

Matt Yglesias

May 21st, 2010 at 5:16 pm

Cato Institute VP For Legal Studies Agrees With Rand Paul; Civil Rights Act is “Inconsistent” With the Constitution and “Its Underlying Principles”

It's been curious to me to note that the Cato Institute, flagship institution of libertarianism in America, hasn't had anything to say about Rand Paul and the Civil Rights Act on its website, especially because their Executive Vice President David Boaz [praised Paul yesterday](#) though without specifically tackling the controversy. Brink Lindsey who works at Cato [offers comments to AOL News](#) in disagreement with Paul and I know that some other Cato staff agree with Lindsey.

It seems, however, that Roger Pilon who heads up their work on legal issues, is in agreement with Paul. He doesn't seem inclined to speak up on the issue at the moment, but here's a selection from his essay [“The Right to Do Wrong”](#) collected in Boaz's book, *The Libertarian Reader*:

And insofar as the Civil Rights Act of 1964 eliminated Jim Crow, it is to be commended. But the idea behind the early civil rights acts was to give force at last to the principle of equal freedom upon which this nation was founded, however imperfect that founding. The idea was not, most decidedly, to recognize “rights” that were inconsistent with that principle.

With the Civil Rights Act of 1964, however, that precisely is what took place. **Driven by the very real problem of discrimination, but failing to utterly distinguish between the appalling institution of public discrimination, in the form of Jim Crow, and its private counterpart, the authors of the 1964 act created a “right” against private discrimination on certain grounds and in certain contexts, which has been expanded over the years. That “right,” of course, is nowhere to be found in the Constitution or in its underlying principles. Indeed, its enforcement is inconsistent with that document and with those principles.** For if we do have a right to be free, to plan and live our own lives as we choose, limited only by the equal right of others, then we have a right to associate, or to refuse to associate, for whatever reasons we choose, or for no reason at all. That is what freedom is about. Others may condemn our reasons — that too is a right. But if freedom and personal sovereignty mean anything, they mean the right to make those decisions for ourselves, even when they offend others.

It seems a little shameful of me that Pilon isn't being more outspoken about this. He concedes earlier in the essay that opposition to the Civil Rights Act won't “earn one popular acclaim” but insists nevertheless that “if we are serious about getting to the heart of the matter, however, and about understanding the core of the American vision, the fundamental questions must be examined.” In other words, Paul is taking a brave stand that Pilon once deemed necessary to understand the core of the American vision. And he's being pilloried for it. But here we have the Vice President for Legal Studies at a large, well-established Washington, DC think tank refusing to stand up for him despite their agreement on the merits of the issue.

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75 Responses to “Cato Institue VP For Legal Studies Agrees With Rand Paul; Civil Rights Act is “Inconsistent” With the Constitution and “Its Underlying Principles””

1. *David B.* says:

[May 21st, 2010 at 5:27 pm](#)

From the actual constitution, Amendment 14, section 5:

“The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.”

This would include, in section 1: “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

Congress is entitled to find, as it did, that not only was segregation mandated by law in many states, that even permitting segregation deprived citizens of rights, and that segregation had an effect on interstate commerce, which Congress is empowered to regulate. (For example, why would a black investment banker want to take a Southern company public, if he'd be subjected to discrimination if he tried to do diligence on its operations?)

So, not only is it not “inconsistent” with the principles or text of the Constitution to pass civil rights act, it's affirmatively called for by those same texts and principles.

2. *Just stopping by* says:

[May 21st, 2010 at 5:27 pm](#)

Ron Paul's followers directed a lot of venom at CATO during his presidential campaign in 2008(Google “cosmotarian” to see what I mean”) so there a chance CATO doesn't want to defend him now.

3. *Morgan Warstler* says:

[May 21st, 2010 at 5:31 pm](#)

If we can allow a Socialist into the Senate, Libertarians are more than welcome.

Neo-Progressives are more concerned about brass tacks like ending public employee pensions, we have no time to worry about fantasy issues.

4. [StevenAttewell](#) says:
[May 21st, 2010 at 5:32 pm](#)

It's always good to be reminded that Cato, et al. really do have an odious philosophy behind a facade of reasonability.

Jim Crow was not merely a public form of discrimination – it required a thorough-going private form of discrimination to fill in the gaps of state supervision of the color line.

And one's rights to freedom and autonomy end an inch from the skin of anyone else – and that extends to the establishment of coercion by default through collective private acts of discrimination.

5. [Arun](#) says:
[May 21st, 2010 at 5:35 pm](#)

I think #1 David B. has it. I'm not allowed to pick and choose customers based on race; only on creditworthiness and such criteria that are relevant to commerce. Just as we separated church and state, we separated commerce and race/ethnicity/... and we are the better for it.

6. [MarkOhio](#) says:
[May 21st, 2010 at 5:37 pm](#)

Seems like we've heard enough about Rand Paul and his concerns about the CRA. The more pressing issue for civil liberties today would be about the Patriot Act. Why can't we get more discussion about those issues?

7. [JM](#) says:
[May 21st, 2010 at 5:39 pm](#)

For if we do have a right to be free, to plan and live our own lives as we choose, limited only by the equal right of others, then we have a right to associate, or to refuse to associate, for whatever reasons we choose, or for no reason at all. That is what freedom is about.

As of this morning, Rand Paul says he does not believe this.

Stay tuned. No telling what he'll believe later.

8. [UserGoogol](#) says:
[May 21st, 2010 at 5:40 pm](#)

David B: Strictly speaking, the part of the Civil Rights Act concerning itself with private businesses was very consciously tailored to operate under the commerce clause instead of the fourteenth amendment, with it being explicitly stated that regulated businesses have to be engaging in "interstate commerce."

There's an argument that the fourteenth amendment could be extended to such things, but there's Supreme Court precedent from the 19th century to the contrary and Congress didn't want to have to deal with that.

9. [wiley](#) says:
[May 21st, 2010 at 6:03 pm](#)

Did the Constitution, in principal, oppose slavery? Fuck this founders bullshit. They were opposed to monarchy and wanted democracy. They did not write a document for all Americans in the 21st century, they wrote it for themselves in their time. I don't see how an adult can treat it as anything other than a living document that can be interpreted to expand freedoms and regulations for the betterment of society as it is—not how it was. Some of these conservatives would gladly overturn a couple of centuries worth of precedent claiming it was on “principle” and not self-serving horseshit, but no one is obligated to treat their lies like an argument.

10. *newhavendan* says:

[May 21st, 2010 at 6:15 pm](#)

In reading the debate, I can't help notice that people keep talking past each other. There were many elements to the 1964 Act, and then, of course, there was how the Act developed over the 1960s and 1970s through the EEOC. I don't want to get into details, but will point everyone to chapter 3 of Steve Gillon's book [_That's Not What We Meant to Do_](#). It's excellent, though I hate the flip title.

11. *David B.* says:

[May 21st, 2010 at 6:18 pm](#)

Well, arguably section 5 is redundant then. To the extent it permits regulation of conduct that is not part of the commerce among the several states, it is broader, but there are only a few areas that fall outside of commerce, and none dealing with public accomodations.

12. *Mimikatz* says:

[May 21st, 2010 at 6:34 pm](#)

The 14th Amendment had been construed as applying to state action, not private conduct. It had been stretched in cases involving company towns, but that was the precedent. (“No STATE shall deprive” not “No state shall allow a private party to deprive etc.”) So especially the public accommodation part of the Civil Rights Act was tailored to invoke the Commerce Clause. This wasn't a stretch—the inability to buy gas or use a restroom, stay at a motel, eat in a restaurant etc really did limit black people's freedom to travel in the Jim Crow South.

Further, the trade-off for the South was to be a third-world state. Most Northern companies would not locate there because of segregation and poor school systems, as welol as pervasive anti-semitism. They could not have any major league sports franchises until segregation was a real thing of the past, because the leagues had been integrated. The South did not become a part of the 20th Century until enforcement of the civil rights laws. I think it is really hard for younger people, particularly from the North, to understand how much a loss of liberty was created so that good ol' boys and the country club set could relegate black people to second class status.

And of course there was discrimination in the North as well, but it was not officially sanctioned (except in housing and as a consequence some schools) and not as all-pervasive.

13. *Morgan Warstler* says:

[May 21st, 2010 at 6:41 pm](#)

wiley,

Its one thing to argue we need to read the constitution for our time and quite another to pretend the new reading will be more to your liking.

We'd be far more likely to establish firmer guidelines against Federal interference. The niggling commerce clause would get brutally reinforced much to my satisfaction.

14. *Mimikatz* says:

[May 21st, 2010 at 6:47 pm](#)

The 5th clause was the basis for enabling legislation such as section 1983-1985 of the Title of the USC that deals with health and welfare. This prevented any official acting "under color of law" from depriving people of their civil rights. It was used against police who beat people exercising their rights, or otherwise deprived them of their rights, and against other kinds of official abuse. The Feds prosecuted several cases like this. Another section was used some with employment discrimination.

But the 14th Amendment (passed after the Civil War) was very clearly restricted to state action or action "under color of law" with the notable exception of *Shelley v. Kramer*, which held that for a court to enforce a restrictive covenant that prohibited the sale of a house to certain kinds of people was a violation of the 14th Amendment. But this wasn't followed in other cases, even though people tried. Then there was a case involving restriction of free speech in a company town (*Marsh v. Alabama*) where the Court said that the town had all the attributes of the public square so it couldn't prohibit certain kinds of speech. The Civil Rights Act was explicitly designed to avoid these issues, and was therefore done under the Commerce Clause.

15. *MoeLarryAndJesus* says:

[May 21st, 2010 at 7:08 pm](#)

Paul is taking a brave stand that Pilon once deemed necessary to understand the core of the American vision.

It's not a "brave stand" if Paul has been crawling away from it, crying, ever since. And he has been.

16. *Jeffrey Davis* says:

[May 21st, 2010 at 7:24 pm](#)

Every sitting member of Congress needs to speak to this.

17. *wiley* says:

[May 21st, 2010 at 7:28 pm](#)

Is slavery "inconsistent" with the "underlying principles" of the Constitution, Morgan? However the Supreme Court rules, it should rely on precedent, the reality of our times, and a broader view of civil rights without hiding behind the skirts of the founders to support white, male, monied privilege.

18. *Greg* says:

[May 21st, 2010 at 7:37 pm](#)

Morgan, slavery is 110% consistent with the principles and values of the Constitution, up until you get to the 13th, 14th, and 15th Amendments, and indeed, if you leave those three out, it's still compatible today.

Since the South was basically able to cajole the rest of the country into accepting its belief that those three Amendments were more or less pretend, at worst quasi-slavery and at best fourth class citizenship was found to be totally consistent into the era of the fucking television and wide spread colorized movies.

And this bullshit about how the Civil Rights Act is incompatible with the Constitution can only work if you ignore the those three Amendments to this day.

Funny, these assholes spend so much fucking time crowing about certain Amendments but pretending the others don't exist.

This Civil Rights business reminds me how none of these jerkholes seems to have a problem with the Arizona immigrant law, or legalized torture, or pretty much anything that's done on Law & Order, 24, and most flagrantly, NCIS. Despite, y'know, the several Amendments that prohibit this kind of shit.

19. *elle loco* says:

[May 21st, 2010 at 7:38 pm](#)

And again, I ask: Why the hell does Matt, or anyone, give the Cato Institute the time of day? Sure, some rich bastards seem to have hooked them up with real nice digs, but it's plain as day that they're a bunch of pot-smoking college sophomores trying to rewrite Thomas More's Utopia. Just, you know, fuck it. Stop wasting my time.

20. [Adam Villani](#) says:

[May 21st, 2010 at 7:47 pm](#)

anything that's done on Law & Order

Whoa, what've you got against Law & Order? I watch SVU pretty regularly, and one thing they emphasize is the need to adhere to the law. If one of the cops screws up when nabbing a perp, the brass and the assistant DAs rake them over the coals for it.

21. *Greg* says:

[May 21st, 2010 at 8:40 pm](#)

Adam, l&o is extremely bad on the law side, not order.

Even the hot headed Logan acted admirably.

But as much as I love Sam Waterson, McCoy, his assistants and especially the disbarred one on svu would have been fired years before – and almost certainly faced prosecution

22. [Adam Villani](#) says:

[May 21st, 2010 at 8:52 pm](#)

I'm not saying the L&O scripts get vetted by the Attorney General, but at least as presented within the universe of the show, they make efforts to adhere to the law. Yeah, I'm sure they take a lot of liberties for dramatic purposes.

But that's a different thing from 24, which, as I gather (correct me if I'm wrong, as I haven't watched it

myself), implicitly (or maybe even explicitly) endorses the idea that getting the bad guys by any means necessary is the right thing to do, and that questions of legality are academic at best.

23. *Butler T. Reynolds* says:

[May 21st, 2010 at 9:03 pm](#)

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24. *Miles* says:

[May 21st, 2010 at 9:35 pm](#)

“Libertarians” are, I think, the absolute worst in terms of demanding that everybody religiously subscribe to their version of history. And since Ayn Rand told them they were smart, then clearly their version of history is impeccable.

25. *Midland* says:

[May 21st, 2010 at 9:43 pm](#)

And again, I ask: Why the hell does Matt, or anyone, give the Cato Institute the time of day?

It would be great if we could ignore the Cato Institute, but they are one of the most influential organizations of their kind in the country, with direct access to all national media and the respectability of being allowed to put their talking points on the air as “expert” commentators rather than extremists who are only allowed on to be questioned or “balanced” by other commentators.

You and I may think the Cato people are extremists and crackpots, but NPR and CNN say otherwise, and they are the arbiters of what is considered mainstream or radical in American political discourse.

26. *Midland* says:

[May 21st, 2010 at 9:57 pm](#)

I'm not saying the L&O scripts get vetted by the Attorney General, but at least as presented within the universe of the show, they make efforts to adhere to the law. Yeah, I'm sure they take a lot of liberties for dramatic purpose

Yep. Of course, the chief influence they have had on our culture is to help convince millions of Americans that the chief purpose of lawyers and judges is to protect the guilty by finding arcane or trivial reasons to exclude evidence from trials. The second half of most L & O episodes is a duel of wits between prosecutors, criminals, and defense attorneys to get as much evidence excluded and testimony avoided as possible so the conviction is made only at the last minute. The judges, of course, let the lawyers play their games without any obvious interest in justice or the public interest, usually looking bored with the whole business.

You gotta figure that anyone who has watched a few seasons of L & O or any other police procedural is going to be horrified to learn that terrorists are getting their Miranda rights and tried in civilian courts. They've been educated in the belief that virtually any gore-smeared axe-wielding criminal might be set free at any time by a judge because a detective opened the cabinet door with the blood leaking out on the counter without asking politely.

27. *bill* says:

[May 21st, 2010 at 10:05 pm](#)

People are free to associate and not associate with whomever they want. But if you offer goods and services to the public, you can't discriminate on the basis of race to whom you offer those services. That has absolutely nothing to do with free association. You can't freely associate on my lawn and a business open to the public can't choose who it wants to associate in it.

28. *Bat of Moon* says:

[May 21st, 2010 at 10:43 pm](#)

My imperfect understanding of Jim Crow laws was that in many cases of public accommodations a white person had to discriminate against blacks — for ex., you couldn't serve black persons in your diner, or let them use the bathroom set aside for whites. You — the white proprietor — would run afoul of the law.

29. *mattifat* says:

[May 21st, 2010 at 10:49 pm](#)

matt if i owned a restaurant i wouldn't let you in. you're fat and ugly. all you do is eat. i want to sew your asshole shut and keep feeding you and feeding you...feeding you

30. *wiley* says:

[May 21st, 2010 at 11:17 pm](#)

Looks like Morgan has some sock puppet friends.

31. *ScentOfViolets* says:

[May 21st, 2010 at 11:30 pm](#)

This Civil Rights business reminds me how none of these jerkholes seems to have a problem with the Arizona immigrant law, or legalized torture, or pretty much anything that's done on Law & Order, 24, and most flagrantly, NCIS. Despite, y'know, the several Amendments that prohibit this kind of shit.

Hey!!! I love NCIS! Of course I'm also quite fond of Dr. Who, Glee, House, and Burn Notice, and for very much the same reasons. Unlike a lot of my compatriots, however, I would not for a second look to these shows for any references as to how to behave in real life situations.

I mention this because it seems very much a part and parcel of the American character to love their stories and referring to them as guides as to how to behave in real life. Heck, it seems that between real life and TV, Americans will choose the TV version just about every time.

This is nothing new, btw, or an extraordinary observation. Mark Twain was saying the exact same thing 150 years ago.

32. *Midland* says:

[May 21st, 2010 at 11:34 pm](#)

You — the white proprietor — would run afoul of the law.cases of public accommodations a white

person had to discriminate against blacks —

Correct. Of course, the laws were in place because they were popular among whites, part of the culture. Also, anyone violating or speaking up against segregation would be subject to terrorist attacks. Threats, violence, crosses burned on your lawn, occasional riots, and a thousand or more lynchings every year across the Jim Crow south.

Much as we thump our chests about being tough on terrorism, the United States, from 1865 to 1965, was the setting for what was arguably the most successful terrorist campaign in civilized history. Terrorists destroyed anti-segregation political factions in the 19th Century, enforced segregation anywhere the law fell short in enforcing it officially, and successfully held off modern desegregation until Eisenhower, King, Kennedy, and Johnson brought federal anti-terrorism measures to bear after 1954.

How much of that history of private and government interaction would libertarians approve of?

33. *JHE* says:

[May 22nd, 2010 at 12:32 am](#)

They did not write a document for all Americans in the 21st century, they wrote it for themselves in their time.

Actually, they did. They even had built-in instructions on how to change the parts we disagree with.

34. *JHE* says:

[May 22nd, 2010 at 12:36 am](#)

So we made a law stating that KKK restaurant owners must serve blacks. How many of you would make a law stating that the KKK can't march down public streets?

35. *SamB* says:

[May 22nd, 2010 at 12:46 am](#)

Although Pilon (and thus Paul) make what is on one level a reasonable argument, it is ultimately undermined by their unwillingness to consider the fundamentally recursiveness of "freedom to associate".

For if, as Pilon argues, "we have a right to associate, or to refuse to associate, for whatever reasons we choose", then those who formed the association "citizens of the United States" can condition membership in their "association" on appropriately non-discriminatory behavior or acceptance of dully set-out penalty for violation of this condition.

Notably, this formulation also dissolves the distinction between government and public action, as compliance with dully determined "government" policy is a condition of association.

Just as by their arg

36. *Jimmy* says:

[May 22nd, 2010 at 12:55 am](#)

Seriously, does *anybody* still take the Cato Inst seriously?

37. *ScentOfViolets* says:

[May 22nd, 2010 at 11:04 am](#)

Seriously, does anybody still take the Cato Inst seriously?

Well, not taking them seriously apparently gives libertarians the license to spurn any contrary cites or sources offered up as “partisan”, as well. As you say, this is getting awfully stale. This sort of trick only works with freshly minted “Think Tanks” whose patina of respectability hasn’t been tarnished yet by repeated abuses of trust. Note that people are getting more hip to this sort of ploy, and that Politico’s reputation, such as it was, was on a downhill trajectory almost immediately after it was launched.

38. *David B.* says:

[May 22nd, 2010 at 11:42 am](#)

JHE describes the current state of the law. Members of the Klan have to serve blacks if they run restaurants and are free to march down the street in protest of those laws. So, as far as a slippery slope argument, it fails. The reason it fails is because running a restaurant is not an “expressive” activity — it’s a business engaged in commerce. And, oh by the way, if you want to serve food in a “private club” that discriminates, you can probably get away with it, especially if golf is involved.

39. *JHE* says:

[May 22nd, 2010 at 12:59 pm](#)

David B, what if the Klansmen were selling white hoods while marching down the street? Does engaging in commerce somehow nullify their right to engage in “expressive” activity?

40. *quercus* says:

[May 22nd, 2010 at 1:35 pm](#)

JHE, see above about commerce not being expression.

They still get to march, and they also have to sell the hoods to anyone who wants them. You’re hoping you’ll get to yell “gotcha!” here soon, but there’s nothing there to “get” us on.

Moron.

41. *quercus* says:

[May 22nd, 2010 at 1:51 pm](#)

None of these libertarian types ever explains why the right to discriminate based on race is such an important part of the property rights they (incorrectly) think are such an integral part of the constitution. Maybe that’s because they’d have to admit they’re a bunch of over-privileged racist assholes if they did. Hmmm. . .

42. *JHE* says:

[May 22nd, 2010 at 2:03 pm](#)

The same reason the ACLU used to defend Nazis, I guess. If you truly believe in free speech, you have to defend all speech, even the speech that you abhor.

43. *quercus* says:

[May 22nd, 2010 at 2:25 pm](#)

Discrimination isn't speech.

44. [tomemos](#) says:

[May 22nd, 2010 at 2:25 pm](#)

“So we made a law stating that KKK restaurant owners must serve blacks. How many of you would make a law stating that the KKK can't march down public streets?”

None of us.

“David B, what if the Klansmen were selling white hoods while marching down the street? Does engaging in commerce somehow nullify their right to engage in “expressive” activity?”

Not at all. But they would have to sell those hoods to anyone who wanted one.

“The same reason the ACLU used to defend Nazis, I guess.”

They still do.

“If you truly believe in free speech, you have to defend all speech, even the speech that you abhor.”

I agree. Commerce isn't speech. After all, if it were, then by exercising your “freedom” to refuse to sell something to a black person, you would be infringing upon that black person's freedom to buy it.

45. [ScentOfViolets](#) says:

[May 22nd, 2010 at 2:35 pm](#)

I agree. Commerce isn't speech. After all, if it were, then by exercising your “freedom” to refuse to sell something to a black person, you would be infringing upon that black person's freedom to buy it.

Are you so sure of this given the ideology and character of the sitting (and soon to be seated) Justices of the SCOTUS? “Speech” and “Commerce” is just what they say it is, nothing more. I don't find it entirely implausible that this crew could rule that money = free speech = commerce . . . and call this ruling the “original intent” of the founders to boot.

46. [quercus](#) says:

[May 22nd, 2010 at 2:38 pm](#)

JHE, are you confusing discrimination with prejudice? Also, there's a difference between speech and action. You're free to hate whoever you like for whatever stupid reason you like, and you're free to spout off about it as much as you like—that's the speech part— but you don't get to take actions that limit anyone else's freedom. Like they say your right to swing your fist ends where my nose begins.

47. [quercus](#) says:

[May 22nd, 2010 at 2:49 pm](#)

I don't find it entirely implausible that this crew could rule that money = free speech = commerce . . . and call this ruling the “original intent” of the founders to boot.

Yeah, and Roberts will probably try to claim that *only* money counts as speech. . .

48. *JHE* says:

[May 22nd, 2010 at 2:53 pm](#)

tomemos,

What is the difference between the Klansman expressing his hatred of blacks by marching down the street and him expressing his hatred by refusing to make a BLT sandwich? Is it because, in the later example, the Klansman is also engaging in commerce at the same time he is expressing himself? Do you lose your right of speech if you engage in commerce?

49. *quercus* says:

[May 22nd, 2010 at 3:05 pm](#)

I'm not tomemos so JHE will probably ignore me, but NO. Commerce still isn't speech, or expression. As long as they got their parade permit in order the march isn't infringing anyone else's rights. When you have a public place of business you must do business with the public, else you *are* infringing on someone else's rights. What about the black person's right to buy that sandwich?

50. *tomemos* says:

[May 22nd, 2010 at 3:11 pm](#)

“What is the difference between the Klansman expressing his hatred of blacks by marching down the street and him expressing his hatred by refusing to make a BLT sandwich? Is it because, in the later example, the Klansman is also engaging in commerce at the same time he is expressing himself?”

Well, yes. Once you are taking part in the public marketplace, you have to play by the rules of that marketplace. The Klansmen is also not free to sell medication to someone without a prescription, even if he truly believes that he should be allowed to and that his free speech is being infringed upon.

“Do you lose your right of speech if you engage in commerce?”

Not at all. Plenty of restaurants put up political slogans on the walls. That's speech, not discrimination. Let's say it again: discrimination is not speech, it's action.

51. *JHE* says:

[May 22nd, 2010 at 3:45 pm](#)

Well, yes. Once you are taking part in the public marketplace, you have to play by the rules of that marketplace. The Klansmen is also not free to sell medication to someone without a prescription, even if he truly believes that he should be allowed to and that his free speech is being infringed upon.

That's because the laws prohibiting sell of prescription drugs was made in the name of public safety, not to stop expression. The illegality of selling prescription drugs is a commerce issue. The illegality of private restaurant owners to express their hatred through inaction is a free speech issue.

Not at all. Plenty of restaurants put up political slogans on the walls. That's speech, not

discrimination. Let's say it again: discrimination is not speech, it's action.

There's much more action involved in a Klansman marching down Main Street screaming the N word than a Klansman sitting at a lunch counter refusing to do anything. The amount of action does not determine whether an incident is considered an expression.

52. *JHE* says:

[May 22nd, 2010 at 3:51 pm](#)

I'm not tomemos so JHE will probably ignore me, but NO. Commerce still isn't speech, or expression. As long as they got their parade permit in order the march isn't infringing anyone else's rights. When you have a public place of business you must do business with the public, else you are infringing on someone else's rights. What about the black person's right to buy that sandwich?

I'm not ignoring you. Being engaged in commerce does not mean you are engaging in speech. But the fact that someone is engaging in commerce does not preclude him from being engaged in speech.

53. *tomemos* says:

[May 22nd, 2010 at 3:56 pm](#)

JHE, I'm sorry, but you're using terms that you don't understand. Whether something is "behavior" (or "action" if you prefer) has nothing to do with how much noise the person is making. Discrimination is not "inaction"—it's behavior that negatively impacts someone. A black man (or a Jew, or whomever) who can't enter a restaurant, buy a house (except in a certain neighborhood) or get a job is being locked out of the economy by definite action. A Klansmen shouting racial slurs is not "action" just because it sounds louder than discrimination.

"That's because the laws prohibiting sell of prescription drugs was made in the name of public safety, not to stop expression."

Anti-discrimination statutes are also not to stop expression (otherwise you would see, you know, *laws against prejudiced expression*). They are made in order to protect a free public market that the entire public can take part in.

54. *tomemos* says:

[May 22nd, 2010 at 3:58 pm](#)

"Being engaged in commerce does not mean you are engaging in speech. But the fact that someone is engaging in commerce does not preclude him from being engaged in speech."

You're just repeatedly asserting that the decision to refuse to sell your goods to a group of people is "speech" without any evidence. The Supreme Court and a host of legal experts says you're wrong, so unless you can bring in some evidence, or even just some new arguments, this conversation isn't going to go anywhere.

55. *tomemos* says:

[May 22nd, 2010 at 4:05 pm](#)

I'll put it another way. If I call you a racist name, I've probably hurt your feelings, but I haven't done you any tangible harm. But if I choose not to pick you up in my cab because of your race, I have done you tangible harm. And if all of my fellow cabbies do the same, which is generally what happens in a discriminatory society, then the harm is multiplied until a whole mode of transportation is closed off to you and the fellow members of your race. Someone who's driving a cab, or running a restaurant or hiring an employee, doesn't have the freedom to give that public good to one qualified group of people and not another.

56. *JHE* says:

[May 22nd, 2010 at 4:10 pm](#)

A Klansmen shouting racial slurs is not "action" just because it sounds louder than discrimination.

Does a marching Klansman screaming the N word at a family trying to have a nice picnic have a negative impact on that family?

JHE, I'm sorry, but you're using terms that you don't understand. Whether something is "behavior" (or "action" if you prefer) has nothing to do with how much noise the person is making. Discrimination is not "inaction"—it's behavior that negatively impacts someone.

Whether something is considered speech is not determined by whether it "negatively impacts someone." Yelling fire in a movie theater is still speech.

57. *tomemos* says:

[May 22nd, 2010 at 4:14 pm](#)

"Does a marching Klansman screaming the N word at a family trying to have a nice picnic have a negative impact on that family?"

Not a material negative impact, no. As opposed to a family trying to find an integrated hotel to stay in on a late-night road trip.

"Whether something is considered speech is not determined by whether it "negatively impacts someone." Yelling fire in a movie theater is still speech."

Is your belief that yelling fire in a movie theater is *protected* speech? If so, I decline to continue this conversation until you educate yourself about this issue.

58. *quercus* says:

[May 22nd, 2010 at 4:37 pm](#)

I still want to know why you think the the klanner's supposed right to be an asshole trumps the black person's right to participate in society in your example up there. Like to address that?

59. *abb1* says:

[May 22nd, 2010 at 5:12 pm](#)

Here's how I see it: the adventuristic policy of forced busing harmed the race relations and destroyed

urban working class, which is the base of left-wing movements in every industrialized society. That paved the way for the right-wing takeover (ongoing right-wing takeover), and, ironically, re-segregation. And for Rand Paul, of course.

60. [tomemos](#) says:
[May 22nd, 2010 at 5:25 pm](#)

Congratulations, Abb1, you're officially an Astroturf troll.

61. [JHE](#) says:
[May 22nd, 2010 at 5:43 pm](#)

Not a material negative impact, no. As opposed to a family trying to find an integrated hotel to stay in on a late-night road trip.

So the legality of speech (refusing to provide a hotel room to blacks) should be judged based on how much material harm is done? What if there was an integrated hotel right next door to the racist hotel? Is there still material harm? If not, should it still be illegal?

What if a white patron, seeing the black family being refused a room, decides to cancel his reservation with the racist hotel? Is that white patron's speech causing material harm to the racist hotel? If so, would the white patron's speech be illegal?

Whether a particular expression should be made illegal should not be based on general harm (racist hotel's revenues decreasing) but rather whether it conflicts with another constitutional right (the right not to have your life taken away without due process, etc). That's why I support laws that make speech that threaten the President illegal. Your freedom of speech to threaten the President is outweighed by his right to live.

62. [abb1](#) says:
[May 22nd, 2010 at 5:46 pm](#)

"Race" is not determined by skin color but by the socio-economic class.

63. [tomemos](#) says:
[May 22nd, 2010 at 5:48 pm](#)

"Whether a particular expression should be made illegal should not be based on general harm (racist hotel's revenues decreasing) but rather whether it conflicts with another constitutional right (the right not to have your life taken away without due process, etc). "

Yes. And since we have a constitutional right to take part in the public market, shouldn't we conclude that discrimination should be made illegal?

"That's why I support laws that make speech that threaten the President illegal. Your freedom of speech to threaten the President is outweighed by his right to live."

This is very poorly phrased (threatening the President in no way infringes on "his right to live," which is also not a constitutional right), plus it utterly conflicts with the statement you made earlier: "Whether something is considered speech is not determined by whether it "negatively impacts someone.'" The

question of harm does indeed determine whether speech is protected, which is why we have laws not only against threats, but also against harassment, libel and slander, incitement, fraud, you name it. So on what basis are you opposing anti-discrimination laws, again?

64. [tomemos](#) says:
[May 22nd, 2010 at 5:50 pm](#)

“What if there was an integrated hotel right next door to the racist hotel? Is there still material harm? If not, should it still be illegal?”

Yes, because the segregated hotel competes with and draws resources (customers, employees, etc.) away from the integrated one.

65. [tomemos](#) says:
[May 22nd, 2010 at 5:56 pm](#)

By the way, JHE, have you found the origin of that Crowded Theater line yet? Have you found what it was used to say?

66. [quercus](#) says:
[May 22nd, 2010 at 6:05 pm](#)

I still want to know why you think the the klanner’s supposed right to be an asshole trumps the black person’s right to participate in society in your example up there. Like to address that?

Still waiting.

67. [abb1](#) says:
[May 22nd, 2010 at 7:09 pm](#)

“Klu Klux Klan” is not determined by the skin color but by the socio-economic class.

68. [Jasper](#) says:
[May 22nd, 2010 at 7:28 pm](#)

Rand Paul thinks it should be legal for a restaurant to deny a hungry child a meal because of the color of the child’s skin.

That’s really all you need to know about Rand Paul.

69. [abb1](#) says:
[May 22nd, 2010 at 7:29 pm](#)

Why not just force everybody to swap the children? Take one from the ghetto, send one of yours to live there; see how that is going to work out, you liberal zombie-idiots.

70. [abb1](#) says:
[May 22nd, 2010 at 8:01 pm](#)

@ 60 So, you too now prefer to discuss my humble online persona instead of the effects of the forced busing? Great, go join the rest of the zombies.

71. *abb1* says:

[May 22nd, 2010 at 8:50 pm](#)

It seems quite obvious that Harry Reid (or anyone else for that matter) don't even imagine to hear a US politician to speak ebonics, that's 100% out of the question. What Reid was talking about (what he say Obama doesn't have) is merely stylistic and intonational hints of the ghetto.

72. *tomemos* says:

[May 22nd, 2010 at 9:18 pm](#)

Did abb1 have a stroke or something?

73. *abb1* says:

[May 22nd, 2010 at 9:42 pm](#)

tomemos tell me the Liberal Zionazism, what does it mean

74. *abb1* says:

[May 23rd, 2010 at 2:23 am](#)

For the recap: the adventuristic policy of the forced busing harmed the race relations and destroyed urban working class, which is the base of left-wing movements in every industrialized society. That paved the way for the right-wing takeover (ongoing right-wing takeover), and, ironically, re-segregation. And for Rand Paul, of course.

75. [Libertarians, Tea Party "Patriots" and Christian Morality | The Pink Flamingo](#) says:

[May 23rd, 2010 at 8:30 am](#)

[...] the Civil Right's Act – or anything that might impose limitations on business. "...It's been curious to me to note that the Cato Institute, flagship institution of libertarianism in America, hasn't [...]

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