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Hershey H. Friedman

*Brooklyn College of the City University of New York*, x.friedman@att.net

Murray Mizrachi

*Brooklyn College of the City University of New York*, Murray.Mizrachi@brooklyn.cuny.edu

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# Fair and Stable Prices in the Age of Greed: *The Torah View*



**HERSHEY H. FRIEDMAN**  
BROOKLYN COLLEGE  
CUNY, NEW YORK



**MURRAY MIZRACHI**  
BROOKLYN COLLEGE  
CUNY, NEW YORK

defines business law.

## **Abstract**

*Much of the Jewish legal tradition deals with business ethics. One such area of ethical analysis, in particular, concerns efforts of leaders throughout history to combat price gouging. This paper focuses on an overlooked precept: ensuring price stability. There is a tendency to trivialize the law mandating that prices be kept low and affordable, but in the wake of the 2020 world pandemic, these laws are more important than ever. Indeed, very few people are aware that the ninth blessing of the ancient Amida (also known as shemoneh esrei) prayer, established by the 120 members of the Great Assembly in the 5th century BCE, is a prayer for divine protection against individuals who would raise prices unjustly. This paper illustrates the importance of this law and provides interesting stories and examples of individuals who protected the public against hoarders. For it was these ethical leaders who assumed the obligation to actively shun price manipulation, shielding vulnerable individuals from being taken advantage of in the marketplace.*

## **Introduction**

More than 100 of the 613 commandments in the Torah (also known as the Five Books of Moses) deal with business and economics (Tamari, 1987, p. 35). The Torah *she'bal peh* (oral Torah, i.e., the Talmud, consisting of the Mishna and Gemara), is the explanation of the written Torah and clarifies in detail how the laws should be observed. In approximately 200 CE, Rabbi Judah, the President of the Sanhedrin, compiled and edited the Mishna, the oldest codification of Jewish oral traditions and laws. An entire order — one sixth of the Talmud — is dedicated to *Neziqin* which

Business ethics and fair practices dominate many of these laws and discussions. Following the Corona pandemic crisis of 2020, there were many examples whereby typical regulations, supply chain efficiency, and normal business practices were suspended. In such a volatile economic climate, price manipulation, gouging, and hoarding became commonplace. In times of natural disaster such as hurricanes, famines, or war, similar behavior patterns have emerged.

Jewish law classically discusses these economic situations in late antiquity and forbids these and other unfair practices. Much of this established corpus comes from an earlier time where economies and political situations were less stable than today. The Jewish Sages recognized what the threat shortages of commodities and essential goods represented and developed laws, guidelines, and regulations to protect consumers and ensure supply and fair prices from the merchants.

## **Jewish Business Ethics**

The Bible is the foremost authority for Jews and Christians alike and therefore by extension to the modern Western world. The person who is not honest in his business dealings is considered an “abomination” by God (Deuteronomy 25:16). This verse speaks of people who use dishonest weights and measures but then refers to anyone who acts dishonestly as an abomination. Many of the Prophets were similarly concerned with merchants who used “scales of deceit” to cheat others (see Hosea 12:8; Micah 6:11; Amos 8:5).

## **The Importance of Business Ethics in the Talmud**

The Talmudic sages believed that business ethics were so important that Rava opined that the first question an individual is asked in the next world at the final judgment is: “Were you honest in your business dealings?” (Babylonian Talmud, Shabbat 31a). The Midrash (Mechilta, Exodus 15: 26) states: “Whoever conducts his business dealings honestly is liked by humankind and it is considered as though he observed the entire Torah.” The Yalkut Me’Am Lo’ez commentary on Deuteronomy 25: 13-16 avers that if one is honest in business, it is as though he observed the entire Torah; and one who is not honest in business, any Torah he learned is of no value. The Me’Am Lo’ez cites the Talmud (Babylonian Talmud, Maakot 24a): “The prophet Habakkuk came and established them upon one ethical requirement (Habakkuk 2:4): ‘But the righteous person shall live by his faith.’” According to the Talmud, David felt there were 11 key ethical principles one had to observe in order to reach a high level of spirituality (see Psalms 15 for a listing of the 11 attributes that brings one close to God and enables one to sojourn in God’s tent); Habakkuk reduced it to one, “living by faith (*emunah*)” which the Me’Am Lo’ez interprets as being honest in one’s business dealings.

A simple rule of business ethics can be derived from Hillel’s philosophy: “If I am not for myself, who will be for me? And if I only care for myself, what am I?” (Avot 1:14). A business firm must achieve its goals (e.g., profit) but must also care for others. Hillel’s version of the “Golden Rule” — “What is hateful to you, do not do to others.” — (Babylonian Talmud, Shabbos 31a) may easily be applied to organizations as well as individuals. A similar idea is expressed by Rabbi Yosi: “Your fellow man’s wealth should be as dear to you as your own” (Avot 2:12).

## **Ethics of Pricing**

It is difficult to talk about ethics and pricing in the same breath. The reality, however, is that most prices are ethical. Stiving (2019, para. 1) asserts: “most pricing is extremely ethical and most pricers act ethically. In any transaction, both parties enter into it willingly, and both are better off after the transaction.” There is a problem, however, with pricing during a crisis or charging a fair price when a drug firm has a monopoly on a necessary drug. What should an ethical firm do? One can argue that the job of a CEO is to maximize profits and it would be wrong not to charge the highest price possible. In fact, there are economists who posit that we should allow market prices to do their jobs and allocate goods efficiently (Fridman, 2017). After all, that is the purpose of prices in a free market economy. High prices are a signal to producers that a product is becoming scarce and more should be produced.

Some advocates of unfettered markets grumble that those who act self-interestedly and raise prices are contributing to an efficient allocation of goods, but are hardly recognized.

Nobel Prize winner Milton Friedman stated that gougers deserve a medal. Yet there are good reasons why they do not, and why we cannot be easily convinced otherwise.

The moral condemnation of price gouging is a recognition that in certain social situations, raising prices is kicking vulnerable people when they are down. Our reaction to price gouging is not some silly knee-jerk rejection from people who don't know enough about economics, as it is sometimes portrayed. It is, rather, deeply reflective of the societal need for mechanisms other than markets (Fridman, 2017, paras.12-13).

How a firm sets prices might be a litmus test for ethics. Ethical leaders should consider all stakeholders and demonstrate compassion for members of the public who are vulnerable during crises and should be repulsed at the thought of taking unfair advantage of them. Hosea (12:7) demanded that everyone (especially businesspeople) "practice loving-kindness and justice." Consumers are often weak and helpless when compared to powerful corporations that can use their market power to keep prices high and wages low. This is why concerns such as ensuring price stability and fair markups are an important part of Jewish business ethics.

### **Ensuring Price Stability**

The Torah states (Leviticus 25:14): "If you sell something to your neighbor or buy something from your neighbor's hand, you shall not wrong one another." This verse is interpreted by the Talmud to refer to excessive overcharges and undercharges (*ona'ah*). For example, if hand sanitizer normally sells for \$5 and a retailer charges a customer \$50, then the retailer has violated this law. The Babylonian Talmud (Baba Metzia 50b) ruled that if the overcharge is more than one sixth of the market price, the sale is null and void.

The Talmud extended the law against price fraud and instituted a law against excessive markups on necessities. Any profit from the sale of a necessity was not to exceed one-sixth (Babylonian Talmud, Baba Bathra 90a). This law was taken seriously and the Talmud discusses the profit margin that Rabbi Yehudah, the wine merchant, made on wine sales (wine was considered a necessity in Talmudic times). The Talmud calculates the profits made by Rabbi Yehudah after taking into account such costs as Rabbi Yehuda's own labor and the cost of a crier who announced the availability of the wares (i.e., ancient advertising). Additional revenues were derived from selling the lees and the wine barrel. The Talmud's conclusion was that Rabbi Yehudah's profit was one sixth of the total cost incurred (Babylonian Talmud, Baba Metzia 40 a,b).

The Talmud was concerned with the effects of exporting on domestic prices. Exporting necessities to other countries can cause shortages. It is interesting that one opinion allows the exporting of wine since it is seen as a product that causes one to act indecently. The sages were concerned about the effects of excessive alcohol consumption.

*One must not take out of the Land of Israel produce which are life's necessities, such as wines, oils, and fine flour. Rabbi Yehudah ben Beteira permits the export of wine, since by doing so, one diminishes indecency. And just as it is not permitted to take produce out of the Land of Israel into a foreign country, so too it is not permitted to take produce out of the Land of Israel to Syria. However, Rabbi permits this from a border province in Israel to an adjoining province in Syria (Babylonian Talmud, Baba Bathra 90b-91a; based on translation by ArtScroll).*

Most of the United States maintains price gouging protection to consumers, specifically for the sale of basic commodities during emergencies. New York, for example, has the following law:

*During any abnormal disruption of the market for consumer goods and services vital and necessary for the health, safety and welfare of consumers, no party within the chain of distribution of such consumer goods or services or both shall sell or offer to sell any such goods or services or both for an amount which represents an unconscionably excessive price. For purposes of this section, the phrase “abnormal disruption of the market” shall mean any change in the market, whether actual or imminently threatened, resulting from stress of weather, convulsion of nature, failure or shortage of electric power or other source of energy, strike, civil disorder, war, military action, national or local emergency, or other cause of an abnormal disruption of the market which results in the declaration of a state of emergency by the governor....ether a price is unconscionably excessive is a question of law for the court (Laws of the State of New York, 1998, Chapter 510).*

This system common to many States and jurisdictions is not explicit about what markup constitutes unfair pricing, leaving it up to a judge to decide what “unconscionably excessive price” is. The Talmudic system quantifies that *ona'ah* pertains to an overcharge of 1/6 above the market price (Babylonian Talmud, Baba Metzia 49b-52b), and thus helps regulators in enforcing this statute.

Price gouging is a serious problem in the pharmaceutical industry. Some infamous examples include the astonishing increase in the price of Daraprim, a drug used to treat dangerous parasite diseases, from \$13.50 to almost \$750 after Turing Pharmaceuticals purchased the product from Impax. There are even worse price abuses. Achar, a drug used to treat infantile spasms that used to sell for \$50 a vial skyrocketed to \$28,000 when California-headquartered Questcor bought the rights to the product. When Mallinckrodt Pharmaceuticals bought Questcor, it raised the price to \$39,000 (Wu, 2020; Pollack 2012).

There was a public uproar when the price of an EpiPen (an anti-allergy injector) went from \$57 in 2007 to \$600 in 2016. By 2016, Mylan, the firm that acquired EpiPen in 2007, controlled 90% of this market and took advantage of its monopoly. Because of the controversy, the company introduced a generic EpiPen costing \$300 (Henry, 2020).

There are several lawsuits in Texas and California aimed at egg producers, wholesalers, and a few large retailers who are being accused of price gouging during the coronavirus epidemic. The price of a dozen eggs has tripled in many places and is as high as \$3.44. The complaint notes: “As in any time of economic turmoil, there are those who seek to profit from the misery of millions” (MacFarquhar, 2020).

## **Fair Markup and Predatory Pricing**

Predatory pricing or unfair competition is also considered unethical and is illegal in many locations. In this practice, merchants may artificially lower prices or engage in unfair practices in order to harm competition.

The Talmud discusses the question as to whether a storekeeper may lower prices below the market price to increase the number of customers (Babylonian Talmud, Baba Metzia 60a). Rabbi Yehuda was opposed to this practice and similar practices — such as giving children candy so their parents would patronize their stores (Mishnah Baba Metzia, 4:12). The

majority opinion of the *chachamim* (sages) not only permits price reductions but also feels that a retailer who does this “is remembered for good.” The sages felt that one who lowered prices deserved to be praised since he was benefitting the public. Rabbi Yehuda felt that conducting business this way would disrupt the livelihood of another person and was therefore unfair. One may surmise that the Sages believed in low prices with a fair markup in which both the merchant and the consumer benefit.

It is the duty of the regulators to ensure that businesses can be profitable to incentivize supply of critical resources. By providing an equity of opportunity, regulators foster healthy competition and supply lines can flourish. One key reason that the United States did not have enough portable ventilators when the coronavirus pandemic struck was that the FTC allowed a merger in 2012 between Covidien, an American company based in Ireland that manufactured expensive ventilators, with Newport Medical Instruments (because of insufficient profits) in which the federal government was preparing for emergencies by stockpiling 40,000 inexpensive, portable ventilators manufactured by Newport (Wu, 2020).

### **Rights of the Merchant**

The Talmud also extends certain rights to the merchant and applies the law of *ona'ah* undercharges. Thus, if an individual is unaware of the true value of an item and wishes to sell it, one must not take advantage of the seller's ignorance and underpay as in a case of retail arbitrage. Both consumers and sellers must be held responsible for manipulating knowledge that significantly causes a loss to either party.

The rule of *ona'ah* applies only to objectively-priced commodities. Subjectively-priced products such as someone's dream home or a collectable sports car, are not included under the ruling of *ona'ah* (Babylonian Talmud, Baba Metzia 58b). Maimonides codifies this:

*This rule [of charging above a sixth] applies only to articles that are necessities of life, such as wines, oils, and various kinds of flour. However, for spices such as costus root, frankincense, and the like, no market price is fixed and one may make as much profit as he desires* (Maimonides, Mishneh Torah, Laws of Sale 14:2).

The “necessities of life” are those essential commodity products, while luxuries and non-essentials such as gourmet spices are not regulated by this law.

The *ona'ah* system is based on a market exchange price (*sha'ar*) and ultimately protects both consumer and merchant. Thus, if there was a shortage of gas during a natural disaster which raises the market price, the merchant may still make a modest profit – at the new rate. This dynamic system based on a market price ensures a profit to the merchant and availability to the consumer in troubled times. This is especially important during a crisis when the market wants to ensure a merchant incentive to make commodities available. For example, should the cost of hand sanitizer triple for a storekeeper, but still be in demand – the shopkeeper may purchase and resell at a modest profit. The Talmud, however, is against artificial shortages caused by hoarding.

Guilds and artisans may also set prices by working with communal leaders to ensure probability of their trade. Maimonides summarizes a lengthy and complicated section from the Babylonian Talmud:

*Artisans may make an agreement among themselves that one should not work on the day the other does, or the like, and that they will impose such-and-such a penalty upon*

*him who violates the agreement. This rule applies only in a place where there is no distinguished sage to set the affairs of the locality in order and to make the life of its inhabitants prosper. However, if there is a distinguished sage there, the agreement of the residents is of no effect; nor may anyone inflict a penalty upon or cause a loss to him who does not accept the agreement unless he consented to the agreement and it was made with the approval of the sage. Hence, whosoever has caused a loss based upon an agreement made without the approval of the sage — must pay for the loss he caused (Maimonides, Mishneh Torah, Laws of Sale 14:10-11).*

While the “distinguished sage” is not quantified in the Talmud or Maimonides, it is presumably a communal leader well versed in commerce and law who understands these ramifications.

### **Against Hoarding**

The Talmud was concerned with price stability for necessary items. To the Talmudic sages, causing prices to rise by hoarding or other means was a violation of Torah law similar to usury or tampering with weights and measures (Babylonian Talmud, Baba Bathra 90b). The central value of this view is based on what the prophet Amos said:

*“Listen to this, you who devour the needy, annihilating the poor of the land, saying when will the month pass, so that we can sell grain; the Sabbatical year, so that we can open the stores of grain; using an ephah that is too small and a shekel that is too large, and distorting dishonest scales. To purchase the poor with silver and the destitute for shoes, and selling the refuse of grain as grain” (Amos 8: 5-6).*

Note that the prophet rebuked the Jews for unethical business practices including hoarding food in order to resell it a high price, tampering with weights and measures, and raising prices unjustly. The Talmud states that the prophet Amos had the above groups of dishonest businesspeople in mind when he said (Amos 8: 7): “The Lord swears that He will never forget what they have done.” Thus, to the Talmudic sages, causing prices to rise by hoarding or other means was a violation of Torah law similar to tampering with weights and measures (Babylonian Talmud, Baba Bathra 90b). In addition, causing prices to rise is a violation of the biblical command (Leviticus 25:36): “...that your brother may live with you.” One is not permitted to engage in business practices that cause harm to others making it difficult to sustain themselves.

Shabbatai was infamous in Talmudic times for hoarding produce and causing prices to increase and was considered by the Talmud to be an evil man for this business practice (Babylonian Talmud, Yoma 83a). The Talmud actually felt that he was even wicked in his mother’s womb. When his mother was pregnant with him, she smelled some food on Yom Kippur and was seized with a craving. Rabbi Chanina suggested that the people whisper in her ear that it was Yom Kippur. This usually worked for other pregnant women but did not work in this instance, and she gave birth to Shabbatai. The Talmud felt that Shabbatai’s greed and voraciousness were so substantial that such negative traits must have started when he was an embryo.

According to the Babylonian Talmud (Baba Bathra 88b), the (divine) punishment for false weights and measures is more severe than that for illicit sexual relations. The reason for this is that repentance is possible for illicit sexual relations. With false weights and measures, it is virtually impossible to find everyone that has been defrauded and then provide them with

a refund. This may be the reason that one who uses unjust weights and measures is considered as though he violated all the precepts of the Torah (Baal HaTurim, Leviticus 20: 36). The same can be said for someone who causes prices to rise by manipulating the market for a product.

The great sage, Rabbi Shimon b. Gamliel, was extremely upset when he heard that the price for doves, necessary for certain sacrifices, had reached a golden dinar. He swore that he would not sleep until the price went down to a silver dinar, so he revised the laws concerning sacrifices in order that demand for doves would decrease. The price sank almost immediately to one-quarter of a silver dinar (Babylonian Talmud, Krithoth 8a).

One is supposed to use whole myrtle branches for the holiday rituals of Sukkot. Shmuel warned the sellers of myrtle branches that he would allow individuals to use myrtles with broken tips if merchants raised prices on the whole myrtle branches when the holiday was approaching (Babylonian Talmud, Sukkah 34b). A similar problem occurred after Passover. The people used to break the pots in which leaven was cooked and thereby absorbed, and had to buy new pots after Passover. Shmuel warned the pot sellers not to raise the price of pots or he would take the more lenient position regarding the absorbed leaven in pots and not require the use of new pots after Passover (Babylonian Talmud, Pesachim 30a). Shmuel and his father were known to buy, and subsequently sell, produce in such a way as to keep the market price stable and low throughout the year (Babylonian Talmud, Baba Bathra 90b).

In the Babylonian Talmud (Baba Bathra 89a), there is an argument whether inspectors are needed to keep prices low. Some (e.g., Shmuel) felt that it was not necessary since if one merchant charged a high price, others would charge a low price and buyers would go to the dealer selling the product for the lowest price. In other words, market forces would ensure that anyone charging a high price would have to lower it because of competition. Everyone agrees, however, that inspectors are required to ensure that merchants are using honest weights and measures. The Talmud states (Babylonian Talmud, Yuma 9a) that the *parhedrin* (supervisors) compelled the bakers to sell cheaply, saying “sell cheap, sell cheap.” Bread, of course, is a necessity of life and it is important to keep prices low.

In any case, the Shulchan Aruch (Choshen Mishpat 231: 20), the authoritative code of Jewish law, asserts that the court is obligated to appoint inspectors whose job is to ensure price stability for necessities. It is forbidden for speculators to hoard food during famines (Maimonides, Mishneh Torah *Laws of Sale* 14:1; Choshen Mishpat 231:23-26) and presumably other similar crises.

The respected 12<sup>th</sup> century Jewish commentator Rashbam did not feel the need for regulation and advocated for a free market economy. In his comments to the Talmud, he writes:

*Market officers are not appointed to supervise prices and prevent merchants from selling high: it is logical that this is not necessary, for if one wants to sell at a high price, another who needs money will sell more cheaply, all the buyers will go to him, and the first will be forced to sell cheaply* (Rashbam, Babylonian Talmud, Baba Bathra 99a).

Perhaps one could surmise, that under regular economic conditions, the above argument for a free-market economy is true. Issues begin to arise during times of uncertainty such as war, famine, and pandemics when real or artificial shortages can occur, and therefore fail safes are needed.



During the 2020 pandemic, when the price of hand sanitizers, facemasks, Lysol, and other essential products began to skyrocket, such price increases were mostly attributed to price fraud and artificial shortage. The consumer advocacy organization U.S. PIRG Education Research indicated that at least in “one case in which a package of 320 Lysol disinfecting wipes that typically sold for an average \$13.57 over three months rose to \$220 on March 3. It also found a listing for Purell sanitizer that normally sells for \$7.99 going for as high as \$49.95” (Berzon & Hernandez, 2020).

Amazon shut down over 500,000 products and suspended more than 6,000 vendors because of Covid-price gouging. This is what an Amazon spokesperson had to say:

*There is no place for price gouging on Amazon and that's why our teams are monitoring our store 24/7. We are disappointed that bad actors are attempting to take advantage of this global health crisis, and in addition to removing these offers, we are terminating accounts and working directly with states attorneys general to prosecute bad actors and hold them accountable (Morad, 2020).*

This type of severe behavior stops price gouging, but the ultimate goal of providing products and fair prices is missed. Had proper measures that regulated fair pricing been in place, consumers would have been able to purchase these and many other products.

### **Special Consideration for the Poor**

There may be no special obligation for storekeepers to lower prices for the poor. The obligation to give charity to the poor, however, is a core value of Judaism and is stressed in the Bible and the Talmud. According to the Talmud, “The best of doctors are destined for Hell” (Babylonian Talmud, Kiddushin 82a). Several reasons are provided including the fact that doctors are often arrogant and will not consult with other physicians and thus cause a patient to die. Also, many refuse to treat the indigent. Here is a story of one who did things right. Abba Umna was concerned with the health of his patients and was not interested in becoming wealthy. Moreover, he was even concerned about such issues as patient modesty and was also very charitable.

*Abba Umna was a surgeon/bloodletter (umna) and would receive greetings from the Heavenly Academy every day. Abaye received greetings on every Sabbath eve, Raba on the eve of every Day of Atonement. Abaye felt dejected because of the special honor shown to Abba Umna. People said to Abaye: “You are not able to perform deeds such as his.” What was the special merit of Abba Umna? When he performed his operations he would separate men from women [for modesty reasons]. He had a garment which had a cup for receiving the blood and which was slit at the shoulder to accommodate the surgeon's knife. Whenever a woman patient came to him he would put the garment on her shoulder in order not to see her exposed body. He also had a private place where the patients deposited their fees which he would charge; those that could afford it put their fees there, and thus those who could not pay were not embarrassed. Whenever a young scholar happened to consult him, he would not accept any fee from him. When the scholar would leave, he would give him money and tell him: “Go and regain your health.” (Babylonian Talmud, Taanis 21b-22a; based on translation by Soncino and ArtScroll).*

The Talmud often uses stories to enhance a law. Halbertal (2011) stresses that a major characteristic of the Talmud is to place a narrative alongside a law. Stories can then

demonstrate the ideal way a law should be followed. Those following in Abba Umna's footsteps should seek a clever way to lower prices for the impoverished and needy.

## Discussion and Conclusion

The coronavirus pandemic of 2020 made evident why clear guidelines regarding price manipulation and hoarding are necessary. During the early part of the crisis, many goods, despite demand, were unavailable and some goods were hoarded, only to be sold at outrageous prices. Jewish tradition provides a long tradition of protecting the consumer and making merchandise available at reasonable prices.

The *Amida* (also known as *shemoneh esrei*) prayer is together with the *shema* the most important prayer of the daily service. It was established by the 120 members of the Great Assembly in the 5<sup>th</sup> century BCE and is recited three times a day. The ninth blessing of the *Amida* reads as follows: "Bless on our behalf, O Lord our God, this year, and every species of its produce, for the best; and bestow a blessing upon the face of the earth and satisfy us from its bounty..." It is the only blessing that begins with the word "bless" and deals with sustenance and deliverance from want. Although there is no direct reference in this prayer to hoarders, price predators, or cunning profiteers, the Talmud states that this prayer was established as a prayer for divine protection against individuals who would raise prices unjustly (Babylonian Talmud, Megilla 17b). The fact that there is a special blessing to ensure price stability indicates the importance of this law.

The Talmudic sages regarded price gouging as a serious threat to the wellbeing of society and interpreted the verse in Psalms (10:15): "Break the arm of the wicked and evil person" as referring to those who raise prices unjustly and thereby oppress the poor (Babylonian Talmud, Megilla 17b).

Shutting down merchants for price gouging does not help consumers, as they are ultimately unable to receive the desired goods. By contradistinction, price regulation on essential products disincentivizes undesirable behavior such as hoarding by eliminating incentive of this product why ensuring consumer availability.

One important takeaway from this paper is the need to balance consumer protection and merchant's incentive. The *ona'ah* system applied is one example of a dynamic system that exemplifies balance. While consumers demand low pricing, regulators must strike a balance to achieve fair pricing, in which the merchant can also profit reasonably and modestly. Fair markups that balance profit and affordability are needed to ensure market efficiency and equity of opportunity for all.

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## About the Authors

**Hershey H. Friedman** is a Professor of Business in the Business Management Department of Brooklyn College of the City University of New York. He has held both the Bernard H. Stern Chair of Humor and the Murray Koppelman Professorship. Prof. Friedman has published more than 250 scholarly articles in such journals as *Journal of Business Ethics*, *Journal of*

*Applied Psychology*, and *Journal of Advertising Research*. His latest book (Routledge 2014) is *God Laughed: Sources of Jewish Humor*, co-authored with Linda W. Friedman.

Dr. Friedman can be reached at Murray Koppelman School of Business, Brooklyn College, CUNY, 2900 Bedford Avenue, Brooklyn, New York 11210, [x.friedman@att.net](mailto:x.friedman@att.net).

**Murray Mizrachi** is a lecturer of business at the Murray Koppelman School of Business at Brooklyn College CUNY. His research interests include ethics, leadership, and the impact of the Bible on Western Society. He holds an M.S. in Global Business Economics and Ph.D. in Jewish Studies. He was an American Sephardi Federation Fellow at the Center for Jewish History in New York and previously recognized as one of the *Jewish Week's* prestigious "36 Under 36."

Dr. Mizrachi can be contacted via email: [MurrayMizrachi@gmail.com](mailto:MurrayMizrachi@gmail.com)