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The Fallacy of Equal Pay for Equal Work

by Glenn Jacobs

We've all heard the phrase "equal pay for equal work." Many of those who habitually repeat this mantra may not realize that it is simply a variation of the discredited labor theory of value (LTV), which is generally associated with Marxian economics. According to the LTV, the value of a product is related to the labor needed to produce it. The LTV prevailed in classical economics until the Marginal Revolution in the late 1800s. The marginalists proved that value is not the result of a product's inputs, but the result of the subjective judgment of individuals.

Unfortunately, it was the convoluted logic of the LTV that led President Obama to sign the Lilly Ledbetter Fair Pay Act on January 29. The Ledbetter Act changes the statutory limitations period to sue an employer from 180 days from the date on which the employee's pay was agreed on to 180 days from the issue of each new "discriminatory" paycheck.

To better understand the implications of the laws prohibiting discriminatory pay, let us examine the nature of the relationship between an employer and an employee.

Despite rhetoric to the contrary, jobs are not the property of the employee. Unions will state that the positions which they hold are "their jobs"; protectionist anti-free-traders will claim that immigrants are stealing "American jobs." The fact is that the job is the property of the employer. There is a very simple way to logically prove this fact. If an employee worked for a single individual and that individual died would the employee still receive remuneration? Would the employee still have a job? Of course not; the job has died with the employer. But if, on the other hand, the employee died, the job would still exist.

Employment is a contract between an employer and an employee. Thus, laws prohibiting discriminatory pay are an infringement on private contracts. Laws that infringe contracts are a violation of the U.S. Constitution: the Ninth Amendment states that rights not enumerated elsewhere in the Constitution, such as freedom of contract, are still retained by the people, and Article I, Section 10, prohibits state governments from "impairing the obligation of contracts."

Freedom of contract — the ability of individuals to bargain freely without government interference — is the bedrock of a free-market economy and was a fundamental part of American legal doctrine until the late 1930s. In *Adkins v. Children’s Hospital* (1923), the Supreme Court rejected federally mandated minimum-wage laws as a violation of the Fifth and Fourteenth Amendments. Unfortunately, the Supreme Court, under pressure from President Roosevelt, reversed course in 1937 in *West Coast Hotel Co. v. Parrish* in which it overturned *Adkins*.

Another common misconception about employment is that the employer is buying the employee’s labor. However, the employer is not buying the employee’s labor per se; he is buying the employee’s productive ability. In general, the goal of a businessman is to maximize production while minimizing cost, thereby maximizing revenue and profits. That is the reason that machines have replaced so much of human labor; machines are more productive, cost less, and free up people to do jobs that machines cannot do. Thus, discrepancies in pay are not always due to discrimination, but to the perception, real or otherwise, that one employee is more productive than another.

The unintended consequence of the laws prohibiting discriminatory pay is that they, like minimum-wage laws, will harm the people that they are intended to help. In a free society, individuals enter into contracts of their own accord with the assumption that the contract will benefit them. Government interference in private contracts prevents this process from taking place, hindering the individual’s ability to improve his standard of living and usurping control over his life.

By mandating equal pay, the government erases the competitive advantage of those people who are willing to take less pay. In addition, employers are less willing to hire employees who they believe could subject them to increased liability. Thus, instead of equalizing pay between men and women, the Ledbetter Act will lead to higher unemployment rates among women.

The Ledbetter Act is aimed at equality. But individuals are not equal. We all have different talents, resources, interests, abilities, educations, and backgrounds. In a free market, individual persons can find the niche in which they can exploit their talents to mold their lives in the way that they wish. Far from encouraging discrimination, the free market leads to social harmony as people view each other not as members of disparate groups with hostile intentions, but instead as individuals providing products and services that improve one another’s lives.

Far from being a panacea that promotes fairness and prohibits discrimination, the Ledbetter Act and laws like it promote resentment and social strife and undermine individual liberty. Most ominously, they are a recipe for government oppression. As the Nobel Prize-winning economist F.A. Hayek said, “A claim for equality of material position can be met only by a government with totalitarian powers.”

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