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COMMENTARY

'Comparable Worth'

By LINDA CHAVEZ
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Two decades have passed since feminists lost their battle for "comparable worth," a bureaucratic scheme that would have replaced the free market in determining wages. But recent headlines on the Roberts nomination make it seem like the mid-'80s all over again. "Roberts Resisted Women's Rights: 1982-86 Memos Detail Skepticism" inveighed the Washington Post; "Critics Say Women's Issues Could Be Pitfall for Roberts," intoned the Chicago Tribune. USA Today weighed in with "Roberts Joked about Equal-Pay Request." At issue were comments in a memo Mr. Roberts wrote while a young White House lawyer in 1984. Asked to recommend whether the Reagan administration should remain neutral on comparable worth, he called the idea "staggeringly pernicious" and "anti-capitalist." He was right. Nonetheless, comparable worth, repudiated by policy makers and courts 20 years ago, has been revived as a stick with which to beat a seemingly invincible nominee.

Comparable worth was intended to eliminate the gap between the earnings of men and women. Feminists argued that only hidden discrimination could explain the relatively lower wages in female-dominated occupations, like librarians, compared to male-dominated jobs, like electricians. Under comparable worth, employers would be required to rate jobs according to abstract notions of intrinsic value based on years of education required for a given job, the level of responsibility it entailed, and working conditions involved. In a free market, however, wages -- like prices -- are set primarily by supply and demand. Diamonds are not intrinsically more valuable than water (which is necessary to sustain life). But diamonds are in short supply relative to demand, which is why a one-carat solitaire costs a whole lot more than a bottle of Evian. Similarly, it may seem "unfair" that tree-trimmers earn more than day-care workers, but the relative supply of the former compared with the latter explains the differential.

Comparable worth is no mere variant of equal pay for equal work, which has been the law since 1963. It is illegal for an employer to pay a woman less than a man to trim a tree or to hire a male day-care worker at a higher salary than a female; it is also illegal to bar women from tree-trimming or men from day-care work. Yet for complex social and historical reasons, men and women still tend to do different jobs, although this is less true today than it was in the mid-'80s. In 1983, fewer than 6% of employed engineers were women; by the late '90s, that number had almost doubled to 11%, still far short of parity. The "remedy" is not to pay less for jobs that are dominated by men but to encourage more women to become electricians or tree-trimmers. This was the conclusion of the U.S. Commission on Civil Rights after extensive research and public hearings in 1985 when I directed the agency. We opposed comparable-worth legislation and lawsuits, arguing that such efforts would actually discourage women from breaking out of sex-

stereotyped roles and undermine the free market system.

The Commission wasn't alone in its skepticism. Congress also demurred on comparable worth (although the Democrat-controlled House did pass a bill authorizing a study of the issue), and the appellate courts rejected the concept outright. A current member of the Supreme Court, Justice Anthony Kennedy, helped deliver the death-blow to comparable worth when he was on the Ninth Circuit. The case involved public employees in Washington state, where it was alleged that those in job categories filled mostly by women were paid less than those held predominantly by men. "The state did not create the market disparity and has not been shown to have been motivated by impermissible sex-based considerations in setting salaries," wrote Justice Kennedy in a unanimous opinion from the most liberal appeals court. His comments didn't bar him from the Supreme Court two years later, nor should Mr. Roberts' be held against him by feminists sore that they lost their battle for comparable worth two decades ago.

Ms. Chavez, president of the Center for Equal Opportunity, directed the U.S. Commission on Civil Rights during the Reagan administration.

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