

Price Controls in Rabbinical Literature.
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Introduction

Since the times of Adam Smith, the free competitive market has been extolled as the ideal form prerequisite to maximizing economic welfare. However, the free market does often fail to serve its purpose when competitive conditions do not prevail. When buyers or sellers lack information about competitive prices, or extraordinary demand or supply conditions prevail, present day authorities have a duty to intervene to prevent fraud, misinformation or monopoly pricing. In the USA these functions are assigned to the Federal Trade Commission and the Department of Justice. In extreme cases of severe mismatching of supply and demand as in wartime, the authorities have actually established agencies to control prices.

Over the centuries, a large body of Jewish Rabbinical literature dealing with market regulation. has been accumulated, This literature developed over the years with religious-legal interpretations of the Bible's *Five Books of Moses*. A redaction of these discussions, about 5th Century A.D., became known as the *Jerusalem Talmud* and *Babylonian Talmud*. Subsequent decisions in later times were more precisely defined in various books of Codes of Law, and finally in Responsa documents dating up to present times when rabbinical authorities were called upon to respond to actual cases at hand.

Deviant sales resulting from a) fraud or misinformation b) price gouging

Wherever large Jewish autonomous communities existed, the rabbinical leaders were able to intervene in market transactions to a) prevent improper sales of essential commodities arising under conditions of fraud or misinformation, and b) to prevent monopoly type price gouging of the public..

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The area of misinformation (fraudulent or innocent) by either buyer or seller as to the true (read: usual) market price of a good, is called "Ona-ah" or Overreaching. If the markup or markdown exceeded 1/6 of the usual market price, the excess or deficiency would be refunded to buyer or seller. In the view of some scholars the transaction could also be nullified by either the aggrieved buyer or seller.

This 1/6 limitation seems to have arisen from the general evaluation by the rabbis that there existed a psychological region of "mechila" or forgiveness by buyer and seller. The rabbis estimated that a buyer or seller will likely tolerate a price deviation of up to 1/6 rather than undergo the inconvenience of searching for another buyer or seller¹

There is much discussion in the Talmud as to how the 1/6 is calculated as an overcharge or under charge. Disagreement exists on whether to calculate the 1/6 on the usual original price or as a percentage of the new selling price. The most restrictive opinion is the

example of an item conventionally selling for \$100 should not be sold for more than \$116.67 nor less than \$83.33.²

The ruling of the Talmud is based upon the Biblical prohibition in Leviticus 25:14,15,"if thou shall sell ought unto thy neighbor, or buyest ought of thy neighbor's hand, ye shall not oppress one another."

Ephraim Kleiman offers an excellent review of the ona-ah principle and compares it to Medieval *just price* as instituted by the Church.³ As practiced, *just price* was probably not determined as precisely as the Rabbinical 1/6 limitation and seems to be more closely related to the more diffuse notion that the seller should limit himself to a price that will leave his socio-economic status not higher nor lower than others of his trade.⁴

Price gouging

The present paper deals mainly with the second issue of intervention namely, against price monopoly. This is the case of deliberate gouging by the seller who is able to control supply and exercise some monopoly power over the market. Both the buyer and seller know that the product has usually been sold for \$100. But now the seller demands a price of more than 1/6 higher namely \$116.67. . This is no longer the case of fraud or misinformation but rather monopoly pricing.

The rabbis albeit, not couched in the economic theory of markets felt it necessary at times to intervene on behalf of the general public with respect to *essential* life-sustaining commodities called "Chayei Nefesh". This category certainly included grains, cooking oil and wine. R. Judah ben Beteirah adds weapons in time of battle.⁵

This respect for providing humanity with essentials, perhaps originates in the biblical injunctions against wanton destruction of fruit trees during time of war (Deut. 20: 19-20.)

Sacramental wine is essential for the Sabbath and particularly the Passover holidays. Many would not include foods which are mere additives such as spices. Exports out of Israel were restricted at times to avoid shortages of essentials within the country. Rabbi Judah declines to restrict wine export since he claims that too much wine domestically encourages unseemly levity.⁶ Water for drinking, and perhaps for bathing and laundering is included by some scholars.⁷

Eggs were given special treatment in talmudic times since they required special handling and were allowed additional markup. However many other law codes treat most other basic food products as part of the "essential" category. . Some go as far as adding non-food goods that are considered essential.⁸

Rabbinical courts justified their intervention under the general principle that "hefker beth din hefker." This means that rabbinical courts were granted control over monetary matters including the right to redirect ownership of all monies and private property.⁹

This privilege is based on *Ezra* 10:8 and *Joshua* 19:51. These post-*Five Books of Moses* quotes normally do not have the authority of the Torah (*Five Books*). However, the rabbis considered the *Ezra* and *Joshua* source as indirect proof that rabbinical authorities from time immemorial always possessed the power to control and redirect ownership of money and valuables.

Originally the courts supervised only weights and measures based upon the Biblical dictates of Deut. 25: 14,15. They extended their intervention to prices at the instigation of the Exilarch, the official head of the Jewish community in Babylonia. about the middle of the third century.¹⁰

While the rabbis could not find a direct biblical injunction against deliberate gouging, they did find ethical precepts to guide them. Some compared price gouging to fraudulent weights and measures that is explicitly biblical. (Deut. 25:14,15) “ Others liken it to the prohibition against charging interest.¹¹ Some consider this a general violation of Lev. 25:36 "that thy Brother may live with thee." Others demonize monopolists as bandits "who prey on the poor" whereas most bandits attack only the rich.¹²

. The scholars show here a great ethical awareness that inflated prices tend to hurt the most, those least able to defend themselves. Maimonides rules that monopoly profiteers should be subject to flagellation and be compelled to sell at the market price.¹³

Predatory Pricing

Rabbi Judah bar Ilai states that a shopkeeper may not distribute delicacies such as parched corn and nuts to children which would attract adult customers. Nor may he drastically reduce his prices.¹⁴ However other fellow scholars disagree with R. Judah and argue that ordinary price competition is desirable, and that any injured competitor has the opportunity to counterattack by distributing other goodies to children. Only when the competition seems to become predatory with the intention of destroying a competitor's livelihood and later re-imposing a monopoly price would there be any rabbinical intervention.¹⁵

Normal Market Price

The rabbinical scholars are never quite clear about defining a normal price. Distinctions are made between wholesalers who can work on smaller margins, whereas the retailer has over-head costs and smaller unit sales hence requiring larger markup margins. A God fearing individual seller was not to be restricted from raising prices if all other competitors seemed to have been able to raise prices.¹⁶

Controls by both secular and rabbinical authorities

In addition to rabbinical authorities, permission was often granted to secular authorities to control prices, and wages¹⁷ Secular leaders of Jewish communities were permitted to impose fines in case of violations. Also in many cases various artisan and trade groups

were granted similar authority to establish prices. . This was granted under what seems to be a parallel existence of secular law along side religious law. This implied that both the king (government) as well as the Great Beth Din (Rabbinical Court) were allowed to deal with civil law.¹⁸ However, the secular community was forbidden to enact any ordinance that contradicts religious law (halacha). .

The Talmud quotes a case of a butchers association that restricted its members to certain hours of operation. The association sought to punish a member violator. This was rejected by Rava the leading authority for the simple reason that before a secular ordinance can take effect the secular authorities must first obtain approval of the distinguished religious leader which they had failed to do.¹⁹

To discourage potential monopoly profiteering the rabbis decreed that hoarding produce that might lead to cornering a market is forbidden.. However if the storing was for the purpose of protecting ones own family, some hoarding was permitted even in times of famine.²⁰ It is forbidden for a seller to encourage rumors of an impending shortage²¹ Similarly public fasts declared during droughts should not begin on Thursday since this would produce sudden excessive buying and lead to higher prices on Thursdays because people were buying for both the conclusion of the fast as well as preparation for Sabbath meals.²²

We find cases where the rabbis decreed a consumer boycott against fishmongers, although fish was considered a necessity for the Sabbath table.²³

Conclusion

While economists have always been trained to rely on market forces as the best means of promoting social welfare, markets do in fact often fail to fulfill their intended purposes. . It is interesting to note that the need for anti-monopoly control did not originate with the Sherman Act of 1890. This need for intervention was perceived and introduced some 2,000 years earlier in Jewish communities. Those were times when religious rulings were considered binding, We should appreciate the role that rabbinical leaders played in prior years to protect the public from unfair pricing. They indeed added an essential ethical-religious consideration to the market place.

Endnotes:

Most sources are in original classical Hebrew. Exceptions in English are noted. Translations do exist for *Babylonian Talmud*, (*T*) and for *Rambam* (*Maimonides*, *Mishna Torah*) Talmud pages are denoted by leaf or folio number and side *a* or *b*

- 1) *Talmud- Baba Mezia 49b*
- 2) The major sources on “overreaching” are found in *Jerusalem Talmud 9:4*; *Babylonian Talmud 49-52 and 55-67*; *Encyclopedia Judaica* (English) “Ona-ah” and “Hafkaat Shearim”; *Encyclopedia Talmudit* (Hebrew) “Ona-ah and Hafkaat Shearim”
- 3) Ephraim Kleiman, “Just price in Talmudic Literature”: *History of Political Economy* 19:1 1987 Duke Univ. Press.
- 4) Dudley Dillard, *Economic Development of the North Atlantic Community*, Prentice Hall 1967 p. 30
- 5) *T-Baba Mezia 58b*
- 6) *T-Baba Batra 90b*
- 7) RAN on *T-Nedarim 90 b*
- 8) *Sefer Hamekach* of R. Hai Gaon section 60; *Aruch Hashulchan 231:22, Tur 231: Rambam, Mechira 14:9*
- 9) *Rambam, Shemita 9:16*
- 10) *T-Baba Batra 89a; T-Yoma 9a*
- 11) *T-Baba Batra 90b*
- 12) *Rambam, Genevah 8:20*
- 13) *T-Megilla 17b*
- 14) *T-Baba Mezia 60a*
- 15) Aharon Shapiro, “Rabbinical Responsa and Regulation of Economic Competition,” *American Journal of Economics and Sociology*, January 1970 p. 71
- 16) *Shulchan Aruch 231:20*
- 17) *T-Baba Batra, 89a and 8b*
- 18) *Encyclopedia Judaica* “Takkanot Hakahal”
- 19) *T- Baba Batra 9a*
- 20) *Tur Choshen Mishpat 231:29*
- 21) *Sefer Hamekach*, R. Hai Gaon sec. 60
- 22) *T-Taanit 2a*
- 23) *Responsas of Zemzch Zedek Sec28 : Magen Avraham 242:1*