

למען נחדל מעשק ידונו - Wage Theft and Consumer Boycotts

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Introduction: The Consumer Boycott as a Resistance Strategy

Consumer boycotts are a resistance strategy that draws heavily on the foundational principles of civil disobedience.¹ An individual engaged in an act of civil disobedience “seeks not only to convey her disavowal and condemnation of a certain law or policy, but also to draw public attention to this particular issue and thereby to instigate a change in law or policy.”² The public sphere serves as the ideal forum for civil disobedience for two reasons. First, the target of the direct action is forced to confront the issue under the scrutiny of the public eye, thereby raising the stakes for how the issue is dealt with. Ideally, the public will hold the target accountable for its response to the act of civil disobedience. Second, the calculation on the part of the target of whether or not to meet the demands of the protestors is partially determined by the following generated by the act of civil disobedience. Thus, the public sphere helps attract further support to instigate a change in law or policy.

Consumer boycott campaigns are “where citizens act collectively and use their purchasing power to achieve economic, social or political objectives....Consumers can use their purchasing power as a kind of vote that is capable, among other things, of educating corporate

¹ I am grateful to Rabbis Elliot Dorff and Aryeh Cohen for their thoughtful teaching and editorial remarks that shaped the development of this essay.

² Brownlee, Kimberly. “Civil Disobedience,” *Stanford Encyclopedia of Philosophy*.
<https://plato.stanford.edu/entries/civil-disobedience/>

giants.”³ Given the diverse motives that can drive consumer boycotts, scholars divide them into two main categories: economic boycotts, typically aimed at lowering prices or fighting price-gouging and corporate collusion, and political boycotts, directed at social change.⁴ Consumer boycotts are often employed as part of a more comprehensive strategy of civil disobedience that might include worker strikes, sit-ins, and pickets, to name a few. That said, consumer boycotts offer several distinct advantages over worker strikes. First, a consumer boycott does not necessitate the unemployment of large numbers of workers, many of whom must be paid strike benefits.⁵ Second, worker strikes often fail because companies can easily find replacements for the striking workers. Third, “in a strike, an employer may obtain a fair hearing and may take measures to protect his business; in a boycott, the union acts as judge, declares the employer guilty, invokes to its aid a vast power foreign to the dispute... [and] succeeds in destroying the employer’s business.”⁶ Lastly, the impact of a boycott lasts longer as a company’s tarnished reputation will continue to impact its bottom line, even after the dispute has been settled. Consequently, companies are eager to avoid widespread consumer boycotts by settling disputes earlier on in the campaign.

To illustrate the ways the Jewish community has been involved with consumer boycotts, I will examine one case of “economic boycott,” the New York City kosher meat boycott of 1902, and one case of “political boycott,” the grape boycott of 1968-1971. In early May, 1902, retail butchers in New York City raised the price of kosher meat from twelve cents to eighteen cents a pound. Small retail butchers refused to sell the more expensive meat for a week in order to

³ Omri Shamir and Guy Ben-Porat, “Boycotting for Sabbath: religious consumerism as a political strategy,” *Contemporary Politics* 13, no.1 (2007): 75.

⁴ Shamir, 78.

⁵ Monroe Friedman, *Consumer Boycotts: Effecting Change through the Marketplace and Media*. (New York: Routledge, 1999), 40-41.

⁶ Friedman, 41.

pressure the Meat Trust (the wholesalers) to lower their prices; however, this tactic did not produce a reduction in price. On May 15th, “after a neighborhood canvas staged by the organizing committee, thousands of women streamed through the streets of the Lower East Side, breaking into butcher shops, flinging meat into the streets, and declaring a boycott.”⁷ Over the course of the next week, women went house to house and synagogue to synagogue urging families not to enter butcher shops or purchase meat. “Using the traditional communal tactic of interrupting the Torah reading when a matter of justice was at stake, they called on the men in each congregation to encourage their wives to not buy meat and sought rabbinic endorsement of their efforts.”⁸ Eventually, Orthodox leaders succumbed to public pressure and formally endorsed the boycott. The boycott spread to the Bronx and Harlem, where local groups of women enforced the boycott in their own neighborhoods by patrolling butcher stores and distributing pamphlets that read, “Eat no meat while the Trust is taking meat from the bones of your women and children.” By June 5th, the boycott was concluded as the retail price of kosher meat was reduced to fourteen cents a pound. The kosher meat boycott illustrates how a group of passionate and collectively organized consumers can protest what they deem to be unfair price gouging. The economic focus of their boycott was not value neutral; rather, they called upon all women to “join the great women’s war” and “help... in the name of humanity in this great struggle which we have undertaken out of need.”⁹

The Delano grape strike, led by the Agricultural Workers Organizing Committee and the United Farm Workers (UFW), began in 1965 and resulted in a negotiated collective bargaining

⁷ Paula E. Hyman, “Immigrant Women and Consumer Protest: The New York City Kosher Meat Boycott of 1902,” in *American Jewish Women’s History: A Reader*, ed. Pamela S. Nadell (New York: NYU Press, 2003), 116-128.

⁸ Hyman, 118.

⁹ Hyman, 121.

agreement with the table grape growers and over 10,000 farm workers. Protesting the substandard working conditions and demanding wages equal to the federal minimum wage, farm workers engaged in a workers' strike; however, replacement workers were often found, stalling the efforts of the UFW. In 1967, the UFW called for a consumer boycott of California table grapes that did not bear the seal of the UFW. Cesar Chavez, leader and organizer of the UFW, credited the consumer boycott with turning the tide of the campaign. He said, "The consumer boycott is the only open door in the dark corridor of nothingness down which farm workers have had to walk for many years. It is a gate of hope through which they expect to find the sunlight of a better life for themselves and their families."¹⁰ The organized Jewish community's response to Chavez's call cited the tradition's mandate to protect the oppressed. The Massachusetts Board of Rabbis (MBR), representing rabbis of all branches of the Jewish community, passed a resolution on December 13, 1968 "urging all congregations to consider California table grapes to be unfit for use in synagogues and in religious Jewish homes." The text of the resolution continues:

The Massachusetts Board of Rabbis, consistent with the Talmudical injunctions against *oshek*- the oppression of a hired man, is concerned that the farm workers are a last vestige of labor oppression in our nation.... The owners have been bringing in help from Mexico to break the strike. Hence the boycott is the only significant countervailing power available to those impoverished farm workers....¹¹

Similarly, in 1969, the Union of American Hebrew Congregations (UAHC) passed a resolution on "Farm Workers and the Grape Strike." Similar to the MBR resolution, the UAHC invoked Jewish values in support of the UFW campaign. The resolution states:

....These grape pickers, among the poorest working people in our land of plenty, have appealed to the conscience of the country to support them in their desperate struggle to secure a collective bargaining agreement with the growers of table grapes. We cannot

¹⁰ Larry Brimner, *Strike! The Farm Workers' Fight for their Rights* (Honesdale, Calkins Creek Publishing, 2014), 81.

¹¹ Judea B. Miller Papers, MS-686, Box 1, Folder 19, American Jewish Archives, Cincinnati, Ohio, United States.

stay indifferent to their appeal, nor to the right of other farm workers to a fair share of the fruit of their labors.¹²

Consequently, the UAHC resolved to urge Congress to extend collective bargaining rights, join the boycott of table grapes, and assist congregations and affiliates in the implementation of the consumer boycott. When the UFW launched a new campaign dealing with worker treatment in lettuce fields, Chavez similarly called for a consumer boycott of iceberg lettuce. Addressing the issue in a bulletin article, Rabbi Haskel Lookstein of Kehilath Jeshurun wrote:

.... It is told of the great Chassidic sage and saint, Rabbi Simcha Bunim, that he once visited a matzo factory and saw the workers there being exploited. "God," he exclaimed, "the gentiles falsely accuse us in a vicious libel of using the blood of gentiles in our matzo. That is false, but we do spill Jewish blood into our matzo-- the blood of the exploited workers." He thereupon issued a most unusual ruling. He declared the matzo produced under exploitative conditions as being "forbidden food," i.e. non-kosher. You see, then, that lettuce too can be kosher or non-kosher. Without making any declaration in this matter, might I suggest that kosher Jewish homes avoid the use of the lettuce described above....¹³

Rabbi Lookstein is unwilling to say outright that the lettuce grown and harvested under exploitative conditions is *halakhically treif*, but he raises serious, *halakhically*-informed, ethical concerns about the permissibility of purchasing this lettuce. Furthermore, he clearly endorses the boycott as a course of action for "kosher Jewish homes," placing the status of the food and purchase of lettuce in a clear ritual category. These three examples of Jewish responses to "political boycotts" demonstrate that a religious community can harness its power as a value-driven identity group to impact people's decisions about how to consume. When the consumer leverages her purchasing power to fight for workers' rights, she helps fulfill the words of Dr.

¹² Peter E. Kasdan, "A Look Back at the Reform Movement's Response to the United Farm Workers Grape Boycott," in *The Sacred Table*, ed. Mary L. Zamore (New York: CCAR Press, 2011), 297-303.

¹³ Haskel Lookstein, "A Word about 'Kosher' Lettuce," *KJB XXXIX:11* (5 February 1971), p. 2.

Martin Luther King Jr., writing from a Birmingham jail, “Society must protect the robbed and punish the robber.”¹⁴

Background: The Pervasiveness and Impact of Wage Theft

Labor activists rightfully expend significant energy advocating for a myriad of issues aimed at improving workers’ rights and protections, including raising the minimum wage, safer worker conditions, and further protection against discrimination and harassment. While both the amendment of existing laws and the development of new laws are vital avenues in the fight for workers’ rights, the lack of enforcement of established legal standards, which has enabled widespread violations, is a crisis of the modern workplace. Among the most pernicious of these violations is wage theft, an umbrella term that encompasses a variety of infractions when workers do not receive their legally or contractually promised wages. “Most commonly, wage theft is a violation of the Fair Labor Standards Act (FLSA), which provides for a federal minimum wage... and requires employers to pay time and a half for all hours worked above 40 hours per week.”¹⁵ In a study entitled “Wage Theft and Workplace Violations in Los Angeles” conducted by the Institute for Research on Labor and Employment at University of California, Los Angeles (UCLA), researchers found that almost 30 percent of Los Angeles workers sampled were paid less than the minimum wage in the work week preceding the survey.¹⁶ Of employees who worked over 40 hours for one employer in a workweek, 79.2 percent of these workers were

¹⁴ Martin Luther King Jr., “Letter from a Birmingham Jail,” *African Studies Center- University of Pennsylvania*, published April 16, 1963, www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html.

¹⁵ “Frequently Asked Questions,” Wage Theft, accessed December 21, 2017. <http://www.wagetheft.org/faq/>

¹⁶ Ana Luz Gonzalez, Ruth Milkman, and Victor Narro, *Wage Theft and Workplace Violations in Los Angeles: The Failure of Employment and Labor Law for Low-Wage Workers* (Los Angeles: UCLA Institute for Research on Labor and Employment, 2010), 2.

not paid the legally required overtime rate by their employers.¹⁷ Other common forms of wage theft include: off-the-clock violations, meal and rest break violations, tip stealing, misclassification of employees, and illegal deductions taken from paychecks. According to an estimate by the Economic Policy Institute, \$50 billion in wages are stolen from workers every year nationwide.¹⁸ By comparison, “all of the robberies, burglaries, larcenies, and motor vehicle thefts in the nation cost their victims less than \$14 billion in 2012, according to the FBI’s Uniform Crime Reports.”¹⁹

Wage theft occurs throughout the United States and no industry is immune to the threat of wage theft. That said, certain industries, occupations, and worker characteristics increase the likelihood of being a victim of wage theft. According to the UCLA study, garment manufacturing, domestic service, building services, and department stores and miscellaneous retail are the industries with the highest rate of minimum wage violation (all above 30 percent) and overtime violations (between 79 and 92 percent) in Los Angeles county.²⁰ Salient worker characteristics that increase the likelihood of being the victim of wage theft include gender, race/ethnicity, and nativity. In Los Angeles, foreign-born Latina women had the highest statistical rate of minimum wage and overtime pay violation.²¹ Wage theft is also more likely to

¹⁷Gonzalez, 2.

¹⁸ Brady Meixell and Ross Eisenbrey, “An Epidemic of Wage Theft is Costing Workers Hundreds of Millions of Dollars a Year,” Economic Policy Institute, September 11, 2014, <http://www.epi.org/publication/epidemic-wage-theft-costing-workers-hundreds/>

¹⁹ Federal Bureau of Investigation, *Crime in the United States 2012*, “Table 23: Offense Analysis.”

²⁰ Ana Luz Gonzalez, Ruth Milkman, and Victor Narro, *Wage Theft and Workplace Violations in Los Angeles: The Failure of Employment and Labor Law for Low-Wage Workers* (Los Angeles: UCLA Institute for Research on Labor and Employment, 2010), 32, 36.

²¹ Gonzalez, 44, 46.

occur in a non-union workplace, as unions are more likely and able to challenge wage theft in court.²²

Given the statistics listed above, it should not come as a surprise to learn that many of the companies with which ordinary consumers interact on a daily basis are implicated in cases of wage theft, whether through accusation, settlement, or conviction. Consider the example of Wal-Mart, which paid at least \$352 million in 2008 to settle 63 cases pending in federal and state courts over the issue of forcing employees to work off the clock.²³ Despite the claim by Tom Mars, general counsel and executive vice president at Wal-Mart Stores, stating, “Many of these lawsuits were filed years ago, and the allegations are not representative of the company we are today,”²⁴ the lawsuits brought against Wal-Mart have continued to pile up since 2008, including cases that are currently pending. In 2010, Wal-Mart “agreed to pay as much as \$86 million to settle a class-action lawsuit accusing it of failing to pay vacation, overtime and other wages to thousands of former workers in California.”²⁵ In 2012, Wal-Mart paid \$4.8 million in back wages for denying overtime pay to workers.²⁶ According to the Center for Media and Democracy, “In December 2014, the Pennsylvania Supreme Court confirmed earlier court

²² “Frequently Asked Questions,” Wage Theft, accessed December 21, 2017. <http://www.wagetheft.org/faq/>

²³ Steven Greenhouse. “Wal-Mart settles 63 lawsuits over wages,” *The New York Times*, December 23, 2008. <http://www.nytimes.com/2008/12/24/business/24walmart.html>

²⁴ Steven Greenhouse. “Wal-Mart settles 63 lawsuits over wages,” *The New York Times*, December 23, 2008. <http://www.nytimes.com/2008/12/24/business/24walmart.html>

²⁵ Reuters Staff. “Wal-Mart in \$86 million settlement of wage lawsuit,” *Reuters*, May 12, 2010. <https://www.reuters.com/article/us-walmart-lawsuit-settlement/wal-mart-in-86-million-settlement-of-wage-lawsuit-idUSTRE64B3MG20100512>

²⁶ Alice Hines. “Walmart fined by Labor Department for denying workers overtime pay,” *Huffington Post*, May 2, 2012. https://www.huffingtonpost.com/2012/05/02/walmart-overtime-labor-department-settlement_n_1470543.html

decisions from 2006, 2007 and 2011 that require Wal-Mart to pay \$151 million in lost wages and damages... for underpaying wages to employees in Pennsylvania from 1998-2006.²⁷”

Furthermore, Wal-Mart is a particularly enlightening example of the ways in which wage theft occurs at numerous points in the production line. In addition to the lawsuits listed above, which were mostly brought by in-store employees, there have also been lawsuits brought against warehouse companies that exclusively stock Wal-Mart products and truck drivers that transport Wal-Mart merchandise.²⁸ For the purposes of this paper, the pervasiveness and repetitive pattern of wage theft within a company and its subsidiaries is a pertinent factor in determining whether or not it is *halakhically* permitted to purchase merchandise from the company.

Part I: Defining the Problem in *Halakhic* Terminology

While I hope the reader immediately senses the moral and legal issues at hand in this paper, I hope to develop a *halakhic* argument, based on biblical and rabbinic sources, advocating for a consumer boycott of companies that have been repeatedly convicted of wage theft. The prohibition of *oshek* provides some foundational information about how an employer is obligated to treat his employee. The prohibition appears twice in the Torah:

לֹא תַעֲשֶׂק אֶת רֵעֶךָ, וְלֹא תִגְזֹל; לֹא תִלְוֶה פְעֻלַּת שְׂכִיר, אִתָּךְ עַד בִּקְרָה.

²⁷ “Wage Theft,” *Source Watch*, accessed December 2, 2017. https://www.sourcewatch.org/index.php/Wage_Theft#Wal-Mart_Settles_Another_Wage_Violation_Complaint.2C_2012

²⁸ “Truck Drivers Win \$54M Verdict in Wage Theft Case Against Walmart,” *Horton Group*, published December 13, 2016. <https://www.thehortongroup.com/resources/truck-drivers-win-54m-verdict-in-wage-theft-case-against-walmart> and Ricardo Lopez. “Workers reach \$21-million settlement against Wal-Mart, warehouses,” *Los Angeles Times*, May 14, 2014. <http://www.latimes.com/business/la-fi-wal-mart-warehouse-workers-20140515-story.html>

Do not oppress your neighbor and do not rob him. Do not keep the wages of the worker with you until morning. (Leviticus 19:13)

לֹא תַעֲשֶׂק שֹׂכֵיר, עֲנִי וְאֶבְיֹן, מֵאֲחֵיךָ, אוֹ מִגֵּרְךָ אֲשֶׁר בְּאַרְצְךָ בְּשַׁעְרֶיךָ. (ט) בְּיוֹמוֹ תַתֵּן שְׂכָרוֹ וְלֹא תְבוֹא עָלָיו הַשֶּׁמֶשׁ, כִּי עֲנִי הוּא, וְאֶלָּיו, הוּא נֹשֵׂא אֶת נַפְשׁוֹ; וְלֹא יִקְרָא עָלֶיךָ אֶל יְהוָה, וְהָיָה כְּךָ חַטָּא.

Do not oppress the hired laborer who is poor and needy, whether he is one of your people or one of the sojourners in your land within your gates. Give him his wages in the daytime, and do not let the sun set on them, for he is poor, and his life depends on them, lest he cry out to God about you, for this will be counted as a sin for you." (Deuteronomy 24:14-15)

These verses establish that the prohibition against oppression applies to both “your neighbor” and a “hired laborer,” whether he is Jewish or “of the sojourners in your land.” Furthermore, the characterization of the hired laborer as “poor and needy” illustrates the economic inequality inherent in employer-employee relations. As Rabbi Jill Jacobs writes in her Committee on Jewish Law and Standards (CJLS) responsum, *Work, Workers, and the Jewish Owner*, “The texts understand both the employer's power to rob the employee and the employee's dependence on the wages.”²⁹ The worker’s life depends on these wages, so much so that delaying payment even by one day is a grave sin with potentially fatal consequences for the worker. Ramban makes this point explicitly in his commentary on Deuteronomy 24:15. He writes, “For he is poor- like the majority of hired laborers- and he depends on the wages to buy food by which to live...if he does not collect the wages right away as he is leaving work, he will go home, and his wages will remain with you until the morning, and he will die of hunger that night.”³⁰

²⁹ Jill Jacobs, “Work, workers, and the Jewish Owner.” *Rabbinical Assembly*, published May 28, 2008, <https://www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/20052010/jacob-s-living-wage.pdf>

³⁰ Jill Jacobs, *There shall be no needy* (Woodstock: Jewish Lights Publishing, 2009), 115-116.

In Rambam's *Mishneh Torah*, in *hilkhot gezeilah v'aveidah*, Rambam provides a definition of *oshek*. He writes,

אי זהו עושק זה שבא ממון חבירו לתוך ידו ברצון הבעלים וכיון שתבעוהו כבש הממון אצלו בחזקה ולא החזירו. כגון שהיה לו ביד חבירו הלואה או שכירות והוא תובעו ואינו יכול להוציא ממנו מפני שהוא אלם וקשה. ועל זה נאמר לא תעשוק את רעך

What is meant by *oshek*? It refers to a person who was given money willingly by a colleague and then, when it was demanded of him, he forcefully maintained possession of it and refused to return it. For example, a person was given a loan or had hired a colleague, and when payment was demanded he forcefully refused to pay [lit. he was violent and difficult]. Concerning this we were commanded, Leviticus 19:13: "Do not withhold money from your colleague."³¹

Thus, in the case of a worker, *oshek* constitutes forcefully withholding money that is due to the worker.

In *hilkhot sekhirut*, Rambam leaves little ambiguity about the connection between *oshek* and *gezeilah*, robbery.³² Rambam writes:

כל הכובש שכר שכיר כאילו נטל נפשו ממנו שנאמר ואליו הוא נושא את נפשו ועובר בארבע אזהרות ועשה עובר משום בל תעשוק ומשום בל תגזול ומשום לא תלין פעולת שכיר ומשום לא תבא עליו השמש ומשום ביומו תתן שכרו

Whenever a person withholds the payment of a worker's wage, it is as if he takes his soul from him, as Deuteronomy 24:16 continues: "Because of it, he puts his life in his hand." He violates four admonitions and a positive commandment: He transgresses the commandments not to oppress a colleague, not to steal, not to hold overnight the wage of a worker and not to allow the sun to set before having paid him, and the positive commandment to pay him on time.³³

³¹ *Mishneh Torah, hilkhot gezeilah v'aveidah* 1:4

³² Simply by placing the definition of *oshek* in *hilkhot gezeilah*, Rambam clearly connects the two prohibitions.

³³ *Mishneh Torah, hilkhot sekhirut* 11:2

Thus, one who withholds the payment of a worker's wage, Rambam's definition of *oshek*, has violated *lo tizzol*. The similarity also extends to the punishment for violating the two prohibitions. Writing in *Sefer Ha-mitzvot*, Rambam writes:

והעובר על העושק דינו ודין הגזלן שוה אמר וכחש בעמיתו בפקדון או בתשומת יד או בגזל או עשק את עמיתו

The punishment for one who transgresses *lo ta'ashok* is identical to that of a robber. [As He] said "...if he lied to his neighbor regarding an article left for safekeeping, a business deal, robbery (*gazel*), withholding payment (*oshak*) from his neighbor."³⁴

Prior to Rambam's classification of *oshek* as *gezeilah*, the connection between the two is explored in *Bava Metzia* 111a. The opening question of this passage attempts to distinguish between *oshek* and *gezel*. In a series of attempts to distinguish between the two, Rav Hisda's argument is refuted by Rav Sheshet, and Rav Sheshet's argument is refuted by Abaye; however, Rava is given the final word on the matter, and in debates between Abaye and Rava, normative practice typically follows Rava. Rava says, "There is no need for such an artificial distinction, as **oppression (*oshek*) is the same as stealing (*gezel*)**, and no practical difference exists between the two categories. **And why, then, did the verse divide them** into two categories? It did this **so that he will violate two prohibitions**, stealing and oppression."³⁵ Therefore, similar to Rambam, the Talmud equates *oshek* and *gezeilah* and claims that in violating the prohibition of *oshek*, one is also guilty of robbery.

In cases of wage theft, the employer is quite clearly violating the prohibition of *oshek* by forcefully withholding money that is due to the worker. When workers who are contractually owed minimum wage and time and a half for overtime pay, for example, are given paychecks that do not reflect the agreed-upon terms, they are the victims of wage theft. Rambam's use of

³⁴ *Sefer Ha'mitzvot, lo ta'asei* 247

³⁵ Translation provided by sefaria.org. The bolded words correspond directly to the text, and the unbolded words attempt to clarify the terse writing style of the Talmud.

the word “forcefully” intentionally connects *oshek* with *gezeilah*, and I believe accurately reflects the power imbalance between workers and their employees that exacerbates the issue of wage theft. He writes:

אי זהו גנב זה הלוקח ממון אדם בסתר ואין הבעלים יודעים. כגון הפושט ידו לתוך כיס חבירו ולקח מעותיו ואין הבעלים רואים וכן כל כיוצא בזה. אבל אם לקח בגלוי ובפרהסיא בחזקת יד אין זה גנב אלא גזלן

Who is a thief (*ganav*)? A person who takes assets belonging to a colleague in stealth, without the owner's knowing - e.g., a pickpocket who is not detected by the owner or the like. If, however, a person takes a colleague's assets in open view and with public knowledge by force, he is not considered a thief, but rather a robber (*gazlan*).³⁶

The *gazlan*'s use of force need not be narrowly defined as physical; rather, it is characterized by a brazenness that communicates to the victim (and those in the victim's orbit) that there is nothing the victim could do to stop the robbery from occurring. In cases of wage theft, month after month, workers receive paychecks with less money than they are owed; however, many are fearful of the repercussions of confronting their employer. In the UCLA study, nearly 50 percent of workers who made complaints or attempted to organize in response to worker violations reported that they received retaliation from their employer as a result.³⁷ Furthermore, in a workplace setting, there is little doubt who is the perpetrator. Based on the information above, I assert that employers who forcefully withhold wages from their employees are *gazlanim*, and as such, a consumer who wishes to purchase merchandise from them must consider the *halakhic* literature regarding buying from a *gazlan*.

³⁶ *Mishneh Torah, hilkhoh geneivah*, 1:3.

³⁷ Ana Luz Gonzalez, Ruth Milkman, and Victor Narro, *Wage Theft and Workplace Violations in Los Angeles: The Failure of Employment and Labor Law for Low-Wage Workers* (Los Angeles: UCLA Institute for Research on Labor and Employment, 2010), 3.

Part II: Buying from a Robber

The intertwined relationship between the robber and the people who purchase from the robber is cleverly depicted in *Vayikrah Rabbah* 6:2:

וְשָׁמְעָה קוֹל אֱלֹהִים, הֲדָא הוּא דְכָתִיב (משלי כט, כד): חוֹלֵק עִם גַּנֵּב שׁוֹנֵא נִפְשׁוֹ אֱלֹהִים יִשְׁמַע וְלֹא יִגִּיד, מַעֲשֵׂה בְּשִׁלְטוֹן אֶחָד שֶׁהָיָה הוֹרֵג אֶת הַקְּבָלָנִין וּמִתִּיר אֶת הַגַּנְבִּים, וְהָיוּ הַכֹּל מַלְיָזִין עָלָיו שְׂאִינוּ עוֹשֶׂה כְּרֹאיוֹ, מִה עֲשֵׂה הוֹצִיא כְּרוֹז בְּמַדִּינָה וְאָמַר כָּל עַמָּא לְקוּמְפוֹן, מִה עֲשֵׂה הִבִּיא תְּלָדוֹת וְנָתַן לְפָנֵיהֶן מְנוֹת וְהָיוּ תְּלָדוֹת נוֹטְלוֹת אֶת הַמְּנוֹת וּמוֹלִיכוֹת אוֹתָם לְחוּרִים, לְמַחֵר הוֹצִיא כְּרוֹז וְאָמַר כָּל עַמָּא לְקוּמְפוֹן, הִבִּיא תְּלָדוֹת נָתַן לְפָנֵיהֶם מְנוֹת וְסָתַם אֶת הַחוּרִים וְהָיוּ תְּלָדוֹת נוֹטְלוֹת אֶת הַמְּנוֹת וּמוֹלִיכוֹת אוֹתָן לְחוּרִין וּמוֹצְאוֹת אוֹתָן מִסְתַּמּוֹת וּמִחֲזִירוֹת אֶת הַמְּנוֹת לְמָקוֹמָן, לוֹמַר שְׂאִין הַכֹּל אֱלָא מִן הַקְּבָלָנִין, הָרִי מִן הַשְּׁלִטוֹן. מִן הַמַּעֲשֵׂה מְנִין, רְאוּבֵן גַּנֵּב לְשִׁמְעוֹן וְלוֹי יָדַע בֵּיהֶם, אָמַר לִיהֵא אֵל תְּפָרְסֵמִי וְאַנָּה יְהִיב לָךְ פְּלִגָּא, לְמַחֵר נְכַסְוּ לְבֵית הַבְּנֵסֶת וְשָׁמְעוּ קוֹל הַחֲזָן מְכַרְיִין מֵאֵן גַּנֵּב לְשִׁמְעוֹן, וְלוֹי קָאִים תַּמָּן, הָלוֹא נִתְּנָה תוֹרָה אֶפּוֹפְסִין, וְהוּא עַד אוֹ רָאָה אוֹ יָדַע.

“...should he hear the public-voice [carrying] a threat...” (Leviticus 5:1) This is as it says in Proverbs, “He who shares with a thief is his own enemy; He hears the threat and does not tell.” (29:24) There once was a governor who used to put to death receivers of stolen property and release the thieves, and all used to find fault with him, saying that he was not acting correctly. What did he do? He issued a proclamation throughout the province, saying: ‘Let all the people go out to the public field!’ What did he do then? He brought some weasels and placed before them portions of food. The weasels took the portions and carried them to their holes. The next day he again issued a proclamation, saying: “Let all the people go out to the public field!” Again he brought weasels and placed portions of food before them but this time he stopped up all the holes. The weasels took the portions, and carried them to their holes, but finding these stopped up, they brought their portions back to their places. [He did this] to demonstrate that all the trouble is due to receivers. This, then, we learn from the governor, but how does the parable apply in practice? Reuben stole from Simeon, and Levi knew of it. Said Reuben to Levi: Do not expose me, and I will give you half. The following day, people entered the Synagogue and heard the functionary announce: “Who has stolen from Simeon?” and Levi was present there. Surely the Torah has decreed, “...if he be a witness, whether he has seen or known...” (Leviticus 5:1)

The counter-intuitive message of the parable is that without consumers, thieves will have no outlet to sell their stolen ware; in turn, robbers will stop stealing.³⁸ The governor's verdict, sentencing the receivers and releasing the thieves, places ultimate (perhaps even sole)

³⁸ See also *Gittin* 45a

responsibility on the consumer who engages in business with a thief. The explanation of the parable adds another layer; namely, when a third-party knowingly benefits from the exploitation of another, he too bears the iniquity of the exploiter. Whether the fault exclusively lies with the consumer or is shared between the thief and the consumer, the *midrash* certainly teaches that the wellbeing of the victim is dependent on the actions of both parties.

Directly addressing the question of purchasing merchandise from a *gazlan*, Rambam writes in *hilkhot gezeilah v'avedah* 5:1:

אסור לקנות דבר הגזול מן הגזולן ואסור לסעודו על שינויו כדי שיקנהו שכל העושה דברים אלו וכיוצא בהן מחזק ידי עוברי עבירה ועובר על ולפני עור לא תתן מכשול

It is forbidden to purchase an object obtained by robbery from the robber. Similarly, it is forbidden to assist him in changing its nature, so that the robber will acquire it. Whoever acts in this manner or the like assists transgressors and violates the prohibition Leviticus 19:14: "Do not place a stumbling block before the blind."

Before addressing the specifics of the transaction, it is important to note that, similarly to the *Vayikrah Rabbah* passage, Rambam draws a clear line between the actions of the consumer and the crime committed by the robber. Purchasing a stolen object both strengthens the hands of the transgressor and constitutes the placing of the stumbling block, which propels forward a vicious cycle in which the robber (the blind party) will continue to steal.

One could claim that, in the case of wage theft, purchasing merchandise from an employer who is stealing the wages of his employees perpetuates the cycle of theft. By tacitly condoning the behavior of the employer, the consumer "places a stumbling block before the blind" and causes the employer to continue his sinful practice. While the general principle may be sound, this interpretation ignores the specific language Rambam uses in prohibiting the transaction. Rambam's concern seemingly lies less in the relationship between the robber and the consumer, but rather seeks to prevent a stolen object, *davar ha'gazul*, from being purchased.

Thus, it is imprecise to claim that stolen wages are perfectly akin to *davar ha'gazul*. Even if, as in the case of Wal-Mart, wages are being stolen or withheld from employees at every step of product development, transportation, shelving, and retail, the object of theft (workers' wages) is not the object itself that the consumer is purchasing.

The case of *lulav ha'gazul* in *Mishnah Sukkah* 3:1, which states that a stolen *lulav* is unfit for use, is also narrowly focused on the use of the stolen object itself. In this case, the metaphysical state of the *lulav* can be transformed by virtue of how it was acquired. Rabbi Yochanan's statement that a stolen *lulav* is unfit because it is *מצוה הבאה בעבירה* only offers stricter criteria for the use of stolen objects; namely, even in the case of fulfilling a mitzvah, the instrument must not be tainted by an immoral blemish. The same issue that prevents Rambam's statement above from neatly applying to wage theft is applicable here.

Whereas Rambam is exclusively focused on *davar ha'gazul*, Jacob ben Asher (the Tur) further limits the interaction between consumer and *gazlan*. He writes in *Choshen Mishpat* 369:1:

אסור לקנות שום דבר מהגזלן ואסור להחזיק ידו ולסעודו בשום דבר מפני שהוא מחזיק ידי עובר עבירה:

It is forbidden to purchase **anything** from the robber. Similarly, it is forbidden to strengthen his hand and to assist him in changing anything because whoever acts in this manner or the like assists transgressors

The shift from *davar ha'gazul* to *shum davar* signifies that, according to the Tur, it is forbidden to engage in any business with the *gazlan*. Rather than determining the permissibility of commerce based on the status of the object, the identity of the seller as *gazlan* becomes the determining factor in prohibiting a purchase from being made. By virtue of being a *gazlan*, all of one's possessions are legally presumed to be stolen. In his commentary on the statement above, Rabbi Yoel Sirkus writes:

נראה דר"י והרא"ש מודו דבגזלן מפורסם פשיטא דלא עשו בו תקנת השוק משום דכל מה שנמצא בידו בחזקת שהיא גזולה דגזלה בחזקה ובפרהסיא שכיחא ליה טובא

It seems that the *Ri* and the *Rosh* acknowledge that with respect to a known thief (*gazlan mefursam*), it is obvious that they do not grant [the leniency of] the enactment of the market because everything that is in his possession is legally presumed as being stolen because he stole openly, forcefully, and very frequently.

While it is the case that the blanket prohibition of buying from a known thief likely stems from the concern that one will acquire a stolen good, all of the thief's possessions become tainted by virtue of his repeated, brazen, and transgressive behavior. The consumer is expected to act differently and more stringently vis-a-vis a known thief, and if *bdi'avad* a purchase was made, the stolen item itself must be returned to the original owner.³⁹ Nonetheless, *l'khatchillah*, the consumer is prohibited from buying anything from a known thief.

It is important to mention that the Tur's opinion is not only more stringent than Rambam's, but it is also stricter than the Talmud's statement on buying from a known thief. In *Bava Kamma* 119a, the *gemara* states:

איתמר גזלן מאימת מותר לקנות הימנו רב אמר עד שתהא רוב משלו ושמואל אמר אפילו מיעוט שלו אורי ליה רב יהודה לאדא דיילא כדברי האומר אפילו מיעוט שלו

It was stated: With regard to a robber, from when is it permitted to purchase items from him? **Rav says:** It is prohibited until the majority of his possessions are from his own property, i.e., property that he obtained legally. **And Shmuel says:** It is permitted to purchase items from a known robber even if only a minority of his possessions are from his own property. The Gemara notes that **Rav Yehuda instructed Adda, his attendant, in accordance with the statement of the one who says:** It is permitted to purchase items from a known robber even if only a minority of his possessions are from his own property, i.e., in accordance with the opinion of Shmuel.

³⁹ Assuming the owner has not despaired of the item, which in our case is clear given the numerous lawsuits filed against employers (even many years after the violation) who have stolen wages.

Thus, the *gemara* does not seem to apply the same blanket statement regarding buying from the known thief as the Tur. Furthermore, the favored position rules leniently towards business transactions with a thief by allowing the legal presumption of the thief's goods to be "not stolen." The *gemara*'s position is reflected in both Rambam and the Tur; however, the concept of "אפילו מיעוט שלו" is only applied with respect to benefitting (ליהנות) from a robber.⁴⁰ Despite the *gemara*'s clear use of לקנות, as opposed to ליהנות, the Tur's unequivocal statement prohibiting buying anything from a *gazlan* represents the strictest view on the matter.

Conclusions and Recommendations:

- 1) Following the Tur's opinion, it is prohibited to purchase merchandise from an employer who the consumer knows repeatedly steals or withholds his employees' wages. Despite the fact that it is wages that are stolen, as opposed to goods, the classification of the employer (or more broadly, corporation) as a *gazlan* disqualifies potential business interactions. Everything in the employer's possessions, from wages to merchandise, takes on the legal presumption of being stolen.
- 2) Indefinite prohibition vs. time-bound prohibition: There are two vital considerations when determining how a prohibition on purchasing merchandise from a *gazlan* should take effect. First, is it possible for an employer to "undo" his status as *gazlan*, thereby enabling normal business transactions to resume? To complete the process of *teshuvah*, the perpetrator must not only acknowledge and rectify the wrong he has committed, but he must also demonstrate reformed behavior when facing a similar situation in the

⁴⁰ See Tur CM 369:5, Rambam MT *gezeilah* 5:8.

future.⁴¹ In *Choshen Mishpat 366:1*, the Tur, commenting on the process of *teshuvah* for thieves, differentiates both between someone who initiates the process of *teshuvah* on his own accord versus someone who is brought to court and a “known thief” versus a “thief.” In cases of wage theft, the public tends to learn of the violation only as a result of a lawsuit, meaning any leniency that could be applied if the perpetrator were to rectify the situation on his own accord likely does not apply in our context. However, the differences between a “known thief” and a “thief” are applicable, especially if the known thief has acquired this reputation as a result of ongoing and pervasive theft. A one-time perpetrator who repays back wages and establishes a commitment to upholding legal standards can undo his status as a *gazlan*. However, for a company such as Wal-Mart, whose record of wage theft demonstrates an unwillingness to truly do *teshuvah*, the prohibition could be indefinite. That being said, the second consideration is the interests of the victims of wage theft. Indefinitely refraining from buying merchandise from a company that has repeatedly been convicted of wage theft provides little incentive for that company to change its practices. Instead, a time-bound, concentrated effort to launch a consumer boycott against the business, explicitly linked to the cessation of wage theft, could be the most effective way to provoke change. As indicated above, consumer boycotts are most successful when coupled with other civil disobedience tactics, such as worker strikes. Thus, the decision to launch a consumer boycott should be made in communication with those workers whose rights the campaign aims to address.

- 3) Since the argument against buying merchandise from a known thief was made using a *halakhic* framework, it is important to note that a time-bound consumer boycott, while

⁴¹ See *Mishneh Torah, hilkhos teshuvah, 2*

potentially most effective, tests the limits of the *halakhic* system. That said, the concept is not entirely foreign to *halakhic* literature. In the 17th century, Rabbi Menachem Mendel Krochmal, the *Tzemach Tzedek*, wrote that it was permissible for the townspeople to engage in a two-month boycott of fish to protest price gouging. The sellers were attempting to take advantage of their knowledge that the Jews of this community honored Shabbat by purchasing fish. Citing *Mishnah Kritot* 1:7, in which Rabban Shimon ben Gamliel protested the exorbitant cost of a sacrificial animal and thereby reduced the cases when a woman must bring this sacrifice, Rabbi Krochmal permitted a *takkanat ha-kahal* in favor of the boycott. While I am not suggesting a *takkanah* to obligate a time-bound consumer boycott, I am reminding the reader that fighting for justice for the oppressed often necessitates that we harness the power of our community. In this spirit, I encourage *marei d'atra* to encourage a coordinated and communal consumer boycott of a targeted company that can be classified as a known thief. *Marei d'atra* should articulate their explicit rationale to the company that their community is boycotting, while highlighting the company's path towards *teshuvah*.