

# Why I am Not a Libertarian

Libertarians are good at explaining why the market works and why government fails, and they have made important policy initiatives in areas such as school choice. On the other hand, they actively oppose laws prohibiting obscenity, protecting unborn children, promoting marriage, limiting immigration, and securing American citizens against terrorists. These positions flow from core principles that have more in common with modern liberalism than with the American founding, and which threaten to erode our constitutional order even further.

The attraction of libertarianism is also its main defect: it offers neat solutions to complex problems. Unfortunately, reality is far more complex than libertarians acknowledge. Only conservatism offers principles adequate to that reality. Consider ten claims libertarians often make:

1. *"The Founders of the American political order were libertarian."* Although the American Founders believed in limited government, they were not libertarian. The Constitution was designed for a federal system of government, specifying and limiting national powers and leaving to the states the exercise of their customary powers to protect the health, safety, morals, and welfare of their citizens. None of the American founders challenged these customary state powers, nor did they attempt to repeal them. Even on its own terms, the Constitution provides for powers that many libertarians would object to, such as establishing post offices, granting patents, regulating commerce among the states, and suspending the writ of *habeas corpus*.

2. *"Conservatism fears new ideas because it has no distinctive principles of its own to oppose them."* This claim, made by F.A. Hayek, is simply false as applied to American conservatism (as Hayek himself knew). American conservatism seeks to conserve the principles of justice that lie at the

root of the American political order, what might be called Natural Law Liberalism. These principles, enunciated in the Declaration of Independence, are rooted in nature, which fixes the boundaries to all authority. They include “the Laws of Nature and Nature’s God”; “self-evident” truths such as “all men are Created equal” and “are endowed by their Creator with certain unalienable Rights”; and a clear statement of the end of government, to “secure” rights and to “effect [the] Safety and Happiness” of the governed.

3. *“Only individuals exist, therefore there is no such thing as a ‘common good.’”* The statement reflects the corrosive nominalism that Richard Weaver decried in [\*Ideas Have Consequences\*](#), and which fatally undercuts the principled limits to coercive authority identified above. Every human association, whether a marriage, business partnership, or sports team, has a common good, or why would it exist?

Common goods are not substantial entities standing over and against individual persons; they *are* the good of individual persons. But this does not mean common goods are always divisible into individual shares, like a cake. An orchestra, a marriage, an army cannot be divided without being destroyed. Within such associations individual persons exist as bandmates, spouses, and soldiers.

The common good of the political association consists in the ensemble of conditions in which persons and associations can more easily flourish. These are nicely summarized in the Preamble to the Constitution of the United States: “to . . . establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity.”

4. *“The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.”* The “harm principle,” first formulated by J.S. Mill, is a moral claim. It cannot be

derived from moral skepticism without committing a self-referential fallacy: The argument, "We don't know what is right or wrong, therefore it is wrong to do x," is obviously invalid.

As a moral claim, the harm principle is not neutral with respect to competing conceptions of the good. Underlying it is the conviction that the good for human beings is to live according to one's own conception of what is good, and to live in a society in which that freedom is protected. For the sake of this conception of the good, it requires the repeal of legislation enacted by those with a different conception of the good. It thus deprives them of their right to choose and live according to their own conception of the good. In effect, libertarians wish to compel other persons with whom they disagree to live in a society that these others find, often with very good reason, to be hostile to human flourishing.

Further, the harm principle is neither self-evident nor demonstrably true. It certainly cannot apply to children and mental incompetents, as Mill himself knew, and this concession significantly undermines the principle.

The greatest objection, however, is the narrow construction Mill gives to it. For him, as for other libertarians, the principle only applies to bodily harm. But why deny the existence of moral harm? If it is true that some actions are intrinsically self-destructive or self-corrupting, then it is also true that encouraging such actions can cause harm to others. Prostitutes, panders, pushers, and pimps all profit from the moral corruption of others. Why should society be forced to treat these actions with indifference because of a questionable moral claim like the harm principle?

5. "*Conscription is Slavery, and Taxation is Robbery.*" This is Murray Rothbard's succinct summary of the anarcho-libertarian objection to politics. Anarcho-libertarians are opposed to conscription and taxation *on principle*. What gives people

calling themselves "the state," they ask, the moral right to do that which, if done by "private" persons, everyone would call criminal? (Rothbard, consistent to the point of absurdity, would even prevent parents from restraining their run-away toddlers.) Because non-anarchist libertarians also regard all coercion as evil, this objection presents some difficulty for them.

Conservatives do not regard coercion as evil, *simpliciter*. Some limits liberate. Human beings enter the world utterly dependent, and they require for their security and development the authoritative and sometimes coercive direction of parents, teachers, police, soldiers, and judges. There are many subtle threads of coercion, conservatives argue, that make social cooperation possible.

Outside the bounds set by natural right, however, coercion is tyranny. It has been the greatest achievement of Western civilization to recognize the basic human needs, interests, and inclinations that make coercive associations necessary, to carve out their rightful scope and limits, and to bring them under the discipline of reason and the rule of law. Civilization depends upon citizens (*cives*), members of a political association (*civitas*) who understand and are grateful for the gift of free government, attached to its principles, and prepared to defend it against all threats, including free riders who would exploit the system for their own private advantage. Libertarians often treat this difficult achievement like mere scaffolding that can now be kicked down for the sake of a utopian vision that has never existed and never will.

6. *Virtue cannot be coerced, therefore government should not legislate morality.* Coercive law cannot make people virtuous. But it can *assist* or *thwart* individuals in making themselves virtuous. Law is both coercive and expressive. Not only does it shape behavior by attaching to it penalties or rewards; it also helps shape attitudes, understandings, and character.

Libertarians who doubt this point can examine the difference in attitudes toward racial discrimination in America before and after the Civil Rights Act of 1964, or the availability of pornographic materials before and after *Roth v. United States* (1957), or the stability of marriage before and after the introduction of no-fault divorce laws in the 1970s. The law, both by prohibition and by silence, is a powerful signal of acceptable behavior, and thus a powerful influence on character. When the behavior in question involves moral norms that are consequential for the rest of society, it is a proper object of law.

This is *not* to say that the law *must* prohibit every vice or mandate every virtue, as libertarians often suggest. Aristotle, Aquinas, the Declaration itself all make clear that “prudence will dictate” whether the costs outweigh the benefits in concrete circumstances (e.g., difficulty of enforcement; more pressing needs with scarce resources; the danger of encouraging underground crime, etc.). But this is prudence in the service of principle, not mere pragmatism.

7. *Government should not interfere in the free market.* Because they oppose commerce in things that are intrinsically immoral and harmful, such as hard drugs, prostitution, or obscene materials, conservatives are accused by libertarians of opposing the free market. This is false. Conservatives value the free market as much as libertarians, as a means for mutually beneficial exchanges, as an occasion for the exercise of virtues such as creativity, cooperation, industry, honesty, and thrift, and as an indispensable source of information (through the pricing mechanism) for individuals on the best use of resources.

But conservatives oppose the “total market,” in which all human associations, such as families and churches, are falsely remade in the image of ordinary contracts, and in which all voluntary (short of force or fraud) contracts between consenting adults are enforced by law. In the libertarian

universe there are no citizens, only consumers.

For conservatives, private property and the free market are important institutions for human flourishing, but their value and success critically depend upon non-market institutions such as the family and the political association, as well as a moral and cultural milieu favorable to honesty, trust, industry, and other important virtues. When the use of private property and market exchanges have spillover effects that adversely affect these other institutions and individuals, they are subject to reasonable limits by law. This is the understanding of law and morality that lies behind the common law, was embraced by the states after the American Revolution, and although under steady assault by modern liberals and libertarians, continues in America to this day.

8. *The only alternative to libertarianism is totalitarianism.* This is a false dilemma. Between the fantasies of libertarianism and totalitarianism is the wide spectrum of governments that have actually existed through most of human history. The false dilemma is often associated with the slippery slope fallacy: *If people are given the power to coerce in one area, they will eventually coerce in all areas.* Libertarians rarely give the cause or reason why this must be true, and conservatives deny that it is true.

Conservatives recognize the dangers of moral fanaticism, but they insist, with historical evidence to back them up, that the remedy is not to facilitate the debauchery of society by eliminating the props to good moral character, but to reinforce and support those props.

9. *Libertarianism is based upon a realistic understanding of human nature.* Libertarians accuse conservatives of being utopian or naïve about human nature. Self-regarding actions are sufficient for producing a free and prosperous society, they argue. Moreover, power by its very nature corrupts human beings and therefore should be narrowly circumscribed and

vigilantly watched.

Conservatives reply that it is the libertarians who are utopian for failing to give proper weight to the full range of human motives, and to the exigencies of a free society and limited government. They concur with James Madison's observation in *Federalist* No. 55: "As there is a degree of depravity in mankind, which requires a certain degree of circumspection and distrust: so there are other qualities in human nature, which justify a certain portion of esteem and confidence. Republican government presupposes the existence of these [latter] qualities in a higher degree than any other form."

Public virtue alone is not sufficient to secure limited government, but it is foolish to think that it can be dispensed with altogether. If the despotism of George III caused the American Revolution, the virtue of George Washington was necessary to conclude it. "The aim of every political constitution," Madison writes in *Federalist* No. 57, is "first to obtain for rulers men who possess most wisdom to discern, and most virtue to pursue, the common good of the society; and in the next place, to take the most effectual precautions for keeping them virtuous whilst they continue to hold their public trust." Here, from the "Father of the Constitution," is a sober constitutional principle based upon a true realism.

10. "*Freedom works.*" A frequent refrain of Hayek, but what does it mean? Weapons also "work," though not necessarily for good. Freedom cannot be evaluated apart from the ends that it serves. John Winthrop, in a passage Tocqueville called "this beautiful definition of freedom," once said:

There is a *liberty* of corrupt nature, which is effected by *men* and *beasts*, to do what they list; and this *liberty* is inconsistent with *authority*, impatient of all restraint; by this *liberty*, [we are all inferior]; 'tis the grand enemy of

*truth* and *peace* ... But there is a civil, a moral, a federal liberty, which is the proper end and object of authority; it is a liberty for that only which is just and good; for this liberty you are to stand with the hazard of your very lives.

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