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How the Establishment Press Got Rand Paul Wrong

By: [Conor Friedersdorf](#) – [March 11, 2013](#)

Most journalists failed to anticipate his role in the Senate, focusing instead on a distracting controversy about the Civil Rights Act of 1964.

When Rand Paul emerged on the national scene in 2010, staffers at places like The Cato Institute and Reason backed him more enthusiastically than any other U.S. Senate candidate. Like all Tea Party-affiliated pols, Paul favored smaller government, tax cuts, and free-market reforms. Unlike Marco Rubio or Christine O'Donnell, the Kentucky Republican was expected by right-leaning libertarians to oppose the bipartisan excesses of the post-9/11 era. As Radley Balko argued that spring, Paul would be better on civil liberties than President Obama and most Senate Democrats. Few non-libertarians believed him, as evidenced by the skeptical replies of progressive writers Adam Serwer* and Jamelle Bouie, savvy civil libertarians in their own right.

Three years later, it is beyond dispute: Paul is a leading opponent of civil-liberties abrogations, executive-power excesses, and militarism. Safe to say, after last week's filibuster, that his stands on those issues are the most visible and consequential that he has taken in the Senate. Even prior to that 13-hour spectacle, Paul mounted high-profile, sometimes lonely efforts to reform the Patriot Act; formally end the president's authorization to wage war in Iraq; reform drug laws; prevent indefinite detention; extend Fourth Amendment protections to electronic communications; require warrants for drone surveillance; reform overzealous TSA screening procedures; and stop an anti-piracy bill that would have onerously infringed on free expression online.

He's also opposed calls to wage war in Libya, Syria, and Iran.

In light of this record, the establishment press ought to reflect upon the fact that its 2010 coverage utterly failed to anticipate the most important consequences of electing Paul to the Senate. Go back, as I just did, and read every story The New York Times published about him. Its coverage was representative: The paper paid little attention to his anti-war, pro-civil liberties, pro-checks-and-balances proclivities, though those issues were certain to loom large between 2010 and 2016; it paid some attention to the political import of a possible victory by a Tea Party Republican; and it focused intensely on Paul's position on the Civil Rights Act of 1964, legislation that passed when he was two years old and certainly won't be revisited in the foreseeable future. (Another landmark law from that era, the Voting Rights Act, does face a serious challenge in the Supreme Court right now.)

Revisiting this coverage is important because it helps to clarify the flaws in the way that many journalists cover libertarianism generally -- even if you think, as I do, that the Civil Rights Act of 1964 was extremely important legislation that ought to be celebrated by all Americans for the good it did; and that, if better executed, covering Paul's position on the subject would have been legitimate. Unfortunately, the actual coverage unfolded in a way that left the audience ill-informed.

The particulars won't surprise anyone familiar with the template the political press uses to cover libertarians. As Chris Beam wrote in 2010, "For all the talk about casting off government shackles, libertarianism is still considered the crazy uncle of American politics: loud and cocky and occasionally profound but always a bit unhinged." He nailed the perception among journalists.

One consequence is something I call *reductio ad libertarium*.

On a given issue, a journalist confronted with the libertarian position, like legalizing drugs, objects by pointing out the most extreme possible consequence: "So I could go buy heroin at the store?" Fair enough, except that there are no analogous challenges to the establishment positions. A candidate whose stance is that drugs must remain illegal is never asked, "So you're okay with imprisoning millions of people, empowering violent street gangs, destabilizing multiple foreign countries, militarizing municipal police forces, and still having ubiquitous drug use?"

Thanks to status quo bias, libertarians are labeled "crazy" and "kooky," even as the establishment makes historic blunders for which they are never pilloried and that many libertarians opposed.

(Take the Iraq War.)

It's a bogus approach.

When Paul sat down in April 2010 with the Louisville Courier-Journal editorial board during his Senate primary, an interviewer, knowing his libertarian affinity for property rights, reached for the most extreme possible consequence of that position. "Would you have voted for the Civil Rights Act of 1964?" he asked. It's actually a legitimate question. As Ross Douthat would later write, "No ideology survives the collision with real-world politics perfectly intact. General principles have to bend to accommodate the complexities of history, and justice is sometimes better served by compromise than by zealous intellectual consistency." Regardless of a candidate's ideology, it's appropriate to ask probing questions like that precisely to test his or her limits.

"I like the Civil Rights Act in the sense that it ended discrimination in all public domains," Paul replied. "I'm all in favor of that."

Said his questioner, "But?"

Paul chuckled.

"You had to ask for the 'but.' I don't like the idea of telling private business owners -- I abhor racism, I think it's a bad business idea to ever exclude anybody from your restaurant, but at the same time I do believe in private ownership, but I think there should be absolutely no

discrimination in anything that gets any public funding, and that's mostly what the Civil Rights Act was about."

The newspaper cited that exchange in a subsequent editorial that pointedly endorsed neither man in the GOP primary. "The trouble with Dr. Paul is that despite his independent thinking, much of what he stands for is repulsive to people in the mainstream," the editorial stated. "For instance, he holds an unacceptable view of civil rights, saying that while the federal government can enforce integration of government jobs and facilities, private business people should be able to decide whether they want to serve black people, or gays, or any other minority group."

Were voters well-informed by that editorial?

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I'd argue, after three years of Senator Paul, that his record on civil rights is much better than average, and far better than what his Republican opponent in that primary would've managed. The Bill of Rights has no more consistent defender in the Senate than Paul. And he has pointed critiques of the War on Drugs and the War on Terrorism, the two federal policies that do more harm to minorities than any others. There was nothing wrong with the Courier-Journal criticizing Paul's answer on the Civil Rights Act of 1964, as I have done. But to treat it as the only or even the most relevant position that Paul had taken on the subject of civil rights was myopic.

Skip ahead to the morning after Paul's primary victory, when he appeared on NPR for an interview with Robert Siegel. That occasion was very different from a leisurely editorial board interview. There would be time to ask Paul just six questions. Three were about the Civil Rights Act of 1964. Again, testing a candidate's ideology or principles by honing in on the most difficult cases is legitimate; but "mainstream" Republicans and Democrats are seldom questioned in that manner, and are almost never forced to focus on issues so removed from what they'll face in office. With the nation at war, an ongoing fiscal crisis, debate still raging over Obamacare, the Republican Party dividing into factions, and conservatives beating the drum for war with Iran, was the NPR audience optimally informed about the choices before them by an interview that focused fully half of its questions on whether Paul would've supported everything in the Civil Rights Act or just the majority of its provisions? In hindsight, was that a good use of the time?

Rachel Maddow apparently thought so. Here she is later that same day in her now famous interview with Paul:

"What does Rand Paul stand for?" she asks, immediately before airing the Civil Rights Act questions and answers from both the NPR appearance and the newspaper editorial board. Was Paul's position in those interviews, however ahistorical or naive, really the most insightful for purposes of figuring out where he would stand as a prospective senator? Certainly not, if the issues that he's actually worked on and voted on in the Senate at all inform our analysis.

But Maddow spent the entire interview on the Civil Rights Act. If you've only heard the exchange second hand, I encourage you to watch it, because Paul's repeated denunciations of institutional racism and the avowal that he supported nine-tenths of the law gets lost in the retelling. That isn't to defend Paul's conclusion, which I think was wrongheaded. Douthat suggested an answer he could've given: "As a principled critic of federal power," he could've said, "I oppose efforts to impose Washington's will on states and private institutions. As a student of the history of

segregation and slavery, however, I would have made an exception for the Civil Rights Act." Julian Sanchez explains why that is the correct position in a piece that I fully endorse.

(Seriously, read the whole thing.)

Even Paul ultimately agreed, saying that, upon consideration, he would've voted for the Civil Rights Act, becoming the millionth politician to figure out that an ideological position he'd taken couldn't ultimately be defended and complicating his position for political and substantive reasons. Given that I concur with his "after" position, that's the happiest part of the story for me.

I'm less sanguine about what happened next. Following the Maddow interview, Paul's thoughts on the Civil Rights Act of 1964 were covered more frequently and in more detail than his position on any other issue. Whole articles rehashed the controversy. Every long profile commented on it at length. And most people failed to recognize that the same treatment could be given to almost any politician, and especially a principled civil libertarian. A liberal who describes herself as a First Amendment absolutist? "Do you really think it should be legal for an old white man to call a little black girl 'nigger' on the street?" We've just gone through a bout of anti-Second Amendment rhetoric. The neoconservatives are fond of attacking Fourth Amendment champions by accusing them of having wanted to read Osama bin Laden his Miranda rights. Do I think the Fifth Amendment should've applied to Anwar al-Awlaki? Indeed I do. There's doubtless a Fox News contributor ready to tell me that I favor coddling our terrorist enemy.

What almost no one in the establishment press seems to realize, even today, is that the qualities that led Paul to defend his wrongheaded discomfort with the Civil Rights Act is the same stubbornness, political courage, and deeply felt commitment to libertarian principles that makes him willing to express the opinion that just because someone propagandizes for Islamists doesn't give us the right to kill them; or that even accused terrorists deserve due process; or that if you have a cousin in the Middle East who you talk to on the phone that shouldn't put you at risk of warrantless surveillance or a drone strike.

Wrote Michael Scherer in Time, "The libertarian approach, which heavily favors private rights over government rights, has always produced some interesting conversations. Most libertarians, for instance, don't own a bong or watch extremely violent pornography, but Republican doctors like Ron Paul will defend your right to grow and smoke marijuana and avoid obscenity prosecutions for producing the most vile consensual smut. They see it as an issue of personal rights. Government should stay out of your lungs, they argue, stay out of your bedrooms, and stay out of your businesses."

Given the substantial overlap between liberals and libertarians on these issues -- the mainstream position in both camps is that the Nazis should've been free to march through Skokie, Illinois, when it was home to many Holocaust survivors, to cite one famous example -- it's amazing to witness the extreme intolerance for its-the-principle-not-my-preference judgments not their own. For all her smug posturing, Maddow surely holds similarly fraught positions.

Conservatives would doubtless point to still more double standards in press treatment.

NPR would never harangue a candidate who supported a woman's right to choose an abortion in all circumstances about whether it would even be okay to terminate a pregnancy at 32 weeks just because the mother decided that she didn't want a girl. But I'm sure someone like Dennis Prager

could adeptly craft a whole uncomfortable interview around that premise. And it's impossible to make the statement that torture is always wrong without someone chiming in about how immoral it would be to cling to that anti-torture position in a ticking-time-bomb scenario.

These situations aren't all perfectly analogous to the Civil Rights Act discussion or like one another. All I mean to argue is that every ideology and every principled position can be uncomfortably challenged if it's fair game to ask difficult, "logical conclusion" hypotheticals. And in theory, it is fair game. What isn't fair are establishment-media interviewers who only give libertarians that treatment, never challenging even the most radical views of "mainstream" politicians (like Barack Obama). What leaves an electorate ill-informed is focusing on these "test the ideological limits" hypotheticals to the exclusion of significant issues actually likely to arise.

What's particularly galling about the people who continue to portray Paul as a quasi-racist with unenlightened views on civil rights is the fact that he is doing far more than most senators to protect the minority group presently subject to more institutional racism than any other: Muslims. He has been criticized by some for focusing in his filibuster on American citizens being targeted by drones, spied upon, other otherwise violated by the federal government. What about foreigners? This ignores the fact that he has expressed skepticism of drone strikes abroad on many occasions, once going so far as to say that "I don't believe Jesus would've killed anyone, or condoned killing, perhaps not even in self-defense;" and that when Paul defends Americans against warrantless spying, indefinite detention, harassment at the airport, and drone strikes on U.S. soil, he is opposing policies that disproportionately hurt powerless minorities and stigmatized others, as so many Muslim American emailers remind me. Falguni Sheth asks:

Is Paul any more racist in his economic and drug policy endorsements than the White House in its policies of kill lists, targeted killings, drone strikes, TSA no-fly and watch lists, Department of Homeland Security's Secure Communities program or "See Something, Say Something" policy?" "Is Rand Paul more of a threat to black and brown populations (American or foreign) than the current administration, which deported more than 1.5 million migrants during its first term and separated tens of thousands of migrant parents from their children? Is Rand Paul more of a threat to our safety than the current administration?"

Despite the White House's defiant disregard of procedure, transparency or accountability, the Democrats disassociated themselves from an important strategic ally -- a libertarian who is the only one asking the questions that progressives, Occupy protesters, political dissenters, Muslims, Arab Americans, African-Americans, Latinos, South Asians and undocumented migrants want an answer to: Will the president claim and exercise the power to kill one of us at his and his advisers' discretion?

Compare the reaction to Paul's comments on the Civil Rights Act to Michael Bloomberg's ongoing stop-and-frisk policy and the NYPD task force he sent to New Jersey to spy on innocent Muslim college students. I understand why the Civil Rights Act is regarded as sacrosanct, but treating non-racist, abstract discomfort with one of its provisions as a more important than actual, ongoing state harassment of innocent blacks and Muslims is bonkers. It isn't that no liberal has ever objected to Bloomberg's excesses, but tell me this: If pitted against one another in the 2016 presidential election, do you think the press would give Paul or Bloomberg a harder time on matters of race? What do you think would garner more mentions, the Civil Rights Act or spying on innocent Muslim students for months without producing any leads?

Why is that?

Glenn Greenwald writes, "Continuous killing, due-process-free imprisonment, and other rights abuses under the War on Terror banner has affected one group far more than any other: Muslims and, increasingly, American Muslims. Politically, this has been the key fact enabling this to endure. Put simply, if you're not Muslim, it's very easy to dismiss, minimize or mock these issues because you can easily tell yourself that they don't affect you or your family and therefore there is no reason to care. And since the vast, vast majority of Democratic politicians and progressive media commentators are not Muslim, one continuously sees this mentality shaping reaction to these issues." Most Republicans are even worse; but not Paul, who is better.

The answer is emphatically not to go easy on Paul. Like all politicians, he has objectionable views, ideological blind spots, and a natural human tendency to rethink his least defensible positions only when they are challenged by his constituents and/or an adversarial press. I'd urge him to reverse himself on the issue of building a mosque in lower Manhattan and to champion cutting the biggest deficit-reduction deal possible, not the one that minimizes taxes. Progressives should certainly feel free to criticize him on every issue on which they disagree. But the establishment press should recognize that much of its early coverage of Paul did more to obscure than illuminate the sort of senator that he'd be; that this is partly due to a bias against non-establishment politicians, including libertarians; and that if Paul were to leave the Senate tomorrow, the U.S. would lose one of a very few national politicians challenging executive-power excesses, unnecessary foreign wars, and racist, xenophobic policies that have resulted in thousands of innocent people being killed, imprisoned without charges, surveilled without warrants, or otherwise harassed by authorities in the name of fighting terrorism.

That none of the politicians responsible for those policies are ever confronted during interviews in the way that Maddow confronted Paul is as much a problem as how Paul has been treated. The final irony is that Paul is busy remaking the Republican Party in some ways that progressives can cheer, or would've cheered before their guy took power. "Paul's filibuster was devoted to a specific question of executive power -- whether there are any limits on the president's authority to declare American citizens enemy combatants and deal out death to them," Douthat writes. "But anyone who listened (and listened, and listened) to his remarks, and put them in the context of his recent speeches and votes and bridge-building, recognized that he was after something bigger: a reorientation of conservative foreign policy thinking away from hair-trigger hawkishness and absolute deference to executive power."

That is the role he's playing in the Senate. I leave you with this question: Who is more problematically ideological, the man whose attachment to property rights left him blind to the need for a civil-rights remedy passed 50 years ago? Or the one focused on the sacrosanctness of that remedy more than present abuses?