

THE FREE MARKET

THE MONTHLY PUBLICATION OF THE LUDWIG VON MISES INSTITUTE

Lilly Ledbetter Re-considered

CHRISTOPHER WESTLEY

You may have heard of Lilly Ledbetter. If you are concerned about the sorry state of U.S. employment, you may wish you hadn't. This woman from Jacksonville, Alabama, a minor figure in the 2012

presidential campaign—occasionally invoked by Barack Obama, mostly ignored by Mitt Romney—is a former Goodyear employee who discovered she had lower earnings than her male co-workers when she worked as a manager for the company over the course of several years. Nearing early retirement herself, Ledbetter decided to sue Goodyear for gender discrimination. Ledbetter lost her case and the Supreme Court ruled against her in a 5–4 decision.

Ledbetter's name soon began popping up in Obama's 2008 campaign speeches while she appeared at his campaign events to promote the myth that unfettered markets result in injustices like gender discrimination and thus require government intervention. Just nine days after being inaugurated, Obama signed what became known as the Lilly Ledbetter Fair Pay Act. This law made it easier for

alleged victims of discrimination to file charges against their employers by allowing them to file complaints years following an alleged event, as long as the filing occurred within 180 days of the last paycheck earned by the employee.

Ledbetter's story is now a staple of so-called "Women's Studies" at elite universities. Her new book, *Grace and Grit*, is allowing her to make the rounds on a partisan campaign against free markets, veiled as a book tour, as she collects awards and accolades from Democratic Party organizations and affiliates and makes the rounds on regional and national media outlets.



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Most recently—fresh from the “Are We to Be Spared Nothing?” department—is the news of a major Hollywood film of Ledbetter’s story, or at least her version of it. The movie is to be directed by Rachel Feldman who not only claims on her web site “[t]he creation of original content is my expertise,” but also that the Ledbetter saga makes for “a great American story as powerful as *Norma Rae* or *Erin Brockovich*.”

Ownership is Control

Far from being glorified in another anti-capitalist Hollywood flick, Ledbetter’s actions since 2007 deserve our contempt because they promote the expansion of fascism in the U.S. economy. I use the term “fascism” not as a pejorative epithet, but as a strictly descriptive term. Fascism is a variant of socialism in which economic resources such as capital and labor are privately owned yet employed on terms set by the state. This means that ownership is private in a legal sense but public in an economic sense because, from an economic perspective, ownership is control. Not surprisingly, the tendency of the United States to order its economy along these lines has increased as the size of the federal government itself has increased.

Firms favored by the state tend to welcome this type of intervention because it has the effect of protecting them from competition and allowing them to cartelize. When the state imposes a cost on private business—thus assuming *economic* ownership in the process—it creates a situation that can make it difficult for potential competitors to enter markets, increase output, and create downward pressure on prices. Automobile manufacturers, for instance, may welcome regulation requiring tire pressure monitors on tires—the latest “standard” feature—when they increase costs on potential competitors or at least reduce the relative difference in costs faced by competing firms.

The Ledbetter Act itself is fascist because it forces another such layer of state control over the ownership of resources, in particular that of labor. Thanks to its intervention, many firms are now more likely *not* to hire additional women for full-time management positions because of the increased monitoring and reporting costs that comes with their employment. Businesses will be more careful to maintain a level of female employment at whatever level they believe is necessary to avoid federal fines or other penalties.

Firms that will support the Act and the loss of control over their labor markets are those who believe they stand to gain market power over competitors who will have a more difficult time complying with it. As a result of this and previous interventions like it, we have an economy that is more French, characterized by a few large firms that exchange control in exchange for state favor, at the expense of the small business and entrepreneurial sectors associated with more competitive, dynamic, and wealth-producing economies.

The result: All workers, men and women, will have an even harder time selling their labor for whatever wage they choose due to the government’s assumption of economic ownership over it.

Economic theory tells us that in a free market, one’s wage reflects her marginal revenue product. How much one worker’s efforts add to a firm’s revenues determines her wages. If a firm pays an employee less than this revenue, then it earns profit by employing her. Conversely, if it pays her more than this revenue, then the firm earns losses.

Ledbetter claimed that her contribution to Goodyear’s revenues was equivalent to her higher income-earning

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Judge Andrew P. Napolitano

on Constitutional Law



At Mises University this July 21–27 in Auburn, students will have the opportunity to study constitutional law with Judge Andrew Napolitano. Judge Napolitano is a former New Jersey Superior Court Judge, and a senior judicial analyst with Fox News Channel. He is the author of eight books including 2012's Theodore and Woodrow: How Two American Presidents Destroyed Constitutional Freedom, and 2013's The Freedom Answer Book: How the Government Is Taking Away Your Constitutional Freedoms.

Last month, The Free Market spoke briefly with Judge Napolitano about the Constitution and the American political system.

TFM: Why is understanding constitutional law and its history important? The text of the document is pretty short, so can't we just read it for ourselves and know what it says?

APN: The Constitution proclaims itself to be the Supreme Law of the Land. It was written to create, define, and restrain the federal government. If history is prologue, it is important for all concerned about the overreach of the government today to understand how we got to where we are today; and the history of that is essentially a study of the history of the debates over the implementation of the powers set forth in the Constitution.

As for reading the Constitution in order to understand it, that is no doubt what its authors intended. However, as is well known, the big government impulses of those in government have rendered most of the plain language in the Constitution meaningless. Thus, it is nearly impossible to comprehend the meaning of the Constitution without understanding about 200 Supreme Court cases interpreting it.

TFM: When it comes to Supreme Court cases, what do you think were some of the most damaging to the cause of liberty?

APN: Without sounding cynical, my answer is: Almost all of them. Here is a short list of the most constitutionally offensive cases: *Marbury v. Madison*, which establishes the federal government as the final judge of its own power; *McCullough*

v. Maryland, which establishes the primacy of the federal government over the states and establishes the concept of implied federal power; *Dred Scott v. Sanford*, which establishes the principle that a class of human beings can be defined as non-persons because of an immutable characteristic of birth; *Wickard v. Filburn*, which permits the Congress to regulate personal, private, even trivial behavior; *Korematsu v. United States*, which permits the attribution of guilt and the infliction of punishment based on an immutable characteristic of birth; *Roe v. Wade*, which permits murder based on the age of the victim, and *National Federation of Independent Business v. Sebelius*, which permits the Congress to tax any event or non-event it wishes.

TFM: Are there any easy fixes? Could we just tweak the text of the Constitution in certain places to greatly improve things? If so, what would you change? If not, why not?

APN: Because the Constitution is only as effective as an instrument to guarantee liberty as is the fidelity of those in whose hands it has been reposed for safekeeping

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A Conversation with Ralph Raico

Through the Oral History Project, the Mises Institute is preserving the personal recollections and wisdom of the great men and women of our movement for the students and scholars of the future. Mises Institute staff and faculty will sit down this year to discuss the past and the future with champions of the Austrian tradition including economist Leland B. Yeager and Mises's long-time assistant Bettina Bien Greaves. The recorded interviews will be archived on mises.org and transcribed to text so they will be easily accessible, searchable, and usable to researchers everywhere.

In February, the foremost historian of classical liberalism, Ralph Raico, spoke with David Gordon about Raico's life and career, including insights into the views and personalities of Rand, Hayek, and Rothbard. The full interview will be available later this year, but for those who can't wait, David Gordon provides a bit of a sneak peek at the Raico Interview:

Raico grew up in the Bronx, but in contrast with the leftist views common in his family's apartment building and neighborhood, he acquired from an early age a sympathetic grasp of the isolationist wing of the Republican Party. In high school, he joined Youth for Taft, where he encountered George Reisman. While still in high school, Raico and Reisman became interested in Mises, and Raico describes their hilarious attempt to meet Mises, in the guise of door-to-door salesmen for *The Freeman*.

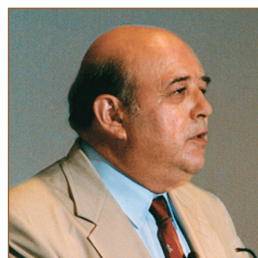
The attempt failed, but they soon were able to join Mises's famous seminar at New York University. Here Raico met someone who became one of the dominant intellectual influences on his life—Murray Rothbard. The incredible range of Rothbard's scholarship, as well as his enthusiasm and humor, impressed Raico deeply. Rothbard was the first person Raico had met who defended “a fully voluntary society—nudge, nudge.”

Raico, along with Reisman, Ronald Hamowy, and several others, became members of the Circle Bastiat and met regularly with Rothbard. When Ayn Rand's *Atlas Shrugged* appeared in 1957, Rothbard and his followers met for a while with Rand and her group, “The Collective,” but Rothbard and the Randians soon clashed. He refused their demand that he divorce his wife Joey, who had committed the unpardonable sin of being a Christian.

Raico did his graduate work at the Committee on Social Thought of the University of Chicago, with Friedrich Hayek as his major professor. He found Hayek “more interested in his own research than teaching” and, although friendly,



The Circle Bastiat (from left): Ralph Raico, Murray Rothbard, George Reisman, Robert Hessen, and Leonard Liggio.



somewhat remote. While at Chicago, he founded the *New Individualist Review*, which became one of the best of all classical liberal journals. He was able to attract such luminaries as Hayek and Milton Friedman to contribute.

Listeners to the tape will catch the nostalgia Raico feels for his first teaching position at Wabash College; the quality of the students there was never matched in his later career at Buffalo State College. Raico also describes his many trips to Europe, and listeners will especially enjoy his account of the Gaudi buildings in Barcelona. While in Europe, he lectured widely. Raico became the foremost expert on the history of nineteenth-century German liberalism and published *Classical Liberalism and the Austrian School*.

Like Rothbard, Raico has been very closely associated with the Mises Institute. The tape conveys a clear impression of Raico's intelligence and wit. Listening to it is almost like meeting Ralph Raico in person. ■

Special thanks to our Oral History Project Sponsors: James M. Rodney, Yousif Almoayyed, Anonymous, T.J. and Ida Goss, Keith M. Harnish, Drs. Hans-Hermann Hoppe and Guelcin Imre Hoppe, Richard J. Kossmann, M.D., Thomas McGinn, Francis M. Powers, Jr., M.D., Paul F. Peppard, G. Keith Smith, M.D., Dr. Thomas L. Wenck, Jonathan Wilcox, and Walter F. Woodul

To help sponsor this important project, go to mises.org/oralhistory or call 800-636-4737.



JUDGE ANDREW P. NAPOLITANO
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committed to the plain language and original intent of the document, and the preservation of the natural law. However, if I were free to do so, I'd change "We the People . . ." to "We the States . . ." I'd define the regulation of interstate commerce as "keeping the movement of goods between merchants across interstate borders regular," I'd add "explicitly" to the Tenth Amendment, and I'd repeal the 16th and the 17th amendments.

TFM: In recent months, the issue of nullification has become important, and it has been actually happening. Colorado, for example, has nullified federal laws about marijuana. Moreover, there have been efforts surrounding provisions of the National Defense Authorization Act, and historically, numerous states essentially nullified the federal law behind the national ID card. Are these efforts on firm constitutional ground?

APN: They are on firm historical ground, and firm constitutional ground as the Constitution was understood by those who wrote it.

to its underlying principles, the short answer is: Have a majority of Supreme Court justices

TFM: We've been talking about the 1787 Constitution of course, but there was one that came before it, written in 1776, and known as the Articles of Confederation. Many libertarians point to the newer constitution, say it was not an improvement, and that it replaced the more de-centralist Articles. In light of this, should we still be defenders of the current constitution, and if so, why?

APN: I have spent my entire professional career defending the Constitution; and that can be likened to playing catch with Jell-o or shoveling against the tide. The Articles of Confederation permitted the states to become tyrants, and the Constitution—as interpreted over the centuries—has permitted the federal government to become tyrannical.

The resolution of this dilemma will require the entry into all three branches of the government of persons committed to natural law principles. That means they'd believe in the primacy of the individual over the state and the intrinsic inability of government to do anything beyond enforcing the natural law. ■

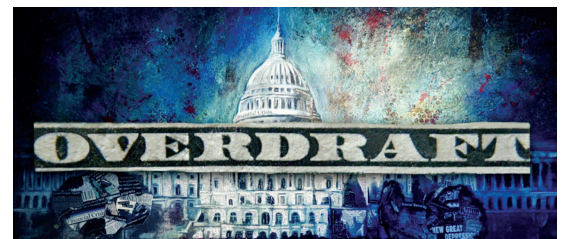
Mises News and Events



First Annual Mises Institut Deutschland Conference | The first Mises Institut Deutschland conference will be held on June 15, 2013, in Munich at the Hotel Bayerischer Hof. Speakers are Hans-Hermann Hoppe, Rahim Taghizadegan, Thorsten Polleit, Philipp Bagus, and Guido Hülsmann.

Mises at the University of Texas | The Mises Circle at the University of Texas at Austin was founded in 2012 by students Michael Goldstein, George McHugh, and Jose Niño, to provide a forum for scholarship in the Austrian economic tradition. The group meets on Monday evenings. At a February session of the UT Mises Circle, Austrian economist and former Mises Institute Fellow Per Bylund presented a paper on the realities of the Swedish economy. According to the February 12 edition of *The Daily Texan*: "Things are not what they look like," Bylund said. "Sweden is really a subsidized market with exploited workers."

Joe Salerno on *Overdraft* | Mises Institute Academic Vice President Joseph Salerno was a featured speaker on March 13 at Pace University's panel discussion of the PBS documentary *Overdraft*. The documentary examines the U.S. government's debt and its impact on American society. Dr. Salerno presented the Austrian view of government debt, booms, and busts to a packed room of students and faculty.



Tom Woods Interviews G.P. Manish | While guest-hosting the *Peter Schiff Show* on March 8, Mises Institute Senior Fellow Thomas Woods interviewed former Mises Institute Fellow and Troy University economics professor G.P. Manish on what's wrong with Keynesian economics. Dr. Manish explained the Austrian alternative to endless increases in government spending and inflation to "stimulate" the economy. The interview is available at mises.org.

LILLY LEDBETTER RE-RECONSIDERED CONTINUED FROM PAGE 2

co-workers, something that was disputed by the firm itself and confirmed in numerous case histories. But even if it was true, then so what? In a free labor market, workers who are paid less than their marginal revenue product are often bought away by competitors offering higher wages. That Ledbetter didn't do this suggests many things, including that perhaps her lower wages *did* reflect (a) her actual contribution to Goodyear's revenues, and (b) the best possible employment of her labor resource given her skill level in that labor market.

Moreover, the economics literature strongly suggests that, corrected for productivity, the differences between male and female compensation shrink considerably. As Loyola University economist Walter Block often points out, if wages of certain classes of workers (such as women) were actually less than the revenues generated by those workers, employers would be foolish not to have employment biases *in favor of those workers in the first place*.

A better long-term solution in the face of such discrimination is to promote a labor market defined more by economic freedom than fascist control. A free and functioning labor market is one in which (a) a Lilly Ledbetter, faced with workplace discrimination, can penalize her employer

by finding a better paying job; and (b) employers refrain from engaging in discrimination out of concern for paying the market penalty of losing a productive worker.

The real problem in our current regulated market is that due to government intervention in a cartelized tire industry, we now pay more for tires and there are fewer of them. Meanwhile, the industry faces higher costs that require even more state protection in the form of subsidies, bailouts, and protectionism. Consequently, workers face fewer job opportunities that today contribute to unemployment rates well above those that would be consistent with a freer labor market, and a freer society.

One suspects such an analysis would be lost on Ledbetter the woman who, by all accounts, seems to be enjoying her second career as an "equal-pay activist." Never mind that, in the process, she perpetuates a system that would otherwise come crashing down to the dismay of politicians, politically-connected firms, and state-approved labor unions. To them, Ledbetter is a useful tool, but one the majority of workers and wealth producers can do without. ■



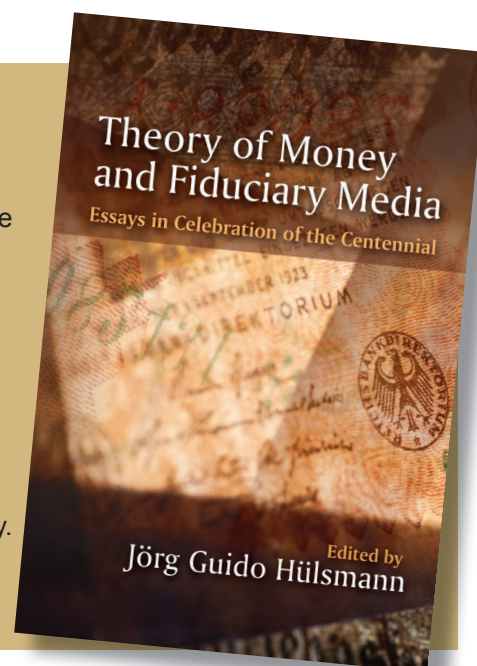
Christopher Westley is a professor of economics at Jacksonville State University. Follow him on Twitter @Americonomist.

New Release by Jörg Guido Hülsmann

The first of Mises's major works, *Theory of Money and Credit* was published in 1912. To commemorate the centennial of this important work, the Mises Institute presents *Theory of Money and Fiduciary Media: Essays in Celebration of the Centennial*, edited by Jörg Guido Hülsmann. The title of this collection of new essays reflects a more accurate translation of Mises's original title, *Theorie des Geldes und der Umlaufsmittel*.

This new collection of 13 original essays comes from a 2012 symposium at the Austrian Scholars Conference in Auburn, Alabama, and provides wide-ranging views and analyses. It features the latest from established Misesian scholars such as Hülsmann and Joseph Salerno along with fresh perspectives from young Misesians such as Philipp Bagus, Malavika Nair, and Matthew McCaffrey.

Available at [Mises.org/store](https://mises.org/store) | \$14.95 paperback



COMING EVENTS

Register online at mises.org or by phone at 800.636.4737.

June 10–14	ROTHBARD GRADUATE SEMINAR (Sponsored by Alice J. Lillie) • Mises Institute
July 21–27	MISES UNIVERSITY • Mises Institute • Featuring a new course on Constitutional Law with Judge Andrew P. Napolitano
November 8	SEMINAR FOR HIGH SCHOOL STUDENTS • Mises Institute
January 18, 2014	MISES CIRCLE IN HOUSTON (Sponsored by Christopher P. Condon, Terence Murphree, and T.J. & Ida Goss)
March 20–24, 2014	AUSTRIAN ECONOMICS RESEARCH CONFERENCE • Auburn, Alabama

Upcoming Mises Academy Online Courses. Register at <http://academy.mises.org>

April 24–May 28 Bubbles, Booms, and Busts. Instructor: Mark Thornton

IN MEMORIAM

The cause of liberty and the Mises Institute in particular lost a very good friend. We mourn the passing, but celebrate the life and achievements, of Paul Trumpf of Chicago, Illinois, who passed away on Wednesday, January 30, 2013. Mr. Trumpf was born on October 12, 1927. He was a charter Member of the Mises Institute and was a long-time friend and supporter of the Institute.

2013 Austrian Economics Research Conference

From March 21 through March 23 this year, 150 scholars, students, and faculty met at the Mises Institute for the world's premier Austrian economics scholarly conference. More than 50 papers were presented in 15 sessions.

Our Authors Forum featured six new books by Austrian scholars, including Hans-Hermann Hoppe's *The Great Fiction: Property, Economy, Society, and the Politics of Decline*, and Harry Veryser's *It Didn't Have to Be This Way: Why Boom and Bust Is Unnecessary—and How the Austrian School of Economics Breaks the Cycle*.

The conference's five Memorial Lectures were made possible by our generous donors, including The Lou Church Educational Foundation, Toby Baxendale, Helio Beltrão, Dr. Don Printz, and James M. Rodney. These lectures featured a variety of scholars from Nikolay Gertchev of the European Commission speaking on fractional-reserve banking and monetary imperialism, to economist Dominick Armentano on myths of antitrust. All the Memorial Lectures were streamed online, and are now available.

"I've just listened to your talk on the history of the Soviet Union," historian and Mises Institute Senior Fellow Ralph Raico wrote to Robert Wenzel after viewing the Henry Hazlitt Memorial Lecture online. "It is magnificent! The amount of scholarship is overwhelming."

Attendees at the conference traveled to the Institute from 32 states and 14 countries from New Zealand to Guatemala to Italy. Fifty-six universities and research institutes were represented as well, including other Mises Institutes around the world: the Ludwig von Mises Institut Deutschland and the Institutul Ludwig von Mises Romania.



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