



Are Civil (Liberties) Unions America's Best Hope?

Freedom Watch

By HARVEY A. SILVERGLATE AND DANIEL R. SCHWARTZ | July 13, 2011

Ron Paul and Barney Frank make odd bedfellows, but one hopes theirs is more than a one-night stand.

On June 23, the two congressmen co-sponsored a bill to allow states to legalize, regulate, and tax marijuana. While there are numerous arguments for legalization — tax revenues, the failed war on drugs, prohibition-induced corruption — the media have largely ignored Frank and Paul's avowed support for individual liberty. The belief shared by the two should not be surprising; Democrat Frank has long felt that the "vast amount of human activity ought to be none of the government's business," and that the government should not "tell you how to spend your leisure time." Libertarian Paul, in the first Republican presidential debate, drew the loudest cheers when he said, sarcastically, "Oh yeah, I need the government to take care of me, I don't want to use heroin, so I need these laws." Frank and Paul have more in common than last names that can also be first names: they support drug legalization because of a shared philosophy geared to individual rights, and demonstrate how pols — and all citizens — can unite in support of a wide range of liberties even if they disagree on issues like economic regulation.

Even with political gridlock in Washington, we see more civil libertarian unions emerging. In the recent fight to re-authorize the infamous USA/Patriot Act, Republican senator Rand Paul delayed a vote to force consideration of two civil-liberties-based amendments, and teamed up with Democratic senator Patrick Leahy to pursue a third. Leahy remarked that "the underlying bill represents a missed opportunity" without safeguards. Paul went further: "Do the many provisions of this bill . . . have an actual basis in our Constitution?" As the *Atlantic Monthly* put it, the conservative Paul was taking up the anti-Patriot Act mantle left behind by liberal Democrat Russ Feingold, the Wisconsin senator defeated in the 2010 election.

Outside of Congress, too, there have been similar pairings. Ted Olson and David Boies, formerly opposing counsel on *Bush v. Gore*, have joined in the fight for marriage equality. In 2006, the AFL-CIO filed a Supreme Court amicus brief in support of an anti-choice group's right to picket a family planning/abortion clinic, for fear that limiting pro-life picketing could impact organized labor's picket lines.

Civil-liberties-based coalitions are especially important because their opposite — unions in support of odious, anti-liberty laws — have become Congress's most frequent form of bipartisanship. President Obama, despite his campaign criticisms of George W. Bush's anti-terror policies, has left most of those policies intact, including the Patriot Act, warrantless wiretaps, military commissions, and national-security letters.

Consider again the Patriot Act extension: Leahy voted for the eventual bill, along with 39 of his fellow Democrats and 45 Republicans. Paul was joined in opposition by one fellow Republican, nine Democrats, and the lone Socialist. Those assaulting civil liberties have more bipartisan unity than those defending them.

Some credit the Tea Party as a potential answer. While Tea Partiers claim to be non-partisan, they have demonstrated that theirs remains a largely conservative, Republican movement, unconcerned with many civil-liberties positions. Tea Party evangelist Sarah Palin charged that the recent 8-1 Supreme Court ruling in *Snyder v. Phelps* — in which the Supreme Court allowed obnoxious political speech at military funerals — lacked "common sense and decency," and Tea Partiers protested in opposition to gay marriage in New York.

The left long ago abandoned its libertarian streak, largely conceding such issues to the right, which has, in turn, transformed into an angry grassroots movement without a liberty-friendly core. But if politicians as different as Ron Paul and Barney Frank can join together on mold-breaking legislation, perhaps there is hope for making liberty safe from repressive federal laws.