



## Introduction

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### Introduction

This column will look at Halachic issues from an economic mindset. This is not the same thing as a column that would look at economic issues from a Halachic mindset. This is not a column on money issues in Halacha. Economics, in practice, is a key to good money management, but behind the pragmatics of economics is the theoretical, the ideological, the scientific process of economics, and it stems from a very unique and focused outlook on society and decision-making. Most significantly, it provides a coherent and effective language for investigation. In this column, economic methodology will be used to analyze topics in Halacha.

So what exactly is 'economic methodology?'

### Economic Methodology

Economics, as a study, is unique in that it is neither a science nor an art, but rather a combination of both. In science, we seek to understand reality in a transparent, tangible sense. The artist, on the other hand, seeks to comprehend an elusive, instinctual reality. The study of human behavior and decision-making (which is tantamount to saying 'the study of economics') lies somewhere in-between these bookends (much like psychology, a field closely linked to economics). The economist relies on facts and statistics to catalogue human behavior and attempts to predict future choices based on statistical methods. At the same time, the economist makes extensive use of logic and reasoning to try to

understand the backbone of the decision-making process. That which is derived through economic reasoning is never provable beyond a doubt. There is no irrefutable way to test the Invisible Hand or Diminishing Marginal Utility. It is based on an understanding of human beings and human nature as only a human can comprehend.

Economic methodology is based on one major assumption: Man acts rationally. When economists speak of rational decision-making they mean that decisions are made so as to ensure costs (whether perceived or actual) are exceeded by benefits (also, perceived or actual—a person can only make a decision based on what he/she knows). Generally, this is applied to matters of business and the market place, as issues of cost and benefit fit naturally into such circumstances (since money simplifies and concretizes the concept of cost-benefit analysis). However, economic methodology is a way of analyzing incentives and this applies to each and every decision any person will ever make, even decisions more esoteric than those that deal in dollars. Therefore, the purpose of this column is to examine the incentives that arise in Halachic situations.

### Example: Shor Tam

We know of two classifications of oxen: the Shor Tam and the Shor Muad. The Shor Tam is an ox that has gored less than four times. It is a so-called 'innocent ox' because it is not yet expected to be a dangerous ox. Once an ox has gored a fourth time, however, it becomes a Shor Muad, an ox that is expected to be dangerous. When a Shor Muad gores, its owner is responsible to pay the full value of the damage it causes, but when a Shor Tam gores, the owner is only responsible to pay *chetzi nezek* (half-damages).

One might reason that the owner of a Shor Tam only pays half-damages because it is not yet realistic to expect that the ox will gore, at least not with as much likelihood as with a Shor Muad. From an economic perspective, we might say that it is inefficient for Halacha to demand such a strict level of care by an owner of a Shor Tam; if every ox, regardless of how dangerous it was thought to be, made its owner fully liable for damages when goring, we would see those who own oxen putting undo care into preventing their oxen from causing damage. This level of care would detract from more efficient uses of resources. On

the other hand, absolve the owner of a Shor Tam from damages altogether and the level of care will drop below the efficient level. Therefore, the burden is split between defendant and plaintiff.

But there is a debate regarding this exact issue in **T.B. Baba Kama 15a**. Rav Papa and Rav Huna (son of Rav Yehoshua) argue over the nature of the half-damages. According to Rav Huna, the owner should truly not be liable at all for the damage caused by a Shor Tam since “average cattle are presumed safe” but the Torah imposes a fine on the owner so that additional care will be taken. Rav Papa, however, states that “average cattle are not presumed safe” and, therefore, in reality the owner of a Shor Tam should be fully liable, just as when a Shor Muad causes damage, but the Torah was merciful and only made the owner liable for half-damages.

Economic analysis can easily identify the incentives that are being manipulated in this case. If the first case is correct, and the half-damages are a fine, then incentives are being imposed to ensure that additional care will be taken. If the latter case is correct, the half-damages represent a reduction in liability. Perhaps Rav Papa’s view assumes people would take an inefficiently high level of care and therefore the Torah sought to reduce this unnecessary use of time and resources by exempting the owner of a Shor Tam of half the cost of damages.

Rav Huna’s view is interesting and brings to light a very important distinction between classic economic thought and economic analysis when dealing within the realm of Halacha. In a standard judiciary system, an economist sees Punishment (in conjunction with the probability of suffering such punishment) as the price of Crime. Therefore, if a speeding ticket is \$200 (and we assume that everyone who speeds is caught), an economist would say that \$200 is the *price of speeding*. Therefore, there is an efficient amount of speeding in the market—those who value speeding the highest will *purchase* their right to speed. And those who value speeding at less than \$200 will *choose not to consume*. In Halacha, one cannot so simply accept such a system since we believe in Right and Wrong—even if it is apparently worth the *cost* of death, for example, a Halachic Jew does not commit murder.

Rav Huna speaks of the imposition of a fine of *chetzi nezek*. Economic analysis has already shown that the imposition of this fine will increase the potential damager's level of care. An economist would therefore assume that the Torah is setting this level of care as the Efficient Level of Care for the society—that such a level of care represents the ideal usage of time and resources. However, this is not necessarily the case. According to Rav Huna, the Torah imposed *chetzi nezek* as a fine, *kanas*, not as a monetary compensation, *mamon*. This distinction is crucial. The additional level of care that will be upheld by the owners of oxen is actually *inefficient*—it detracts from the ideal usage of time and resources. The Torah is demanding that the Halachic Jew act beyond the rationality of the visible system. This could mean one of two things:

1) Focus on the Individual – The *kanas* is meant to monetize costs that aren't being recognized by the individual, such as spiritual or heavenly costs, that, if known, would increase his level of care equal to the amount increased due to the *kanas*. To understand this, imagine a simpler example, such as the case of a person choosing how much to spend on an alarm system for his house. (It is assumed that the more you spend on the alarm, the better protected you will be.) If a person values all of his belongings at \$500, he would certainly not spend more than \$500 to protect those belongings. But what if there are potential costs of being robbed that he is not recognizing, such as a secret treasure chest in the basement worth well over \$1000. If the presence of this chest were known to the individual, he would be willing to spend more for the alarm system. It is the same with the *kanas*, perhaps. The Torah institutes the *kanas* to make the owner of the potentially-damaging ox aware that there are personal costs that he should recognize. In other words, it is in the owner's best interest to take a certain level of precaution regarding his ox even though it is a *Shor Tam*.

2) Focus on the Community – What is efficient for the individual is not always what is efficient for society. Sometimes incentives have to be imposed in order to provide the individual with the proper motivation to act in a way that will be beneficial to society. The *kanas* in this case may be such an example. (This is a classic case of an externality in economics, rectified with a tax.)

(Rav Papa's use of the word 'mercy' should also be investigated. Is the obligation to pay full damages really the efficient case and the Torah chose to be *inefficiently merciful*? What is the value of mercy in the Halachic system? Could mercy possibly override efficiency? Or

is there a hidden efficiency, similar to our analysis of Rav Huna above?)

Before concluding this example, it is important to note that one of the guiding principles of economics is that all transactions require two parties, generally a Buyer and a Seller. In legal cases, we speak of the Criminal and the Victim, or the Defendant and the Plaintiff. Both parties have incentives and it is important to understand both sides. In the current case of the Shor Tam, the level of care taken by the victims should also be considered. Perhaps the victim's incentives were relevant in the Torah's edict.

If liability was increased from zero-damages to half-damages (Rav Huna's opinion), we may suspect that the Torah sought to reduce the burden placed on the victim by placing half the burden on the owner of the ox. Alternatively, if the second case is correct, and the owner's liability was decreased from full- to half-damages, perhaps we may assume that victims were projected to be negligent with their own property since they could expect to fully recover the cost of any damages suffered and therefore the Torah gave them the incentive to take some care of their own by reducing the liability of the damaging party to half.

### Conditions

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The above is a preliminary example of what I hope to accomplish through this column. It is not enough to know the outcome—one must also try to understand the procedure by which the outcome was reached. Without knowledge of the process, the essence is often lost and we are transformed into automatons, doing without really thinking. I hope to gain some insight into the manner in which Halachic decisions are made.

Before I conclude this introductory edition of Moral Hazard, I will present some of the conditions under which I will write. These conditions seem logical to me and I think they will be an integral, though mostly only implied, part of this column. It may be useful to outline these conditions here, at the outset:

#### 1. Economics and Halacha Are Compatible

The working hypothesis of this column is that an economic mindset poses no outright conflict with a Halachic mindset. In other words, the assumption is that the economic ‘way of thinking’ is congruent with both Halachic practice and a Halachic ‘way of thinking.’ (There is certainly conflict between sound economic practice and Halachic practice—lending with interest is a quick, simplistic example—but this is, as mentioned, irrelevant for our purposes, not to mention a generalization: sound economic practice varies from place to place, system to system.) This hypothesis is based on my understanding of Halacha and economics. It is a working hypothesis and its validity will be tested as we progress.

## 2. Halachic Man is a Rational Man

Certainly Halachic Man is concerned with loftier goals than wealth and material well-being, however this is no reason to consider him irrational. The Rational Man is a man who acts so as to maximize benefit and minimize cost. An atheist may look at Halachic Man and see his actions as the epitome of irrationality, but this is only from a very closed-minded perspective. If a Halachic Man is hungry (and I certainly do not mean in any life-threatening sense) and chooses not to eat because the only food available is not kosher, the secular individual might accuse the Halachic Man of being irrational—“Surely the cost of hunger is greater than the benefit of ‘feeling pious!’” But for the Halachic Man the cost of hunger is far surpassed by the benefit of obeying God’s command. As Reish Lakish says (**T.B. Sotah 3a**): “A person does not sin unless he has been overtaken by a spirit of madness.”

The economist understands this distinction by way of the concept of utility. Utility is a theoretical measurement of pleasure and no two people derive the exact same level of utility from any one good. (For me, the benefit of the wine may exceed the cost of not being able to drive home tonight. For you, the opposite may be true—that is how designated drivers are born.)

Just as for Economic Man in general economics, the assumption that Halachic Man acts

rationally requires a certain level of suspension of disbelief. Everybody knows people who act irrationally. Perhaps everybody acts irrationally sometimes. Perhaps no one ever acts with complete rationality. For some economists, the assumption of rational decision-making is considered only a small request; for others, it is thought to be a very large leap. Since Halachic Man acts within a system of reward and punishment, cost and benefit, incentive and disincentive, it is no more and no less of an issue to assume Halachic Man rational than it is to assume Economic Man is rational. It is, however, an integral axiom for our purposes: Halachic Man is rational.

### 3. Halacha Represents a Consistent System

Halacha as we know it today is the product of years of development. For example, the same issue discussed in the Torah, the *gemara*, Rambam's Mishne Torah, and the Chofetz Chaim's Mishna Berurah might very well take on several different permutations. However we assume that the transition from the Biblical period to the Talmudic period, and all similar transitions, occurred with a consistent devotion to the integrity of Halacha and therefore any apparent gaps in the system are due to our lack of knowledge, not a divergence from the philosophy of the system. We attempt to fill in the gaps by way of connecting whatever dots we may have, but sometimes even our best efforts fall short. In such cases we give the process the benefit of the doubt and assume that somewhere in between the start and the finish-line there is an ordered path, hidden as it may now be. This assumption is similar to the assumption that if the market price for a certain good was five dollars lower yesterday than the market price today, something has occurred in between the two days to alter the supply and/or demand of the good—we do not assume that the workings of the entire market have suddenly failed.

### 4. Halacha Represents a Legal System that Humans Can Comprehend

Just as we assume that Halachic Man is rational, we assume that the entire Halachic system is rational and, therefore, any perceived irrationality is due to the fact that we, as humans, lack information. This condition is essential because analysis of the incentives, disincentives, costs and benefits of the system is only worthwhile if we accept that we have

a certain grasp of such qualities. If it can be countered that we are never truly aware of the costs or benefits of any of our actions this entire column becomes moot.

Yes, of course we will never fully understand Reward and Punishment, and we may never be able to satisfactorily answer the question “Why do good things happen to bad people?”—but this column is not concerned with that which we cannot comprehend since such matters cannot affect our incentives. For example, when the battery in your phone dies you are presented with the incentive to buy a new battery, but only once you become aware of the depleted battery. Before you are aware that the battery has died, even though the phone will not work when you try to use it, you have no increased incentive to replace the battery *until you actually try to use it*. (An interesting Halachic discussion relevant to this topic may be *yeeush shelo midat*, the classic case in which someone is considered to have given up hope of retrieving a lost object *before* becoming aware that it is missing.) Similarly, everything in Halacha which cannot be comprehended or predicted by humans can be disregarded here since it cannot affect incentives.

Therefore this column only deals with issues in Halacha that present us with costs and benefits that we can understand and act upon. And the subsequent assumption made is that when we *can* understand the incentives, we *do* understand the incentives—or at least we think we do—and act accordingly to maximize benefits as we see them. As Rebbi said (**Avot 2:1**), “Compare the cost of a mitzvah to its reward, and the reward of a sin to its cost.”

### Moral Hazard: a Note on the Title of This Column

The economic term ‘Moral Hazard’ refers to a case in which inefficiencies may be caused due to a redistribution of risks. For example, when Fire Insurance is purchased, a risk which at one time, prior to the purchase of insurance, was borne by the individual is now, after the purchase of insurance, taken on by the insurance provider; the individual may be given the incentive, therefore, to reduce his personal level of care for fire safety, assuming he can expect full-coverage of damages and no increase in premiums.



The title for this column, then, comes from this economic term. It is, obviously, a play on words, since this column will not deal exclusively with issues of moral hazard in the technical sense of the term but will deal with issues of morality. However there is a deeper connection to this term as well.

My mother told me recently about a documentary she saw in which an atheist with a broken leg and no food was lost alone on a mountain. Somehow he found his way home and survived. In an interview conducted some time later, the mountain-climber said that he had not once asked God for help, had not once looked to the Heavens for assistance or guidance. This proved to him that he was a true atheist who, even in a time of extreme desperation, never wavered in his disbelief.

I wondered: would this man have been able to summon the strength to survive if he had not been an atheist. It's an interesting question. Generally we assume that belief in God provides us with confidence and reassures us that there is 'someone watching'—it is not random. But what about the opposite inclination: "God will save me." And in those moments that demand the most of us, do we ever submit because we think God might pull us that last extra inch?

This is the moral hazard of belief: complacency. With this column I hope that I am able to contribute to a stepping away from this form of moral hazard.

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