

RAISING THE MINIMUM WAGE

Halacha and Minimum Wage Regulation /

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Increasing the minimum wage is in the

national debate again. In this article, we consider the basic idea of a mandatory minimum wage from various Torah perspectives and the attitude of

Halacha towards the regulation of minimum wage.

Native Halacha

Halacha has no native minimum wage regulation.

Indeed, *Halacha* has no general notion of “fair” pricing;

the laws of *Ona’a* merely prohibit pricing goods (and,

according to some, services) differently from the going market rate, but have

nothing to say about the establishment of this rate, and in any event, the protections afforded by these laws can be waived by the participants in a transaction, insofar as they know the actual going rate and explicitly acknowledge that they are nevertheless diverging from it. In general, the *halachic* system is strongly *laissez-faire*, with parties to a contract having very wide latitude to set whatever terms they wish.

Enactments by Guilds and Municipalities

The Talmud states

that “municipal residents are permitted to stipulate regarding measures, prices

[of goods]

and the wages of workers”. Although it may be anachronistic to understand this as referring to minimum wage legislation, some understand it to

actually refer to **maximum** wage legislation, prohibiting employers from paying – and employees from receiving – daily wages above some ceiling.

Some

apparently understand that the “stipulation” here is not even a regulation at all, but merely the establishment of a standard rate that governs transactions

that are not otherwise specified, but the *halachic* consensus takes for granted the general

right of communities to regulate prices.

Is Minimum Wage Legislation Binding Upon Jews?

Halacha recognizes the legitimacy and

authoritativeness of temporal law under the principle of “*dina de’malchusa dina*” (“the

law of the government [lit. “kingdom”] is the law”), but there is considerable

debate over the scope and application of this principle. In particular, some limit it to legislation involving a direct governmental interest, such as taxation or currency regulation, while many extend it to any legislation “for the benefit of the inhabitants of the state”.

This latter, more

expansive interpretation of *dina de’malchusa dina* would therefore cover minimum wage

legislation insofar as such legislation is deemed to be “for the benefit of the inhabitants of the state” – a loaded question that depends on one’s political and economic convictions and assumptions. In various other contexts, we find

widely different attitudes among the *Poskim* of the last century or so toward various

instances of modern social legislation.

The Example of Rent Control Legislation

A classic case

study is rent control legislation. Some *halachic* authorities are strongly opposed to the

recognition of such legislation, arguing that – barring emergency situations – such

laws are grievously unjust takings of private property that unfairly favor the tenant class against the landlord class (as well as incumbent tenants against

those in search of housing). These, they contend, are the product of “free-thinking representatives, holding the doctrines of the communists and the

socialists, to squeeze the rich and take their money, whereas all these doctrines are contrary to *Da’as Torah*”.

Other authorities,

however, are quite enthusiastic about rent control legislation, insisting that “it is fair, appropriate and acceptable, especially in big cities, for it is directed against price gougers and those who flay the hides of the poor”.

A third,

compromise view distinguishes between prohibitions against eviction and rent

stabilization provisions that compel the landlord to continue renting the property at below-market rents: the former are binding, as they have precedent

in the classic Talmudic rules governing landlord-tenant relations, while the latter are not, as they do not.

Similar arguments

can be made with regard to minimum wage legislation: on the one hand, it certainly derives from a socialistic, egalitarian ideology and a concern with income inequality, and perhaps should be considered an unfair taking of private

property, as it compels employers to pay more than market forces would

naturally require. On the other hand, it is certainly directed against “price gougers” and “those who flay the hides of the poor”.

According to the

third view mentioned above, the key question is whether there is *halachic* precedent for such

legislation: on the one hand, as has been previously noted, there is ample precedent for price and wage regulations of various sorts, but on the other hand, these regulations were generally for the benefit of sellers, the general public, and employers, not employees! It would seem, however, that there is no

real conceptual difference between protecting the livelihoods of sellers and workers – on the contrary, if protecting sellers is legitimate, *a fortiori* should protecting the typically less well-off workers be.

Even the first

view discussed above might have no objection to minimum wage legislation, since,

unlike rent control legislation, which deprives an owner of the free use of his

property without any prior agreement thereto, minimum wage legislation merely

restricts the types of employment contracts which can be legally enacted.

One

who does not wish to pay the minimum wage is perfectly free to keep his money,

by refraining from hiring employees.

Is Minimum Wage Legislation an Economically Sound Idea?

R. Aaron Levine

has argued that due to “economic realities”, a mandated minimum wage will not

achieve its stated goals, and is therefore “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 inevitable 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. ...

But economists are

no longer “almost unanimous”; the Washington

Post Fact Checker did give President Obama two Pinocchios for flatly

declaring that “there’s no solid evidence that a higher minimum wage costs jobs”, but it also acknowledges that:

The [2013 Economic Report of the

President] noted that most economists had once believed an increase in the minimum wage would reduce employment but that “the consensus view among economists has since shifted as more evidence has accumulated.” It also cited a 2009 meta-analysis of 64 studies of the minimum wage that found “no evidence of a meaningful adverse employment effect” of the minimum wage.

On the other hand:

The problem is that while there may be a new consensus emerging on the left-leaning side of economic theory, there is an equally fierce response from other economists.

In 2006, economists David Neumark and William Wascher published a survey of more than 100 studies, and came to an

opposite conclusion, directly contradicting the results of the so-called New Minimum Wage Research. They found that the majority of the studies showed that

“raising the minimum wage leads to economic distortions and often has unintended adverse consequences for the employment opportunities of low-skilled workers.”

In the final

analysis, it is probably fair to say that “objective”, “neutral” economics will not settle this debate, and one’s understanding of the Torah’s view of minimum

wage legislation will ultimately depend on the sorts of economic ideologies articulated in the rent control debate.