



On Private Discrimination

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Rand Paul, the newly designated Republican candidate for one of Kentucky's seats in the U.S. Senate, has taken a lot of flack over the past couple of days as a result of his views on the landmark Civil Rights Act of 1964. MSNBC's Rachel Maddow spent [roughly 15 minutes of interview time](#) with Mr. Paul trying to get him to directly express his belief that the government should not prohibit private business owners from engaging in racial discrimination. Rather than offer a soundbite that would allow political opponents to caricature him as a closet racist or opponent of civil rights, Paul first emphasized all that he found admirable and beneficial about the Civil Rights Act, then tried to express the difference between discrimination as a governmental policy, which he believes to be both abhorrent and unconstitutional, and discrimination as a private choice, which he believes to be both abhorrent and unwise, but beyond the proper authority of government to prohibit.

It's true that a strict libertarian or free-market perspective might prevent the government from interfering when individuals choose to act in a discriminatory fashion. This may make people uncomfortable. But, as Mr. Paul pointed out, the very idea of freedom requires us to tolerate certain decisions that we might find distasteful, in order to ensure that we have the liberty to make decisions that others might find distasteful. For example: Our nation prizes freedom of expression so much that our constitutions deny governments the authority to

restrict or punish speech, even if the ideas expressed are almost universally regarded as offensive. Respect for this form of freedom is so ingrained in our culture that its wisdom is only rarely challenged. Mr. Paul was trying to help Ms. Maddow understand that, similarly, if one believes in individual liberty then one must necessarily be prepared to tolerate the fact that some individuals will use that liberty in ways that others might find offensive.

The proper question, I believe, is how best to deal with those situations when they present themselves. Where speech is concerned, if someone says something offensive, the ideal solution for those offended would be either not to listen to that speaker or to respond with their own speech. Likewise, the best response to discriminatory business establishments would have been for others to boycott the offending establishments and/or to open non-discriminatory establishments of their own. The same principle can be applied to businesses that refuse to hire or promote qualified minority or female applicants. These discriminatory decisions create an opportunity for competing businesses to hire those same applicants — which, presumably, will allow them to offer higher-quality services than the discriminatory employer. The effect might not be immediate, but eventually it will become plain that discrimination is both foolish and costly.

It is also vitally important to remember that governmental power is a double-edged sword. A power that can be used in ways of which you approve can also be used in ways that you find repugnant. The problem of segregation/desegregation is a useful example, because the governmental action at issue represented flip sides of the same freedom-denying coin. In much of the Jim Crow South, segregation was not optional. Those allowed to vote — almost exclusively white people, many of whom had an interest in maintaining a privileged status in society — elected representatives who decided that individual business owners were not permitted to offer a desegregated environment. Thus, all people were forced to live with governmentally enforced segregation. After the Civil Rights reforms were enacted, individual business owners were not permitted to offer a segregated environment — all people were forced to live with governmentally enforced desegregation. At all times, individual citizens had only a limited ability to make these choices for themselves.

In a libertarian or free-market paradigm, the government would not have the authority to dictate these matters to individual in either direction. The government's sole responsibility would be to ensure that those who sought actively to harm others would be brought to justice and, if necessary, their victims compensated for any demonstrable, quantifiable injuries suffered. Those who believed strongly in the importance of segregation would be permitted to live out their choice — but would also be forced to suffer the disadvantages that would flow from their choice. Those who favored integration would realize a unique competitive advantage that, eventually, would reveal the wisdom of that approach.

To sum up, governmental control over the decisions that individuals may make for themselves presents a seductive shortcut for those who believe that the world ought to be

ordered in some particular way. But not only does it represent a denial of individual liberty, a government vested with the power to dictate decisions made by its citizens can very easily turn against those who had hoped to use it to pursue their vision of a "good" society. As George Washington once warned: "Government is not reason; it is not eloquence; it is force! Like fire, it is a dangerous servant and a fearful master."

About the Author



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