

# ACTON INSTITUTE POWERBLOG

## Libertarians, Religious Conservatives, and the Myth of Social Neutrality

posted by [JOE CARTER](#) on TUESDAY, FEBRUARY 21, 2012

When it comes to our view of individual liberty, one of the most unexplored areas of distinction between libertarians and religious conservatives\* is how we view neutrality and bias. Because the differences are uncharted, I have no way of describing the variance without resorting to a grossly simplistic caricature—so with a grossly simplistic caricature we shall proceed:

Libertarians believe that neutrality between the various spheres of society—and especially between the government and the individual—are both possible and desirable, and so the need for bias toward a certain outcome is not only unnecessary, but contrary to liberty.

Religious conservatives, in contrast, recognize that such neutrality between individual and social spheres is illusory and that bias is an intractable aspect of human nature.

If these caricatures are generally applicable (as I believe they mostly are), then it helps to explain how libertarians and conservatives can use language that is similar—if not exactly the same—and yet come to wildly different conclusions.

For example, over a decade ago David Boaz of the Cato Institute helpfully defined the [Key Concepts of Libertarianism](#). One of these key concepts is the “rule of law”:

The rule of law means that individuals are governed by generally applicable and spontaneously developed legal rules, not by arbitrary commands; and that those rules should protect the freedom of individuals to pursue happiness in their own ways, not aim at any particular result or outcome.

I choose this example because it is a statement that, on initial examination, conservatives and libertarians would generally agree with. The reason for this, I believe, is that conservatives have largely adopted the libertarian way of framing such concepts. However, once we consider the statement in the light of the different views of bias and neutrality we can better understand why it is self-contradictory.

Let’s start with the claim that individuals are governed by legal rules that are “spontaneously developed.” While we can all agree that such legal rules should *be applied* neutrally and without bias (that is, generally speaking, what we mean by the rule of law), they are not “spontaneously developed” by a neutral and unbiased method.

All legal rules are made by humans and filtered through human institutions, such as courts and legislatures. They are therefore subject to the various biases of the people who develop the legal rules.

As the judge and legal scholar Richard Posner has said, if judges are not introspective, their candor will not illuminate the actual springs of their decisions. When asked to explain this comment [he replied](#):

If a case is difficult in the sense that there is no precedent or other text that is authoritative, the judge has to fall back on whatever resources he has to come up with a decision that is reasonable, that other judges would also find reasonable, and ideally that he could explain to a layperson so that the latter would also think it a reasonable policy choice. To do this, the judge may fall back on some strong moral or even religious feeling. Of course, some judges fool themselves into thinking there is a correct answer, generated by a precedent or other authoritative text, to every legal question.

What Posner is saying is that the legal rules that we think are “spontaneously developed” are often influenced by “strong moral” or “religious feeling.” This complicates Boaz’s claim that these rules should,

. . . protect the freedom of individuals to **pursue happiness in their own ways, not aim at any particular result or outcome.**[emphasis added]

If the rules are biased in favor of a particular moral or religious feeling, then they are biased in favor of a particular result or outcome and are likely to be unsuitable for protecting the freedom of individuals to “pursue happiness in their own way.”

To take an example from the realm of bioethics, if a judge is influenced by his “religious feeling” that human life has an intrinsic dignity, then it can lead him to develop legal rules that hinder individuals from pursuing happiness in their own way (e.g., having an abortion).

When libertarians recognize this truth (which happens too infrequently) they search for ways to do the impossible: remove the human bias from the system. Or, more precisely, what they prefer is to *add more libertarian bias* into the system since for their conception of the rule of law to be coherent requires that the majority share the *exact same bias* toward the ideal of unfettered individualistic pursuit of self-defined happiness.

Needless to say (at least saith the conservatives), that ain’t gonna happen.

As I mentioned earlier, conservatives generally recognize that such neutrality is illusory and that bias is an intractable aspect of human nature. This puts us about a half-step ahead of our libertarian cousins, for while we may come to the recognition more quickly we are left with the same need for everyone (or at least the majority of folks) to share our bias in order to get what we prefer.

(This is partially why conservatives are in favor, as G.K. Chesterton said, of giving votes to the most obscure of all classes, our ancestors. By including the “democracy of the dead” we ensure we have a plurality on our side.)

Since libertarians and conservatives end up in the same place, desiring to [immanetize the eschaton](#) by getting everyone to share our general bias, why should we prefer the conservative position? Because conservatives are able, though not always willing, to harness bias and use it to our advantage by directing it toward ordered liberty—the only type of liberty that is sustainable.

By placing an overemphasis on individual liberty without an equal accent on individual virtue, the libertarian unwittingly erodes the foundation of order on which her political theory stands.

Order is a necessary precondition of liberty and must be maintained from the lowest level of government (the individual conscience) to the highest (the State). The individual conscience is the most basic level of government and it is regulated by virtues. Ordered liberty, in this view, is not an end unto itself but a means by which *eudaimonia* (happiness or human flourishing) can most effectively be pursued. Liberty is a necessary component of virtue, but it cannot serve as a substitute.

Religious conservatives recognize that all institutions have a bias either *toward* or *away from* virtue and ordered liberty. We can either harness and direct the bias of institutions towards a free and virtuous society characterized by individual liberty and sustained by religious principles or we will lose both order and liberty. There is no neutral ground in which the seed of freedom can grow uncultivated.

\*Throughout this post, the terms "religious conservatives" and "conservatives" are used interchangeably to refer to political (though not necessarily theological) conservatives whose views are influenced and sustained by religious principles. The way I use the terms here will likely also apply to many people who would self-identify as "religious libertarians." People are free to choose their own labels, of course, but I [agree with Russell Kirk](#) that "If a person describes himself as "libertarian" because he believes in an enduring moral order, the Constitution of the United States, free enterprise, and old American ways of life-why, actually he is a conservative with imperfect understanding of the general terms of politics."