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## A Dialogue on Comparable Worth

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A DIALOGUE ON COMPARABLE WORTH. By *Michael Evan Gold*. Ithaca, N.Y.: ILR Press. 1983. Pp. vii, 111. Cloth, \$14; paper, \$7.50.

*A Dialogue on Comparable Worth* is Michael Evan Gold's<sup>1</sup> attempt to address the causes of pay inequities between men and women in the work force and examine the viability of the comparable worth theory as a remedy for the male-female earnings gap in America. The comparable worth theory speaks to sex-related pay inequities across jobs which, although not identical, are deemed to be of equivalent value to the employer.<sup>2</sup> The author frames the essay as a hypothetical debate featuring characters created from his imagination. The *dramatis personae* are a "moderator," who delineates the topics of discussion, and an "advocate" and "critic," who present plausible arguments on both sides of each issue. While this book presents no new approaches to equal employment opportunity thinking, it does offer a unique introduction to the difficult dilemmas surrounding the theory of comparable worth.

The debate begins by examining various explanations for the clear

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1. Associate Professor, New York State School of Industrial Relations, Cornell University.

2. The issue presented in this book is not whether the law should require equal pay for equal work (as it does, *see* note 8 *infra*), but whether it should mandate equal pay for "comparable" work.

earnings gap between men and women.<sup>3</sup> The advocate argues that the gap reflects sex discrimination in the labor market (pp. 3-4). The critic argues that the gap can be explained by legitimate, nondiscriminatory factors attributable to inherent differences in male and female job characteristics (pp. 7-9). These differences of opinion stem primarily from different basic assumptions about the operation of the labor market and about the role of sex as a factor in labor market decision making.

Both critic and advocate agree that occupational concentration or gender segregation<sup>4</sup> accounts for much of the male-female earnings gap. For the critic, such compression flows from operation of the sex-neutral human capital system: women willingly "select" lower-paying jobs by investing their time in job preparation inapplicable to higher-paying employment (p. 8). The advocate, on the other hand, maintains that occupational segregation is invidious: women are socialized into pursuing certain types of stereotypically female jobs even though they might be qualified for and interested in higher-paying, stereotypically male lines of employment (p. 9).

The advocate's and critic's differing positions on comparable worth reflect reliance on fundamentally different theories of labor economics. The critic's position derives from a neoclassical or perfect competition model of the labor market. He believes that labor supply and demand are the only factors which affect wage rates. Moreover, he concludes that discrimination cannot survive in the marketplace: "Some employers are certainly free of prejudice or greedy enough to ignore their prejudices. If other employers are discriminating against productive women, these unprejudiced or greedy employers will be able to hire women at bargain rates and, with this competitive advantage, drive their discriminatory competitors out of business" (p. 17).<sup>5</sup> Therefore, the critic reasons that the crowding of women into lower-paying jobs must be due to a lower average productivity of women or a lack of readiness for the more highly valued, higher-paying jobs (pp. 10, 17).

The advocate adheres to a "segmented" labor market theory which suggests that women (and certain minority groups) compete for jobs in

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3. U.S. Census Bureau statistics for the last quarter of 1983 indicate that the average American female worker earned 66.2% as much as the average male worker. R. WILLIAMS & L. KESSLER, *A CLOSER LOOK AT COMPARABLE WORTH* 5-6 (1984).

4. The advocate and critic use "segregation" and "concentration," respectively, to refer to the same phenomenon of women being crowded into lower-paying occupations. P. 14. The advocate believes such crowding is intentional, p. 6, while the critic asserts that it is unrelated to employers' behavior. Pp. 10-14.

5. Although the critic does not raise the argument, this reasoning presumably extends to markets where discriminating employers hire women but only at a substantially lower wage than men. Nondiscriminating firms will ultimately hire away all women workers in the market by offering a higher wage. Equally, the nondiscriminators can run the discriminators out of the market by paying women a rate in between the market wage for men and the discriminators' wage for women.

a different sector of the labor market than men (p. 18). That is, because they lack information, women are generally trained for, and hired in, a sector of the labor market consisting of lower-paying, less valued jobs. Societal discrimination stops women from training for or gaining information about more highly valued jobs, and employment discrimination prevents them from crossing over into the primary labor sector even when they have the requisite training (pp. 18-20).

In addition, the advocate identifies certain benefits which employers *can* reap from discriminating. First, in situations where customers or male employees object to association with women employees, a firm might benefit economically by catering to those preferences and excluding women from its work force (p. 22). Second, some employers have a "taste for discrimination" (p. 22).<sup>6</sup> They are willing to sacrifice some profits for the privilege of not having to hire women. In particular, firms in the primary segment of the economy with high capital investments and high profits can afford to exercise such discrimination because their economies of scale prevent nondiscriminatory competitors from driving them out of the market.

Because women are occupationally segregated, the advocate believes that recognition of comparable worth is necessary to break the vicious social and economic circles which lock women out of higher-paying, higher-prestige jobs. He cautions that current systems for evaluating job worth are biased against "women's jobs" (pp. 46-47), and argues for a job evaluation system which identifies key compensable factors so as to recognize the objective worth to an employer of women's as well as men's jobs.<sup>7</sup>

The critic objects to comparable worth on efficiency and *laissez-faire* grounds. He argues that the assignment of worth under the job evaluation system distorts the value of that job as determined by the market equilibrium wage rate (pp. 43-45, 58-59). In addition, he is concerned that a nonmarket system of determining worth will inevitably lead, as it has in other countries, to government intervention in the private sector, and will thus impinge upon *laissez-faire* capitalism (pp. 62-63).

Legally, whether current antidiscrimination laws recognize comparable worth theory is an open question. The Equal Pay Act<sup>8</sup> clearly rejects the concept of comparable worth, but there is a controversy over whether Title VII<sup>9</sup> permits such claims. The critic argues that

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6. For a broader definition of this phrase, see G. BECKER, *THE ECONOMICS OF DISCRIMINATION* 5-9 (1957).

7. Ideally, a panel of male and female employees would evaluate a priori the compensable components of each job.

8. The Equal Pay Act of 1963, 29 U.S.C. § 206(d) (1982), proscribes unequal pay schemes for men and women only where men and women are performing the same jobs.

9. The critic refers specifically, p. 7, to the Bennett Amendment (the second sentence of 42 U.S.C. § 2000e-2(h), amending Title VII) which reads:

the legislative history of Title VII, and a pivotal Supreme Court case, *County of Washington v. Gunther*,<sup>10</sup> and its progeny foreclose a comparable worth cause of action.<sup>11</sup>

The advocate emphasizes that *Gunther* left open the comparable worth question.<sup>12</sup> He relies heavily on *Briggs v. City of Madison*<sup>13</sup> for the proposition that a plaintiff can construct a prima facie case of sex discrimination in compensation under Title VII using a comparable worth argument (p. 83).<sup>14</sup> In *Briggs*, the plaintiffs lost only because the defendant-employer asserted a successful "labor market defense."<sup>15</sup> The advocate suggests that "it will not be long before judges realize that the defense of the labor market is a false defense because the market discriminates against women" (p. 84). Once such a defense is eliminated, courts will grant relief to plaintiffs paid lower wages for comparable work regardless of the employer's reasons for discriminating.

Gold's hypothetical debate format is effective both in framing the comparable worth issue in realistic terms and in highlighting strengths and weaknesses in the arguments for and against comparable worth. The form of the discussion in *A Dialogue on Comparable Worth* allows the reader to follow the logic of each argument to its natural conclusion. Gold's unique style of addressing the issue should bring the reader to a more enlightened understanding of the comparable worth controversy.

The one shortcoming of the book is that it omits some crucial arguments undercutting the critic's position. The author makes his most striking omissions in the discussion of labor market operation. The

It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 206(d) of title 29.

10. 452 U.S. 161 (1981).

11. Pp. 70, 73-74. The critic argues that the cases which seem to accord Title VII protection to comparable worth claims in fact hinged on proof of an employer's *intentional*, sex-based wage discrimination. A comparable worth claim would only require the showing of a discriminatory impact. P. 79.

12. Pp. 71-73. In *Gunther*, the Supreme Court held that the Bennett Amendment, *see* note 9 *supra*, did not confine Title VII's application to the requirements of the Equal Pay Act. The Court expressly stated that it was not ruling on the comparable worth question. "Respondents' claim is not based on the controversial concept of 'comparable worth' . . . Rather, respondents seek to prove, by direct evidence, that their wages were depressed because of intentional sex discrimination. . . ." *Gunther*, 452 U.S. at 166.

13. 28 Fair Empl. Prac. Cas. (BNA) 739 (W.D. Wis. 1982).

14. The plaintiffs in *Briggs* — public health nurses (predominantly women) — were paid less than the sanitarians (all men). Plaintiffs were held to establish a prima facie case by showing that their jobs "involve work that is similar in skill, effort, and responsibility." 28 Fair Empl. Prac. Cas. (BNA) at 747-48.

15. *See* 28 Fair Empl. Prac. Cas. (BNA) at 750. As one of several statutory exceptions to the requirement of equal pay for equal work, the Equal Pay Act exempts pay inequities due to any "factor other than sex." 29 U.S.C. § 206(d)(1).

critic's theory that discriminatory employers are always forced out of the market<sup>16</sup> is inapplicable to comparable worth. First, comparable worth deals with employers who hire women but discriminate against them in compensation. When unemployment exists, unemployed women who cannot find jobs with the "nondiscriminating" firms are forced to accept jobs with the discriminating employers. Thus, discriminators can still operate as efficiently as their competitors (even more so, because they are paying less for labor) and cannot be driven out of the market. Second, the model does not reach markets in which women are segregated, by all firms, into jobs with lower compensation than similar "men's jobs."

Another important argument omitted by Gold is that a perfect competition theory ignores a significant externality: the law. The model insists that nondiscriminating firms can force discriminating firms out of business by hiring away productive female laborers at a wage higher than discriminators are willing to pay (if they are willing to pay at all) but lower than the market wage for men. In so doing, the "nondiscriminating" firms would be discriminating in compensation against women in violation of the law. If these firms choose to obey the law, they lose their efficiency advantage over the "discriminating" firms and are unable to force them from the market. If they break the law, they create further discrimination in the market. The predicted exit in the long run of the "more discriminating" firms never takes place because the law condemns both "more discriminating" firms and "less discriminating" firms equally.

Finally, Gold's arguments against free market wage determination and the Equal Pay Act labor market defense are too cursory. While making the persuasive argument that reliance on labor market determination of wage rates compounds sex discrimination because the market reflects a biased view of women's work value, Gold understates this point. The most telling argument against a market solution to sex-based compensation discrimination is that discrimination has woven itself into the fabric of American society and the internal structure of the market economy. Therefore, only solutions which regulate or are external to the market can be effective in eliminating wage discrimination against women. This book could have made a more substantial contribution to comparable worth literature if Gold had examined the potential impact of such regulatory and external remedies on wage discrimination against women in the labor market.

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16. See note 5 *supra* and accompanying text. Some authorities argue that perfect competition simply does not exist and the model should not be employed in the discrimination context. See, e.g., R. WILLIAMS & L. KESSLER, *supra* note 3, at 43-45.