Rand Paul and the Civil Rights Act of 1964

by Jeffrey Miron on May 26th, 2010

3 Comments

My main objection to Paul's comments is that he backed down once challenged; I think he had it right in the first place. Here is what I wrote in LAZ:

Civil Rights Act of 1964

Advocates of bans on discrimination typically point to Title VII of the Civil Rights Act of 1964, which banned employment discrimination in the United States, as evidence that bans are crucial for ending discrimination. Essentially the argument is that the employment and wage outcomes of blacks relative to whites improved in the U.S. South in the decade after 1964, and this outcome is most readily explained as the result of Title VII.

The role played by Title VII in improving economic outcomes for blacks is far from clear, however. To begin, adoption and enforcement of Title VII occurred against a backdrop of legally enforced segregation in Southern states, segregation that applied in education, public accommodations, and voting (the Jim Crow laws). Some of the improved outcomes for blacks undoubtedly reflect the toppling of this legal structure, which facilitated the culture of discrimination even in arenas, like employment, where segregation was rarely legally mandated.

Adding further nuance, private efforts to end segregation, including boycotts and protests, occurred before and after passage of the Civil Rights Act. Likewise, the federal government intervened to end segregation even before 1964. For example, the Supreme Court's Brown v. Board of Education decision began the process of integrating public schools, and federal court orders repealed state segregation in transportation. Thus the degree to which Title VII itself caused the improved outcomes for blacks is unclear.

Whatever the role of Title VII in generating gains for blacks, it is not the whole story. These gains would likely have come anyway—perhaps somewhat more slowly—due to private efforts and the federal dismantling of Jim Crow. In addition, the Act's ban on discrimination led to further interventions that have generated far more costs and produced far less evidence for their efficacy. In particular, the Civil Rights Act evolved into affirmative action, and the scope of anti-discrimination policy evolved from merely outlawing racism to promoting diversity and limiting statistical discrimination.

Thus, the federal effort to eliminate discriminatory state laws was almost certainly desirable, but the efforts beyond this intervention have not been beneficial overall.

A further note: many provisions of the CRA are attempts to ban discrimination by state governments, as opposed to discrimination by private parties. For example, Title I bans unequal application of voter registration requirements; Title III bars state and local governments from denying equal access to public facilities; Title IV encourages desegregation of public schools.

It is an open question as to how much good these provisions accomplished. For example, federally mandated busing to achieve desegregation caused serious polarization and may have increased de facto segregation.

But the provisions of the CRA that apply to state goverments are not deeply offensive to libertarian sensibilities; they are attempts by the federal government to eliminate anti-libertarian policies run by state or local governments.

The libertarian argument against even these portions of the CRA would be that since federal interventions in most areas tend to be worse than state interventions, it is best to avoid federal interventions whenever possible to avoid slippery slopes. I have substantial sympathy for this view; I am not sure whether I would apply it in this instance.

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John

May 26, 2010 at 4:46 am

Dr. Miron I have a question for you, based on your application of cost-benefit analysis. You basically state that the main cost of Title II of the Civil Rights Act of 1964 has been the further civil rights acts which were passed afterwords and led to affirmative action.

Yet as there is no real evidence of causation (did Title II have to ultimately lead to other bills which would legislate affirmative action?) and since they are essentially different intrinsic questions – nondiscrimination law versus mandated hiring of minorities – is there any other cost-benefit case against Title II? If Title II did not lead to further affirmative action bills, would its costs still outweigh the benefits? Both Brink Lindsey and Richard Epstein have basically supported Title II (with a few modifications) because they saw the benefits outweighing the costs, see Epstein's article yesterday for instance which makes a cogent case:

http://www.forbes.com/2010/05/24/rand-paul-rachel-maddow-opinions-columnists-richard-a-epstein.html

Reply

Jeffrey Miron

May 26, 2010 at 5:19 am

On this issue, I disagree with Brink and Richard.

On the relation between bans on discimination, and affirmative action, I think there is in fact exact causation. The reason is that a ban on discimination is essentially meaningless with affirmative action, because it is difficult to prove discriminatory intent. So few suits against discrimination would ever succed. That is why the U.S. adopted affirmative action.

See the entires on discrimination and affirmative action in LAZ.

jeff

Reply

John

May 26, 2010 at 5:55 am

I agree with you on title IV and hiring but title II or equal access to places of "public accomodation" which are strictly defined in the bill is much easier to prove and doesn't necessarily lead to affirmative action as it doesn't have to do with hiring but letting people eat at your restaurant instead of having it whites or blacks or Asians only – for that specifically I agree with the Epstein article the costs are nil with high symbolic and significant substantive benefit.

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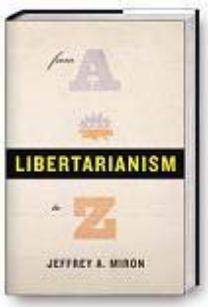

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