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# Left Libertarianism: What's in It for Me?

H. E. BABER\*

Left libertarianism cannot effectively promote equal opportunity for well-being. Neither direct distributions from the rent fund nor financial incentives for firms will significantly reduce gross, ongoing discrimination which locks most women into a narrow range of boring, dead-end, pink collar drudge jobs and puts minorities at a disadvantage in hiring, housing, and access to credit. Left libertarianism: What's in it for me? Not much.

## I.

Left libertarians hold first that agents fully own themselves, and second that natural resources belong to everyone in some egalitarian manner. Peter Vallentyne argues that although discrimination is not intrinsically unjust on left libertarianism grounds and state prohibitions against it are, it is nevertheless unjust for the state, and many private individuals, to take no steps to offset the negative effects of systematic discrimination.<sup>1</sup>

Vallentyne focuses on *private discrimination*, discrimination by individuals as citizens, versus *state discrimination*. Vallentyne is particularly concerned with discriminatory practices that are socially significant, presumably including race and gender discrimination in employment, housing, and

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1. Peter Vallentyne, *Left Libertarianism and Private Discrimination*, 43 SAN DIEGO L. REV. 981 (2006).

access to credit.<sup>2</sup> These are among the “standard cases of racism and sexism,” which he holds are forms of “invidious discrimination” where:

Invidious discrimination against an individual is . . . the treatment of an individual less favorably because of some feature one believes the individual to possess, where (1) the person is not morally or prudentially responsible for having the feature in question; and (2) the treatment is based on (a) a mistaken belief in the moral inferiority of those having the feature, (b) a significantly mistaken empirical belief about people having the feature, or (c) hatred of those having the feature.<sup>3</sup>

Vallentyne argues that insofar as left libertarians are committed to agents’ full private ownership of self and property, standard cases of socially significant discrimination do not constitute wrongs against their victims.

Full private ownership of an entity consists of a full set of the following ownership rights: (1) *control rights* over the use of the entity . . . ; (2) *rights to compensation* if someone uses the entity without one’s permission; (3) *enforcement rights* . . . ; (4) *immunities against the non-consensual loss* of these rights; and (5) *rights to transfer* any of these rights to others . . . .<sup>4</sup>

My refusal to hire an applicant for a job, to extend him credit, or to rent an apartment to him because of his race or sex does not violate any ownership rights he enjoys with respect to himself or artifacts that constitute his property, and thus does not violate his rights. Some varieties of invidious discrimination do violate an individual’s right to property and self-ownership, such as lynching or defacing the property of minority residents, but the common or garden varieties do not. Individuals, Vallentyne argues, “do not have a right not to be discriminated against on the basis of characteristics for which they are not responsible, or a right to be treated on the basis of their desert.”<sup>5</sup>

On this account, it would be unjust for the state to force me to refrain from discriminatory employment practices, discrimination in renting or selling property, or discrimination in extending credit. Victims of such discriminatory practices are not wronged, so they cannot appeal to enforcement rights to license state intervention and, insofar as I own my house, money, or firm, or act as an agent of the owner, the state would violate my rights of ownership if it compelled me to hire, finance, or rent to an individual with whom I do not wish to do business—for whatever reason. Nevertheless, left libertarians hold that natural resources belong, in some manner, to everyone equally, and the equality of opportunity for well-being version of left libertarianism imposes a duty of justice on

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2. *Id.*

3. *Id.* at 982-83.

4. *Id.* at 985.

5. *Id.* at 992.

individuals and the state acting on their behalf to promote equality of opportunity for all.<sup>6</sup>

How does this work? Under a left libertarianism view, individuals hold ownership of natural resources conditional on the payment of rent to the commonweal. According to equal opportunity left libertarianism, to which I will confine myself here, “the rent must be spent so as to efficiently promote equality of opportunity for well-being.”<sup>7</sup> Discrimination undermines opportunities for well-being, and where individuals have worse than average prospects for well-being, they ought to be compensated from the rent fund to improve their opportunities for a good life. Left libertarians, moreover, recognize a duty to promote equality of opportunity in the long run, so that in addition to compensating individuals, “the state has a duty of justice to use education and incentives to reduce future invidious discrimination.”<sup>8</sup>

There is, however, no special duty to compensate for discrimination as such, or to reduce its occurrence. As Vallentyne notes, “[t]hose who suffer from invidious discrimination, but benefit from other brute luck advantages, may already have above average life prospects and thus may be owed no help.”<sup>9</sup> Invidious discrimination is all of a piece with other life circumstances that undermine opportunities for well-being.

In the section that follows, I argue that contrary to Vallentyne’s assumption, most significant discrimination on the basis of sex and race, particularly in employment and housing, is rational and therefore warrants intervention by the state or other agencies. I consider Richard Arneson’s discussion of how even “mild” racial preferences may bring about extensive racial segregation, noting that in the case he considers along with a wide range of others, the taste for discrimination is itself a consequence of discriminatory practices which generate feedback effects. Considering Alan Wertheimer’s observation that “reaction qualifications” may be bona fide occupational qualifications, I also note that accommodating the discriminatory tastes of clients, customers and coworkers quite often has the same result.

In the final section, I pose some questions about whether the left libertarianism account can either provide a rationale for promoting

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6. *See id.* (recommending an equality of opportunity for well-being version of left libertarianism).

7. *Id.* at 986.

8. *Id.* at 989.

9. *Id.*

greater equality in opportunities for well-being and whether programs that are consistent with left libertarianism notions of full property ownership and self-ownership can contribute significantly either to promoting greater equality of opportunity or greater well-being.

## II.

Most common varieties of sexism and racism do not involve hatred, mistaken beliefs about the moral inferiority of individuals, or mistaken empirical assumptions. Discrimination is usually rational, and more often than not, innocent to the extent that perpetrators are not blameworthy. Nevertheless, discrimination undermines overall well-being.

### *1. Discrimination Is Rational but Inefficient*

Employers discriminate for a variety of reasons. Many have a taste for discrimination—they simply want employees who look the part and have no reason not to indulge their taste because most jobs can be done equally well by the majority of applicants. The employment practices of a British pickle factory described by Collinson, Knights, and Collinson in *Managing to Discriminate*, which maintained virtually complete sex segregation in shop floor positions, are not atypical. When, by a fluke, a man succeeded in getting work as a pickle-packer, a female-typed job, he was transferred to the loading dock within two days of his appointment:

Although he was “pleased” to be moved, this was not due to a request by him, but rather was the decision of the female packing supervisor. She explained, “I know I shouldn’t treat anyone differently, but he just didn’t look right on the packing line. I think this is a woman’s job really.”<sup>10</sup>

In addition, employers need to accommodate the tastes of customers, clients, and coworkers who also prefer to deal with employees that look the part. Fry’s Electronics’ customers want to buy gadgets from men. Thus Fry’s, rationally, hires only men for commissioned sales positions on the floor. Fry’s employees in charge of personnel decisions do not hate women or regard them as morally inferior—and they are correct in believing that males will be more effective in selling their products because they know that most customers prefer dealing with men when they buy electronic gadgets.

Because such sex discrimination in employment is rational, the market will not fix it. However, markets are not perfectly efficient. When discrimination is a response to the tastes of employers, customers, clients, and coworkers who prefer to deal with employees that “look

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10. DAVID L. COLLINSON ET AL., *MANAGING TO DISCRIMINATE*, 115-16 (1990).

right,” discrimination becomes self-perpetuating and locks in suboptimal equilibria at which all players do as well as they can given the actual choices of others, but where players do worse overall than they would if they all made different choices.

Consider, for example, the case of *Burlington Northern & Santa Fe Railway Co. v. White*:

In Memphis in 1997, Burlington Northern hired Sheila White to operate a forklift in its rail yard. The other employees, all men, were furious—even though none of them had the qualifications to run the forklift—because forklift driver was considered the plum job. White’s foreman and co-workers told her insistently that they didn’t think a woman should be working there in a rail yard . . . After a few months, White complained to her foreman’s manager about the harassment. The foreman was suspended for 10 days. But White, too, was punished: She lost the forklift job and was reassigned to plain old track labor, which all sides agreed was a dirtier and harder job. Still later, she was suspended without pay for 37 days for being a “troublemaker.” Only by bringing a union grievance did she retrieve her job—the track laborer spot, not the prized forklift spot—and her back wages.<sup>11</sup>

Burlington wasted White’s skills as a forklift operator in order to accommodate “furious” male employees. However, the decisions to suspend and transfer her were rational. White was a troublemaker insofar as her presence in an otherwise all-male crew caused trouble that was costly to the firm. The cost, and the costs of dealing with the resentment and disruptive behavior of male coworkers’ resentment and disruptive behavior was greater than the cost of wasting White’s skills. The firm’s decision was, therefore, rational—even though both White and Burlington would have been better off, and other employees would have been no worse off, if White’s male coworkers did not have an expensive taste for discrimination.

## 2. *Segregation Perpetuates the Taste for Discrimination*

Such expensive preferences are not typically immutable brute tastes but a consequence of sex segregation, which is itself the result of discriminatory practices. Discrimination, which produces segregation,

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11. E.J. Graff, *Fighting for Fair Treatment*, AM. PROSPECT ONLINE EDITION, Apr. 27, 2006, <http://www.prospect.org> (search for “articleId=11454”; then follow “American Prospect Online–ViewWeb” hyperlink). For a more extensive discussion, see Caroline Moses, *Burlington N. & Santa Fe Railway Co. v. White, Sheila*, MEDILL–ON THE DOCKET, Dec. 5, 2005, available at <http://docket.medill.northwestern.edu/archives/003256.php> (emphasis added). See also *Burlington N. & Santa Fe Railway Co. v. White*, 126 S. Ct. 2405 (2006).

whether by sex or by race, quite often generates feedback effects that lock in suboptimal equilibria. Consider, for example, discrimination in housing, which Richard Arneson suggests is a consequence of the “mild racial preferences” of individuals to avoid neighborhoods where they will be in a minority:

If one sees a sharply segregated housing segregation pattern (for example, African-Americans living next to African-Americans, whites living next to whites, and African-Americans living next to whites only at the neighborhoods’ edges) even though there is no legal requirement that forces this result, one might suppose that what explains the segregation is a strong desire of almost all members of one or both groups not to live in proximity to any members of the other group. Schelling presented a simple model of the dynamics of residential housing choice that showed that mild racial preferences could lead to strongly segregated outcomes. For example, if nobody wants to live in a neighborhood in which members of his racial group are a minority, and individuals occasionally move in and out of neighborhoods, eventually a strongly segregated pattern emerges. In other words, segregation can emerge even if no one is averse to living in proximity to members of another race.

Plausibly, the mild racial preferences that Schelling showed capable of inducing segregated housing patterns are morally innocent. It is not merely the case that they are not seriously morally wrong or not viciously racist. Arguably, they are not wrong at all.

Nonetheless, the segregated housing patterns induced by a Schelling mechanism might be the cause of serious social harms. To generate a simple example, imagine that children interact with other children who live nearby, that whites are wealthy and educated and African-Americans are poor and uneducated, and that interacting with children whose parents are wealthy and educated is a great boon if you are a child of poor and uneducated parents. Also assume that contact with children whose parents are richer and more educated than yours increases your expected lifetime wealth and education prospects, and to a far greater degree than interacting with children whose parents are poorer and less educated diminishes your lifetime prospects. Segregation in these imagined circumstances would do little, if anything, to help white children and would do a lot to hurt African-American children.<sup>12</sup>

It is common to dismiss such “mild racial preferences” as brute facts—at best data for psychoanalytic or sociobiological speculation whose etiology is irrelevant for purposes of policy. But that is not quite right. It is easy to see why whites, as rational choosers, prefer to live in neighborhoods where blacks are in the minority. When blacks exceed “critical mass” in a neighborhood, both property value and prestige decline. However, they do not decline because blacks are less diligent in maintaining their property than demographically matched whites, or because blacks have socially undesirable characteristics, or even because whites *believe* that they do, but because most Americans, black and white, *expect* property in predominantly black neighborhoods to be less

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12. Richard J. Arneson, *What Is Wrongful Discrimination?*, 43 SAN DIEGO L. REV. 775, 775-76 (2006) (citing THOMAS C. SCHELLING, MICROMOTIVES AND MACROBEHAVIOR 135-66 (1978) (footnotes omitted)).

valuable, economically and socially, and because they know that most other Americans, black and white, have the same expectations.<sup>13</sup>

In this respect the housing market, which operates by second-guessing, is relatively insensitive to fundamentals. White Americans, even if they themselves do not hate black Americans, or believe that they are morally inferior or that they are likely to trash their property, quite literally bank on white privilege in the form of the premium that buyers, also banking on white privilege, are willing to pay for housing in predominantly white neighborhoods. Homeowners in predominantly black neighborhoods interested in relocating who have not banked the white neighborhood premium have a difficult time trading up or even finding comparable housing in predominantly white neighborhoods. This can explain the persistence of racially segregated housing patterns without making any questionable assumptions about the pervasiveness of racial hatred, mistaken empirical beliefs about the characteristics of racial minorities, or even some “mild” biologically-based taste for clubbing together with tribes-mates.

Segregated housing is pervasive in the U.S. and puts blacks, most of whom cannot bank the white neighborhood premium, at an economic disadvantage. Discrimination in employment is the rule rather than the exception and sex segregation, in particular “horizontal” segregation, is pervasive. Women are not only paid less in the aggregate than men and are more likely to occupy subordinate positions, but they are also locked out of a wide range of blue collar jobs.<sup>14</sup> Because most women are

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13. Furthermore, even prescinding from historical factors that put blacks at a disadvantage, “mild racial preference” as such puts members of minorities at a disadvantage. Suppose neither blues nor greens have ever been enslaved, oppressed, or thought to have undesirable social characteristics but that both blues and greens are averse to living in neighborhoods where members of their group are underrepresented. Now assume that there are many more greens than blues. Property values in green neighborhoods are likely to rise because there will be more potential buyers competing for housing.

14. For a lucid discussion of occupational segregation by sex and the theories proposed to explain it, see, for example, Richard Anker, *Theories of Occupational Segregation by Sex: An Overview*, 136 INT'L LAB. REV. 315 (1997). For a more extensive but less lucid discussion, see MARIA CHARLES & DAVID B. GRUSKY, OCCUPATIONAL GHETTOS: THE WORLDWIDE SEGREGATION OF WOMEN & MEN (2004). Most writers focus on vertical segregation, the tendency for women to be relegated to subordinate positions, which is disappearing rapidly in developed countries. Arguably, horizontal segregation, which has not diminished to any appreciable degree, should be a matter of greater concern. First, it has the effect of crowding women into a narrow range of jobs where, as a consequence, wages stay low. Second and more importantly, it imposes severe constraints on women's preference satisfaction by limiting the *kinds* of work that are, for all practical purposes, available to women.



restricted to a narrow range of pink collar jobs, wages for these jobs remain low due to overcrowding in a handful of female-typed occupations.<sup>15</sup> This is invidious enough alone; nothing hangs on Vallentyne's condition (2) for invidious discrimination, which stipulates that discrimination is invidious only if based on mistaken beliefs or hatred, so it is safe to ignore it. If I am stuck behind the Wal-Mart checkout counter for eight hours a day it does not matter to me whether that is a result of market forces or a consequence of my employer's "hatred" or mistaken views about my abilities or moral character. What matters is that I am stuck, because I am locked out of a wide range of more desirable, better paid, less closely supervised, less boring, male-identified jobs which comparably qualified males can get.

### 3. *Proxies and Statistical Discrimination Have Expensive Feedback Effects*

Where gender is concerned, at least in Western countries, bigotry, hatred, and false beliefs about moral status are rarely an issue. Men and women have traditionally been separate but genuinely equal. Women have fewer desirable opportunities in the labor market, but most women are not obliged to work outside the home full time and continuously from the time they complete their education until retirement. Men, on the other hand, have many more opportunities in the world of work but labor under a burdensome breadwinner obligation. Women, so the story runs, buy flexibility at the cost of desirable job options; men take on the breadwinner obligation and are rewarded with more desirable opportunities in the labor market. *Prima facie*, this seems a fair trade: what women gain on the swings men lose on the roundabouts and vice versa. In the aggregate, men and women are equally well off even if they are differently off.

Nevertheless, *la difference* makes both men and women worse off because such trade-offs do not reflect the *ceteris paribus* preferences of all men and women. A woman might prefer to trade flexibility for higher earnings and improved job prospects, but that is a trade-off which most women do not get the chance to make because employers are reluctant to hire women for responsible positions requiring long-term commitment to the job, to provide firm-specific training, or offer women opportunities for advancement. This is a rational decision on employers' part. Because women as a group are less likely to exhibit a high level of

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15. This is Barbara R. Bergmann's "overcrowding hypothesis." See Barbara R. Bergmann, *Occupational Segregation, Wages and Profits When Employers Discriminate by Race or Sex*, 1 E. ECON. J. 103 (1974).

commitment to the job than their male counterparts, employers, quite reasonably, take gender as a *proxy* for a range of characteristics that make workers poor investments. Women, responding to employers' policies, behave in the way that employers predict—exhibiting higher levels of absenteeism, quit behavior, and other characteristics that are, from employers' perspective, undesirable.<sup>16</sup>

The foregoing is the classic case of feedback effect generated by statistical discrimination, which locks in what is arguably a suboptimal equilibrium: women do not invest in work because employers do not invest in women. Employers do not invest in women because women do not invest in work. Both women and employers are making the best choices they can, given one another's choices, but everyone might be better off if everyone made different choices. Arguably, what is wrong about using gender as a proxy in cases such as this is not that it is irrational—it is not—or that it is tough on anomalous “deserving” women who will invest in work if given a chance, or that it violates women's rights, demeans, stigmatizes, or expresses wrongful values towards women. What is wrong is that using gender as a proxy creates a

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16. For discussion of the impact of such feedback effects see, for example, BARBARA R. BERGMANN, *THE ECONOMIC EMERGENCE OF WOMEN* (2d ed. 2005); FRANCINE D. BLAU, MARIANNE A. FERBER, & ANNE E. WINKLER, *THE ECONOMICS OF WOMEN, MEN, AND WORK* 214 (1998). In discussing these effects, Linda Levine notes:

Since women historically have tended to move in and out of the labor force more often than men, risk-adverse employers who rely on their impressions of the relative job turnover of all men and women when deciding about hiring individual men and women (i.e., statistical discrimination) would prefer men over women for primary sector jobs. The outcome, some analysts claim, is that women are relegated to the secondary, low-paying sector of the labor market.

It is suggested that limiting women to poor job opportunities could make their alleged high turnover a self-fulfilling prophecy because the jobs provide women little reason to stay with any one employer. Labor market discrimination could have other feedback effects “if it discourages women from making human capital investments, weakens their attachment to the labor force, and provides economic incentives for the family to place priority on the husband's career.” As a consequence of discrimination's feedback effects on human capital variables, then, empirical studies that use these variables to explain the wage gap could understate discrimination's impact. Rather than the gender wage gap being due to either women's choices *or* women's constraints, the explanation likely is a mutually reinforcing combination of human capital differences between the sexes and discrimination against working women.

LINDA LEVINE, CONGRESSIONAL RESEARCH SERVICE, *THE GENDER WAGE GAP AND PAY EQUITY* (Apr. 21, 2003), available at [http://www.opencrs.com/rpts/98-278\\_20030421.pdf](http://www.opencrs.com/rpts/98-278_20030421.pdf) (quoting Blau, *supra*) (footnotes omitted) (last visited Dec. 20, 2006).

vicious circle that perpetuates a state of affairs in which both employers and employees are worse off than they would be if the male-breadwinner/female-secondary-worker scheme were not locked in. Employers would have a larger pool of committed workers from which to choose when deciding whom to hire, whom to train, and whom to promote; and women would have a wider range of opportunities.

Likewise, employers' attention to what Alan Wertheimer calls "reaction qualifications" may create vicious circles that perpetuate discrimination and leave everyone worse off as a consequence, not because it is irrational for employers to take reaction qualifications into consideration but precisely because it is rational to do so. As Wertheimer notes, such characteristics may be bona fide occupational qualifications:

[S]uppose that a law firm is considering candidates, one of whom is a former high ranking official in the Department of Justice. He may be less talented than other applicants, but the firm has reason to believe that his high profile will bring more business. If the law firm can reasonably aim to maximize its profits (rather than its legal talent), the former official may be the most *qualified* person for the job . . . .<sup>17</sup>

Even if the candidate is, in virtue of being less "talented" than other applicants less "deserving," he is more qualified to the extent that clients will seek him out. By the same reasoning, sex and race may figure as bona fide reaction qualifications. In this respect, males are better qualified to sell Fry's gadgets because customers believe that they are, while female forklift operators like Sheila White are less qualified than males with comparable technical skills precisely because male coworkers do not believe that they are qualified, suitable, or deserving.

The difference between Wertheimer's case and common or garden variety cases of discrimination, however, is that when employers take sex and race into account as reaction qualifications, they contribute to the perpetuation of undesirable feedback effects. Sex and race figure as reaction qualifications in many occupations precisely *because* women, minorities or, in the case of female-identified occupations, men, are unrepresented or severely underrepresented.<sup>18</sup> Supervisors, coworkers, customers, and clients prefer to do business with employees who look the part. They question the competence of workers who are visibly anomalous, scrutinize their work more closely, and hold them to unrealistically high standards. If members of underrepresented groups achieve critical mass, however, sex and race cease to be reaction

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17. Alan Wertheimer, *Reflections on Discrimination*, 43 SAN DIEGO L. REV. 945, 949 (2006) (emphasis in original).

18. This is not true of what Yuracko calls "sex" and "plus-sex" jobs. See Kimberly A. Yuracko, *Private Nurses and Playboy Bunnies: Explaining Permissible Sex Discrimination*, 92 CAL. L. REV. 147, 172 (2004).

qualifications. When Walter Cronkite, Douglas Edwards, Huntley, and Brinkley were the only show in town, women *were* less qualified to serve as television news anchors because they lacked relevant reaction qualifications—credibility and authority—that men had in virtue of viewers' expectations. Once women achieved critical mass in television journalism, viewers came to see female television journalists as normal, credible, and authoritative. Thus, being male ceased to be an occupational qualification.

This dynamic does not play out in cases like Wertheimer's. When law firms hire high profile hacks everyone in the office knows exactly what is going on, and clients soon find out as well. Celebrity hiring does not generate significant feedback effects. Moreover, because there are very few celebrities in the applicant pool, very few talented individuals will be displaced and the waste of skills, if any, will be minimal. This is why we regard celebrity hiring "whimsical discrimination" and most instances of nepotism as relatively innocuous.<sup>19</sup>

Arneson, Wertheimer, and other contributors to this volume cite cases of discrimination, such as hiring on the basis of nonmeritocratic characteristics, that we should regard as innocuous or at least noninvidious. They ask, rhetorically, what is the difference between these cases and discrimination on the basis of race or sex?<sup>20</sup> I have suggested that the difference is that neither whimsical hiring nor discrimination against non-celebrities, the old, the fat, or the ugly, generates the feedback effects that sex and race discrimination do. Arguably, what makes these sorts of discrimination invidious is their propensity to generate expensive feedback effects. Discrimination is rational, and that is the problem.

### III.

For many libertarians, right and left, market failures such as those I have described above are peripheral, if not completely off the map. Left libertarians like Vallentyne, however, have special difficulties because they claim to have a serious interest in promoting equality of opportunity for *well-being* in an efficient manner. Arguably, left libertarian notions concerning the egalitarian ownership of natural resources do not justify this aim, and the left libertarian program cannot effectively promote it.

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19. See Arneson, *supra* note 12, at 784-86 (describing "whimsical discrimination").

20. See Arneson, *supra* note 12; Wertheimer, *supra* note 17.

*1. The Rental System: Where the Elite Have Small Ecological Footprints*

It is not clear from Vallentyne's exposition how the left libertarian rent system works, or how the duty to promote equality of opportunity for well-being is spun out of the egalitarian ownership of natural resources and our obligation to pay rent for our share in them. *How* does equal ownership of land, air, water, or other natural resources translate into any right, even subject to constraints, to equal opportunity for well-being? Perhaps this is the idea: If I use less than my share of the natural resources, then individuals who use more than their share are renting little bits from me. The state, or some other agency, acts as a rent collector, distributing rent for natural resources that individuals use in excess of their equal shares to individuals who use less than their equal shares in the form of opportunities for well-being.

If so, it is hard to see how such an arrangement militates in favor of equality of opportunity for well-being. These days, people who are very well off quite often have smaller ecological footprints than individuals who have far fewer opportunities for well-being. Unless there is some very fancy way of calculating the share of natural resources an individual uses, a person's opportunity for well-being is not a function of the quantity of natural resources he consumes or even the market value of these natural resources as such. Take, for example, the following illustration: Moneybags lives on the 58th floor of a tiny but expensive Manhattan apartment; he rents no more than four square inches of expensive real estate. Moneybags is a vegetarian and does not own a car. The value of most of the yuppie goods he consumes—art, fine wine, and the like—is mainly in the labor that went into their production and the prestige they confer in virtue of which other yuppies are prepared to pay through the nose for them. His natural resource consumption is low but his opportunities for well-being are vast. On the other hand, Redneck lives in a sprawling ranch house, drives an SUV, hunts, and hikes. He consumes lots of natural resources but has far fewer opportunities for well-being. On any account of what natural resource consumption comes to, rednecks should be paying well-being rent to yuppies, further skewing the distribution of opportunities for well-being.

Distributing rent funds to individuals who under-consume natural resources at the expense of those who over-consume may have some benefits when it comes to promoting ecologically responsible practices.<sup>21</sup> Such distribution is not, however, likely to result in a more equal distribution of well-being in industrial or post-industrial societies. The single tax program that inspires left libertarianism has some plausibility

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21. I am grateful to John Baber for making this point in conversation.

in a semi-feudal agrarian economy.<sup>22</sup> But it is merely a contingent matter that in some circumstances, opportunities for well-being track access to natural resources. Opportunities for well-being are not a function the market value of natural resources that individuals consume, and in developed, post-industrial economies the correlation between natural resource consumption and opportunities for well-being is very loose indeed.

Left libertarians, insofar as they hold that “rent must be spent so as to efficiently promote equality of opportunity for well-being,”<sup>23</sup> therefore face a dilemma. Either distributions from the rent fund are based on the amount of resources individuals are “owed” in virtue of under-consumption or they are organized so as to promote equality of opportunity without regard to consumption. Distribution according to the former scheme may not promote equality of opportunity for well-being and, indeed, in a developed economy may be counterproductive. If, however, the left libertarian holds that the rent fund should pay out to individuals with below average opportunities for well-being *regardless* of their consumption of natural resources, then it is hard to see what the idea that natural resources belong to everyone in some egalitarian manner is doing for left libertarianism. Distributing rent funds according to this scheme looks more like an implementation of the simpler, more familiar dictum: from each according to his ability; to each according to his need.

## 2. “Money Can’t Buy Happiness”: Goods that Produce Welfare Are Not Fungible

The types of compensation individuals with few opportunities for well-being can legitimately receive under the left libertarianism rent fund theory do not do a very good job in improving well-being opportunities for most victims of discrimination. In some cases, monetary compensation *replaces* opportunities lost through discrimination. If the state provides blacks, who have less access to credit than whites because of discrimination, with low interest loans or grants to compensate for the disadvantages they suffer as a consequence of the decisions of private lenders, the problem is fixed. Money is money and

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22. In a semi-feudal agrarian economy, most participants are large landowners, small-holders, or landless peasants and most wealth is in the land so that land ownership and consumption of natural resources track the extent of individuals’ opportunities for well-being tightly.

23. Vallentyne, *supra* note 1, at 986.

it does not matter where it comes from. But monetary grants do not fix discrimination in employment even if they provide some compensation by way of alternative opportunities for well-being. Monetary compensation does not help much if people are stuck doing jobs they hate; currency is fungible—employment is not. Given that differences in individual tastes do not tightly track sex or race, *ceteris paribus*, a state of affairs in which individuals have different opportunities by virtue of their sex and race is less conducive to overall preference satisfaction than one in which all individuals have the *same* opportunities.

Arguably, what makes discrimination bad is not that it treats some individuals “less favorably” by virtue of their sex, race, or other ascribed characteristics, but simply because discrimination treats them *differently*. If a restaurant assigns whites to wait on tables, but assigns people of color to invisible jobs in the kitchen to accommodate customer tastes, it still undermines *all* employees’ opportunities for well-being to the extent that it restricts their options for getting the kind of work they find least objectionable, even if it provides equal wages and benefits, or pays kitchen staff more to compensate for not getting tips. There may be some whites who are adverse to extensive contact with the public and would therefore prefer kitchen work to waiting tables, or blacks with an aversion to the grease and smells in the kitchen who would prefer waiting tables. Even if the distribution of preferences or the earnings from serving and kitchen work are the same among black and white employees so that each are equally well off in the aggregate, employees overall are less well off than they would be if they had a wider range of job options. Shy whites and fastidious blacks lose out.

Currently, most men and women compete in a dual job market. In particular, occupations for men and women without college degrees are highly sex segregated. Moreover, women not only have different job options than men, they have far fewer options. Evelyn Murphy notes that two-thirds of all females employed in the U.S. are crowded into twenty-one out of five hundred occupational categories.<sup>24</sup> According to one popular view, women’s restricted job options do not diminish their opportunities for well-being. Rather, women crowd into a narrow range of female-typed jobs because they have a taste for nurturance, service, and social interaction and an aversion to work that is physically demanding, dirty, or dangerous because they are better able to cope with boredom than men and because they willingly trade off higher pay to satisfy their preferences. If this view is accurate, the gendered division of labor is unobjectionable.

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24. EVELYN F. MURPHY, GETTING EVEN 146 (2005).

To examine whether this hypothesis is plausible, however, let us consider *how much* working class women pay for clean, safe, and physically undemanding work that provides opportunities for nurturance, service, and social interaction. Mechanics earn on average \$669 per week while female clerical workers average \$512 per week and female service workers earn \$366 per week.<sup>25</sup> Now, it may be that female clerical workers are willingly pay \$157 per week (\$8164 per year) to avoid getting dirty and that female service workers, who earn on the average \$19,032 per year, are willingly pay a \$15,756 premium to avoid getting dirty and to indulge their craving to serve customers. Assuming that women in pink collar occupations *could, if they so chose*, get work in blue collar trades where wages are comparable to auto mechanics' pay, the choice to perform traditional women's work would cash out as a 23% pay cut for female clerical workers and a 45% loss for female service workers.

It seems unlikely that women whose earnings are low to begin with are so averse to male-typed work that they willingly absorb so big a financial hit. This strongly suggests that working class women crowd into the pink collar ghetto because they have no viable alternatives—either because the costs of blue collar employment are significantly higher for women than they are for their male counterparts or, more likely, because most women know that they will not be seriously considered for blue collar jobs and therefore do not apply for them or invest in training that they have good reason to believe will be wasted.

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25. BERGMANN, THE ECONOMIC EMERGENCE OF WOMEN, *supra* note 16. Eighteen percent of male workers have jobs in the skilled crafts, which are relatively high paying and do not require a college education, but not even one percent of women workers have such jobs. *Id.* The male mechanic's \$669 weekly paycheck, as compared with the female clerical worker's average of \$512 or the female service worker's average of \$366 shows the crucial advantage of men over women in the part of the population that has not been to college. *Id.* "The inability of non-college women to get crafts jobs virtually condemns such a woman to a low standard of living if she finds herself with a child or two and lacks a man" who will share his income with her. *Id.* In this respect, the labor market has not improved since the 1970s. *Id.* The crafts jobs all require training. Some of this training is at the discretion of the employer, who may exclude women. Some training is obtained in public vocational schools, which remain highly segregated by sex. The women who are excluded from skilled crafts jobs as carpenters or electricians swell the ranks of those competing for unskilled work. The presence of these extra people competing for these jobs lowers the wage in these poor-paying jobs from that which it would be otherwise. This crowding hurts the workers who would, even in the absence of discrimination, still be in a dead-end, low-skill job.



If this is so then it seems likely that because most women are confined to a narrow range of female-typed work there are a number of women who are seriously miserable because of the work they must do. Left libertarians cannot support equal opportunity or affirmative action regulations that would enable women to obtain male-typed jobs. The best they can offer, given their principles, is financial compensation from the rent fund so that women who find traditional “women’s jobs” intolerable can avoid work altogether. This would be beneficial to the extent that it would relieve overcrowding in pink collar occupations so that wages would rise and working conditions might improve—at the cost of creating an unproductive renter class of Welfare Queens. However, the Welfare Queen option would not do much to improve the well-being opportunities of women who want to work for a living but do not want to be restricted to the narrow range of pink collar jobs currently available to them.

The problem is that left libertarianism trades in rent funds but aims at welfare. When it comes to work, however, the power of money to buy happiness or alleviate misery is limited. The intrinsic character of work is most important, even when it comes to occupations that do not require a college degree. Discrimination in employment prevents individuals from making the trade-offs they prefer to satisfy their tastes and forces people into occupations to which they are averse, seriously undermining opportunities for well-being. Distributions from the rent fund do little to offset the loss in opportunities for well-being arising from discriminatory practices that lock most women into a narrow range of pink collar jobs. Even if the left libertarianism agency, drawing from the rent fund, topped off wages for female-typed occupations so that pink collar workers earned as much as their blue collar counterparts, discrimination in employment to the extent that it restricts the vocational options of both men and women would still significantly undermine opportunities for well-being. Individuals who were seriously averse to gender-appropriate work in particular would lose out.

Money or alternative opportunities for well-being are compensation of a sort—in the way that financial settlements are compensation for false imprisonment—but nothing can make up for doing time at a job you hate. This is the most compelling reason why anyone with a serious interest in promoting equal opportunities for well-being should prefer affirmative action and the enforcement of antidiscrimination policies to compensation from a left libertarian rent fund.<sup>26</sup>

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26. Few discussions of discrimination take “horizontal” sex segregation in occupations that do not require a college degree seriously. Arguably, however, we should take it much more seriously than such “vertical” sex segregation as exists for

### 3. Promoting Equality of Opportunity in the Long Run

Once again, the constraints under which left libertarians operate with regard to the duty to promote equality of opportunity in the long run and minimize future invidious discrimination, make things difficult. Vallentyne notes that education and incentives are legitimate means for counteracting discrimination.<sup>27</sup> However, while providing educational opportunities and incentives to women and minorities may diminish segregation that is the consequence of past discrimination, it seems unlikely to have much effect on continuing discrimination.

Education enables a minority of women to gain access to a number of desirable, well-paid jobs. While there are male-female wage gaps for every occupation, the male-female wage gap for college graduates as a group is smaller than it is for less educated groups, in part because there is much less horizontal sex segregation at the high end of the labor market. If a woman goes to college she gets access to a wider range of jobs and will make more money, which is no surprise. But realistically, not everyone can get through college. Even if they did, we would still have many college graduates working at Wal-Mart. After all, someone must still occupy the pink and blue collar jobs.

While sex segregation in jobs that require a college degree has decreased dramatically since 1980, sex segregation in working class occupations has not budged, in large part because women remain locked out of traditional blue collar occupations.<sup>28</sup> Education enables some women to get out of the pink collar ghetto by escaping from the segment of the labor market in which discrimination is most pervasive. This is why there are now many more women than men at universities in all affluent countries. But even if the increased educational attainment of women shrinks the pool of female applicants for low-end pink collar

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high-end jobs if for no other reason than that there are three times as many Americans who have not completed college than there are Americans with undergraduate or advanced degrees. I suspect many of us overlook the seriousness of horizontal sex segregation in pink and blue collar occupations because we assume, without reason or reflection, that all "bad" jobs—jobs we would not do—are equally bad and that in any case that the people who do these jobs do not get bored as easily as we smart people do and therefore do not suffer as much as we would if we had to do their jobs. I also suspect that male academics in particular find it difficult to believe that working class women are seriously disadvantaged because they cannot get blue collar jobs, because they are a self-selected group who are especially averse to blue collar work insofar as they have invested in education to avoid it.

27. Vallentyne, *supra* note 1, 988.

28. See, e.g., ROBERT CHERRY, WHO GETS THE GOOD JOBS? (2001).

jobs (and so boosts wages), it is not likely to improve the *job* prospects for women at the low end.

As to incentives, Vallentyne does not clearly express what he has in mind. One type of incentive that might effectively decrease sex segregation would be an incentive to encourage girls to become involved in hard sciences and engineering. It seems likely that there are small on-the-average male-female differences in mathematical aptitude, but also that they are not nearly large enough to explain why there are *so* few women in math-heavy scientific areas. Nevertheless, not all women, or men, can be scientists or engineers, and in any case such an incentive program does not address the far more significant effects of discrimination on the majority of women who compete in the non-college labor market. There are proportionately many more women in the sciences than there are in traditional blue collar trades, and proportionately more women engineers than women working in Fry's commissioned sales positions pretending to be engineers. It would also likely be beneficial to provide incentives to induce young black males to stay in school and out of jail, although it is not clear what sorts of incentives would prove efficacious. Moreover, staying in school is not going to do young black males any good if they continue to face discrimination in employment.

Both programs, I take it, would be consistent with left libertarian principles—and very good things. However, they would not have any direct effect on discrimination by sex and race, which occurs when employers take sex and race into consideration in dealing with individuals *who are otherwise qualified in virtue of their education, training, and skills*. Optimistic scenarios promoting the benefits of education underestimate the extent of ongoing discrimination: they assume that women and minorities are currently disadvantaged primarily as a consequence of human capital deficits or psychological factors that are a result of *past* discrimination. That is false: *the fault is almost never in ourselves and almost always in our stars*. Discrimination is ongoing because, as I have argued, it is rational. Incentives to encourage women to train for blue collar jobs are unlikely to have much effect because women are rational and know that they will not be seriously considered for such jobs.

The only incentives and educational programs that address ongoing discrimination are those directed at perpetrators. It is, however, unlikely that educational efforts or propaganda directed at them will have much effect because, as we have seen, most discrimination is rational. Owners of upscale restaurants may believe that discrimination is “bad” but still reserve table serving jobs for white males in order to achieve an ambiance for which customers will pay. Real estate agents who are not racists will continue to steer white clients to white areas in order to collect their commission on the white neighborhood premium.

Offering carrots is consistent with the left libertarianism view, but threatening the stick is not. The “Rent Bureau” can bribe but it cannot punish; it can subsidize firms which promote blacks and hire women for male-typed work to offset the losses they may incur through hiring employees who lack reaction qualifications in virtue of race or sex and bribe them to take on “troublemakers” like Sheila White,<sup>29</sup> but it cannot fine them for continuing to discriminate or impose any other disincentives that would violate their full property ownership and self-ownership rights.

It is unlikely that bribery will be effective. Women have always worked for less and yet employers have been prepared to pay a premium to hire men for “men’s jobs.” Members of disadvantaged racial and ethnic minorities have also been willing to work for less but, once again, continue to face discrimination in employment. The civil rights movement achieved results by liberal use of the stick—by boycotts and sit-ins, by forced integration of the schools, backed by National Guard troops and legal action. There is some evidence that when it comes to discrimination, the stick is effective and the carrot will not do.

#### *4. Running the Rent Bureau*

Finally, there is reason to be concerned about the efficiency of policies for promoting equality of opportunity for well-being that are consistent with the left libertarian theory vis-à-vis regulations forbidding discrimination. Managing the left libertarian scheme for allocating compensation, education, and incentives from the rent fund’s stash to promote equality of well-being will take many economists, psychologists, sociologists, ethicists, and support staff working fulltime at the Rent Bureau and continuously tinkering. I cannot even imagine how, for practical purposes, this would be accomplished. It is expensive, impractical, inefficient, and just crazy.

Right libertarians would likely concur and would also add that mechanisms for antidiscrimination regulations and affirmative action policies are equally expensive, impractical, inefficient, and crazy. I am not sure that this has to be so. Currently, the mechanisms for enforcing antidiscrimination regulations are costly, cumbersome, and inefficient, though arguably, not nearly so expensive and as would be the operations

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29 See *supra* note 11 and accompanying text.

of a left libertarian Rent Bureau occupied by elaborate well-being calculations. But there may be room for improvement if the mechanism for enforcing antidiscrimination regulations were comparable to those for enforcing workplace safety regulations or health regulations.

Consider a case of “plain old discrimination” described by Evelyn Murphy in *Getting Even*:

In 1998, Ernest Talley’s Renters Choice chain of rent-to-own stores acquired Rent-A-Center . . . Immediately, Talley and his senior vice presidents fanned out across the country to explain to the newly acquired managers that there would be no women at RAC. The weight-lifting requirements for the job had been fifty pounds; Talley raised it to seventy-five pounds because, he explained—as many managers later testified—it “would keep women from applying.”

A few men tried to stand up against the policy—and lost. . . . [M]ost who tried to resist the female-free juggernaut quickly decided it wasn’t worth their jobs . . . [L]iterally dozens of midlevel managers from across the country, in separate and uncoordinated depositions, testified that the top executives and senior managers who were their direct reports had said such things as “In case you didn’t notice, we do not employ women” and “I regularly throw away women’s applications”

. . . .  
. . . As a result, after a few years of legal skirmishing, in 2002 RAC agreed to pay out \$47 million, revamp its personnel policies and procedures, and submit to EEOC oversight for four years. But while the few named plaintiffs got lump sums of either \$100,000 or \$55,000, taxable as a single year’s income, the rest of that money had to be spread out over thousands of women, who, on average, received a lump-sum payment of less than \$10,000 each—not enough to make up for their three years of lost wages, much less the strain and exhaustion of being disparaged and hounded daily.<sup>30</sup>

What is striking about this case is not only that it occurred long after sex discrimination had been prohibited by law, but the way in which it was handled—and had to be handled given the way in which the EEOC was required to operate. Discrimination in hiring is treated as an anomaly to be handled by the courts *ex post facto* in response to complaints, rather than a common practice to be eliminated through monitoring, regular inspections, and routine fines for noncompliance. Employers who discriminate are treated like doctors guilty of malpractice and unlike stores that sell products after their pull dates or contractors who send workers onto construction sites without hardhats.

Of course, right libertarians, with the courage of their convictions, who regard health and safety regulations as illegitimate interference in business activities motivated by unwarranted paternalism, are no more sympathetic to OSHA or the Board of Health than they are to the EEOC. If workers choose to live dangerously, that is their business; if a supermarket

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30. MURPHY, *supra* note 24, at 56-57.

sells rotten meat consumers will find out, even if it takes a few high profile cases of E. coli, and take their business elsewhere. Most of us, however, are happy with state regulation in the interests of maintaining health standards and workplace safety.

Arguably, it is not antidiscrimination regulation so much as the mechanisms by which regulations are enforced that burden employers and motivate resistance. Employers know that they are unlikely to be called on discrimination. Employees are in a poor position to complain and fear reprisals; job applicants are in no position to prove discrimination. They also worry that, given the way in which the system operates, if they hire “nontraditional” applicants they run the risk of expensive litigation if they demote or fire them. This is merely a consequence of the way in which antidiscrimination regulations are enforced rather than the regulations as such. If the EEOC had operated more like OSHA or the Board of Health, it is unlikely that Renters’ Choice would have either implemented its discriminatory hiring policies, gone through “a few years of legal skirmishing,” or been socked with multimillion dollar settlement costs at the end of the road. If the employment practices of firms were monitored as a matter of course there would have been questions about why weight-lifting requirements had suddenly been raised (was the merchandise suddenly heavier?) and why there were few or no female applicants for jobs where there was no significant “pipeline” constraint. Current schemes for promoting equality of opportunity for well-being could stand improvement, but arguably, the left libertarian program is significantly less efficient and unlikely to be effective.

#### IV.

If you are going to be a libertarian at all, you might as well be a right libertarian. The doctrines of full property ownership and self-ownership impose constraints, which even given the assumption that natural resources are owned “in some egalitarian manner,” are not conducive to equality of opportunity for well-being. Left libertarians seek to offset well-being deficits that arise from discriminatory practices and to discourage future discrimination but only insofar as that can be done via distributions from the rent fund and resources that rent money can buy. This program will not go very far either in compensating women and minorities for restricted opportunities due to discrimination, or in breaking the vicious circles that perpetuate discriminatory practices.

Under the left libertarian regime, whites will continue to bank their white neighborhood premiums and flee to ever more remote suburbs when blacks achieve critical mass in their neighborhoods—until white voortrekkers moving back to gentrify city neighborhoods squeeze out black renters and begin the cycle all over again. Most women will remain locked into pink collar jobs.<sup>31</sup> Women foolish enough to take advantage of rent fund subsidies to train for “nontraditional” occupations will not be taken seriously when they apply for “men’s jobs.” Employers who respond to incentives to hire women will collect their subsidies from the Rent Bureau and give women job assignments that do not provoke male coworkers or disturb clients who want employees with whom they do business to look the part.

This is not much different from the way things were when I went to college to escape from my clerk/typist job at a local bus company, grubbed for grades in fear and trembling, and fought my way through graduate school in order to get into the high end of the job market where sex segregation was not an issue. When I was working at Inter-City Transportation Company, I would have been happy to receive distributions from a rent fund, but even if they equaled or exceeded the difference between my wages and the earnings of male bus drivers whose pay slips I filed, I would have much rather been driving a bus.

Sex segregation in employment does not just affect working class women—who we are inclined to forget represent three-quarters of the female population in the United States. Sex segregation affects all women because it means that for us there are no fallback positions or safety nets. Career housewifing is no longer an option—men will not guarantee lifelong financial support—so unless we catch the brass ring, which most of us cannot catch since brass rings are in short supply, we will spend most of our lives in pink collar jobs “caring, cashiering, catering, cleaning, [or doing] clerical work.”<sup>32</sup> Unless left libertarians have some more elaborate schemes up their sleeves for getting women a real shot at male-typed jobs I do not see much in the program for me.

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31. *Id.* at 146. In 2000, two-thirds of all women working in the U.S. remained crowded into twenty-one occupations out of five hundred job titles, constituting eighty to ninety-eight percent of the workers in those categories. *Id.*; see also *supra* text accompanying note 24.

32. Fred Halliday, *The Forward March of Women Halted?*, OPEN DEMOCRACY, May 5, 2006, available at [http://www.opendemocracy.net/globalization/women\\_march\\_3510.jsp](http://www.opendemocracy.net/globalization/women_march_3510.jsp) (last visited Dec. 20, 2006).