

## Rejoinders

Here are remarks on a couple of Professor Sundstrom's points, and a point from the discussion.

### Equal Opportunity

- The upshot of Professor Sundstrom's remarks here is that he favors coercion so as to enhance the goal of ensuring "equal life chances for people with equal potential," to offset any "systematic disadvantage."
- That sounds like something any responsible and fair parent would want for his or her children, trying to manage or manipulate conditions from above, trying to look after everyone's lot. But in fact, as public policy it works out badly.
- Two ways government differs from parents:
  - The government doesn't love you
  - The government lacks knowledge

Results: Bureaucracy and politics.

"Equal opportunity" becomes distorted and meaningless. People become soured on the notion of "equal opportunity."

"Equal opportunity" policies eliminate opportunity.

- Are Equal-Opportunity Advocates Objectifying and Exploiting Blacks, Women, etc?
  - I can't help thinking that the real impetus of the equal-opportunity point of view is to create an encompassing collective experience – effected, mediated and championed by government – in pitying and aiding those deemed to be systematically disadvantaged. Blacks, for example, are used as a group that "we" (i.e., "The People," i.e., the government) must help, thus authorizing

the collectivists to create and determine another major narrative in the theater of political culture. It often strikes me as simply another example of the greed of collectivism. One reason I am suspicious is how often the equal-opportunity advocates advocate interventionist policies that clearly hurt the disadvantaged. For example, when it comes to real solutions in schooling (vouchers/tax credits), when it comes to increasing the laborer's freedom to compete and acquire human capital (by repealing minimum wage, union privileges, and occupational licensing), when it comes to increasing the mobility and exit power of laborers (by building more roads and lowering gasoline taxes), when it comes to increasing the freedom of the individual to defend himself in unsafe environments (by allowing people to pack heat), the people who look to Rawls often oppose what I consider to be the plainly right answers, or omit discussion of those answers. Instead, they often vigorously advocate the policies that hurt the disadvantaged (as well as practically everyone else) yet assert the collectivist agenda – the socialist school system, labor restrictions, rail transit and the war on the private automobile, and the war on gun freedom. I don't mean to direct this charge personally at Professor Sundstrom, because he might agree with me on such other policy areas. I'm making a general complaint against the leftist voice on race issues.

And to return to an earlier point, by using, for example, blacks as an object for collective romance and the assertion of government narrative, the equal-opportunity wing casts blacks in the collective role of the pitiful and needy. It is such a narrative that ushers in "leaders" like Jesse Jackson and Al Sharpton.

- How to salvage equal opportunity:
  - By thinking of equal opportunity as liberty enjoyed equally by everyone. Equality before the law.
  - Everyone is equally free to compete. No legal barriers or privileges.

- The classical liberal or libertarian philosophy has always had strong roots in ideas of egalitarianism. The philosophy has been a battle against rulers and privileged status.
- The famous 19<sup>th</sup> century British legal scholar Sir Henry Sumner Maine: “the movement of the progressive societies has hitherto been a movement *from Status to Contract*.” (*Ancient Law*, p. 141)
- Antidiscrimination law moves against this progressive trend: It asserts status (protected categories) over freedom of contract.

### Jim Crow Not in the Workplace

I learned from Professor Sundstrom’s presentation that Jim Crow didn’t dictate workplace discrimination, yet employers did discriminate quite strictly (I’m not sure if this latter part is mainly just for the South). This is an important point. It affects how we view the extent to which Jim Crow underpinned the racist culture of the South.

My response is that after dictating discrimination “in public conveyances, marriage, schools, places of public accommodation, amusement, and burial” (repeating Sunstrom’s quotation of Gavin Wright), maybe Jim Crow sufficiently structured a racist culture that it didn’t need to specify workplace discrimination. In other words, and I’m sure Professor Sundstrom agrees with this, we can’t look at employment in isolation of the general attitudes, norms and culture of a society in which government pervasively mandated discrimination. So I don’t think that the absence of Jim Crow workplace laws significantly challenges my general claim that a major reason for the lack of progress in the South was the combination of the two coercions (Jim Crow laws and tolerated private coercion by the KKK, etc.).

### The Meaning of Liberty and Freedom

A question in the general discussion asked: “If a bigoted employer denies someone a job because of race, doesn’t the bigot reduce that person’s opportunity and thereby assault his freedom? So don’t antidiscrimination laws increase the freedom of the protected groups?”

My response:

First, opportunity is opportunity and freedom is freedom. There is no good reason to call opportunity “freedom.”

And to preserve semantic content and integrity, there is very good reason *not to* call opportunity “freedom.”

Liberty and freedom are really rooted in the ideas of *property* and *ownership* (or property rights).

Our primary form of property is our own person. This notion of property is sometimes expressed as *self-ownership*.

Freedom of contract, then, is the freedom to own our person without restriction, so long as we respect the equal property rights of others. That means that we may use, dispose of, or sell our property as we see fit, according to mutually agreed upon contract or consent.

Now, the questioner would seem to be suggesting that we can think of antidiscrimination law as an assigning of property rights, not at odds with liberty.

He suggests that by virtue of antidiscrimination laws people acquire a property right “not to be discriminated against.”

Does this fit the logic of liberty?

First, what is the property? What is ownership of that property?

I admit that questions of property are often ambiguous, and that government laws sometimes settle what is and isn't property, and what ownership means. But I don't think that what the questioner proposes can be cast as one of these gray-area issues.

The reasoning would lead to us into serious difficulties. It would seem that by the method suggested, the government could also accord people a so-called property to, say, “live in a drug-free society.” Then, if someone does drugs, they are violating other

people's said property rights. Thus drug prohibition becomes consistent with liberty. And virtually anything could be made consistent with liberty. The Nazi's didn't violate liberty, they simply enforced the property rights of the Germans to live in a Jew-free society.

Or if the government passed a law that required that whenever we meet each other we must say "And a jolly good day to you!", thus creating a supposed property right in how others should treat you. Does it make sense to say I would have a property right in your having to greet me in such a fashion, or does it make sense to say that the law simply violates our freedom?