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Rand Paul's principled stumble

By: [Robert A. Levy](#)

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Rand Paul has taken a principled — but politically incorrect — position, for which he's being pilloried. A look behind the 6-second-sound-bite version of his position might be helpful.

Despite how his comments have played, Paul has said he is glad that the Civil Rights Act of 1964 passed. He accepts the Civil Rights Act as settled U.S. law — not to be revisited by the courts despite possible constitutional infirmities.

But, though the Supreme Court upheld the 1964 act, the law has a disputable constitutional pedigree.

The Civil Rights Act addresses the conduct of private individuals, so it is not easily shoehorned into the 14th Amendment, which constrains only government conduct. And the act has nothing to do with reducing state-imposed obstacles to the free flow of interstate trade — so it should not have been legitimized under an original understanding of the commerce clause.

Still, the law was affirmed — and deservedly so — by the court because it helped erase an unconscionable assault on human dignity.

So Paul stands foursquare for civil rights but acknowledges the Civil Rights Act's possible disconnect from the Constitution. His position is therefore intellectually honest, unlike those who insist that, because the Civil Rights Act is beneficent, it must necessarily be constitutional.

Some activities — for example, torture — offend the Constitution even though they might yield widely acclaimed benefits — such as preventing a terrorist attack.

The remedy in such cases is either to amend the Constitution or to acknowledge the disconnect and recognize that the Constitution must not be a barrier to racial equality.

Paul's detractors misunderstand the essential nature and purpose of our Constitution. It does not speak to private power; it is not a criminal or civil code that private citizens must obey.

Rather, the Constitution has two primary objectives: to authorize government, then limit its powers in a manner that secures individual rights.

First and foremost, the Constitution is a code of conduct for the legislative, executive and judicial branches of government. Both federal and state officials breached that code when they condoned

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slavery and, later, Jim Crow laws that mandated racial segregation.

Of course, the media have used Paul's forthright if impolitic pronouncement as an occasion to disparage his libertarian — that is, classic liberal — philosophy. Not surprisingly, critics either do not understand or willfully distort basic libertarian principles. For starters, libertarians are proponents of limited government. We are not anarchists.

My colleague David Boaz sums it up nicely: "A government is a set of institutions through which we adjudicate our disputes, defend our rights and provide for certain common needs. ... What we want is a limited government that attends to its necessary and proper functions.

"Libertarians support limited, constitutional government — limited not just in size but, of far greater importance, in the scope of its powers."

Ideally, government's role is to foster an environment in which individuals can pursue happiness in any manner they please — provided they do not impede other individuals' rights to do the same.

Regrettably, government does much more — and much less — than create a congenial civil environment. It burdens transactors with confiscatory taxes, favors politically connected special interests, coerces parties to engage in unwanted transactions, transfers assets and incomes without consent from one party to another and depletes our financial and human resources by undertaking foreign interventions that bear little relation

to America's vital interests. Those are the excesses of government that libertarians struggle to rein in.

In addition, and perhaps least understood, a vital aspect of personal liberty is the freedom not to participate. In that regard, libertarianism is the antithesis of collectivism.

Anyone who prefers a social order that sacrifices individual liberty to attain equal outcomes is free to leave my libertarian world and form the collectivist society he favors. But he may not compel me to join.

Libertarianism does not foreclose collectivist arrangements as long as participation in those arrangements is voluntary.

By contrast, collectivists will not endorse libertarian enclaves within a collectivist system. Just try refusing to support the welfare state.

People who believe a deregulated free market leaves us worse off can create a

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hyper-regulated marketplace, shackled by government to their heart's content. They would not extend the same opt-out choice to me.

The essence of collectivism is force. The essence of libertarianism is choice.

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