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## MINIMUM WAGE LEGISLATION— A HALAKHIC PERSPECTIVE

### INTRODUCTION—HALAKHIC CONSIDERATIONS

Since its enactment in 1938, minimum wage legislation has been an integral part of the social welfare program of the United States government. Its underlying philosophy has always been to provide the working poor with a “living” wage. Our purpose here will be to consider the minimum wage concept from the perspective of Jewish Law.

#### *The Minimum Wage and Jewish Communal Legislation*

Halakha’s attitude toward the minimum wage concept begins with a consideration of whether such a policy falls within the legislative prerogative of the Jewish community.

It should be noted at the outset that communal legislation enjoys no halakhic sanction when it comes into conflict with ritual prohibitions and permissions.<sup>1</sup> In matters of civil and criminal law, however, communal enactments are generally recognized even if they come into conflict with a particular rule of Halakha.<sup>2</sup>

Providing a basic source for the nature of this authority is the following *baraita* quoted at *Bava Batra* 8b:

The townspeople are also at liberty to fix weights and measures, prices and wages, and to inflict penalties for infringement of their rules.

Espousing the majority view, R. Isaac b. Jacob Alfasi (Algeria, 1013–1103) and others understand the communal legislative authority that the *baraita* speaks of to become effective by means of a majority decision rule.<sup>3</sup> Indicative of the limitations of the coercive

power of the majority over the minority is the observation that all the actions the *baraita* speaks of are of a community-wide welfare basis. What may therefore be inferred is that in matters not pertaining to a community-wide interest, the majority may not pass legislation that favors one group at the expense of another. Clearly enunciating this principle is the fifteenth-century decisor R. Joseph Colon (Italy, c. 1420–1480).<sup>4</sup>

In this vein, R. Solomon b. Abraham Adret (Barcelona, 1235–1310) ruled invalid a community edict calling for the taxation of a resident on the basis of his ownership of assets located in a different town. Majority decision, as R. Adret points out, cannot legitimize robbery. Since the edict effectively subjects a segment of the community to double taxation, the provision amounts to outright robbery.<sup>5</sup>

Further limitation of the coercive power of the majority in legislative matters follows from R. Meir b. Baruch of Rothenburg's (c. 1215–1293) comments on the *baraita* quoted earlier.

Taking the position that unanimous consent is required before legislative proposals become operative, R. Meir posits that the *baraita* implies that verbal consent alone suffices to make town ordinances effective law. Though verbal consent alone normally does not constitute a *kinyan*, and hence does not make a commitment legally binding, unanimously approved legislation becomes binding by means of verbal consent alone. By dint of the pleasure each member of the community derives in the knowledge that his fellows have consented to enter into a mutually advantageous agreement with him, he resolutely binds himself to the commitment.<sup>6</sup>

Notwithstanding the halakhic rejection of the unanimous decision rule in favor of a majority decision rule, R. Meir's interpretation of the *baraita* as describing proposed actions of mutual benefit has evoked much discussion. Fixing weights and measures or prices and wages amounts to actions of mixed effect, i.e., some of the townspeople will gain while others will lose. Why, then, did R. Meir characterize these actions as mutually advantageous?

Addressing this issue, R. Moses b. Joseph Trani (Safed, 1500–1580) posits that R. Meir's characterization of the actions described in the *baraita* as mutually advantageous is essentially correct. Rather than imposing absolute gains and losses on the townspeople, the fixing of weights and measures or prices and wages merely determines the relative gains of economic activity. Amounting to an implementation of the townspeople's concept of equity in the distribution of the relative gains of economic activity, these measures must be characterized as mutually advantageous.<sup>7</sup>

Adopting the mutual advantage requirement for communal legislation severely restricts the ambit of Jewish legislative authority, even within the majority vote decision rule. Somewhat expanding this authority is R. Shalom Schwadron's (Brezen, 1835–1911) conceptualization of mutual advantage as it pertains to Jewish communal legislation. In his view, any legislation which, with the passage of time, has a good chance of reversing the positions of the gainers and losers is to be regarded as mutually advantageous. Majority vote hence makes such legislation effective.<sup>8</sup>

Clearly satisfying all the caveats for Jewish communal legislation discussed above is a minimum wage law. Since the edict affects all workers and employers in the community, it satisfies R. Adret's community-wide criterion. Mandating the *relative* distribution of economic gain, it falls into R. Trani's criterion. Finally, R. Schwadron's mutual advantage concept is met, as economic growth and inflation will often work to reverse an earlier pro-labor characterization of a minimum wage law as now favoring employers vis-à-vis workers.

Proceeding clearly from the above analysis is that minimum wage legislation falls squarely within the legislative prerogative of the Jewish community. The appropriateness of such legislation does not, however, follow automatically. Deliberation of a legislative proposal, according to R. Moses Isserles (Poland, 1530–1572), requires members of the community to decide the issue at hand *le-shem shamayim* (for the sake of heaven).<sup>9</sup>

The *le-shem shamayim* criterion translates, most basically, into an obligation to consider whether the objectives of the proposed legislation are consonant with halakhic values. Once consonance is satisfied, we need to evaluate the prospects of the legislation's achieving its stated goals. Since economic analysis is often helpful in predicting the economic consequences of alternative courses of action, the *le-shem shamayim* criterion translates, it appears to us, into an obligation to integrate economic analysis into the Jewish communal legislative process.

### *The Minimum Wage and Halakhic Anti-Poverty Goals*

The stated goal of minimum wage legislation of insuring the working poor a "living" wage is an objective Halakha would fully embrace. In Jewish law, poverty prevention is an aspect of the charity obligation.<sup>10</sup> Indeed, preventing a faltering individual from falling into the throes of poverty is given first ranking by Maimonides (Egypt, 1135–1204) in his eight categories of charity. The position of such a person must be stabilized, with his dignity preserved, by either

conferring a gift upon him, extending him a loan, entering a partnership with him, or creating a job for him.<sup>11</sup>

Minimum wage legislation, of course, takes the “invisible” charity concept beyond voluntarism to the level of a legislative mandate. Government involvement in the charity obligation, is, however, an integral part of the social welfare program of the halakhic society. Specifically, Judaism’s charity obligation consists of both a public and a private component. In Talmudic times the public component consisted of a variety of coercive levies<sup>12</sup> for the purpose of attending to the full range of needs of the poor. Public communal levies were, however, never entirely relied upon to relieve poverty. Evidencing this is the dictum that if one becomes needy he does not immediately apply for public relief. His relatives and neighbors must first attend to his needs; only then is the community required to make up the deficiency.<sup>13</sup>

Another consequence of minimum wage legislation that Halakha would embrace is the influence it exerts on the work-leisure trade-off. By setting the wage rate above the level it would attain if market forces were left to their own devices, minimum wage legislation influences the would-be welfare recipient to choose gainful employment over idleness. Judaism attaches a positive value to work.<sup>14</sup> Indicative of the disdain Judaism has for idleness is its teaching that idleness brings on immorality.<sup>15</sup> Discouragement of idleness follows also from the halakhic disapproval of the “welfare mentality,” as enunciated in Rav’s advice to R. Kahana: “Flay carcasses in the marketplace and earn wages, and do not say, I am a priest and a great man, and it is beneath my dignity.”<sup>16</sup>

### *Talmudic Precedent for the Minimum Wage Concept*

The minimum wage concept apparently finds its counterpart in the product market in the form of the Talmudic ordinance which set a one-sixth profit rate limit for vendors dealing in commodities essential to human life (*hayyei nefesh*).<sup>17</sup> Standing at the basis of the ordinance, according to R. Joshua ha-Kohen Falk (Poland, 1555–1614), is the biblical injunction, “. . . and let your brother live with you” (Leviticus 25:36).<sup>18</sup> What the verse apparently intimates is that the seller of essential foodstuffs should sacrifice some part of the potential profits he could realize by means of voluntary exchange so as to lessen the deprivation effects the sale price would generate to the buyer.

Interfering with the natural workings of the marketplace for the purpose of promoting a social welfare goal hence finds historical precedent in the Talmudic essential foodstuff ordinance.

## THE MINIMUM WAGE—ECONOMIC ANALYSIS

Notwithstanding the philosophical consonance of the minimum wage concept with halakhic goals, economic analysis can demonstrate that its stated goals cannot be achieved. Moreover, examination of the distributional consequences of the minimum wage law places this edict in conflict with the equity rules Halakha sets for financing social welfare projects. Finally, economic analysis can uncover a basic difference between the minimum wage concept and the Talmudic foodstuff ordinance. This distinction will, in turn, dispel any notion that the minimum wage concept finds precedence in the ancient foodstuff ordinance.

### *The Economic Consequences of Minimum Wage Legislation*

Economists generally have been critical of minimum wage legislation. The primary argument against such legislation is its effects on employment opportunities. As the wage rate is increased, employers' demand for labor will fall. There will be fewer job opportunities. Those who remain employed do gain a higher wage rate, but at the expense of those who are no longer employed.

The negative employment effects occur in direct response to various measures employers undertake to counteract the higher labor costs the minimum wage entails for them.

One response might be to cut back on the production of goods and services. For example, in response to the boosts in the minimum wage between 1977 and 1981, many fast-food restaurants cut back on off-peak work crews. With fewer employees working at certain hours, this meant that some customers had to wait longer to be served. A few of the large restaurant chains decided to close earlier at some locations.

Another way to cut back labor usage is to have customers perform more services for themselves. Many fast-food restaurants, for example, have eliminated table service. Customers, in effect, wait on themselves. Many service stations have installed self-service gasoline pumps. Customers are given the option of pumping their own gasoline at a reduced price or getting full service at a higher price. The elimination of many delivery services is yet another example.

A third method designed to reduce the use of labor services is automation—the use of machinery in place of people. For example, it is thought that the shift from manually operated to automatic elevators was spurred by a rising minimum wage.<sup>19</sup>

We should note that the brunt of the unemployment effect described above is borne by teenagers. This occurs because about

40% of the teenagers who work are working at the minimum wage. In addition, at the higher minimum wage, employers are often able to attract adult workers to take the place of teenagers. Older workers are generally more productive and stay on the job longer. By hiring these older workers, employers can cut both hiring and training costs.<sup>20</sup>

*The Minimum Wage As an Anti-Poverty Program*

The major goal of minimum wage legislation, as mentioned earlier, has been to reduce poverty for the working poor. Available evidence suggests, however, that the minimum wage has had little net effect on poverty and the distribution of income. A combination of three factors points to this conclusion. First, the wage gains resulting from minimum wage legislation, as indicated earlier, are somewhat offset by the negative employment effects. Second, the wage gains are small relative to the total income of the poor; and third, many of those who do gain from the minimum wage are children or other secondary earners in reasonably well-to-do families, families where the household head has a well-paying job.<sup>21</sup>

*The Minimum Wage and On-the-Job Training*

Another negative impact of minimum wage legislation is its effect on on-the-job training. Higher minimum wage rates give employees incentives to reduce on-the-job training. Unless an employee captures 100 percent of the benefit of such training, a portion of its cost is usually paid for by the worker in the form of a lower wage (but not below the legally binding minimum). Thus younger workers not only get fewer job opportunities but have fewer opportunities in the jobs they do get to convert an essentially flat income stream through future years to one that is rising because of the improved productivity that on-the-job training stimulates.<sup>22</sup>

*Minimum Wage and Discrimination*

Still another adverse effect of minimum wage legislation is that it exacerbates the problem of discrimination. With the number of workers wanting to work at the minimum wage exceeding the number of workers firms want to hire, employers who harbor prejudices will be able to discriminate at zero cost.<sup>23</sup>

*Minimum Wage and Job Security*

Finally, with the option of cutting wages eliminated under minimum wage legislation, the job security of low income workers becomes more vulnerable during an economic downturn.<sup>24</sup>

What proceeds from the above analysis is that despite its widespread perception as a humanitarian gesture, minimum wage legislation is a poor measure of promoting the interests of low income workers.

### *The Minimum Wage and Distributional Justice*

The above analysis points to another halakhic objection to the minimum wage. Since the *raison d'être* of the minimum wage is its anti-poverty objective, Halakha would apparently call for this measure to be financed by the same equity benchmark it invokes for all social welfare legislation. This benchmark consists of a broad-based proportional wealth tax.<sup>25</sup> Far from mandating the practice of "invisible charity" in a broad-based fashion proportional to wealth, the minimum wage imposes this conduct directly only on employers. Employers, in turn, can be expected to attempt to minimize the burden of higher labor costs by either reducing labor usage or raising prices. The negative employment effects of the minimum wage are, of course, borne by low income households. Those same households bear a disproportionate burden of any increase in the price level occasioned by the minimum wage law. This follows from the fact that any inflationary consequence resulting from the minimum wage is effectively a tax on consumption, and consumption spending is a declining fraction of income as income rises.

### THE MINIMUM WAGE AND THE TALMUDIC PROFIT CONSTRAINT ON FOODSTUFF VENDORS

It was earlier stated that the minimum wage apparently finds halakhic precedent in the Talmudic profit constraint ordinance on vendors of foodstuffs. Just as economic analysis attacks the poverty prevention intent of the minimum wage as self-defeating, the same conclusion is apparently in order with respect to the Talmudic foodstuff ordinance. We need only point out that interference with market forces carries with it the danger of creating a shortage, with the consequence of making completely unavailable to the poor the very items we want them to obtain at low prices. This condition will obtain when the price ceiling inherent in the profit constraint fails to coax out a supply equal to the demand. With price deprived of its rationing function, substitute mechanisms will emerge to allocate the available supply among the demanders. In the absence of governmentally supervised rationing, queuing and/or a black market will emerge to correct the imbalance between supply and demand. The

latter two mechanisms will all but insure that the poor will disproportionately go without the regulated items. Since the Sages did not attach a rationing provision to the ordinance, the regulation would be expected, at times, to work against the interests of the poor.

The affinity between the ancient foodstuff ordinance and the minimum wage concept, however, dissipates upon examination of the various details of the ancient edict. The exact design of the foodstuff ordinance is both a matter of dispute and subject to interpretation. Adopting a particular viewpoint with respect to several critical details of this regulation minimizes the prospect that its operation would generate shortages.

### *Market Forces*

One critical issue is whether the ordinance was directed at individual vendors in the foodstuff sector, or perhaps, translated into a price-fixing obligation on the part of the Jewish court for this sector. Adopting the former view, R. Jacob b. Asher (Toledo, 1270–1340), R. Joseph Caro (Safed, 1488–1575) and R. Jehiel Michel Epstein (Belorussia, 1829–1908) regard the role of the court with respect to this ordinance to consist of the enforcement of the one-sixth profit rate constraint on individual vendors.<sup>26</sup> Moreover, these decisors take the position that the regulation does not work to prohibit vendors from selling at the current market norm.<sup>27</sup> If, for instance, market forces push the price of wheat above its harvest time level, vendors may sell at the current prices, despite any windfall above the one-sixth profit constraint they will realize thereby. Taken together, the above two elements of the foodstuff ordinance lead to the thesis that the edict was never designed to intentionally create a disequilibrium price. What the profit constraint amounts to, then, may be nothing more than a maximum mark-up directive to vendors of foodstuffs, which can be suspended if market forces so dictate.

If the foodstuff ordinance allows market forces free rein, then its practical significance is merely to prohibit sellers from collusively restricting supply for the purpose of raising their profit margins above the one-sixth level. The ordinance hence restricts both cartelization and restraint of trade practices by the monopoly firm in the essential foodstuff industry.

We should note that the authorities cited above all record that the foodstuff ordinance called for the appointment of market commissioners by the court to monitor the regulated sector.<sup>28</sup> If the foodstuff ordinance was never intended to countermand market conditions, then the role of the market officials, it appears to us, must be merely to enforce the competitive norm. Without this monitoring,



ignorance of market conditions could result in transactions concluded in divergence from the competitive norm. To be sure, judicial redress is often open to victims of price divergence of this sort in the form of an *ona'ah* (price fraud) claim.<sup>29</sup> But the *ona'ah* claim is at best an *ex post facto* remedy. Technicalities of law will often work to make it difficult for complainant to legally recover losses on account of *ona'ah*. Moreover, many instances of *ona'ah* may go undetected by the victim. Out of concern for the subsistence needs of the masses, the Sages added another layer of consumer protection in the foodstuff sector. For this sector, price commissioners were assigned for the purpose of enforcing market price and preventing instances of *ona'ah*.

Preventing and breaking up collusive arrangements among sellers would be another role assigned to the price commissioners in the essential foodstuff sector.

### *Labor Costs*

Another critical issue is whether an allowance for the implicit labor costs of the owner is included in the cost base against which the one-sixth profit rate constraint is calculated. The widely held view<sup>30</sup> is that if the owner provides his labor services on a continuous basis, i.e., a retailer, an allowance for the labor services is included in the base. Presumably the return is limited to the competitive rate for the type of work performed. Inclusion of implicit wages in the cost base may amount to a "safety margin" measure to insure that the foodstuff ordinance does not work to create shortages.

Since the Sages did not call for any allowance for implicit wages for the wholesalers, the "safety margin" is apparently absent for this segment of the foodstuff market. Why no provision for implicit wages was made here apparently reflects a conviction on the part of the framers of the ordinance that wholesalers at that time provided no useful social service.

The above assertion is explicitly invoked by R. Jehiel Michel Epstein in rationalizing a related Talmudic ordinance which prohibited middlemen dealing in essential commodities in the Land of Israel from earning a mark-up unless they worked to process the products they purchased.<sup>31</sup> Standing behind this ordinance, according to R. Epstein, was the conviction that producers themselves were capable of handling the function of supplying the market for the entire year.<sup>32</sup> The ordinance was accordingly meant to drive middlemen out of the market and hence promote lower prices of essential foodstuffs in the Land of Israel.

What follows from R. Epstein's thesis is that Halakha would adopt quite a different attitude today toward wholesalers in the

agricultural sector. In sharp contrast to Talmudic times, when agricultural production served a predominantly local market,<sup>33</sup> agricultural production today is mainly for the regional, national or international market. Warehousing and distribution are clearly differentiated from production. Without middlemen performing the former two functions, the economic viability of the agricultural sector could not be assured. Given the social usefulness of wholesalers in the agricultural sector today, Halakha would apparently find legitimacy in expanding the cost base of the wholesaler to include a return for his labor services.

### *Unprocessed Foodstuffs*

One final aspect of the design of the foodstuff ordinance which would work to minimize the prospect of shortages is the possibility that the price of unprocessed foodstuffs is entirely unregulated. This point emerges from R. Simeon b. Samuel of Joinville's (12th–13th cen.) analysis of the following Talmudic passage at *Bava Batra* 9a:

Our Rabbis taught: It is not permitted to make a profit in eggs twice. [As to the meaning of "twice"] Mari b. Mari said: Rav [d. 247] and Samuel [d. 254] are in dispute. One says: Two for one [100 percent profit margin], and the other says: [selling] by a dealer to a dealer.

Commenting on the opinion that limits the profit rate in the egg industry to less than 100 percent, Tosafot ask why the egg industry is set apart from other industries dealing in essential foodstuffs, wherein the profit constraint is one-sixth. Addressing himself to this dilemma, R. Simeon posits that unprocessed foodstuff is usually not subject to any mandatory profit limitation. The egg industry, however, provides an exception to this rule. Egg farmers must limit their mark-up to less than 100 percent.<sup>34</sup>

If the price of unprocessed foodstuff is unregulated, then yet another "safety margin" exists for the foodstuff ordinance to insure that its operation would not work to produce shortages.

Consideration of the various features of the foodstuff ordinance outlined above suggests the thesis that the profit constraint was never meant to interfere with what the suppliers could earn in their next-best market alternatives. Economic theory calls these earnings opportunity cost earnings and earnings above that level economic rent. If the ordinance was intended only to set a maximum for economic rent, its operation presents no problem of economic inefficiency.

### *Maimonides on the Foodstuff Ordinance*

Examination of Maimonides' presentation of the foodstuff ordinance makes the above thesis difficult to sustain. Unlike the authorities

cited above, Maimonides specifically identifies the foodstuff ordinance with a price fixing obligation on the part of the Jewish court.<sup>35</sup> Accordingly, the role of the market commissioners is to enforce the official prices set by the Jewish court. Moreover, within his own conceptualization of the ordinance, Maimonides does not mention that the Jewish court is required or at least has the discretion to upwardly adjust this price when it is evident that the prevailing norm is creating shortages. Finally, in his treatment of the cost base, Maimonides makes no mention of a return for the labor services of the owner. Noting the later lacunae, R. Joel Sirkes (Poland, 1561–1650) posits that the one-sixth profit rate, in Maimonides' view, is the return the owner receives for his labor services.<sup>36</sup>

The potential inefficiency inherent in Maimonides' formulation of the foodstuff ordinance is somewhat attenuated by considering that this decisor regarded the community's price-fixing authority as superseding any price requirement proceeding from the foodstuff ordinance. That the price requirement proceeding from the foodstuff ordinance is not inviolate is seen from Maimonides' following ruling:

The residents of a city may agree among themselves to fix a price on any article they desire, even on meat and bread, and to stipulate that they will inflict such-and-such penalty upon one who violates the agreement.<sup>37</sup>

Price fixing legislation in the foodstuff sector obviously may come into conflict with the one-sixth profit constraint prescribed for this sector. Maimonides' failure to qualify communal legislative authority in this regard clearly indicates that, in his view, communal price-fixing authority is absolute and may, if necessary, supersede the one-sixth profit rate constraint rabbinically mandated for the essential foodstuff sector. The community's price-fixing authority hence represents its means of correcting a commodity shortage which may arise out of the operation of the foodstuff ordinance.

### THE MINIMUM WAGE, TEENAGE UNEMPLOYMENT, AND THE HALAKHIC SOCIETY

Of all the adverse effects of minimum wage legislation previously discussed, the negative impact on teenage employment is perhaps the most serious. In American society a high value is placed on teenage employment. In the act of getting and keeping a job, teenagers soon learn the crucial importance of good work habits. For many young workers, these simple work habits do not come naturally. They are often not learned at home. Employers are aware of this, and as a result some record of employability—even at a “dead end” job—is

often essential in order to get a better job. Before employers will risk investing in employees through an on-the-job training program, they will typically want some evidence of successful past performance.

By contrast, teenagers who do not hold steady jobs often fail to learn even the most basic work habits essential to any career. Instead, they may adopt a life-style detrimental to their long-run self-interest. The welfare syndrome and a life of crime are often very real alternatives to productive work, and the minimum wage law may be a major factor influencing the choices that generations of young people are making.<sup>38</sup>

While American society places a premium on teenage employment, the halakhic society regards Torah study as the ideal preoccupation of teenagers. This proposition follows from the role Judaism generally assigns to Torah study in the life experience. Indicative of the all-encompassing nature of the commandment to study Torah is that Torah study is regarded as the Jew's normal state, while every other activity is only a temporary distraction.<sup>39</sup> Expressing the ideal that Halakha establishes regarding Torah study is the guidelines of R. Mosheh Isserles (*Yoreh De'ah* 246:21):

And man should not entertain the thought that he can preoccupy himself in Torah study as well as acquire wealth and honor. Anyone who entertains such thoughts will not merit the crown of Torah. Instead, Torah study should be his main preoccupation and the pursuit of a livelihood secondary. And he should minimize his livelihood activities and preoccupy himself in Torah study; and remove from his heart the lure of the blandishments of the moment, and should work sufficiently every day for his subsistence in the event he does not have what to eat, with what remains of the day and night devoted to Torah study. It is a mark of high distinction if one supports himself from his own toil as it says: "The labor of your hands, when you eat of that, then you shall stride forward and the good will be yours." (Psalms 128:2)

Now, if the ideal is to maximize time spent on Torah study, then it follows that in the absence of economic pressure to support a family, an individual must opt for Torah study instead of gainful employment. Indeed, Halakha generally recommends for the male adult postponement<sup>40</sup> of marriage in order to fully concentrate on Torah study without the necessity to pursue a livelihood.

Encouraging unmarried males in the halakhic society to choose Torah study over gainful employment follows, it appears to us, from another consideration. One aspect of the *mitsvah* of Talmud Torah is the obligation of the father to teach his son Torah.<sup>41</sup> This *mitsvah* continues to devolve upon the father even after his son has reached adulthood, i.e., 13 years.<sup>42</sup> While public funds cannot be used to finance Talmud Torah for adults,<sup>43</sup> encouraging the father to support the Torah studies of his teenage son is certainly in order.

We should note that the ideal of Talmud Torah includes Torah study for women as well. Notwithstanding the generally discouraging attitude the Sages historically have had in respect to teaching Torah to women,<sup>44</sup> changing social conditions have convinced modern-day halakhists of the dire need to organize Torah study in a formal setting for girls. A major innovator in this area was R. Israel Meir ha-Kohen Kagan (Radin, 1838–1933). Noting the loosening of family ties that was taking place in his time, R. Kagan felt that it was unrealistic to assume that girls would pick up the requisite Torah knowledge informally. The lack of a proper home environment made formal Torah education a prerequisite for proper motivation.<sup>45</sup> Echoing R. Kagan's sentiments, R. Zalman Sorotzkin (d. 1966) posited that nowadays failure to inculcate Torah to girls leaves them prey to street culture and *eo ipso* teaches them immorality.<sup>46</sup> Surveying the halakhic literature on this matter, R. Menachem Brayer and R. Moshe Meiselman both conclude that the overwhelming weight of modern authority follows the above line of reasoning.<sup>47</sup>

Minimum wage legislation, as we discussed earlier, will bias employers in favor of heads of households at the expense of teenagers. The incentive system of the marketplace under minimum wage legislation hence promotes the halakhic goal of inducing teenagers to engage in Torah study.

Providing a historical precedent for a social engineering policy designed to maximize Torah study is R. Asher b. Jehiel's (Germany, c. 1250–1327) analysis of the Talmudic ordinance regarding the preferential commercial rights of rabbinical scholars. The special treatment consists of disallowing competing firms to offer their wares on the market until the rabbinical scholar has managed to sell out his inventory.<sup>48</sup>

Why rabbinical scholars are conferred special trading rights is a matter of dispute. Maimonides posits that the courtesy proceeds from the biblical obligation to confer honor to rabbinical scholars.<sup>49</sup> R. Asher, however, views the measure as a means of minimizing time lost from Torah study. Rabbinical scholars, in contrast to their commercial competitors, normally spend their time in Torah study. Extending the rabbinical scholar a temporary monopoly license allows him to minimize the time he must devote toward earning a livelihood, thereby maximizing the time he spends on Torah study.<sup>50</sup>

## THE MINIMUM WAGE AND JEWISH LAW

The minimum wage represents a noble attempt at raising the living standards of the working poor. Its work incentive effect on the poor

as well as its “invisible charity” intent are anti-poverty goals Halakha would readily embrace. Economic analysis, however, demonstrates that the minimum wage will not achieve its goals. Moreover, the regressive distributional consequences of this legislation provide another halakhic objection to this measure. One consequence of the minimum wage, namely, its effect of biasing employers in favor of heads of households vis-à-vis teenagers, would find favor in the halakhic society. Available jobs would be allocated to those facing the greatest economic pressure to earn a livelihood. While teenagers are shut out of the labor market, they are simultaneously induced to devote their time to fulfilling their obligation to engage in Torah study.

### THE WAGE RATE SUBSIDY AND HALAKHA

In this section we will discuss a variant of the minimum wage concept called the wage rate subsidy (WRS).

The WRS calls for the government to provide a supplemental wage rate to low wage earners. The lower the worker's market wage rate the larger the supplemental wage rate he or she would be eligible for. If, for example, a worker earns \$1.50 an hour, the government adds a subsidy of \$1.75 an hour, bringing the net wage up to \$3.25. At higher market wage rates the subsidy per hour is reduced, but not by the full amount of the increment in the market wage rate. Finally, at some wage level, say, \$5, the subsidy is cut off entirely.<sup>51</sup>

Since the WRS does not artificially raise the wage rate in the labor market, negative employment effects are avoided. An employer is free to offer a job seeker a wage rate no higher than what he perceives the prospect's value to him is.

The WRS meets Halakha's standard as an anti-poverty measure. Unlike the minimum wage, which mandates the practice of invisible charity directly only on employers, the WRS enlists the entire society in its practice. It accomplishes this by financing the supplemental wage payments by means of tax revenues.

Another advantage of the WRS from the standpoint of Halakha's anti-poverty goal is its work incentive feature. The WRS is designed to ensure that workers with higher market wage rates also receive higher net wage rates, which in turn gives the recipients an incentive to increase their market wage rates.

If the WRS is to operate as an anti-poverty measure, the wage rate subsidy cannot be based on an individual's earnings but rather must be based on household earnings. Maintaining the anti-poverty character of WRS hence would exclude from eligibility many

families with more than one earner, including teenagers who are dependents.

Given that labor supply decisions are based not on the market wage rate but rather on the net wage rate, the effect of the WRS program is to shift outward to the right the supply curve of labor: along the entire continuum of wage rates which allow for the possibility of household subsidization, more labor will be supplied than before. Assuming an unchanging demand schedule for labor, WRS will work to depress the market wage rate for everyone, both subsidized and non-subsidized categories alike. Given that, other things equal, a sharp shift of the labor supply curve outwardly to the right produces a steep decline in the market wage rate, the WRS produces the following irony: A successful WRS program will adversely affect the work-leisure trade-off of non-subsidized workers, influencing them to reject work in favor of other uses of their time.

We should note that WRS is faced with a substantial administrative problem in ensuring the integrity of the program. Without proper safeguards, WRS may turn the lower echelons of the labor market into a conduit for fraud and "make-shift" work. Under WRS there is nothing to prevent an employer (A) and a job seaker (B) from entering into the following collusive arrangement: A agrees to put B on his payroll without actually assigning him any work. B, in turn, agrees to remunerate A with part of his wage subsidy. A system of on-the-job site surprise inspections may be a necessary feature of the WRS.

The aforementioned has demonstrated that the WRS is an attractive alternative to the minimum wage concept. It offers both the prospect of achieving its stated objectives as well as meeting Halakha's standards as an anti-poverty measure.

## NOTES

1. R. Solomon b. Abraham Adret (Barcelona, 1235–1310), *Responsa Rashba* 3:411; R. Simeon b. Zemah Duran (Algeria, 1361–1444), *Tashbets* 2:132 and 239.
2. R. Gershom b. Judah (Germany, ca. 960–1028), *Responsa R. Gershom Me'or ha-Golah*, ed. Eidelberg, no. 67; R. Joseph B. Samuel Bonfils (France, 11th cen.) quoted in *Responsa Maharam of Rothenburg* 423; *Responsa Rashba*, 4:311; R. Asher b. Jehiel (Germany, 1250–1327), *Responsa Rosh* 101:1; R. Zemah b. Solomon Duran (North Africa, 15th cen.), *Responsa Yakhin u-Vo'az*, II:20.
3. R. Isaac b. Jacob Alfasi (Algeria, 1013–1103), *Responsa Rif*, ed. Lieter no. 13; R. Joseph b. Samuel Bonfils, quoted by R. Meir b. Baruch of Rothenburg (1215–1293), *Responsa Maharam* 423; R. Hayyim (Eliezer) b. Isaac (Germany, 13th cen.), *Responsa Hayyim Or Zaru'a*, no. 222; R. Eliezer b. Joel ha-Levi (Bonn, 1140–1225), quoted by R. Mordecai b. Hillel (Germany, 1240?–1298), *Mordekhai*, *Bava Batra* 1:482; Nahmanides (Spain, 1194–1270), *Responsa Rashba* (attributed to Ramban) 280; *Responsa Rashba*, II:279; V:126, 270, 242.
4. R. Joseph Colon, *Responsa Maharik*, *shoreshe* 24. See, however, R. Hayyim Halberstamm (Zanz, 1793–1876), *Divrei Hayyim* 2:60.

5. *Responsa Rashba*, Vol. 1:788; see also 1:399.
6. R. Meir b. Baruch, *Responsa Maharam* (Prague ed.) 941.
7. R. Moses b. Joseph Trani, *Responsa Mabit* 1:237. See also R. Joseph Saul Nathanson (Lemberg, 1810–1875), *Responsa Sho'el u-Meshiv* 4:89, pt. 4.
8. R. Shalom Mordecai Schwadron, *Mishpat Shalom, Kuntres Tikkun Olam* 131 ot 16.
9. R. Moses Isserles (Poland, 1530–1572), *Shulhan Arukh, Hoshen Mishpat* 163:1.
10. *Torat Kohanim Be-Har*; Maimonides (Egypt, 1135–1204), *Mishneh Torah, Hilkhot Mattenot Aniyyim* 10:7; R. Jacob b. Asher (Toledo, 1270–1340), *Tur, Yoreh De'ah* 249:7; R. Joseph Caro (Safed, 1488–1575), *Shulhan Arukh, Yoreh De'ah* 249:6; R. Jehiel Michel Epstein (Belorussia, 1829–1908), *Arukh ha-Shulhan* 249:15.
11. Maimonides, *loc. cit.*
12. Rema, *Shulhan Arukh, Hoshen Mishpat* 163:1; *Arukh ha-Shulhan, Hoshen Mishpat* 163:1. For a description of these levies see Aaron Levine, *Free Enterprise and Jewish Law: Aspects of Jewish Business Ethics* (New York: KTAV Publishing House, Inc., Yeshiva University Press, 1980), p. 155.
13. *Nedarim* 65b; R. Asher b. Jehiel, *Perush ha-Rosh, ad locum; Shulhan Arukh, Yoreh De'ah* 257:8.
14. Cf. *Avot de-Rabbi Natan*, chapter 11.
15. R. Shimon, *Mishnah Ketubbot* 5:5.
16. *Pesahim* 113a.
17. *Bava Batra* 90a; Rif *ad loc.*; Maimonides, *Hilkhot Mekhirah* 14:1; Rosh, *Bava Batra* 5:2; *Tur, Hoshen Mishpat* 231:27; *Shulhan Arukh, Hoshen Mishpat* 231:20; *Arukh ha-Shulhan, Hoshen Mishpat* 231:20.
18. R. Joshua b. Alexander ha-Kohen Falk (Poland, 1555–1614), *Sefer Me'irat Einayim, Shulhan Arukh, Hoshen Mishpat* 231, n. 43.
19. John C. Goodman, Edwin G. Dolan, *Economics of Public Policy: The Micro View*, 3rd edition (New York: West Publishing Co., 1985), pp. 176–182.
20. Marvin Kosters and Finis Welch, "The Effects of Minimum Wages on the Distribution of Changes in Aggregate Employment," *American Economic Review* 62 (June 1972), p. 30.
21. See Edward Gramlich, "Impact of Minimum Wages on Other Wages, Employment, and Family Incomes," *Brookings Papers on Economic Activity* (1976), pp. 409–51; and William Johnson and Edgar Browning, "The Distribution Efficiency Effects of Increasing the Minimum Wage," *American Economic Review* (March 1983), pp. 204–11.
22. Masanori Hashimoto, *Minimum Wages and On-the-Job Training* (Washington, D.C., and London: The American Enterprise Institute for Public Policy Research, 1981).
23. Goodman and Dolan, *op. cit.*, pp. 178–180.
24. *Ibid.*, p. 181.
25. *Responsa Rashba* 3:38, quoted in *Beit Yosef, Yoreh De'ah* 250:5; Rema, *Yoreh De'ah*, 250:5.
26. *Tur, Hoshen Mishpat* 231; *Shulhan Arukh, Hoshen Mishpat* 231:20; *Arukh ha-Shulhan, Hoshen Mishpat* 231:20.
27. See note 26.
28. See note 26.
29. For a detailed discussion of the law of *ona'ah* as it pertains to modern markets, see Aaron Levine, *Economics and Jewish Law: Halakhic Perspectives* (Hoboken, N.J. and New York: KTAV Publishing House Inc., Yeshiva University Press, 1987), pp. 64–68.
30. R. Menahem b. Solomon Meiri (Perpignan, ca. 1249–1306), *Beit ha-Behirah, Bava Metsia* 40b; Rosh, *Bava Metsia* 3:16; *Tur, op. cit.*, 231 and comment of *Perisha* n. 26. R. Joel Sirkes (Poland, 1561–1650), however, interpreting Maimonides' position on this matter, posits that the one-sixth profit rate is the return the owner receives for his labor services (*Bah, Tur, loc. cit.*, n. 26).
31. *Bava Batra* 91a; Rif *ad locum*; Maimonides, *Hilkhot Mekhirah* 14:4; *Shulhan Arukh, op. cit.*, 231:23; *Arukh ha-Shulhan, op. cit.* 231:23.
32. *Arukh ha-Shulhan, op. cit.*
33. See Marcus Arkin, *Aspects of Jewish Economic History* (Philadelphia: Jewish Publication Society, 1975), pp. 22–33.
34. R. Simeon b. Samuel of Joinville (12th–13th cen.), quoted in Tosafot, *Bava Batra*, 91a.
35. *Hilkhot Genevah* 8:20, *Hilkhot Mekhirah* 14:1.
36. *Bah, Tur, op. cit.*, 231, n. 26.



37. *Hilkhhot Mekhirah* 14:9.
38. Goodman and Dolan, *op. cit.*, pp. 181–2.
39. Tosafot, *Berakhot* 11b.
40. *Kiddushin* 29b; Rif *ad locum*; Rosh, *Kiddushin*, 1:42; Maimonides, *Hilkhhot Ishut* 15:2; *Tur*, *Even ha-Ezer* 1:3; *Shulhan Arukh*, *Even ha-Ezer* 1:3; *Arukh ha-Shulhan*, *Even ha-Ezer*, 1:3.
41. *Kiddushin* 29a; Rif *ad locum*; Maimonides, *Hilkhhot Talmud Torah* 1:1; *Tur*, *Yoreh De'ah* 245; *Shulhan Arukh*, *Yoreh De'ah* 245; *Arukh ha-Shulhan*, *Yoreh De'ah* 245:1–13.
42. R. Shneur Zalman of Liadi (1745–1813), *Shulhan Arukh ha-Rav*, *Hilkhhot Talmud Torah*, 1:6.
43. *Ibid.*, 1:3.
44. R. Eliezer, *Mishnah Sotah* 3:4.
45. R. Israel Meir ha-Kohen Kagan, *Likkutei Halakhot*, *Sotah* 20a. Diverse interpretations have been offered regarding the exact intent of R. Kagan on this point; see R. Moshe Weinberger, “Teaching Torah to Women,” *Journal of Halacha and Contemporary Society*, no. IX, Spring 1985, pp. 43–52.
46. R. Zalman Sorotzkin, *Responsa Moznayim le-Mishpat*, no. 42, *Ha-De'ah ve-ha-Dibbur*, *derush* 3.
47. R. Moshe Meiselman, *Jewish Woman in Jewish Law* (New York: KTAV Publishing House, Inc., Yeshiva University Press, 1978), p. 40; R. Menachem M. Brayer, *The Jewish Woman in Rabbinic Literature*, vol. 2 (Hoboken: KTAV Publishing House, Inc., Yeshiva University Press, 1986), pp. 125–129. See also, R. Moshe Weinberger, *op. cit.*, p. 46.
48. *Bava Batra*, 22a.
49. Maimonides, commentary to *Mishnah Avot* 4:5.
50. Rosh, *Bava Batra* 2:13.
51. Edgar K. Browning, Jacqueline M. Browning, *Public Finance and the Price System*, third edition (New York: Macmillan Publishing Co., 1987) pp. 272–4.