

The Tea Party and civil liberties

BY GLENN GREENWALD

It's long been clear that the best (and perhaps only) political hope for civil liberties in the U.S. is an alliance that transcends the standard Democrat v. GOP or left v. right dichotomies. Last night's surprising (and temporary) **failure of the House** to extend some of the most controversial powers of the Patriot Act -- an extension jointly championed by the House GOP leadership and the Obama White House -- perfectly illustrates why this is true.

The establishments of both political parties -- whether because of actual conviction or political calculation -- are equally devoted to the National Security State, the Surveillance State, and the endless erosions of core liberties they entail. Partisan devotees of each party generally pretend to care about such liberties only when the other party is in power -- because screaming about abuses of power confers political advantage and enables demonization of the President -- but they quickly ignore or even justify the destruction of those liberties when their own party wields power. Hence, Democratic loyalists spent years screeching that Bush was "shredding the Constitution" for supporting policies which Barack Obama now enthusiastically supports, while right-wing stalwarts -- who spent years cheering on every Bush-led assault on basic Constitutional limits in the name of Terrorism -- flamboyantly read from the Constitution during the Obama era as though they venerate that document as sacred. The war on civil liberties in the U.S. is a fully bipartisan endeavor, and no effective opposition is possible through fealty to either of the two parties.

For most civil liberties incursions over the last decade, there's been at least some glimmer of opposition on the Left -- exemplified by people like Russ Feingold in the Senate and the Congressional Black Caucus and Dennis Kucinich in the House. But they've been easily overwhelmed by the civil-liberties-hating mainstream of the Democratic Party, and particularly hampered by the lack of any meaningful partners on the Right (where Ron Paul has been a solitary voice on such matters). What has been most needed -- and most harmfully non-existent -- is some minimal amount of intellectual honesty and consistency from America's conservatives, whose rhetoric of "limited government" and "individual rights" has translated into nothing other than lockstep support for ever-increasing government power and a highly authoritarian political mindset. It is that dynamic that has marginalized civil liberties advocacy -- and rendered civil liberties erosions inevitable -- no matter which party is in control.

There are so many examples proving how true that is, but just look at the current "controversy" over extension of these Patriot Act provisions. The **three provisions set to expire** -- the "roving"

wiretaps, the authority to surveil individuals with no connection to Terrorist groups (the "lone wolf" provision), and the power to obtain "any tangible items" (the "library records" power) -- have a **long history** of **serious abuse**. These provisions were supposed to be temporary, emergency measures hastily enacted in the wake of the 9/11 attack with virtually no oversight. Even the Congress acting in the immediate aftermath of those attacks realized how extreme they were, and thus imposed "sunset provisions" requiring their expiration and renewal after several years. But every time they've been considered in the past 10 years, they've been extended with the full support of both parties, without any added oversight provisions or limits; not even incontrovertible evidence of systematic abuse has generated any meaningful opposition. This has been just as true in the GOP Congress and the Democratic Congress, and with both Bush and Obama in the White House. Yesterday, on the very same day that the Obama White House **demanded that Egypt repeal its 30-year-old "emergency law,"** it also **demanded enactment of the House GOP's proposal to extend America's own emergency law** -- the Patriot Act -- for three more years with no new oversight (the White House actually **wants a longer extension than the House GOP is willing to support**). Meanwhile, in the Senate, Pat Leahy has introduced a bill to impose some very mild and inadequate safeguards on these Patriot Act powers (some of which the DOJ has voluntarily accepted), but those efforts are **being thwarted by the Democrats' Senate Intelligence Committee Chair, Dianne Feinstein** -- easily one of the most implacable enemies of civil liberties in the Congress and one of the most loyal servants of the National Security State which **enriches her husband**; just as she did last year, Feinstein has demanded a full extension of the Patriot Act with **no reforms of any kind**.

Put another way, the reform-free extension of the Bush-era Patriot Act is jointly assured by the most important Democratic power brokers (the Obama White House and Feinstein) and the Congressional GOP leadership. That's the same bipartisan dynamic that has **repeated itself over and over for the last decade** as civil liberties in the U.S. have steadily eroded.

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But what happened last night highlights the potential to subvert the two-party stranglehold on these issues -- through a left-right alliance that opposes the Washington insiders who rule both parties. So confident was the House GOP leadership in commanding bipartisan support that they put the Patriot Act extension up for a vote using a fast-track procedure that prohibits debate and amendments and, in return, requires 2/3 approval. But 26 of the most conservative Republicans - **- including several of the newly elected "Tea Party" members** -- joined the majority of Democratic House members in voting against the extension, and it thus fell 7 votes short. These conservative

members opposed extension on the ground that more time was needed to understand whether added safeguards and oversight are needed.

The significance of this event shouldn't be overstated. The proposed Patriot Act extension still commanded support from a significant majority of the House (277-148), and will easily pass once the GOP leadership brings up the bill for a vote again in a few weeks using the standard procedure that requires only majority approval. The vast majority of GOP members, including the leading Tea Party representatives, voted for it. The Senate will easily pass it. And the scope of the disagreement even among the Democrats opposing it is very narrow; even most of the "no" votes favor extending these provisions, albeit with the types of tepid safeguards proposed by Leahy. So in one sense, what happened last night -- as is true for most political "victories" -- was purely symbolic. The White House will get what it wants.

But while it shouldn't be overstated, there is a real significance here that also shouldn't be overlooked. Rachel Maddow last night pointed out that there is a split on the Right -- at least a rhetorical one -- between what she called "authoritarian conservatives" and "libertarian conservatives." At some point, the dogmatic emphasis on limited state power, not trusting the Federal Government, and individual liberties -- all staples of right-wing political propaganda, especially Tea Party sloganeering -- has to conflict with things like oversight-free federal domestic surveillance, limitless government detention powers, and impenetrable secrecy (to say nothing of exploiting state power to advance culture war aims). Not even our political culture can sustain contradictions as egregious as (a) reading reverently from the Constitution and venerating limits on federal power, and then (b) voting to vest the Federal Government with extraordinary powers of oversight-free surveillance aimed at the American people. This was the contradiction which Dennis Kucinich **smartly exploited** when challenging the Tea Party to join him in opposition the Patriot Act's extension:

The 112th Congress began with a historic reading of the U.S. Constitution. **Will anyone subscribe to the First and Fourth Amendments tomorrow when the PATRIOT Act is up for a vote?** I am hopeful that members of the Tea Party who came to Congress to defend the Constitution will join me in challenging the reauthorization.

There is precedent for this type of alliance on this and other issues. Early on in the Bush years, a bill to repeal Patriot Act abuses was co-sponsored by Kucinich and Ron Paul, and **supported by the ACLU**. A bill to audit the Federal Reserve was opposed by most of official Washington but enacted **by a left-right alliance**. Some of the earliest and most outspoken opposition to Bush civil liberties radicalism -- and the war in Iraq -- came jointly from the Left and from

the [Cato Institute](#). Religious rights groups scared of federal government oppression have long [joined with the ACLU and others in opposing some civil liberties incursions](#), such as the Patriot Act. Controversy over things like TSA patdowns and the corrupt way the Wall Street bailout was manufactured came from both the Right and the Left. The fact that it's Tea Party Sen. Rand Paul [willing to question](#) the value of American financial and military assistance to other nations (including to Israel) -- while Democrats attack him for that brave position -- further underscores the potential here. And in other nations -- such as [Britian](#) -- one finds a [genuine left-right alliance](#) against the political establishment's relentless assaults on civil liberties.

Both liberal and conservative ideology can and should sustain popular opposition to ongoing reductions in civil liberties. It's the political establishment -- regardless of the party to which it belongs -- that is incentivized to seize always-greater levels of power in the name of Security. So many (though not all) of our most consequential political disputes are far more about insider v. outsider than they are Democrat v. GOP: a simplistic dichotomy used to keep the populace divided over trivial disputes and thus too fractured to resist the corruption and repression of the bipartisan ruling class. That's why I've long written and spoken about the need for such an alliance as a bulwark against further civil liberties abuses (for the crux of my argument, see the third question and answer in my [2010 interview with *The Atlantic's* Conor Friedersdorf](#)).

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Despite my belief that such an alliance is both tenable and necessary -- and last night's Patriot Act vote underscores that fact -- I'm ultimately quite pessimistic about its ability to produce any meaningful benefits in the near future. That's because there are far too many impulses among ostensibly "limited government" conservatives which conflict with -- and ultimately negate -- any possibility for meaningful civil liberties defenses.

In those rare cases when there has been real opposition on the Right, it has been grounded in a fear that **they** will be subjected to the abuses they oppose. Christian groups were petrified that Patriot Act powers would be used by federal officials to disrupt their religious liberty. Anger over TSA patdowns occurred on the Right only because good white Christian Americans (rather than dark American Muslims) were being inconvenienced. And the newfound right-wing concern for the Constitution stems from the belief that Obama (unlike Bush) will use the Executive Branch's ability to transgress Constitutional limits in a way that harms conservatives. It's very self-interested -- and unprincipled -- advocacy: they suddenly discover their distrust of government power and belief in liberty only when they perceive that their own interests are endangered. That's better than never discovering it -- indeed, the [Democrats' failure to meaningfully oppose Bush's seizure of radical power](#), even if only on self-interested grounds, will redound to their

eternal shame -- but such erratic interest in civil liberties makes for a very unreliable and ultimately counter-productive alliance.

Worse, other impulses in that movement render support for civil liberties abuses inevitable as long as they're directed at other people. The nativism, the anti-Muslim bigotry, the blinding American exceptionalism, the fear-based eagerness to support anything in the name of Security, and the instinctive reverence for GOP political authority all ensure widespread support among the Right -- even those factions incessantly marching under the banner of "limited government" -- for the vast majority of authoritarian assaults on civil liberties. There has been some principled, strong opposition among some libertarian and "paleoconservative" factions on the Right, but those factions are far too small to make much of a difference. For the vast majority of American conservatives -- including the self-proclaimed limited government Tea Party movement -- the instincts that generate support for authoritarian policies easily overwhelm the instincts against it.

Last night's unexpected Patriot Act vote illustrates the tantalizing promise of such an alliance. Things would be vastly improved on the civil liberties front if the American Right was even minimally faithful to the political principles they claim to support. But the nature of that movement means that last night's vote is far more of an isolated aberration than anything likely to change the bipartisan dynamic in a positive way. Indeed, the very weak status of civil liberties in the U.S. is compellingly illustrated by the fact that an alliance with this deeply unprincipled and authoritarian movement is one of the few viable means for stemming the tide of the erosion.