Western Kentucky University
TopSCHOLAR®

Honors College Capstone Experience/Thesis Projects

Honors College at WKU

Fall 12-8-2010

The Future of the Gender Wage Gap in the American Workforce

Molly K. Merrick
Western Kentucky University, molly.merrick292@wku.edu

Follow this and additional works at: http://digitalcommons.wku.edu/stu_hon_theses

Part of the Communication Commons, and the Political Science Commons

Recommended Citation
Merrick, Molly K., "The Future of the Gender Wage Gap in the American Workforce" (2010). *Honors College Capstone Experience/Thesis Projects.* Paper 281.
http://digitalcommons.wku.edu/stu_hon_theses/281

This Thesis is brought to you for free and open access by TopSCHOLAR®. It has been accepted for inclusion in Honors College Capstone Experience/Thesis Projects by an authorized administrator of TopSCHOLAR®. For more information, please contact connie.foster@wku.edu.

THE FUTURE OF THE GENDER WAGE GAP IN THE AMERICAN WORKFORCE

A Capstone Experience/Thesis Project

Presented in Partial Fulfillment of the Requirements for

the Degree Bachelor of Arts with

Honors College Graduate Distinction at Western Kentucky University

By

Molly Katherine Merrick

*****

Western Kentucky University
2011

CE/T Committee:

Professor Scott J. Lasley, Advisor

Professor Jeffrey P. Kash

Professor Dennis P. Wilson

Approved by

_____

Advisor
Department of Political Science

Copyright by
Molly Katherine Merrick
2011

ABSTRACT

This thesis aims to accomplish four goals. First, to establish the extent to which a gender wage gap exists in the American workforce and why it matters. Second, it seeks to explore the various factors that scholars have advanced as potential explanations for this gap with the aim of identifying a more concrete and all-encompassing root cause of the gender wage gap as it exists today. Third, this thesis will individually evaluate a succession of equal pay legislation which has been enacted to date in order to discern the effectiveness of previous attempts to address this root cause, as well as the gender wage gap as a whole, through legislative intervention. Finally, to offer prescriptions based on scholarly evidence of how this issue could be better addressed whether by strengthening past legislation or through the enactment of future equal pay legislation.

Keywords: Gender Wage Gap, Occupational Segregation, Equal Pay Act of 1963, Civil Rights Act of 1964, Civil Rights Act of 1991, Lilly Ledbetter Fair Pay Act of 2009

Dedicated to my family and friends

ACKNOWLEDGEMENTS

This project would not have been possible without the support of a number of individuals. First, I would like to thank Dr. Scott Lasley, my CE/T advisor, for so generously giving of his time, for his tireless provision of honest and insightful critique throughout the evolution of my work, and, above all, for his willingness to continually inspire and motivate me to take my thesis to the next level academically. Most gracious thanks to the members of my committee- Dr. Jeffrey Kash and Dr. Dennis Wilson- for their added insight and encouragement.

I would also like to thank the Honors College for providing the framework and network of academic support which has been indispensible to me as I have surmounted this unique intellectual challenge. Moreover, I thank the Honors College for providing the opportunity to complete a CE/T project, for I feel that this experience has contributed greatly to my academic development, making me better prepared to confront the many challenges and opportunities which lie ahead of me, whether academic or otherwise.

Above all, I would like to thank my family and friends without whom I would not have possessed the confidence and determination necessary to complete such a project.

VITA

August 1, 1989…….Born – Somerset, Kentucky

2007…….....Southwestern High School, Somerset, Kentucky

2009……..Study Abroad, Harlaxton College, U.K.

October 15-16, 2010...……...…….....Presenter at the Kentucky Honors Roundtable, Western Kentucky University

FIELDS OF STUDY

1st Major: Political Science

2nd Major: Communication Studies

TABLE OF CONTENTS

Page

Abstract……ii

Dedication……...iii

Acknowledgements……iv

Vita……...v

Chapters:

1. Introduction……1

2. Lit Review……...6

3. The Equal Pay Act of 1963……21

4. Title VII of the Civil Rights Act of 1964……...29

5. The Civil Rights Act of 1991……37

6. The Lilly Ledbetter Fair Pay Act of 2009……..45

7. The Future of the Gender Wage Gap in the American Workforce……....51

References……..63

CHAPTER 1

INTRODUCTION

Recent research finds that women in the American workforce earn 77 cents for every dollar a man earns (Ford 2006). The existence of this "gender wage gap" has been a policy issue since women entered the workforce. This thesis evaluates the effectiveness of legislative attempts to address this problem. Starting with the Equal Pay Act of 1963 (EPA), this paper explores how this legislation and subsequent legislation impact this problem. The goal of this analysis is to make informed predictions about future trends in wage disparities between men and women and to offer recommendations for how this gap could be better addressed through legislative intervention.

The first chapter of this thesis seeks to identify the many explanations for the gender wage gap which have been offered by scholars, examining their relative strengths and weaknesses with the aim of identifying a concrete explanation for the gender wage gap. Identifying the cause of this phenomenon will have important policy implications. Indeed, the cause of this problem should, in large measure, shape the solution which is chosen to address it. In subsequent chapters, this explanation will be held up to the many legislative initiatives from the EPA, to Title VII of the Civil Rights Act of 1964, to the

Civil Rights Act of 1991, and the recent Lilly Ledbetter Fair Pay Act of 2009 which have been aimed at addressing the gender wage gap, in order to identify the relative merits and shortcomings of each initiative in achieving its stated goals. Each of these legislative initiatives will be examined in turn, with special attention being directed at assessing how well each addressed the root cause of the gender wage gap. Ultimately, the final chapter will seek to offer prescriptions for how the wage gap, as it exists today, could be narrowed through legislative intervention based on scholarly evidence. Overall, this analysis should not only provide valuable insight into the causes of wage inequality between the sexes, but draw important conclusions about the role of legislative intervention in addressing this gap. Wage inequality between the sexes has been an enduring issue in the American workforce and will continue to pervade our society if unchecked.

EXTENT OF THE GENDER WAGE GAP

According to U.S. Bureau of the Census data in 2003, women's median earnings were $30,599 while men's median earnings were considerably higher at $40,556 (U.S. Census Bureau Data 2003). According to a recent Congressional Research Service (CRS) Report concerning pay equity legislation in the 109th Congress, such wage disparities among the sexes may even be noted within similar groups in the workforce. For instance, in 2003 women with a bachelor's degree employed year-round full-time earned $47,910, while men with similar levels of education earned $69,913 (Dale and Levine 2005). Male and female high school graduates demonstrated similar wage disparities with men earning $38,331 on average, considerably more than their female

counterparts who earned $27,956 on average (Dale and Levine 2005). Moreover, there is evidence to suggest that the wage gap is narrowest among the youngest members of the workforce and typically widens in relation to age increase (Dale and Levine 2005).

In general, the wage gap has narrowed at a slow, and often uneven, pace over time. The most notable period of increased pay equity to date occurred during the 1980s during which women's wages steadily climbed to reach nearly 70 cents for every dollar a man earned (Dale and Levine 2005). Data from both the Bureau of the Census as well as the Bureau of Labor Statistics indicate that this steady upward climb of women's wages was not sustained during the 1990s (Dale and Levine 2005). Despite the ongoing struggle to achieve parity in wages between the sexes through various legislative initiatives as well as the ever increasing involvement of women in the American workforce, the wage gap has only narrowed by a mere 15 percent over the last 40 plus years (Dale and Levine 2005).

WHY THE WAGE GAP MATTERS

The consequences of the wage gap are both widespread and numerous. According to a 2007 publication by the American Association of University Women (AAUW),

> In part, pay equity is simply a matter of fairness…the larger issue at stake in pay equity, however, revolves around family values (Goldberg-Dey and Hill 2007).

In regards to fairness, when women are paid less than men the means by which they are able to support themselves, as well as their families, are compromised. In this sense, the

gender wage gap can have negative consequences not only for women in the American workforce, but also for their children. This is particularly true in the case of single mothers, an ever growing demographic in the U.S. workforce. More broadly, the gender wage gap "impedes women's ability to negotiate in the workplace, at home, and in the political arena" (Goldberg-Dey and Hill 2007). By earning less, women will automatically experience the disadvantage of a more precarious economic status. Moreover, due to their inferior earning potential, women may feel reluctant to question even the most blatantly discriminatory wages for fear of poverty.

Indeed, the feminization of poverty is quite staggering when approached from a quantitative perspective. According to a recent report released by the U.S. Census Bureau, in 2009 single-parent homes headed by women constituted nearly 83% of all single-parent homes U.S (U.S. Census Bureau). Moreover, single-parent homes headed by women were nearly twice as likely as single-parent homes headed by men to be below poverty level. Perhaps most striking, in 2009 29.9 percent of single-parent homes headed by women lived in poverty while only 5.8 percent of dual-parent families lived in poverty. Thus, single-parent homes headed by women were nearly five times as likely to be below poverty level as dual-parent homes. Such statistics only serve to further emphasize the importance of the gender wage gap by highlighting its impact not only on women, but also on their families.

In regards to family values, many critics of the gender wage gap have argued that the American workforce can be very unforgiving toward those women who choose to pursue motherhood alongside their career (Goldberg-Dey and Hill 2007). As the

traditional caregivers in our society, women face the challenge of balancing the responsibilities of home and career in an ever more competitive job market which rewards long hours while often offering maternity leave provisions that are limited at best. Not to mention the struggle that mothers face as they attempt to reenter the workforce after their absence, many find themselves out of step or obsolete in an ever changing market.

Wage inequality affects all women, single or married, old or young, college educated or high school graduate, mothers, daughters and everywhere in between. Yet there is still considerable debate concerning the cause of this phenomenon as well as what should be done to address it. After nearly 50 years and several legislative initiatives the gap still endures, this is precisely the curiosity on which this thesis aims to shed some light.

CHAPTER 2

LIT REVIEW

A number of scholars have realized the importance of seeking to identify a concrete explanation for the gender wage gap. Indeed, the cause of this phenomenon has important policy implications for addressing these wage disparities. Among the many explanations for the wage gap that scholars have offered are the disparity in levels of human capital between the sexes, compensating wage differentials, statistical discrimination, and occupational segregation. Ultimately, the gender wage gap may be attributable to one or many of these factors. However, this chapter seeks to examine the relative strengths and weaknesses of the many explanations for the gender wage gap which have been offered by scholars with the aim of identifying a more concrete and all-encompassing explanation for the gender wage gap.

HUMAN CAPITAL

Many researchers have suggested that differences in levels of human capital between men and women are at least partially to blame for the gender wage gap. Human capital may be defined as the "productive capacities of human beings as income producing agents in the economy" (Rosen 2008). These productive capacities may be

manifested in a number of forms including, but not limited to, work-related skills, years of work experience, and amount of schooling. According to Paula England, "amount of schooling…explains virtually none of the sex gap in pay, since men and women in the labor force have virtually the same median years of formal education" (England 1992). However, England does suggest that amount of job experience has some bearing on the gender wage gap suggesting that, on average, women have fewer years of job experience than men. In fact, a number of studies have suggested that this factor explains between one quarter and one half of the gender wage gap (England 1992). Researchers have attributed these disparities in work experience to the fact that women, since they are responsible for the majority of child rearing in our society, are less likely than men to gain work experience and skills, or human capital, and are therefore less likely to qualify for higher paying jobs.

The effect of motherhood on the accumulation of human capital in the form of job experience and subsequent earnings by women in the American workforce is well-illustrated by Wood, Corcoran, and Courant (1993) and Noonan, Corcoran, and Courant (2005). In a cross-sectional examination of graduates from the University of Michigan Law School, Wood et al. concluded that parenting responsibilities accounted for over 40% of the perceived wage gap in their 1979 and 1985 cohorts. In fact, a later study conducted by Noonan et al. using 1987 and 1993 cohorts from the University of Michigan Law School illustrated a strikingly similar relationship with parenting responsibilities accounting for 55 to 60% of wage differences (Noonan, Corcoran, and Courant 2005).

However, when controlling for sex-based differences in work-hours, work interruptions, and part-time work, both cohorts in the later studies demonstrated that childless women earn no more than mothers, and single women earn no more than married women (Noonan, Corcoran, and Courant 2005). Thus, the wage disparities in these cohorts were not exclusively attributable to motherhood. Indeed, even controlling for these factors fails to eliminate the wage gap that exists between the male and female lawyers within the sample, suggesting that factors aside from women's unequal share in the duties of parenthood must be at play.

Furthermore, although a narrow representation of the workforce at large, these cohorts had nearly identical levels of human capital, both in the form of education as well as in work experience, providing strong evidence to suggest that disparities in work-related skills and experience are not sufficient explanations for the gender wage gap in its entirety. Indeed, having graduated from the same law school and having been educated in nearly identical curriculums, these men and women had the same earning potential at the point of graduation. In general, research concerning the effect of human capital on the gender wage gap has led scholars to conclude that, although undoubtedly a factor in wage disparities, human capital does not explain this phenomenon in its entirety. Moreover, such evidence suggests that the human capital argument fails to get at the root cause of gender-based wage disparities in the American workforce.

COMPENSATING WAGE DIFFERENTIALS

Compensating wage differentials has been offered as another potential explanation for the gender wage gap by a number of scholars. This explanation is based on the assumption that women tend to place a greater value on less demanding and more personally rewarding working conditions than men. Meanwhile, men place a greater value on higher wages than favorable working conditions. Thus, men are "compensated" for their less desirable working conditions by receiving higher wages and women are "compensated" for their lower wages through the benefit of more advantageous working conditions.

The compensating wage differentials argument has been thoroughly explored in the work of Wood, Corcoran, and Courant (1993) and Noonan, Corcoran, and Courant (2005). Their work assesses whether women's occupational choices are more heavily dictated by perceived working conditions than those of men. For example, both cohorts in the study by Noonan et al. demonstrated that women lawyers tend to favor different areas of practice than those traditionally favored by male lawyers such as government and legal services. Moreover, these areas typically offer more opportunities for human interaction and may be characterized as more "personally rewarding" work settings than those typically favored by men, such as large private firms (Noonan, Corcoran, and Courant 2005). More specifically, their findings revealed that the areas which female lawyers tend to prefer typically pay less and offer fewer opportunities for advancement than those areas which are traditionally favored by men. For example, men in the earlier cohort were more likely to be in private practice, have more years of work experience in

private practice, and more likely to be partners in large firms, and were less likely to work in the lower-paying areas of government and legal services than women in the earlier cohort (Noonan et al. 2005). However, in the later cohort, sex differences in job settings decreased; more women worked in private practice and business and fewer worked in government, legal services, and as judges/professors (Noonan et al. 2005). Additionally, women in the later cohort averaged nearly two years more experience in private practice than those in the earlier cohort. Based on these downward trends in sex differences in job settings, both Noonan et al. and Wood et al. were generally reluctant to grant too much significance to compensating wage differentials as an explanation of today's gender wage gap. Both cite that women are becoming increasingly represented in all areas of law, rather than being clustered into a few female-dominated specialties.

The concept of compensating wage differentials as an explanation for the wage gap is further taken into question by the work of Jacobs and Steinberg (1990). These researchers are particularly critical of the work of Randall Filer (1989), who argued that female-dominated occupations are not underpaid when their preferable working conditions are taken into consideration. According to Filer, women are much less likely than men to work in physically taxing or potentially hazardous environments. The research conducted by Jacobs and Steinberg (1990) is largely directed at undermining, if not fully disproving, the conclusions of Filer's research claiming that, "male-dominated positions do not have a monopoly on undesirable working conditions" (Jacobs and Steinberg 1990). In this study, unfavorable working conditions were characterized by factors such as extreme heat or cold, cleaning others' dirt, fumes, loud noise, strenuous

physical activity, risk of injury, contact with difficult clients, communication with the public, stress, job autonomy, working with sick patients, repetition, unexpected problems, and being told what to do. Ultimately, their research on a sample of New York state employees revealed that undesirable working conditions were a burden to both men and women in the workforce alike, and that little or no "compensation" for these conditions in the form of wages was given to either sex.

The work of Lowell and Sicilian (2008) offers additional compelling evidence in opposition to the compensating wage differentials argument. Their research seeks to assess whether women's wages are lower than men's wages because they are more likely to receive "family friendly" fringe benefits, such as paid parental leave, flexible work schedules, child care, and sick leave. In other words, the study assesses whether women are "compensated" for their lower wages by the advantages they receive due to their status as a mother. They conducted a survey of 12,686 individuals in the American workforce, interviewing them annually (biannually after 1994) starting in 1979 through 1998, in order to assess the fringe benefits that they received at their place of employment (Lowell and Sicilian 2008). The study concluded that, although women were more likely to receive family-friendly benefits than men, both men and women received family-neutral benefits at approximately the same rates. When controlling for the proportion of an occupation that is occupied by females, gender does not appear to have a significant impact on the likelihood of receiving fringe benefits, whether family friendly or otherwise, with the exception of parental leave (Lowell and Sicilian 2008). Alternatively, receipt of family-friendly fringe benefits was not shown to lower wages, either for

women or men. Moreover, the study revealed that receipt of fringe benefits of any kind did not diminish the wages of women any more than those of men. Thus, Lowell and Sicilian concluded that fringe benefits do not have a compensating wage effect and, therefore, do not represent a valid explanation of gender wage disparities.

McCrate (2005) further criticized the compensating wage differential argument. The study seeks to assess whether women's lower wages are the result of their concentration in jobs with flexible hours. Using data from the 1991 Comparative Project in Class Analysis (CPCA), the study examines flexible hours as a compensating wage differential for women in the U.S. workforce. The study concludes that, overall, women do not have more flexible work schedules than men. In fact, the study finds that flexible work schedules are positively correlated with positions of authority in the workplace, which are traditionally dominated by men. Moreover, the study finds that, although when controlling for industry, occupation, workplace authority, and selection on unobservables, workers with flexible schedules do tend to earn lower wages. The study makes several stipulations on these findings. First, McCrate notes the compensation for authority in the workplace is much greater than compensation for inflexible schedules (McCrate 2005). Thus, an individual in a powerful position, whether male or female, will earn higher wages than an individual with inflexible work hours. Second, workers may not be fully compensated for their inflexible work hours in the form of wages (McCrate 2005). Thus, women who have inflexible work schedules may not be able to achieve sufficient wages to compensate for this rigidity. Overall, the results of the study suggest that flexible hours are not a compensating wage differential for women in the American workforce.

In general, much of the research surrounding the gender wage gap has suggested that compensating wage differentials, although a potential contributor to wage disparities in the American workforce, does not appear to explain the gap in its entirety. Much like the preceding human capital argument, scholarly evidence suggests that the compensating wage differentials argument fails to account for the root cause of the gender wage gap as it exists in the American workforce today.

STATISTICAL DISCRIMINATION

Researchers have offered an additional explanation for the wage gap, suggesting that women, which are more likely than men to be intermittently employed, may be discriminated against at the point of employment as well as in terms of their opportunities for promotion. According to England, "if women have higher turnover rates, and employers know this, then based on this sex difference in turnover they may engage in what economists call statistical discrimination" (England 1992). In particular, England suggests that employers would be hesitant to hire women into positions for which turnover is particularly costly, especially jobs that require a great deal of on-the-job training. However, the work of England has also highlighted a number of weaknesses within this hypothesis, citing that, overall, both men and women are more inclined to quit jobs that are either low paying or offer few chances for advancement. Thus, rather than high employment turnover rates among women being to blame for statistical discrimination, perhaps women's higher turnover rates are the result of their placement in less desirable jobs through statistical discrimination.

Moreover, it is worth noting that recent studies have shown minimal differences in turnover rates between young men and women in the workforce. Therefore, employers' continued tendency to favor hiring men to positions that require considerable on-the-job training cannot reasonably be attributed to statistical discrimination, instead reflecting other gender-biased motivations. Indeed, much of the work of Noonan et al. (2005) is aimed at testing the hypothesis that, as women are being introduced into previously male-dominated professions, employers may predict female productivity on the basis of inappropriate sex-based stereotyping. Consequently, employers might be reluctant to hire and promote female employees. These researchers have further posited that as women become more proportionately represented in these fields, sex will become less of a consideration for employers (Noonan, Corcoran, and Courant 2005). From this perspective it is entirely possible that, regardless of the role statistical discrimination has purportedly played in the gender wage gap phenomenon, the negative implications of such inappropriate stereotyping will eventually disappear as women become more equally represented in the diversity of fields which constitute the American workforce.

In fact, other research suggests that the effects of statistical discrimination have already been eliminated from the workplace. A study which collected data on blue-collar and clerical employees within 16 U.S. industries along with employees in 10 professional and administrative occupations, concluded that statistical discrimination or "within-job wage discrimination" was not a plausible explanation for the gender wage gap that exists today (Petersen and Morgan 1995). In their analysis, Petersen and Morgan concluded that, when controlling for both occupation and establishment, the wage gap was

diminished to the point that there was hardly any difference between men and women (Petersen and Morgan 1995). Thus, this hypothesis has also proven weak, with studies suggesting that a combination of discriminatory forces both at the point of employment as well as in the ways that women are channeled, or select themselves, into particular occupations is more likely at fault for the wage gap than individualized discrimination on the part of employers. Ultimately, intentional discrimination against women at the point of employment, promotion, or in wage setting decisions is likely still taking place in the American workforce today. This thesis does not presume that this is a problem that cannot or should not be rectified. Rather, this thesis suggests that other factors play a more dominant role in fostering the gender wage gap which endures in the American workforce today and that, by addressing these central causes, future equal pay legislation could more effectively bridge this gap.

OCCUPATIONAL SEGREGATION

Many researchers have pointed to another potential explanation for the wage gap known as occupational segregation or occupational-establishment segregation. Indeed, it has been suggested that unequal pay for equal work may only be partly to blame for the perceivable gender wage gap; historically women have not occupied the same occupations as men. According to the work of Kelly and Bayes (1988), "in 1981 four out of every five women employed in the United States worked in 25% of the 420 occupations listed by the Department of Labor."

The work of Mary Huff Stevenson (1984) also followed this line of reasoning, further suggesting that, not only are women largely confined to a narrow selection of occupations, but these occupations also tend to pay less than other typically male-dominated occupations. Stevenson defends this claim, citing the research of John Buckley (1971), who concluded that "women tend to fare better (in terms of earnings) in establishments where they have male occupational counterparts" (Buckley 1971, 36 as cited in Stevenson 1984, 42). In fact, his studies revealed that men, who enjoyed an overall wage advantage of 18%, experienced a wage advantage as great as 22% in establishments that exclusively employed men. Meanwhile, in establishments employing both men and women this wage advantage dropped to as low as 11%. Based on her analysis of data collected by numerous scholars concerning the phenomenon of occupational segregation, Stevenson's work ultimately develops a model of male-female wage differences based on the Edgeworth Bergmann "crowding hypothesis." This hypothesis attributes women's lower wages to their concentration in relatively few occupations. This "crowding" is anticipated to cause the supply of workers in those particular occupations to be higher, resulting in driving down the wages due to decreased demand.

Petersen and Morgan (1995) concluded that, particularly in the case of blue-collar and clerical workers, occupational-establishment segregation was largely responsible for the gender wage gap accounting for as much as 89% of the perceived wage gap within their sample. Petersen and Morgan define the term occupational-establishment segregation by breaking it down into two subsets of discrimination, allocative and

valuative. Allocative discrimination is based on the idea that women are typically allocated to occupations or establishments that pay lower wages, suggesting that discrimination exists at the point of hiring and in the probability that a woman will receive a promotion (Petersen and Morgan 1995). In other words, from an allocative perspective a woman's lower wages is likely attributable to the fact that she is less likely to be considered for a high-paying position than her male counterparts in the workforce or, upon being employed, she is less likely than her male co-workers to be considered for a promotion. Valuative discrimination refers to the idea that occupations held primarily by women tend to be paid lower wages than those primarily held by men (Petersen and Morgan 1995). Thus, from a valuative perspective, occupations such as nursing which are traditionally dominated by women are likely to be paid lower wages than occupations such as engineering which are traditionally dominated by men.

Cohen and Huffman (2003) offer further support for the occupational segregation argument. Using data from a random sample of U.S. work establishments with metropolitan-area data, the study seeks to assess whether the effect of occupational segregation on female wage devaluation varies across the broader labor market, as opposed to simply at the establishment level as supposed by previous research. The findings of their research support their hypothesis that, "in labor markets with a relatively high level of gender segregation…men are in a stronger position to benefit from [wage] devaluation and women and less able to resist it." The implications of their findings are particularly significant in the sense that they expand the scope of occupational segregation as an agent in the gender wage gap phenomenon, asserting that wage

devaluation in female-dominated occupations occurs not only on a micro-level, that is from establishment to establishment, but also on macro-level within the broader labor market.

Other research on the impact of occupational segregation on the gender wage gap has broadened its focus to include not only the impact of female clustering in certain occupations on wage, but also its impact on women's career mobility in male-female integrated work settings. Such research is illustrated by the work of Maume (1999), which followed the careers of a sample of workers from the Panel Study of Income Dynamics (PSID) for seven years in terms of occupational segregation. According to the study, not only did men's promotion chances in an occupation increase relative to the percentage of males in the occupation, but also the probability of women leaving their jobs increased relative to the percentage of males in the occupation. Interestingly, these findings were confirmed even when controlling for factors such as human capital, family characteristics, the skill requirements of occupations, exposure to dangerous working conditions, and industrial sector of employment.

Overall, the findings of the study suggest that, although women do tend to earn higher wages when employed in a male-dominated occupation, they do so at the increased risk of leaving these jobs or having their career mobility, in the form of promotion, hindered in relation to their male counterparts due to their "token" status. In fact, the study asserts that, "men tend to monopolize the "best" jobs in the economy and resent women's presence as co-workers," and express their resentment through "performance pressures, social isolation, and stereotyping" (Maume 1999).

Undoubtedly, the effects of such resentment will have an indirect impact on overall gender wage disparity trends by discouraging women from maintaining positions in higher-paying male-dominated occupations and by putting them at a disadvantage in terms of their upward career mobility within these occupations. Such studies serve to strengthen the occupational segregation argument as a potential explanation of the gender wage gap, indicating that the pervasive effects of occupational segregation extend beyond its direct impact on wages in female versus male-dominated jobs.

SYNTHESIS

While differences in human capital, the argument of compensating wage differentials, statistical discrimination, and occupational segregation have all been suspected to play at least some role in the overall gender wage gap by one or more of the many scholars who have examined this topic, the occupational segregation hypothesis is arguably among the most enduring and empirically strong explanations for the gender wage gap. Indeed, this argument has been defended by a number of scholars and from a number of different perspectives. Not only have these studies shown that women tend to be concentrated in a narrow set of occupations, but these occupations are also among the lowest paying occupations. Moreover, scholarly research has shown that the devaluation of women's wages as a result of occupational segregation is so pervasive that the impact is evident not only at the micro (establishment) level, but also at the macro (labor market) level. Finally, even if a woman does attain a position in a male-dominated field for which she is rewarded with higher wages, there is evidence to suggest that her "token"

status may encourage her to leave that position or hinder her career mobility relative to her male counterparts in the workplace.

In conclusion, a considerable gender-based wage gap still exists within nearly all occupational fields in the U.S., over four decades after the passage of the Equal Pay Act of 1963. In response to this, scholars have taken an interest in the subject and have attempted, through various statistical methods, to identify the causes of this phenomenon. Among these potential explanations for the wage gap are the influence of human capital disparities, compensating wage differentials, statistical discrimination, and occupational segregation.

Now that we have subjected each of the potential explanations for the gender wage gap which have been proposed by scholars to careful scrutiny, emerging with the hypothesis that occupational segregation is the most viable explanation for the gender wage gap as it exists today in the American workforce, we may now move to assessing the policy implications of this assumption. In order to accomplish this aim, the following chapters will hold the occupational segregation argument up to the many legislative initiatives which have been aimed at addressing the gender wage gap, in the hopes of identifying the relative strengths and weaknesses of each initiative in addressing the gender wage gap. Since the cause of any problem should always be a foremost consideration in how that problem should be addressed, we will assess the relative success of each of these legislative initiatives in terms of how well they address occupational segregation as a root cause of the gender wage gap.

CHAPTER 3

THE EQUAL PAY ACT OF 1963

The Equal Pay Act (EPA) of 1963 was enacted as an Amendment to the Fair Labor Standards Act of 1938 which, among other provisions, had prohibited classifying jobs and wages on the basis of age or sex and created a minimum wage for some job categorizations (Ford 2006). The 1963 bill would take a step further in ending gender-based wage differentials, prohibiting unequal pay for women doing "equal work on jobs the performance of which requires equal skill, effort and responsibility, and which are performed under similar working conditions" (Equal Pay Act 1963). Among the major pieces of legislation that have been aimed at addressing the gender wage gap, the EPA of 1963 was one of the most groundbreaking for its time. Yet, it is arguable that the bill still failed to live up to its original intent. Moreover, in spite of this well-intentioned legislative initiative, the gender wage gap has endured, bringing the overall effectiveness of the EPA into question.

Since much of the language of the EPA is somewhat ambiguous, it is important to define some of the key terms. Equal skill refers to experience, training, education, and the overall ability required of the employee (Crampton, Hodge, and Mishra 1997). Equal effort refers to the degree of mental and physical exertion required of the employee (Crampton et al. 1997). Responsibility refers to the amount of accountability demanded

of the employee (Crampton et al. 1997). Working conditions include environmental factors, as well as potential workplace hazards (Crampton et al. 1997).

Originally, the wording of the EPA was intended to include the phrase "equal pay" for "comparable work" (Ford 2006). The intention had been to create a commission that would enforce, through government regulation, the equal compensation of men and women for work determined to be of comparable worth, or requiring the same level of skill (Ford 2006). Proponents fought for eighteen years before the EPA was successfully passed in 1963. A bill called the "Women's Equal Pay Act of 1945," known more commonly as the "Pepper-Morse Bill" after its congressional sponsors, was first introduced to the 79th Congress in 1945. This bill differed substantially from the 1963 Act, calling for the creation of an Equal Pay Division within the Women's Bureau that would be responsible for administering the new law (Mutari, Figart, and Power 2001). The 1945 bill also called for employers to maintain records or their employees by sex, job classification, wages, and other terms and conditions of employment and would have applied to all employers with 8 or more employees, who engaged in interstate commerce (Mutari, Figart, and Power 2001). Each and every year following the introduction of the Pepper-Morse Bill, at least one roughly equivalent equal pay bill was introduced in each session of Congress until the passage of the EPA in 1963. Major changes to the nature of this bill did not occur until the election of John F. Kennedy and a Democrat-controlled Congress in 1962, after which the bill was successively "watered down" as proponents changed its wording to gain congressional support (Mutari, Figart, and Power 2001).

Ultimately, in order to ensure the successful passage of the bill, advocates were forced to concede on the "equal pay for comparable worth" phrase, calling instead for a bill which would require "equal pay for equal work." Thus, in terms of occupational segregation, the version of the bill that was successfully enacted into law only addresses pay inequity in careers in which both men and women are employed, yet it fails to address wage disparities among careers that are traditionally female-dominated in comparison with careers that are traditionally male-dominated. Moreover, the "equal pay for equal work" doctrine may have served to perpetuate occupational segregation in the American workforce, by discouraging employers from hiring women. Previously, the prospect of hiring women had been accompanied by the incentive that employers could pay them less than male employees for the same work (Lens 2004). Following the EPA, such practices became illegal and therefore employers lacked cheaper labor as a motivation to employee women. Thus, the substitution of "equal pay for equal work" for "equal pay for comparable work" is undoubtedly the most blatant shortcoming of the Act in addressing occupational segregation as a root cause of the gender wage gap.

Additionally, the avenues by which women may file suit in these cases often discourage them from taking legal action. Perhaps the most obvious example of this is the fact that the women filing suit in these cases must bear the burden of proof. First, the plaintiff must prove that the defendant paid unequal wages to employees of the opposite sex. Second, they must demonstrate that they each performed equal work on jobs which require equal skill, effort, and responsibility. Finally, they must show that both jobs operate under similar working conditions.

Although the EPA does not require that the compared jobs be identical, merely "substantially equal," there is little clarification provided as to what this means. According to Wyman (2003), the courts have often taken a narrow approach to interpreting the "substantially equal" criteria, allowing employers to offer a number of differences between the female employee and her male comparator to prevent the plaintiff from establishing her case. For example, if the male comparator has more employees over which he supervises or if he is responsible for a larger budget or market share than the female, the courts have traditionally held that such jobs are not substantially equal (Wyman 2003). Thus, unless the jobs which are being compared are virtually identical, it is often impossible for female employees to successfully pursue a wage inequality case under the EPA. In this way, the Act further fails to address occupational segregation as a root cause of the gender wage gap. According to Quinn (1994), these existing schemes for job evaluation under the EPA do not capture the complexities of "women's work" in comparison to "men's work" and, therefore, the substantially equal standard is too rigid to effectively address the gender wage gap. Traditionally female-dominated occupations require different kinds of skill, effort, responsibility, and working conditions than traditionally male-dominated jobs, a reality for which the provisions of the EPA does not account (Quinn 1994). Therefore, since the American workforce is highly segregated into female-dominated and male-dominated jobs which often fall short of meeting such a strict "substantially equal" standard, the average woman is unable to successfully attain redress for gender-based wage disparities under the EPA.

Due to the demanding burden of proof that is placed on employees filing suit in EPA cases, very few pay inequality cases under the EPA are filed. In fact, from 1985 to 1997 only 164 cases were filed and only 251 lawsuits were resolved under the EPA (Spizman 2001). Additionally, the economic costs for women filing suit in these cases often outweigh the ultimate benefits. For instance, from 1985-1997 roughly 16 million dollars were recovered in lawsuits under the EPA, a negligible amount when spread across several lawsuits over a twelve year period (Spizman 2001). Not to mention, the sheer length of these legal disputes often discourages or prevents women from being able to see a case through to its resolution due to exorbitant legal fees, with even expedited cases lasting as long as two-and- a-half years (Crampton, Hodge, and Mishra 1997).

Moreover, the EPA also outlined a number of exceptions to its "equal pay for equal work" doctrine, making provisions for instances in which pay differentials would be legally justified. These include cases in which employees are paid on the basis of a "seniority system, a merit system, a system which measures earnings by quantity or quality of production, or a differential based on any other factor other than sex" (Equal Pay Act 1963). However, such exceptions only served to weaken the effectiveness of the Act by providing legal justification for those employers who seek to rationalize discriminatory practices.

Under the EPA, if a plaintiff does manage to establish the three previously stated criteria, the burden of proof shifts to the employer (Spizman 2001). The employer must then prove that the unequal pay resulted from one of the four aforementioned exceptions: seniority, merit, productivity, or any other factor other than sex. According to Spizman

(2001), the "any other factor other than sex" defense is one of the most commonly used tactics by defendants in EPA wage discrimination cases, due to the fact that it is the most broadly worded permitted factor outlined in the Act. Indeed, the statute does not define this qualification or offer standards for what qualifies as a factor other than sex. According to Whitley (1997), the "any other factor other than sex" provision of the EPA has "proven the most contentious in litigation and the most pliable to clever defendants" of the four affirmative defenses. For example, the courts have found differences in education or experience between male and female coworkers to be acceptable explanations for wage disparities (Wyman 2003). However, such a defense of wage inequality still arguably represents some latent gender bias. Indeed, the different manner in which our society socializes and channels young boys and girls into different levels of education as well as different occupations may adversely influence their relative levels of education and experience in the long run (Whitley 1997). When considered from this perspective, education and experience may be perceived as less viable rationalizations for gender-based wage differences. Additionally, although the courts have generally frowned upon intangible factors such as market forces as explanations for unequal wages, employers may offer the fact that a male employee earned higher wages in their previous job as a rationalization for wage differences between male and female employees (Wyman 2003). In this manner, the courts' decisions may serve to perpetuate wage disparities between men and women by upholding men's superior earning potential across occupations. Not only are such rationalizations unfair to women, but they can also make pay discrimination cases particularly difficult to win for employees.

In conclusion, there are many ways in which the EPA has failed to address occupational segregation as a root cause of the gender wage gap. Most prominently, the Act only provides for "equal pay for equal work" and therefore fails to address relative wage disparities between female-dominated and male-dominated occupations. Moreover, the burden of proof, particularly the "substantially equal" standard, has proven especially difficult for women facing wage discrimination relative to their male coworkers to surmount. Finally, the Act also provides several provisions for circumstances under which wage inequalities may be legally justified. In particular, the "any other factor other than sex" defense has often been the source of questionable rulings in gender-based wage discrimination cases.

As you proceed into the following chapters of this thesis you will recognize that much of the equal pay legislation to date has come about through an evolutionary process. Each successive Act has been aimed at addressing the inherent weaknesses of its predecessor. However, despite this incremental improvement, this thesis proposes that each of these Acts still possesses weaknesses that prevent them from addressing occupational segregation as a central cause of the gender wage gap, from the EPA in 1963 to the recent Lilly Ledbetter Fair Pay Act of 2009. Moreover, as you examine the ineffectiveness of each of these legislative initiatives in addressing gender-based wage disparities, it is arguable that none of these Acts represent a governing principal within the American workforce. Instead, it may be argued that these Acts come nearer to representing a philosophical or symbolic statement that, while seeking to pacify women who experience unfair wage discrimination of the basis of their sex, carries little

significance with respect to actually addressing the gender wage gap. At the conclusion of this thesis we will explore some of the remedies which have been offered by scholars as a means to produce more effective and enforceable equal pay legislation. The value of each of these recommendations as well as their potential implications for the future of the gender wage gap in the American workforce will be discussed in turn.

CHAPTER 4

TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

As the next piece of equal pay legislation following the passage of the EPA in 1963, Title VII of the Civil Rights Act of 1964 took a step further in addressing the gender wage gap. Indeed, the Act was much broader in the sense that it sought to prohibit discrimination in a variety of areas including hiring, firing, compensation, classification, promotion, and other employment decisions (Crampton, Hodge, and Mishra 1997). Overall, this Act prohibited discrimination in these employment decisions "with respect to compensation, terms, conditions, or privileges of employment because of such an individual's race, color, religion, sex, or national origin" (Civil Rights Act of 1964). However, there is evidence to suggest that this piece of legislation also contained several inherent weaknesses which limited its effectiveness in addressing the gender wage gap and, more specifically, occupational segregation.

It is well documented that the word "sex" was originally introduced for inclusion in the 1964 Act as a joke and as a tactic to defeat or weaken the bill by splintering interested parties in support of the bill (Deitch 1993). However, according to Deitch (1993), despite the less than honorable intentions underlying the addition of this term, "the inclusion of the word sex in Title VII of the 1964 Civil Rights Act became the legal basis for most gender discrimination policy in the United States." Indeed, it is arguable

that the gains in gender-based wage inequality which have resulted in wage discrimination cases under the Title VII were merely the unintended consequences resulting from the passage of this legislation. Therefore, regardless of how effectively this legislation has addressed occupational segregation as a cause of the gender wage gap, the manner in which it came to fruition casts a shadow of doubt on its validity as a means to address gender-based wage disparities.

Prior to the passage of the 1964 Act, a number of concerns arose regarding the impact of this legislation on its predecessor, the EPA (Wyman 2003). Due to its broader interpretation of employment discrimination, interested parties feared that an employee filing suit under Title VII could file a wage discrimination claim without the need to demonstrate "equal pay for equal work" as required under the EPA (Wyman 2003). As a result, Congress incorporated the Bennett Amendment into the bill shortly before its passage in 1964. This amendment effectively integrated the EPA's four provisions for circumstances under which gender-based wage inequalities would be legally justified into Title VII, including "a seniority system, a merit system, a system which measures earnings by quantity or quality of production, or a differential based on any other factor other than sex" (Equal Pay Act of 1963). The Bennett Amendment served to impose many of the same limitations on Title VII in terms of its ability to address occupational segregation as the EPA faced. In particular, by including these four affirmative defenses for wage discrimination, Title VII became subject to the vast limitations arising from the ambiguity of the "any other factor other than sex" provision of the EPA. As a result, wage discrimination cases arising under this Act have been subjected to unfair

rationalizations of pay disparities offered by employers and, subsequently, made exceedingly more difficult to win for aggrieved employees.

Much like its legislative predecessor, the 1964 Act outlined circumstances under which gender-based pay inequities would be legally justified in addition to those already provided under the EPA. In particular, the act detailed a few protected traits classified as Bona Fide Occupational Qualifications (BFOQ), over which an employer would still be permitted to discriminate at the point of employment under this Act. According to the Act, it is not unlawful for an employer to hire an individual on the basis of religion, sex, or national origin in situations in which those factors constitute a bona fide occupational qualification "reasonably necessary to the normal operation of that particular business or enterprise" (Civil Rights Act of 1964). However, since men and women are largely concentrated into male-dominated and female-dominated occupations, it is arguable that such bona fide occupational qualifications could serve to discourage women from entering traditionally male dominated fields by hindering their earning potential in those fields (Quinn 1994). Thus, in this sense, the act fails to address occupational segregation as a cause of the gender wage gap. In fact, the implications of the BFOQ provision of Title VII may even serve to reinforce occupational segregation in the American workforce.

Moreover, such provisions for cases in which gender-based wage disparities are permitted provide employers additional means by which to rationalize unfair wages. Indeed, the Act's definition of what constitutes a bona fide occupational qualification is largely ambiguous and provides no mechanism by which to ensure the legitimacy of

employers' application of this principle. In fact, illegitimate claims by employers of occupational qualifications as the basis for gender-based wage inequalities are unlikely to be corrected unless an aggrieved female employee files a wage discrimination suit. This is further complicated by the fact that female employees are unlikely to be aware of the inferiority of their earnings relative to their male coworkers. In this manner, the Act also falls short of addressing occupational segregation as a cause of the gender wage gap, by discouraging women from entering traditionally male-dominated occupations.

Another limitation of the Act is that employees filing suit in wage discrimination cases under Title VII, in addition to bearing the burden of proof as in the EPA, must also prove that their employer acted with discriminatory intent (Wyman 2003). In this case, discriminatory intent includes anything from malicious intent to stereotyped assumptions and unconscious perceptions (Zimmer and Sullivan 1986). Thus, in these cases it is not enough for an employee to demonstrate that she was paid less than her male coworkers for doing the same work, she must also demonstrate that her employer did so intentionally based on her sex. Thus, although Title VII takes a broader approach in addressing wage discrimination in a number of areas, it also makes wage discrimination cases more difficult to win for plaintiffs due to a more stringent burden of proof.

Additionally, although this Act created the Equal Employment Opportunity Commission (EEOC) with the express purpose of enforcing and implementing the prerogatives of the legislation, it failed to provide the commission with any mechanism by which to ensure compliance with the Act. Indeed, the EEOC's capacity to address wage discrimination was impeded by inadequate enforcement powers, budgetary

limitations, and weak administration (Pedriana and Stryker 2004). For instance, the EEOC's capacity to enforce the Act was limited by the manner in which the Act called for wage discrimination cases to originate, requiring that violations be brought to the attention of the EEOC by the aggrieved party rather than allowing the EEOC to actively seek out and address such unfair wage disparities. Thus, under this Act many women may be experiencing unfair wage discrimination without their knowledge. Additionally, although many women may be aware of the unfair wage discrimination to which they are being subjected, they may not be aware of their rights to file suit in these cases.

In addition to the weaknesses of the EEOC under the provisions set forth by the 1964 Act, sources suggest that the EEOC has become increasingly ineffectual over time due to ever-increasing caseloads and personnel shortages. Indeed, there is evidence to suggest that the process of reaching a resolution in wage discrimination cases under the EEOC is becoming increasingly lengthy, often spanning over a number of years. According to Crampton, Hodge, and Mishra (1997), "the number of discrimination charges [filed with the EEOC] increased by 46.7 percent between 1989 and 1994…however, resolutions of these complaints only increased by 9.6 percent; thus, the process is slowing down." Filing wage discrimination suits with the EEOC is further complicated by a 13 percent decrease in EEOC investigators since 1989, accompanied by the caseloads for individual investigators tripling over the same time period (Crampton, Hodge, and Mishra 1997). Such statistics highlight the limitations of the EEOC in addressing the gender wage gap.

Yet another limitation of Title VII which has been offered by scholars is that, although the Act addresses gender-based wage inequalities in contexts in which both men and women work, the Act fails to address the source of occupational segregation. According to Moss (2004), occupational segregation in the American workforce is largely the result of women's inherent preference for nondiscriminatory workplaces and their tendency to select occupations on the basis of expectations of discrimination in a given work environment. According to this theory, women anticipate discrimination in male-dominated occupations due to an underrepresentation of women (Moss 2004). As a result, women tend to favor gender-diverse occupations and, consequently remain largely unrepresented in traditionally male-dominated fields. Such a cyclical process serves to perpetuate occupational segregation in the American workforce. Therefore, the weakness of Title VII in addressing occupational segregation lies in its failure to address the origin of women's expectations of discrimination in male-dominated occupations. Moss (2004), suggests that future legislation should more directly address the cause of occupational segregation by implementing changes in the "focus and the burdens of proof in Title VII cases, affirmative action, and educational reform." Such prescriptions for improved equal pay legislation will be further discussed at the close of this thesis.

Other limitations of this Act include the short 180 day statute of limitations, after which an aggrieved party may lose their right to file suit (Civil Rights Act of 1964). The courts have often held that the statute of limitations begins at the time of employment when wages were agreed upon rather than at the point at which discriminatory wages were discovered by an aggrieved party (Bornstein 2009). Thus, under the 1964 Act it

was possible that a woman could be subjected to unfair gender-based wage inequality over the course of her employment and become aware of this 180 days after the point at which she was hired, only to find that the statue of limitations had already been surpassed and she no longer possessed legal recourse to file suit despite the fact that she is still receiving unfair wages. This major weakness was only recently addressed in 2009 with the passage of the Lilly Ledbetter Fair Pay Act, which effectively relaxed the 180 day statute of limitations, an issue which will be covered in more depth later in this thesis.

Another shortcoming of Title VII is that it only applies to employers who employ 15 or more employees (Civil Rights Act of 1964). However, according to a recent news-release by the U.S. Small Business Administration (2006), "in 2005, small businesses represented 99.7 percent of all the nation's employer business…[employing] 57.4 million Americans." Thus, the Act only covers a small percentage of the businesses in the American workforce, a majority of which are small businesses employing fewer than 15 people. In this way, the significance of this Act in addressing gender-based wage inequality is further limited, since it only applies to a very small minority of employers in the American workforce.

In conclusion, Title VII of the Civil Rights Act of 1964 features a number of inherent weaknesses which limit its ability to address occupational segregation and the gender wage gap. In fact, it is arguable that many of the provisions in this act represent a primarily symbolic statement, rather than a significant and effective attempt to address the gender wage gap. Indeed, the intentions underlying the inclusion of the word "sex" in this piece of legislation alone are indicative of the shortcomings of the Act. Perhaps most

strikingly, the inclusion of the four affirmative defenses of the EPA through the Bennett Amendment, as well as the addition of Bona Fide Occupational Qualifications as additional circumstances under which gender-based wage inequalities would be legally justified, served to weaken the effectiveness of this Act. Also, the more stringent burden of proof placed on employees filing wage discrimination suits under this Act, requiring them to prove discriminatory intent on the part of their employers, further undermined the ability of a plaintiff to achieve a favorable resolution in court. Moreover, the weaknesses of the EEOC as an agency responsible for enforcing the prerogatives of this Act also limit the effectiveness of this Act. Additionally, it is arguable that this act fails to address the causes of occupational segregation and, therefore, fails to address the gender wage gap as it exists today. Finally, the short statute of limitations, along with the limited applicability of this Act within the American workforce, further diminishes its value as a solution to gender-based wage inequalities.

CHAPTER 5

THE CIVIL RIGHTS ACT OF 1991

Following its passage, the Civil Rights Act of 1991 was widely recognized as a major victory for the cause of wage equality. This Act was inspired by several goals. In general, it sought to amend its legislative predecessor, the Civil Rights Act of 1964. Additionally, it sought to overturn a number of previous Supreme Court decisions in employment discrimination by "restoring the civil rights protections that were dramatically limited by those decisions" (Civil Rights Act of 1991). Moreover, the Act aimed to "strengthen existing protections and remedies available under federal civil rights laws to provide more effective deterrence and adequate compensation for victims of discrimination" (Civil Rights Act of 1991). Although a number of legislative initiatives with regard to employment discrimination were passed since the passage to the Civil Rights Act of 1964, the 1991 Act was the first statutory initiative to specifically address gender-based inequalities with regard to wages since its legislative predecessor nearly 30 years before. In spite of the many provisions for gender-based wage disparities which this Act offered it is arguable that, like its legislative predecessors, the 1991 Act also fell short of addressing the gender wage gap and, more specifically, occupational segregation as a cause of this gap.

Among the major provisions brought about by this Act was that it significantly lightened the plaintiff's burden of proof in disparate impact cases. According to Lissy (1992), a disparate impact occurs when an employment policy or practice "disproportionately and adversely" affects an individual. Previously the courts had routinely ruled in favor of employers in wage discrimination cases due to the excessively harsh burden of proof faced by plaintiffs in these cases (Seymour 1992). Under the new act, if an employee can demonstrate that an employment policy or practice has a disparate impact on female employees then the burden of proof shifts to the employer. At this point, the employer must demonstrate that the employment practice in question constitutes a "business necessity" in relation to the position at issue (Lissy 1992). However, in spite of the advantages of this provision of the Act for women filing wage discrimination cases, it is arguable that the ambiguity of the term "business necessity" in the Act limits the ability of women to reach favorable resolutions in wage discrimination cases.

Indeed, the Act offers only a very broad and ambiguous definition of this term. Therefore, the employment practices which employers may classify as business necessities virtually are limitless, allowing a great deal of room for rationalizing otherwise unfair and unjust wage disparities. For example, an employer may offer height as a business necessity for a job the performance of which may or may not be impacted by one's height. Likewise, an employer may require that employees be able to lift a certain amount of weight for a job the performance of which may or may not be impacted by strength. Although seemingly exaggerated in their implications, these are instances of

job stipulations that are not precluded as constituting a "business necessity" under this Act; such limitations may, either overtly or subtly, serve to prevent women from being hired or promoted into certain positions. As Quinn (1994) argues, such justifications, if applied at the point of employment, may ultimately serve to limit women's access to traditionally male-dominated occupations and to limit women's earning potential once they are hired into such positions. As a result, occupational segregation and, subsequently, the gender wage gap as a whole may be reinforced.

This Act also amended the statute of limitations implemented by the 1964 Act in cases in which wage discrimination resulted from a seniority system. Previously, the 180 days allotted to file suit with the EEOC in cases of wage discrimination began at the point at which a seniority system was adopted (Seymour 1992). Thus, women who were hired 180 days following the implementation of a seniority system and who were subsequently discriminated against as a result of the system possessed no recourse to challenge the discrimination. In this manner, intentionally discriminatory seniority systems could be perpetuated under the previous Act. Under the 1991 Act, women are allowed to challenge intentionally discriminatory seniority systems at the point at which they are adopted, when they become subject to them, or when they become injured by their application (Seymour 1992).

However, despite the fact that this Act eased the statute of limitations in regards to seniority systems it still failed to address the statute of limitations in regards to the other three affirmative defenses set forth in the EPA as well as in the Bennett Amendment of the 1964 Act which include: "a merit system, a system which measures

earnings by quantity or quality of production, or a differential based on any other factor other than sex" (Equal Pay Act of 1963). Indeed, it is arguable that these three stipulations could also lead to the perpetuation of discriminatory employment practices as a result of an unnecessarily strict statute of limitations beginning at the point of implementation. Additionally, these stipulations could also provide convenient rationalizations for employers seeking to justify discriminatory employment practices.

The 1991 Act also differs from its legislative predecessors in that it allows women who sue on the basis of wage discrimination to collect punitive and compensatory damages in cases of intentional discrimination. In this case, punitive damages refer to damages paid with the intention of deterring intentionally harmful employment practices, whereas compensatory damages refer to those losses for which the injured party is entitled to be compensated (Lichtman and Fechner 1992). However, it is arguable that what this Act grants with one hand in the form of provision for damages in wage discrimination cases, it also takes away with the other. Indeed, the Act places strict limits on the amount and accessibility of damages women may receive in these cases. As a result, many women who face gender-based wage discrimination may receive little or no compensation under this Act, regardless of how egregious the wage disparities they faced and no matter how malevolent their employers intentions in inflicting the disparity.

According to Lichtman and Fechner (1992), the caps on damages set forth by the Act are largely arbitrary, being based on employer size. For employers of 15 to 100 employees-which represent the vast majority of employers covered by this Act-the damages cap is set at $50,000. The cap gradually ascends from here reaching $100,000

for employers of 101-200 employees, $200,000 for employers of 201-500 employees, and $300,000 for employers of 500 or more employees. In fact, the most that any employer could ever be liable for under this Act is $300,000 in damages (Lichtman and Fechner 1992). Thus, in cases in which women have incurred substantial losses as a result of wage discrimination, this Act could prevent them from recovering the full amount of their losses. Additionally, like its predecessor, the Civil Rights Act of 1964, the 1991 Act's terms for damages in wage discrimination cases exclude women who are employed in businesses that employ fewer than 15 employees. Thus, as previously mentioned, the majority of the women in the American workforce could not enjoy the advantages of compensation for gender-based wage discrimination that this Act purportedly provides.

Another limitation in regards to the Act's provision for damages is that punitive damages may only be recovered if the plaintiff is able to demonstrate that their employer acted with "malice or reckless indifference to federally protected rights" (Lichtman and Fechner 1992). Thus, the burden of proof lies heavily with the employee who filed suit in these cases if they are to receive damages. As a result of the proceeding stipulations, not only are the majority of women in the American workforce unlikely to be eligible to recover damages in wage discrimination cases, but they also face the additional challenge of proving unethical discriminatory intent on the part of their employer.

Other research cites unintended negative consequences of the provisions for damages in wage discrimination cases set forth by the 1991 Act. According to Taylor (2003), the risk of being liable for large damage rewards in wage discrimination cases may have the inadvertent effect of discouraging employers from hiring women. Indeed,

according to a study by Oyer and Schaefer (2005), analyzing industry hiring practices and associated legal costs before and after the passage of the 1991 Act indicated that the Act had halted and potentially reversed a trend toward industries becoming more integrated on the basis of gender during the 1970s and 1980s. According to Oyer and Schaefer (2005), the 1991 Act discouraged employers from hiring women by leading them to conclude that the surest way to avoid a wage discrimination lawsuit and costly legal fees was to avoid hiring individuals protected under the law. In this way, the 1991 Act could potentially serve to reinforce occupational segregation in the American workforce. Therefore, in addition to damages being particularly hard for women to attain in wage discrimination cases, the threat of damages could potentially serve to perpetuate the gender wage gap in the American workforce.

This Act also sought to "clarify prohibition against impermissible consideration of race, color, religion, sex, or national origin in employment practices" (Civil Rights Act of 1991). Prior to the passage of this Act, the courts had regularly failed to hold employers liable for discriminatory employment practices when employers identified other legitimate factors motivating their otherwise discriminatory employment practices (Bornstein 2009). Under the 1991 Act, discrimination need not be the sole motivating factor behind an unlawful employment practice. Therefore, employers may be held liable for wage discrimination under this Act even if other legitimate considerations played a role in their employment policy.

In fact, the "mixed motive" doctrine of the 1991 Act allows an employer to be held liable for discriminatory employment practices even when they admit that they

would have acted similarly in the absence of any discriminatory considerations (Federal Statutes and Regulations 2003). Thus, once a plaintiff is able to establish that discriminatory motives on the part of their employer exist, liability is difficult for an employer to counter (Federal Statutes and Regulations 2003). However, this provision is also weak in the sense that it limits a plaintiff's ability to recover punitive damages in wage discrimination cases. Under this Act, a plaintiff may not receive punitive damages if an effectively discriminatory employment practice is shown to be motivated by legitimate factors in addition to discriminatory considerations (Bornstein 2009). Thus, if an employer is able to prove that an employment practice which had the impact of discriminating against an employee on the basis of gender was motivated by legally justifiable rationale, even if discriminatory factors also played a role, they may not be liable to pay punitive damages. Therefore, even if a plaintiff is able to establish discriminatory intent on the part of her employer, she may still be ineligible to receive damages for her losses as a result of unfair wage discrimination.

In conclusion, the Civil Rights Act of 1991 fails to effectively address the gender wage gap, particularly in regards to occupational segregation. Once again, a number of the provisions of this Act possess merely symbolic significance as opposed to representing a serious attempt to address the gender wage gap. Indeed, the Act's ambiguous definition of a "business necessity" in wage discrimination cases offers rationalization for employers seeking to justify unfair wage disparities and serves to reinforce occupational segregation. Likewise, by not applying the broader statute of limitations to the other three affirmative defenses in wage discrimination cases, the Act

may also offer convenient justification for employers as well as a means to perpetuate occupational segregation. The Act's effectiveness is further undermined by the numerous limitations it places on the extent and accessibility of damages women may receive in wage discrimination cases. Moreover, the threat of damages liability may inadvertently discourage employers from hiring women and, as a result, contribute to occupational segregation. Finally, although the Act makes it more difficult for employers to counter liability for unlawful employment practices once the plaintiff has established discriminatory motive, it limits women's eligibility for damages in "mixed motive" circumstances.

CHAPTER 6

THE LILLY LEDBETTER FAIR PAY ACT OF 2009

Among the most recent legislative initiatives aimed at addressing the gender wage gap is the Lilly Ledbetter Fair Pay Act which was passed in January of 2009. This piece of legislation is named after Lilly Ledbetter, an Alabama woman who filed a complaint with the EEOC after being paid less than her male co-workers at a Goodyear tire factory. The complaint ultimately culminated in *Ledbetter v. Goodyear Tire & Rubber Co.* (2007), in which the Supreme Court decided in a 5-4 vote to overturn the decision of the lower court, which had sided with Ledbetter's claim of a violation of her rights under Title VII of the Civil Rights Act of 1964. The Supreme Court decision was in favor of Goodyear, declaring that the 180 day statute of limitations for presenting a wage discrimination lawsuit begins at the time of employment, when wages are agreed upon, rather than restarting at the date of the most recent paycheck (Stolberg 2009).

In light of this judicial decision, which represented a major setback for the cause of wage equality, the Ledbetter Fair Pay Act is a major turning point. This bill effectively overturns the 2007 Supreme Court decision, by expanding the rights of workers to sue in wage discrimination cases and effectively relaxing the statute of limitations under Title VII of the Civil Rights Act of 1964. According to the wording of the Act, the findings of the court in *Ledbetter v. Goodyear Tire & Rubber Co.* (2007)

"ignore the reality of wage discrimination and [are] at odds with the robust application of the civil rights laws that Congress intended (Lilly Ledbetter Fair Pay Act of 2009). Many have heralded this Act as a major victory for advocates of wage equality, including the EEOC as well as women such as Lilly Ledbetter who have received unfair wages as a result of their gender. Interestingly, this was the first bill signed into law by President Obama, having faced opposition by the Bush administration following its previous passage in Congress (Stolberg 2009).

This Act took a step further than its legislative predecessor in easing the statute of limitations under Title VII of the Civil Rights Act of 1964. According to the wording of the Act:

> An unlawful employment practice occurs…when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice (Lilly Ledbetter Fair Pay Act of 2009).

Therefore, under this Act employees may file claims of gender-based wage discrimination up to 180 days following the receipt of the most recent paycheck or other benefit allegedly affected by discriminatory motives on behalf of their employer ("EEOC Revises Pay Bias Manual"). In fact, in the wake of the enactment of this Act, the EEOC revised its *Pay Bias Manual* to better align with the new policy, relaxing the statute of

limitations so greatly as to allow employees to file compensation discrimination charges as long as 300 days following the receipt of the most recent discriminatory paycheck or employment benefit ("EEOC Revises Pay Bias Manual"). Additionally, this Act also applies retroactively, allowing for recovery of back pay for up to two years before charges of discriminatory compensation practices were filed. However, in spite of the many advantages for pay equity which this Act offers, it is arguable that there are still several inherent weaknesses which arguably prevent this Act from effectively addressing the gender wage gap, and occupational segregation as a key source of the gap. Indeed, upon closer analysis of this Act (which purportedly aims to prevent discrimination in compensation because of race, color, religion, sex, or national origin) one may discover that it will have a limited impact on the gender wage gap as it exists today.

Following the passage of this Act, a number of concerns arose surrounding its implications for the business world. Many were concerned that the relaxed statute of limitations would result in a flood of wage discrimination cases based on discriminatory gender-based wage inequalities experienced by employees both in the past and in the present (Greenwald 2010). However, recent judicial trends indicate that this did not come to pass and that, in fact, the courts have generally been conservative in interpreting the new law (Greenwald 2010). Furthermore, recent court decisions have demonstrated that lower courts have the potential to lessen the impact of the broadened limitations period imposed by this act in wage discrimination cases (Sorock 2010). Thus, women filing suit in wage discrimination cases have generally been no more likely to achieve a favorable outcome on their behalf as a result of this Act.

Additionally, it has been speculated that, although the threat of costly litigation as a result of this Act may have motivated many employers to conduct more audits of their pay practices and to be more diligent in their recordkeeping efforts, this does not necessarily mean that more cases will be filed ("What Has Changed Since Enactment of Lilly Ledbetter?"). According to Bastian (2009), employees are typically unaware of their co-workers earnings and how pay decisions are made by their employers. Thus, many employees who are subjected to unfair wage disparities are unlikely to file a complaint even within the extended statute of limitations simply because of a lack of transparency of employment practices. This illustrates a key weakness in this Act in addressing the gender wage gap; the Act does not provide any provisions for increasing transparency of employment practices within businesses in order to enable women to challenge discriminatory wages. According to O'Neill (2010), pay secrecy-and-confidentiality (PSC) rules are quite common in the American workforce. Indeed, a recent online poll indicated that over one-third of respondents had formal PSC rules in effect at their place of employment and only 1 in 14 respondents reported that their place of employment had adopted a "pay openness" policy (O'Neill 2010). Moreover, O'Neill (2010) was quick to point out that this poll likely failed to account for an untold number of businesses that communicate wage confidentiality expectations informally. Likewise, the Act only challenges unfair compensation practices when employees are aware of them and file suit, the Act does not provide any mechanism by which businesses may be regularly audited to ensure fair pay practices and to enable women to file suit when they are subjected to discriminatory wages ("How to Play Fair Pay").

Perhaps the most important limitation of this Act which has been set forth is that its scope, which only addresses the statute of limitations in wage discrimination cases, is too narrow and limited ("How to Play Fair Pay"). Indeed, certain employment practices, such as promotions, have been shown to be unprotected by this Act ("Promotions Don't Count as Pay Discrimination in Ledbetter Law"). Thus, an employee who is denied a promotion on the basis of their sex may not be legally protected by this Act. In fact, according to a recent report, this Act does not reinforce any of the provisions originally set forth by the EPA, nor does it amend the EPA in any way ("How to Play Fair Pay"). Therefore, this act "does not require equal pay for equal work, nor does it enact any requirements that relate to how employees are paid or which prohibit discrimination in pay," it simply extends that statute of limitations in compensation discrimination claims under Title VII of the Civil Rights Act of 1964 ("How to Play Fair Pay"). Indeed, it is arguable that this Act in no way addresses occupational segregation as a root cause of the gender wage gap. In fact, recent reports suggest that the wage gap has only shown negligible improvement since 2008 across all 50 states, with women earning 23 cents less than their male counterparts (Tucker 2010). On average, this loss in wages amounts to $11,000 per year (Tucker 2010). Even more strikingly, women in 20 states experienced a widened wage gap (Tucker 2010). Such evidence speaks to the ineffectiveness of this Act as well as the necessity for further legislative intervention in the cause of wage equality.

In sum, the Lilly Ledbetter Fair Pay Act represents another feeble and virtually ineffectual attempt to address the gender wage gap through legislative intervention.

Indeed, the significance of this act is primarily symbolic in that, while it extends the statute of limitations under Title VII, it fails to provide increased transparency in business practices to ensure that women are not unknowingly being subjected to unfair wages or to provide a mechanism through which employers may be routinely audited to ensure fair pay practices. Moreover, the scope of this Act is so limited that it fails to address arguably the most prominent cause of the gender wage gap as it exists today, occupational segregation.

As you can see, the legislative initiatives which have been aimed at addressing wage inequality in the American workforce have largely come about as a result of an evolutionary process of trial and error. Each successive act has aimed to amend to shortcomings of its predecessor. However, in spite of this gradual advancement over the course of nearly half a century, it is questionable as to whether any of these Acts effectively address the gender wage gap and its primary causes, particularly occupational segregation. As we move to the conclusion of this thesis we will examine what scholars have proposed as remedies for the seeming ineffectiveness of past equal pay legislation in addressing the gender wage gap. Each of these recommendations will be assessed in terms of their validity as well as their potential implications for the future of the gender wage gap.

CHAPTER 7

THE FUTURE OF THE GENDER WAGE GAP IN THE AMERICAN WORKFORCE

Having examined a succession of legislative initiatives aimed at addressing the gender wage gap up to the present, it is logical to discuss what lies ahead for the gender wage gap. In response to the shortcomings of each of these legislative initiatives, as well as the gender wage gap as it exists today, scholars have offered a number of prescriptions for how legislative intervention could better be directed toward closing this gap. In particular, a number of scholars have focused on the possibility of narrowing the gender wage gap through legislative initiatives explicitly aimed at addressing occupational segregation as a root cause of the gender-based wage disparities in the American workforce. Additionally, a number of scholars have proposed ways in which the equal pay legislation which has been passed to date could be amended and strengthened to better address wage disparities.

RECOMMENDATIONS FOR FUTURE EQUAL PAY LEGISLATION

A number of the recommendations for future equal pay legislation feature measures which would require the federal government to take a much more hands-on approach to decreasing occupational segregation and ensuring wage parity. According to Hegewisch, Liepmann, Hayes, and Hartmann (2010), addressing the gender wage gap

would be greatly facilitated by the creation of a federal agency dedicated to training and employment programs targeted at young women to promote their interest in traditionally male-dominated occupations. Such a program would actively seek to lower barriers to women entering non-traditional fields by creating opportunities for women to enter into professions that are traditionally occupied by males and by counteracting the manner in which women are typically socialized to view their role in the American workforce. Similarly, Hartmann and Rose (2004) have proposed that future equal pay legislation should aim to implement and enforce educational policies to increase women's presence in higher paying occupations by increasing women's access to skills training for traditionally male-dominated occupations, as well as improving career counseling for women. Hartmann and Rose further suggest that these resources should be specifically targeted at young women who have not yet entered the workforce, as well as low-income and single mothers who would stand to benefit most from such policies in the long-run.

Likewise, Goldberg-Dey and Hill (2007) have also proposed education as a key component in overcoming occupational segregation. According to Goldberg-Dey and Hill (2007), equal pay legislation should implement policies to promote careers in science, technology, engineering, and mathematics in a manner which appeals to young girls and women alike. The importance of catering specifically to women in the promotion of male-dominated careers is further evidenced by the work of Weinberger (2004) which suggests that women often avoid math and science related majors in college, and subsequently careers in those fields, because they perceive them as being "uninteresting." Additionally, Goldberg-Dey and Hill (2007) propose that policies

should be implemented to encourage young girls to start taking higher level math and science courses early in their education. Indeed, such early exposure to these disciplines has been shown to increase the likelihood that women will take similar courses in college and, likewise, pursue careers in these fields as they enter the workforce (Trusty 2002). Thus, by actively intervening and encouraging young women to pursue occupations other than those typically dominated by females through training and education, such legislation could greatly decrease occupational segregation in the American workforce and, subsequently, the gender wage gap as a whole.

Indeed, not only are women greatly underrepresented within traditionally male-dominated occupations, but these occupations also tend to offer higher wages than traditionally female-dominated occupations (Boraas and Rodgers 2003). Thus, introducing women into these fields represents a formidable accomplishment, both in terms decreasing occupational segregation as well as in addressing the overall gender wage gap. However, statistics suggest that women's integration into male-dominated fields has been slow to progress. According to Blum (1991), women experienced only limited gains in their representation in traditionally male-dominated occupations from the 1970s into the 1980s, representing only 6.5 percent of total growth in female employment. Moreover, many female-dominated jobs became even more heavily occupied by females during this time (Blum 1991). Additionally, as previously mentioned, women's integration into male-dominated fields was further compromised as a result of the passage of the Civil Rights Act of 1991. According to Oyer and Schaefer (2005), the 1991 Act discouraged employers from hiring women for fear of costly legal

expenses in the event of a gender discrimination lawsuit. Thus, equal pay legislation to date has generally been ineffective in introducing women into traditionally male-dominated occupations, this constitutes a major weakness which future equal pay legislation should seek to address.

REVISING AND STRENGTHENING PREVIOUS EQUAL PAY LEGISLATION

Other scholars have proposed that the gender wage gap would be more effectively addressed if previous legislation were revised and strengthened. Indeed, many scholars have suggested that such reassessment could potentially lead to more effective legislation and, in some instances, legislation that would better address occupational segregation as a root cause of the gender wage gap. Upon reviewing the preceding critique of the succession of equal pay legislation which has been passed to date, one may note the emergence of several recurring weaknesses. Among these are the ambiguity of certain passages within these acts, the provision for conditions under which gender-based wage disparities would be legally justified, excessively harsh burdens of proof on behalf of the employee filing suit in wage discrimination cases, and the limited applicability of these legislative initiatives. As previously discussed, all of these weaknesses serve to undermine the efficacy of these legislative initiatives in ensuring fair wages and greatly diminish their significance as legitimate protections for women's rights in the American workforce. Indeed, it is arguable that the legislative initiatives aimed at addressing the gender wage gap to date are merely symbolic in their significance.

Ambiguity has been a weakness attributed to the EPA as well as the Civil Rights Acts of 1964 and 1991. This ambiguity is arguably attributable to the fact that implementing policy without the provision of exceptions and "wiggle room" is generally politically unpalatable. Indeed, the concession of the phrase "equal pay for comparable worth" in favor of "equal pay for equal work" in order to ensure the successful passage of the Equal Pay Act of 1963 is a testament to the impact of political forces on policymaking. According to Spizman (2001), this political preference for ambiguity in policy is further illustrated by the four affirmative defenses, in particular the "any other factor other than sex" provision, set forth in the EPA and carried over to the Civil Rights Act of 1964 through the Bennett Amendment. Other examples of these include the Bona Fide Occupational Qualification provision of the Civil Rights Act of 1964 as well as the "business necessity" provision of the Civil Rights Act of 1991. Such ambiguities often allow employers to legitimize otherwise discriminatory pay practices by outlining circumstances in which gender-based wage disparities are legally justified. Perhaps most importantly, scholars have suggested that such justifications may have the unintentional impact of reinforcing occupational segregation in the American workforce by limiting women's access to traditionally male-dominated occupations (Quinn 1994).

Another recurring weakness of the equal pay legislation which exists today is that they generally place the burden of proof with the employee filing suit in wage discrimination cases rather than with the employer. Furthermore, this burden of proof has often proven to be excessively harsh in many cases. This is well demonstrated by the EPA, which requires that an employee establish that unequal wages were paid to

employees of the opposite sex for "substantially equal" work, operating under similar working conditions (Equal Pay Act of 1963). This burden was made even more burdensome in the Civil Rights Act of 1964 which requires that employees not only bear the same burden of proof as in the EPA, but they must also establish discriminatory intent on the part of their employer (Wyman 2003). Although this burden of proof was somewhat lightened by the Civil Rights Act of 1991, employers still face an unduly heavy burden of proof in wage discrimination cases if they are to receive damages in wage discrimination cases under this Act. By placing such a heavy burden of proof on women in wage discrimination cases, the equal pay legislation which has been passed to date makes it difficult for women to achieve favorable outcomes before the courts. Moreover, even when a woman can demonstrate that gender-based wage disparities are present, she is only entitled to recover damages for her losses when she can establish discriminatory intent on behalf of her employer; yet another limitation women face as a result of a heavy burden of proof.

Perhaps the failure of previous equal pay legislation which has most directly impacted the pursuit of gender-based wage equality has been the manner in which it has arbitrarily and systematically inhibited women's eligibility to file suit as well as their entitlement to proper reparation for their losses as a result of gender-based wage discrimination. These limitations include, but are not limited to, strict statutes of limitations, caps on the recovery of damages, and the limited applicability of these acts based on employer size. Although the statute of limitations in wage discrimination cases has become successively more relaxed since the passage of the Civil Rights Act in 1964

to the Lilly Ledbetter Act of 2009, it is arguable that any statute of limitations which may be placed on a woman's right to file suit as a result of wage discrimination may be considered arbitrary. Indeed, at what point does a woman no longer possess legal recourse after being subjected to unfair wage practices? More importantly, how can equal pay legislation effectively enact such limitations without arbitrarily excluding some women from being eligible to file suit in these cases?

Another provision in previous equal pay legislation which has been the target of a great deal of criticism are the caps on damages enacted by the Civil Rights Act of 1991. According to Lichtman and Fechner (1992), these caps also represent an arbitrary limitation on women's rights before the law. In fact, one may rightfully question how the compensation to which a woman who has been the victim of gender-based wage discrimination has anything to do with the size of her employer. Finally, it is arguable that, since the passage of the Civil Rights Act of 1964 which applied only to employers who hire 15 or more employees, equal pay legislation has systematically excluded a majority of women in the American workforce from being able file suit in wage discrimination cases. Indeed, as previously discussed, the vast majority of women in the American workforce work for in small business employing fewer than 15 people (McDowell 2006).

Similarly, scholars have also suggested that stricter enforcement of equal pay legislation by the EEOC would hasten the narrowing of the gender wage gap. According to Pedriana and Stryker (2004), the EEOC faces a number of challenges which limit its effectiveness in addressing sex-based wage disparities, including inadequate enforcement

powers, budgetary limitations, and weak administration. However, perhaps the most blatant weakness of the EEOC in its ability to address gender-based wage disparities is that it was created without any mechanism by which it might actively seek out and correct unfair wage practices within the American workforce. Indeed, wage discrimination must be brought to the attention of the EEOC by an aggrieved party. This problem is further compounded by the fact that many women are unaware of how their wages compare to those of their male co-workers (Bastian 2009).

This brings us to yet another weakness of the EEOC, it offers no provisions for increasing transparency in employment practices. Such provisions are arguably vital for the EEOC to more effectively address the wage gap as it exists today. This is particularly the case if the EEOC continues to operate as it does today, lacking the authority to oversee the wage practices exercised by employers or to hold employers accountable for unfair wage practices that are brought before the EEOC by any other avenue than an employee initiating a wage discrimination suit. According to O'Neill (2010), future equal pay legislation should directly address this problem, making pay secrecy-and-confidentiality (PSC) rules illegal, providing civil penalties for violations, allowing plaintiffs to recover punitive damages, establishing "pay openness" policies in all workplaces, and extending protections to both supervisory and non-supervisory employees from disciplinary action as a result of wage disclosure. Ultimately, the protections of equal pay legislation to date cannot be fully enjoyed by women in the American workforce until these barriers to wage disclosure are overcome. Women

should be able to know how their wages compare to those of their male coworkers as a matter of right, so that they may challenge unfair gender-based wage discrimination.

Furthermore, other scholars have suggested that internal weaknesses within the EEOC present a more serious threat to the effectiveness of the EEOC in achieving its purpose. According to Lichtman and Fechner (1992), as recently as the passage of the Civil Rights Act in 1991 the EEOC has proven to be increasingly less effective than in the past, with favorable settlements declining, no-cause findings increasing, alarmingly incomplete cases becoming the norm, and examples of staff incompetence and hostility to plaintiffs becoming widespread. For instance, whereas 32 percent of all new pay inequality charges filed with the EEOC in 1980 resulted in settlement, only 14 percent of such cases resulted in settlement in the 1990s (Lichtman and Fechner 1992). Additionally, the EEOC has largely reduced its accessibility and accountability to the public, with open forum meetings being held less frequently than at the peak of EEOC enforcement in the 1980s (Lichtman and Fechner 1992). Thus, not only has the EEOC proven to be less effective in ensuring favorable outcomes for women filing suit in wage discrimination cases, but it has also made it increasingly more difficult for women to file suit in these cases. Furthermore, it is worth noting that the changes which would be necessary to improving the effectiveness of the EEOC would require considerable funding and, considering the budgetary restraints faced by the majority of governmental agencies today, such changes are unlikely to be undertaken in the near future.

In conclusion, this thesis has offered a comprehensive picture of the gender wage gap as it exists today in the American workforce, with special attention being directed

toward identifying and expounding upon what is arguably its prevailing cause, occupational segregation. As demonstrated by the preceding chapters, the equal pay legislation which has been enacted to date has largely fallen short of addressing occupational segregation and, subsequently, the gender wage gap as a whole. This thesis offers a synthesis of the scholarly recommendations which have been offered in response to these shortcomings, focusing specifically on how future legislation could better address occupational segregation as a root cause of the gender wage gap. Overall, there is still a great deal of room for improvement in terms of future equal pay legislation. All of the prescriptions for future equal pay legislation detailed in this chapter share a common thread, that legislation aimed at addressing the gender wage gap should be effective, enforced, and more than simply symbolically significant. Although occupational segregation is not the only cause of the gender wage gap, it does represent a dominant factor contributing to the gender wage gap as it exists today. However, this is not intended to give the impression that intentional wage discrimination no longer exists. Indeed, the recent Lilly Ledbetter case is just one of many instances offering evidence to the contrary. However, this thesis proposes that addressing occupational segregation through legislative intervention offers an opportunity to greatly diminish the gender wage gap which continues to endure in the American workforce to this day. Furthermore, this thesis suggests that the legislation which has previously passed to address gender-based wage disparities will require extensive amendments in order to become a more effective means to address the gender wage gap, as opposed to simply representing a symbolic gesture on behalf of women's rights as equal participants in the workforce.

In the end, it is important to recognize that the aim of this thesis is not without its limitations. Indeed, full gender wage parity may be impossible to achieve by legislative means. It is entirely possible that, whether due to the forces of socialization and culture or merely by virtue of biological affinity, women in the American workforce will naturally continue to favor certain jobs over others and that gender segregation within the workforce will endure as a matter of fact. Moreover, it must be recognized that political solutions to the gender wage gap may be difficult to enact and the recommendations advanced by this thesis may not be politically palatable. As a result, equal pay legislation may continue to be primarily symbolic in its significance. In fact, it is arguable that legislation is more often about practical policy, what will get passed versus what will get passed over, rather than the noble goals policy seeks to achieve. This is well-illustrated by the manner in which the legislative initiatives discussed in this thesis were successively watered down and infused with exceptions in order to ensure successful passage. But perhaps symbolic policy that lacks the teeth necessary to directly affect change is better than nothing at all. Indeed, in spite of the many shortcomings of equal pay legislation which has been passed to date, statistics conclude that the gender wage gap has successively narrowed, albeit at a slow and uneven pace, since the passage of the Equal Pay Act in 1963 up to the present (Dale and Levine 2005). Such evidence should inspire optimism for future progress in closing the gender wage gap, suggesting that even symbolic legislation has the potential to elicit cultural change, making people reconsider previously held notions about the acceptability of gender-based wage inequality and indirectly creating greater wage parity. In terms of addressing occupational segregation

as a root cause of the gender wage gap, this may take place as a result of legislation featuring measures similar to those advanced by this thesis. Such policies would indirectly increase women's representation in traditionally male-dominated jobs, rather than forcing occupational integration of the sexes through mandate.

Ultimately, the gender wage gap may only be bridged as a result of slow and evolutionary change, rather than being directly enacted through legislative prerogative. Regardless of the implications of these intervening factors, perhaps the most important contribution of this thesis is that it offers realistic recommendations for reaching greater wage equality through legislative intervention, even if only along the margins. Gender-based wage inequality should be a matter of concern to all of us because, in one way or another, we are all subject to its effects. Wage inequality affects all women and their families whether they be single or married, old or young, college educated or high school graduate, mothers, daughters and everywhere in between.

REFERENCES

Bastian, Stanley A. 2009. "Equal Pay for Equal Work Law a Good Reminder." *Wenatchee Business Journal* 23(5): 28.

Blum, Linda M. 1991. "Between Feminism and Labor: The Significance of the Comparable Worth Movement." Berkley: University of California Press.

Boraas, Stephanie, and William M. Rodgers III. 2003. "How Does Gender Play a Role in the Earning Gap? An Update." *Monthly Labor Review* 3(1): 9-15.

Bornstein, Laura C., ed. 2009. "Title VII of the Civil Rights Act of 1964." *Georgetown Journal of Gender and Law* 10(1): 639-669.

Civil Rights Act of 1964, Pub. L. No. 88-352, sec. 2000, 78 Stat. 241 (1964).

Civil Rights Act of 1991, Pub. L. No. 102-166, sec. 102, 42 Stat. 1981 (1991).

Cohen, Phillip, and Matt L. Huffman. 2003. "Occupational Segregation and the Devaluation of Women's Work Across U.S. Labor Markets." *Social Forces* 81(3): 881-908.

Crampton, Suzanne M. John W. Hodge, and Jilendra M. Mishra. 1997. "The Equal Pay Act: The First 30 Years." *Public Personnel Management* 26(3): 335-345.

Dale, Charles V., and Linda Levine. 2005. *Pay Equity Legislation in the 109th Congress*. Congressional Research Service Report for Congress: CRS Web.

Deitch, Cynthia. 1993. "Gender, Race, and Class Politics and the Inclusion of Women in Title VII of the 1964 Civil Rights Act." *Gender & Society* 7(2): 183-203.

DeNavas-Walt, Carmen, Bernadette D. Proctor, and Jessica C. Smith. 2010. *Income, Poverty, and Health Insurance Coverage in the United States: 2009*. U.S. Census Bureau Current Population Reports: census.gov.

Durlauf, Steven N., Lawrence E. Blume and Sherwin Rosen, eds. 2008. *Human Capital*. The New Palgrave Dictionary of Economics Online. Palgrave Macmillan. 28 September 2010 <http://www.dictionaryofeconomics.com/article?id=pde2008_H000100> doi:10.1057/9780230226203.0754

Eide, Eric. 1994. "College Major Choice and Changes in the Gender Wage Gap." *Contemporary Economic Policy* 7: 55-64.

England, Paula. 1992. *Comparable Worth: Theories and Evidence*. New York: Aldine de Gruyter.

Equal Pay Act of 1963, Pub. L. No. 88-38, sec. 206(d), 77 Stat. 56, 59 (1963).

"Federal Statutes and Regulations: Civil Rights Act." 2003. *Harvard Law Review* 117(1): 400-410.

Filer, Randall K., Robert T. Michael, Heidi I. Hartmann, Brigid O'Farrell, eds. 1989. *Pay Equity: Empirical Inquiries*. Washington D.C.: National Academy Press, 153-164.

Ford, Lynne E. 2006. *Women and Politics: The Pursuit of Equality*. 2nd ed. Boston: Houghton Mifflin Company.

Goldberg-Dey, Judy, and Catherine Hill. 2007. *Behind the Pay Gap*. Washington D.C.: American Association of University Women Educational Foundation.

Greenwald, Judy. 2010. "Ledbetter Fair Pay Law Hasn't Flooded Courts." *Business Insurance* 44(6): 3.

Hartmann, Heidi, and Steven Rose. 2004. "Still a Man's Labor Market: The Long-Term Earnings Gap." Institute for Women's Policy Research. www.iwpr.org.

Hegewisch, Ariane, Hannah Liepmann, Jeffrey Hayes, and Heidi Hartmann. 2010. "Separate and Not Equal? Gender Segregation in the Labor Market and the Gender Wage Gap." Institute for Women's Policy Research. www.iwpr.org.

Jacobs, Jerry A., and Ronnie J. Steinberg. 1990. "Compensating Differentials and the Male-Female Wage Gap: Evidence from the New York State Comparable Worth Study." *Social Forces* 69: 439-68.

Kelly, Rita M., and Jane Bayes, eds.1988. *Comparable Worth, Pay Equity, and Public Policy*. New York: Greenwood Press.

Ledbetter v. Goodyear Tire & Rubber Co. 2007. 550 U.S. ____.

Lens, Vicki. 2004. “Supreme Court Narratives on Equality and Gender Discrimination in Employment: 1971-2002.” *Cardozo Women’s Law Journal* 10(1): 501-576.

Lichtman , Judith, and Holly Fechner. 1992. “Almost There.” *Human Rights: Journal of the Section of Individual Rights & Responsibilities* 19(3): 16.

Lilly Ledbetter Fair Pay Act of 2009, Pub. L. No. 111-2, 123 Stat. 5 (2009).

Lissy, William E. 1992. “Civil Rights Act of 1991.” *Supervision* 53(5): 22.

Lowell, Aaron, and Sicilian, Paul. 2008. ““Family-Friendly” Fringe Benefits and the Gender Wage Gap.” *Journal of Labor Research* 30(2): 101-119.

Maume Jr., David J. 1999. “Occupational Segregation and the Career Mobility of White Men and Women.” *Social Forces* 77(4): 1433-1459.

McCrate, Elaine. 2005. “Flexible Hours, Workplace Authority, and Compensating Wage Differentials in the U.S.” *Feminist Economics* 11(1): 11-39.

McDowell, John. 2006. “Small Business Drives the U.S. Economy.” News-Release: Office of Advocacy U.S. Small Business Administration. 28 September.

Moss, Scott A. 2004. “Women Choosing Diverse Workplaces: A Rational Preference with Disturbing Implications for Both Occupational Segregation and Economic Analysis of Law.” *Harvard Women’s Law Journal* 27(1): 1-88.

Mutari, Ellen, Deborah M. Figart, and Marilyn Power. 2001. "Implicit Wage Theories in Equal Pay Debates in the United States.” *Feminist Economics* 7(2): 23-52.

Noonan, Mary C., Mary E. Corcoran, and Paul N. Courant. 2005. "Pay Differences Among the Highly Trained: Cohort Differences in the Sex Gap in Lawyers' Earnings." *Social Forces* 84: 853-72.

O'Neill, Brian P. 2010. "Pay Confidentiality: A Remaining Obstacle to Equal Pay After Ledbetter." *Seton Hall Law Review* 40(3):1217-1256.

Oyer, Paul, and Scott Schaefer. 2005. "Why Do Some Firms Give Stock Options to All Employees?: An Empirical Examination of Alternative Theories." *Journal of Financial Economics* 76(1): 99-133.

Pedriana, Nicholas, and Robin Stryker. 2004. "The Strength of a Weak Agency: Enforcement of Title VII of the 1964 Civil Rights Act and the Expansion of State Capacity, 1965-1971." *The American Journal of Sociology* 110(3):709-760.

Petersen, Trond, and Laurie A. Morgan. 1995. "Separate and Unequal: Occupation-Establishment Sex Segregation and the Gender Wage Gap." *The American Journal of Sociology* 101: 329-65.

Prokos, Anastasia, and Irene Padavic. 2005. "An Examination of Competing Explanations for the Pay Gap Among Scientists and Engineers." *Gender and Society* 19: 523-43.

Quinn, Jennifer M. 1994. "Visibility and Value: The Role of Job Evaluation in Assuring Equal Pay for Women." *Law and Policy in International Business* 25(1): 1403-1444.

Remick, Helen, ed. 1984. *Comparable Worth and Wage Discrimination*. Philadelphia: Temple University Press.

Seymour, Richard T. 1992. "How to Stem the Erosion." *Human Rights: Journal of the Section of Individual Rights & Responsibilities* 19(3): 12.

Sorock, Carolyn E. 2010. "Closing the Gap Legislatively: Consequences of the Lilly Ledbetter Fair Pay Act." *Chicago Kent Law Review* 85(3): 1199-1216.

Spizman, Lawrence M. 2001. "The Economists Role in Equal Pay Litigation" *Journal of Legal Economics* 11(1):69-86.

Stevenson, Mary Huff. 1984. *Determinants of Low Wages for Women Workers*. New York: Praeger Publishers.

Stolberg, Sheryl G, "Obama Signs Equal-Pay Legislation," *New York Times*, 29 January 2009.

Taylor Jr., Stuart. 2003. "The 1991 Civil Rights Act has Hurt its Intended Beneficiaries." *National Journal* 35(36): 2675.

Trusty, Jerry. 2002. "Effects of High School Course-Taking and other Variables on Choice of Science and Mathematics College Majors. *Journal of Counseling and Development* 80(1): 464-474.

Tucker, Jasmine. 2010. "State Wage Gap Data Show Little or No Improvement." *National Women's Law Center,* September.

Weinberger, Catherine J. 2004. “Just Ask! Why Surveyed Women Did Not Pursue IT Courses or Careers.” *IEEE Technology and Society Magazine* 23(2): 28-35.

Whitley, L. Tracee. 1997. “ ‘Any Other Factor Other Than Sex:’ Forbidden Market Defenses and the Subversions of the Equal Pay Act of 1963.” *NU Forum* 2(1): 51-86.

Wood, Robert G., Mary E. Corcoran, and Paul N. Courant. 1993. "Pay Differences Among the Highly Paid: The Male-Female Earnings Gap in Lawyers' Salaries." *Journal of Labor Economics* 11: 417-41.

Wyman, Elizabeth. 2003. “The Current Legal Framework of Sex/Gender Discrimination Law: The Unenforced Promise of the Equal Pay Acts: A National Problem and possible Solution from Maine” *Maine Law Review* 55(1): 23-62.

Zimmer, Michael J., and Charles A. Sulivan. 1986. “The Structure of Title VII Individual Disparate Treatment Litigation: Anderson v. City of Bessemer City, Inferences of Discrimination, and Burdens of Proof” *Harvard Women’s Law Journal* 9(1): 25-58.

2009. “EEOC Revises Pay Bias Manual in Line with Ledbetter Act.” *HR Focus* 86(12): 2.

2009. “How to Play Fair Pay.” *Industry Week/IW* 258(4): 16.

2010. “Promotions Don’t Count as Pay Discrimination in Ledbetter Law.” *HR Focus* 87(4): 2.

2010. “What Has Changed Since Enactment of Lilly Ledbetter?” *HR Focus* 87(6): 6.