

Price Controls and Consumer Advocacy

Rabbi Yitzchok Adlerstein

Introduction:

Consumer advocacy appears to have found a place in the American Torah community. A state agency in New York monitors prices of kosher foodstuffs and warns the kosher-consuming public of attempts by merchants to secure windfall profits. A prominent rabbi in Baltimore successfully imposes a price ceiling each year in the sale of *etrogim*, and thus makes quality items available to the public at a cost well below what *etrog* vendors charge in other cities. In Los Angeles, a rabbi found a source abroad for inexpensive but halachically correct *mezuzot*. Not only did they replace the non-kosher variety sold until then in the book stores, but they brought down the average price of all kosher *mezuzot* available.

There is still reluctance on the part of many Torah-true Jews to militate in order to make the cost of kosher items more favorable to the consumer. It is frequently assumed that the Torah places no restrictions on the profit of a vendor other than the prohibition of deceptive charging above the market value. It is likewise assumed that if all vendors hit on a similar margin of profit, they effectively determine the actual market value and are fully entitled to exact from the public whatever the market will sustain. Given the Torah's

Director, Jewish Studies Program, Yeshiva University of Los Angeles

regard for the free enterprise system,¹ perhaps consumers have no right to try to limit the privilege of the merchant to charge what he wants.

Halacha does, however, impose restraints upon profit taking in commerce. With the exception of the biblical injunction against *ona'ah*, these strictures belong to the class of law known as *takanot*, or edicts made to ensure the public good. Studying these measures will help consumers understand what direction their advocacy should take in applying Torah law to the contemporary situation.

Ona'ah

The Torah² forbids deceptive pricing. This prohibition is an adjunct to the general prohibition against stealing.³ Both buyer and seller are covered by this law; it is as unlawful for a buyer to purchase at a price below the established market value as it is for a vendor to overcharge his customer.⁴ Depending on the extent of the over- or underpricing, the Torah allows for either relief from damages or nullification of the transaction.⁵ When the variation from the established price is within a range of tolerance, there is no relief from damages. It is doubtful, however, as to whether one may knowingly take payment that varies at all from the accepted value.⁶ When a vendor informs a prospective customer of the extent of his intended overcharging, and the customer agrees, there is no violation.⁷

The rules of *ona'ah* impose no barrier to excessive profit-taking. If vendors find that consumers will tolerate a given price for

1. See Rabbi Aaron Levine's *Free Enterprise and Jewish Law*, Ktav, N.Y., 1980, for a full treatment of the similarities and differences between Torah law and the free enterprise system. This author is indebted to Rabbi Levine for his help in discussing some of the ideas in this article.

2. Leviticus 25:14.

3. *Tur*, *Choshen Mishpat* 227.

4. *Shulchan Aruch*, *Choshen Mishpat*, 227:1

5. *Ibid.* 227:2.

6. *Rosh*, *Baba Metzia*, 4:7; *Choshen Mishpat*, 227:6.

7. *Choshen Mishpat*, 227:21.

a commodity, and that price becomes the market-wide standard, no deception is involved, and no charging beyond the accepted norm has taken place. Protection for the consumer must come from a different halachic source.

Market Manipulation

The Talmud takes a dim view of those who artificially influence market prices to their own advantage. G-d's wrath will not escape those who swallow up the impoverished by taking advantage of short supply to raise prices.⁸ Market manipulation is seen as tantamount to lending at interest,⁹ causing insufferable loss to the poor,¹⁰ and a violation of the Torah's concern that "your brother shall live with you."¹¹

Historically, the rabbis took specific measures to contain market tampering. Violators of these laws were subject to corporal punishment by officers of the court¹² and to fines and forced compliance with the regulations.¹³

Hoarding of essential produce in Israel or any Jewish community is proscribed.¹⁴ However, only a purchaser is subject to this ordinance; producers may store up their entire harvest.¹⁵ Allowance is made for *shmitah*: produce may be purchased in advance of anticipated shortfalls during the three affected years.¹⁶ On the other hand, hoarding by *anyone* is forbidden during times of famine, beyond a one year's supply for familial needs.¹⁷

Within the land of Israel itself, even greater consumer protection is provided. Essential produce is to be sold by the

8. *Baba Bathra*, 90B, based on Amos 8:4-8.

9. Rambam, *Mechirah*, 14:6.

10. Rashbam, *Baba Batra*, 90B, s.v. *otzrei*.

11. *Sma*, *Choshen Mishpat*, 231:25, note 43.

12. *Choshen Mishpat*, 231:21.

13. Rambam, *Geneivah*, 8:20.

14. *Choshen Mishpat*, 231:24.

15. *Ibid.*

16. Rambam, *Mechirah*, 14:6.

17. *Choshen Mishpat*, 231:24.

producer alone, unless it is in plentiful supply.¹⁸ Where the middleman improves on the raw material, as in baking bread, there is no injunction.¹⁹ Supply and lower prices are bolstered by a ban on the export of essential foodstuffs to other countries and even between governmental entities within Israel.²⁰

Profit Limitation

The most far-reaching of all the restrictive enactments was laid down by the *Amora* Shmuel:

One who profits should not profit more than a sixth.²¹

(The "sixth" is the rabbinic "outside" sixth, or a sixth of the final price. It is what we would consider a 20% mark-up.)

Shmuel does not amplify upon his law. What we know about it comes through inference from other sources, as discussed by *Rishonim* and later authorities.

Calculating the Profit-Margin

One such source takes into account expenses and labor charges incurred by the merchant when necessary for the operation of his business.

Rav Yehuda fit 48 *kuz* [a liquid measure] in a barrel. The barrel was purchased for 6 *zuz*. Rav Yehuda sold the contents [piecemeal], at the rate of six *kuz* to a *zuz*. Subtract 36 [*kuz*] for the six [*zuz* that was his purchase cost], and there remain 12 [as Rav Yehuda's profit]. Subtract eight for what is lost to absorption by the barrel, and there remain four for him. But did not Shmuel teach, "One who profits should not profit more than a sixth [and Rav Yehuda should have seen to it to take the full 20% allowed him, and not

18. *Ibid.* 231:23. Rashi, *Yoma* 83A, s.v. *Otzar*, sees the restriction applying to produce and all essential items.

19. Rashbam, *Baba Bathra*, 91A, s.v. *ein*.

20. *Choshen Mishpat*, 231:26.

21. *Baba Batra* 90A.

satisfied himself with a return of four on an investment of 36]?" There are the container and the dregs [which he also gained as profit]. If so, he exceeded the 20% allowance! There was [the cost of] his own labor, and [the wages paid to] a professional wine decanter.²²

The Rosh²³ concludes from this passage, that the 20% limit is placed only on a wholesaler or other middleman who sells his wares in large lots. A retailer who sells a bit at a time is entitled to add on the cost of "his effort and all his expenses, and take his 20% beyond them."

This view is conspicuously absent in the Rambam. The *Bach*²⁴ takes this as a rejection of any provision for the expenditure of effort. The Rosh's opinion is codified in *Shulchan Aruch*,²⁵ however. The *Sma*,²⁶ moreover, maintains that all legitimate expenses are first added to the item's cost, and then 20% of this *total* is used in figuring allowable profit. The merchant thus gains 20% on the cost of his labor and expenses besides the same margin on the initial item cost.

Sma also observes that personal effort on the part of the merchant is a feature of all commercial activity. Yet the Rosh apparently discounts this factor, except where a significant consumption of time²⁷ is involved, as in the case of the wine merchant who had to make himself available often to sell the wine in small parcels. Effort involved in the actual purchase and subsequent resale of an item do not entitle the merchant to profit beyond the 20% mark.

Where the market cost of the item changes between time of

22. *Baba Metzia*, 40A.

23. ad loc.

24. to *Tur Shulchan Aruch, Choshen Mishpat*, 231, s.v. *chayavim*.

25. *Choshen Mishpat*, 231:20.

26. ad loc., note 37.

27. The Ritva here in *Shita Mikubetzet*, s.v. *v'katau*, adds a few words that may represent a different view: "... and he is idled from his work." To the Ritva, the extent of effort may not be as important as its impact on his other capital-generating activity.

purchase by the merchant, and the time of its resale, the increased value may be used in calculating acceptable profit.²⁸

Exemption of the Producer

The Gemara, *Yevamot 91A*, says:

One may not profit two-fold with eggs. Meri bar Meri said, "Rav and Shmuel disagree about this. One of them said, '[What is prohibited is selling for] two [what was purchased] for one.' [The other] one said, 'One vendor to [another] vendor.'"

One of these two opinions prohibits a profit of 100% of cost. A lesser profit, although well in excess of 20%, is apparently tolerated. This, of course, flies in the face of Shmuel's own dictum fixing profit at a 20% maximum.

One resolution is offered by the Rashba:²⁹ the Gemara here deals with one who raises his own chickens, not one who buys up eggs from different producers for subsequent resale. Ordinarily, no profit limit is imposed in such circumstances, but an exception is made for eggs. The implication is clear: the 20% limit applies only to merchants involved in resale, but not to original producers.³⁰

Commodities Included

Shmuel does not specify what items are covered by his legislation. The Rambam,³¹ followed by the *Tur* and *Shulchan Aruch*,³² restricts the 20% limit to "life-essential items," such as wine, oil, and flour."

The *Magid Mishna*³³ suggests that the Rambam assumed this limitation because the Gemara³⁴ restricts the hoarding prohibition to

28. Rashbam, *Baba Batra* 90A s.v. *vehamistaker*; *Shulchan Aruch*, 231:20.

29. in *Tosafot* ad loc., s.v. *chad*.

30. The same is likely held by the Rashbam, who introduces Shmuel's dictum by specifying "like a merchant who buys large quantities of wine and fruit from a wholesaler in order to sell a little at a time."

31. *Mechirah*, 14:2.

32. *Choshen Mishpat*, 231:20.

33. *Mechirah*, 14:2.

34. *Baba Batra* 90B.

these items, contrasting them to “spice, cumin, and pepper,” which may be stored up for later resale.

He finds support for the extrapolation from hoarding to profit-limitation in the passage about eggs cited above. Meri bar Meri knew that Rav and Shmuel authored the two positions about double profit, but was unable to associate a particular position with a particular author. Since he knew that Shmuel in general subscribed to a 20% limit on profit, why did he not assume that the position allowing up to 100% profit on eggs was incompatible with Shmuel?

We are forced to conclude, claims the *Magid Mishna*, that there is a fundamental difference between eggs and whichever commodities Shmuel deals with in general. Eggs are not “essential” food items; the 20% limitation applies only to essential items.

This conclusion is contested by R. Yosef Karo.³⁵ Eggs decidedly are essential. They are certainly more important than oil, which is accepted as one of the paradigmatic examples of what Shmuel indeed was talking about. In fact, *all* edibles are considered essential items. When the Rambam qualifies what is considered essential, he contrasts wine, etc., not with spices, but with “roots, such as costus and frankincense.” “*Machshirei ochel*,” or ingredients helpful in the preparation of food, such as spices, should indeed be considered essential, and subject to the 20% rule. Only that which is completely inedible is excluded. The passage concerning eggs may be dealt with in different manner (see later).

A third position is maintained by R. Joshua Falk.³⁶ The Rambam seemingly contains internal contradiction. He first restricts the excess-profit interdict to essentials such as wine, oil, etc. This would imply that anything of lesser import, e.g. spice, lies outside of the law. On the other hand, the Rambam goes on to give examples of excluded items: roots, frankincense. This would indicate that he holds anything more essential, such as spice, to be included.

35. *Kesef Mishnah* to Rambam, *Mechirah*, 14:2; *Beit Yosef* to *Tur*, 231, s.v. *ba-meh*.

36. *Derisha*, *Tur*, loc. cit., note 28; *Sma*, *Shulchan Aruch*, *ibid.*, 231:20, note 36.

The solution to this problem is, he suggests, a three-tiered system. Food items that are most essential are limited by the 20% rate. *Machshirei ochel*, such as spices, form a middle ground, where some restriction applies, but not a stringent 20%. Here there is a profit ceiling of 100%. For inedibles, a merchant may charge whatever he can get. This view is accepted by later authorities such as *Shulchan Aruch HaRav*³⁷ and *Aruch HaShulchan*.³⁸

One further question concerns essentials that are raw and unprocessed. Does unmilled grain fall in the 20% category, or do we restrict the law to things comparable to wine, oil, and flour, that are readily consumable? Rabbi Abraham Wahrman³⁹ leaves this issue unresolved.

All sources so far cited understand Shmuel’s law to be limited to food items. An earlier view of R. Hai Gaon⁴⁰ sees the 20% maximum as applying to *anything* that a person knows is needed by his fellow Jew. This view is not cited, however, by later decisors.

Hardship Provisions

In explaining the provision for 100% profit in the case of eggs, Rashbam⁴¹ first observes that eggs are not all that essential. He then adds that a profit of only 20% does not justify the exceptional amount of effort involved in gathering eggs from widely dispersed producers. We therefore permit the seller to take more than the customary 20%.

It is possible that halacha provides sympathetic relief for the otherwise untenable position of the egg merchant. It is also possible that the principle here is a different one: that we may artificially intervene to make a particular industry more attractive, in order to stimulate a strong source of supply to the consumer.⁴²

37. *Hilchot Midot U-Mishkalot*, par. 17.

38. *Choshen Mishpat*, 231:20.

39. *Kesef Ha-Kedoshim*, *Choshen Mishpat*, 231:20.

40. *Sefer HaMikach U-Mimkar*, section 60.

41. s.v. *b’beitzim*. The two approaches of the Rashbam are cited halachically by *Sma*, *Shulchan Aruch*, op. cit., 231:22, note 41.

42. A resolution to a problem raised by R. Issur Zalman Meltzer in *Even HaAzel*

(The *Aruch HaShulchan*⁴³ writes that we may sometimes face a problem the reverse of Shmuel's. "In our lands, we must cry out in a contrary fashion. Merchants charge so little for all sorts of goods, that poverty is multiplied, as well as problems for the commercial system. Our sages permitted 20% profit even in foodstuffs; in other commodities, they should take much more!" He stops short, however of calling for actual intervention.)

Individual or Community Responsibility

*Shulchan Aruch*⁴⁴ cites the opinion of R. Meir HaLevi Abulafia (Ramah): "These words [Shmuel's law] hold true only where there is a Beth Din to specify proper prices to all merchants. But if all sell for whatever they can, an individual [scrupulous merchant] is not obligated to sell at a lower price."

Rabbi Moses Rivkes⁴⁵ believes that the Rambam as well subscribes to this view. The Rambam begins his discussion of pricing with the statement, "Beth Din is obligated to establish price guidelines, and to maintain officers to enforce them."

Does this mean that responsibility for Shmuel's law rests solely with the court and not with the individual merchant? Rabbi Isser

suggests itself. We earlier cited Tosafot *Baba Batra* 90A, and their difficulty in understanding why eggs were treated differently than other objects, where only 20% profit is allowed. The Ribam responds that where effort is expended, profit in excess of 20% is permitted, as is evident from the Gemara about R. Yehuda the wine-merchant. The *Even HaAzel, Mechirah*, 14:2, asks why eggs should be permitted a five-fold increase in profit level, since the added margin for wine, with its attendant investment of effort, doesn't come close to this allowance.

It is possible that the Ribam means that we permit the egg seller profit far beyond the usual formula, because without such latitude, selling eggs would simply not be a financially attractive occupation. The consumer would be left with no supply at all, or at the mercy of the unscrupulous, who would flout Torah law and charge even more in the absence of competition.

43. *Choshen Mishpat*, 231:20.

44. *Choshen Mishpat*, 231:20.

45. *Be'er Ha-Golah* to *Choshen Mishpat*, *ibid.*, note 4. He bases this supposition on the familiar Gemara regarding eggs. The difference between the 20% rule and the 100% margin, is that the former is addressed to the court alone, while the latter applies even to the individual merchant.

Zalman Meltzer thinks that this is the case.⁴⁶

Some find such a position difficult. The Gemara *Baba Batra* 89a questions whether the court must appoint officers to enforce both price guidelines, as well as weights and measures, or just the latter. Shmuel himself is of the opinion that officers are not appointed to control prices.⁴⁷ If this be the case, his 20% rule must be aimed at the individual.

Whatever the actual view of the Rambam, the opinion of R. Meir HaLevi as cited in *Shulchan Aruch* is the source of much popular confusion. It is commonly used as a rationalization to disregard Shmuel's edict. After all, if a number of merchants will ignore halacha anyway, why should a minority of merchants be

46. *Even Ha-Azel* to Rambam, *Mechirah* 14:2.

47. While this Gemara would also seem to contradict the view of R. Meir HaLevi, this is not the case. He maintains (*ad loc.* number 132) that the official whose position Shmuel rejects is *not* a supervisor of price maxima. Rather, he is meant to prevent consumer fraud by unscrupulous merchants who charge too little, and employ loss leaders to lure customers, and then give them inferior merchandise or use faulty weights. There is no reason to believe, according to the Ramah, that the court does not indeed intervene in price-structuring.

The Rambam, however, takes the Gemara the way most do — as referring to an enforcer of profit limits. The *Magid Mishnah* points to it (and its conclusion against Shmuel) as the source of the Rambam's opening contention that the court must supervise prices. If Shmuel himself rejected such intervention, then his dictum must have been directed at the individual merchant.

Perhaps the *Even Ha-Azel* will explain that even Shmuel maintains that it is the court that structures prices, but rejects the notion of a court-appointed (and community financed) enforcer. This, however, seems difficult. Alternatively, he may hold that the Rambam rejects Shmuel's own conception of his law in favor of one favored by his opponents in *Baba Batra* 89A. The very crux of the argument there may be whether a price-control system is in the province of the court, or of the individual.

If the Rambam does see the 20% rule as binding on individual merchants as well as the court, a problem in his phraseology would be cleared up. The Rambam first writes that the Beth Din is responsible to appoint officers, etc., so that merchants cannot charge what they wish, but no more than 20%. He then uncharacteristically repeats himself: "And the merchant should not profit more than 20%." It is likely that the first lines are addressed to the court; the last line emphasizes that in the absence of a court, the individual is expected to do his best in complying with the law.

martyrs, especially if the halacha itself tells them not to?

A more careful reading of the original Ramah⁴⁸ shows that this is not necessarily valid reasoning. To the words cited by *Shulchan Aruch*, relieving the individual merchant of the duty to stay within the halachic limit where others exceed it, the Ramah adds the following:

... since when the produce of the [scrupulous] merchant is depleted, the others will sell theirs at an inflated price anyway ... and we certainly do not wish to cause him a direct loss.

The Ramah does not suspend the law in the absence of an effective court. He does hold that halacha performs a cost/benefit analysis. Where individual compliance with the law will be of negligible benefit to the majority of consumers, and cause definite loss of profit to the merchant, the halacha of 20% becomes inoperative.

There is an important consequence in focusing on the loss to the merchant, rather than the absence of an effective court. If the law always remains in effect even for the individual, but excuses him from unjustifiable losses, it should follow that the halachically observant merchant must still see to it that he does not charge *more* than his competitors. He is not obligated to settle for diminished profit, but should not be allowed to add injury to the intent of the law beyond the *fait accompli* of the non-observant. This conclusion is in fact reached by the *Shulchan Aruch HaRav*.⁴⁹

It seems to this author that there is another point germane to any discussion of practical implementation of Shmuel's law. The chief concern of the Ramah here is that little good will accrue to the community if an individual merchant keeps within the suggested profit limits, since his own merchandise will be quickly exhausted. This may very well hold true for exhaustible commodities. In fact, however, there are commodities of interest to the Jewish community

48. to *Baba Batra* 90A, number 144. It is quoted by the *Tur*, loc. cit.

49. *Hilchot Midot u-Mishkalot*, #17.

today that are so easily replenished that the reasoning changes dramatically.

Take the price of a typical item, suppose wine, in a community outside New York. There are four stores that provide kosher specialty items to the observant community, all within close proximity to one another. Three proprietors charge whatever they can get; the fourth wants to act in consonance with halacha. Is he entitled according to the Ramah to charge whatever his competitors charge?

I believe that the answer may often be no. If he restricts his profit to the halachic norm, consumers will learn of it. They will purchase their wine from him, rather than from his competitors. When he runs out he can send for more from a virtually limitless supply from the New York distributor. If all Jews of that community buy wine from him, it will not put a dent in the supply available at the point of origin.

Other proprietors will have no recourse but to lower their prices as well or lose their wine sales altogether. If the halachically "honest" merchant adjusts his prices downward on other items as well, he may soon corner the market unless his competitors follow suit. Thus, compliance with the law by even the minority may accomplish precisely what Shmuel wanted it to.⁵⁰

The above analysis probably breaks down in larger communities, where the effect of any individual merchant is lost in the volume of the competition. Even here, however, expert determination is necessary to gauge the potential effect compliance with Shmuel's profit limit could have.

Non-food items

The earliest recorded attempts at protecting the Jewish consumer did not revolve around food or Shmuel's dictum.

50. This analysis may be what the *Aruch HaShulchan* 231:20 had in mind when he tersely offered this qualification to the Ramah: "However, if the court knows that by doing so [asking the minority to abide by the approved price list] it will compel the others to sell as they do, they should force those who will listen to them."

It happened in Yerushalayim that the price of two pairs of birds [used for the mandatory offerings of women after childbirth] rose to two golden *dinari*. R. Shimon ben Gamliel said, "By this Dwelling! [the Temple; he took an oath] I will not rest until they are reduced to [silver] *dinari*." He entered the Beth Din and taught, "A woman who is obligated to bring five childbirth offerings . . . may bring one offering, and thereafter eat holy meat [she is ritually pure]. She need not bring the others." The price of two pairs of birds changed that day to two quarter-*dinari*.⁵¹

Rashi⁵² explains that R. Shimon ben Gamliel actually suspended a Torah requirement, in order to prevent a more serious violation. At the inflated price, he feared that some women not able to afford even a single offering, might eventually partake of some other offering while remaining ritually impure, and face the punishment of excision.

Consumers have long complained about the high price of kosher meat. While production costs inherent in the kosher trade must create somewhat of a price increment, many people still believe that prices are fixed at an unaffordable level. Prices are often arbitrarily raised before holidays, when demand is greatest. Many believe that this does impact upon those who can least afford it and curtails their ability to secure holiday necessities for their tables. And many Jews of marginal commitment to kashrut look at kosher meat prices and decide that this is another mitzvah they can forgo. Can the above source be seen as a mandate for the community to take dramatic steps, such as meat boycotts, in order to bring prices down?

A responsum by Rabbi Menachem Mendel Krochmal⁵³ does see the incident above as a model for bold intervention to facilitate mitzvah performance. The non-Jewish fish merchants of his town realized that Jews would pay exorbitant prices to have their

51. *Keritut*, 1:7, 8A.

52. ad loc. s.v. *nichnas*.

53. *Responsa Tzemach Tzedek (hayashan)*, number 28.

traditional fish on Shabbat and charged accordingly. The community retaliated by agreeing that no person, rich and poor alike, would buy any fish at all for two months. They asked their rabbi's approval. He responded favorably, noting that if R. Shimon ben Gamliel could suspend Torah law, they could certainly suspend what was only a custom. His chief concern was not the fact that the whole community had been taken advantage of, but that the poor would not be able to afford the fish, just as R. Shimon ben Gamliel's concern was for the poor.

The conclusion of this responsum is accepted by the *Magen Avraham*.⁵⁴ The *Pri Megadim*,⁵⁵ however, questions it. R. Shimon ben Gamliel gained protection for a negative mitzvah by sacrificing a positive one (bringing the remainder of the offerings). That was a reasonable return on the investment. In the case of the fish he sacrificed, albeit temporarily, the same mitzvah he wished to protect. Furthermore, R. Shimon ben Gamliel's measure was reversible. After prices stabilized, women could then bring their back due. The enhancement of Shabbat's honor that fish brings could never be regained for those Sabbaths lost. He also questions whether any court today has authority comparable to that of R. Shimon ben Gamliel necessary to tamper with religious observance.

54. to *Shulchan Aruch Orach Chaim*, 242:1. See also op. cit., 656:1, where he deals with the issue of *hidur mitzvah*, in his context, procuring a better looking *etrog* at a higher price. The *Magen Avraham* cautions that such a purchase is meritorious only when the customer believes that his proffering of a better price will not drive up the price of *etrogim* in general.

The concept of intervention against artificially inflated prices is also endorsed by the 18th century R. Judah Ayash of Algiers in his *Responsa Beth Yehudah, Yarah Deah* 32, and the 19th century R. Chaim Halberstamm in his responso to *Choshen Mishpat, Divrei Chaim* 24.

55. to *Magen Avraham* 242:1. Similar objections are brought in the glosses of R. Moshe Sofer ad loc. The latter, though, does point to the last Mishna of the fourth chapter of *Gittin*. According to the commentary of the Rambam there, the rabbi at one point suspended the obligation of *bikurim* (bringing the first fruits to Jerusalem) from land sold by a Jew to a non-Jew, and then repurchased by a Jew. This would create the impression that the holiness of the land was somehow diminished because of the non-Jew's possessions, and lower his asking price for repurchase.

Nonetheless, since no biblical or rabbinical mitzvah was involved, he too concurs.

There is, therefore, some basis for the community to fight back against unfair pricing, even where some religious precept (on the level, at least, of *minhag*) may temporarily suffer, as long as there is no actual abrogation of Torah or rabbinic law.

Community Self-Regulation

Where no conflict with any religious practice is involved, the right of effective consumerism is even more definitively stated. The Gemara⁵⁶ flatly states that townspeople have the right to regulate weights, prices, and wages, and to impose fines upon those who ignore their regulations.

There are two distinct ways of understanding this Gemara. The implication from Rashi is that a majority of townspeople can force the minority to comply with their *takanot*. Rabbenu Tam, however, sees the right of the people to enforce communal edicts as limited to those previously accepted by *all* the people. The majority does not have the right to impose its wishes on the dissenting minority, unless the latter reneges on a previous accord.

R. Samuel ben Moses di Medina of the 16th century considers the evidence on both sides of this issue.⁵⁸ He concludes that a majority of *Rishonim* (early commentators) side with Rashi and uphold the right of the majority to dictate terms to the minority, at least if the majority is represented by the recognized heads of the community. R. Moses ben Chaim Alshekh⁵⁹ of the same century also upholds this right.

Thus, there is ample halachic precedent for the community protecting its interests through its own enactments, even where a minority element might sustain a loss.⁶⁰ And the focus of their

56. *Baba Batra* 8B; *Shulchan Aruch, Choshen Mishpat*, 231,:27 cites this as law.

57. cited in Mordechai, ad loc. number 480.

58. *Responsa Maharashdam, Yoreh Deah* 117.

59. *Responsa Maharam Alshekh* 59.

60. R. Mordechai ben Yehuda HaLevi of 17th century Egypt (in *Responsa Darchei Noam, Choshen Mishpat* 38) makes explicit the notion that Rashi and Rabbenu

enactment can be anything at all, not just the items covered by Shmuel's law.

Summary

A number of conclusions obtain:

- 1) Halacha does place a 20% maximum on profits.
- 2) The ceiling only applies to food items.
- 3) Only resellers, not producers, are generally covered.
- 4) The 20% is calculated after figuring in all relevant expenses.
- 5) There is generally no restriction on the number of middlemen who may profit.⁶¹
- 6) Special allowance is sometimes made to insure an equitable return for a person's effort.
- 7) Where others do not comply with halachic guidelines, the halachically observant individual need not comply alone. He still may not exceed the price charged by others, however, and may be required to charge a lesser price if doing so will force others to follow suit.

Tam only conflict where a given measure is beneficial to some and detrimental to others. Where all involved stand to gain, but some obstinately refuse to acquiesce, even Rabbenu Tam would agree that the majority can enforce their view. He also maintains that where the many will sustain some damage without legislative relief, and the few will not sustain any loss but will merely refrain from profit, that the many may certainly have their way.

The Gemara also stipulates that no agreement by the people is valid unless endorsed by the eminent halachic authority of the area, if one indeed exists. This requirement is also waived if no one stands to lose by the agreement (Ramo, *Shulchan Aruch*, *ibid.*, 231:28). The context of this stipulation is a discussion of the right of trade and craft groups to self-regulate. It is not clear if this requirement holds also for the agreement of the town as a whole. (See *Sma*, ad loc., number 45, who maintains that the townspeople may act on their own, unlike the opinions of the Ramo and the *Shach*.)

Since almost any action considered by consumers today might cause real loss to some parties, and in the absence of a legally empowered community board that can speak for an entire population, it seems likely that any measure contemplated would require the approval of halachic authorities,

61. See Rashbam, *Baba Batra*, 91A. He posits that competition will keep the price down.

- 8) Bold measures may be taken to facilitate the performance of mitzvot by the community, especially in protecting opportunities for the poor.
- 9) The community has the general right to legislate purchasing policies.

It is hoped that Torah-conscious consumers will find a way to implement the ethic voiced a few hundred years ago by Rabbi Israel Lipschitz:⁶²

It is not proper to be too oppressive to people in all matters concerning the observance of Torah and mitzvot, which is the purpose of all creation.

62. *Tiferet Yisrael, Bechorot*, 4:6.