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Ona'ah

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Abstract *Ona'ah is a Hebrew word indicating the Jewish Talmudic law which, according to various interpretations, proscribes both fraud and over-charging. The present essay sharply distinguishes between these two concepts, accepting the former as legitimate but rejecting the latter on grounds of economic inefficiency and property rights violations.*

Ona'ah is a Talmudic prohibition against charging "excessive" prices, and earning "exorbitant" profits[1]. Specifically, in order to comply with this law, prices are to be at such a level that profits are no higher than 16 per cent[2].

The problem with all such controls is that prices (e.g. rates of exchange between two goods, or one good and money) have a crucial role to play in an economy. It is no exaggeration that they are the only way a large-scale society can function. Indeed, the sole alternative to prices is central planning[3]. Happily, ever since the unraveling of the Soviet Union, most people are properly suspicious of government intervention into the economy[4].

Suppose that for some reason there is a surplus of carpenters and a shortage of plumbers. The way the price system handles such a challenge is simplicity itself. The wage of carpenters falls, and that of plumbers rises. This leads people who have or can attain both skills to switch from the former to the latter. Similarly, if there is a great demand for carrots and small demand for corn relative to supply, the price of the former will rise and that of the latter, fall. This will again tend to lead entrepreneurs, as if by an "invisible hand"[5], to tailor their offerings to the wishes of consumers. The higher price of carrots will call forth more of this vegetable, and the lower price of corn will reduce incentives to bring that product to market, at least on the part of all those who attempt to maximize their returns. As for those who ignore these market signals, other things equal they will become bankrupt. It is in this way that a decentralized market can function in a rational manner without any central direction at all. This may not seem important to all, but it has great importance for our welfare; no less than the feeding, clothing and sheltering of the human race is at stake.

Controls, of course, prohibit the movement of prices (without government permission). But by the time the bureaucrats merely discern the difficulties in relative supply of carpenters and plumbers, or corn and carrots, to say nothing of the hundreds of thousands of other items in a modern economy, there is no possibility of rectifying matters and attaining a smoothly functioning economy[6].

In this regard *Ona'ah* is not a total disaster. Instead of preventing such price changes, it merely retards them. This Hebraic law allows only those changes at



which profits are still held below 16 percent per year. If resources can be fully allocated by, say, a price change yielding only a 10 percent profit on employees or commodities, then *Ona'ah* will have no explicit deleterious effect on the economy. In a stable economy, e.g. of early or biblical times[7], with little call for the beneficent intermediation of changing prices in order to allocate resources, this law, conceivably, would do little harm. But in a modern economy, replete with inventions, innovations, a computer revolution, immigration, trade, discoveries, quick and massive changes in tastes, etc., the economic arteriosclerosis engendered by *Ona'ah* might be serious indeed.

Fraud

Let us now address an interpretation of *Ona'ah* according to which what is being banned is not earning profits greater than 16 percent, but rather fraud[8]. Posit the following scenario: a man walks into a restaurant, and orders a sandwich, French fries and a coke without looking at the menu. He expects to pay about \$10, based on his experience of prices in that neighborhood, and on his estimate of the quality of this particular eating establishment. Were the bill presented to him \$8, he would feel he had a bargain; were it \$12, he would be surprised, but would not think of his experience as in any way remarkable. Were it \$16 he might feel victimized by sharp practice, but would still pay without protest. The quality of food does vary after all, different establishments have different costs, and, then, there is always "location, location, location." All of this might account for a price variation of as much as, say, the 100 percent differential between \$8 and \$16.

In the event, however, the man is presented with a bill for \$500[9]. Now this is a horse of an entirely different color. It seems reasonable to adopt a "reasonable man" standard in cases of this sort[10]. On the basis of any such test \$500 would presumably be ruled out of court. Here the *Ona'ah* rule would be a reasonable one.

Suppose now a slightly different scenario. Again the man orders his meal, but this time the waiter cautions him: "You know, the cost of the food you just ordered is \$500.00. Are you sure you want it? Let me see the color of your money or a credit card first." If the reach of *Ona'ah* is limited to fraud, there can be no question of that taking place in this second scenario. The diner knows full well the rate of exchange of money for lunch.

But *Ona'ah* still applies[11]. Even though this law combats fraud, it is by no means limited to that task[12]. That is, according to this law, the \$500 price tag would be unenforceable even if the customer agreed to it[13]. This seems like a "capitalistic act" between consenting adults (Nozick, 1974, p. 163). Why might the law of *Ona'ah* oppose such a contract?

In order to see this we ask, Why would a person consent to pay \$500 for a meal, given that it is widely available in the neighborhood for prices ranging from \$8 to \$16?

One possibility is that he is so rich that "money is no object to him." Yes, he could avail himself of an equally good and far cheaper meal, but in order to do

that he would have to invest in a walk of five minutes, and perhaps it is raining. Saving some \$500 doesn't seem worthwhile to him, given the amount of effort he must expend.

Why should the restaurateur obey the law under such circumstances, other than for the fact that it indeed is the law? There is certainly no fraud, nor anything that can be called "exploitation".

Another possibility is that the diner is simply unaware of what is being charged elsewhere[14]. He would vastly prefer to pay say, \$10, but does not know of any such opportunity; he only reluctantly consents to the \$500.

This scenario depicts tourist (to the extent we can give this example any credibility) like behavior. The man is unwilling to engage in any research (e.g. comparative shopping) since he intends soon to leave the area, and will not in the future benefit from such an investigation. That is to say, his search would not be economically warranted. The law of *Ona'ah* may thus be economically inefficient, in that it will compel the restaurateur to in effect do this search in behalf of the customer (by telling him of other prices in the neighborhood) even though, by stipulation, this was inefficient since it can be capitalized only over a very short period of time.

If not economic inefficiency, there is but one other interpretation: *Ona'ah* violates the commandment against theft. For it is forcing the owner of the restaurant to give something of value (information about local prices) to all his customers, for free. But information is a valuable economic commodity, just like cars, sandwiches and soft drinks. If the diner walked out of his establishment without paying, we would have no difficulty in labeling that as stealing. Why, then, not also when the diner walks out without paying for the information[15]?

Profit

I buy a quart of orange juice under ordinary circumstances. It will take me perhaps a week to consume this beverage, since I drink only a small glass of it each day. The cost is \$2 per quart. I value it at \$2.20. (I had to value it at a level greater than its cost, or I would not have made the purchase.) I earn a profit of \$0.20, or 10 percent on the price tag. I am within the bounds of *Ona'ah*.

The next time I go to the store to buy orange juice, I have just finished running the marathon. This time, I value it at \$100, so desperate am I for liquid refreshment. I will drink it all in one fell swoop, immediately. I value it at \$100, so desperate am I for a taste. That is, this is the top price I would have paid. But the cost is still \$2. (The store owner is much too busy to monitor my desires for his products, and, in any case, had he charged me anywhere near the \$100 I would have been willing to pay, I would simply make my purchase at a neighboring grocery.) Now, however, I am making a vast and exorbitant profit from my transaction[16], to wit, $100 - 2 = 98/2 - 100 = 4,800$ percent. Surely, I am transgressing against the law of *Ona'ah*. If I want to be obedient to this law, I cannot purchase the orange juice until my need or desire for it has returned to

normal levels. If I always register such a strong consumer surplus from this product, I can never purchase it.

The implicit premise of *Ona'ah* is that if the profiteer is not engaging in fraud, he is then exploiting his trading partner. It seems difficult to sustain such a charge in the present case. How have I harmed the grocer, merely by taking such pleasure in what he sells me?

I am walking in the desert one day and see a sparkling stone on the ground. I bend down to pick it up and lo and behold it is a diamond, worth \$100,000. The cost of my labor is insignificant. It took all of two seconds to acquire this jewel. I calculate that my labor is worth \$60 per hour, or \$1 per minute. The total cost to me of engaging in this labor is thus about 3 cents. If I sell this diamond for its market value, my profit rate will be enormous. If I wish to live up to the rule of *Ona'ah*, I must either keep the diamond for myself, give it away as a gift, or sell it for no more than 4 cents.

The implicit premise of *Ona'ah* is that if the profiteer is not engaging in fraud, he is then guilty of exploitation. But why is it wrong to sell a diamond for its market value?

In the diamond and orange juice cases, only one party to each of these commercial arrangements is in violation of *Ona'ah*: the seller in the former, and the buyer in the latter. It is possible, however, for both parties to a deal to disobey this regulation. For example, if the diamond of our example is sold for \$100,000, to a billionaire, who values it at \$1,000,000, perhaps for sentimental reasons. Then, each of the two parties to the arrangement gain an enormous amount, but would have to cease and desist, for they would be acting incompatibly with *Ona'ah*.

Actually, the situation is worse, far worse, for this curious doctrine. For profit transcends mere monetary or trade arrangements. We need limit our purview to the world of commerce. A happily married man and wife[17] might each treasure each other inordinately. Compared to the cost to each of them in setting up and continuing this relationship, their gains are astronomical. This may be all well and good for the institution of marriage, but it leaves *Ona'ah* mortally wounded.

Strictly speaking, profit is the difference in how a man evaluates the world if he makes choice A versus B, where option B is the next best opportunity known to him. Suppose that A is the decision to go to school, get a good job, get married, have children, while B entails dropping out of school, engaging in criminal activity, and joining the drug culture. In most calculations, A would be vastly superior to B. Thus, the profit[18] from this course of action would be enormous. If so, it would be proscribed by *Ona'ah*.

Are we to give up highly profitable personal or commercial relationships because they do not square with *Ona'ah*? Or should we, rather, rethink this curious enactment? The latter seems by far[19] the better choice.

Let us consider another dimension of this discussion. According to some interpretations, *Ona'ah* does not really form part of the law; rather, it is a rule for niceness, or kindness, or "treating others as you would have them treat

you." An alternative way of putting this is that *Ona'ah* applies only to members of the extended family. Since in Talmudic law this would apply only to all Jews, this is in effect a law that applies to each member of that faith with regard to all other members, but to none of them as far as outsiders are concerned.

How would this apply to the issue of insider trading? For virtually all secular commentators, and religious ones too, for that matter, this is a non-issue. To trade as an insider is equivalent to theft and ought to be punished by the criminal law. It is in effect to take advantage of market participants by benefiting from secret, illegitimate, or, in a word, inside, information[20].

But there are problems in reconciling the doctrine of *Ona'ah* with the phenomenon of insider trading. For one thing, this law, under the interpretation of it we are now considering, calls for not one single response, but rather a bifurcated one. That is, *Ona'ah* requires one kind of act with regard to co-religionists, and an entirely different one for those who do not fall into this category. To wit, a Jew must not practice insider trading when only other members of this religion are involved, but one can do so in all other cases. The difficulty is that it is difficult, if not impossible, in practice, to separate the two. Suppose, for example, that only Jews participated in the Tel Aviv stock exchange, and that none of them were involved in this capacity in London. Then, matters would be clear: a member of this religion could practice insider trading in the former, but not in the latter. In reality, though, all sorts of people are involved in both. It is a virtual certainty that there is no stock exchange in the world that is homogeneous in this regard. Presumably, the proper response would be that insider trading should not be practiced by anyone who follows the law of *Ona'ah*. This is required of Jews with regard to other members of this religion. Since there is no way to separate the two populations, non-Jews would be in effect "free riders"[21] on this law. That is, no one who obeys the Talmud could practice insider trading with regard to them. But this would not be because Jewish law specifically prohibits such acts. It does not. Rather, it is due to the fact that Jews may not engage in insider trading with other Jews, and there is no way to distinguish people, based on their religious precepts, in stock markets. Say what you will about this conclusion, at least it is not radically counterintuitive.

One last complication. The essence of entrepreneurship is insider trading. This is because the fundamental nature of this activity is acting on the basis of information and knowledge that not everyone else possesses (Kirzner, 1973). There are two different ways to conduct entrepreneurial activity: through space, and through time. In the former case, there is geographical arbitrage. A businessman notices that some oranges cost \$1 in Florida, \$5 in Boston, and that the costs of transporting them from the one place to the other, and selling them in the latter, is only \$1. He does so, and earns \$3 in profit, far more than the 16 percent allowed by *Ona'ah*. In the latter case, an entrepreneur thinks that if he purchases goods worth \$100 now, he can turn them into products worth \$1,000, in a year from now, with interest costs included. He does so, and earns a profit of \$900, far in excess of the rate allowed to him by *Ona'ah*.

Both the time and the space entrepreneur possess information not available to everyone else (were it so, these price differentials would never have arisen in the first place.) We pass over the difficulties of getting the newspapers to publish this vital knowledge; and also, that if they do, there will be some people who will not believe it, and many others who will never hear about it. We focus instead, again, only on the difficulties presented for the doctrine of *Ona'ah* by the distinction, for Jews, between treating some people differently than others. Were the world to consist of only members of this one religion, it seems a clear implication of *Ona'ah* that entrepreneurship would be strictly forbidden[22]. But in reality, the earth is heterodox in this regard, and there is no practical way to confine the effects of entrepreneurship to any one group of people. Given, then, that it is illicit to practice entrepreneurship with regard to Jews, and there is no way to separate individuals on this basis, then in the real world, it would appear, members of this religion are forbidden to engage in this activity even in so far as Gentiles are concerned. Here, the implications of *Ona'ah* would appear to cut in the opposite direction, as far as counterintuitivity is concerned. That is, while it seemed reasonable to allow non-Jews to “free ride” on insider trading (since Jews couldn’t do this to others of their religion, they couldn’t do this to anyone else either), it is decidedly unreasonable sounding to prohibit Jews from engaging in entrepreneurship with Gentiles, on the ground that this could not help but spill over to their co-religionists.

My conclusion: neither entrepreneurship nor insider trading should be disallowed, for anyone, for any reason. Both are “victimless crimes”, or “economic crimes” in the parlance of the now discredited Soviet law. If *Ona'ah* prohibits either of them, then so much the worse for *Ona'ah*.

Notes

1. The literal translation of the law into English is as follows: variously, “the law of mispricing” (Wilson, 1997, p. 1); “price fraud” (Warhaftig, n.d.).
2. Is there some reason for 16 percent, as opposed to 15 percent or 17 percent? If so, what is it?
3. Most modern economies, of course, are “mixed,” in the sense that some prices are controlled and others not.
4. For earlier critics of soviet style economics, see Bauer and Yamey (1957), Boettke (1993), von Mises (1975, 1981).
5. By this terminology Smith (1965) meant to indicate God’s role in economics.
6. On this see Hayek (1945, 1948). For an even more radical claim, that it is not merely the information that is lacking for the central planners, but that even if they had it they still could not function due to lack of appraisalment, see von Mises (1975, 1981), Salerno (1990, 1992, 1995).
7. An ancient one, of the sort which occurred when this law was first promulgated. Leviticus was written some time in 1400 BC, the actual date varies between different authorities; see: <http://www.carm.org/bible/biblewhen.htm>
8. For one scholar who has interpreted *Ona'ah* in this way as pure fraud see, Zvi Weiss <weissz@iia.org> who states: “The halacha states that if I *explicitly* tell someone that I am overcharging what I am selling (or that I am offering an artificially low price for what I am

buying), then there is no prohibition of *Ona'ah*. This would seem to make clear that *Ona'ah* is strongly based upon issues of value and *deception*." Mail Jewish Mailing List, Volume 16 Number 5; Produced: Mon Oct 24 22:53:39 1994. http://www.ottmall.com/mj_ht_arch/v16/mj_v16i05.html)

9. This article is being written in 2002. There is no doubt, given government inflationism, that in a few years hence \$500 for such a meal will not raise any eyebrows. The present writer, in his youth in the 1950s, was accustomed to paying for a sandwich, fries and a coke in the neighborhood of \$0.50.
10. The bill might have specified \$5,000, \$50,000, \$500,000, etc., or perhaps even indentured servitude for life.
11. See Warhaftig (n.d.).
12. In a similar vein, anti trust law also proscribes fraud, but does much more. For a critique of the non fraud combating aspects of anti trust, see Armentano (1972, 1982, 1991), Armstrong (1982), Block (1977, 1982, 1994), DiLorenzo (1997), Boudreaux and DiLorenzo (1992), High (1984-1985), McChesney (1991), Rothbard (1970), Shugart (1987), Smith (1983).
13. And not only unenforceable; presumably, the law would have some teeth and penalties would be imposed on the restaurateur. "Less than one-sixth: The sale is binding. Exactly one-sixth: The sale is binding and the fraud must be refunded. More than one-sixth: The sale is cancelled. A discrepancy of this magnitude is equivalent to a fraud in the object itself." See on this Warhaftig (n.d.).
14. According to folklore, there was a case in the 1990s, possibly apocryphal, where a taxicab driver charged a foreign customer some \$5,000 to take him from JFK Airport to downtown Manhattan. If true, this would certainly be a violation of the *Ona'ah* proscription.
15. What price would this information have? The restaurateur, by his actions, does not wish to make it available to the tourist customer. If he did, he could have charged \$10. The only price he would in effect agree to is $\$500 - \$10 = \$490$. But this would have been attained without the charade of information selling, merely by a direct charge of \$500 for the meal.
16. This is called "consumers' surplus" by economists.
17. Or two very good friends.
18. A non-economist would place quotation marks around these words. I do not.
19. But not too far, lest we in contemplating it be found guilty of a violation of the very law under discussion.
20. To consider the other side of this issue would take us too far afield from our present concerns. For an alternative analysis of it, however, see Manne (1966a, b, 2002), McGee and Block (1989).
21. I refrain from saying "free rider beneficiaries" of *Ona'ah*, since it is by no means clear that this is so; it is not, if the critics mentioned in note 20, are correct.
22. This would be a problem only for those who think that markets are helpful economic institutions. Dirigistes of the world would, presumably, rejoice.

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