

Economic Morality and Jewish Law.

Aaron Levine. 2012. New York: Oxford University Press. ISBN 978-0-19-982686-5. \$58.50.

Judaism, Law & the Free Market.

Joseph Isaac Lifshitz. 2012. Grand Rapids, MI: Acton Institute. ISBN 978-1-880595-41-1. \$7.99.

Reviewed by Andrew Schein, Netanya Academic College (Israel)

The two books under review here ostensibly deal with the same topic, the interaction between Judaism and economics, but in fact, the books differ considerably. Aaron Levine's book examines specific issues in the economy and society from the perspective of Jewish law in a very detailed manner, while the book by Joseph Isaac Lifshitz takes a more general approach and attempts to analyze the relationship between Judaism and socialism. I will discuss each book separately.

Levine, who passed away in 2011, dedicated his life to studying the interaction of Judaism, Jewish law and economics. He was a prolific scholar and this book is mostly a collection of articles that he wrote from 2005-2010.

In the introduction to the book, Levine states that under Jewish law the crucial issue of an action is its intrinsic qualities and not its consequences (p.15). Thus, Jewish law would be a deontological ethical system, not a consequentialist one. This is the main issue in the book, but Jewish law is not a unified system, which gives one perspective on all issues. Throughout history, there have been several attempts to unify Jewish law, and the last, and generally successful, was by R. Yosef Caro (Spain, Turkey, Israel, 1488-1575) in his monumental work, the *Shulchan Arukh*. Since his time there have been numerous commentaries on his work and responses to new questions which have generated a myriad of opinions on almost all issues. In addition, modern scholars have to make inferences from previous cases to modern times, and in many cases these inferences are not obvious, especially when dealing with issues relating to the modern economy. Accordingly, there is a large amount of subjectivity in determining which scholars to follow and what are the correct inferences. We will give several examples from Levine's book.

In the first chapter Levine presents a fictitious case study of people's responses to two sermons, and he analyzes whether it is appropriate for the people to lie about the sermons. The issue here is that the standard approach in Judaism is that one is allowed to lie in the interest of making

peace between people. This contradicts Levine's claim that the Jewish law is deontological and not consequential since lying is permitted if it leads to greater harmony in society. However, Levine quotes several scholars who argue that the permission to lie is limited and he follows a stringent approach by arguing that these scholars should be followed.

In the second chapter, Levine has a brief discussion on biblical exegesis to explain the troubling story in Genesis 25, where Jacob sold Esau, his twin brother, soup in return for the family birthright. First, Levine (p.55) argues that Jacob did not violate any law since "given Esau's exhausted and famished condition at the time he (Esau) sold the birthright, he surely achieved subjective equivalence in the sale." While this may or may not be true, it does not explain why Jacob did not freely give the soup to his brother. Levine then quotes various Midrashim that disparage Esau's character to justify Jacob's action, but this appears to be an example of begging the question. Better approaches to explaining this incident would either be to accept that Jacob did not act correctly or to argue that Jacob was trying to mock the idea of the firstborn since he could not accept that just because Esau was born a few seconds before him, Esau should be granted greater privileges.

In the third chapter, Levine returns to discussing economic issues and argues that Jewish law rejects the Coase theorem. This would be an example of following deontological ethics and not consequentialism, but another scholar, Yehoshua Liebermann (1981), has argued that several sources from Jewish law indicate that Jewish law is in accord with the Coase theorem. Levine rejects Liebermann's argument since he claims that one of the responses that Liebermann relied upon cannot be generalized, and this is an example of the subjective nature of drawing inferences. In addition, this reviewer (Schein, 2004) has suggested that there might be a biblical precedent for the Coase theorem. Accordingly, Levine's conclusion that Jewish law rejects the Coase theorem is not self-evident and the subject is a topic for further research.

In the fourth chapter, Levine examines price controls on necessities in Jewish law, and this chapter is based on a paper from this reviewer. In Schein (2001), I had argued that Jewish law only mandates that the Jewish court should institute price controls in non-competitive markets, but not in competitive markets. Levine disputes this conclusion and maintains that even in competitive markets, the Jewish court is obligated to impose price controls. He admits that this could cause shortages in the goods market, but surprisingly he suggests (p.109) that the communal legislative authority can override the Jewish court.

One of my arguments that the Jewish court is not obligated to impose price controls in competitive markets is from the ruling of Maimonides (Spain, Egypt, 1135-1204), who was one of the most prominent authorities in Jewish law. Maimonides (*Mishneh Torah*, Laws of sale, 14:1) wrote that the court should impose price controls in order that people will not be able to profit whatever they desire, and this wording is followed by R. Joseph Caro in his *Shulchan Arukh*. I had suggested that Maimonides's words imply that the market in question was non-competitive since in a competitive market sellers are price takers; they have to accept the market price and hence they are not free to profit whatever they desire. However, Levine argues that Maimonides' wording

refers to a competitive marketplace. In that context, sellers have the ability to exploit the ignorance of a naïve and trusting consumer who erroneously imagines that whatever deal a particular seller offers him is the same deal another seller would offer him (p.104).

This reading of Maimonides is incorrect for two reasons. One, Maimonides writes, in the same law, that the case here is where the seller informs the buyer of his costs and large profits. This is not a case of a trusting consumer, but of consumer who feels he has no choice but to pay the high prices, which is in a non-competitive market. Two, one of the conditions of a perfectly competitive market is that consumers have perfect information that they know all the prices in the market. Even if one argues that in real life not all consumers have perfect information, still if the market is competitive, firms are price takers and they do not have the ability to charge whatever they desire. Maimonides's idea that without the price controls a seller can profit whatever he desires is not in reference to a seller possibly profiting from one consumer but to the seller earning abnormal profits from all consumers and this only occurs in non-competitive markets.

While Levine endorses price controls in the goods market, in the labor market (chapter 7), he follows a consequentialist approach and argues that Jewish law rejects imposing minimum wages and living wages, which are higher than minimum wages. He writes (p. 209) that "minimum wage legislation is self-defeating and the lesson should apply with even greater force to the living wage proposals." Yet, the evidence on minimum wage is changing. For example, the *Economist* (2013, p.40) writes, "Recent research suggests that relatively low rates are not harmful and that small increases can be beneficial." Thus, maybe Jewish law would accept minimum wages, but not living wages.

In the fifth chapter, Levine proposes a system for funding Jewish

education based on various sources in Jewish law. Levine argues that his system accords with Milton Friedman's idea of giving parents vouchers to choose which schools to send their children. It may very well be that Levine's educational system is reasonable and would be successful, but it differs in one important way from Friedman's idea of vouchers. According to Levine, each community should establish a fund to support the local educational institutions and the board of the fund would distribute funds based on the enrollment in the different schools. This funding per enrollment appears to put the power to choose in the hands of the parents. However, according to Levine, the board of the funds would also set standards for the schools, and then the funding would be based on the board's decisions and not the parents.

In the sixth chapter, Levine examines how warranties for products and service should be formulated according to Jewish law, and he notes that in some instances the warranties under Jewish law would differ from American law. He further notes that the goal of warranties is to reduce the problem of "lemons" in the market, but that the warranties are not sufficient to solve this problem. Thus, he proposes that governments should try to create an environment of trustworthiness, which would make the sellers act more honestly, but of course this is easier said than done.

In the last chapter of the book, Levine discusses short selling in a market from the perspective of Jewish law. Levine argues that in certain cases, "Jewish law has a favorable attitude towards short selling" (p.228) since it can reduce bubbles in financial markets. This again would seem to be an instance of consequentialism since the favorable view is based on the claimed benefits from short selling.

Accordingly, it is not clear from this book whether Jewish law supports deontological ethics or consequentialism. Economics is a consequentialist system, and hence the more one argues that Jewish law is consequentialist, the more one will find accord between economics and Jewish law. In the cases where Jewish law is deontological, then there is room for Jewish law to offer different perspectives on economic actions. In this book by Levine, he has pointed out several cases where Jewish law offers these different perspectives, though in all the cases, scholars will need to slowly work through the sources to make their own evaluation of what is the Jewish law in the particular case. Levine's book is an excellent resource for people who want to research the Jewish viewpoint on the issues discussed in the book, but it is not the last word on these subjects.

In contrast to Levine's book, the second book under review has almost no discussion of economics and instead focuses on Judaism's

attitude towards socialism and the free market. The book consists of six chapters and a brief conclusion. In the two largest, Chapters 2 and 3, Lifshitz's argues that Judaism should not be identified with socialism. In the remaining chapters, Lifshitz briefly discusses his notion of the term generosity, competition in Jewish law, and what he calls spontaneous order in Judaism.

Lifshitz argues that Judaism should not be identified with socialism since "Jewish tradition takes a very positive view of both the institution of ownership and the accumulation of wealth" (p. 6). This latter point was made a hundred years ago by Sombart (1913, pp. 235-244), though this book is rarely quoted today due to its perceived anti-Semitic bias [see Mendes-Flohr (1976)]. Within Lifshitz's discussion of Judaism's positive view of wealth, he states (p.15) that R. Akiva (2nd century, Israel) said, "It is better to profane your Shabbat (the Sabbath) than to become dependent on others." This translation of the Talmudic (*Bavli Pesachim* 112a, 113a) passage is incorrect. R. Akiva was not saying that a person should violate the Shabbat in order not to borrow or beg, but that a person should not borrow or beg in order to have extra and fancy food on the Shabbat, as instead a person should save money by eating a regular weekday meal on Shabbat.

How positive a viewpoint does Judaism take towards private ownership? Lifshitz first writes, "the right to private property in Judaism is nearly absolute and can be restricted only in the most extreme circumstances" (p.13). However, later he admits that a person's "rights over his property are limited by the religious obligation to leave the land fallow on the Sabbatical Year and to return land to its owner during the Jubilee" (p.34). These two cases can hardly be called extreme circumstances if once every seven years a person cannot use his field, and if one can never permanently sell land. Furthermore, one is not allowed to work one's land once every seven days (the Sabbath), there are various requirements that a person has to leave over some of his fields to the poor and one has to give some of the produce to the priests and levities. Lifshitz argues that all of these limitations on private property are not legal limitations since the person's ownership is not being challenged. Still, no matter how one defines the nature of the requirements, Jewish law limits a person's use of his/ her property.

Lifshitz appears to be arguing that Judaism should not be identified with socialism since it does not advocate a redistribution of wealth. Yet, the laws of the Jubilee and the Sabbatical year have been interpreted in such a manner, and while today these laws are not operative (in Israel, the

Sabbatical year is partially observed) one would have expected these laws to be a major issue in this book, but they are barely mentioned. Instead, Lifshitz dedicated a major part (around 20 percent) of this relatively short work to discussing whether charity can be coerced in Jewish law, and he comes to the conclusion that it can be. This would seem to indicate that Jewish law advocates at least a partial redistribution of wealth, and limits his argument that Judaism should not be identified with socialism.

Lifshitz writes that a society based on a redistribution of wealth “encourages dependence and undermines the value of hard work and creative innovation” (p.21). Lifshitz continues and argues that such an outcome counters Judaism since “The Jewish approach seeks to encourage individual responsibility and innovation among society’s most successful and its poorest members, for it is in these qualities that man acts as one created in God’s image” (p.22). This reviewer is in general agreement with this point, though the author’s first assertion would be more compelling if he had provided empirical support for it. In addition, with regard to the second assertion, there are a huge number of Jews today who consider themselves very religious (even ultra-Orthodox), and advocate a system where society’s wealth is redistributed to them in order for them to learn Torah, the “*kollel* system.” These Jews believe that they are acting in accordance with God’s will, but they do not work, and then according to Lifshitz, they are not acting in God’s image. Perhaps, Lifshitz was trying to indiscreetly criticize this lifestyle, but a full discussion of this lifestyle and whether Judaism supports it would have added to the book.

In chapter 5, Lifshitz appears to have forgotten Judaism’s positive views on working and innovation, as he writes (p.85), “for the Talmudic Sages, the way to achieve prosperity (besides through God’s help) was mainly through war.” Lifshitz cites a passage in the Talmud (*Bavli Berakhot* 3b) to support this assertion. The Talmud relates that King David’s advisors told the king that the people needed sustenance, so he told them that the people should make a living from each other, but the advisors said that this was insufficient. David then responded that they should go out in troops and attack the enemy for plunder.

Does this passage in the Talmud support Lifshitz’s statement that the Talmudic Sages thought that prosperity was achieved mainly through war? David’s first response to his advisor’s request was that the people should make a living from each other. While this phrase has been understood to mean that the rich should support the poor, more likely it means that the people should work and trade with each other. However, the advisors, who apparently had a static view of economics, did not understand that

trade generates wealth and instead claimed that trading would not help the people since they viewed trades as a zero sum game. David then responded that if the people do not want to trade with themselves, then let them plunder other countries, the ultimate zero sum approach. David was not telling the people to fight, but trying to get them to agree to his first response to trade amongst themselves, that if they were not willing to trade amongst themselves, then they would have to fight. David was not offering to fight with them, and he was trying to get the people to stop complaining. It is interesting that while the Talmud records that the people had an immediate enthusiasm to battle, there is no record of them actually fighting, which shows that it was not David's intention for the people to really fight a war.

In the conclusion Lifshitz retreats from his earlier definitive claims as he acknowledges "that it is very difficult to extract a clear economic theory from Jewish sources" (p.107). This difficulty relates to the subjectivity problem discussed above in reference to Levine's work and here the problem is greater since an economic system, such as socialism or capitalism, is more encompassing than examining specific economic issues. In reference to the question of whether Judaism is in accord with socialism, one should examine the different aspects of socialism individually.

One aspect of socialism would be the question of the redistribution of private property, which is discussed by Lifshitz, and here there is a need to determine the following: how much does Judaism uphold private property? For instance, do the Jewish court/ communal authorities have the power not just to coerce charity and set price controls, but also to nationalize private property?

A second aspect of socialism would be where people jointly agreed to pull their resources to work together, and there is no forced redistribution of wealth. This would be similar to the kibbutzim in Israel, where people were granted land to work together, and there are several religious kibbutzim. Does this system "undermine the value of hard work" as mentioned by Lifshitz, and, even if this is true, does this really counter any law in Judaism? Maybe the goal of equality is believed to be more important, just as many Jews today argue that studying the Torah is more important than working.

A third aspect of socialism would be government control of major industries, prices and wages in society. This control tends to lead to poorer economies, but is that a reason for Judaism to reject these policies (consequentialism)? Is the goal in Jewish law to have an economy with

the highest possible per capita GDP? Even if yes, would some industries, such as health care, have different rules?

Readers of Lifshitz's book might come away with a better awareness of some of the issues (for example, coercion of charity in Jewish law) relevant to these questions, but the book does not offer a comprehensive discussion of Judaism, socialism and the free market.

Lifshitz concludes with a Talmudic passage (*Bavli Niddah* 70b), which states that if a person wants to be successful, he/she should engage much in business and deal honestly. The Talmud states that many have tried this but have not become successful. Thus, the Talmud adds that one should also pray "for mercy from Him to whom all riches belong." The Talmud does not state whether this formula was successful, but it is fitting advice; a person should work hard, be honest and pray to God.

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