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The Justice of Pay Discrimination

by Michael Tennant

Recently the upstairs toilet in my house backed up.

Unable to budge the clog, my wife called a plumber, who replaced both the seal and some of the inner workings of the toilet. Let's say, just for the sake of this example, that the plumber charged us \$200 for the repair.

Now suppose the next day the downstairs toilet had needed the same work, and suppose further that the plumber who did the job the first day was unavailable, so we called another plumber, who charged us only \$100 for the repair.

Is there any injustice in the fact that the second plumber was paid less than the first, given that both agreed to do the job for the amounts they were paid? Common sense says that the compensation was perfectly just because the payer and the payee had mutually agreed on the terms.

Ah, but common sense and politics seldom mix. Thus it was with great fanfare that President Obama signed his first bill into law, vastly extending the statute of limitations for filing legal claims of pay discrimination.

Of course, it should go without saying that the federal government has no constitutional authority to involve itself in setting wage rates for private-sector employees, and therefore that federal laws prohibiting wage discrimination should not even exist in the first place. That such laws exist is bad enough, but Obama has significantly exacerbated the havoc that these statutes can wreak. According to the Associated Press, the Supreme Court had previously ruled "that a person must file a claim of discrimination within 180 days of a company's initial decision to pay a worker less than it pays another worker doing the same job. Under the new bill, given final passage in Congress this week, every new discriminatory paycheck would extend the statute of limitations for another 180 days." Clearly the trial lawyers who contributed to Obama's campaign made a wise investment.

The law, known as the Lilly Ledbetter Fair Pay Act, is being touted as a law that guarantees equal pay for equal work. Now who could be against that? Anyone who cares about liberty should be, and here's why.

First of all, it is exceedingly rare to find two people who are doing precisely the same work. Perhaps only two workers doing the same job at the same rate on the same assembly line would qualify. Two secretaries in an office, who in theory probably have the same duties, might still find that one of them ends up typing twice as many letters as the other. And this second secretary may in turn do three times as much filing as the first. One might take half again as many phone calls as the other yet do so in the same amount of time because she is able to get to the nub of the conversation more quickly. Even in the plumbing example I cited at the outset, the two toilets were different models, so plumber number two may have had an easier time of it or found cheaper parts than plumber number one. Productivity, proficiency, and even a certain amount of chance play huge roles in determining exactly what, and how much, work each person does. It is next to impossible to say that any two people have done "equal" work.

Even if it could be shown beyond all doubt that employee A and employee B were doing exactly the same work, there would still remain the problem illustrated by the plumbing story. If A and B each agreed to work at the wages they were being paid, then there is no injustice in paying A more than B for equal work. In the case of Lilly Ledbetter, who sued Goodyear Tire & Rubber Co. for alleged pay discrimination, the fact that Ledbetter continued to work for Goodyear for 19 years and, presumably, to cash her paychecks indicates that she was satisfied with her compensation during that time. Had she at any time disagreed that she was being compensated fairly for the work she was doing, she had only to request an increase in pay and then, if the company declined her request, to quit. By remaining in Goodyear's employ for nearly two decades, she gave assent to the wages she was receiving. As long as a person accepts the pay he is receiving and is not the victim of either force or fraud by his employer — and paying a person the wage to which he agreed, even if it differs from others' wages, in no way constitutes fraud — the government has absolutely no business punishing the employer. It's a simple matter of property rights.

Parable of the Vineyard Workers

In case I have still failed to convince you, allow me to call as my expert witness, Jesus Christ, who endorsed precisely this line of reasoning in a parable recorded in Matthew 20. In the parable the owner of a vineyard hired some men to work in the vineyard at the beginning of the day at the wage of one denarius for the entire day. Throughout the day he continued to hire workers for his vineyard. At the end of the day he paid every one of them the same wage, one denarius, he had offered to the men who had started working at daybreak. These men, too, complained of wage discrimination, to which the employer replied, "Friend, I am not being unfair

to you. Didn't you agree to work for a denarius? Take your pay and go. I want to give the man who was hired last the same as I gave you. Don't I have the right to do what I want with my own money? Or are you envious because I am generous?" Now Jesus was trying to make a spiritual point with this story, but the fact remains that he did not dispute the vineyard owner's claims, nor did he suggest that Caesar ought to intervene and force him to pay the workers on the basis of how much time they had worked. The money was, as the man said, his own, and he had a right to dispose of it as he pleased.

It comes as no surprise that Obama, as much a believer in the all-powerful state as anyone else in Washington, thinks it is the business of the federal government to regulate every aspect of our lives. He probably even thinks he was doing women and minorities a good turn by signing the Ledbetter Act. What he is really doing, however, is making it that much less likely that employers will want to hire them for fear that they will be sued for paying them exactly what these employees agreed to be paid.

It used to be said that a man's word is his bond, but in employer-employee relations in the age of Sugar Daddy Sam, that is strictly a one-sided proposition. Employers must live up to their word, and then some, but employees are free to disregard theirs and then pillage their employers for failing to discern exactly how much money the employees *thought* they should have been paid.

What we really need are some plumbers to drain the cesspool that is the District of Columbia. I'd happily pay them all the same exorbitant fee to flush the whole malodorous system down the toilet.

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