Gender Pay Equity: A Textual Exploration for Justice

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Nearing the end of their graduate studies, two friends interviewed with the employers who had come to their school during job search season. After they accepted offers for their first positions, the friends, a man and a woman, compared notes about the interview process, discovering that they were both offered the same job. Strangely, the man was offered markedly more salary than the woman, although neither could figure out why. Both newly minted graduates had the same degree from the same school, the same training, similar work experiences, and comparable skills. Between the two candidates, there was only one difference that could explain the disparate salary offers—gender.

It would be tempting to think that this vignette was from the 1970s or 1980s, when a substantial wave of professional women entered the American workforce, breaking barriers in many sectors, but it is not. This true story of gender pay inequality happened recently. It is easy to see the injustice in a specific narrative, but this story happens every day, without acknowledgment, across the world.

When workplaces underpay women, it reflects an imbalance in the overall worth placed on women. Surprisingly, as will be discussed later, the Reform Movement itself has a persistent and troubling pay gap among its professionals. The wage gap’s impact on women and their families, including their male partners and dependents, is explored in depth elsewhere in this symposium, therefore it will not be repeated here. While the impact of the wage gap on women and their families creates a compelling enough reason to support pay equity, it is vital to address pay equity as an

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issue of justice, for Judaism envisions society as built on justice. This is reflected in the expectation of fair compensation, as seen in our sacred texts.

According to the biblical narrative, from the moment that God punishes Adam in the Garden of Eden, proclaiming, “By the sweat of your brow shall you eat bread, till you return to the earth” (Gen. 3:19), God dooms humanity to work but also ensures a solid relationship between toil and reward. Human beings work, expecting to reap the benefits proportionally. Considering Genesis 29, the narrative of Jacob working for his future father-in-law, the reader fills with moral outrage as they learn of Laban’s trickery, depriving Jacob of his proper payment of Rachel as wife after his laboring for seven years. (Yes, of course, the modern reader is equally filled with outrage over the idea of paying for a wife, but the ancient narrative itself points the reader toward abhorring Laban’s exploitation of Jacob.) The reader cringes as Jacob patiently works for another seven years to reap his intended reward. Then, just as the reader believes there is no justice, Jacob prepares to leave his father-in-law’s domain to return to his own homeland and rejects Laban’s payment for his twenty years of labor. Instead, Jacob proposes, “Do not pay me a thing . . . Let me pass by all your flock today, removing from it every spotted and speckled kid . . . that will be my payment” (Gen. 30:31–32). When Jacob’s wise breeding practices yield him an abundant flock, it appears the divine plan is that Jacob should be paid more than fairly.

Ancient Jewish sacred texts, of course, do not approach employment laws with the understanding of modern feminism and therefore do not address gender pay equity directly. However, the moral insights implied both by Jewish law and by the tradition’s ethical standards do provide a path to equal pay for women. The Torah is clear that employers must treat employees ethically. Part of the section of the Torah referred to as the Holiness Code enjoins, “You shall not defraud your fellow [Israelite]. You shall not commit robbery. The wages of a laborer shall not remain with you until morning” (Lev. 19:13). Meanwhile Deuteronomy 24:14–15 commands, “You shall not abuse a needy and destitute laborer, whether a fellow Israelite or a stranger in one of the communities of your land. You must pay out the wages due on the same day, before the sun sets, for the worker is needy and urgently depends on it; else a cry to the Eternal will be issued against you and you will incur guilt.”
These two sections of Torah clearly command that we not oppress workers by withholding wages. They also recognize the power dynamic of the employer/employee relationship. Employees will frequently work under conditions that include unfair wages because they need employment and have little or no choice. They depend on the money due them for their work in order to sustain their lives. Even thousands of years later, many people today work paycheck to paycheck.¹ Their wages sustain them and their families with an urgent immediacy. At all socioeconomic levels, the employer has more control than the employee. As highlighted in the verses above from Leviticus and Deuteronomy, the Torah protects employees with laws forbidding oshek (the oppression of workers), which includes withholding salary. Ultimately, not paying a female worker fairly is a type of withholding. The worker has produced the quantity and quality of work demanded of her position, and yet because of her gender, she is being paid less.

When an employer places a specific monetary value, a salary, on an individual’s contribution to the workplace, there are several factors informing that decision. (Minimum wage is not included in this discussion, since there should be no gender gap when minimum wage is offered. It is, however, important to note many women are employed in work in which minimum wage requirements are ignored or not applicable [housekeepers, waitresses], which exacerbates pay disparity injustices.) Salaries are shaped by demand, prevailing rates in the same or similar communities, training, experience, education, and skills of the employee, as well as potential productivity and contribution of the employee. The process by which salaries are set can be likened to weighing and measuring commodities, as the goal in setting a salary should be to eliminate any arbitrary factors like prejudice or bias to reflect the employee’s true contribution to the workplace. In addition to being the source of ethical treatment of workers as discussed above, the Holiness Code also instructs on the use of fair weights and measures. Leviticus 19:35–36 states, “You shall not falsify measures of length, weight, or capacity. You shall have an honest balance, honest weights, and honest eifah,² and an honest hin.³ I am the Eternal your God who freed you from the land of Egypt.” These verses echo the language used earlier in Leviticus 19:15, which enjoins the Israelites to judge fairly: “You shall not render an unfair decision: do not favor the poor or show deference to the rich; judge your kin...
As Rashi points out in his commentary on verse 35, both Leviticus 19:15 and Leviticus 19:35 begin with the same words, Lo taaasu avel bamishpat, which can be translated, “Do not render an unfair judgment.” This repetition draws a connection between legal judgment and judgment in commerce through the measuring tools used daily. Rashi emphasizes, “If he deals falsely in measuring, he is as one who corrupts justice and is called unrighteous, hated and abomination, accursed and detestation.” These verses can guide us to understand that employers must “weigh” and assign salary in an ethical manner, avoiding the gender bias that still pervades our society and workplace.

Fair weights and measures are a great concern throughout Jewish texts. The Levitical laws are expanded in Deuteronomy 25:13–16 with the following commandment:

You shall not have in your pouch alternate weights, larger and smaller. You shall not have in your house alternate measures, a larger and a smaller. You must have completely honest weights and completely honest measures, if you are to endure long on the soil that the Eternal your God is giving you. For everyone who does those things, everyone who deals dishonestly, is abhorrent to the Eternal your God.

The strong language here damns those who corrupt commerce through unethical practices by using one set of weights or measures for buying and another for selling. This disreputable practice allows the merchant to have an unfair advantage in all exchanges. The Babylonian Talmud, in Bava Batra 88b–90a, discusses the steps the merchant, as well as the ordinary homeowner, must take to ensure that their measures are just. The Talmud points out that the Deuteronomy text commands owning weights and measures that are sh’leimah vatzedek (perfect and just) (Deut. 25:15). The doubling of the adjectives is interpreted as signifying two practices concerning the weights and measures. The first is that they should be accurate; the second that the seller should always overmeasure, meaning measuring accurately and then adding a bit more (BT Bava Batra 89a). These two practices ensure that the seller does not cheat the buyer, deliberately or inadvertently.

If the moral underpinnings of these rules are applied today to gender pay equity, it should become the responsibility of employers
to guarantee that they are paying female employees fairly. Just as the Talmud’s instruction that fair measurements include two parts, measuring accurately, plus adding a bit more, to ensure ethical business practices, employers need to be scrupulous in assigning salaries to female workers, perhaps even overpaying by a bit to safeguard they are not underpaying and therefore perpetuating the gender pay gap. The question every modern employer must answer is not “Am I paying my female employees fairly?” but instead “How do I know that that I am paying them fairly?” The former question too often becomes impressionistic: “Do I think or feel that I am paying the equal and fair wage?” This question is too easily answered in the affirmative. The latter question requires thought and research to ensure that salaries offered to female employees are truly equal with the market range offered to men. As in the matter of weights and measures, the responsibility to ensure “perfect and just” wages should be on the employer, who must use multiple methods to ensure ethical employment. Employers should not ask what employees were paid in their prior positions or how much they wish to earn in the new position. Instead, employers should utilize salary studies to set wages. A growing number of corporate employers use implicit bias inventories, self-administered tests that help individuals reflect on the social preferences they unwittingly harbor, before engaging in the hiring or review process to reduce the impact of bias on hiring, promotion, and salary. Being able to identify those subconscious biases that inevitably lurk within every human helps an employer consider if they are judging potential or current employees fairly. These types of methods promoting pay equity are expanded later in this symposium.

Exploring the possible punishments for false weights and measures, the Talmud explains that false measures are worse than ordinary robbery, because the robbers can always find and repay their victims, but “who could ever track down all the victims of false measures?” (BT Bava Batra 88b). The Talmud recognizes the pervading impact of false weights and the impossibility of restoring justice after a seller uses them in daily commerce. The text, in fact, goes on to say that communities must appoint inspectors to ensure not only fair weights and measures but also fair pricing (BT Bava Batra 89a). Rabbi Arthur Waskow points out the importance of this law, emphasizing that “almost all autonomous Jewish
communities since then have appointed inspectors of weights and measures to make sure that these laws were communally enforced, not left to individual ethical decision alone.” Gender pay inequality also has lasting effects, impacting the standard of living for female employees and their families. Like false weights and measures, it is impossible to completely repair the damage done by the wage gap, for it affects the access the employee and her family has to quality food, health care, childcare, education, and retirement.

The Talmud also teaches, “When a person robs his fellow even the value of a [penny], it is as though he had taken his life away from him” (BT Bava Kama 119a). The institutionalized oshek of female workers, through the deliberate or inadvertent undervaluing of their contribution to the workplace, impacts their finances and their sense of self-worth. Professional and industrial organizations must strive to narrow the wage gap by educating both employers and employees. Offering ethics training to employers and regularly producing salary studies to track the gender wage gap need to be part of the solution. Again, these will be discussed fully elsewhere in this symposium.

In the well-known narrative of women demanding fair treatment under biblical law, the daughters of Zelophehad (Numbers 27) petition Moses, Eleazar the priest, the chieftains, and the whole assembly for their right to inherit their deceased father’s property holdings, since there are no male heirs. Standing at the entrance of the Tent of Meeting, the five daughters, Mahlah, Noah, Hoglah, Milcah, and Tirzah, plead their case, ending with this pointed argument: “Let not our father’s name be lost to his clan just because he had no son! Give us a holding among our father’s kinsmen!” (Num. 27:4). The daughters ask that inheritance rights be extended to women, when male heirs are not present, to protect their father’s legacy within his own clan. In ancient times, asking for women’s equal rights would not have been a compelling argument, and therefore the five daughters ask for their inheritance by claiming the dead man’s right to be remembered and continuously linked to the clan. Yet this biblical model of women, standing up to power and making the moral claim for their rights to be protected, resonates with the independent moral gravitas of contemporary feminist demands for equality.

The modern feminist argument is augmented by the truism discussed earlier that underpaying women affects men, as women
often contribute to joint household income. The underpayment of women impacts their husbands, partners, and children, too. The nonprofit National Committee on Pay Equity urges:

In 2009, the number of women in the workforce exceeded the number of men, and more men than women lost jobs. With more families relying on women’s paychecks for their livelihood, the US must address the wage gap for the sake of American families and their financial stability. 

The voices of the daughters of Zelophehad echo in these lines.

The narrative of the five daughters provides a groundbreaking legal argument for several reasons. First, the women speak out for themselves, directly petitioning the leaders of their community, confronting those with power, authority, and control over the reins of justice. Modern women can learn from these role models and make sure they are educated in the advocacy and negotiation skills to argue for fair wages. Male allies are essential to advancing gender pay equity, but women must be advocates for themselves on the frontlines of the workplace. The result of the petition of the daughters of Zelophehad is they were given the rights to their father’s property in the absence of male heirs. This was a win for five specific women, but it also created a legal precedent for future cases. This is an important reminder for each woman who demands equal pay. Every cent that a female employee’s salary moves closer to her male colleagues’ earnings not only helps that individual woman, but also raises the expectation of equal pay for all women. The daughters of Zelophehad also illustrate a much more important lesson than just securing property rights for women. It shows, even in Torah, that the law can evolve, addressing injustices as they are raised to the community. Jewish law can and has evolved over our existence as a people. Women’s rights, within both Jewish and secular law, continually strengthen, too.

The true story of gender pay inequality, which opened this essay, happened not after graduation at an American business school, but at a rabbinical seminary. The friends were two recently ordained Reform rabbis. Unfortunately, the Reform Movement’s consistent commitment to tikkun olam and to economic justice does not make it immune to ethical challenges within its own congregations and institutions. The wage gap persists within the Reform Movement,
as it does within the greater American Jewish community.11 Presented later in this symposium, a comparison of the salary surveys and studies of the rabbis, cantors, executive directors, and educators of the Reform Movement reveal a well-documented and persistent wage gap within the Reform Movement. Gender pay equity eludes the women Jewish professionals of the Reform Movement despite this Movement’s devotion to gender equality and social justice as foundational values. However, Reform Judaism can build on our commitment to social justice, joining the daughters of Zelophehad to demand equal rights for women and building on the precedent of fair pay as demonstrated in our sacred texts, to lead the way to more ethical employment practices for the women who work for our Movement. Then, when our own house is in order, we can share our model and demand pay equity in our greater world.

Notes


3. A liquid measure, equivalent to about an American gallon or four liters. Ibid.
5. Ibid., 3:197–98.
7. The most widely used implicit bias inventory is Project Implicit, https://implicit.harvard.edu.
