

Left-Libertarianism and Private Discrimination

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San Diego Law Review (2007)

Left-libertarianism, like the more familiar right-libertarianism, holds that agents initially fully own themselves. Unlike right-libertarianism, however, it views natural resources as belonging to everyone in some egalitarian manner. Left-libertarianism is thus a form of liberal egalitarianism. In this article, I shall lay out the reasons why (1) left-libertarianism holds that (a) private discrimination is not intrinsically unjust and (b) it is intrinsically unjust for the state to prohibit private discrimination, and (2) that, nonetheless, a plausible version of left-libertarianism holds that it is unjust for the state (and many private individuals) to take no steps to offset the negative effects of systematic private discrimination. The basic line is not new. It is simply that there is nothing unjust in principle with private discrimination, but there is (at least typically) something unjust about doing nothing to promote equal life prospects.

1. Private Discrimination

I shall focus on *private* discrimination, which is discrimination by individuals as citizens—as opposed to *state* discrimination, which is discrimination by individuals in their capacities as government officials or discrimination in the content of laws and other state policies and procedures. There are strong grounds for morally condemning various kinds of state discrimination, but we shall not consider that issue here. We shall focus on private discrimination—which includes discrimination with respect to whom one associates with

(spouses, friends, and private clubs), whom one hires or works for, and from/to whom one buys or sells.

What, then, is discrimination? In its broadest sense, one discriminates against (in favor of) a person when one treats that person less (more) favorably because of some feature one believes the individual to have. I discriminate against the young man when I help the elderly lady with her groceries and not him. No one thinks that discrimination in this broad sense is intrinsically morally problematic. Indeed, no one even thinks that it is always morally *better* to refrain from such discrimination. Discrimination need not be problematic when its effects are minor (e.g., when I refuse to shake hands on Feb. 28th with anyone born on that day), when the person is suitably responsible (e.g., blameworthy) for having the feature (e.g., being a murderer), or where the discrimination is based on the best available statistical predictors (e.g., basing insurance rates on all known relevant factors, including the fact that young men are more likely than others to have accidents).

Because I want to argue that discrimination is not intrinsically unjust, I shall, for simplicity, focus on the most despicable kind. Let us understand *invidious discrimination* against a person to consist 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) a significantly mistaken empirical beliefs about people having the feature, or (c) hatred of those having the feature. I take standard cases of racism and sexism to be forms of invidious discrimination. Throughout, I shall implicitly restrict my attention to *socially significant* discrimination where this is discrimination the net effect of which is significant and negative for many individuals having the feature in question.¹

I shall describe a plausible version of left-libertarianism and show that it holds (1) that invidious discrimination is not intrinsically unjust, (2) that it is intrinsically unjust for the state to prohibit invidious discrimination as such, and (3) nonetheless, the state (on behalf of its citizens) has a duty of justice to eliminate or reduce the negative effects of such discrimination.

2. Justice and Moral Assessment

Actions can be assessed from many different normative perspectives and justice is only one of these. Here I shall comment on a few of such perspectives with respect to invidious discrimination.

One perspective is that of *personal ideals* (or goals or values). Although this typically involves some moral considerations, it is not based exclusively on such considerations. My personal ideals attach great importance to musical achievements and not much to athletic achievements. I do not, however, view musical achievements as morally more important than athletic achievements; nor do I view it as a moral defect to have no musical achievements. At the level of personal ideals, I, of course, find invidious discrimination despicable—at least in those cases where the discrimination is based on hatred or unreasonable false beliefs. I would not be friends with anyone who engages in such discrimination. This, however, does not establish that there is anything *morally* problematic with invidious discrimination.

Another perspective is that of *moral ideals*, understood as what is morally desirable (or good). I have some general qualms about how much content the notion of moral goodness has, but, if I set those aside, I fully agree that it is *morally desirable* not to engage in invidious discrimination. That, however, leaves open whether it is morally *wrong* to do so. Not everything that is morally desirable need be morally obligatory (and thus wrong not to do). It is, for

example, often morally desirable to give away most of one's wealth to help feed the starving, but it may not be morally wrong not to do so. (Of course, maximizing consequentialists will deny this. Here I merely mean to be setting up the issue in a general way—independently of any particular moral view.)

Another perspective is that of *moral permissibility*. Here we need to distinguish between two subperspectives: interpersonal morality and impersonal morality. *Interpersonal morality* is concerned with assessing when an action *wrongs someone* (i.e., violates a duty owed to that person), whereas *impersonal morality* is concerned with *impersonal wrongs* (actions that are wrong but not in virtue of wronging anyone; perhaps destroying a rare cultural artifact that no one cares about). I would argue that there are no impersonal wrongs, but that is beyond the scope of the present paper. Instead, I will grant that, if there are some impersonal wrongs, invidious discrimination may be among them. This is not much of a concession, since almost everyone who holds that invidious discrimination is wrong holds that it is so because it wrongs the victim.

In what follows, I focus exclusively on interpersonal morality (wrongs to individuals), and I shall use the term “justice” to designate that which is interpersonally permissible (which wrongs no one). Justice in this sense is concerned with what duties we owe each other. (Admittedly, “justice” is confusedly used in many other senses, but I will use it stipulatively in this sense.)

I shall describe a plausible version of left-libertarianism and show that it holds (1) that invidious discrimination is not intrinsically unjust, (2) that it is intrinsically unjust for the state to prohibit invidious discrimination as such, and (3) nonetheless, the state (on behalf of its citizens) has a duty of justice to eliminate/reduce the negative effects of such discrimination.

3. Left-Libertarianism

Libertarianism holds that agents initially *fully own themselves*. Agents are *full self-owners* just in case they own themselves in precisely the same way that they can fully own inanimate objects. Stated slightly differently, full self-owners own themselves in the same way that a full chattel-slave-owner owns a slave. Throughout, we are concerned with moral ownership and not legal ownership. In the days when slavery was legal, those who were legally slaves were moral self-owners (i.e., had the same moral rights over themselves as everyone else).

Full self-ownership consists of full private ownership of one's person (e.g., body). 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 (liberty-rights to use it and claim-rights against others using it), (2) *rights to compensation* if someone uses the entity without one's permission, (3) *enforcement rights* (rights to use force to prevent the violation of these rights or to extract compensation owed for past violation), (4) *immunities against the non-consensual loss* of these rights, and (5) *rights to transfer* any of these rights to others (powers of sale, rental, gift, or loan).

All forms of libertarianism endorse full self-ownership. They differ with respect to the liberties persons have to use, or the moral powers they have to acquire ownership of, *natural resources* (and perhaps other resources). Natural resources are all the resources in the world, in their unimproved form, that were not created by any (non-divine) agent. Natural resources (land, air, water, space, etc.) are contrasted with *artifacts* (improved natural resources, such as improved soil or chairs) and with *beings with moral standing*. The best-known versions of libertarianism are *right-libertarian* theories, which hold that agents have a very strong moral power to acquire full private ownership of unowned things. *Left-libertarians*, by contrast, hold that natural resources (e.g., space, land, minerals, air, and water) belong to everyone in some

egalitarian manner and thus cannot be privately appropriated without their consent or significant compensatory payment to them.²

There are many different versions of left-libertarianism, and I shall here identify just two. Like right-libertarianism, they each hold that individuals have the moral power to appropriate unowned natural resources. Unlike right-libertarianism, they hold that ownership of natural resources is always conditional upon paying rent based on the competitive value (based on supply and demand) of the rights claimed over those resources. Strictly speaking, they deny that individuals can *fully* own natural resources, since their rights over them are always conditional on the payment of the competitive rent. As long as the rent payment is made, however, individuals may have all the other rights of full ownership.

The two versions of left-libertarianism that we shall consider differ with respect to how the rent fund is to be allocated. The *equal share view* holds that everyone has a right to an equal share of the value of natural resources and thus a right to an equal share of the rent fund.³ The *equal opportunity for wellbeing view* holds (roughly) that everyone has a right to whatever share of the value of natural resources—and hence of the rent fund—provides them with an equal opportunity for wellbeing (or life prospects).⁴ On this view, the rent fund may be divided up unequally—with more going to those who suffer from unchosen disadvantages in their genetic endowments, childhood environments, and so on.⁵

According to equal opportunity left-libertarianism, each individual has a duty to pay competitive rent on the rights over natural resources that she claims. Moreover, this rent must be spent so as to efficiently promote equality of opportunity for wellbeing. For simplicity, I shall assume that the rental payment is paid to the state (in the form of a tax) and that the state then uses the funds to promote equality of opportunity. (If there is no state, or if the state would not

distribute the funds appropriately, then the individual has a duty to distribute them directly.)

Obviously, left-libertarianism (like all other theories of justice) is a highly controversial view, but I shall not attempt to defend it here. Moreover, I shall simply assume (as I believe) that the equal opportunity for wellbeing version is a plausible version and I shall focus on it. My goal is thus quite limited. It is simply to draw out the implications of equal opportunity for wellbeing left-libertarianism for the justness of invidious discrimination and state responses thereto.

4. A Left-Libertarian Assessment of Private Discrimination and Associated State Responses

I shall first argue that equal opportunity left-libertarianism does not view invidious discrimination as intrinsically unjust. I shall then argue that it views state prohibition of invidious discrimination as intrinsically unjust. Finally, I shall argue that equal opportunity left-libertarianism holds that individuals (or the state on their behalf) often have a duty of justice to offset the negative effects of invidious discrimination by others.

An action is just if and only if it wrongs no one, that is, if and only if it violates no one's rights (where rights are broadly construed to correspond to duties owed to individuals). From the perspective of equal opportunity left-libertarianism, we thus need to ask whether invidious discrimination violates the victim's rights of self-ownership, her rights of ownership of artifacts or natural resources, or her limited right (based on amount of rent owed for natural resources) to an equal opportunity for wellbeing.

Of course, invidious discrimination *can* violate these left-libertarian rights—as when someone murders on the basis of invidious discrimination. Our question, however, is whether invidious discrimination is *intrinsically* unjust, that is, whether it *always* violates the victim's rights.

Invidious discrimination need not violate the libertarian (moral) property rights of individuals (in themselves or other material things). The racist who refuses to befriend, hire, work for, buy from, or sell to the black person does not violate any of her property rights. Invidious discrimination also need not violate the victim's right to an equal opportunity for a good life. A man-hating bigot does not violate anyone's right to an equal opportunity for a good life when she invidiously discriminates against the man who is above average in his opportunities for a good life (rich, handsome, smart, happy, accomplished, loved by friends and family, etc.). Moreover, even invidious discrimination against a person with significantly below average life prospects is not always unjust. One may indeed have a duty of justice to help that person, but it need not take the form of refraining from invidious discrimination. That duty can be met, for example, by making an appropriate cash payment (or by providing other sorts of aid).

Thus, according to equal opportunity left-libertarianism, invidious discrimination is not intrinsically unjust. Of course, it often, probably typically, is unjust. Much invidious discrimination involves personal violence, property damage, or disadvantaging without compensation those who have less than an average opportunity for a good life. The crucial point is that what makes such invidious discrimination unjust is the violation of property rights or of the (limited) right to an equal opportunity for a good life. According to equal opportunity left-libertarianism, it is not invidious discrimination as such that is unjust.

Moreover, equal opportunity left-libertarianism judges it unjust for the state to prohibit (or for others to forcibly prevent) invidious discrimination—except, of course, with the consent of those whose liberty is restricted. The use of force against a person to stop her from engaging in an activity that violates no one's rights violates her left-libertarian rights and is unjust. (It is unjust, for example, for the state to stop me from playing my piano quietly in the privacy of my

home.) Likewise, the use of force to punish or extract payment for past actions that violated no one's rights is unjust. Here left-libertarianism takes a different position from standard versions of equality of opportunity egalitarianism (which do not recognize any basic libertarian property rights). These unconstrained versions of egalitarianism agree that invidious discrimination is not intrinsically unjust, but they also hold that state prohibition of invidious discrimination is not intrinsically unjust. If the consequences of the prohibition suitably promote equality of life prospects, these versions of egalitarianism will judge the prohibition just. Equal opportunity left-libertarianism, however, holds that there are certain constraints—the libertarian rights—on how equality may permissibly be promoted. Just as equal opportunity left-libertarianism judges it unjust to promote equality by forcibly taking someone's kidney for another's benefit, it also judges it unjust to forcibly prevent someone from engaging in activities that violate no one's rights.

Finally, although it is unjust for the state to prohibit invidious discrimination, it is also unjust for the state (and private individuals) to ignore the often systematic and very significant negative effects of invidious discrimination. Such discrimination is a major source of inequality in life prospects, and the state (on behalf of the citizens) has a duty of justice to promote equality of opportunity for a good life to the extent feasible with the natural resource rent fund. All else being equal, this will require giving extra resources (money, education, or other opportunities) to those who have suffered from invidious discrimination. Of course, there are other sources of poor life prospects—such as genetic endowments, financial endowments from gifts and bequests, childhood environment, and so on. 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.

Finally, the left-libertarian duty to promote equality of opportunity for a good life is a duty to promote *long-run* equality and to do so *efficiently* with the rent fund. It does not focus solely on present or immediate inequalities of opportunities; it also is concerned with reducing *future* inequalities. Thus, where it is an efficient way of promoting long-run equality (as I believe it typically will be), the state has a duty of justice to use education and incentives to reduce future invidious discrimination.

It should be noted, however, that, because equal opportunity left-libertarianism recognizes only a *limited* duty—based on the amount of rent that one owes for ownership of natural resources—to promote equality of opportunity, it allows that justice may not require perfect equality. In particular, it does not guarantee that those who suffer the negative effects of invidious discrimination will be fully compensated, nor that the state will minimize future invidious discrimination. Those who favor a stronger equality requirement (e.g., maximizing egalitarians) will, of course, find this feature objectionable. The issue here concerns how demanding the requirements of justice are (e.g., how much freedom they leave us to pursue our own projects). I would argue that the demands of equality are strong but not all encompassing in the sense that there is some kind of limitation on the duty to promote equality. It is, however, beyond the scope of this paper to undertake this defense or to defend the specific left-libertarian limitation that I have invoked. My goal is simply to work on the implications of this view for invidious discrimination.

5. Objections

Obviously, there are many aspects of equal opportunity left-libertarianism that can be challenged. One could challenge the libertarian claim that individuals have property rights (in

themselves and in external things) that ensure the injustice of state prohibitions of invidious discrimination. One could also challenge the egalitarian claim that individuals—and the state on their behalf—have a duty to compensate and reduce future instances of invidious discrimination that disadvantage those with less than average life prospects. Here, however, I shall limit myself to challenges directly relevant to the claim that invidious discrimination is not intrinsically unjust.⁶ The crucial challenge is the claim that individuals have rights that (1) are not recognized by equal opportunity left-libertarianism, and (2) are always violated by invidious discrimination. If this is correct, then invidious discrimination is intrinsically unjust.

One might claim that individuals have a right not to be treated on the basis of characteristics for which they are not responsible. This is clearly mistaken. It entails that it is unjust to make choices in romantic or sexual partners on the basis of the sex of individuals. Alternatively, one might claim that individuals have a right to be treated on the basis of their earned desert. This too can't be right. I may be a far more deserving person than Slick, and I may even be far more deserving than he of Agatha's love and companionship (e.g., because of my feeling for and attentions to her). That, however, does not give me a right to her love or companionship. I am not wronged if she gives me no attention whatsoever.⁷

Of course, it may be objected that the above examples fail to taken into account that invidious discrimination is often systematic in society with profound effects on life prospects. It is one thing for one person to be denied the love of another; it is quite another for a black person to be systematically denied jobs, housing, and so on. I fully agree. The relevant point, however, is that some individuals are suffering significant disadvantages in life prospects. That is what is problematic. If invidious discrimination were widespread and systematic but resulted in equal life prospects (e.g., everyone has otherwise equal life prospects and everyone is equally subject

to the effects of invidious discrimination), it would not be so disturbing. (Of course, it might still typically be problematic for efficiency reasons—since false beliefs and hatred preclude various forms of cooperation. Thus, there may typically be an egalitarian duty to reduce invidious discrimination through education, incentives, and other admissible means.)

There is, of course, a strand of egalitarian thinking that challenges this emphasis on overall life prospects. It claims that (1) it is only certain *basic* goods that must be equalized, (2) these basic goods include the good of full recognition of one's moral worth or status, and (3) for these basic goods, *each* good must be equally present (it is not sufficient for the total package of such goods to be equal). Here, I shall not worry about what determines whether a good is basic (although this is an important problem) and I shall simply assume that full recognition of one's moral status is such a good.

The claim that only basic goods need to be equalized is highly dubious. Even if certain goods are basic and more important than other goods, there is little reason to exclude the others from the purview of the egalitarian requirement. At least sometimes, increasing enough non-basic goods is more important for an individual than increasing some basic good. Still, let us grant this assumption for the sake of argument.⁸

Suppose, then, that only basic goods need to be equalized and that full recognition of one's moral status is a basic good. This is still not sufficient to judge invidious discrimination unjust. Recall that invidious discrimination against a person consists of treating her less favorably because of some feature one believes her 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) a significantly mistaken empirical belief about people having the feature, or (c) hatred of those having the feature. Thus,

invidious discrimination (as I have defined it) need not involve failure to fully recognize the moral status of the victim. One can invidiously discriminate on the basis of a false empirical belief or hatred while fully recognizing the moral status of the victim. One could, for example, fully believe that women have equal moral status with men, but falsely believe that they are incapable of being effective CEOs.

Let us therefore restrict our attention to *disrespectful discrimination*, which is invidious discrimination based on a mistaken belief in the moral inferiority of those having the relevant feature (and thus a failure to fully recognize their moral status).⁹ Even if equality is only concerned with basic goods, of which full recognition of moral status is one, it doesn't follow that disrespectful discrimination is intrinsically unjust. After all, some other basic goods might offset the negative effects of the discrimination. The victim of disrespectful discrimination, that is, need not be below average with respect to the overall value of basic goods. He might be rich, handsome, loved, happy, and so on.

To this, a basic goods egalitarian might reply (as indicated above) that *each* basic good must be equalized. It is not enough to equalize the overall package of basic goods. It is quite mysterious, however, why one should suppose this. From the victim's perspective, basic goods can, at least normally, be traded off. For example, most people would prefer to experience a small increase in disrespectful discrimination conjoined with a major increase in other basic goods (e.g., health) to no change in either. Even if one focuses only on basic goods, it is the value to the individual of the *overall* bundle of basic goods that matters. Individual basic goods should not be fetishized.

Even if we grant that each basic good must be equalized, it still doesn't follow that disrespectful discrimination is intrinsically unjust. Under some (rare!) circumstances, engaging

in disrespectful discrimination may be the most effective means of reducing the future harmful effects of disrespectful discrimination (or other basic goods). For example, perhaps sometimes the misogynist's disrespectful discrimination against a racist white woman (by refusing her a job, say) will make her less inclined to disrespectfully discriminate against African Americans. The intrinsic injustice of disrespectful discrimination follows (not surprisingly!) only if there is a deontological restriction against (avoidably) failing to equalize each basic good. Whether there is any such restriction is, of course, the crux of the matter. I shall not attempt to systematically argue against this view. I merely note that it seems quite implausible. Our concern should be with giving people equal life prospects. We should be concerned with the net effect of *all* goods—and not rule out any non-basic goods or insist on equalizing each good. We should take a consequentialist perspective that favors promoting long-run equality of life prospects and not a deontological perspective that requires us to provide equality now independently of later effects. Or so I would argue.¹⁰

In sum, I have argued that individuals 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. I have also argued that, even if a right to equality of each basic good (on some criterion) and full recognition of one's moral status is a basic good, it does not follow that invidious (or even disrespectful) discrimination is unjust. Of course, there may be other rights that establish the injustice of invidious discrimination, but I know of no promising ones. I therefore provisionally conclude that the equal opportunity left-libertarian account of private discrimination is correct.

6. Conclusion

At the level of personal ideals, I find invidious discrimination despicable and deeply troubling.

At the level of moral ideals (setting aside some general concerns I have about how much content there is to the notion of moral goodness), it is morally undesirable. If there are any impersonal wrongs (and I deny that there are any), invidious discrimination may be among them. My focus, however, has been on the justice of invidious discrimination, that is, on the question of whether it wrongs anyone.

I have assumed—without defense—equal opportunity left-libertarianism and worked out its implications for invidious discrimination. Like consequentialist egalitarianism, it sees no intrinsic injustice in invidious discrimination. Such discrimination often deprives individuals of their fair share of life prospects, and, when it does, it is unjust. It is not, however, unjust when it does not. Like right-libertarianism, but unlike consequentialist egalitarianism, equal opportunity left-libertarianism judges it unjust to forcibly prevent, punish, or extract compensation from, a person who is committing no injustice. It thus judges it unjust for the state to prohibit invidious discrimination. Finally, like consequentialist egalitarianism, but unlike right-libertarianism, equal opportunity left-libertarianism judges that individuals—and on their behalf, the state—have a duty of justice to promote equality of opportunity. Very often, but not always, this will take the form of compensating victims of invidious discrimination or taking steps through education and incentives to reduce its occurrence.

Obviously, the ultimate importance of these observations depends on the plausibility of equal opportunity left-libertarianism. All I have done here is to help clarify the implications of this position and offered a limited defense of its implications on the topic of private discrimination.¹¹

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¹ For useful discussions of discrimination, see Singer (1978), Narveson (1987), Alexander (1992), Arneson (1999, 2000), and Cavanagh (2002).

² For more on left-libertarianism generally, see Vallentyne and Steiner (2000a, 2000b). For a critical assessment of left-libertarianism, see Fried (2004) and Vallentyne, Steiner, and Otsuka (2005).

³ See, for example, Steiner (1994).

⁴ See, for example, Otsuka (2003). The version that I invoke here, however, differs in some ways from his view, but those differences are not essential for present purposes.

⁵ For simplicity, here I ignore the difference between equality of opportunity for wellbeing (which is not sensitive to later brute luck) and equality of brute luck wellbeing. For further discussion, see Vallentyne (2002).

⁶ For criticisms of both libertarianism and egalitarianism on the topic of discrimination, see Cavanagh (2002).

⁷ For further criticism of these views, see Cavanagh (2002).

⁸ For discussion of related issues, see Vallentyne (2005).

⁹ For a defense of the wrongness of disrespectful (or contemptuous) discrimination, see

Cavanaugh (2002).

¹⁰ For related discussion, see Vallentyne (2005).

¹¹ For helpful comments, I thank Harriet Baber, Jason Glahn, Eric Heidenreich, Kasper Lippert-Rasmussen, Mike Otsuka, Erich Roark, Hillel Steiner, Alan Tomhave, Jon Trerise, and the participants at the workshop on private discrimination at the Institute of Law and Philosophy, University of San Diego.