

Dr. Aaron Levine

The Interface Between Economics and Halakhah: The Case of Minimum Wage Legislation

The relevancy of Torah extends not only to our ritual behavior but to all matters of social and public policy as well. I believe that this area of public policy offers the most fruitful opportunity for the integration of halakhic and economic principles. I would like to illustrate this interface of "Torah" and "Madda" by an halakhic analysis of the minimum wage proposal which is now before Congress.

Frozen at the level of \$3.35 since 1981, Congress is now calling for the minimum wage to be increased to \$4.55 over three years. Excluded from coverage, however, would be workers who worked fewer than 60 days in their lives. For these workers, a subminimum or so called "training wage" would be established. Promising to veto this bill, President Bush has advanced an alternative proposal. Salient features of the Bush proposal include an increase of the minimum wage to only \$4.25 over three years and the application of the subminimum wage to all workers who are on the job for less than six months. Analysts predict that any change in the minimum wage law will incorporate that two tier provision.¹

It must first be made clear that legislation in the realm of criminal and civil law does fall within the prerogative of the Jewish community. The Talmud tells us, רשאיין בני העיר להתנות על המדות ועל השערים.² The Jewish community has a right to legislate in the areas of weights,

measures, and prices, both the price of labor and the price of products. But the Gemara only says רשאי; if the Jewish community wants to, it is permissible. But such legislation, save in the regulation of essential foodstuff,³ is, however, not mandated. What about the appropriateness of minimum wage legislation?

The Rama writes that regarding a community-wide action all members of the community who vote must do so לשם שמים. They cannot vote in their own self-interest, but must vote for what they think is best for the community as a whole.⁴ I would say that לשם שמים translates into two essential criteria: Are the stated goals of the legislation consonant with halakhic values? And, will the legislation achieve these values?

The explicit goal of minimum wage legislation is to provide a living wage for the working poor. People who, on their own, could not command a livable wage are provided for through legislation which requires their employer to pay a minimum standard. If not for this legislation, the employees would become public charges and recipients of public and private charity. Hence, we can describe minimum wage legislation as a form of invisible charity, a noble objective indeed. In fact, it is the highest of the eight levels of *zedakah* described by the Rambam:

מעלה גדולה שאין למעלה ממנה זה המחזיק ביד ישראל שמך ונותן לו מתנה או הלואה או עושה עמו שותפות או ממציא לו מלאכה כדי לחזק את ידו עד שלא יצטרך לבריות לשאול. ועל זה נאמר והחזקת בו גר ותושב וחי עמך כלומר החזק בו עד שלא יפול ויצטרך.⁵

This is, in essence, what minimum wage legislation is all about. We are setting a standard for the marketplace that prevents poverty.

Of course, minimum wage legislation goes beyond the Rambam's categorization. The Rambam is referring only to charity given privately, on a voluntary basis. Within that framework, one can achieve the highest level of charity if it is practiced in an invisible fashion, wherein the recipient is not aware of the charitable intent of the donor. The minimum wage legislation, however, is a much more far reaching and comprehensive public policy. Nevertheless, public programs are essential components of the social welfare programs of halakhah. In Talmudic times, the public component consisted of a coercive levy which provided for a whole range of needs for the poor.⁶ As a result, the notion of invisible charity on the part of the public sector is not alien to halakhah. In the case of the minimum wage legislation, we are simply mandating it to the employer.

Another advantage of this legislation from the standpoint of halakhah is that it favorably affects the work/leisure trade-off. We know that an individual confronted with the choice of being idle or working is greatly influenced by the wage rate he or she faces in the marketplace. The lower the wage rate, the more appealing appears the choice of idleness. By

providing and mandating a minimum wage above the amount that would otherwise be commanded by this lowest echelon of the labor force, we are favorably influencing their choice of work over idleness, a choice greatly encouraged by the halakhah. There are many different dicta in the Talmud which reflect this position. For example, our rabbis taught that idleness leads to immorality.⁷ In addition, Rav advised Rav Kahana to even flay carcasses in the marketplace rather than say, "I am a priest, a privileged person, and it is beneath my dignity to work."⁸

Finally, it would appear that we could find halakhic precedent for the minimum wage concept in a rabbinic law mentioned in the Talmud. The Sages imposed a one-sixth profit rate constraint on sellers of essential foodstuff.⁹ According to R. Joshua Falk, this ordinance is based on the verse, *וְחִי אֲחִיךָ עִמָּךְ* (Lev. 25:36).¹⁰ Our Sages understood this to mean that one should forgo a certain amount of profit which could be earned through voluntary transactions in the marketplace for the purpose of allowing one's brother the opportunity to also achieve a decent standard of living. This is a precedent for social engineering, namely, interfering in the marketplace so as to upgrade the standard of living of the most deprived elements of society.

On the surface, therefore, the concept of minimum wage seems consonant with halakhic concerns. But we must analyze it more carefully in light of economic realities, and ask whether its stated goals would be achieved. In the process, I believe, we will show that it is not in keeping with the principles of halakhah.

Economists are almost unanimous in condemning the minimum wage concept as self-defeating. They point out that raising the wage level above what it would be if market forces were left to their own devices inevitably results in unemployment. While it is true that those who will be hired will be better off, the very existence of the higher wage requirement will encourage employers to substitute capital for labor and to utilize labor-saving devices in a variety of ways. For example, in response to increases in the minimum wage in the 1970's, many restaurant owners eliminated waiter service in favor of self-service. It was simply not worth it for them to hire workers at a wage above the market price. Similarly, many service stations have their own pumps that consumers use rather than rely on the services of various gas-station personnel. Therefore, while some may gain, many more will lose out.¹¹

As an anti-poverty measure, minimum wage legislation is also not regarded highly at all, not only because of the negative employment effect, but also because many of those who would benefit from the legislation are teenagers or other secondary earners in reasonably well-to-do families where the household head has a well-paying job.¹² In order to deal with the issue of poverty, we would have to look at total household

income rather than at the wages of individual people. In fact, if we look at the distributional effects of minimum wage legislation, we would have to conclude that, if anything, it is biased against the poor. Why? First, as noted earlier, it encourages employers to substitute capital for labor and to hire less workers. The brunt of this is suffered by lower-income families. Second, it is quite reasonable to expect that in order to maintain their profit margins, employers will try to raise prices to make up for the higher wages they must pay. There is a hierarchy of wages in the marketplace: as the minimum wage goes up, so too do the wages of skilled laborers. Union wages are always above the minimum wage; it is a part of the negotiation process. Also, there will most definitely be some inflation on account of minimum wage increases. All these result in a price rise which disproportionately adversely affects the poor because the lower one's income level, the larger percentage of one's income one tends to spend. As a result, the lower-income population suffers much more than those on a higher income level.

If the only reason we have for defending the minimum wage is because it is consonant with the social welfare objectives of halakhah, then we would have to finance this proposal as we would any public charity levy. This benchmark consists of a broad-based proportional wealth tax.¹³ However, since the distributional effects of the minimum wage legislation would really be regressive, it is a far, far cry from a proportional wealth tax, and therefore not consonant with the equity benchmark that halakhah calls for in financing social welfare measures.

Another serious question which can be raised relates to the rabbinic law regarding profit constraints on vendors of essential foodstuff, mentioned above. Is not this ordinance also self-defeating? 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 government 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 have to make do without the regulated items. Since Ḥazal did not attach a rationing provision to the ordinance, the regulation would be expected, at times, to work against the interests of the poor.

However, a closer analysis of the profit constraints imposed by Ḥazal reveals no affinity whatsoever to modern price/profit controls. Indeed, the prospect that these constraints would generate a shortage is very

unlikely. The reason is because price/profit constraints in the foodstuff sector, as formulated by the *Tur*, the *Bet Yosef*, and the *Arukh ha-Shulhan*, applied only on an individual vendor basis.¹⁴ It was a mark-up limit imposed on individual sellers which did not translate into a price ceiling obligation on the part of the court. Furthermore, according to these sources, in the event that the market price went up, the vendor would be permitted to sell his product at the new price. For example, if the vendors bought wheat at a current market price of five dollars per bushel and the price went up, they could all sell wheat at the new, higher market price.¹⁵ Ḥazal had no intention whatsoever to deliberately impose a disequilibrium price; their intention was merely to impose a maximum mark-up which could be suspended if market forces so dictated. If, however, market forces pushed up the price, nothing would stop individual vendors from taking advantage of that situation.

An additional safety margin which prevented the foodstuff ordinance from leading to shortages was the base against which the one-sixth profit rate was calculated. This was fairly elastic because, according to the mainstream view, the owner could include also an implicit return for his own labor. This allowed him not only a one-sixth profit on capital and other explicit expenditures, but also permitted him to add one-sixth to whatever he was allowed to give himself in the form of reasonable wages for his own labor.¹⁶ As a result, the price he could demand on a given product could be significantly expanded. This again made it less likely that the pricing would cause shortages and that demand would exceed supply at the market price.

These *posekim* also stipulate the existence of market commissioners who were assigned by the court to oversee profit constraints. It seems to me that their role was merely to enforce market price—nothing more. True, if someone felt he had been cheated in a market transaction wherein the transaction was at variance with the competitive norm, he had recourse in the Jewish courts. The remedy for this price fraud, called *'ona'ab*, was, however, only an ex-post-facto remedy, providing the individual with an option to claim the differential or, depending on how wide the differential, to cancel the transaction. However, people can be victims of *'ona'ab* and never know about it, and it is sometimes difficult to assess whether *'ona'ab* actually took place. An extra level of consumer protection was therefore imposed by Ḥazal with the appointment of market commissioners who would oversee the market and, knowing supply and demand conditions, would realize when a vendor had taken advantage of a customer. This was felt to serve as a particularly effective deterrent because most frequently the victims belonged to the more disadvantaged, deprived elements of society. Given all these safeguards mentioned above, it seems very unlikely that shortages would exist.

The Rambam, however, has a much more narrow view of the foodstuff ordinance, understanding it as a price ceiling obligation on the part of the court without permitting vendors to sell at a higher price if market forces so dictate.¹⁷ In addition, the *Bab* understood the Rambam as also disallowing a return for implicit wages, i.e., labor services provided by the owner, to be included in the base against which the one-sixth profit margin is calculated.¹⁸ Such a view might, in fact, result in shortages. Nevertheless, even according to the Rambam there is one safety margin, i.e., if the community realizes that the price ceiling is a disequilibrium one and is self-defeating, it could decide that prices should be changed.¹⁹ Of course, this is very awkward. There is a time lag involved in getting a legislative edict to change the price ceiling of the court all the while that the market is not being allowed to work efficiently.

Still, all the leniencies of the non-Rambam mainstream view call for the smooth effective functioning of this ordinance with no affinity to the criticism we have described earlier of the minimum wage legislation. While on the surface it would seem that the ancient ordinance might prompt some to challenge the wisdom of Hazal by assuming that it imposed price ceilings, a closer analysis of the ordinance and investigation of all its components would yield the conclusion that, in all likelihood, it would not bring about food shortages. There is one other interesting caveat which also leads us to this conclusion. One of the *Ba'alei ha-Tosafot* contends that unprocessed foodstuff was not regulated at all,²⁰ adding an additional safety margin to insure that shortages would not be felt.

The thrust of our discussion has led to a very negative assessment of the minimum wage concept. We have shown that it falls far short of halakhic goals, with no precedent in the rabbinic essential foodstuff ordinance. Economically it is self-defeating, for the very same group we want to benefit will suffer the most because of the reduction in the demand for the lower echelons of the work force. Additionally, we would be violating the equity benchmark of a proportional wealth tax because poor people will suffer most from the resulting increase in the price level.

However, we could salvage the minimum wage concept with an important variation that economists have devised—the wage rate subsidy. It is similar to minimum wage, but with a very important difference. Rather than impose the practice of invisible charity on employers as the minimum wage concept does, the wage rate subsidy would call for a subsidization by the government of the wage rate that people earn when the marketplace is left to operate on its own. It would work as follows: If, for example, a worker earns \$1.50 an hour, the government would add a

subsidy of \$1.75 an hour, bringing the net hourly 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.²¹ Because we would not be artificially raising the wage rate, supply and demand forces would be left to their own devices, and there would be no negative employment results. The wage rate subsidy meets halakhah's standard as an anti-poverty measure. Unlike the minimum wage which mandates the practice of invisible charity directly only on employers, the wage rate subsidy enlists the entire society in this practice. It accomplishes this by financing the supplemental wage payments by means of tax revenues.

If the wage rate subsidy is to operate as an anti-poverty measure, it cannot be based on an individual's earnings but rather must be based on household earnings. As a result, maintaining the anti-poverty character of the wage rate subsidy would exclude from eligibility many families with more than one earner, including teenagers who are dependents.

There is one interesting consequence of the minimum wage legislation that American society regards as a negative factor but which is viewed differently by halakhah. One of the negative employment effects of minimum wage legislation is that the brunt of it is suffered by teenagers. Given an artificially high wage rate, an employer will generally choose an older person who is seen as more responsible, more dependable and more serious. In America, a premium is placed on teenage employment, especially for minority groups and particularly in the summer. The concern is that without work, they will get mischievous; the hope is that a job will give them maturity and will teach them responsibility. Even when the jobs offer no opportunity for advancement, the work experience itself is important as a pre-condition to future employment with more meaningful assignments. In American society, therefore, the minimum wage is condemned as deterring this very important process.²²

A society based on halakhah, however, would consider this in a positive way because the most important activity of the Jew is to study Torah. Tosafot states, שאני תורה שאינו מייאש דעתו דכל שעה אדם מחוייב ללמוד, *Tosafot* states, שאני תורה שאינו מייאש דעתו דכל שעה אדם מחוייב ללמוד.²³ In addition, the Rama writes:

ולא יחשוב האדם לעסוק בתורה ולקנות עושר וכבוד עם הלמוד כי מי שמעלה מחשבה זו בלבד אינו זוכה לכתרה של תורה אלא יעשה תורתו קבע ומלאכתו עראי וימעט בעסק ויעסוק בתורה ויסיר תענוגי הזמן מלבו ויעשה מלאכה כל יום כדי חייו אם אין לו מה יאכל ושאר היום והלילה יעסוק בתורה ומעלה גדולה למי שמתפרנס ממעשה ידיו שנאמר יגיע כפיך כי תאכל וגו' . . .²⁴

The ideal in a halakhic society is to maximize Torah study, especially among teenagers who do not have the economic pressure of earning a livelihood. As a result, it is preferable for older people who do face this pressure to get the available jobs, thereby forcing teenagers to engage in

Torah study. One of the מצוות הבן על האב is teaching Torah²⁵ and, as the *Shulḥan Arukh ha-Rav* points out, that *mizvah* continues even after the son becomes a *gadol*.²⁶ Although we would not finance this with community money, nevertheless it is a *mizvah*,²⁷ and if our social engineering policies encourage Torah study among teenagers, this would be consonant with the halakhic ideal.

A precedent for the use of such policy to maximize Torah study can be found in the Gemara. The rabbis teach that if a *talmid ḥakham* comes to a town, he must be allowed to sell his wares first, and only after he exhausts his inventory are competing merchants allowed to offer their wares.²⁸ There is a dispute as to the basis of this *mizvah*. The Rambam understands it as part of the *mizvah* of honoring *talmidei ḥakhamim*.²⁹ But the Rosh offers a different rationale and claims that this *takanah* was designed to maximize Torah study.³⁰ We do not want the *talmid ḥakham* to waste his time when he should be spending every minute learning. Therefore, by allowing him to sell his wares first, we allow him to return as soon as possible to his natural state of learning Torah. We actually introduce a policy in the marketplace for the purpose of maximizing Torah study.

In conclusion, it seems that the economic analysis points to the attractiveness of the wage rate subsidy, as it would be consonant with halakhic objectives and would have very good prospects of accomplishing its goals.

NOTES

1. D. Wessel and A. R. Kann, "Two-Tier Minimum Wage May Be Near As Congressional Democrats Accept Idea," *Wall Street Journal*, Tuesday, April 18, 1989, A2.
2. Baba Batra 8b.
3. Baba Batra 90a; Rif, *ad. loc.*; Maimonides, Hil. Mekhirah XIV:1; Rosh, Baba Batra V:2; Tur, Hoshen Mishpat 231:27; *Shulḥan Arukh*, Hoshen Mishpat 231:20; *Arukḥ ha-Shulḥan*, *ibid.*
4. R. Moses Isserles, *Shulḥan Arukh*, Hoshen Mishpat 163:1.
5. Hil. Mattenot 'Aniyim X:7.
6. Rama, *Shulḥan Arukh*, Hoshen Mishpat 163:1; *Arukḥ ha-Shulḥan*, *ibid.* For a description of these levies see A. Levine, *Free Enterprise and Jewish Law: Aspects of Jewish Business Ethics* (New York, 1980), 155.
7. R. Shimon, *Mishnah Ketubot* V:5.
8. *Pesahim* 113a.
9. See above n. 3.
10. R. Joshua b. Alexander ha-Kohen Falk, *Sefer Me'irat Einayim*, Hoshen Mishpat 231:43.
11. J. C. Goodman and E. G. Dolan, *Economics of Public Policy: The Mirco View* (New York, 1985), 176–82.
12. See E. Gramlich, "Impact of Minimum Wages on Other Wages, Employment, and Family Incomes," *Brookings Papers on Economic Activity* (1976), 409–51; W. Johnson

- and E. Browning, "The Distribution Efficiency Effects of Increasing the Minimum Wage," *American Economic Review* (March, 1983), 204–11.
13. *She'elot u-Teshuvot ha-Rashba* III:38, quoted in *Bet Yosef*, Yoreh De'ah 250:5; Rama, Yoreh De'ah, *ibid.*
 14. *Tur*, Hoshen Mishpat 231; Shulhan Arukh, Hoshen Mishpat 231:20; *Arukh ha-Shulhan*, *ibid.*
 15. See above, n. 14.
 16. R. Menahem b. Solomon Meiri, *Bet ha-Behirah*, Baba Mezi'a 40b; Rosh, Baba Mezi'a III:16; *Tur*, Hoshen Mishpat, 231 and comment of Perisha, *ad. loc.*, n. 26.
 17. Hil. Genevah VIII:20; Hil. Mekhirah XIV:1.
 18. Bah on *Tur*, Hoshen Mishpat, 231:26.
 19. Hil. Mekhirah XIV:9.
 20. R. Shimon, quoted in Tosafot, Baba Batra 91a.
 21. E. K. Browning and J. M. Browning, *Public Finance and the Price System* (New York, 1987), 272–4.
 22. J. C. Goodman and E. G. Dolan, *op. cit.* (n. 11), 181–2.
 23. Tosafot, Berakhot 11b, s.v. *she-kevar*.
 24. Rama, Yoreh De'ah 246:21.
 25. See Kiddushin 29a.
 26. R. Shneur Zalman of Lyadi, *Shulhan Arukh ha-Rav*, Hil. Talmud Torah, 1:6.
 27. *Ibid.*, 1:3.
 28. See Baba Batra 22a.
 29. Maimonides, Commentary to Mishnah 'Avot IV:5.
 30. *Rosh*, Baba Batra II:13.

[A somewhat longer version of this essay appeared as "Minimum Wage Legislation—A Halakhic Perspective," *Tradition* XXIV (1988), 11–27.—ED.]