



DEPARTMENT OF JUSTICE

The Pursuit of Justice: Lessons in Competition from Judaism

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Good morning. It's wonderful to be back in Los Angeles, and especially to be here at this Community Speaker Series, among fellow members of the Jewish community. Thanks very much to Rabbi Cunin for that kind introduction. As many of you know, Rabbi Cunin is not only the head of the Congregation here, but is a member of the storied Cunin family in California, and brother of Rabbi Levi Cunin, my Rabbi in Malibu. He is also a very dear friend. Rabbi Cunin and all of his brothers were kind enough to travel to Washington, D.C. for my confirmation hearing before the Senate Judiciary Committee last year. I am so grateful for their support. When the Rabbi asked me to come and spend a few minutes with you this morning, I was honored by the invitation and am delighted to be with you today.

As the Assistant Attorney General for the Antitrust Division at the Department of Justice, I look forward to speaking briefly about my background, historic concepts of justice, and finally, what Judaism and the Old Testament have to say about the laws of competition.

Antitrust and Jewish law are perhaps not the most obvious pairing, but as I'm sure Rabbi Cunin would tell you, if you look hard enough, Judaism has something to say about just about everything.

Before beginning those remarks, I want to acknowledge what a difficult month it has been for Los Angeles and the greater area in the wake of the devastation caused by the recent fires. Many of my friends and former neighbors in Malibu, and perhaps even some of you in this room, were personally affected by the fires, and many lost their homes. As a community and as a people, we are nothing if not resilient, and I'm glad to see that the city is beginning to heal.

Although I now live in Washington, D.C., this broader L.A. community always will be my home. Los Angeles is the city that embraced me and my family when we first came to the United States in 1979. As some of you know, I was born in Tehran, Iran. Growing up, antisemitism was

simply a fact of life as I am sure it may have been for some in this room. As a nine year old boy I remember hearing machine gun fire and shouts of “Death to America” outside my bedroom window. When the Shah ultimately was ousted during the Islamic Revolution, things went from bad to worse for Iran’s Jewish community. My father, older sister, and I were forced to flee when I was ten years old, while my mother and younger sister, who went back and were to return in a matter of weeks, remained trapped in Iran for five more years.

We eventually found refuge near Los Angeles, where my family joined a synagogue, Chabad of Westlake Village, which welcomed us with open arms. It was in LA that I learned English and about hard work, pumping gas at my dad’s gas station, changing oil, tuning up cars, and selling tires. I have enormous gratitude for this community and still take my kids to visit the small town where I grew up.

My family’s journey, fleeing an oppressive government hostile to a religious minority, is unfortunately a familiar one throughout history. As I have said before, this story isn’t unique. But, what is unique is this country and the freedoms it guarantees.

We were fortunate to be able to come to a country that gave us tremendous freedom when we arrived—a fate that, at the time, many did not experience. There are few other places in the world where an immigrant fleeing violent regime change and religious intolerance could grow up to work in the White House, the United States Senate, and the Justice Department. I can say from my own firsthand experience, therefore, that the American dream is alive and well, and we all must fight to keep it that way.

Regardless of where I am, I am mindful of a higher force, and humbled by it. The entrance not only to my home, but also to my office at the Department of Justice has a mezuzah nailed to the door frame. My desk at the DOJ also has a picture of the Lubavitch Rebbe. I was pleased to

have been part of the pro bono legal team for Rabbi Shalom Rubashkin after he was sentenced to 27 years in prison and served 8 years and 8 days prior to President Trump commuting his sentence during last year's Chanukah in one of the greatest displays of compassion. For months last winter, my personal conference room—where I have the opportunity to meet with senior government officials every day, in a room decorated with dark wood paneling and all the pomp and circumstance you might expect to see at the Department of Justice—was also adorned with a drawing of a dreidel painted purple by my four year old daughter, Milana, during Chanukah. These small but significant reminders ensure that the moral underpinnings of justice, as enshrined in our shared Judeo-Christian heritage, are never far from my mind.

Historic Concepts of Justice

The Department of Justice's Main Building, which I walk into every day, is named for the great former Attorney General Robert F. Kennedy. In the main entrance of the Antitrust Division, I displayed a large photograph of Attorney General Kennedy using a megaphone to address a group of civil rights demonstrators at the Justice Department in 1963. It was Robert F. Kennedy who once said:

“Few men are willing to brave the disapproval of their fellows, the censure of their colleagues, the wrath of their society. Moral courage is a rarer commodity than bravery in battle or great intelligence. Yet it is the one essential, vital quality for those who seek to change a world that yields most painfully to change.”¹

¹ Robert F. Kennedy, Day of Affirmation Address, (1966), available at: <https://www.jfklibrary.org/learn/about-jfk/the-kennedy-family/robert-f-kennedy/robert-f-kennedy-speeches/day-of-affirmation-address-university-of-capetown-capetown-south-africa-june-6-1966>.

In that same speech, given to graduates of the University of Capetown in South Africa during the height of apartheid, he also quoted his brother, President John F. Kennedy, who said:

“With a good conscience our only sure reward, with history the final judge of our deeds, let us go forth and lead the land we love, asking His blessing and His help, but knowing that here on earth God’s work must truly be our own.”²

I take these words to heart in my work leading the Antitrust Division. Moral courage is an imperative for all of us, but especially for those of us entrusted by the public to represent their interests in government and ensure that justice is done.

As Attorney General John Ashcroft, a role model for me, once commented, the Department of Justice is the **only** agency in the federal government with a **moral** imperative in its name. Former Nuremburg prosecutor, Attorney General, and Supreme Court Justice Robert H. Jackson once reminded a room of federal prosecutors that:

“Your positions are of such independence and importance that while you are being diligent, strict, and vigorous in law enforcement you can also afford to be just. Although the government technically loses its case, it has really won if justice has been done.”³

Justice Jackson’s wise words tell us that law enforcement officials like myself must remain humble in our pursuit of justice. We may not win every case we bring, but that is not the point. The higher purpose of the prosecutor is to ensure that the public’s interests are served, not to protect a record of wins and losses. To this end, Justice Jackson further explained that “[a]ny prosecutor

² *Id.*

³ Robert H. Jackson, *The Federal Prosecutor* (1940), available at: <https://www.roberthjackson.org/speech-and-writing/the-federal-prosecutor/>.

who risks his day-to-day professional name for fair dealing to build up statistics of success has a perverted sense of practical values, as well as defects of character.”⁴

Biblical Concepts of Justice

As some in this room may recognize, these concepts of morality and justice, as articulated by some of my legal heroes, have roots dating back to the Torah. Indeed, the Old Testament is the source book for many, if not all, of our modern concepts of fairness and justice. In the Torah, justice has multiple faces: retributive, restorative, and distributive, to name just a few.

These concepts are distinct. At times they are complementary and at times they are in opposition to one another. Yet within them lie the seeds for both mercy and order, or what we now might think of as the rule of law.

First, take retributive justice. Retributive justice has its origin in the Code of Hammurabi, known for his “eye for an eye” laws, dating all the way back to ancient Mesopotamian times. What appears to be novel in the Torah is the notion that a crime involves more than just an offense between a perpetrator and a victim. If a person should steal from another, the thief is required to repay the theft, plus 20%, and present an offering to G-d.⁵ Theft was considered an offense to the community, to the public order, and to the one who had established and guaranteed these, so each must be compensated for equity to be restored. The whole community was injured from top to bottom, not just the individual.⁶ In this way, retributive justice in the Torah is about restoration of

⁴ *Id.*

⁵ Leviticus 6:1-7.

⁶ *Id.*

the community, not private vengeance. Much of our legal system is based on this concept. One can think of how criminal law enforcement prosecutes cases on behalf of the “United States” for federal cases or “the People” for state cases, rather than naming the individual victim in the case caption.

Now consider restorative justice. In the Torah, equity can be restored through the concept of forgiveness. If you remember the story of Joseph, whose ten brothers sold him into slavery in Egypt, forgiveness restores the community without the need for intervention of society at large or its representatives.⁷ Instead, Joseph shows mercy toward his brothers and permits the whole family to avoid famine. In this way, forgiveness becomes the preferred method of restoring shalom in any situation. Our legal system continues to make room for this as a way to restore peace, such as when one declines to press charges in a criminal case or finds a way to settle a civil dispute through some combination of negotiation and perhaps contrition. We also see this in sentencing; prosecutors generally are more forgiving to those who come forward and take responsibility for their actions in the form of reduced sentences. In the Antitrust Division, we even have a dedicated leniency program through which corporations and individuals who report criminal cartel activity and cooperate with the government can avoid criminal convictions and reduce their fines or prison sentences.

Finally, the biblical concept of distributive justice also bears mentioning. If we remember the founding of agricultural communities in Israel, the lands were distributed by a sort of lottery. Everyone was given the chance for an equal start. The Torah speaks of the “Year of Jubilee,” in which debts were forgiven and property was returned, effectively restoring equal opportunity for

⁷ Genesis 37:18-36; Genesis 45.

the next generation.⁸ In this way, the success or failure of the parents would not necessarily carry over to the children forever. Consider how even today, our modern bankruptcy and inheritance laws mirror this very concept.

It is worth noting that it is equality of opportunity, not of outcome, that is provided. The concept is *distributive* justice—not *re-distributive* justice. Individual competence and effort is rewarded rather than status at birth, an important concept and underpinning of our free markets. I am grateful that these concepts are alive and well in the United States today, so that a boy from Iran who spoke no English when he arrived in this country in 1979 could grow up to have the opportunity to speak before all of you today.

Jewish Law and Competition

Having touched on a few general themes of justice in the Torah, I'd like to briefly discuss my particular legal field, antitrust and competition, and how Jewish law views these concepts.

Antitrust and its role in protecting free-market competition has long been a central part of our Nation's moral imperatives. The Antitrust Division is charged with protecting free markets and ensuring robust competition for the benefit of American consumers. Along with the talented men and women of the Antitrust Division, my job is to help ensure that markets are free and open to new entrants and innovation. We do this through vigorous law enforcement and advocacy.

When we see a group of competitors getting together and agreeing to raise prices or to divide the market between themselves, rather than competing against one another for business, we may bring a lawsuit to stop that anticompetitive conduct. We even bring criminal charges when the conspiracy warrants it. When we see a large company try to buy its biggest competitor so that

⁸ Leviticus 25:8-13; 45:1-25.

consumers can no longer compare the merits of one against the other, we may decide to bring a lawsuit to block that merger. Finally, if a company has succeeded to the point that it becomes a monopoly and uses its dominance to block innovative new competitors, we may investigate and bring a lawsuit.

We don't pick winners and losers at the Antitrust Division. Instead, we protect competition and enforce the laws equally. This is all for the benefit of consumers. Hard-nosed competition ensures lower prices, increased innovation, higher quality goods and services, and improved opportunities for entrepreneurs to succeed.

Jewish law incorporates the concepts of antitrust and economics in ways large and small. My friend and University of Chicago Professor, Dennis Carlton, former Deputy Assistant Attorney General for Economic Analysis at the Antitrust Division, along with Professor Avi Weiss of Bar-Ilan University in Israel, and former chief economist at the Israeli Antitrust Authority, have explored this very topic at length in their paper: "The Economics of Religion, Jewish Survival and Jewish Attitudes Toward Competition in Torah Education."⁹ From their research and analysis, there are several takeaways relevant for our purposes.

Professors Carlton and Weiss, both distinguished economists, explain at the outset that religion is traditionally regarded as an area outside of economics. This is because economists are trained to resist the notion that preferences can be manipulated and to focus instead on using prices as incentive devices.¹⁰ As many in this room can probably attest, however, religion *can* be a

⁹ Dennis W. Carlton and Avi Weiss, *The Economics of Religion, Jewish Survival, and Jewish Attitudes toward Competition in Torah Education*, 30 J. Legal Stud. 253 (2001).

¹⁰ *Id.* at 254.

powerful tool to influence social and economic behaviors.¹¹ It can influence our preferences for one product over another, our savings and investment decisions, and our choices of work versus leisure. We don't give tzadaka or keep pushkes in our homes because it is cost effective, but because we are commanded to do so. Interestingly, Judaism actually places limits on the amount of good one can do, or tzadaka he can give, in order to save him from himself.¹² There is a maximum amount, 20 percent of one's assets, that we are permitted to donate to charity.¹³

It's worth considering how ancient Jewish scholars thought about competition in particular. Judaism is generally described as having a favorable view toward competition. Nevertheless, Professors Carlton and Weiss note that Judaism restricted competition on many occasions.¹⁴

The Talmud contains several examples. For instance, in the Talmud, the rabbis extended the concept of "hasagat g'vul," meaning "the removal of a neighbor's landmark," to also cover encroachment on another's business.¹⁵ An antitrust lawyer in today's times would call this an entry restriction.

To this end, Rabbi Huna in the Talmud argued that the resident of an alley with a business in that alley can prevent the resident of another alley in the same town from opening a competing business.¹⁶ Rabbi Moses Isserles approved of the notion that depriving an incumbent businessman

¹¹ *Id.*

¹² *Id.* at 256.

¹³ *Id.*

¹⁴ *Id.* at 267.

¹⁵ *Id.* at 268.

¹⁶ *Id.* Nonetheless, other Jewish scholars have concluded that "Jewish law ultimately comes down heavily on the side of allowing free competition, and rabbinic authorities generally decline to regulate prices or restrict entry to existing markets in order to protect incumbent suppliers." Neil

of his livelihood can justify blocking competitors from entering the market, and Rabbi Moshe Feinstein went even further, adding that a reduction in the incumbent's earnings below the average of his peer group can justify such entry restrictions.¹⁷

Despite these potential anticompetitive threads in the Talmud, even the more protectionist rabbis agreed on one thing: That entry restrictions should not apply to the teaching of Torah to children.¹⁸ Thank goodness for this. As a result, the Torah's teachings were freely disseminated to the next generation, permitting wide transmission of information.

Competition among Torah teachers created decentralized education, which was crucial given the dispersion of the Jewish people across the world. This provided "a surefire way to simultaneously transmit a common heritage and allow adaptation to changed circumstances."¹⁹

Because teachers were concerned that a rival would outperform him, the Talmud explains, this concern catalyzed extra effort, and as a consequence, more knowledge was passed on.²⁰

In other words, the benefits of competition were realized. When juxtaposed against the entry restrictions placed on other occupations, this concept is remarkable. Jewish scholars, who had every personal incentive to close off their profession to new entrants, instead "chose to keep competition thriving in their profession."²¹

Weinstock Netanel, *Maharam of Padua v. Giustiniani: The Sixteenth Century Origins of the Jewish Law of Copyright*, Hous. L. Rev. 821, 854 (2007).

¹⁷ *Id.*

¹⁸ *Id.* at 269.

¹⁹ *Id.* at 263.

²⁰ *Id.* at 269.

²¹ *Id.* at 272.

All of us in this congregation observing Shabbat today are the beneficiaries of this wisdom. There can be no doubt that the prioritization of competition in teaching Torah directly contributed to the survival of Judaism for generation after generation. My vow to you is that I will do everything I can to continue this great tradition of protecting competition for the benefit of all Americans in my work at the Department of Justice.

Thank you again for the opportunity to speak with you about some of the origins of antitrust in Judaism and concepts of justice from the Old Testament.