixth? Why not couch the law of price fraud in terms of a deviation between the sale price and the market price of one-fifth, or one-seventh? One-sixth appears arbitrary and capricious.

Secondly, the distinction between market price and sale price is by no means so clear as is implied in this treatment. Strictly speaking, the market price at any given time *is* the sale price. Therefore, there can never be a deviation between the two of any amount, let alone to the extent of 16.66 per cent.

Take the Vancouver housing market as an example. What is the market price of a house? The very question is ludicrous. Think of the things we must specify before it even begins to make sense. What neighbourhood is it in? How big is it? What is the layout? What is the state of disrepair? Is it on a quiet street or a main thoroughfare? Is it a condo? Is it a rancher or a split-level? Are there schools and shops nearby? Are there synagogues within walking distance? Will the owner take back a mortgage? On what terms? But even when we completely specify all such criteria, and we never really can, we are faced with the problem of continually changing prices. The market price for a house of a "given" quality changes from month to month, even from day to day. Strictly speaking, there is only one way to determine what fair market value is: find out the latest terms of sale. True, there is such a thing as the value of the average home sold in a given time period. The Vancouver Real Estate Board publishes such a figure. But this is of no help, unless we want to prohibit all sales which differ by more than 16.66 per cent from this average.

Nor must it be thought that these problems arise only with regard to heterogeneous goods such as homes. Similar difficulties apply, as well, to homogeneous goods such as sugar, salt, apples, coffee, bricks, fish, lumber, steel, coal, etc. In each of these cases different vendors will offer alternatives in terms of financing, reliability, sales effort, delivery, goodwill, payment terms, packaging, allowable level of impurities, scheduling, freight charges, etc.[2]

Thirdly, as Rabbi Levine himself states, "price agreements which diverge enormously from the prevailing norm are interpreted as representing a tacit understanding between buyer and seller to treat the price differential as a voluntary gift transfer". If I sell you a cup of coffee for \$5, and the item can

be had in most other restaurants for \$0.50, instead of interpreting the differential of \$4.50 as a form of *gezel*, or robbery, why not interpret it as a gift you make to me on a voluntary basis?

Rabbi Yizchok Adlerstein states, "When a vendor informs a prospective customer of the extent of his intended over-charging, and the customer agrees, there is no violation"[3]. Certainly, such a warning would constitute a compelling defence against the charge of *ona'ah*. But suppose I merely notify you in advance that I am going to charge you \$5 for a cup of coffee, without mentioning that other people will charge only \$0.50 for a similar product. Why can we not continue to interpret your willingness to engage in this commercial activity as a gift to me of \$4.50? We can never know, for sure, that you are ignorant of prevailing prices for a cup of coffee. People lie on survey questionnaires. But, even if it is somehow granted, just for the sake of argument, that you have no knowledge of the fact that coffee can be obtained down the street for \$0.50? why am I guilty of fraud if I continue my sales at \$5? Must I subject each of my customers to a quiz before selling coffee, questioning them about their awareness of competing prices? Information is a scarce and valuable good, and I cannot see why merchants should be required to give it out free.

Another point that needs to be raised in this connection is that, although you may be able to purchase a product that for some purposes may be considered similar to the cup of coffee you can obtain from me, it cannot be identical. By definition, I am the only one who can sell you a "Walter Block" cup of coffee. There may be many imitators, but there is only one original.

This insight only underscores the difficulties of trying to distinguish a market price from a sale price. If all goods may be individualised in this manner, not just coffee, then, strictly speaking, there is no market for coffee. There are only numerous buyers and sellers of slightly different kinds of coffee, each of them offering different packages in terms of ambience, reliability, association with particular people, etc.

Given all these uncertainties and difficulties, the law of *ona'ah*, if carried out, would amount to full employment legislation for lawyers, and for the Rabbis involved in such matters. But surely more important work can be found for such otherwise productive members of society, especially if economic progress is deemed desirable in the community.

Perhaps the worst result of this interpretation of *ona'ah* is that it leaves uncovered what common sense tells us is real price fraud. Lying, cheating, advertising a cheap price and then offering a worse deal when the customer shows up at the store, selling a product at one price but substituting an inferior item for it without the buyer's knowledge, these are all instances of price fraud which have nothing to do with selling goods at prices 16.66 per cent higher than some mythical "market value".

Rabbi Adlerstein characterises *ona'ah* as "deceptive charging above the market value"[3, p. 61]. This is an improvement over the treatment given the subject by Rabbi Levine, because of the insertion of the word "deceptive", but it, too, is disappointing because it still gives credence to the distinction between market price and the actual sales price.

### Specific Payment Obligations

Rabbi Levine considers the following Talmudic passage:

[If one declares,] "This calf be for my son's redemption", his declaration is invalid. [If he says] "This calf, worth five selas, be for my son's redemption" . . . his son is redeemed. Now, how is the redemption meant? Shall we say that it [the article] is not worth [five selas]? Does it rest with him? . . . After all it means that it was not worth [it] but we suppose the priest accepted it [for the full value], as in the case of R. Kahana, who accepted a turban for a son's redemption [although it was certainly not worth five selas], observing to him, [the father who redeemed the son] "To me it is worth five selas". R. Ashi said: this holds good only of e.g. sic [a man like] R. Kahana, who is a great man and needs a turban for his head; but not of people in general. Thus it happened that Mar, son of R. Ashi, bought a turban from the mother of Rabbah worth ten for thirteen sic[4].

Rabbi Levine analyses the passage following the lead of Rabbi Nissim Gerondi, a 14th century Spanish commentator, as follows:

Credibility is given to the priest's claim that the turban is subjectively worth to him the above market price of five selas only when the latter was known on other occasions to pay this above market price for the subject article. When this is not the case, no credibility is given to this assertion that the turban is subjectively worth the above market price of five selas[1, p. 30].

This, however, is in sharp contrast to Maimonides, who states:

"[If he [the father] gave him [the priest] a utensil that does not have a market value of five selas and the priest accepted it as worth [to him] five selas, his son's redemption is therefore effected[5].

Rabbi Levine is unhappy with this, noting Maimonides' "conspicuous failure" to cite Rabbi Gerondi's credibility condition, that is his previous purchasing behaviour; he adds that the commentators have found Maimonides' position to be "enigmatic".

But the position of the Rambam appears cogent, and the credibility condition posed by Rabbi Gerondi, and seconded by Rabbi Levine, seems puzzling. The heart of the matter is the claim that, if the priest was not known on other occasions to pay five selas or more for a turban, we should not believe his present assertion that the present turban is worth five selas or more to him. Passing over the difficulty of calling the clergyman a liar, the problem with this view is that it posits an independent criterion for the evaluation of an item by a purchaser, apart from his decision to buy it, or refrain from buying it. His behaviour on a completely separate occasion is neither here nor there, because people commonly change their minds. A consumption decision at time  $t$  is not a sure indication of the true subjective worth of an item to the same person at time  $t + 1$ . You might have been willing to trade your wrist-watch for my tie 20 minutes ago, but may by now have had second thoughts. This crucial economic insight has been expressed by Ludwig von Mises:

One must not forget that the scale of values or wants manifests itself only in the realm of action. These scales have no independent existence apart from the actual behavior of individuals. The only source from which our knowledge concerning these scales is derived is the observation of a man's actions. Every action is always in perfect agreement with the scale of values or wants because these scales are nothing but an instrument of the interpretation of a man's acting[6].

In the view of Murray N. Rothbard:

Actual choice reveals, or demonstrates, a man's preferences; i.e. his preferences are deducible from what he has chosen in action. Thus, if a man chooses to spend an hour at a concert rather than a movie, we deduce that the former was preferred, or ranked higher on his value scale. Similarly, if a man spends five dollars on a shirt we deduce that he preferred purchasing the shirt to any other uses he could have found for the money[7].

From this we can see that, if the priest accepted a turban in a situation where he was entitled to five selas, it follows that he ranked the turban higher than this amount of money, at least at that point of time. Contrary to Rabbis Levine and Gerondi, his previous turban purchases are completely irrelevant. Of course, we don't know *why* he ranked the two items in this order. It might be that this was an implicit gift; perhaps the father was a poor man. Possibly his tastes have changed. But from the point of view of the economist, all this is idle speculation; we cannot get past the commercial decision into the man's soul. There is no independent criterion of value apart from the priest's decision.

### Price, Wage and Profit Controls

We are told by Rabbi Levine that "price and wage regulation . . . becomes effective law, according to Mabit, by means of simple majority of those eligible to vote"[8]. If so, this is exceedingly difficult to reconcile with well-known biblical injunctions against theft, for compelling a merchant to sell at a certain price, or a labourer to work for a given wage, is tantamount to robbery[9]. And this goes as well for requirements that vendors sell within a specified time period, or geographical area[8, p. 117].

Even worse, we are told by Rabbi Levine that "the option of leaving prices unregulated is . . . not open to the community in relation to commodities essential to human life. By Rabbinical decree, a profit rate limitation of one-sixth (there is that number, again)[present author's brackets] is set for vendors dealing in such commodities"[8, p. 117].

And what is the role of Rambam in all of this? Unfortunately, it is not to point to the drawbacks of such a system. Rather, it is limited to a discussion of which items are necessities or essential, and thus open to control, and which are luxuries, and thus potentially free, if the voters are willing. States Maimonides:

The vendor is proscribed from earning more than one-sixth profit. When does this apply? Only to commodities essential to life, i.e., wine, oil and flour. However, in regard to roots, i.e., costus and frankincense, and the like, no price is fixed and the vendor may earn as much profit as he desires[10].

There are several difficulties I have in understanding this. First, a price restriction on necessities like foodstuffs is a violation of the private property rights of the owners in question. It is, in effect, an unjustified seizure of part of the value of his goods. Secondly, the means adopted are incompatible with the ends of the Rabbis. Since essentials are very important to the sustenance of life, the goal of the Rabbis is to make sure they are always available; since luxuries are not so consequential, it is not so crucial to guarantee continual access. The problem with adopting price control for the necessities, and allowing a free market for luxuries, is that the very opposite results will obtain. That is,

price controls are an *impediment* to continued supply of a good, while economic freedom is the best guarantee, at least on this side of the Garden of Eden, that shortages will not arise[11].

Why is this?

Profits are the means by which the consumers signal to the merchant their priorities. If people come to fear they may not have enough milk for their babies, profits in milk production will rise. This will draw investments into this industry, and away from all others. But, if the government artificially limits profits, this process will to that extent be vitiated. Profit controls are like a warning sign to the entrepreneur. In their absence, he had looked upon all investment opportunities on an equal basis, focusing on the items which people felt were most important to them, so as to maximise returns. But now, with price controls and profit limitations, he will tend to avoid these options. As a result, there will be economic perversity. Resources will flow away from industries producing necessities, where they are most needed, and towards luxuries, where they are not.

Given the goal of the Rabbis, and on the assumption that for some reason or other price and profit controls must be implemented, the decision to impose regulation on necessities and to allow freedom for luxuries is the very opposite of what will best serve the community. If we have to have government interference in the economy[12], then it would be far better to control extravagant items and to leave essentials strictly alone. Better yet, of course, would be no controls at all.

The same analysis applies to rent control. Well-meaning politicians and bureaucrats, concerned with rental housing shortages and high prices, especially for the poor, have enacted this legislation in order to improve matters. Instead, the very opposite has occurred. The controls serve as a warning device, alerting entrepreneurs of the dangers of this sort of investment. Even the fear of possible future rent controls has lowered supply, thus, paradoxically, raising prices, and decreasing vacancy rates. In contrast, luxury high-rise office towers, hotels, shopping centres and industrial parks have never been subjected to rent controls. As a result, there are no shortages in these markets, and vacancy rates are oft-times in the double digit range[13].

### Political Rulers

Let us now consider Rambam's position on the legitimacy of political rulers. He is led into speculation on this topic in his attempt to analyse the Rabbinic principle "the law of the land is law". Maimonides says that a state of legitimacy will

apply only to a king whose coins circulate in the localities concerned, for then the inhabitants of the country have accepted him and definitely regard him as their master and themselves as his servants. But if his coins do not circulate in the localities in question he is regarded as a robber who uses force, and as a troop of armed bandits, whose laws are not binding. Moreover such a king and all his servants are deemed robbers in every respect[14]

This is a very important topic; indeed, it is perhaps the most important, vexing and complex issue in all of political philosophy. A longer, more complete treatment of the subject would have been preferable, but even this fragment opens up several avenues of exploration.

There are several puzzles which arise in this connection, however. First, why

does the fact that "the inhabitants of the country have accepted" a person as master, and definitely regard him as such, make this relationship legitimate? Surely, the slaves of a plantation may accept a person as master, and definitely regard him as such, and yet the master-slave relationship may be totally unjustified? Surely, the unenviable people who live under the power of dictators accept these people as their masters, at least in the sense of resigned acquiescence? But that hardly renders their rule legitimate.

Secondly, why should the king be the master, and the citizens the servants? According to the political philosophy now in vogue in Canada, at least in some quarters, this reverses the ideal situation, where the electorate are likened to employers, and the politicians to employees.

Thirdly, why the emphasis on the circulation of coinage bearing the king's imprint? Historically, some societies have used barter, and no money at all; were they illegitimate on that score alone? Other countries do not use the coinage bearing their own leader's imprint, but rather that of a completely different nation. For example, only the US dollar circulates in the sovereign states of Liberia and Panama, as does the Swiss franc in Luxemburg and Liechtenstein, and the French franc in Senegal, Mali, Niger and Ivory Coast. Historically, this applied to the US itself. According to one historian, "In the United States, as late as 1857, few bothered going to the US mint to obtain coins; the coins in general use were Spanish, English, and Austrian gold and silver pieces"[15]. Further, suppose that there was a country where the medium of exchange was completely privatised, and the people used gold coins minted not by government, but by a private industry dedicated to this task. Where is the illegitimacy in this case?[16] There is also talk of a dollarisation plan in Israel — the US dollar would be substituted for the shekel as the circulating medium. Should that ever come to pass, would the Israeli government lose its legitimacy, for this reason? Hardly.

Possibly, the Rambam's phrase "the inhabitants of the country have accepted him" should be interpreted not as surrender to an overpowering force, but as voluntary agreement to being ruled. Coupled with the phrase "he is regarded as a robber who uses force, and as a troop of armed bandits, whose laws are not binding", this interpretation is potentially a very revolutionary one. For it calls into question not only the regimes of dictators, but also those of democracies. This is because they, too, use force against those who have not accepted the legitimacy of democratic rule. And there will always be such persons, unless there is totally unanimous agreement to the constitution, which is like a contract whereby all agree to be bound by the rule of the majority.

### Conclusion

Based on this very brief analysis of the Halachic tradition on economics and business regulation, and on the contribution of Maimonides, it would be fair to say that there are significant differences between Jewish law and the philosophy of free enterprise[17]. This is highly unfortunate since all minority groups, especially beleaguered ones such as those of the Jewish faith, benefit particularly from free markets[18]. For the Diaspora Jews it is an insurance programme against bad prices, and for Israel itself this system is vitally needed if the economy of the country is ever to be successful, and thus the country guaranteed to remain militarily secure[19].

Notes and References

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2. For an analysis of the multidimensionality of even "homogeneous" goods, see Armstrong, D., *Competition vs. Monopoly*, The Fraser Institute, Vancouver, 1982.
3. Rabbi Yizchok Adlerstein, in "Price Controls and Consumer Advocacy", *Journal of Halacha and Contemporary Society*, No. XIII, Spring 1987, p. 62, notes "When a vendor informs a prospective customer of the extent of his intended over-charging, and the customer agrees, there is no violation."
4. Kiddushin 8a. Material in brackets inserted by present author.
5. Yad, Hilkot B'koorim XI:7. Cited in Levine.
6. von Mises, L., *Human Action*, 3rd ed., Regnery, Chicago, 1966, p. 95.
7. Rothbard, M.N., *Toward a Reconstruction of Utility and Welfare Economics*, Center for Libertarian Studies, New York, Occasional Paper #3, 1977, p. 2.
8. Levine, A., "The Free Enterprise Model: A Halakhic Perspective", *Intercom*, p. 116.
9. Many brutal and immoral governments first came to power as the result of a democratic election. Surely, the fact that a decision was the result of a "simple majority of those eligible to vote" is no guarantee of its ethical goodness?
10. Yad, Hilhot Mechirah, XIV:2, cited in Levine, "The Free Enterprise Model", op cit, p. 117.
11. See Walker, M. (Ed.), *The Illusion of Wages and Price Control: Essays on Inflation, its Causes and its Cures*, The Fraser Institute, Vancouver, 1976.
12. I confess, the justification for this statement eludes me.
13. See Block, W. and Olsen, E. (Eds.), *Rent Control: Myths and Reality*, The Fraser Institute, Vancouver, 1985.
14. Missing citation. Cited in Zipperstein, E., *Business Ethics in Jewish Law*.
15. See Rothbard, M., *The Mystery of Banking*, Richardson and Snyder, 1983, p. 271.
16. For a defence of such a pure gold standard system, see von Mises, L., *On the Manipulation of Money and Credit*, Free Market Books, Dobbs Ferry, NY, 1978; *The Theory of Money and Credit*, The Foundation for Economic Education, Irvington on Hudson, NY, 1971.
17. For further analysis, see Rivkin, E., "Judaism's Historical Response to Economic, Social and Political Systems"; Feigenbaum, S., "Comment on Rivkin"; Tamari, M., "Judaism and the Market Mechanism"; Block, W., "Comment on Tamari"; in Block, W. and Irving, H. (Eds.), *Religion, Economics and Social Thought*, The Fraser Institute, Vancouver, 1986.
18. See Block, W., "The Jews and Capitalism", *Vital Speeches*, Vol. LI, No. 9, pp. 283-8.
19. See, in this regard, Friedman, M., "Capitalism and the Jews"; Levine A., "Comment"; Frankel, S.H., "Comment"; Friedman, M., "Reply"; in Block, W., Brennan, G. and Elzinga, K. (Eds.), *The Morality of the Market: Religious and Economic Perspectives*, The Fraser Institute, Vancouver, 1985.