

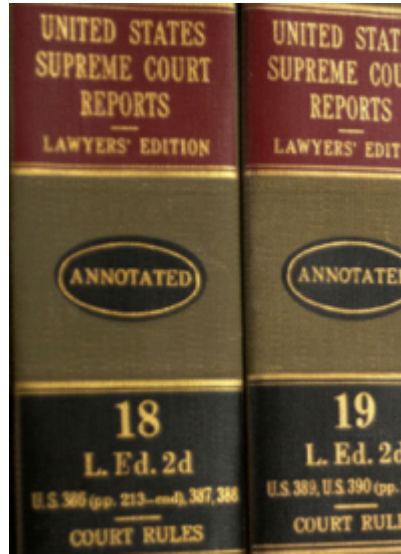


Written by [Bruce Walker](#) on November 24, 2009

Left and Right Seek Common Goals in Supreme Court

The standard ideological spectrum of a “Right” and “Left” sometimes fails to explain politics. An article in the New York Times on November 24 helps highlight how the traditional spectrum can be more confusing than helpful. The Supreme Court, in the next few months, will be deciding some cases which deal with the vagueness and the breadth of federal criminal laws.

While the Libertarian position has always favored the least government possible, which sometimes placed it alongside socially liberally groups that favor ending the war on drugs, legalizing prostitution, and so forth, more traditionally conservative groups, like the Heritage Foundation, the Federalist Society, and the CATO Institute have closed ranks with groups that have usually not been considered conservative.



The ideological alliance covers certain areas of criminal law and procedure. The criminalization of almost everything means that prosecutorial discretion now trumps almost every other decision in the criminal justice system. Behavior that almost no one would have considered in the past to be “criminal” has grown as federal legislators decide to intrude into every area of life. Former Attorney General Ed Meese noted that it was a violation of federal law to give a false weather report. Another strand of the alliance deals with a wildly disproportionate civil punishments for drug offenses, with Professor Cassell at the University of Utah noting that current laws allow the forfeiture of a yacht for a single marijuana cigarette. The broad powers of the federal government under the Patriot Act appear likely to be another area of de facto alliance between groups that disagree on many other issues.

Does this mean that what we have thought of as the permissive Left and the socially conservative Right suddenly agree on the underlying issues involved? No. What it means is that a lot of diverse groups are beginning to worry about whether federal criminal law is the safest and most effective way to implement their beliefs.

The legalization of drugs, for example, would not mean that socially conservative groups would find the use of narcotics to be morally acceptable. Many of these groups currently oppose immoderate consumption of alcohol and the use of tobacco, even while they would oppose the prohibition of these products. The ideological alliance suggests a growing consensus that individual Americans or groups of like-minded Americans have the right and the duty to argue against destructive and immoral behavior, even while these groups disagree on what is destructive and immoral behavior.

Religiously serious Christians and Jews have long had theological positions on behavior like adultery, drunkenness, pornography, and related issues that are much more restrictive than the legal system allows. As is true with other areas of religious belief and conduct, religious Americans have moved away



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from using government to promote their beliefs and moved toward moral suasion and argument.

The social position of these conservatives is very different from those on the Left who have embraced open marriages, drug experimentation, and similar types of behavior that they believe should be legal and also should be considered morally acceptable. This ideological alliance appears certain to end on certain issues. Conservatives, for example, believe that abortion is murder and the right to life is constitutionally protected. Requiring that states allow homosexual marriage would also appear to be an area in which fundamental definitions of conservatives and liberals clash.

Nevertheless, the alliance of groups so far apart on the notional “ideological spectrum” gives some idea of just how big, and scary Big Brother has become to many Americans. The Supreme Court is usually considered to be divided into justices on the Left and justices on the Right. How these justices respond to the common concerns of liberal and conservative groups in pending court cases will tell us much about the future of constitutional liberties.



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