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6-2014

# Working women and the Lilly Ledbetter Act: a case study on misleading rhetoric of equal pay

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## Recommended Citation

DeBoer, Celia A., "Working women and the Lilly Ledbetter Act: a case study on misleading rhetoric of equal pay" (2014). *College of Liberal Arts & Social Sciences Theses and Dissertations*. 162.  
<https://via.library.depaul.edu/etd/162>

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WORKING WOMEN AND THE LILLY LEDBETTER ACT:  
A CASE STUDY ON THE MISLEADING RHETORIC OF EQUAL PAY

A Thesis

Presented in

Partial Fulfillment of the  
Requirements for the Degree of  
Master of Arts

June, 2014

BY

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## INTRODUCTION

Growing up, I always wondered why it was difficult for my mother to make ends meet. A single parent of two daughters, my mother worked as a secretary barely scraping by on a meager salary of \$18,000 a year. Her common statement, “I do not make enough money,” sparked my interest in equal pay issues from a young age. This interest in equal pay was reignited by the 2008 presidential campaign, with the Democratic candidate Barack Obama promising hope and change for the future. One of his promises was to address wage discrimination against women in the United States by using Lilly Ledbetter as what I call the “face” of equal pay. Lilly Ledbetter was a woman with whom I could identify; like my mother she worked in a low-income job as way to help support her family. Lilly Ledbetter found out that her male counterparts at Goodyear Tire Company were earning significantly more than she, which prompted her to file a legal claim of pay discrimination on the basis of sex. Unfortunately, when her case reached the Supreme Court of the United States (SCOTUS), she lost. Learning about this sparked my research interest in better understanding women, work and wages while an undergraduate. As a college junior, I had an internship with the European Parliament; as a senior I had internship with the Women’s Bureau of the United States Department of Labor. In both I did research on pay discrepancies between men and women. Through those internships I realized that the battle over fair pay for women has gone on for far too long. I want to understand why this has been the case in the United States.

Since the passing of the Equal Pay Act of 1963, the wage gap in the United States has only decreased by eighteen cents. The Equal Pay Act of 1963 made it illegal for employers to discriminate on the basis of sex when providing different salary structures for men and women. The goal of the Act was to ensure that men and women who performed similar jobs were paid

the same wage. Currently, the national average a woman makes is approximately seventy-seven cents to every dollar a man makes compared the average of fifty-nine cents in 1963; the wage disparity is even larger for women of color: sixty-four cents for African American women, and fifty-six cents for Hispanic women.<sup>1</sup> While there is equal pay legislation in place today, there remains little government enforcement. There is little to no investigation of corporations, which would ensure compliance to the law. One of the most recent pieces of legislation regarding equal pay is the Lilly Ledbetter Fair Pay Restoration Act of 2009. It has been praised as representing an immense step towards equal pay, but actually it has only changed a minor detail by extending the filing deadline, while still holding the individual accountable to discover whether pay discrimination is occurring.

The individual accountability rhetoric in the Ledbetter Act is indicative of the current neoliberal framework that influences public policy in the United States. Manfred Steger and Ravi Roy explain, “A neoliberal governmentality is rooted in entrepreneurial values such as competitiveness, self-interest, and decentralization. It celebrates individual empowerment and the devolution of central state power to smaller localized units. Such a neoliberal mode of governance adopts the self-regulating free market as the model for proper government.”<sup>2</sup> In other words, neoliberalism makes individuals responsible for the oppression they face without considering structural impacts. Whereas, the ideology of intersectionality examines the interlocking experiences of race, class and sex etc. that an individual may encounter.<sup>3</sup>

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<sup>1</sup> White House Council on Women and Girls, *Keeping America's Women Moving Forward: The Key to an Economy Built to Last* (Washington DC: GPO, 2012), 3.

<sup>2</sup> Manfred B. Steger and Ravi K. Roy, *Neoliberalism: A Very Short Introduction* (New York, NY: Oxford University Press, 2010), 12.

<sup>3</sup> Kimberlé Crenshaw, “Demarginalizing the Intersection of Race and Sex,” in *The Black Feminist Reader*, edited by Joy James and T. Denean Sharpley-Whiting (Malden, MS: Blackwell, 2000), 208-238.

Intersectionality works to challenge structural oppressions by considering difference in experience. In this thesis, I will argue that the neoliberal rhetoric around equal pay has to change to an intersectional approach where women can claim many experiences of discrimination.

Intersectionality would redirect the focus from blaming the individual woman to understanding how the experiences with pay discrimination an individual woman faces are structurally embedded within neoliberalism. Intersectionality allows a better means to hold the government accountable for enforcement by investigating if companies have disproportionate wages between people in the same job, which would be analyzed in terms of race and sex. Thus, I will examine the Lilly Ledbetter Fair Pay Restoration Act closely in terms of its content, how the media and politicians present it and what the future holds for equal pay in the United States. Ledbetter's story provides a compelling point of entry to my thesis.

### **LILLY LEDBETTER: HER STORY AND HOW IT CONNECTS TO OTHER WOMEN**

Before developing my argument about equal pay, Lilly Ledbetter's story can serve as a case study, showing the full picture of the problems a woman can face in a society where equal pay is far from reality. In what follows I will be relying Lilly Ledbetter's autobiography, *Grace and Grit*, to paint a picture of who she really is and the values she holds because it covers her childhood, marriage, work experience, the Supreme Court Trial and the aftermath.<sup>4</sup>

Born and raised in Possum Trot, Alabama, Ledbetter grew up in poverty near the local Goodyear Tire Plant; she helped her family with farm work as a means to survive. From a young age, she associated privilege with those families who worked at the Goodyear Tire plant. For instance, Ledbetter's best friend's father worked at Goodyear and was able buy nice things, like

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<sup>4</sup> Lilly Ledbetter, *Grace and Grit: My Fight for Equal Pay and Fairness at Goodyear and Beyond* (New York: Random House, 2012).

store bought clothes, items that Ledbetter's family could not afford.<sup>5</sup> The lack of financial means her family had was limiting to her future. She excelled academically as one of the top of her class and was offered to take college courses while still in high school. However, her family could not afford college and as a result a college education was not a viable option. Instead, Ledbetter married her high school sweetheart before graduating, not just because she was in love, but also because she saw marriage as an economic opportunity. She would no longer be dependent on her family financially.<sup>6</sup>

Being married at a young age, however, proved to be financially difficult for her as well. Ledbetter got a job with General Electric and after two years of working there she was laid off. Around the time of the layoff, she found out she was pregnant. The layoff from General Electric proved to be an opportunity for Ledbetter to be a stay at home mom, which was a good thing, in both her and her husband's eyes. Her husband also worked at General Electric, but the plant closed two years later so he found a job working as a license inspector for the county. Meanwhile, they had a second child they needed to provide for. By the time both of the children were in school, Ledbetter wanted to re-enter the workforce to help provide for her family. Ledbetter wanted her children to have a college education. Her son had a speech development issue, which entailed consulting a specialist.<sup>7</sup> Given these goals and expenses it is not hard to see that her husband would not be able to financially provide on his salary alone. Ledbetter re-entered the workforce with a job at H&R Block, where she prepared taxes for four years before being laid off. She went on to work at a college in the financial aid office. While working there,

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<sup>5</sup> Ibid., 15.

<sup>6</sup> Ibid., 28.

<sup>7</sup> Ibid., 47.

H&R Block offered her a managerial position, which she took. After three years, she felt she had gone as far as she could with H&R Block and wanted to find an opportunity that would challenge and provide her with more income. Luckily, she had recently read an article about Goodyear Tire Company having an initiative to hire women managers.<sup>8</sup> She saw this as an opportunity to excel financially and provide for her family. She felt she could better climb the ladder for economic opportunity when she applied and then accepted a manager position at Goodyear Tire Company.

In 1979, at age forty-one Ledbetter began her full time managerial position at Goodyear Tire Company. Starting off as a manager in third shift she was warned of the push backs she would get from her male counterparts and subordinates.<sup>9</sup> This did not stop her in working towards the goal of having a larger income for her family and, in a sense, proving a woman could succeed at a “man’s” job just as well. For the next nineteen years she excelled in her position, having outstanding production numbers. Yet, she never knew if Goodyear was going to reward or punish her because she was often reprimanded and blamed for false allegations of low production numbers made by male co-workers. For instance, she was moved to different departments in the plant and shifts were changed, but she would receive awards for being an outstanding employee.<sup>10</sup> Still, she felt she was discriminated against by Goodyear because of her success and sex.

Throughout those nineteen years at Goodyear Tire Company she faced both sexual harassment and pay discrimination. First, Ledbetter was sexually harassed by her male

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<sup>8</sup> Ibid., 61.

<sup>9</sup> Ibid., 70.

<sup>10</sup> Ibid., 78.

supervisor who would make passes, physically and verbally, for her to sleep with him. Every time she would deny his passes, eventually leading him to backlash by making false claims about her production numbers and quality of inspecting tires. She was sick of having to face this every day she came to work. After speaking with her husband, she filed a complaint with the EEOC for sexual harassment claims against her male supervisor and won the right to sue.<sup>11</sup> She decided to not go through with a lawsuit because it would have been difficult to prove “he said, she said” instances and all she wanted was to come back to work again. Instead Ledbetter’s lawyer negotiated a deal with Goodyear to reinstate Ledbetter as a supervisor. Having a job was important to Ledbetter to be able to provide for her family. This is evident from Ledbetter’s statement, “That’s all I wanted. I don’t mind working hard or even being cussed out. I can put up with a lot, but just don’t let anyone harass me like Dennis. And don’t lie about my performances.”<sup>11</sup> Although the goal was to regain her job, she faced additional harassment from co-workers for filing the sexual harassment claim. Her co-workers blamed her for their job security because Goodyear had hinted that if anyone got involved their jobs would be on the line.<sup>12</sup> This is the type of harassment she faced before she learned of the pay discrepancies between her and her male counterparts.

Second, Ledbetter received an anonymous tip that her salary was far below that of her male co-workers in the same job; her salary was \$44,724, while her male counterparts were making close to \$58,000 or more.<sup>13</sup> Soon after, she filed a lawsuit, but ultimately lost at the Supreme Court, because she did not file her claim within 180 days of her first discriminatory

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<sup>11</sup> Ibid., 91.

<sup>12</sup> Ibid., 88.

<sup>13</sup> Ibid., 145.



paycheck. She had a few hints that she was not being paid a fair amount. Ledbetter describes, “The few raises I got were communicated on torn slips of paper with the percentage written on them. I hadn’t been evaluated or given a raise since my performance award, an eight percent raise, in December 1995.”<sup>14</sup> She questioned why she was given raises in this manner, with such small increases. For instance, at one point she was told she did not get a raise because of cutbacks and a poor performance review, when recently she received an award for top performance.<sup>15</sup> The responses to her questions were half addressed and played into the power structures that promote sexism fostered by the individualized rhetoric of neoliberalism. In neoliberalism, the individual woman is held responsible for her success or failure, which is the “poor performance” review aspect of Ledbetter not receiving a raise. An intersectional approach would consider and question the multiple factors that could have increased her pay, including the top performance award. Since intersectionality would address the success Ledbetter had in her job, it highlights how neoliberalism is systemically reinforcing of sexism when it comes to pay disparities. Ledbetter is one of many stories that exemplifies and explores how intersectionality could play a beneficial role for women regarding pay and work.

Only talking about Lilly Ledbetter limits the scope of this paper because all women deserve equal pay. Using Ledbetter, a white woman, as the “face” of equal pay presents pay inequality as a white woman’s issue, when in reality women of color face larger pay discrepancies.<sup>1</sup> Take Betty Dukes for instance, an African American woman who was the head of an attempted class action lawsuit against Wal-Mart in 2011. Dukes and other female employees tried to sue Wal-Mart on the basis of sex discrimination because their “local

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<sup>14</sup> Ibid., 128.

<sup>15</sup> Ibid., 115.

managers' discretion over pay and promotions is exercised disproportionately in favor of men, leading to an unlawful disparate impact on female employees."<sup>16</sup> Her lawyers initially attempted to bring a class action lawsuit against Wal-Mart, because other women could claim the same sort of sex discrimination Dukes had faced. The District Court ruled that Dukes and the other women qualified for class action status, but Wal-Mart appealed. Then the Ninth Circuit Court of Appeals affirmed the District Court decision, which seemed promising for equal pay. Wal-Mart appealed again and the case was accepted by the Supreme Court. SCOTUS overturned the lower court's decision and Dukes, as well as other women, lost.

The Supreme Court majority opinion found that the plaintiffs failed to prove that the class has common 'questions of law or fact.'<sup>17</sup> Basically, with *Wal-Mart Stores, Inc. v. Betty Dukes et al.*, the Supreme Court said that the women had no standing to bring a class action lawsuit. Thus, each individual woman, who worked for Wal-Mart, would need to show how and why she had been discriminated against. Keep in mind that the issue of sex discrimination was barely touched upon. Those in the majority accepted a statement from Wal-Mart on their policy against discrimination at face value.<sup>18</sup> The justices never inquired about the discrepancy between policy and practice. This is the same as saying that because there is a law against stealing, people will not steal. Like the decision for *Ledbetter v. Goodyear Tire Co.*, this decision has presented another roadblock to equal pay, given the individual focus of the neoliberal ideology. The negative impact of neoliberalism is evident because having to file cases individually for discrimination is unaffordable for most women; more responsibility is on the individual woman.

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<sup>16</sup> *Wal-Mart Stores, Inc. v. Betty Dukes et al.* 564 U.S.\_\_\_\_ (2011), 4.

<sup>17</sup> Ronald J. Adams, "David v. Goliath: A Brief Assessment of the U.S. Supreme Court's 2011 Ruling Denying Class Certification in *Dukes v. Wal-Mart*," *Business and Society Review* 118 (2013): 261.

<sup>18</sup> *Wal-Mart Stores, Inc. v. Betty Dukes et al.* 564 U.S.\_\_\_\_ (2011), 13.

While Dukes' loss is unfortunate, it is important to highlight her race if she had the financial ability to file a case individually. As a black woman, it is likely that she faced discrimination that was not only based on sex. It is possible she could argue that discrimination was also because of her race. Betty Dukes is both black and female, but the U.S. legal system only considers one aspect of identity for discrimination claims. Kimberlé Crenshaw argues that intersectionality does not come into consideration when women make legal claims; women of color have to file legal claims either as a woman or black, not as both black and woman. She explains, "Because the intersectional experience is greater than the sum of racism and sexism, an analysis that does not take intersectionality into account cannot sufficiently address the particular manner in which black women are subordinated."<sup>19</sup> If Dukes could afford to file individually then her case would have been stronger if she could claim both race and sex. Neoliberalism could work in favor here if Dukes could claim both sex and race, but the ability to file a discrimination claim is limited to one aspect of identity, such as race or sex. It is important to remember Dukes' and Ledbetter's story when analyzing the rhetoric of equal pay. In what follows, is an exploration of history, neoliberalism, materialist feminism, and intersectionality that inform my argument on the need to change how pay equity is approached in the United States.

## **LITERATURE REVIEW**

After contextualizing Lilly's Ledbetter's experience, it is necessary to consider the history of women and work and the three theoretical approaches of neoliberalism, materialist feminism and intersectionality. My literature review is divided into several sub-sections. Once I provide an overview of the history of women and work in the United States, I go into scholars'

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<sup>19</sup> Crenshaw, op. cit., 209.

theories on working women and the pay barriers they may face. Then I go into the three theoretical frameworks I will be utilizing. First, I explain how neoliberalism is the current framework used in legislation that affects a woman's wage. Next, I demonstrate how materialist feminism explains the production value of women in the neoliberal mindset. Last, I discuss the need for an intersectional approach to be used in legislation and media coverage pertaining to working women and wages. Through examining the historical background, the theoretical approaches on the wage gap, and the framing theories I am able to show how Lilly Ledbetter's experience led to her filing a pay discrimination claim. The goal is to paint the full picture of the many problems a woman can face in a society where few government enforcement mechanisms exist to ensure equal pay.

### ***Historical Context: Working Women, Wages and Race***

Women have been working throughout the history of the United States, but the progress of women entering wage work indicates the types of work accessible to women. In the nineteenth century United States, women who worked for wages generally did so as domestic servants, factory workers and prostitutes.<sup>20</sup> As time went on, women started entering different sectors of paid work, including positions that were traditionally held by men. Lilly Ledbetter was in a nontraditional position at Goodyear Tire Company, so examining the effects of sex, class and race in the history of working women provides glimpse as to why she did. It is important to acknowledge that there are cultural implications that can limit a woman's access to a higher paying occupation. Class, race and sex are contributing factors affecting women's

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<sup>20</sup> See, for example, Teresa L. Amott and Julie A. Matthaei, *Race, Gender, and Work: A Multicultural Economic History of Women in the United States* (Boston, MA: South End Press, 1991); Julia K. Blackwelder, *Now Hiring: The Feminization of Work in the United States, 1900-1995* (College Station, TX: Texas A&M University Press, 1997); Jacqueline Jones, *American Work: Four Centuries of Black and White Labor* (New York, NY: W.W. Norton, 1998); Martha Vicinus, *Independent Women: Work and Community for Single Women, 1850-1920* (Chicago, IL: University of Chicago Press, 1985); Elizabeth Higginbotham and Mary Romero, *Women and Work: Exploring Race, Ethnicity, and Class* (Thousand Oaks: Sage, 1997).

access to work that many scholars have contextualized.<sup>21</sup> Women of color remained in the private sphere of work in positions such as nannies or maids. White women transgressed from the private sphere of women's household work to the public sphere of men's industrial work; positions in the public sphere offered higher wages.

The access to public work institutions made it possible for women to build community. This was possible because women took wage work that was outside the family and home, which cultivated an environment where women could have "leadership skills, friendship networks, and more generally a power base for public work."<sup>22</sup> Women in these communities were forming coalitions in order to address inequalities in the workplace and in public. These coalitions led to the suffrage movement that ultimately won the right to vote for women. Working women were tied to the suffrage movement because up until the 1920s women lacked the right to vote and were considered not fully human.<sup>23</sup> Having the right to vote would allow women to advocate for their rights as workers to be seen as equals to male workers. Martha Vicinus comments, "They [working women] were consistently paid one-third to two-thirds less than men for equivalent work, were often barred from employment if they married, and were generally discouraged from

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<sup>21</sup> For more discussion on women's access to work see, Amott and Matthaehi, op. cit.; Blackwelder, op. cit.; Jones, op. cit.; Vicinus, op. cit.; Alice Kessler-Harris, *Gendering Labor History* (Urbana, IL: University of Illinois Press, 2007) and *In Pursuit of Equity: Women, Men, and the Quest for Economic Citizenship in 20<sup>th</sup>-Century America* (New York, NY: Oxford University Press, 2001); Gilda Berger, *Women, Work and Wages* (New York, NY: F. Watts, 1986); Eileen Boris, "Ledbetter's Continuum: Race, Gender, and Pay Discrimination," in *Feminist Legal History: Essays on Women and Law*, edited by Tracy A. Thomas and Tracey J. Boisseau (New York, NY: New York University Press, 201), 240-256.

<sup>22</sup> Vicinus, op. cit., 7.

<sup>23</sup> For more discussion on women and voting see, Vicinus, op. cit.; Linda Briskin, "Union Renewal, Postheroic Leadership, and Women's Organizing: Crossing Discourses, Reframing Debates," *Labor Studies Journal* 36, no. 4 (2011): 508-537; Susan J. Carroll, and Richard Logan Fox, *Gender and Elections: Shaping the Future of American Politics* (New York, NY: Cambridge University Press, 2006); Sue Tolleson-Rinehart, *Gender Consciousness and Politics* (New York, NY: Routledge, 1992).

pursuing any career into the upper levels of management.”<sup>24</sup> What this shows is that, at the beginning of the twentieth century, equal pay for women was a concern and women who formed coalitions drew attention to this. The importance of women forming communities around labor issues connects to how coalitions formed around Ledbetter’s pay discrimination claim after the Supreme Court decision denied her claim. The support Ledbetter got after the Supreme Court decision led to the passage of the Ledbetter Act of 2009. Coalition building for working women is vital to keep in mind, but it is also necessary to consider the historical context of women’s access to work.

Examining the struggles women face in the workforce throughout history with correlation to the legislation developed to address them, allows the development of a historical timeline that leads up to the Lilly Ledbetter Act. The transition from agricultural work to manufacturing work allowed women to enter a larger labor force and be paid wages at the beginning of the twentieth century. At that time, wages were needed to help support the family. Julia Blackwelder explains, “The typical working “girl” at the turn of the century was a single woman whose earnings helped support her parents and siblings.”<sup>25</sup> The increasing demand for women to be in the workforce sheds light on how age, sex, race, and class effects women’s access to certain types of work.<sup>26</sup> By the 1960s, the female labor force had increased by ten percent and more women were working full time to help provide for their family. During this time the Equal Pay

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<sup>24</sup> Vicinus, op. cit., 247.

<sup>25</sup> Blackwelder, op. cit., 12.

<sup>26</sup> See, for instance, Blackwelder, op. cit.; Jacqueline Jones, *Labor of Love, Labor of Sorrow: Black Women, Work and the Family from Slavery to the Present* (New York, NY: Basic Books, 1985); Kessler-Harris, *Gendering Labor History*, op. cit. and *A Woman's Wage: Historical Meanings and Social Consequences* (Lexington, KY: University Press of Kentucky, 1990); Nila Hofman, “Understanding Women's Work Through the Confluence of Gender, Race, and Social Class,” *Cultural Dynamics*. 22, no. 3 (2010): 179-195; Francine D. Blau, Marianne A. Ferber and Anne E. Winkler, *The Economics of Women, Men, and Work* (Upper Saddle River, NJ: Pearson/Prentice Hall, 2006).

Act of 1963 and the 1964 Civil Rights Act were passed, making it possible for women to file lawsuits about pay and employment discrimination based on sex.<sup>27</sup> These Acts provide the foundation of the Lilly Ledbetter Act of 2009.

To go along with the timeline of women, work and pay legislation an analysis of the history of pay discrimination in the United States is needed. Alice Kessler-Harris is leading scholar who examines the history of working women and wages. Her expertise, along with other scholars', focuses on the history of women in the American workforce and the barriers they face in accessing equal economic opportunity.<sup>28</sup> When women started earning wages, they were valued as less than men and as a result were paid less. The socially constructed views of what women are expected to do are tied to the history of the wage gap. While the work available to women was transforming throughout the nineteenth to the mid-twentieth century, women were still held to the gender role expectations.<sup>29</sup> A woman's true work belonged in the home where the man is the provider and consequently, deserves a larger wage. On top of this, women's demand for equal employment opportunity raised questions about a woman's role in her family.<sup>30</sup> The view was that if a woman had a full time job, then there would be no one to fulfill

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<sup>27</sup> For further discussion see, Blackwelder, op. cit.; Jones, *American Work*, op. cit. and *Labor of Love, Labor of Sorrow*, op. cit.; Kessler-Harris, *Gendering Labor History*, op. cit.; Claire Randall, *Legislative History of the Equal Pay Act of 1963: (Amending Section 6 of the Fair Labor Standards Act of 1938, as Amended): Public Law 88-38, 88th Congress, H.R. 6060 and S. 1409 (Washington D. C.: GPO, 1963).*

<sup>28</sup> Kessler-Harris, *Gendering Labor History*, op. cit., *A Woman's Wage*, op. cit. and *Women Have Always Worked: A Historical Overview* (Old Westbury, NY: Feminist Press; McGraw-Hill, 1981); Bettina Berch, *The Endless Day: The Political Economy of Women and Work* (New York, NY: Harcourt Brace Jovanovich, 1982); Berger, op. cit.; Blau, et al, op. cit.; Dorothy Sue Cobble, *The Sex of Class: Women Transforming American Labor* (Ithaca, NY: ILR Press, 2007).

<sup>29</sup> Kessler-Harris, *Gendering Labor History*, op. cit., 103.

<sup>30</sup> See, for example, Kessler-Harris, *Gendering Labor History*, op. cit. and *A Woman's Wage*, op. cit.; Vicinus, op. cit.; Blau, et al, op. cit.; Cobble, op. cit.; Arlie Russel Hochschild and Anne Machung, *The Second Shift* (New York, NY: Avon Books, 1990); Karine Moe and Dianna Shandy, *Glass Ceilings and 100-Hour Couples* (Athens, GA: University of Georgia Press, 2010).

the household duties. However, many women are capable of balancing family and work life out of necessity, as evident of Lilly Ledbetter being of working class. Ledbetter was a wife and mother who needed to help provide for her family and did so by working fulltime at Goodyear Tire Company.

In addition, there are hidden meanings behind women's wages and the wage gap in the twentieth century United States. These hidden messages make clear the connection between the wage gap and its effect on Lilly Ledbetter. Various scholars have presented views on wages from the perspectives of policymakers, laws, employees, politics and history.<sup>31</sup> For example, a lot of focus has been on the enactment of the Equal Pay Act of 1963 and what equal pay means. The phrase "equal pay for equal work" is ambiguous and contentious for many theorists because it encapsulates mixed messages about gender, which have shifted in meaning over time.<sup>32</sup> In other words, it is difficult to determine what is considered equal work between men and women because the work women and men do is evaluated differently. The double meaning of "equal pay" informs the notion that paychecks and wages also have a hidden message about the value of a worker that is based on gender.

The demeaning value of women workers throughout history draws attention to the importance of economic independence. Throughout history, economic independence is tied to citizenship because financial sustainability for individuals and/or their families is tied to

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<sup>31</sup> Kessler-Harris, *Gendering Labor History*, op. cit., *Women Have Always Worked*, op. cit., and *A Woman's Wage*, op. cit.; Boris, op. cit.; Cobble, op. cit.; Clare Cushman and Talbot D'Alemberte, *Supreme Court Decisions and Women's Rights: Milestones to Equality* (Washington D. C.: CQ Press, 2011); Ashley English and Ariane Hegewisch, "Still a Man's Labor Market: The Long-term Earnings Gap," in *Global Perspectives on Gender and Work*, edited by Jacqueline Goodman (New York, NY: Rowman & Littlefield, 2010), 125-135.

<sup>32</sup> For further discussion see, Kessler-Harris, *Out to Work: A History of Wage-Earning Women in the United States* (New York : Oxford University Press, 1982), *Women Have Always Worked*, op. cit., and *A Woman's Wage*, op. cit.; Hochschild and Machung, op. cit.; Moe and Shandy, op. cit.



freedom.<sup>33</sup> Economic independence reveals the connections between why Lilly Ledbetter continued to work at Goodyear Tire Company with all the discrimination she faced.

Examinations of workplace legislation have shown that women's equality is limited because legislation tends to assume that women will be married to husbands who have job benefits.<sup>34</sup>

This assumption shows that there are gendered meanings in work benefits, not only wages and access to work. This is limiting to women who do not have husbands because the most important benefits (i.e. health insurance or social security) a person can receive are derived from wage work.<sup>35</sup> Women are held to the gendered ideal that they are not providers of the family and as a result do not need to receive any benefits independent of their male spouses. This is patently false, especially given the stories of Ledbetter and Dukes, provided earlier in this thesis.

Women of color have to be discussed in the history of women in United States workforce, to account for women like Betty Dukes. Even though Dukes was a part of class action lawsuit for sex discrimination, her race was likely a contributing factor to her lack of promotion or pay raises. Racism in our political economy determines the wages women receive; especially lower wages for women of color. Jacqueline Jones and others have examined over 350 years of black and white labor in the United States. While some of this scholarship is not specifically on women of color and work, it explains how racism in politics and the economy interact to determine which groups of people are fit for certain work. The historical development

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<sup>33</sup> Arlie Russel Hochschild, *The Time Bind: When Work Becomes Home and Home Becomes Work* (New York, NY: Metropolitan Books, 1997); Hochschild and Machung, op. cit.; Moe and Shandy, op. cit.; Blau, et. al, op. cit.

<sup>34</sup> Moe and Shandy, op. cit.; Amott and Matthaei, op. cit.

<sup>35</sup> Kessler-Harris, *In Pursuit of Equity*, op. cit.; Hochschild, op. cit.; Moe and Shandy, op. cit.

of racially divided work places had a role in fostering stereotypes of blacks in work.<sup>36</sup> In the early twentieth century, Jones points out:

Unions that operated employment bureaus, thus controlling hiring at a particular site, could retaliate against an employer who dared to bypass these traditional channels of hiring workers. Employer at times anticipated these difficulties and managed to resist the temptation to reduce their payrolls by taking advantage of blacks who would work for less money than whites.<sup>37</sup>

Work done by black people was valued less than work done by white people. Black women were doubly devalued based on sex and race, which limited job opportunities for women of color, let alone fair wages.

The dual oppressions of race and gender have a negative impact on women of color that limits their access to work. Women had different reasons for entering the workforce. At the beginning of the Twentieth century, white women were advocating for the right to choose to work, whereas black women had to work to support their families given the historical ties to slavery.<sup>38</sup> Black women were relegated to domestic jobs such as care of a family, which has ties to slavery and “mammy” figures. As such, these jobs were lower paying for black women, signifying their status in society through the materiality of women’s production and reproduction value.<sup>39</sup> This history shows that black women have always worked, but they have been limited to low paying jobs. This relates to Betty Dukes’ low wage and her value in the lines of production at Wal-Mart. Even though Dukes was a part of a class action lawsuit where the

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<sup>36</sup> Jones, *American Work*, op. cit.; Harriet Bradley and Geraldine Healy, *Ethnicity and Gender at Work: Inequalities, Careers and Employment Relations* (New York, NY: Palgrave Macmillan, 2008); Higginbotham and Romero, op. cit.

<sup>37</sup> Jones, *American Work*, op. cit., 313.

<sup>38</sup> Jones, *American Work*, op. cit. and *Labor of Love, Labor of Sorrow*, op. cit.; Higginbotham and Romero, op. cit.

<sup>39</sup> See, Jones, *American Work*, op. cit.; Rosemary Hennessy, *Materialist Feminism and the Politics of Discourse* (New York: Routledge, 1993); Harriet Bradley and Geraldine Healy, *Ethnicity and Gender at Work: Inequalities, Careers and Employment Relations* (New York, NY: Palgrave Macmillan, 2008); Boris, op. cit.; Cobble, op. cit.

commonality was sex, her race was a likely factor in her denial of promotion. After the loss in *Wal-Mart v. Dukes*, Dukes would have the sole burden of proving discrimination as either sex or race based, if she decided to file on her own. The next section looks at the negative impact of individual responsibility in the neoliberal framework.

### ***Neoliberalism: Individualized Responsibility***

Understanding how neoliberalism operates in the shaping of public policy in the United States will show that a different approach is needed. Neoliberalism is significant in this thesis because it has become a dominant ideology in United States policies and serves as the current theoretical framework for legislation. Manfred Steger and Ravi Roy as well as other scholars provide a useful insight into how neoliberalism is entrenched in systems of power that influence public policy and point to the problematic individual responsibility focus that neoliberalism advocates.<sup>40</sup> The issue with an individual centered approach is that there are no considerations of systemic impacts affecting groups of individuals such as sexism or racism. Thus, for my purposes in this thesis, I suggest that, neoliberalism means holding individuals responsible for the oppression they face, without ever considering the effect of systemic impacts on any individual. In the end, neoliberalism favors corporate interests and not the interest of individuals. Neoliberalism's individualized focus influences legislation, media coverage and politician's views on women and work. In the current system, individual focus works in limiting access to equal pay. For instance, the Supreme Court decided that Ledbetter's claim of sex discrimination was not viable because she did not file her claim within the required 180 days of

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<sup>40</sup> Steger and Roy, op. cit.; David Harvey, *A Brief History of Neoliberalism* (New York, NY: Oxford University Press, 2005); Henry A. Giroux, *The Terror of Neoliberalism: Authoritarianism and the Eclipse of Democracy* (Boulder, CO: Paradigm Press, 2004).

her first discriminatory paycheck.<sup>41</sup> The justices assumed that an individual could and should know when wage discrimination occurs from the moment it happens, which is impossible because a person is never presented with the salaries of coworkers on the date of hire. In turn, this assumes that ensuring a basic freedom, such as a fair living wage, is up to the individual; the government does not protect this freedom.

Delving into the historical roots of neoliberalism and its effect on public policy, it becomes clear that the focus on neoliberalism is not about the equality and wellbeing of the people. David Harvey argues that neoliberalism assumes that “individual freedoms are guaranteed by the freedom of the market and of trade,” which happen to be driving principles of capitalism, private corporations etc., not democracy.<sup>42</sup> Instead, neoliberalism maintains the uneven distribution of wealth between the Upper, Middle and Lower classes. Neoliberalism influences the unequal distribution of income between men and women. Even more, neoliberalism makes it possible for government entities to not be held responsible for wage inequalities considering the lack of regulation in existence; individuals are held responsible for their financial situation.<sup>43</sup> This does not allow for a social safety net to exist for people of the United States, something that should be provided by government. Rather, an individual has to be personally responsible for knowing wage discrimination is occurring and the avenues to combat it. The neoliberal insistence on individual responsibility is another form of victim blaming.<sup>44</sup> Lilly Ledbetter is a victim of wage discrimination, who was blamed for her pay discrepancy

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<sup>41</sup> *Ledbetter v. Goodyear Tire & Rubber Co. Inc.*, 550 U.S. 618 (2007), 2.

<sup>42</sup> Harvey, op. cit., 7.

<sup>43</sup> For a deeper discussion of individual responsibility in neoliberalism, see Noam Chomsky, *Profit Over People: Neoliberalism and Global Order* (New York, NY: Seven Stories Press, 1999); Gérard Duménil, and Dominique Lévy, *The Crisis of Neoliberalism* (Cambridge, MS: Harvard University Press, 2011).

<sup>44</sup> Chomsky, op. cit.; Harvey, op. cit.; Giroux, op. cit.

because she did not file in a timely manner. The government failed Ledbetter because there was no enforcement of equal pay laws in her case, given that she did the same work as her better-paid male counterparts. Section 206(d) of the Equal Pay Act of 1963, stipulates that a woman cannot be discriminated on the basis of sex if she is applying for or is in the same positions as a man. My critique of neoliberalism's individual responsibility and blame focus, as it pertains to pay equity, only points to a need to hold the federal government more accountable. And, in turn, holding corporations such as Goodyear more accountable.

Examining concrete examples of how neoliberalism affects equal pay issues brings to light the negative impact the ideology has on working women. There are many resources that take specific issue with neoliberalism by examining working women's lives, including the recent 2014 Shriver Report.<sup>45</sup> These stories show how neoliberalism fosters the current situation in the United States with regard to women and pay discrimination. What these stories illustrate is the awareness women have of their political and purchasing power. It is evident that there is a connection between women's votes and their production role in the economy.<sup>46</sup> Women's production role in the economy is valued less and as result a wage gap exists where women earn less. Considering that women make the majority of purchasing decisions, they are also likely spending a larger portion of their income on these purchases than if a man did. If women earned a fairer wage then their financial lives could be more stable and they would have the potential to increase their purchasing power, which would further help the overall economy. While women

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<sup>45</sup> The following titles provide various examples of the difficulties working women face. These titles show that pay discrimination cannot be reduced to one factor such as sex. Maria Shriver, *The Shriver Report: A Woman's Nation Pushes Back from the Brink* (New York, NY: Rosetta Books, 2014) Kindle Edition; Barbara Ehrenreich, *Bait and Switch: The (futile) Pursuit of the American Dream* (New York, NY: Metropolitan Books, 2005) and *Nickel and Dimed: On (not) Getting by in America* (New York, NY: Metropolitan Books, 2001); Janet M. Currie, *The Invisible Safety Net: Protecting the Nation's Poor Children and Families* (Princeton, NJ: Princeton University Press, 2006).

<sup>46</sup> Shriver, op. cit.; Susan B. Hansen, *The Politics of Sex: Public Opinions, Parties, and Presidential Elections* (New York, NY: Routledge, 2014).

are voting on economic policy, they do not have direct influence on policy like corporations do. And it is not in corporate interests to advocate for a need to hold the government accountable for enforcing fair wages between men and women.<sup>47</sup>

The neoliberal framework in public policy centers on individual blame rather than systemic fault lines and implications. The way neoliberal policies of state and federal governments work to reinforce blame and place responsibility on the individual has to change. The United States needs to move away from neoliberalism in public policy and consider systemic effects on why a wage gap exists. As the Shriver Report argues:

We must recognize that our government programs, business practices, educational system, and media messages don't take into account a fundamental truth: This Nation cannot have sustained economic prosperity and well-being until women's new, central role is recognized and women's economic health is used as a measure—perhaps it should be the measure—to shape common-sense policies and priorities for the 21<sup>st</sup> century. In other words, leave out the women, and you don't have a full economy. Lead with the women, and you do. It's that simple and Americans know it. In our polling more than 70 percent of Americans say women's financial contribution to our national economy is essential.<sup>48</sup>

The fundamental truth, which I believe the Shriver Report gets at, is the necessity of holding the government accountable, rather than the individual. Women are a vital part of the economy and the United States could only benefit if women earned the same as their male counterparts. Without filing a claim of discrimination, the only way an individual woman can potentially change her wage is through voting on pay equity policy.<sup>49</sup> This is, if a policy ever comes up and if people voted in favor of it. The government needs to enforce investigations that would look into wage distribution at

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<sup>47</sup> Shriver, op. cit.; Chomsky, op. cit.; Harvey, op. cit.

<sup>48</sup> Shriver, op. cit.

<sup>49</sup> Hansen, op. cit.; Shriver, op. cit.

corporations. The truth remains that the government does not do this, given the neoliberal traces in legislation. The next section will examine neoliberalism's bearing on women's production value through a materialist feminist lens.

### ***Materialist Feminism: Women's Production Value***

Since neoliberalism reinforces the existence of pay discrepancies between men and women, the envelope needs to be pushed in order to explain why a wage gap persists. Materialist feminism breaks down how pay equity legislation is falsely presented as providing women with the power to obtain equal pay. It takes into consideration whose voices are heard in public policy debates as well as why. Materialist feminist theory came about through critiques of Marxism, focusing on the operation of power in material processes. Rosemary Hennessey discusses how materialist feminism is distinct as a theory in that its focus is on how language and subjectivity interact.<sup>50</sup> A way to think of materialist feminism is that it examines the relationship between language and subjectivity. Language is framed to position the "subject" as either having power or lacking power in the means of production.<sup>51</sup> Women's role in production is the material work they produce, reproduction capabilities and the care of other family members. Materialist feminism analyzes women's production value in wage labor as well as their home life, since women often face the double shift of production.<sup>52</sup> One shift is the "nine to five" hourly paid job as a mean of providing an income for the family. The other shift is the care of family and household chores once done with the shift of the paid job. The "double shift" demonstrates how the feminine gendered stereotype of women being incapable of hard tiresome

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<sup>50</sup> Hennessey, op. cit., 5.

<sup>51</sup> Hennessey, op. cit.; Hochschild, op. cit.; Hochschild and Machung, op. cit.; Annette Kuhn and Ann Marie Wolpe, *Feminism and Materialism: Women and Modes of Production* (New York, NY: Routledge, 2013).

<sup>52</sup> Hennessey, op. cit.; Jones, *American Work*, op. cit., and *Labor of Love, Labor of Sorrow*, op. cit.; Hochschild and Machung, op. cit.; Moe and Shandy, op. cit.

work is false. Thus, women are capable are doing the same work as men and deserve the same pay. Next is a portion of how materialist feminism has been used to explain how women have been oppressed in public policy.

One area of public policy that has been analyzed through a materialist feminist framework is welfare reform. The framework present in welfare reform does not account for the varied experiences women have that are different from men. As a result, the government privileges individualistic solutions over restructuring its role in welfare reform. Nancy Naples utilizes materialist feminist discourse analysis to discuss the gendered and racialized structures present in United States welfare reform policies. Naples argues that the redefined social contract on welfare policy in the late 1980s privileged individualized and coercive behavioral strategies rather than holding the state accountable for failure in welfare programs.<sup>53</sup> Materialist feminist theory points out that welfare reform policy has determined which women are deemed worthy of aid.<sup>54</sup> Also, materialist feminism can point out how policy values women as less than men when there is a lack of legislation that actively enforces fair pay. Furthermore, materialist feminism draws out how public policy fails to recognize factors such as race, class and gender, which make it difficult for women to obtain and keep jobs.

There seems to be a strong disconnect of what the government's responsibilities are to welfare recipients and can connect to the responsibility the government should have for the wage gap. Materialist feminism demonstrates how the Supreme Court decision was reached in *Ledbetter vs. Goodyear Tire Co.*, where blame was placed on

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<sup>53</sup> Nancy A. Naples, "The Gendered Social Contract: Constructing the New Consensus," in *Feminism and Method: Ethnography, Discourse Analysis, and Activist Research* (New York: Routledge, 2003), 109.

<sup>54</sup> Naples, op. cit.; Hennessy, op. cit.; Kuhn and Wolpe, op. cit.



Ledbetter for not filing her pay discrimination claim within the 180 day time period. The failure is placed on the individual (i.e. Lilly Ledbetter) rather than looking at societal factors and oppressions that may prevent women from accessing equal pay. Materialist feminist theory explains how wage discrimination is implicated in a neoliberal system where blame is placed on the individual rather than holding the government accountable for enforcement and the corporation accountable for compliance to the law.<sup>55</sup> A woman's race, age, class and family etc. are all factors that make up her material experience and also determine her production value. The materialist experience allows us to answer why it is that women have been responsible for providing particular biological, family care and financial needs.<sup>56</sup> What the answer alludes to is that there is no universal materialist experience for women; nor is there a universal experience with pay discrimination. Thus, recognition of difference in experiences of wage discrimination is imperative for pay equity coverage and legislation. This is where intersectionality comes in to account for the intersections of race, age, class, gender and wage etc.

***Intersectionality: Wage Discrimination Experience***

Intersectionality shows that many factors and experiences that make up a woman's identity affect access to work and equal pay. Policy and legal decisions are limited to the possibilities of understanding all the forms of discrimination a woman may face. The many facets of a woman's identity such as race, class or gender are within power structures that

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<sup>55</sup> For more, see Nancy J. Hirschmann, "Feminist Standpoint as a Postmodern Strategy," in *The Feminist Standpoint Theory Reader: Intellectual and Political Controversies*, edited by Sandra Harding (New York: Routledge, 2004) 317-332; Hennessy, op. cit.; Kuhn and Wolpe, op. cit.

<sup>56</sup> Hirschmann, op. cit.; Kuhn and Wolpe, op. cit.

predetermine a woman's work within the global economy that make it difficult for access to equal pay. Many arguments have been made that intersectionality does not come into consideration when women make legal claims.<sup>57</sup> Women of color have to file legal claims either as a woman or black, not as both black and woman. The both/and approach that intersectionality promotes allows for more experiences with discrimination to be presented. Intersectional experience has to also include differing experiences of pay that can affect a woman's life. Little discussion exists on the intersecting experiences that affect women's access to equal pay. This thesis adds to the intersectional experience through examining wage discrimination as an experience. By doing so, the rhetoric of equal pay present in legislation and the media can be analyzed.

Equal pay tends to be represented as a white woman's issue in the media, given the representation of Lilly Ledbetter. The presentations of Lilly Ledbetter and the Ledbetter Act are misleading. Equal pay is an issue for all women and this includes women of color. Sarah Gershon focuses on the lack of media coverage of minority Congresswomen in the United States and that coverage of minority Congresswomen is limited and tends to be unfavorable when they are covered.<sup>58</sup> Gershon's findings connect with other research done on negative presentations of women of color.<sup>59</sup> Women already face the barrier of not being taken seriously when presented in the media based on gender alone; to add a "double burden," such as race, to the mix increases the changes that the issue discussed will not be received as a serious matter. An intersectional

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<sup>57</sup> Crenshaw, op. cit.; Serena Mayeri, *Reasoning from Race: Feminism, Law, and the Civil Rights Revolution* (Cambridge, MA: Harvard University Press, 2011); Julie Greenberg, "Definitional Dilemmas: Male or Female? Black or White? The Law's failure to Recognize Intersexuals and Multiracials," in *Gender Nonconformity, Race and Sexuality*, edited by Toni P. Lester (Madison, WI: University of Wisconsin Press, 2002), 102-124.

<sup>58</sup> Sarah Gershon, "When Race, Gender, and the Media Intersect: Campaign New Coverage of Minority Congresswomen," *Journal of Women, Politics and Policy*, 33, no. 2 (2012): 107.

<sup>59</sup> Crenshaw, op. cit.; Mayeri, op. cit.; Gershon, op. cit.; Greenberg, op. cit.

approach is necessary in legislation and media coverage of equal pay. The stories of women of color and pay discrepancies have to be heard and represented for equal pay to be a reality. To understand why an intersectional approach is essential it is necessary to analyze legislation affecting equal pay, Ledbetter's court trials and the enactment of the Ledbetter Fair Pay Act of 2009. I will now turn, in light of this literature review, to the analysis of the case study I set out to examine earlier in this thesis.

## **LEDBETTER'S STORY**

### *The Historical Context*

At the turn of the nineteenth century momentum among women was growing for the right to vote in the suffrage movement. Women formed coalition over being able to participate in policy decisions that would affect their lives.<sup>60</sup> The way their voices could get heard was through the freedom and right to vote; the lack of being able to vote signified women's secondary status.<sup>24</sup> Women wanted to be able to have a say in policies they were affected by such as wages, work, health, or safety etc. Vicinus explains, "Suffrage touched a responsive chord in so many middle-class women because they had been stirred by accounts of the sufferings of poor working women, the unequal legal position of wives and mothers, and the horrors of prostitution."<sup>61</sup> Coalitions were important in the suffrage movement because it drew attention and support to women's issues that tend to be ignored in public policy. In 1920, white women gained the right to vote; women of color faced different circumstances and experiences that denied them the right to vote for some time. It took close to forty years for women of color to be included in legislation that protected their working rights, including the right to vote, with the Civil Rights

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<sup>60</sup> Vicinus, op. cit.

<sup>61</sup> Ibid., 249.

Acts of 1964 and 1965; with this inclusion they became more involved in politics.<sup>62</sup> Women of color involvement with politics tend to address the needs to consider intersectional experiences of oppression; an example is Crenshaw's argument about being *both black and woman*. Without moving too far ahead, the development of legislation affecting women's wages after women gained the right to vote in 1920 will be explored.

By 1960, the women's movement was gaining momentum and John F. Kennedy was running for president of the United States. Janet Martin discusses President Kennedy's connection and support to the women's movement, especially pertaining to workplace discrimination.<sup>63</sup> When Kennedy was running for president, the population of women voters was increasing as well as women's call for politicians to focus on women's issues. Once Kennedy won the Democratic nomination at the Democratic National Convention (DNC), he knew he needed Eleanor Roosevelt's political support. However, Eleanor Roosevelt supported Adlai Stevenson II, not Kennedy, before the DNC because she despised Kennedy's policies and his father.<sup>64</sup> Shortly after Kennedy received the nomination at the DNC, the two had a private meeting and it is still not known what was discussed, but after Eleanor Roosevelt supported Kennedy as the Democratic candidate.<sup>65</sup>

Shortly after Kennedy won the presidential election, he created a new commission focusing on women's issues. In 1961, President Kennedy signed an Executive Order that created the first-ever President's Commission on the Status of Women (PCSW) and appointed Eleanor

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<sup>62</sup> Jones, *Labor of Love, and Labor of Sorrow*, op. cit., 276.

<sup>63</sup> Janet M. Martin, "The Kennedy Administration," in *The Presidency and Women: Promise, Performance and Illusion* (College Station, TX: Texas A&M University Press, 2003), 49-86.

<sup>64</sup> "Eleanor Roosevelt, John Kennedy, and the Election of 1960," *George Washington University* (Washington D.C.), accessed April 28, 2014, from <http://www.gwu.edu/~erpapers/mep/displaydoc.cfm?docid=erptoc>.

<sup>65</sup> Ibid.

Roosevelt as chair.<sup>66</sup> Eleanor Roosevelt was the prime choice to chair the commission given her political experience with women and work. Working women and wages was a top priority of the commission because the commission was building on the work of the Women's Bureau in the Department of Labor, "with a clear focus on issues of equality in the workforce, especially issues of equal pay and benefits."<sup>67</sup> Thus, the commission proposed the creation of the Equal Pay Act, which was signed into law in 1963.

An imperative part of the Equal Pay Act of 1963 was that it made it illegal to treat women discriminatory in the workplace or to deny jobs on the basis of sex.<sup>68</sup> This was huge for women because now they had legal rights to challenge discrimination. The passing of the Equal Pay Act of 1963 was a milestone for working women. In October 1963, the PCSW released its report and "President Kennedy issued an executive order establishing two continuing federal bodies [an Interdepartmental Committee and a Citizens' Advisory Committee] to evaluate progress made, provide council, and serve as a means for suggesting and stimulating action,"<sup>69</sup> but this was obscured by the assassination of President Kennedy. Equal pay regulation still has a way to go when considering the amendments to legislation and the passing of new legislation until the present. Within two years after the passing of the Equal Pay Act of 1963, the Civil Rights Act of 1964 provided further support to make workplace discrimination and unfair wages possible. The Civil Rights Act of 1964 made the addition that discrimination on the basis of race and sex is illegal. Strikingly, Title VII of the Civil Rights Act of 1964 created the Equal Employment Opportunity Commission (EEOC) as a government enforcement agency that would

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<sup>66</sup> Martin, op. cit., 59.

<sup>67</sup>Ibid., 63.

<sup>68</sup> *Equal Pay Act of 1963*. Public Law 88-38. 88<sup>th</sup> Cong. 1<sup>st</sup> sess., (June 10, 1963).

<sup>69</sup> Martin, op. cit., 85.

implement this law. The responsibility of the EEOC is to investigate claims of workplace discrimination reported by individuals. As stated, “The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice.”<sup>70</sup> Including sex as a protected category was a controversial part of Title VII because:

It banned sex discrimination in the workplace and it applied to jobs at all levels in American businesses...it prohibited discrimination in employment and would establish a government agency to investigate complaints. Many conservative Americans believed the government had no right to tell a businessman whom to hire.<sup>71</sup>

Title VII made it possible for women to have legal avenues to file claims of sex discrimination in the workplace.

During the 1960s, there was pressure from the women’s movement to have an amendment to the constitution that ensures the rights of women, known as the Equal Rights Act (ERA), which had been in development since the 1920s. One component of the Act was “to guarantee to women equality of rights under the law, including equal pay for equal work.”<sup>72</sup>

Unfortunately, the ERA attracted negative attention and did not receive the required number of state ratifications to be adopted, even after Congress voted in favor of it. Keep in mind that adding sex as a protected category to Title VII of the Civil Rights Act of 1964 undercut much of the opposition to the Equal Rights Amendment (ERA).<sup>73</sup> Consequently, the Equal Pay Act and the Civil Rights Act of 1964 are the strongest pieces of legislation that address equal pay, until

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<sup>70</sup> *Title VII of the Civil Rights Act of 1964*, Public Law 88-352. 42nd Cong., 2<sup>nd</sup> sess. (July 2, 1964).

<sup>71</sup> Flora Davis, *Moving the Mountain: The Women’s Movement in America since 1960* (New York, NY: Simon & Schuster, 1991), 39, 41.

<sup>72</sup> Martin, *op. cit.*, 51.

<sup>73</sup> Davis, *op. cit.*, 39.

the Ledbetter Act of 2009. Nonetheless, these pieces of legislation do not focus on the issue of the government proactively enforcing equal pay.

Examining the attitudes and language in legislation on workplace discrimination and equal pay the neoliberal approach to fair wages becomes evident. For instance, Title VII of the Civil Rights Act of 1964 makes it clear that it is up to the individual to file claims of workplace discrimination:

Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the “respondent”) within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission.<sup>74</sup>

The use of “person” or “member” in this clause means individual, the enforcement proponent of the EEOC is not to investigate workplace discrimination until after a claim by an individual is made. Granted the creation of the EEOC is huge, it places the responsibility to know discrimination has occurred and knowing to report it to the EEOC on the individual. The phrasing reinforces individual responsibility and blame for having to know discrimination is occurring. The lack of investigation into workplace discrimination before claims are made is counteractive to enforcing equal pay, rather the government needs to act proactive to combat the wage gap through developing a system that investigates salary distributions of companies. This pathway of women getting the right to vote, the development of legislation that supports fair

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<sup>74</sup> *Title VII of the Civil Rights Act of 1964*, op. cit.

wages and the neoliberal linguistic framing of legislation leads to the examination of Ledbetter's court trials.

***Ledbetter's Story: The Court Decisions***

When Ledbetter's case went to trial, the District Court sided with Ledbetter arguing that an act of pay discrimination had occurred, but Goodyear Tire Company appealed and the case went to the Eleventh Circuit Court of Appeals. The Eleventh Circuit Court of Appeals reversed the decision of the District Court and Ledbetter appealed, which is why the case came before the Supreme Court.<sup>75</sup> Once *Ledbetter v. Goodyear Tire and Rubber Co.* made it to trial at the Supreme Court, many awaited a disappointing verdict. With a five to four vote, SCOTUS upheld the Eleventh Circuit Court decision that Goodyear Tire Co. did not perform an act of sex discrimination. Justice Samuel Alito wrote the opinion of the Court, explaining that Ledbetter did not act within accordance of Title VII of the Civil Rights Act of 1964, which states that any act of discrimination must be filed within 180 days of which it first occurred.<sup>76</sup> Also, the Supreme Court did not accept Ledbetter's arguments that pay discrimination is different from other forms of discrimination in the workplace because like other forms of discrimination, pay discrimination also occurs at one point in time.<sup>77</sup> This reasoning around time of an incident does not recognize the intersectionality of experience. By limiting all discrimination acts down to the timing of an occurrence, it takes away from the importance of the different experiences and reasoning behind varying forms of pay discrimination. It assumes that all wage discrimination is the same, which as Crenshaw points out there is intersectionality of experience.<sup>78</sup> While

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<sup>75</sup> *Ledbetter v. Goodyear Tire & Rubber Co. Inc.*, 550 U.S 618 (2007).

<sup>76</sup> Justice Samuel Alito, Opinion of the Court, *Ledbetter v. Goodyear Tire and Rubber Co.* 550 U.S. 618 (2007), 2.

<sup>77</sup> *Ibid.*, 5.

<sup>78</sup> Crenshaw, *op. cit.*



Crenshaw's argument deals with the intersectionality of black women's identities in the labor force, it relates to Lilly Ledbetter's experience at Goodyear Tire Co. Ledbetter's court trials restricted her experiences of class, sex and gender discrimination to one experience of sex.

On top of this, the Court claimed that Ledbetter was not truly claiming discrimination because of current pay; she was claiming that her pay was unlawful because it could have been bigger if she had been paid more in the first place.<sup>79</sup> What this means is that because she did not see each paycheck as reflecting discriminatory intent by Goodyear Tire Company, it cannot be considered pay discrimination. Ledbetter never knew that she had started out earning less pay until years later, so it would be impossible for her to see each present paycheck as discrimination. Here the opinion of the Court can be examined through an intersectional analysis as seen through the dissenting opinion of Justice Ruth Bader Ginsberg.

In a rare instance, Justice Ginsberg read the dissent from the bench to signal its importance, an action she had only done six times previously in her thirteen terms as a Justice.<sup>80</sup> The dissent of SCOTUS by Justice Ginsburg is an example of how intersectionality can be utilized, even though it is not based in an intersectional approach. In the dissent, Ginsburg argued that the limitations placed on filing wage discrimination claims is a form of discrimination itself. This dissent is powerful in that it addresses systems of power that limit a woman's access to fair pay, rather than placing the responsibility of knowing when discrimination happens to the individual. Justice Ginsberg asserted that Goodyear Tire violated the Civil Rights Act of 1964 because Ledbetter's starting salary was lower because of her sex,

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<sup>79</sup> Alito, *op. cit.* 9.

<sup>80</sup> Ledbetter, *Grace and Grit*, *op. cit.*, 212.

which is sex discrimination.<sup>81</sup> The point of the dissent was to highlight how a woman can be unaware of discrimination in nontraditional jobs where characteristics of discrimination are taken as the norm. Justice Ginsberg also challenged the notion that the paychecks were not discriminatory, rather she argues that each paycheck is indeed an act of discrimination every time it is issued.<sup>82</sup> From an intersectional approach the importance of her dissent is the discussion of the realities and varying experiences of discrimination women in the workplace face, especially in “nontraditional” jobs.

Justice Ginsberg showed how Ledbetter’s experiences point to the many forms of discrimination a woman may face that are not easily identifiable, as the opinion of the Court makes it out to be. When the Court puts “easy” identifiable distinctions on discrimination and time limits for filing discrimination claims, the court is giving more power to the employer while placing a on the individual. This rationale by the Court opinion is neoliberal at its core and can be critiqued by intersectionality. For example Justice Ginsberg stated,

Allowing employees to challenge discrimination “that extend[s] over long periods of time,” into the charge-filing period, we have previously explained, “does not leave employers defenseless” against unreasonable or prejudicial delay.<sup>83</sup>

As Justice Ginsberg pointed out, the employer is not defenseless when there has been an ongoing act of sex discrimination. The employer has many sources of help such as the income to afford a lawyer that an employee does not. Ginsberg’s statement would hold employers and the government accountable, rather than placing the full burden on the individual employee of knowing when discrimination happens and how to challenge it. This is what intersectionality

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<sup>81</sup> Justice Ruth Bader Ginsberg, Dissenting, *Ledbetter v. Goodyear Tire and Rubber Co.* 550 U.S. 618 (2007), 2.

<sup>82</sup> *Ibid.*, 5.

<sup>83</sup> *Ibid.*, 15.

works to challenge; the need to situate acts of wage discrimination in multiple intersecting systems of power and how to hold those in power accountable for pay discrepancies on the basis of sex.

### ***Ledbetter's Story: After SCOTUS***

After the decision of the Supreme Court was given, it became clear that the opinion of the Court did not resonate with many in Congress. Within two weeks of the decision, Lilly Ledbetter went before the House of Representatives and testified her experiences of sex discrimination while at Goodyear and the SCOTUS decision. The Subcommittee on the Constitution, Civil Rights and Civil Liberties held a hearing and drafted a response entitled *Impact of Ledbetter v. Goodyear on the effective enforcement of Civil Right Laws*. The hearing was to evaluate whether or not the Court correctly interpreted legislation drafted by Congress. The hearing begins with a brief overview of what happened that led to the lawsuit, then goes into an opinion of how the Court's decision limited rights to the individual.<sup>84</sup> A majority of the Representatives felt that the decision of the Court furthered narrowed the purpose of antidiscrimination law, making it more difficult for individuals to file legal discrimination claims.<sup>85</sup> Rather than protecting individuals from discrimination, the subcommittee found that the decision protects companies and makes it easier for them discriminate on the basis of sex without facing repercussions.<sup>86</sup> The hearing ends with a proposed bill that would amend the Civil Rights Act of 1964 and other acts that put time limits on filing discrimination claims. What led to this result can be explained with materialist feminism and intersectionality because the hearing

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<sup>84</sup> U.S. Congress, House of Representatives, Subcommittee on the Constitution, Civil Rights and Civil Liberties, *Impact of Ledbetter v. Goodyear on the Effective Enforcement of Civil Right Laws*, 110<sup>th</sup> Cong., 1<sup>st</sup> sess., (June 28, 2007).

<sup>85</sup> *Ibid.*, 2.

<sup>86</sup> *Ibid.*, 88.

contextualizes women's workplaces in terms of assumed traditional gender skills and the varied experiences women have.

On top of the apparent outrage in the congressional hearing, there was a presidential election around the corner. With most elections, the Democrats economic policy goals cater to the poor and middle class. During the 2008 Presidential election, the Democratic Party's focus was on wage issues for working women given the decision of *Ledbetter v. Goodyear Tire and Rubber Co.* At the 2008 Democratic National Convention, it became evident that Lilly Ledbetter was going to be the "face" of equal pay for the United States because of the speech she gave. In her speech, Ledbetter backed Barack Obama to be the presidential candidate for the Democratic Party. Ledbetter stated,

We can't afford more of the same votes that deny women their equal rights. Barack Obama is on our side. He is fighting to fix this terrible ruling, and as president, he has promised to appoint justices who will enforce laws that protect everyday people like me.<sup>87</sup>

Her backing of Obama helped push him to be elected president because of the promise to create legislation that would protect women from wage discrimination.

At the same time, Ledbetter's speech provides a false sense of security that legislation regarding fair pay for women is an assurance for women to get equal pay. She ends her speech by elaborating on how a fundamental American principle is equal pay for equal work.<sup>88</sup>

Materialist feminism argues that language can provide a false sense of security when capital (i.e. money or wage) is promised to be equal among men and women. There is a false sense of security because materialist feminists recognize that there are social hierarchies between men

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<sup>87</sup> Lilly Ledbetter, *Pay Equity Pioneer Lilly Ledbetter Addresses the DNC* (August 26, 2008), Televised Speech, accessed June 10, 2013, [http://www.pbs.org/newshour/bb/politics/july-dec08/ledbetter\\_08-26.html](http://www.pbs.org/newshour/bb/politics/july-dec08/ledbetter_08-26.html).

<sup>88</sup> Ibid.

and women, where men are above women in relations of power.<sup>89</sup> As the following will show, the legislation that President Obama signed his first day in office does not specifically grant equal pay for women.

President Obama's first piece of legislation he signed was the Lilly Ledbetter Fair Pay Restoration Act of 2009 drafted by the 111<sup>th</sup> Congress. This act amends Title VII the Civil Rights Act of 1964 and the Age Discrimination Act of 1973 to:

Clarify that a discriminatory compensation decision or other practice that is unlawful under such Acts occurs each time compensation is paid pursuant to the discriminatory compensation decision or other practice, and for other purposes.<sup>90</sup>

The 111<sup>th</sup> Congress based this Act on the Supreme Court's decision on *Ledbetter vs. Goodyear Tire and Rubber Co.* With the Act it is discriminatory to allow statutory protections that only help a company and hurt workers. This Act makes it possible for an individual to file a case of wage discrimination without a time limit on when do so.<sup>91</sup> Therefore, if an individual is not aware that pay discrimination is occurring then when they are informed they are not restricted to a time frame of 180 days of when the first instance of pay discrimination occurred. This Act is useful in examining equal pay because it does not directly enforce equal pay. All the Act does is place responsibility on the individual to be informed on whether pay discrimination is occurring, which is difficult to determine. This links to intersectionality in that there are societal assumptions about the wage and the value of women's work being known when they are not.<sup>92</sup> Yet, materialist feminist theory would critique this Act further to show how the subjectivity of

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<sup>89</sup> Hennessy, op. cit., 30.

<sup>90</sup> *Lilly Ledbetter Fair Pay Restoration Act of 2009*, Public Law 111-2, 111<sup>th</sup> Cong. 1<sup>st</sup> sess. January 29, 2009), in *Ledbetter, Grace and Grit*, op. cit., 245.

<sup>91</sup> *Ibid.*, 246.

<sup>92</sup> Greenberg, op. cit.

the Act is not at all what the language surrounding the Act is. The political, economic and social rhetoric on equal pay in the media coverage contribute to the victim blaming of women in pay discrimination.<sup>89</sup> The language in the Act still places the woman as responsible for knowing about wage discrimination, rather than having government entities check into employers' salary structures and distribution.

The same day President Obama and Congress signed the Lilly Ledbetter Fair Pay Restoration Act into law in 2009, the Paycheck Fairness Act was proposed. This legislation has, to date, not been passed.<sup>93</sup> The Paycheck Fairness Act would strengthen the Equal Pay Act by closing loopholes for employers, strengthening penalties for violators and prohibiting the retaliation against workers who question or discuss their wages.<sup>94</sup> The Act would require the EEOC to be better trained in wage discrimination claims as well as to have the Department of Labor promote equal pay to employers through hosting educational workshops.<sup>95</sup> This Act also could create a competitive grant program that would provide salary-negotiating training for women and girls.<sup>96</sup> Thus, the goal of the Act is to protect women from pay discrimination, provide knowledge to the employers of the risks of not allocating equal pay and trains women to have wage negotiating skills. The Paycheck Fairness Act deals directly with equal pay as an issue that needs to be resolved, yet this bill was not signed into law. Together this proposed piece of legislation, the Ledbetter Act and the media representations of the two laws can be

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<sup>93</sup> The Paycheck Fairness Act passed the House of Representatives, but the bill was filibustered by the Republicans in the Senate in November 2010. The bill was introduced again by Senator Barbara Mikulski in January 2013, but is still pending a hearing in the Senate before it can continue to the House of Representatives. Found in Ledbetter, *Grace and Grit*, op. cit., 237, and U.S. Congress, Senate, *Paycheck Fairness Act*. S. 84. 113<sup>th</sup> Cong. 1st sess. (Jan. 23, 2013).

<sup>94</sup> *Paycheck Fairness Act of 2009*, H.R. 12, 111<sup>th</sup> Cong., 1<sup>st</sup> sess., (January 29, 2009), in Ledbetter, *Grace and Grit*, op. cit., 252.

<sup>95</sup> *Ibid.*, 254.

<sup>96</sup> *Ibid.*, 257.

analyzed through the theories of neoliberalism and intersectionality, with materialist feminism pushing further to point out the power and lack of accountability in government and employers. The next section will critique the rhetoric in media coverage of equal pay during the 2008 and 2012 presidential elections.

## **MEDIA ANALYSIS METHODOLOGY**

The support and passion behind Lilly Ledbetter's case propelled the 2008 and 2012 Presidential election campaigns to focus on women, work and the economy. Much of the discussion around women and work in these campaigns frequently referenced equal pay, women's economic status, Lilly Ledbetter herself and pay equity legislation. Examining the media coverage of the 2008 and 2012 election cycles is important because doing so uncovers various representations of public perceptions of when, why and how Lilly Ledbetter, working women and equal pay mattered to the Democratic and Republican Party Presidential candidates. In this section, I examine how three major national newspapers; *The New York Times*, *The Washington Post* and *The Wall Street Journal*, covered fair pay issues during the two Presidential campaigns. These three papers were chosen because they are considered national newspapers of public record.<sup>97</sup> I made a conscious decision not to include the 2010 midterm elections for two reasons; first, the nation as a whole focuses primarily on Presidential elections and, second, in both 2008 and 2012, Barack Obama, as the Democratic nominee, used Lilly Ledbetter's story as a political tactic to showcase what had done to advocate equal pay for women, along with what he hoped to do if elected (or re-elected) to the Presidency.

Using the methodology of content analysis, I examined selected coverage of the 2008 and 2012 Presidential elections to evaluate the messages delivered about equal pay in the United

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<sup>97</sup> Christopher H. Sterling, *Encyclopedia of Journalism* (Thousand Oaks, CA: Sage Publications Inc., 2009).

States. In my study sample, I selected twenty-two articles and eight editorials to demonstrate the range of messages presented by the press. While articles are considered “objective” journalism and editorials are considered “opinion” journalism, both inform and reflect political sentiments to the American public. I chose not to include op-ed pieces because they are by authors not affiliated with a particular newspaper’s editorial board. Breaking down the process by publication date, I made selections that correlate to three phases in an election cycle: six months before Election Day (April-June),<sup>98</sup> the midst of conventions (August-September),<sup>99</sup> and the last month before the election (October).<sup>98</sup> Selections were then made if there were similar topics covered among the papers that were published within a few days of one another. I developed analytic categories of equal pay, women’s economic status, Lilly Ledbetter and pay equity legislation because they emerged from my study of newspaper articles and editorials during the 2008 and 2012 Presidential elections. I used these categories, which had some overlap, to analyze whether the rhetoric used is indicative of the theoretical frameworks of neoliberalism, materialist feminism or intersectionality. What I have found is that throughout both elections, mention of equal pay appeared in twenty-one texts; women and the economy were mentioned in twenty texts; Lilly Ledbetter was named in eighteen texts and pay equity legislation was discussed in twenty-three texts. My purpose in undertaking this media analysis was to determine

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<sup>98</sup> I chose six months before the election day because each party had selected a candidate by this time. The Presidential elections were held on November 4, 2008 and November 6, 2012. “2008 Presidential Election,” *U.S. Electoral College*, accessed April 29, 2014, <http://www.archives.gov/federal-register/electoral-college/2008/dates.html>; “2012 Presidential Election,” *U.S. Electoral College*, accessed April 29, 2014, <http://www.archives.gov/federal-register/electoral-college/key-dates.html>.

<sup>99</sup> The Democratic National Conventions were held Aug. 25-28, 2008 in Denver, CO. and Sept. 3-6, 2012 in Charlotte, NC. The Republican National Conventions were held Sept. 1-4, 2008 in St. Paul, MN. and Aug. 27-30, 2012 in Tampa Bay, FL. “2008 Democratic and Republican National Conventions,” *CNN*, accessed April 29, 2014, <http://www.cnn.com/ELECTION/2008/conventions/>; John F. Harris and Jim Vandehei, “Two Conventions tell the tale of 2012,” *Politico*. Accessed April 29, 2014. <http://www.politico.com/2012-election/conventions/>.



whether the issue of fair pay for women was highly relevant in the United States during the last two Presidential election cycles.

### **2008 PRESIDENTIAL ELECTION MEDIA COVERAGE**

The 2008 election had the potential to break records with regard to filling the offices of Vice President and President. On the one hand, if Barack Obama won the Democratic nomination and then the general election in November, he would be the first African American President. On the other hand, if Hillary Clinton won the Democratic nomination and then the Presidency she would become the first female President. On top of this, Sarah Palin was the Vice Presidential nominee on the Republican ticket; if elected, she would become the first female Vice President. Perhaps needless to say, the 2008 election quickly became about capturing the votes of white women and women and men who belong to racial or ethnic minorities, primarily but not exclusively African Americans and Latinos. The fifteen articles from 2008 serve as evidence that the candidates in the 2008 Presidential election had to focus on working women, equal pay, Lilly Ledbetter and legislation, at least to some extent.

#### ***Equal Pay***

The use of equal pay was brought up in thirteen pieces chosen for 2008 media coverage. Whenever equal pay was mentioned it was usually a part of the phrase “equal pay, for equal work.” This is a vague phrase because it deals with the complicated issue of comparable worth between men and women. Comparable worth is based upon the gendered value of the worker and it is a delicate issue to address. When “equal pay for equal work” is used, it suggests that a universal value of evaluating the work men and women do is achievable. Alice Kessler-Harris points out that the phrase “equal pay for equal work” is ambiguous because it encapsulates

mixed messages about gender, which have shifted in meaning over time.<sup>100</sup> Having a universal method of evaluating “equal pay for equal work” is not plausible because everyone does not have the same attitudes towards men and women. The following shows how the phrase was utilized, either in a newspaper’s content or a politician’s statement.

In the coverage of “equal pay for equal work,” there are many suggestions on how equal pay can be possible in the United States. For example, in *The Wall Street Journal* article, Kris Maher called attention to an ad that evokes the notion of comparable worth. Maher explains: “The ad says women earn seventy-seven cents for every dollar that men earn and that Senator John McCain ‘opposed a law to guarantee women equal pay for equal work. It is one more thing John McCain does not get about our economy,’ a narrator says.”<sup>101</sup> With this ad the nation is misguided to the idea that a standard could exist where every person would be able to determine comparable worth in the same way. Yes, the idea of comparable worth would decrease the pay gap, but there is no suggestion present on how to determine worth. As materialist feminism theorizes, patriarchal and capitalist arrangements maintain the placement of the woman in systems of exploitation and oppression.<sup>102</sup> Men’s status in society is already valued higher than women’s, so it is not hard to see that a woman’s work value is deemed less than a man’s work value.

Politicians were also quoted as using the phrase “equal pay for equal work” in the press coverage. When politicians used the phrase it was positioned as a positive belief they held that their opponent did not. Granted the phrase does send a positive message to the constituency, it is

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<sup>100</sup> Kessler-Harris, *A Woman's Wage*, op. cit., 82.

<sup>101</sup> Kris Maher, “Campaign ’08: Obama Puts Spotlight on Women’s Pay Gap,” *The Wall Street Journal*, Sept. 25, 2008.

<sup>102</sup> Hennessy, op. cit., 36.

simply a false positive that lacks a plan for closing the wage gap. In *The New York Times* article, “Obama Takes on Women’s Issues,” Obama is quoted as saying:

There should be a basic principle of equal pay for equal work and I hope that by the time they [Obama’s daughters] are grown, discrimination against women in the workplace would have ended.<sup>103</sup>

And in *The Washington Post* article, “Ideology Aside, This has been the Year of the Woman”

Lois Romano reports:

Karen O’Connor, director of the Women and Politics Institute at American University, argues that while Palin ‘has had extraordinary accomplishments . . . to be a feminist, you have to believe women deserve equal pay for equal work.’<sup>104</sup>

The phrase was never interrogated by politicians, who might have questioned just how equivalencies between pay, work and gender would be determined. When politicians use the phrase “equal pay for equal work,” it presents a promise to the nation that if elected they have a plan that will make equal pay exist for women. Simply saying the phrase is not an indicator that a plan exists for this to happen; nor could there be such a plan, for the concept of equity is so complicated. “Equal pay for equal work” thus becomes a catch-phrase, signifying a neoliberal political tactic to position an individual politician more favorably than a rival for a particular office. The media increases this competition while endorsing the ideology of neoliberalism, through providing a platform from which politicians may speak to, and define, wage discrimination as a private matter instead of a broader social issue.<sup>105</sup> Politicians use this catch-phrase when attacking opponents in hopes of creating the impression that the other side does not care about women’s equality and economic wellbeing.

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<sup>103</sup> John M. Broder, “Obama Takes on Women’s Issues,” *The New York Times*, Aug. 19, 2008.

<sup>104</sup> Lois Romano, “Ideology Aside, This Has Been the Year of the Woman,” *The Washington Post*, Oct. 24 2008.

<sup>105</sup> Giroux, op. cit., XVIII.

### *Women and the Economy*

By directing attention to the wage gap, a focus on women and the economy was prevalent in ten of the newspaper texts. A lot of the coverage discussed the widely varying views and goals of each Presidential candidate. Republican candidate John McCain reportedly emphasized his qualifications with regard to foreign policy and Barack Obama reportedly favored issues regarding women's economic status. As a result, McCain was often positioned negatively for not caring about women's lower status in the economy, while Obama was praised. The media reported that McCain was criticized for wanting to "continue President Bush's policies on the economy."<sup>106</sup> President Bush had backed policies that were based in neoliberal ideology, where "neoliberal market language merged with a neoconservative security agenda."<sup>107</sup> Essentially, the message was that McCain's plan for a healthy economy was pro-business, not pro-women. This was evident in convention coverage and reporting on the candidates congressional voting statistics.

By the end of August 2008, both John McCain and Barack Obama were in the midst of the campaign trail, attending numerous events and conventions. The media followed them throughout the campaign, reporting on the promises each candidate made when attempting to demonstrate that he would be an effective President. From the reporting, it became clear just who the candidates thought government should fight for. For instance, *The Wall Street Journal* article by Amy Chozick and Elizabeth Holmes highlights how Barack Obama had shown support for equal pay and John McCain did not at each of their respective Democratic and Republican National Conventions. John McCain based his message on how his military credentials were

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<sup>106</sup> Broder, op. cit.

<sup>107</sup> Steger and Roy, op. cit., 121.

relevant to foreign policy issues, whereas “Barack Obama empathized with the economic cares of female supporters.”<sup>108</sup> The commentary on Obama’s interest in elevating the status of women in the economy places John McCain as the weaker candidate. Obama’s reported “empathy” was another political tactic to gain women’s votes. Obama does believe that women deserve a fair wage, but the only pay equity policy passed during his presidency got rid of the time limit in which to file a claim of discrimination. The much-vaunted “Lilly Ledbetter Fair Pay Act” did nothing to proactively increase women’s economic status by giving the government more responsibility. The trend in United States economic policy has been devolution of government responsibility for social and economic solutions to problems, rooted in President Reagan’s trickle down economic plan.<sup>109</sup> The lack of government regulation as an integral component of pay equity legislation is evident in the Ledbetter Fair Pay Act. Whether or not a candidate supported the Act when it was proposed became a point of contention in the election.

In April of 2008, the Ledbetter Fair pay Act went before Congress and failed. Obama was applauded for backing the bill, while McCain was criticized for opposing it.<sup>110</sup> The reporting on McCain’s choice to vote against the Lilly Ledbetter Act was another way in which the media showed that he had no intentions of helping women in the economy. Some of the press misconstrued McCain’s reasoning for not supporting the Act. In *The Washington Post* editorial, “Pocketbook Issue,” Ruth Marcus comments, “McCain opposes the bill because it ‘opens us up to lawsuits for all kinds of problems.’ Well, yes, that would be the point of a law prohibiting pay

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<sup>108</sup> Amy Chozick and Elizabeth Holmes, “Campaign ’08: Candidates Hone Messages in Convention Run-Up; McCain Focuses On Foreign Policy, Obama on Economy.” *The Wall Street Journal*, Aug. 19, 2008.

<sup>109</sup> Steger and Roy, *op. cit.*, 26.

<sup>110</sup> Maher, *op. cit.*; Ruth Marcus, “Pocketbook Issue: A Pay Case that Obama Needs to Woo Women,” *The Washington Post*, Aug. 20, 2008.

discrimination.”<sup>111</sup> With this example two things are happening. First, the quote of McCain using the identifier “us” makes it unclear who the “us” is. It could mean government or corporations; it certainly doesn’t mean women who experience paycheck discrimination. Either way it is reminiscent of neoliberalism because the well-being of the people is not prioritized over the financial well-being of those in power. Laws, currently in place, favor the profit and power of business, rendering the worker to be defenseless against their employer.<sup>112</sup> Second, Marcus’ falsely presents the Act as “prohibiting” pay discrimination, the Act made legal avenues a little easier to navigate. Anytime the Act is referenced in this way, the nation is fed with a lie that employers will actively stop discriminatory pay. Women and their economic well-being was a heated topic provided the consistent reference to McCain’s and Obama’s stance on an Act that was born out of the unfavorable decision of *Ledbetter v. Goodyear Tire & Rubber Co., Inc.*

### ***Lilly Ledbetter***

Ledbetter’s loss at the Supreme Court directed national attention to equal pay, women and the economy. The Democratic candidates, Hillary Clinton and Barack Obama, needed to show their support of equal pay for women and did so by presenting Ledbetter as the figurehead of equal pay by looking for her endorsement. By August of 2008, at the Democratic National Convention Lilly Ledbetter officially backed Barack Obama as the Democratic candidate.<sup>113</sup> Of the fifteen texts I chose from 2008, specific mentions of Ledbetter’s name were located in nine pieces. In those nine, Ledbetter was positioned as the “face” of equal pay issues in either one of two ways.

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<sup>111</sup> Marcus, op. cit.

<sup>112</sup> Chomsky, op. cit., 39.

<sup>113</sup> Ledbetter, *Grace and Grit*, op. cit., 223.

First, she was presented as a victim of pay discrimination because of her loss at the Supreme Court. Whenever Ledbetter's loss was mentioned, her story was brought up, but the emphasis remained on the Court's decision that she did not file her claim by the appropriate deadline. The repeated commentary on the deadline was a way of dredging up the "victim script." "In Defense of Workers," an editorial in *The New York Times*, argued that, "The Court may have realized after its Ledbetter ruling—which has been criticized not only in Congress, but on the Presidential campaign trail—that the American people want a Supreme Court that does not stack the deck in favor of the powerful."<sup>114</sup> The word "powerful" indicates that there is a "weak," which means the victim. Blaming the victim—in this case Lily Ledbetter—for her pay discrimination is rich with neoliberalism, as previously discussed in this thesis. Considering that Ledbetter's story was widely present in the media, more needs to be drawn out of it to show how complex an experience wage discrimination can be. Ledbetter's experience cannot be reduced to her finding out she was being paid less than her male counterparts. She also had top performance awards, was denied a raise, and had faced sexual harassment etc.<sup>115</sup> Crenshaw provides the metaphor:

Discrimination, like traffic through an intersection, may flow in one direction, and it may flow in another. If an accident happens in an intersection, it can be caused by cars traveling from any number of direction and, sometimes, from all of them. Similarly, if a Black woman is harmed because she is in the intersection, her injury could result from sex discrimination or race discrimination.<sup>116</sup>

Discrimination is the result of multiple interacting experiences; thus discrimination claims cannot be reduced to a single experience. An intersectional approach would redirect the focus

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<sup>114</sup> "In Defense of Workers," *The New York Times*, May 29, 2008.

<sup>115</sup> Ledbetter, *Grace and Grit*, op. cit.

<sup>116</sup> Crenshaw, op. cit., 232.

from the outcome of Ledbetter's story to a more complex analysis of the varying aspects of how pay discrimination is structurally imbedded within the United States.

Second, media coverage kept commenting on Lilly Ledbetter's presence on Obama's campaign trail. Ledbetter followed Obama on the campaign trail by giving speeches at rallies, events and the Democratic National Convention. The press provided commentary that turned into a trope about Ledbetter's serving as "the face of equal pay." An example of this is when Ruth Marcus suggested that Ledbetter had become a sort of "running mate" alongside of Barack Obama:

By the time election day arrives, you might be forgiven for thinking that Barack Obama's running mate is named Lilly Ledbetter... there is appeal of Ledbetter as a campaign issue...Ledbetter puts a human face on a pocketbook issue.<sup>117</sup>

Ledbetter provided her story of the discrimination she faced at Goodyear Tire in the speeches she would give. The image of her on the campaign trail was leverage to get the female vote. Ledbetter's endorsement of Obama was a signal to women that he was the right candidate who would deliver on his promise to end discrimination against women in the workplace. Ledbetter's role on the campaign trail can be critiqued by the reward incentive associated with women increasing their productivity. Historically, women would increase their production as a way of gaining higher wages and being valued in terms of their total output.<sup>118</sup> Just as Ledbetter's production value at Goodyear Tire had been defined in terms of her line's output, her production value on the campaign trail was defined in terms of Democrats benefitting from the "gender gap" by receiving more women's votes than their Republican counterparts. The Ledbetter Act of 2009 can be

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<sup>117</sup> Marcus, *op. cit.*

<sup>118</sup> Kessler-Harris, *Gendering Labor History*, *op. cit.*, 165.



seen as a reward for Ledbetter's having joined the campaign trail and stumped for Barack Obama.

### ***Pay Equity Legislation***

Mentions of legislation affecting pay equity were pertinent throughout the 2008 Presidential campaign. In eight of the fifteen texts, concerns were expressed over the pending Ledbetter Fair Pay Act that was up for vote in Congress. On April 23, 2008, the Senate voted against the Ledbetter Fair Pay Act. The nation was divided over how this bill failed to become law. Based on newspaper coverage from *The New York Times*, *The Washington Post* and *The Wall Street Journal*, there was a lot of discussion regarding the Supreme Court ruling for *Ledbetter v. Goodyear Tire Co.*, which many viewed as a barrier to pay equity; several texts argued that the Ledbetter Fair Pay Act should be passed. In *The New York Times* editorial, "Pass the Fair Pay Act:"

They [Supreme Court] decided that Ms. Ledbetter had to sue within 180 days of the company's discriminatory raises and that the persistence of unfairness from check to check was not relevant... The bill would re-establish that the deadline for making a charge of pay discrimination under Title VII runs from when a worker receives unequal pay, not from the day a company first decided to discriminate.<sup>119</sup>

This concern over the 180 day deadline implies that the Ledbetter Fair Pay Act would represent a major step towards equal pay, when, in reality, it was not. Expanding the narrow 180 day time frame in which a woman can file a claim is no guarantee that an employer will pay fairly in the first place. Currently, the Ledbetter Fair Pay Act does not guarantee that an employer would pay damages retroactively. Media treatment of the Ledbetter Act has neoliberal traces; there is no mention of holding the employers accountable. The corporation, in this instance, is treated more

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<sup>119</sup> "Pass the Fair Pay Act," *The New York Times*, April 23, 2008.

humanely than the individual because of its ability to contribute to capital growth.<sup>120</sup> It leaves responsibility up to the individual woman to determine that her pay is disproportionate to that of her male counterpart, without providing any means by which that determination could be facilitated and justice granted. This misinforms the public by suggesting that the only barrier to pay equity has to do with a time limit in which to file discrimination. Such reporting does not call out the government's or employer's role in reinforcing discrimination against women. Without this, the message is that ensuring equal pay is up to the individuals.

On top of this, there was apprehension regarding the possibility that the Ledbetter Fair Pay Act might open up a floodgate of pay discrimination cases. The concern was that people would wait to file a suit as a means to accumulate more money. *The Washington Post* editorial, "Fair Pay, Fair Play," provided two reasons why this seemed unlikely:

In the first place, those who know, or have strong suspicions, that they're being discriminated against are unlikely to stay silent and continue to receive what they believe are unjustifiably and illegally low paychecks. Second, the new legislation would allow a paycheck to trigger a new opportunity to file suit only if that paycheck continues to reflect discriminatory pay.<sup>121</sup>

These are important points, especially when viewed through a materialist feminist lens.

Assuming that a woman would wait to file a claim is also assuming that a woman does not have any financial responsibilities where she could benefit from a larger and fair wage, such as providing for a family. Access to social safety nets, such as welfare, is difficult for women to obtain and women need the finances to survive and provide for their family.<sup>122</sup> It is improbable

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<sup>120</sup> Harvey, op. cit., 80.

<sup>121</sup> "Fair Pay, Fair Play: The Senate Should Restore Workers' Ability to Sue Over Pay Discrimination, Whenever the Injustice is Discovered," *The Washington Post*, April 23, 2008.

<sup>122</sup> Naples, op. cit.

that any woman with financial needs would agree to receiving a stagnant pay that is less than her male counterparts.

While there was coverage in support of the Ledbetter Act, some pieces reflected a less supportive stance. On the one hand, the language of the Act allows for loopholes that may present obstacles to achieving fair pay. For instance, one editorial argued that the language does not allow for someone other than the employee to bring a claim based on Title VII.<sup>123</sup> This resonates with the focus on individual responsibility and victim blaming. As David Harvey suggests, “The social safety net is reduced to a bare minimum in favor of a system that emphasizes personal responsibility. Personal failure is generally attributed to personal failings, and the victim is all too often blamed.”<sup>124</sup> Lilly Ledbetter was blamed for her own wage discrimination, simply because she did not know that the male colleagues were earning more than she had in time to make the filings mandated by law. The message presented in the Act is that the solution places the individual at fault for not knowing, rather than addressing how equal pay is a systemic problem. The reference to the employee’s having to file the claim makes it difficult for any individual to hold government accountable for investigating wage distribution in companies. A government enforcement mechanism would be better suited to investigate wage discrimination because of the greater access to resources and agencies the government possesses.

On the other hand, there was criticism of the Democrats for having proposed the Lilly Ledbetter Fair Pay Act. Again, the issues surrounded the time frame for filing claims; Republicans thought that more cases would be filed if there was no strictly defined time frame for filing a discrimination case. The negative perception of the Ledbetter Act’s encouraging a

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<sup>123</sup> “Fair Pay, Fair Play,” *op. cit.*

<sup>124</sup> Harvey, *op. cit.*, 76.

dramatic increase in lawsuits and payouts hints at the fear of pay equity and workers justice. The fear of employers not being able to defend themselves or afford settlement is unrealistic. Justice Ginsberg has argued that employers have more access to money to pay court costs than employees and that federal courts have the discretionary responsibility to provide just rulings that consider intent of a suit.<sup>125</sup> Judges are trained to recognize when a case is not in good standing, as in, they should be able to recognize when a person is trying to capitalize on a discrimination claim. An example of this is illustrated in *The Wall Street Journal* editorial, “The Foul Play Act,” which states:

Ms. Ledbetter took the novel view that a decision made decades ago by her now-deceased former boss affected her pay all the way to her retirement, so each paycheck was a new discriminatory act. On this theory, there would be no statute of limitations at all. Cases could be brought long after relevant evidence and witnesses had passed from the scene. In practice, every such suit would become a new trial lawyer pay day, as employers settled cases they would find impossible to defend. Democrats decided to make this enterprising legal theory the law of land via the Ledbetter Fair Pay Act.<sup>126</sup>

All this fear does is promote the economic well-being of the company. An individual’s economic well-being is pushed under the rug and so is the fact that women continue to be paid less than their male counterparts, which limits women’s ability to contribute to the economy. Women are vital to the economy because of their purchasing power.<sup>127</sup> Having barriers to equal pay in place only restricts their potential to contribute more to the economy, but this is not brought up. Thus, working women and equal pay remained relevant during the 2012 Presidential election.

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<sup>125</sup> Ginsberg, op. cit., 16.

<sup>126</sup> “The Foul Play Act,” *The Wall Street Journal*, April 26, 2008.

<sup>127</sup> Shriver, op. cit.

## 2012 PRESIDENTIAL ELECTION MEDIA COVERAGE

While the 2008 Presidential election brought Barack Obama victory and he signed the Lily Ledbetter Fair Pay Act with great fanfare during his first week in office, women and work remained a major focus in the 2012 Presidential elections. Like the 2008 election, the 2012 election directed attention to getting women's votes. President Obama was running for reelection against Republican nominee Mitt Romney. Both were praised and criticized for their views on working women in the United States. Each candidate needed to present his views on how he would better improve the economic status of women as way to get women's votes. Within the fifteen articles chosen for 2012, equal pay, women and the economy, Lilly Ledbetter and pay equity legislation remained salient topics, upon which the media drew while covering the campaign.

### *Equal Pay*

In the four years of President Obama's first term in office, the wage gap was decreased by four percent in the United States; in 2008 women made seventy-seven percent of men's earnings and in 2012 women made eighty-one percent of men's earnings.<sup>128</sup> This shows that the Ledbetter Act did not solve the problem of equal pay and that it remains a major issue for working women. President Obama and Mitt Romney had to maximize their effort on gaining the women's vote through attending to equal pay; eight texts reflected this. Rosalind Helderman and Nia-Malika Henderson wrote, in *The Washington Post*, how both candidates had to "tussle over subjects of contraception and unequal pay."<sup>129</sup> The candidates presented their records on working women, where Romney was cast negatively as a part of the "Republican War on

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<sup>128</sup> Bureau of Labor Statistics, *Highlights of Women's Earnings in 2012* (Washington DC: GPO, October 2013), 2.

<sup>129</sup> Rosalind S. Helderman, and Nia-Malika Henderson, "Both Sides Renew Fight for the Key Support of Women," *The Washington Post*, Oct. 18, 2012.

Women” and Obama was cast positively through promoting his beliefs and achievements for working women, mainly the Ledbetter Act of 2009.

As a way to show support for equal pay for equal work, Romney discussed his hiring of female employees when he was governor of Massachusetts. Unfortunately, when Romney talked about this he made the comment that he had “binders full of women” that he would draw from when hiring. The press jumped on the phrase “binders full of women” and spun it to show Romney as unsupportive of equal pay and a part of the “Republican War on Women.” A reporter for *The Washington Post*, Melinda Henneberger, acknowledged that “binders full of women” was taken out of context and exaggerated by the media. However, Henneberger still used “binders full of women” as an entry point for arguing that Romney went to binders because “he has nothing to say about pay equity since he is not for it.”<sup>130</sup> The catch-phrase became used by the press to influence the public perception of Romney as having reduced women and women’s concerns to “binders.” Materialist feminism shows how views towards women are a part of a system that reduces women to a single, totalized value. Martha Gimenez elaborates:

MatFem (material feminism) is a ‘way of reading’ that rejects the dominant pluralist paradigms and logics of contingency and seeks to establish the connections between the discursively constructed differentiated subjectivities that have replaced the generic ‘woman’ in feminist theorizing, and the hierarchies of inequality that exploit and oppress women. Subjectivities, in other words, cannot be understood in isolation from systemically organized totalities.<sup>131</sup>

Such an understanding of materialist feminism recognizes the danger of relying on a totalizing category of “woman.” Women were reduced to an inanimate object (the binder) whose work fate was in control of a man (Mitt Romney). Clearly, the press used “binders full of women” to

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<sup>130</sup> Melinda Henneberger, “Binders Full of Women vs. Obama’s One-note Pitch,” *The Washington Post*, Oct. 19, 2012.

<sup>131</sup> Martha E. Gimenez, “What’s Material About Materialist Feminism? A Marxist Feminist Critique,” *Radical Philosophy*, 101 (2000): 18.

create the impression that Republicans were dehumanizing working women and not in a manner suggestive of arguments in favor of equal pay.

On September 4, 2012, the Democratic National Convention took place in North Carolina. Around this time there was heavy coverage about the content of Michelle Obama's speech for the evening because of her role in providing a positive image of the President and his goals. *The New York Times*, *The Washington Post* and *The Wall Street Journal* each recapped what she said with specific mentioning of what President Obama has done for pay equity. In *The Wall Street Journal* article, "Democrats Push to Rebut GOP:"

Mrs. Obama used the story of her father, and of Mr. Obama's bank-worker grandmother, to explain the President's support for equal-pay laws...His grandmother woke at dawn to catch the bus to her job as a secretary at a community bank, only to see more qualified men pass by her. <sup>132</sup>

This story evokes the unsettling view that male workers are valued more than female workers. "Qualified" is a variation of valued; as such the "qualification" of the worker relates to material feminism. Women's wages have not been based on their level of productivity; rather, women's wages have, historically, been based on their gendered value as women. Kessler-Harris describes:

For if the custom was inscribed into the wage and the wage was conceived male, what women earned was not in the same sense a 'wage' as it was for men. In the minds of employers and of male workers, the wage was to be paid to those who supported families. If part of its function was to reflect the value of the product made, another and equally important part was to make a statement about the value of the worker who made the product. As long as female workers were not—could not be—male workers, their wages could not hope to touch those of their male peers. <sup>133</sup>

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<sup>132</sup> Laura Meckler, and Carol E. Lee, "Democrats Push to Rebut GOP: Michelle Obama Energizes Convention as Party Courts Women, Hispanic Voters," *The Wall Street Journal*, Sept. 5, 2012.

<sup>133</sup> Kessler-Harris, *A Woman's Wage*, op. cit., 17.

The story of President Obama's grandmother makes use of material feminism's theory of women's production value as a means to tug at the heart strings of women voters to signal that something needs to be done for equal pay. With this story, President Obama is characterized as the one who can do so without having to propose ideas on how he would make it easier for women to advance in the economy.

### ***Women and the Economy***

Because Romney was associated with the "Republican War on Women," he had to take steps to show that he cared about women and the economy. Romney would mention his record with women and their economic status in Massachusetts, while he would suggest that women have fared poorly in the economy under Obama. Obama posed Romney's record as bad for women and the economy as well. The multi-faceted issues women face in the economy was hardly touched upon in the fifteen selections. Talking about experiences of women in the economy provides a pathway to discuss changes in policy that would benefit women's economic status. As it stands now, the current policy is limiting to women's experiences because of having to identify with one category of sex or race in law. Julie Greenberg explains arbitrary nature of categories in the legal system and argues:

The law's assignment of individuals to a particular racial or sexual category may affect an individual's fundamental rights, including her right to: (1) certain governmental and employment benefits (2) self-identify race and sex on official documents (3) marry as one's self-identified sex, and (4) protections from discrimination under the equal protection guarantees of the U.S. Constitution.<sup>134</sup>

The press did not provide coverage of what should change in the law, or any policy projections or policy content that either candidate could propose aimed at improving the economic status of women. Rather the media acted as a political scorekeeper, reporting to the public the past

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<sup>134</sup> Greenberg, *op. cit.*, 102.



actions each candidate took towards women; discussion along these lines was present in ten of the fifteen selections.

On the one hand, the press reported on the economic policies attacks of each candidate. The press had a unique position of selecting which quotes to report to the public. In doing so the press was able to situate the candidates in particular ways, where the disagreements between the opponents were intensified. An example of this is in *The Wall Street Journal* article, where Patrick O'Connor and Sara Murray reported:

The Obama campaign seized on the aides' unwillingness to state Mr. Romney's position on the law, producing a statement from Ms. Ledbetter, the plaintiff in a lawsuit that led to the law [Ledbetter Fair Pay Act]. 'If he is truly concerned about women in this economy, he wouldn't have to take time to think about whether he supports' the law, she said ... A series of statements from the campaign said women have fared poorly under Mr. Obama. 'The real war on women is being waged by the President's failed economic policies,' Mr. Romney said at an event in Hartford, Conn.<sup>135</sup>

All of this was simply finger pointing of which candidate would fail women with his economic policies. The press focused on the "he said, he said" aspect of it and failed to present the actual facts regarding the policy proposals and support either candidate would provide for women. As history has shown, the policies of Democratic or Republican Presidents have been entrenched with neoliberalism and do not focus on women to begin with. The state protects the economic growth of business over social needs, which in turn devalues the worker (in the issue of equal pay, the woman worker).<sup>136</sup> The public is not getting the message that policies specifically focused on improving women's status are being ignored.

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<sup>135</sup> O'Connor, Patrick and Sara Murray, "A Liberated Romney Escalates Efforts to Raise Money," *The Wall Street Journal*, April 12, 2012.

<sup>136</sup> Giroux, op. cit., 106.

On the other hand, the press would occasionally reference the Ledbetter Fair Pay Act of 2009 as positive economic outcome for women. How the press would denote this would be misleading to any woman because a wage gap and pay discrimination still existed. For example, Amy Gardner reported that, “Women from many other walks of life will also be joining the roster, including Lilly Ledbetter, after whom a federal law was named requiring that women earn equal pay for equal work.”<sup>137</sup> The specifics that would have showed how the bill would help women were not brought up, but it was assumed that the bill proactively helped women achieve a higher wage, when it would not, in fact, do so. The reporting reinforced the individual rhetoric of neoliberalism by not communicating how the bill would “require” equal pay for equal work. The reference to “requiring” detracts from the fact that employers hold values that influence how they determine wages between men and women, not government. Angela Davis argues that women face a double inferiority with production value because of household and public labor; women are confined to the value of historic private roles when it is no longer necessary.<sup>138</sup> Companies determine the wage of a woman worker that is based on how women workers are valued by the company; the Act does not in any way require companies to value male and female workers the same.

### ***Lilly Ledbetter***

Four years after the 2008 Presidential election, Ledbetter was still heavily involved with and present on Obama’s 2012 campaign trail. This time around, Ledbetter was represented in terms of the Lilly Ledbetter Fair Pay Act of 2009 and questions of whether the Act represented progress for equal pay in nine of the texts I analyzed. The press tended to treat the bill positively

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<sup>137</sup> Amy Gardner, “Democrats Aim to be Inclusive,” *The Washington Post*, Aug. 23, 2012.

<sup>138</sup> Angela Davis, “Women and Capitalism: Dialectics of Oppression and Liberation,” in *The Black Feminist Reader*, edited by Joy James and T. Denean Sharpley-Whiting (Malden, MS: Blackwell, 2000), 163.

by singling out and applauding Ledbetter as a champion of equal pay. When this happened it had undertones that reflected the rhetoric of personal responsibility. Aside from this, it is clear that Ledbetter remained the figurehead of equal pay when there were other women's stories of pay discrimination that could have been represented in the media such as any woman apart of the attempt class action lawsuit in *Wal-Mart Stores, Inc. v. Betty Dukes et al.*<sup>139</sup>

Lilly Ledbetter and the Lilly Ledbetter Act were discussed on the campaign trail, especially if she was to be a speaker at an event. The press painted Ledbetter as the victim of pay discrimination because of her loss at the Supreme Court and as the image of equal pay because of the Act being named after her. One example of *The Wall Street Journal's* rhetoric is provided by the statement, "there is Lilly Ledbetter, whose pay discrimination suit was blocked by the Supreme Court, prompting Democrats to pass legislation in her name to make it easier to sue employers."<sup>140</sup> Attaching Ledbetter's name to a piece of pay equity legislation only signals that Lilly Ledbetter is the "face" of equal pay. Then the reasoning for doing so was a political tactic based in victimhood. The Democrats pointed out that Ledbetter was victimized by a system that favors the corporation over the worker. The current political climate favors protecting business and profits, making it difficult for any intervention to challenge neoliberal practices.<sup>141</sup> The use of Ledbetter's name attracts attention to only one of her experiences with pay discrimination, namely, her loss at the Supreme Court, rather than a complex discussion of what the Ledbetter Fair Pay Act of 2009 does for all women.

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<sup>139</sup> *Wal-Mart Stores, Inc. v. Betty Dukes et al.* 564 U.S.\_\_\_\_ (2011)

<sup>140</sup> Meckler, and Lee, op. cit.

<sup>141</sup> Robert W. McChesney, introduction to *Profit Over People: Neoliberalism and Global Order*, by Noam Chomsky (New York, NY: Seven Stories Press, 1999), 9.

When the Democratic National Convention took place in September, 2012, the media focused on the line-up of speakers. Michelle Obama and Lilly Ledbetter were highlighted as key speakers at the Democratic National Convention. The press covered the content and import of Michelle Obama's speech, but tended to only mention Lilly Ledbetter's having been on the podium as a speaker. I point this out because while other speakers were reported on, Ledbetter was the only one specifically mentioned by *The New York Times*, *The Washington Post* and *The Wall Street Journal*.<sup>142</sup> This need to mention Ledbetter, but not discuss her speech demonstrates the political tactic of presenting her as merely a symbol—"the face of equal pay." This signals that equal pay is an issue that an individual can easily overcome, when Ledbetter never received equal pay for equal work. Positioning Ledbetter as the figurehead of equal pay is not indicative of democracy working to combat workplace discrimination. In the time since the 2008 election, other cases had come before the Supreme Court that could have been a part of the wage gap discussion, including Betty Dukes'. Limiting the focus to Ledbetter created the illusion that equal pay was a white woman's issue.

Not covering the pay discrimination experiences of women of color in the press creates the impression that neither the women nor their issues are important. With regard to media coverage of Congresswomen, Sarah Gershon points out, "If being a female or minority representative alone leads to unfavorable coverage, then minority congresswomen, facing two sets of stereotypes, may confront significantly greater challenges in seeking the attention of the news media than do either Anglo women or minority men."<sup>143</sup> Gershon here implies that women already face the barrier of not being taken seriously when presented in the media based on

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<sup>142</sup> Meckler, and Lee, op. cit.; Gardner, op. cit.; Jim Rutenberg, "First Lady Tops Opening Night for Democrats," *The New York Times*, Sept. 5, 2012.

<sup>143</sup> Gershon, op. cit., 109.

gender alone; to add a “double burden” such as race to the mix increases the chance that the issue discussed will not be received in a serious matter. The risk needs to be taken, so that people hear the stories of women of color. If stories, such as Dukes’, were highlighted in media coverage and in the campaign, then the working women, for whom Obama was advocating pay equity, would be identified as representing the diversity that is the reality in the United States—instead of an illusory, and universal, “whiteness.”

### ***Pay Equity Legislation***

When attention was drawn to women in the American workforce in the media, coverage focused on the stances President Obama or Mitt Romney took on the Ledbetter Fair Pay Act of 2009. The fifteen times when the Lilly Ledbetter Act of 2009 was discussed in the press, a brief description of what it does was provided. The language in these descriptions sent mixed messages where the bill was, at times, depicted incorrectly. One instance that was misleading is in *The New York Times* article by Jennifer Steinhauer, describes, “Lilly M. Ledbetter, the woman whose name was attached to a 2009 law that ensured equal pay for women.”<sup>144</sup> The use of “ensuring” indicates that equal pay exists for women once the bill is signed into law. This language negates the reality that the bill does not include government enforcement regulations that would enforce equal pay. The mention of the Act in the press was not about what it does; it was used to showcase which candidate supported it, or which did not.

Just as McCain was criticized for his stance on the Ledbetter Act, so too was Romney. However, Romney’s lack of Congressional experience meant that there was no voting record that could reflect his precise position. Mitt Romney avoided questions regarding the bill, which did not work in his favor. The media repeatedly questioned Romney on whether he would have

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<sup>144</sup> Jennifer Steinhauer, “Republicans Block Bill to Ease Suits Over Pay Bias,” *The New York Times*, June 6, 2012.

supported the bill or not. Ashley Parker and Trip Gabriel report in *The New York Times* article, “Romney Taking Steps to Narrow his Gender Gap:”

Top Romney aides, questioned on the Lilly Ledbetter Fair Pay Act signed by Mr. Obama, which makes it easier for women to sue in equal pay cases, seemed uncertain of how to respond when a reporter asked about Mr. Romney’s position on it during a campaign conference call.<sup>145</sup>

While Romney did not say outright whether he would support the bill, the language of “uncertainty” situated Romney as opposed to equal pay. All this rhetoric implies that the Act was brought up as a political move by candidates who were hoping to receive women’s votes. For instance, in *The Wall Street Journal*, Laura Meckler wrote, “One speaker is Lilly Ledbetter, whose pay discrimination suit was blocked by the Supreme Court, prompting Democrats to pass legislation to make it easier to sue.”<sup>146</sup> The public was thus reminded of what the President Obama, a Democrat, did for women his first week in office by signing the Ledbetter Act. The political tactic of keeping score on voting records is rooted in individual competition, which results in one candidate coming out stronger through devaluing or driving out the weaker candidate.<sup>147</sup> The “horse-race” aspect of such competition is focused on by the media far more than what individual candidates would do for the well-being of working women. The candidates are scored in terms of what each has done, instead of projecting and discussing what they will do for working women and closing the pay gap.

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<sup>145</sup> Ashley Parker and Trip Gabriel, “Romney Taking Steps to Narrow his Gender Gap,” *The New York Times*, April 12, 2012.

<sup>146</sup> Laura Meckler, “Obama to Press Case for Four More Years—President will Reach Out to Women, Working-Class Voters,” *The Wall Street Journal*, Sept. 4, 2012.

<sup>147</sup> Harvey, op. cit., 67.

Regardless, of the candidates' stances, all of the fifteen selections from 2012 made reference to the Lilly Ledbetter Act of 2009. This Act was continually referenced as a positive outcome of President Obama's first term in office during the 2012 campaign. While this was commendable, there was no plan presented on what the candidates can do for the future of equal pay. Ideas on the potential future of equal pay in the United States will be explored in the next section.

### **RECOMMENDATIONS ON THE FUTURE OF EQUAL PAY**

There are two directions in which the future of equal pay can go in the United States. If the rhetoric remains locked in a neoliberal framework, then the slight progress that has been achieved for equal pay will remain stagnant or perhaps regress. If the rhetoric begins to change in a way that recognizes the value of a materialist feminist and intersectional approach, then women will start to see progress towards the wage gap closing in the United States. Through examining the current remedies for pay discrimination and the most recent actions the government has taken towards equal pay, I consider the implications of the prevailing neoliberal rhetoric and the possibility of it changing. First I provide a short explanation on the various compensation awards possible for those who face pay discrimination. Then I discuss the recent actions on equal pay taken by President Obama on April 8, 2014.<sup>148</sup> Both assist in my recommendations regarding future efforts to combat wage discrimination by using a materialist feminist and intersectional lens. I hope to show this by exemplifying how the neoliberal rhetoric can change in legislation and recent coverage of equal pay.

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<sup>148</sup> Lilly Ledbetter and Cecilia Munoz, "Taking Action in Honor of National Equal Pay Day," *The White House Blog* (Washington D.C., April 8, 2014), accessed April 12, 2014, <http://www.whitehouse.gov/blog/2014/04/08/taking-action-honor-national-equal-pay-day>.

One of the first steps to take when addressing equal pay issues is to re-examine the rhetoric in the array of compensation awards a court can give. That is, it is necessary to determine whether or not a court finds that pay discrimination occurred. It is important to begin here because a court has determined that discrimination has occurred; if the language can change at this level, then it is possible to see further changes articulated in equal pay legislation and in the media. Scholar Raymond Gregory analyzes the various compensations a woman can receive, in cases where discrimination has been found. Gregory explains that the goal of compensation is to make the worker ‘whole’ again:

Once a worker proves that her employer has subjected her to discriminatory practices, the court has available to it – in addition to awards of compensatory and punitive damages – an array of remedial provisions to make the worker ‘whole...The ‘make whole’ doctrine requires the court to examine all economic circumstances that emerge from an unlawful act of discrimination.<sup>149</sup>

Back pay, front pay and reinstatement are ways the legal system makes a worker ‘whole’ again. Using Gregory’s explanations of back pay, front pay, and reinstatement I make suggestions of how the language in each solution can be altered to an intersectional framework that is inclusive to all women and considers varying experiences of discrimination.

The most common compensation award a plaintiff can receive is back pay. Back pay is defined as:

The total loss of compensation suffered by a worker between the date of her subjection to an act of discrimination and the date of the trial of her subsequent sex discrimination suit...Back pay awards encompass not only lost wages, but also other benefits a workers would have received as a normal incident of her employment.<sup>150</sup>

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<sup>149</sup> Raymond F. Gregory, “Back Pay, Front Pay and Other Remedies,” in *Women and Workplace Discrimination* (New Brunswick, NJ: Rutgers University Press, 2003), 195-196.

<sup>150</sup> *Ibid.*, 195.



The language of “an act of discrimination” assumes that a woman has only one instance of discrimination of which to speak of. This places individual responsibility on a woman to pinpoint an exact moment when discrimination occurs. Some acts of discrimination are recurring, multiple and varying, so it would be difficult to pin down an act of discrimination to one particular occurrence. Take for instance, Lilly Ledbetter, who had faced various instances of sexual harassment and had received numerous discriminatory paychecks. If the language were to take out “an act,” then discrimination a woman worker faces would not be reduced to a single experience. It would also heighten the awareness and should increase the compensation award, if a woman can discuss her experiences with discrimination.

Besides receiving back pay, it is possible that the court may award front pay. The point of front pay is, “to recover the loss of salary and benefits she may sustain after the trial of her sex discrimination action ends.”<sup>151</sup> Keep in mind that front pay is not always awarded. The claimant has to apply for front pay and can only do so if the court finds an act of discrimination has happened.<sup>151</sup> The requirement of an individual having to apply for front pay has undertones of neoliberalism. It is requiring individuals to argue for financial support because of not being employed as a result of discrimination. The employer has the upper hand because a court may not grant front pay. If a court does not award front pay, that choice suggests that a woman worker’s value is negligible. Front pay would have been an option for Ledbetter if she had won her case. Front pay should be a guarantee to a woman who does not have an income because of discrimination forcing a woman to leave her job.

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<sup>151</sup> Ibid., 198.

Sometimes a woman may not want to leave her job because the compensation she receives, even if discriminatory, represents her (and in many cases, her family's) survival. Women face the difficulty of choosing whether to file a claim or to continue working. If a woman files a discrimination claim, she is likely to be dismissed or to face such further discriminatory actions that she is forced to leave the job (as in Ledbetter's case). In that case, instead of looking for back pay or front pay, a woman may want to be reinstated. Gregory explains that a court can award reinstatement, but it can be difficult because "courts frequently encounter obstacles that render reinstatement inappropriate."<sup>152</sup> When Lilly Ledbetter filed her claim of sexual harassment and won the right to sue, she ran into this obstacle. If Ledbetter continued with her suit she may have won or lost, but would not have been able to keep her job at Goodyear Tire. And at the moment in her life, she needed a stable income and chose to accept the deal of reinstatement in order to keep working at Good Year Tire.<sup>11</sup> Reinstatement is a tough road to navigate because there is no way to ensure that discrimination would end once a woman goes back to work. Although, if reinstatement is what the woman wants that is how she should be awarded if discrimination is found. Too much power is given to the employer if reinstatement is not allowed. Not awarding reinstatement to the woman is another way of blaming the victim for the discrimination she faced. Awarding a woman with reinstatement, if that is what she wants, is empowering because it acknowledges the intersecting experiences with discrimination by providing the woman the voice to choose her award.

Back pay, front pay and reinstatement are remedies a woman worker who faces discrimination may receive. However, in order to pursue a lawsuit, the woman worker has to figure out how to pay for an attorney. Gregory explains that:

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<sup>152</sup> Ibid., 200.

Because many discrimination claims arise out of terminations of employment, and terminated workers generally lack the financial means to support a lawsuit, lawyers must often agree to contingency-fee arrangements with these workers. In this arrangement, the lawyer is paid only if the plaintiff wins, and the fee is set as a percentage of the amount the plaintiff recovers.”<sup>153</sup>

There are positive and negative sides to “contingency-fee arrangements.” The positive is that a woman worker has the opportunity to be represented by a lawyer if she lacks the financial means to pay for representation. The negative is riddled with concepts of neoliberal individual responsibility; a plaintiff is required to pay lawyer’s fees out of any compensation she is awarded in the event that the court decides in her favor. It would be far more appropriate to require the employer who discriminated to cover the lawyer’s fees in such cases. Making the employer pay the plaintiff’s lawyer fees actually addresses the deep, structural roots of wage discrimination. The employer is held accountable for discrimination by not only having to compensate the plaintiff, but also having to pay for the plaintiff’s lawyer fees. The individual should have no responsibility or accountability for the discrimination they faced. All that results from the current system is a form of blaming the victim of discrimination.

The means of making compensation awards just discussed would provide a woman retroactive solutions to combating equal pay. This is why I turn to recent steps President Obama has made that signal a proactive approach the government is taking on enforcing equal pay. On April 8, 2014, also National Equal Pay Day, the President signed the Executive Order entitled, Non-Retaliation for Disclosure of Compensation Information.<sup>154</sup> This executive order makes it

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<sup>153</sup> Ibid., 203.

<sup>154</sup> Office of the Press Secretary, “Executive Order - Non-Retaliation for Disclosure of Compensation Information,” *The White House* (Washington D.C., April 8, 2014).

easier for women to file suit and find out if there is pay discrepancy. What the Executive Order does is:

Prohibit federal contractors from retaliating against employees who choose to discuss their compensation. The Executive Order does not compel workers to discuss pay, nor does it require employers to publish or otherwise disseminate pay data – but it does provide a critical tool to encourage pay transparency, so workers have a potential way of discovering violations of equal pay laws and are able to seek appropriate remedies.<sup>155</sup>

This solution is semi-proactive because the government is not enforcing employers to publish or make clear to employees their salary structure. However, this is a step in the right direction because it prevents a woman worker from being reprimanded for wanting to know or finding out her wage compared to that of a male counterpart.

President Obama's Executive Order makes it easier for a woman to find out if her pay is discriminatory. Plus there is less room for victim blaming because it does not allow employers retaliate against their workers. This Executive Order only applies to "federal contractors," not all employers.<sup>156</sup> While the definition of "federal contractors" is broader than it appears on its face, it would nonetheless be beneficial to have the Executive Order to apply to all employers, because that would mean that the Order applied to any woman who faced pay discrimination. Were this to be the case, government would be taking a materialist feminist approach, since not all women work for federal contractors. Granted the Executive Order should apply to all employers, it makes sense that the government is starting with federal contractors since they are

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<sup>155</sup> Office of the Press Secretary, "Fact Sheet: Expanding Opportunity for All: Ensuring Equal Pay for Women and Promoting the Women's Economic Agenda," *The White House* (Washington D.C., April 8, 2014)

<sup>156</sup> Office of the Press Secretary, "Executive Order," op. cit.

directly tied to government and make up a wide range of employment.<sup>157</sup> The government is taking accountability by applying the Order to employers who are connected in some way with government; however, the Order still leaves the responsibility of discovering and reporting pay discrepancies on the shoulders of individual working women.

In addition to signing the Executive Order, President Obama signed a Presidential Memorandum to the Secretary of Labor, entitled *Advancing Pay Equality through Compensation Data Collection*.<sup>158</sup> The content of the Presidential Memorandum is:

Instructing the Secretary of Labor to establish new regulations requiring federal contractors to submit to the Department of Labor summary data on compensation paid to their employees, including data by sex and race. The Department of Labor will use the data to encourage compliance with equal pay laws and to target enforcement more effectively by focusing efforts where there are discrepancies and reducing burdens on other employers.<sup>159</sup>

This is a proactive step for government to take that holds government and employers accountable for the wage gap. Developing a government enforcement mechanism where employers have to report compensation data that includes the breakdown of race and sex represents a major step forward for working women. This is the first time I have come across the discussion of equal pay being combated from an apparently intersectional perspective. Neoliberalism does not—and would not—support reporting of compensation data on the basis of race and sex, for these are collective categories. If new regulations are promulgated, requiring that employers submit aggregate, categorical (i.e., by race and sex) data on compensation, then the future of equal pay would appear to be promising, with government taking proactive steps that would not hold the

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<sup>157</sup> Office of Federal Contract Compliance, “Who is a Federal Contractor?” *Department of Labor* (Washington D.C. 2010).

<sup>158</sup> Office of the Press Secretary, “Presidential Memorandum -- Advancing Pay Equality Through Compensation Data Collection,” *The White House* (Washington D.C. April 8, 2014).

<sup>159</sup> Office of the Press Secretary, “Fact Sheet,” *op. cit.*

individual responsible for knowing when discrimination transpires. While this Presidential Memorandum presents hope for equal pay, the Department of Labor has 120 days to draft regulations of reporting and collecting compensation data; as of this writing, that time has not yet elapsed. The questions to consider are: if the Presidential Memorandum is enforced, how will that be mandated? Will enforcement really represent an effective step towards ensuring equal pay? For the time being, it is impossible to predict what the language of the regulations drafted by the Department of Labor will look like; however, this does appear to be a step in the right direction.

## **CONCLUSION**

Equal pay for women has been an issue for some time in the United States and that should come as no surprise. What is astonishing is how little the wage gap has decreased in the United States since the passing of the Equal Pay Act of 1963. This is why I examined Lilly Ledbetter as a case study of the issues surrounding equal pay. Examining the Lilly Ledbetter Paycheck Fairness Act of 2009 provides a perspective on the future of equal pay, just as Lilly Ledbetter's story provides a point of entry into analyzing pay equity as an issue that affects a woman's lived experience. While building a case study on a white woman's experience as the face of equal pay may elide the fact that women of color have larger pay discrepancies as compared with men, it nonetheless emphasizes the fact that pay equity is a gendered issue. Pay equity has been positioned in the media as a monumental step for women's rights because of the passage of the Ledbetter Act of 2009. While I acknowledge the role that intersectionality plays when race enters the picture, the fact is that Ledbetter's court case and the passage of the Ledbetter Fair Pay Act in its wake drew national attention and thus serves as a rich source of data for my study. My hope is that future studies will be able to address the complicated intertwining

of race, gender and class with issues of pay equity that the time and space limits of this Master's thesis did not permit.

At the moment, it is difficult to tell exactly what the future of Equal Pay holds for working women in the United States. The discussion of equal pay has to change from the neoliberal rhetoric that presently dominates the discourse, that women who face pay discrimination will no longer be held responsible, accountable or blamed for their experiences of inequality. Lilly Ledbetter's, Betty Dukes' and countless other women's stories of pay discrimination clearly demonstrate the value of incorporating an intersectional approach in pay equity legislation and media coverage of equal pay issues. If the discussion surrounding equal pay and Lilly Ledbetter Act were to change in such a way as to hold the government and employers accountable, then it is likely that the wage gap would decrease at a faster rate than it has been to date. There is real potential for improvement if the government can enforce employer reporting of data on compensation in new ways. Equal pay may see some light after all, given the Presidential Memorandum of Advancing Pay Equality through Compensation Data Collection, which represents a promising intersectional approach to the creation of a government enforcement mechanism. However, it will take time—and a critical approach—before we can assess what might happen, if the Department of Labor were to create regulations that are proactive in enforcing equal pay.

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