

Left-Libertarianism: what's in it for me?

I

Left Libertarians hold, first, that agents fully own themselves and secondly, that natural resources belong to everyone in some egalitarian manner. Peter Vallentyne argues that while discrimination is not intrinsically unjust on Left Libertarian 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.

Vallentyne focuses on *private discrimination*—discrimination by individuals as citizens as opposed to *state* discrimination—and is particularly concerned with discriminatory practices that are socially significant, presumably including race and gender discrimination in employment, housing and access to credit. These are, amongst the “standard cases of racism and sexism” which he holds are forms of “invidious discrimination where:

invidious discrimination against a person consists of treating that person less favorably because of some feature one believes the individual to have, 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) significantly mistaken empirical beliefs about people having the feature, or (c) hatred of those having the feature.

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.

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 so does not violate his rights. Some varieties of invidious discrimination do violate these rights to property and self-ownership—for example, lynching or defacing the property of minority residents—but the common or garden varieties don't. Individuals, Vallentyne holds, “do not have a right not to be discriminated against on the basis of characteristics for which they are not responsible nor a right to be treated on the basis of their desert.”

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 firm (or act as an agent of the owner), my money or my house, 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 that, on the equality-of-opportunity-for-wellbeing version of Left Libertarian which Vallentyne recommends, impose a duty of justice on individuals, and on the state acting on their behalf, to promote equality of opportunity.

How does this work? On the Left-Libertarian account individuals hold ownership of natural resources conditional on their paying rent for them to the commonweal. According to equal

opportunity Left-Libertarianism (to which I'll confine myself here) "this rent must be spent so as to efficiently promote equality of opportunity for wellbeing." Discrimination undermines opportunities for wellbeing and, where individuals have worse than average prospects for wellbeing, 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, Vallentyne writes, "the state has a duty of justice to use education and incentives to reduce future invidious discrimination."

There is, however, no special duty to compensate for discrimination as such or to reduce its occurrence since, Vallentyne notes that "those 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." Invidious discrimination is all of a piece with other life circumstances that undermine opportunities for wellbeing.

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 that that is why, on consequentialist grounds, intervention by the state or other agencies is warranted. I consider Arneson's discussion of how even "mild" racial preferences may bring about extensive racial segregation noting that in the case he considers and a wide range of others, the taste for discrimination is itself a consequence of discriminatory practices which generate feedback effects. I note also, considering Alan Wertheimer's observation that "reaction qualifications" may be bona fide occupational qualifications, accommodating the discriminatory tastes of clients, customers and co-workers quite often has the same result.

In the final section I pose some questions about whether the Left Libertarian account can either provide a rationale for promoting greater equality in opportunities for wellbeing and whether programs that are consistent with Left Libertarian notions of full property ownership and self-ownership can contribute significantly either to promoting greater equality of opportunity or greater wellbeing.

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, but nevertheless undermines overall wellbeing.

1. Discrimination is rational

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, 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.'¹

Employers in addition need to accommodate the tastes of customers, clients and co-workers who also prefer to deal with employees that look the part. Fry's Electronics' customers want to buy gadgets from men so Fry's, rationally, hires only men for commissioned sales positions on the

¹ David L. Collinson, David Knights, and Margaret Collinson, *Managing to Discriminate*. Routledge, 1990, pp. 115-116.

floor. Fry's employees in charge of personnel decisions don't 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.

Most sex discrimination in employment is rational so 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 co-workers who prefer to deal with employees that “look right,” discrimination becomes self-perpetuating and locks in sub-optimal 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 all made different choices.

Consider the case of Burlington Northern & Santa Fe Railway Co. v. Sheila 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* [emphasis added]-- 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 wages²

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

2. Segregation promotes 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, whether by sex or by race, quite often generates feedback effects that lock in sub-optimal 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, with blacks living next to blacks and whites living next to whites and blacks living next to whites only at the edges of the neighborhoods even though there is no legal requirement that forces this result, one might suppose that what must explain the segregation is a strongly felt desire on the part of almost all members of one or both groups not to live in proximity to any members

² E. J. Graff. “Fighting for Fair Treatment.” *American Prospect*. April, 27, 2006 web exclusive at <http://www.prospect.org/web/page.wv?section=root&name=ViewWeb&articleId=11454> For a more extensive discussion see “Burlington Northern & Santa Fe railway C. v. White, Sheila, *On the Docket: 2005-2006 Term* at <http://docket.medill.northwestern.edu/archives/003256.php>

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.

The mild racial preferences that Schelling showed could induce segregated housing patterns are plausibly morally innocent. It is not merely the case that they are not seriously morally wrong or fall into the category of vicious racism. Arguably they are not wrong at all.

Nonetheless, the segregated housing patterns induced by a Schelling mechanism might for all that be the cause of very serious social harms. To generate a simple example, just imagine children interact with other children who live near them, that whites are wealthy and educated and blacks 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. 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 than yours diminishes your lifetime prospects. Segregation in these imagined circumstances then would do little if anything to help white children and would do a lot to hurt black children.³

It is common to dismiss these “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 property values and prestige decline—not because blacks are less diligent in maintaining their property than demographically matched whites, or have socially undesirable characteristics, or even because whites *believe* that they have these characteristics, but because most Americans, black and white, *expect* property in predominantly black neighborhoods to be less valuable, economically and socially...because they know that most other Americans, black and white, have the same expectations.⁴

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 buyers, also banking on white privilege, are willing to pay for housing in predominantly white neighborhoods.⁵ 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. Without making any questionable assumptions about the pervasiveness of racial

³ Arneson, R. “What is Wrongful Discrimination”

⁴ 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 them. More realistically, suppose the owner of a club knows that there are many more young people with a taste for clubbing than older people and that young people prefer clubs where the clientele are their age-mates. To promote his clubs popularity he will, rationally, exclude older people or, at the very least keep their numbers to a minimum.

⁵ The realtors’ euphemism for the white neighborhood premium is “location, location, location.”

hatred, mistaken empirical beliefs about the characteristics of racial minorities or even some “mild” biologically-based taste for clubbing together with tribes-mates, this can explain the persistence of racially segregated housing patterns.

Segregated housing is pervasive in the US, 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 more likely to occupy subordinate positions—they are locked out of a wide range of blue-collar jobs.⁶ Because most women are restricted to a narrow range of pink-collar jobs, wages for these jobs stay low due to overcrowding.⁷ This is invidious enough—nothing hangs on Vallentyne’s condition (2) for invidious discrimination so it’s safe to ignore it.

Moreover, it is not clear that discrimination must involve treating some individuals “less favorably.” Arguably, policies that simply treat men and women, white Anglos and members of minorities, *differently* are discriminatory. If a restaurant assigns whites to wait on tables and people of color to invisible jobs in the kitchen in order to accommodate customer tastes, even if it provides equal wages and benefits, or pays kitchen staff more to compensate for not getting tips, it still undermines *all* employees’ opportunities for wellbeing to the extent that it restricts their options for getting the kind of work they find least objectionable. There may be some whites who are adverse to extensive contact with the public and so would prefer kitchen work to waiting tables and blacks with an aversion to the grease and smells in the kitchen who would prefer waiting tables. Even if the distribution of preferences amongst black and white employees is the same and workers’ earnings for serving and kitchen work are the same, so that blacks and whites 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.

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, if ever, an issue: men and women have traditionally been separate but genuinely equal. That is perhaps why it is difficult to give any credence to inflated rhetoric about “patriarchy” or the alleged “oppression” of women, and why many writers concerned with discrimination do not take sex discrimination seriously.

Nevertheless, *la difference* as such makes both men and women worse off. Consider the gendered division of labor in the US during the 1950s. There were few opportunities for women in the labor force but most women were not obliged to work outside the home; men had many more opportunities in the world of work but labored under a burdensome breadwinner obligation. Prima

⁶ For a lucid discussion of occupational segregation by sex and theories proposed to explain it see, e.g. Richard Anker, Theories of occupational segregation by sex: An overview. *International Labor Review*. 136/3 also at <http://www.ilo.org/public/english/support/publ/revue/articles/ank97-3.htm> For a more extensive, but less lucid, discussion see Maria Charles and David B. Grusky, *Occupational Ghettos: The Worldwide Segregation of Women and Men*. Stanford, CA: Stanford University Press, 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. Secondly, 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.

⁷ This is Barbara Bergmann’s “overcrowding hypothesis.” Vide, e.g. Bergmann, Barbara. 1974. “Occupational segregation, wages and profits when employers discriminate by wage or sex”, in *Eastern Economic Journal* (Storrs, CT), Vol. 1, Nos. 2-3.

facie, this seemed a fair trade: what women gained on the swings men lost on the roundabouts and vice versa.⁸

Now let us assume that under this regime men and women in the aggregate were equally well off. Even so, the trade-offs in opportunities and obligations were not voluntary. There is no reason to believe that *ceteris paribus* *all* women would have preferred to sacrifice professional opportunities in order to opt out of the labor force or that *all* men preferred to have a wide range of relatively desirable options in the labor force at the cost of the breadwinner obligation. Even assuming that *in the aggregate* women preferred to stay at home and men preferred to work for wages, both men and women were less well off than they would have been if both options had been available to everyone. Ambitious women—like Betty Friedan and others housewives who experienced the Problem that Has No Name—and exhausted men, some working at two or more jobs to meet their breadwinner obligations, lost out.

This gendered division of labor persisted—until wages for white males stagnated and the demand for workers to occupy traditionally female jobs in the service sector exploded—because it was rational. Given that men had significantly greater earning power, it was rational for men to take on the breadwinner role and for women to specialize in home production, including support services to facilitate male breadwinning. However we should not conclude that the Given was entirely a consequence of differences in male and female abilities or immutable, brute tastes. Since women recognized that they could not earn as much as men, had fewer options in the labor force and fewer opportunities for advancement, most chose to invest in their husbands' careers rather than their own. Employers, quite reasonably, taking gender as a proxy for a range of other characteristics, did not hire women for responsible positions, provide firm-specific training for women or offer opportunities for advancement. Women, responding to employers' policies, behaved in the way that employers predicted—exhibiting higher levels of absenteeism and quit behavior and other characteristics that employers concluded made investing in them, at best, risky.

This is the classic case of a feedback effect generated by statistical discrimination, which locks in what is arguably a suboptimal equilibrium: women don't invest in work because employers don't invest in women; employers don't invest in women because women don't 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 like 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, or demeans, stigmatizes or expresses wrongful values towards women but that it creates a vicious circle that perpetuates a state of affairs in which both employers and employees are worse off than they would be if the female-homemaker/male-breadwinner scheme were not locked in.

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 reaction qualifications into consideration but precisely because it is rational to do so. As Wertheimer notes, such characteristics may be bona fide occupational qualifications (BFOQ):

[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

⁸ As late as the 1980s, when I and a colleague in economics, first taught our Women and Work course, male undergraduates argued that it was unfair for women to demand the same wages and opportunities in the labor force since work was optional for them. Looking forward to 40 years locked into the labor force they resented women who, they believed, were demanding the best of both worlds. In the same vein, my grandmother argued that it was fair that women be required to wear girdles since men had to shave.

can reasonably aim to maximize its profits (rather than its legal talent), the former official may be the most qualified person for the job.⁹

Even if the candidate is, in virtue of being less “talented” than other applicants is 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. Males are in this respect better qualified to sell Fry’s gadgets because customers believe that they are and female forklift operators like Sheila White are less qualified to do their jobs than males with comparable technical skills precisely because male co-workers 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.¹⁰ Supervisors, co-workers, 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 qualifications. When Walter Cronkheit, Douglas Edwards, Huntley and Brinkley were the only show in town, women *were* less qualified to serve as TV 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 TV journalism, viewers came to see female TV journalists as credible, authoritative and normal—so 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. 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. Arguably that is why we regard celebrity hiring, “whimsical discrimination” such as Arneson describes, and most instances of nepotism, as relatively innocuous.

Discrimination on the basis of sex and race is rational to the extent individuals who discriminate typically make the best choices they can, given the choices of others. But it restricts individuals’ options and hence their opportunities for wellbeing, typically putting women and minorities at a disadvantage, preserves expensive tastes for discrimination and perpetuates itself. Libertarians—whether left or right, will not be impressed: this is the Utilitarian argument for kicking the system from outside to break wasteful vicious circles and, if possible, extinguishing expensive tastes for discrimination which restrict individual options and leave everyone worse off.

Separate is not inherently unequal even if it often results in inequality, as it does when overcrowding in pink-collar ghettos drives down women’s wages and when discrimination in housing creates a white neighborhood premium. But equality in goods, and comparable but different opportunities, are not good enough. Given that differences in individual tastes do not tightly track sex and race, *ceteris paribus*, a state of affairs in which individuals have different goods and opportunities of comparable worth in virtue of sex and race is less conducive to overall preference satisfaction than one in which all individuals have the *same* opportunities.

III

For many Libertarians, Right and Left, market failures such as those I have described are peripheral, if not completely off the map. Left Libertarians like Vallentyne, however, have special

⁹ Wertheimer, Op. Cit, p. 7

¹⁰ This is not true of what Yurako calls “sex” and “plus-sex” jobs.

difficulties because they claim a serious interest in promoting equality of opportunity for *wellbeing* 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.

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 wellbeing gets 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 wellbeing. Given that we owe rent to whatever entity collects our payments commensurate with our consumption, why wouldn't it be just as good for that entity to use our rent to construct a replica of the Taj Mahal in North Dakota?

Perhaps this 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 wellbeing.

If so, it is hard to see how such an arrangement militates in favor of equality of opportunity for wellbeing. These days, people who are very well off quite often have smaller ecological footprints than individuals who have far fewer opportunities for wellbeing. Unless there is some very fancy way of calculating the share of natural resources an individual uses, a person's opportunity for wellbeing is not a function of the quantity of natural resources he consumes or even the market value of these natural resources as such. Maybe Left Libertarians have some fancy way of calculating the amount of natural resources individuals consume according to which, in addition to land, air and water as such, they also rent bits of artifacts consisting of the raw materials that went into their production—so that, for example, when I consume a painting most of what I get is an artifact that I own outright but I am also renting a little bit of natural stuff in the form of the raw materials that went into making the pigments and canvass.

Even on this fancy account, however, there is still a discrepancy between the share of natural resources a person consumes and his share of opportunities for wellbeing. Moneybags lives in a tiny but expensive Manhattan apartment (on the 58th floor so that he rents no more than 4 square inches of expensive real estate), is a vegetarian and doesn't 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 wellbeing are vast. 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 wellbeing. On any natural account of what natural resource consumption comes to, rednecks should be paying wellbeing rent to yuppies, further skewing the distribution of opportunities for wellbeing.

Distributing rent funds to individuals who underconsume natural resources at the expense of those who overconsume may have some benefits when it comes to promoting ecologically responsible practices.¹¹ It is not, however, likely to result in a more equal distribution of wellbeing in industrial or post-industrial societies. In a semi-feudal agrarian economy, where most participants are large landowners, smallholders or landless peasants and most wealth is in the land, land ownership and consumption of natural resources track the extent of individuals' opportunities for wellbeing tightly. But that is just a contingent matter: opportunities for wellbeing are not a function the market value of natural resources that individuals consume.

¹¹ I am grateful to John Baber for making this point in conversation.

Left Libertarians, insofar as they hold, with Vallentyne, that “rent must be spent so as to efficiently promote equality of opportunity for wellbeing,” therefore face a dilemma. Either distributions from the rent fund are based on the amount of resources individuals are “owed” in virtue of underconsumption 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 wellbeing 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 work is this idea that natural resources belong to everyone in some egalitarian manner is doing for the Left Libertarian.

2. “Money can’t buy happiness”: goods that produce welfare are not fungible

The kind of compensation that individuals with few opportunities for wellbeing can legitimately get from the rent fund on the Left Libertarian account, don’t do a very good job in improving wellbeing opportunities for most victims of discrimination.

In some cases money compensation *replaces* opportunities lost through discrimination. If the state provides blacks, whose access to credit is worse than whites’ due to discrimination, with low interest loans or grants that fixes it. Money is money and it doesn’t matter where it comes from. But money grants don’t fix discrimination in housing even if they provide some compensation by way of alternative opportunities for wellbeing. If where I live is really important to me this doesn’t help much: Currency is fungible—housing isn’t; I don’t just want comparable housing—I want *that* house in *that* neighborhood.

It is even worse when it comes to discrimination in employment because without state intervention workers cannot even get *comparable* jobs. When her youngest child starts school, Mrs. Redneck is told, “Get your fat ass down to Walmart and get a job!” Like most women (i.e. the 75% of women over 25 without college degrees) her career options are limited to a narrow range of extremely boring pink-collar jobs.¹² For 8 hours a day she will be doing work that most of us would regard as perfectly miserable: it would take, on the best case scenario, *lots* of money to provide alternative opportunities for wellbeing to compensate for the loss of wellbeing opportunities she suffers because she is forced to do that work, and it might be that no amount of money would be enough.

Of course if her compensation from the Rent Fund is comparable to the wages she could earn she might not be pushed into the labor force. And if lots of women got such payments so that they could avoid doing pink-collar shit work, overcrowding in pink-collar occupations would diminish, wages would rise and working conditions might improve. That is why it might be a good idea to provide lots of women with generous, uncapped welfare benefits. The cost, however, is an unproductive rentier class of Welfare Queens supported by the Rent Fund.

Many of us may suspect that drudge work isn’t all that bad, at least for people who do it: people’s tastes and priorities vary widely and some people don’t mind boredom as much as others do. We cannot assume that women who do drudge work mind it as much as we would if we were in their place. However, much as we wish, we cannot assume that most individuals who aren’t clever enough, or lucky enough, to avoid such work are less susceptible to boredom than we are, or any less miserable than we would be if we had to do their jobs. It is an empirical question whether pink-collar work significantly undermines the wellbeing of women who do it and whether they would be better off if they had access to a wider range of vocational options.

According to one popular view, sex segregation in the labor force reflects a difference in male-female preferences: women crowd into female-typed jobs because they have a taste for

¹² For rates of college graduation by sex and race see the US Census Bureau Report at <http://www.census.gov/Press-Release/www/releases/archives/education/000818.html>

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 are prepared to trade off higher pay to satisfy their preferences. If so, the gendered division of labor is unobjectionable, insofar as it simply reflects differences in male and female preferences.

To see whether this is plausible however let us consider *how much* women pay for clean, safe, physically undemanding work that provides opportunities for nurturance, service and social interaction. Mechanics, earn on the average \$669/week while female clerical workers average \$512/week and female service workers earn \$366/week.¹³ Now it may be that female clerical workers willingly pay \$157/week (\$8164/year) to avoid getting dirty and that female service workers, who earn on the average \$19,032/ year, 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 chose* get work in blue collar trades where wages are comparable to auto mechanics' pay, the choice to do 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 because most women know that they will not be seriously considered for blue-collar jobs and so do not apply or invest in training that they have good reason to believe will be wasted or apply for blue-collar jobs because they know that they will not get them.

There will always be some people who hate their jobs: there are bad jobs that have to be done and there are some people who are averse to work of any kind. Discrimination in employment however precludes individuals from making the trade-offs they prefer to satisfy their tastes, forces many more people into work to which they are personally averse and seriously undermines opportunities for wellbeing. Even if the Left Libertarian 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 restricted the vocational options of both men and women would still significantly undermine opportunities of for wellbeing—and individuals who were seriously averse to gender-appropriate work in particular would lose out.

The Left Libertarian 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 matters importantly. Distributions from the Rent Fund do little to offset the loss in opportunities for wellbeing arising from discriminatory practices that lock people into jobs to which they are seriously averse.

¹³ Barbara Bergman in *The Economic Emergence of Women* writes:

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. 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. 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. In this respect, the labor market has not improved since the 1970s. 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 what it would otherwise be. So the crowding hurts the workers who would, even in the absence of discrimination, still be in a dead-end low-skill

When it comes to diminishing the effects of *some* sorts of discrimination, programs compatible with left-libertarianism do fine. Low interest loans and other benefits for minority and female owned businesses, for example, can replace the opportunities women and minorities lose as a consequence of discrimination in lending and their exclusion from existing white male old boy networks. In cases like this all a person needs is money and it doesn't matter where the money comes from. In most cases however neither money nor other resources drawn from the Rent Fund can make up for the lack of options women and minorities face as a consequence of discrimination. Even if money or alternative opportunities for wellbeing are compensation of a sort—in the way that financial settlements are compensation for false imprisonment—nothing can make up for doing time at a job you hate.

3. Promoting equality of opportunity in the long run

As regards the duty Left Libertarians recognize to promote equality of opportunity in the long run and minimize future invidious discrimination, once again the constraints under which Left Libertarians operate make things difficult. Vallentyne notes that education and incentives are legitimate means for counteracting discrimination. 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 can enable 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—no surprise. But there is still going to be drudge-work to do—particularly retail sales, waitressing, and other service sector jobs that cannot be eliminated by technology or outsourced—and, realistically, not everyone can get through college. Even if they did we would just have lots of college graduates working at Walmart.

While sex-segregation in jobs that require a college degree has decreased dramatically since 1980, sex segregation in working class occupations hasn't budged in large part because women remain locked out of traditional blue-collar work.¹⁴ Education will enable some women to get out of the pink-collar ghetto by escaping from the segment of the labor market where discrimination is most pervasive—that is why there are now many more women than men at universities in all affluent countries. But even if women's increased educational attainment shrinks the pool of female applicants for low-end pink-collar 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 indicate what he has in mind. One sort that might effectively decrease sex segregation would be incentives to get girls into 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. But not all women, or men, can be scientists or engineers and, in any case, such a program does not address the effects of discrimination on the majority of women who compete in the non-college labor market which are far more significant. 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, though it is not clear what sorts of incentives would prove efficacious.

¹⁴ Vide, e.g. Robert Cherry. *Who Gets the Good Jobs?* Rutgers University Press, 2001

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 as such which occurs when employers, real estate agents, landlords and lenders 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, consciousness-raising and improved self-esteem 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 which are a result of past discrimination. That is false: the fault is almost never in ourselves and almost always in our stars. Women don't train or apply for forklift jobs because they know they are unlikely to get them and do not in any case want to end up like Sheila White.

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-waiting jobs for white males in order to achieve an ambiance for which customers will pay. Real estate agents who are not racists steer white clients to white areas in order to collect their commission on the white neighborhood premium.

Incentives may have some effect but, while offering carrots is consistent with the Left Libertarian program, the stick is not: the Rent Bureau bribe but it cannot punish, it can subsidize firms who 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 “trouble-makers” like Sheila White 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 by legal action. There is some empirical 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 wellbeing that are consistent with the Left Libertarian program 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 wellbeing is going to take lots of economists, psychologists, sociologists, ethicists and support staff working fulltime at the Rent Bureau and continuously tinkering. I can't even imagine how, for practical purposes, they'd do this. It's expensive, impractical, inefficient and just crazy.

Right Libertarians, will concur—and add that mechanisms for anti-discrimination 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 anti-discrimination regulations are costly, cumbersome and inefficient—though, arguably, not nearly so expensive and impractical as the operations of a Left Libertarian Rent Bureau would likely be. But there may be room for improvement if the mechanism for enforcing anti-discrimination 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 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...most who tried to resist the female-free juggernaut quickly decided it wasn't worth their jobs...literally 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.¹⁵

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 non-compliance. Employers who discriminate are treated like doctors guilty of malpractice rather than stores that sell products after their pull dates or contractors who send workers onto 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 sells rotten meat consumers will find out—even if it takes a few high profile cases of *I 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 anti-discrimination regulations as such so much as the mechanisms by which they 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 "non-traditional" applicants they run the risk of expensive litigation if they demote or fire them. But this is a consequence of the way in which anti-discrimination 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 firms' employment practices 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 half again more heavy?) and why there were few or no female applicants for jobs where there was no significant "pipeline" constraint.

¹⁵ E. F Murphy, *Getting Even*: New York: Simon & Schuster, 2005, pp. 56-57.

Current schemes for promoting equality of opportunity for wellbeing 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” and the activities of a Rent Bureau, are not conducive to equality of opportunity for wellbeing. Left Libertarians seek to offset wellbeing 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 is not going to go very far either in compensating women and minorities for restricted options due to discrimination or in breaking the vicious circles that perpetuate discriminatory practices.

It is unlikely that programs consistent with the Left Libertarian agenda will discourage discrimination, eliminate racial segregation in housing and public education, or diminish sex segregation in the non-college job market to any significant degree. 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 vortrekkers move back to gentrify city neighborhoods, squeeze out black renters and begin the cycle all over again. Most women will remain locked into a narrow range of pink-collar jobs.¹⁶ Women who take advantage of Rent Fund subsidies to train for “non-traditional” 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 co-workers 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 sex segregation was not an issue. When I was working at Inter-City Trans. Co., Inc. I would have been happy to get 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 much rather have 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. It affects all of us because it means that for women 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 we will be confined to “caring, cashiering, catering, cleaning and clerical work.”¹⁷

Unless Left Libertarians have some more elaborate schemes up their sleeves I do not see much in the program for me.

¹⁶Murphy, p.146 notes that in 2000, two-thirds of all women crowded into 21 occupations, out of 500 job titles, where women constituted 80 to 90 percent of workers, a figure that had not changed appreciably for 15 years.

¹⁷ Fred Halliday. “The Forward March of Women.” Open Democracy, May 14, 2006 at http://www.opendemocracy.net/globalization/women_march_3510.jsp