

Cicero and the Constitution

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[00:00:00] Jeffrey Rosen: Hello, friends. I'm Jeffrey Rosen, president and CEO of the National Constitution Center, and welcome to We The People, a weekly show of constitutional debate. The National Constitution Center is a nonpartisan, nonprofit chartered by Congress to increase awareness and understanding of the constitution among the American people.

[00:00:20] Jeffrey Rosen: In November, we hosted a great conversation about Cicero, a Roman statesman and philosopher and his essential influence on the American founding. We were joined by Scott Nelson, author of *Cicero, Politics and the 21st Century*, Benjamin Straumann, author of *Crisis and Constitutionalism: Roman Political Thought from the Fall of the Republic to the Age of Revolution*, and Caroline Winterer, author of *The Culture of Classicism, Ancient Greece and Rome in American Intellectual Life*.

[00:00:48] Jeffrey Rosen: We're sharing the episode as part of our best of 2022 Townhall series. Enjoy the show and happy holidays. Have a wonderful new year, dear We the People friends, and look forward to reconvening in 2023.

[00:01:02] Jeffrey Rosen: Welcome Scott Nelson, Benjamin Straumann, and Caroline Winterer. Caroline, we were honored to have you join last year for a great program on the classics and the founders. Today, you're teaching a class at Stanford now on the influence of the classics on the founders and Cicero's *On Duties* was by some measures the most frequently cited text in the founding era. Introduce our audience to this wonderful topic of what Cicero's influence was on the founding generation.

[00:01:32] Caroline Winterer: Well thank you for having all of us here today. It's a pleasure to be back. The founding era loved Cicero and the other Romans of the late republican period because they saw themselves reliving that moment where they felt that they were on a precipice between political liberty and political despotism, with despotism symbolized by King George III of England and his minions in Parliament. And so they looked to people like Cicero, who they saw as the last embattled defenders of Roman liberties against the over weaning, tyrannical forces that were gathering on the horizon.

[00:02:17] Caroline Winterer: That is why Cicero not only started as a major component of the cultural infatuation with antiquity in the 18th century, but that he in fact continued in American education and political life all the way up until the Civil War era, because one lesson that Americans took away from building a republic was that republics are fragile political entities, and that you must always be on guard, you can never relax your guard, and that you need to constantly read Cicero.

[00:02:52] Caroline Winterer: I'll read you just a quick quotation that John Adams wrote to his son, John Quincy, who was all of 14 years old, so you can imagine the original helicopter parent of John Adams, but he's in the middle of a long letter where he's telling him what to read. He says, "In company with Sallust, Cicero, Tacitus, and Livy, you will learn wisdom and virtue. You will ever remember that the end of study is to make you a good man and a useful citizen."

[00:03:22] Caroline Winterer: So, this is not education for creativity. This is education to uphold that most fragile and wonderful of political entities, which is a republic in the style of Rome.

[00:03:33] Jeffrey Rosen: So inspiring. What a great introduction. Thank you so much for signaling and highlighting John Adams and his letters, and it's so striking, as you say, to see John Adams exhorting John Quincy Adams to read Cicero, who they read together, and John Quincy Adams to exhorting his own sons to read Cicero, and Quincy eventually taking a motto from the Tusculan Disputations as his own motto my seeds will bear fruit in future generation. So committed was he to Cicero's influence. Just marvelous.

[00:04:07] Jeffrey Rosen: Benjamin Straumann, in your really powerful new book, *Crisis in Constitutionalism: Roman Political Thought from the Fall of the Republic to the Age of the Revolution*, you have a very powerful chapter on Cicero's influence on constitution making in particular, and you argue that far from embracing the traditional classic republican emphasis on virtue above all, Cicero anticipated enlightenment thinkers who cited him directly by insisting on the need for separation of powers for the protection of private property.

[00:04:41] Jeffrey Rosen: Tell us about Cicero's unique blending of the classic and liberal influences and- and how central they were at the founding.

[00:04:48] Benjamin Straumann: Yeah, thank you very much for having me and thanks a lot for this great question. Yeah, so I think one of the key reasons why Cicero was so singularly influential, and this really merits emphasis, because there has been this long debate in historiography about relative influence on the American founding and framing of the constitution, and there has been this long debate, is Locke really the person, or is it really the commonwealth men of the 17th century as English republicans, or is it really Montesquieu? After all, there's Blackstone.

[00:05:23] Benjamin Straumann: In this whole debate, what's maybe a little bit forgotten is that someone like Cicero, who's usually perceived as a mere ornament, has really exercised huge influence, not least actually via all those figures such as Locke or Montesquieu or Blackstone.

[00:05:37] Benjamin Straumann: But also in his own right, and the reason I think why he's become then such an extremely popular thinker and writer in the Revolutionary Era is that he promised not only a diagnosis of the collapse of a large scale extensive republic the Roman Republic, but he also promised to a certain extent the remedy against this kind of collapse.

[00:06:02] Benjamin Straumann: The remedy that he put forward was at least to a large extent, it was a legal remedy, or it had to do with institutions and with law more than with virtue. So, that's another reason why I think that's maybe a bit receded from the scholarly focus, because usually classical influences, everyone thinks it's about virtue, but Cicero was actually, when you read him, rather skeptical about the reach of virtue and what it can do for a political order, and that skepticism founders such as Adams and Wilson and Hamilton, Madison, many ways shared.

[00:06:40] Jeffrey Rosen: Wonderful. Thank you so much for that and it really is fascinating, as you say, to see Cicero emphasizing the goal of government to be to protect private property not to cultivate virtue, to see Locke directly citing Cicero for that conclusion and then, as you say Madison getting his Lockean conclusion from Cicero as well.

[00:07:02] Jeffrey Rosen: Scott Nelson, in your forthcoming book, Cicero Politics in the 21st Century, you distill lessons for today from Cicero and the Western world, and you talk about in particular, his book On the Republic, on the Commonwealth, which gives us the constitutional thought of Cicero and its emphasis on separation of powers. Tell us about those constitutional principles that are found in On the Republic and what lessons they can give us today.

[00:07:29] Scott Nelson: Sure. And thank you very much for having me here. I mean I think that Cicero's political thought has a few different pillars, certainly the constitutional one but also I do think that on Duties is important as well, the role played by reason in speech in the public sphere.

[00:07:47] Scott Nelson: I mean, after all, we pride ourselves in our republics today on the power of persuasion. Not forcing conclusions or outcomes, but rather in persuading other people, because we believe that we all share in reason. That's actually part of Cicero's notion of the natural law that all human beings share in reason, and that actually there is a law that precedes even political community.

[00:08:14] Scott Nelson: So, I think that this is an important point for Cicero because it means that, let's say majority opinion is not necessarily what makes law. It's not just what the masses say. There is actually a universal objective law out there and a just political community is just only insofar as it respects that kind of law.

[00:08:40] Scott Nelson: I think that once you've established that point, it elides rather easily into the Natural Rights Doctrine of the founding fathers, so I don't think you have to make a very

great leap from that notion to the notion that there are certain natural rights that are self-evidence that belong to us all, the right to life, liberty, and the pursuit of happiness, or life, liberty and property.

[00:09:04] Scott Nelson: I think that another major issue of importance for Cicero in his *De Re Publica*, for example, is the notion of balance so that was the mixed regime idea. I mean, one of the great issues for the ancient philosophers is, "Well, what exactly is the best regime? Is it a monarchy, an aristocracy, or a democracy?" And, Cicero says, "Well, actually, we want to have a blend of all these things. A blend not just because they can all check each other and balance each other out, but also because every single one of these regimes has certain virtues, and we want to try to harness the virtues of each of them and- and combine them together. So, a democracy's virtue is that it preserves the liberty of the people, and we want to create a free state."

[00:09:50] Scott Nelson: The virtue of a monarchy is that in times of crisis, well, when you need decisions to be made and actions to be taken, then it's much easier for a single individual to take that responsibility and do it than than to have everybody talking with different ideas.

[00:10:07] Scott Nelson: Finally the aristocracy is supposed to provide a moderating kind of influence between the two, and in order for it to do that, I mean, to moderate against the tyranny of one, on the one hand, but also the tyranny of the majority on the other hand, and I think for Cicero, it's important that those people be the best citizens, that they be good citizens, virtuous citizens, because if they're not, then the regime will become corrupt, and then they'll set a bad example for everyone else.

[00:10:36] Scott Nelson: I think that those are, in a nutshell, some of Cicero's ideas.

[00:10:40] Jeffrey Rosen: That was just a wonderful summary of Cicero's ideas, and you so helpfully help us understand the connection between his ideas of natural law derived from divine reason or nature and the need for balance among the various orders of government and also within the soul itself, that kind of harmony and balance that we find that leads to private and public happiness and the duties that that creates for citizens to perfect themselves so they can achieve that balance in themselves and in the polity.

[00:11:12] Jeffrey Rosen: Caroline, so helpful to think about Cicero's thought as an integrated whole, both his moral and his political thought. Why don't you introduce us to some of the major elements of it, the connections between them, and I'll just introduce this central distinction that comes up again and again in Cicero between reason and passion. And, in *On Duties*, he says, "We must keep ourselves free from every disturbing emotion or passion, not only from desire and fear, but also from excessive pain and pleasure." To what degree does that duty to moderate our passions in light of reason suffuse his moral and political thought?

[00:11:52] Caroline Winterer: Well, I can only pretend to represent the founders view of Cicero rather than what Cicero really was, 'cause they had a very not a narrow way of viewing

the Romans and the Greeks, but a very kind of task oriented view of the Ancient Greeks and Romans. They took what they needed to build their republic.

[00:12:12] Caroline Winterer: You're absolutely right, that one of the things that they really focused on in Cicero and others in the ancient world is the necessity of reason to guide us and, of course, the enlightenment of the late 18th century is the moment when many philosophers, political philosophers, moral philosophers, are beginning to think about what it means to have reason and how we need to harness reason in order to form republics.

[00:12:42] Caroline Winterer: In order to have reason, you have to imagine what its opposites are in order to frame who the enemies of the republic might be. So, passion becomes the great bug a bear of 18th century political thought, and they begin to fear all of those people in society or institutions in society that strike them as the opposite of reason and of the kind of balanced order that the epicureans were in favor of.

[00:13:13] Caroline Winterer: So, that might be, for example, women, who were known to be nothing but entirely constituted of the passions and were therefore in republican political thought agents of chaos and agents that would very likely bring about the downfall of the republic, because the opposite of manly civic virtue, which of course has the Latin word for man within it, was feminine frivolity or luxury. So, they were on the lookout against these sorts of things.

[00:13:48] Caroline Winterer: Slaves could also be sources of the passions and debauchery, all kinds of music that made you lose your mind in a kind of sensual pleasure rather than thinking of the republic. These things became problematic in the 18th century in part because the founders were reading people like Cicero who were emboldening them to think only of the sort of stern, manly virtues along with people like Tacitus and Sallust a little later who would tell them about how to bring about the bedrock of the republic through a control of reason rather than the passions.

[00:14:28] Caroline Winterer: Probably one of the greatest exponents of this that your listeners will have heard of is Thomas Paine in Common Sense. And the title of Common Sense doesn't mean common sense in the way that we think about it today as look both ways before you cross the street. Right? That's how we think of common sense.

[00:14:49] Caroline Winterer: But, what he meant was that you are using your five senses, and we have those senses in common, and if we listen only to those five senses, then we will build reasonable republics. If we start being influenced by other things than our senses like the passions, then you might as well forget about it. It'll be a despotism before you know it.

[00:15:11] Caroline Winterer: So, that is the sort of passion, reason, duty influence that they are looking for in Cicero.

[00:15:19] Jeffrey Rosen: So interesting reminding us of the fact that that word virtue, as you say, is the word for male talking about this place of women and enslaved people and when we

met last you called our attention to how classically educated women like Abigail Adams, who signed herself Portia, would embrace that idea of restraining your passions so that you could achieve this kind of virtue, and the music point is so great as well. Several of you quote John Adams invoking Handel's music as the model of balance and harmony, and you remind us, Caroline Winterer, that there were other kinds of music that excited the passions in ways that were considered bad for the soul.

[00:15:58] Jeffrey Rosen: Benjamin Straumann, help us understand that reason/passion distinction, and your book does such an important job showing us that the roots of natural law philosophy were really in Cicero and all of those 18th century contractarian theorists, including Montesquieu and Locke, were relying on Cicero for the idea that we're born in a state of nature with certain rights and duties, and that the government action that violates those common constitutional norms, use, as you put it, are beyond the law, and we have a duty to align ourselves with nature and live our lives according to divine nature. Help us understand that in Cicero's thought.

[00:16:38] Benjamin Straumann: This distinction between reason on the one hand and the passions on the other hand is, of course absolutely key to Cicero's thought and he has inherited it from the Greek moral philosophers. But, the way he handles it is interestingly different and I think quite original. It's not quite as the Greek moral philosophers handled it in many ways.

[00:17:02] Benjamin Straumann: So, one key ingredient in Cicero's thought is, and this is to do with something Scott mentioned earlier, it's the fact that reason is seen as a capacity to gain insight into what the natural law demands of us, what the natural law consists in.

[00:17:21] Benjamin Straumann: But now, for Cicero, this is no longer, say, the stoics also have a similar idea, but they think it's really just very few, very rare individuals, the stoic sages, those who are really wise, who actually can gain access to this natural law.

[00:17:36] Benjamin Straumann: Cicero, however interestingly expands the scope of those who can gain insight. He thinks in principle, we can all just as a matter of being human beings, actually, and as a matter of being part of the human species as he puts it, that in and of itself is enough to gain insight into the rules of a natural law and into the rights and obligations that this natural law generates.

[00:18:04] Benjamin Straumann: Of course this universalizing tendency is quite interesting, but it goes also hand in hand with a kind of downgrading of the ambitions of the natural law in a way, because in Greek philosophy, usually what this all does is that if you're really rational, then what beckons is happiness. You get the good life. That's a pretty neat prize, right? That's kind of hard to get, but if you are really supremely rational, then you will get the good life.

[00:18:33] Benjamin Straumann: In Cicero, there's a lot of indications that he's a skeptic, so he's not a stoic. He's a skeptic. He's worried about us not having really a solid conception of the good life and of what we need to get there. So, he writes in other work on ends and what's the

goal of human life, and there he discusses all the Greek proposals for that, but the dialogue ends somewhat on an operative note. We can't really figure this out.

[00:19:08] Benjamin Straumann: So, what he comes up with in other works such as in his political theories, the republic, the laws, and in this strange mix of political theory and moral philosophy that is the *On Duties*, the *De Officiis*. What he comes up with there is a kind of natural law for skeptics. We may not know the highest good. We do not have access to that, to a solid conception of the highest good, but what we do know is it's natural law that generates rights and obligations for us who are not sages.

[00:19:39] Benjamin Straumann: In *De Officiis* even generates some obligations vis a vis slaves, which is quite unheard of in a Roman context, of course. There's really this push of the idea that we all have access to reason to what the natural law demands.

[00:19:57] Benjamin Straumann: I think, in a way, the most important part. What this entails is, of course, that virtue's great if you can get it, but in his political theory, he always, what Scott mentions, his qualms about the good constitutions, the simple, good constitutions usually you have a really just king.

[00:20:19] Benjamin Straumann: That's neat, but even the justest kings, King Cyrus, the Persian king who had a good reputation, he will invariably tilt into the worst tyrant of all. He says, because virtue it's not to be always trusted. You can't really be sure that it always works. The same with a good government of the few. Some aristocrats, same danger lurks there. Of course, the same with the government of the many, a kind of democracy. If they're all virtuous, that's all for the better, but it's not very stable, Cicero thinks. Virtue isn't stable enough.

[00:20:56] Benjamin Straumann: So, when it comes to political order to all of us in the aggregate, the in a way, he moves reason onto the constitutional domain, you might say. Reason sits in the rules that govern all of us. So that is the broad tendency that I think is attractive to some of the founders.

[00:21:14] Benjamin Straumann: Just one quote, because John Adams is usually seen as this kind of the last classical republican who banks on virtue, but, of course you can read in Adams' defense of the constitutions of government of the United States. In the first volume, you can read sentence such as this one, "It's not true," I'm quoting Adams, "It's not true in fact that any people ever existed who loved the public better than themselves, their private friends, neighbors, etc., and therefore, this kind of virtue is as precarious a foundation for liberty as honor or fear. It's the laws alone that love that really love the country."

[00:21:53] Benjamin Straumann: So there you can see this Ciceronian skepticism vis a vis where it's a nice thing. Individually, we try to get to it, but in the aggregate, let's not rely just on that.

[00:22:06] Jeffrey Rosen: Hmm. Such a great and clear melding of Cicero's ideas of natural law which were the foundation for the enlightenment, as you say, with his feeling that virtue is not a stable foundation for government, and that the one, the few, and the many, and as you note, that comes from Polybius because they're unstable, you need separated powers in order to ensure that they don't degenerate.

[00:22:31] Jeffrey Rosen: Scott Nelson, help us in this great synthetic way that Caroline and Benjamin have been doing in understanding, using that reason, passion distinction as a core how that plays out in his political philosophy and this idea of a well tempered constitution. Tell us about reason, passion, and the constitution.

[00:22:52] Scott Nelson: Sure, yeah. Actually just one of the things that Benjamin was mentioning reminds of how even virtue can go too far. Even virtue poses certain dangers. It reminds me of that bit from Montesquieu's Spirit of the Laws where he says, "Who'd have thought even virtue has need of limits?"

[00:23:08] Scott Nelson: I think that thinking is very much latent in Cicero as Benjamin has mentioned. I would point for example to well, in On Duties when he talks about decorum or translated as propriety of seemliness it includes moderation as well. One of the functions of seemliness for Cicero is that it keeps some of these other virtues, some of these other duties in check.

[00:23:33] Scott Nelson: So, greatness of spirit can be taken too far. The key example of that would be a guy like Caesar. Caesar was full of a great deal of greatness of spirit, it ended up outstripping justice. He lost sight of justice. He went too far. So, he needs to have more moderation.

[00:23:52] Scott Nelson: In terms of the reason passion split, one of the things I would add there is that I think Cicero thought that the passions, if they get out of hand, then, of course, you can end up in a sort of despotism, which is why you've gotta keep them under control, and Caesar's another interesting example of that, because there's a lot of people, for example, who might look at politics today and say, "Well, it's about we wanna get power," for example, and Caesar's a wonderful example of how one, let's say, can get power.

[00:24:23] Scott Nelson: Well, in fact, it's not. Not just because he's killed by people who don't like the fact that he got power, but his power ends up undermining itself in another way. Very late in life, when he's dictator when he's sole dictator of Rome, Cicero wrote a eulogy of Cato, and then Caesar, incensed at this, writes an anti-Cato in response.

[00:24:46] Scott Nelson: Now, to Caesar's credit, he chooses actually to respond with words and not with sword, even though he very well could have responded with violence instead. But the effect of the anti-Cato was really just to remind the populace of just how virtuous or persistent or awesome the character Cato the younger was. And, isn't that such a poignant thing? 'Cause

Caesar fails to achieve his goal of trashing Cato's name. Isn't that poignant? Because Caesar, the most powerful man in Rome at the time, is powerless against the ghost of Cato.

[00:25:22] Scott Nelson: That speaks, I think, very much to also, Cicero's Philippics written at the end of his life. The immediate effect of Cicero's Philippics is that they irritate Mark Antony, and it ends up with Cicero's head and hands chopped off and nailed to the rostrum.

[00:25:36] Scott Nelson: But the long term effect of such a noble and at times very humorous work, as the Philippics, is that he makes such an eloquent case for liberty against tyranny.

[00:25:49] Scott Nelson: So, I think what I was going to say, though, in terms of reason and passion is that even a guy as awesome and as and as full of greatness as Caesar, because he cannot control his lust for power, he's undone by that, and he ends up bested by a ghost, effectively.

[00:26:06] Scott Nelson: Cicero, by contrast, would say, "Well, if you're attaching your happiness to, let's say, the acquisition of wealth, or popular acclaim, or power, for that matter, then you're attaching your happiness to something that is inherently fickle, volatile, and dependent on other people." Because, all of those things are dependent on other people and on circumstances.

[00:26:29] Scott Nelson: The only thing over which you have perfect control is your own individual virtue, your own inner virtue. If you cultivate that, then you're guaranteed to be happy regardless of what the world throws at you. I think that's effectively the conclusion that he arrives at the end of his Tusculan Disputations in book five, that virtue is the key to true happiness. I can't help but feel that this must have been at the backs of the minds of the founding fathers when they talk about life, liberty, and the pursuit of happiness.

[00:27:01] Jeffrey Rosen: Wow. Well, it certainly was, and as it happens, I'm working on a book now called Pursuing Happiness, the ancient wisdom that inspired the founders quest for the good life, and I'm so struck by the fact that Cicero's Tusculan Disputations, the book that you mentioned is cited repeatedly by so many of the major founding fathers as their definition of the pursuit of happiness, and at the end of his life, Thomas Jefferson would send to anyone who wrote to him, kids of friends who were going to law school or students of all kinds, who asked him for the definition of happiness, a passage from the Tusculan Disputations.

[00:27:38] Jeffrey Rosen: I want to read it, because it just sums up the definition of the pursuit of happiness you just gave us, that controlling your own thoughts to cultivate the tranquility of mind that will allow us to be free from the vagaries of fortune. And this is the passage that Jefferson quoted, and it was also quoted by Benjamin Franklin in his 13 Virtues, and by John Adams, by John Quincy Adams.

[00:28:03] Jeffrey Rosen: Here it is. Therefore the man, whoever he is, whose soul is tranquilized by restraint and consistency, and who's at peace with himself, so that he neither

piners away in distress nor is broken down by fear, nor consumed with a thirst of longing in pursuit of some ambition, nor maudlin in the exuberance of meaningless eagerness, he is the wise man of whom we are in quest. He is the happy man.

[00:28:30] Jeffrey Rosen: Caroline Winterer, I'm so eager for all of your thoughts and insights about the significance of this definition of happiness from the Tusculan Disputations. What is the significance, and why did so many of the founders quote it?

[00:28:42] Caroline Winterer: First of all, thank you for reading it out again, 'cause it's so inspiring. Today, we will attempt that version of happiness.

[00:28:50] Caroline Winterer: I think happiness is one of those 18th century key words in the way that liberty and reason is in that it's simultaneously everywhere, and yet we have a hard time pinning down exactly what they meant by it, a little bit like today when we talk about nature. Everybody means something different by it, yet, we all agree that it's something very, very important.

[00:29:17] Caroline Winterer: So, in the 18th century, as you've just said, there is a definition of happiness from the ancient world that is all about a kind of inner inner peace. I think of it a little bit as an inner metronome as someone who grew up playing the piano with a task master of a Hungarian piano teacher. There was always a metronome keeping me right in line. That version of happiness is a little bit like that.

[00:29:44] Caroline Winterer: There's another one, though, that is in competition, I think, with that inner definition of happiness. When you look at the way the founders deployed happiness in more public documents, they talk about social happiness and public happiness. They often link those words together.

[00:30:05] Caroline Winterer: And, the Declaration of Independence is the most public of public documents, and it's intended, in some sense, as sort of we're going into business document intended for a European audience, saying, "We're no longer under the aegis of Great Britain. We are hanging our shingle out for business. We are telling you what we're all about, and that you can form trade agreements and political alliances with us."

[00:30:33] Caroline Winterer: So, if you imagine that they knew life, liberty, and social or public happiness then, then that starts to mean something closer to what we mean by national security, in that it's saying that we need life, we need liberty, but we also need a state that is strong enough that it can protect us from external enemies and internal anarchy, insurgence of various kinds.

[00:30:59] Caroline Winterer: I think that it will always remain a mystery what Jefferson mean, 'cause he knew that this document was really intended for this external audience. It's a diplomatic document. Does he mean life, liberty, and internal peace? Or, does he mean life, liberty, and national security for this new and very fragile republic?

[00:31:25] Caroline Winterer: I don't think we're ever gonna know, and I don't actually think we need to decide. I think what's important to know as we think about the American context, is that there are these two ideas that are floating in the air of what the happiness of a polity built on the will of the people really needs in order to survive.

[00:31:47] Caroline Winterer: What I would love is if every American out there re-visited these 18th century ideas of happiness, because they're not the materialistic hedonism that we have today when we think of happiness, like I need a BMW. Or, I guess, I live in Palo Alto, I need a Tesla. Nothing against Tesla. But, a kind of pursuit of material gain, that's not what Jefferson meant. He meant something much closer to what you were saying, Jeff, and something much closer to what I was saying. But, they're all different from what we think of today.

[00:32:27] Jeffrey Rosen: So powerful and so true, and exactly as you say, for Jefferson and the founding generation, happiness was not feeling good, it was being good. It was not hedonism and the pursuit of pleasure. It was virtue and self-mastery. And then, you raised this really interesting question, what's the similarities and differences between that private happiness that comes from internal tranquility and public happiness that comes from national security?

[00:32:51] Jeffrey Rosen: Benjamin Straumann, I'd love your thoughts on how to reconcile those ideas of public and private happiness, and I wonder, Caroline's suggestion made me think, might we say that for Cicero, just as private happiness was achieved by a well-tempered mind, public happiness was achieved by a well-tempered constitution, and we had to find the same balance in our faculties of reason on the private level that we have to do among the branches of government on the public level? Might something like that work?

[00:33:22] Benjamin Straumann: I think that's certainly a very influential image, this analogy of our inward balance but this is seen in analogy to the constitution make of a state is, and that's Plato's idea in his Republic, and to a certain extent, I think Cicero follows this, but because of this skepticism that is not Plato's but very much Cicero's, I think he can't go all the way.

[00:33:55] Benjamin Straumann: So for Cicero, maybe it's more important to have a carved out domain where you actually can have the kind of leisure to philosophize, which is something he himself, of course, does, especially once he's no longer once he's kicked out of politics and can't do anything, and he's on his conscious states so he's thinking about those things. And, in a way, the Tusculans are an expression of that. There, you see him in a kind of, in a very stoic mode, really.

[00:34:26] Benjamin Straumann: But, it's in sharp tension with what he says in other words, so he's a stoic when you catch him as such, and the Tusculans, there he is one. But, it might be the case that for him, it's important that we be able to figure out the, let's say, the correct conception of the highest good and the correct conception of happiness.

[00:34:49] Benjamin Straumann: He's a bit of a fallibilist in that regard. He thinks maybe we'll figure it out, but right now, I don't think he has the confidence that he shows in the Tusculans.

The next day, he will have less confidence. You can see also in his correspondence how these things move around a bit.

[00:35:05] Benjamin Straumann: When it comes to the political order, there I think for sure he does follow Polybius to a certain extent in trying to arrange the institutions of the state such that you do have a kind of, as he put it, well-tempered or balanced setup of a constitutional setup.

[00:35:28] Benjamin Straumann: What he does, and I think what is somewhat new is that he tries to figure out the underlying constitutional order, and he does that in a very legalized manner. He's learned in the Roman law as well, so he uses private law analogies all the time to explain the political legal order.

[00:35:49] Benjamin Straumann: In a way, that moves now in as a remedy to the decay and the collapse of the Roman republic, because he puts forward in his laws, written in the late '50s, perhaps in the '40s, it's hard, there's a bit of dispute about that, but as the republic collapses, and thus there is the looming civil war, already the civil war, he puts forward really a set of laws that he says are formulating natural law and that are supposed to give shape to the state.

[00:36:21] Benjamin Straumann: And, that is important to the founders, of course, because unlike us who are used to the idea that constitutional law is a kind of law this is a pretty novel idea, and usually when people talked about constitutions, also in early modern times, what they meant is just descriptively, how is the state, sociology of the state, basically.

[00:36:40] Benjamin Straumann: But, with Cicero, the founders now start perceiving this foundational order as based in natural law, as Scott pointed, but also as really a kind of law, and it enters constitutional thought. You see Wilson during the ratification debates defend the supremacy clause by saying, "Sure, this is actually law. And, if lower levels of law do conflict with it, then they have to go they have to be declared void, or we have to somehow make sense of this hierarchy."

[00:37:07] Benjamin Straumann: And, I think this hierarchy and really perceiving the underlying legal order as really legal is a pretty influential idea of Cicero's, with which he tries to give fine grain shape and legal shape to the idea of a rational order, rational political order.

[00:37:25] Jeffrey Rosen: So interesting, and you do such a marvelous job in showing us how direct Locke's writings on natural law were in drawing on Cicero and as you say, Locke recommended just two books on ethics, one was Cicero's *On Duties*. And the other, the Bible. So crucially insightful.

[00:37:45] Jeffrey Rosen: Scott, you introduced the *Tusculan Disputations*, which I read, and Caroline introduced us to the distinction between public and private happiness, and I suggested that perhaps one connection between them and Cicero and the enlightenment thought was that personal self-government was necessary for political self-government. We had to find the inner

tranquility of mind and mastering of our unreasonable passions on a personal level in order to be good citizens and have a balanced constitution at a political level.

[00:38:14] Jeffrey Rosen: Might that work, or how would you describe the Ciceronian conception of a relation between public and private happiness?

[00:38:20] Scott Nelson: I mean, I think that they're certainly related. I mean, unfortunately, it's rather banal of me to say, but you sort of need to have both. When what you just mentioned there, it kind of reminds me, though what you just said, but it reminds me of what Friedrich von Hayek once said in one of his essays. He said that if we have to wait for everyone to be virtuous before we can have freedom, then we're gonna have to wait for a very long time, indeed. So we might start with the freedom first even though it might lead to some bad outcomes from time to time.

[00:38:52] Scott Nelson: That's the view that Cicero seems to take as well, because the polity, Rome is not about making citizens virtuous. I mean, it should, we should try to tend in that direction, but liberty comes first, whereas if your goal is ultimately to make everyone virtuous, then that may entail a great deal of restraints on people's liberty.

[00:39:12] Scott Nelson: But in terms of the connection between private and public happiness, I mean, I think that one way that they're connected and one thing that we can certainly learn from Cicero is, well, obviously, moderation. Moderate our expectations. Moderation both of ourselves personally, but also moderation on an institutional level.

[00:39:34] Scott Nelson: But also, we could start to talk about, as Cicero does in *Deo Officiis*, we can start to talk more about duties. Now, I know that's gonna sound like a hopelessly antiquated and terrible thing to say, because we're all inundated all the time with all sorts of duties and obligations, and so we'd much rather talk about rights. But, I think there are psychological reasons why it's useful to talk a little bit more about duties than we do.

[00:39:57] Scott Nelson: When we talk about rights so often, we end up becoming the passive recipients of rights. It's everything that is owed to us by other people, and when we don't get it, then we see ourselves as being victims. Duties actually restores to us as individuals a certain moral agency which the ability to choose to do something, what we should and should not do.

[00:40:21] Scott Nelson: That's actually key to our humanity. So duties, recovering that kind of talk about duties, what it is that we should do, and when I say what it is that we should do, I don't mean what we as a society should do, because if everyone is responsible for something, then no one's responsible for something. What I mean is as Scott Nelson, I need to look closely at my life and decide what it is that I should do. Jeff, you look closely at your life, you decide what you should do, etc.

[00:40:49] Scott Nelson: We may actually find ourselves a lot more empowered, feeling a lot better, and also, incidentally, contributing to our community, to the public good. That brings me

to another point, I mean, because we talk a lot about to the extent that we talk about duties, we talk about, let's say, civic duties. I think Cicero would say to us on that, "Yes, civic duties, very important, but be serious about them."

[00:41:11] Scott Nelson: When you say we as a society should do something, who exactly are you addressing, and what sort of an outcome do you expect? When you blast something off, let's say, into the Twitter space and whatnot, who do you want to listen to you, and what effect do you really want that to have?

[00:41:26] Scott Nelson: Cicero, by contrast, always had a very clear idea of who his audience was. Was it a jury? Was it the assembly of people? Was it the Senate? Was it Caesar, for example? And he had a clear idea of what it was that he wanted to do when he opened his mouth and when he spoke.

[00:41:45] Scott Nelson: And, it's interesting that for us, we live in a world where we are surrounded by words even more so than in Cicero's time, and yet, one of the things that Cicero brings up at the beginning of his *De Oratore* applies even more forcefully in our day than it did in his time, which is that why is it that the one thing that is common to all human beings, the ability to reason and to speak, indeed, that which is most divine in us, that which connects us to the gods, why is it that we so frequently misuse or abuse this very divine gift that we all have? Why do we use it for deceit and fraud, or why do we not use this divine gift seriously?

[00:42:27] Scott Nelson: I think that Cicero would ask us, "Yes, say civic duty's very important, but reflect a little bit more seriously on who you're talking to and what exactly it is you mean to accomplish when you advocate a particular course of action. And, I think in so doing, you might find yourself both happier privately and also it would contribute to the public happiness."

[00:42:51] Jeffrey Rosen: Crucially, wise words and, just as you say, Cicero was so focused on audience, on what you're trying to accomplish, and you just introduced this really crucial reminder of the lost language of duties. Cicero did think that we have a duty to moderate our temper and our expectations and our thoughts, because it would align us with the harmonies of the universe, and that's kind of fallen out of our discourse in a rights-oriented age.

[00:43:18] Jeffrey Rosen: Caroline Winterer, why did the language of duties fall out of the curriculum? In your amazing book, *The Culture of Classicism*, you traced the rise and fall of classical education between 1780 and 1910. After classical education fell out of the curriculum, character education persisted for a while in the McGuffey Reader and the *Columbian Orator*, which Lincoln and Douglas read selections from classical texts in translation.

[00:43:45] Jeffrey Rosen: In the 1960s in particular, it seems like that fell out of the curriculum, and I'm trying to understand why that happened. Obviously, there were Supreme Court decisions that said that you can't teach religion, appropriately, which made it difficult to teach some of these texts. There was a new Me Generation ethos of feeling good rather than being good. But,

why did this language of duties and character education fall out of the curriculum, and how do you find that students react to it when you teach these texts today?

[00:44:14] Caroline Winterer: Okay. That's a big question that could have its own National Constitution Center seminar, so I will just point to one thing that comes to mind, which is that in the 1960s, at the height of the Cold War, Americans began to ask themselves how they can educate Americans to combat totalitarianism. How do we educate students for a free society, as they put it?

[00:44:46] Caroline Winterer: I'm not sure character education has entirely fallen out, but the new emphasis on creativity as a key feature of American education, I think, was very new after World War II, and it was absolutely tied up with the fear that if we didn't make American children creative, then they would become automatons the way they imagined Soviet children must be, that they were being educated for totalitarianism while Americans were being educated for freedom.

[00:45:22] Caroline Winterer: There's a wonderful book about this by Jamie Cohen Cole that's called *The Creative American*. So I don't know if that's something that can go in the chat but it's a wonderful look at why that is.

[00:45:36] Caroline Winterer: It's unclear within creativity where duty fits, because it's not so much the Me Generation as the generation of cultivating one's own talents and skills, whatever those might be, and the role of duty in all of that is very unclear.

[00:45:58] Caroline Winterer: So I think there's a lot of different reasons why an explicit focus on duty has fallen away but I think the rise of creativity, which we have people who are in the European educational system with us, so correct me if I'm wrong, but my own experience in European schools is that there's much more emphasis on memorization, not to the exclusion of creativity, but that it's really in American schools that there's a downgrading of memorization and an upgrading of creativity and, again, with duty falling away as a critical discourse.

[00:46:36] Caroline Winterer: So, those are some of my rather unformed thoughts on the question. But, I think that students learn duty in other ways, Jeff. I'm teaching a history of ideas class this fall here at Stanford, and we're moving from the founding era to 1900, and the students are very concerned about the state of the union. They want to be good citizens. They want to learn about duty, and they're doing it in their own way whether it's by reading John Adams or by reading William James in the late 19th century or Frederick Douglass, it's not as top down as it was in the 18th century curriculum.

[00:47:16] Jeffrey Rosen: Well, wonderful. Thanks so much for that great answer. As you say, so much to discuss, and perhaps we will indeed reconvene to talk about that. Thanks for the recommendation about the creativity book, and great to hear that your students today are focused on all these different ways of learning about duties.

[00:47:33] Jeffrey Rosen: Benjamin Straumann, I think this may be our last major intervention, but curious both about your thoughts about why character and duty may have fallen out of the curriculum. Did it also fall out in Europe in the '60s, or not? And then what remaining aspects of Cicero would you like to highlight that you think that all of us should keep in mind today?

[00:47:55] Benjamin Straumann: Yeah, I think speaking from the beating heart of Western European republicanism, namely the small scale Swiss republic, I'm in a good position to talk about this. I mean, I do think there is a bit more focus on this kind of thing especially in Switzerland. But, it also shows it has a bit of a two edged sword.

[00:48:17] Benjamin Straumann: I mean, in many ways, this kind of character education that is being dished out here also in primary schools like my kids' or there's a bit more attention on these things, but it's a bit like on the small scale ancient republics. It does have a mildly perhaps repressive or constraining aspect to it, and it's very homogenizing in a way that this brings us maybe back to the Cicero discussion or Cicero question.

[00:48:48] Benjamin Straumann: One reason why the founders were attracted to Cicero, another reason which we may not have talked about sufficiently but which is key in my view, is that the founders, they did away with the king. They wanted to have a republic. Now, republics were just much smaller than the 13 original colonies, and so everyone said, "Read your Montesquieu, yet you just don't get it. You can't have a large-scale, big, territorial state without a king. That just doesn't work."

[00:49:15] Benjamin Straumann: The founders said, "No, we can. Look, there is actually this huge thing. It's the Roman Republic." the reply is usually, "Yeah, but that thing also collapsed. How are you going to do that?" Then, the reply to that is usually, "Well, but Cicero has kind of an answer to that, too."

[00:49:28] Benjamin Straumann: So there is a little bit of falling away from virtue talk and all that. Duty is very much, like *De Officiis* by Cicero, but in *De Officiis* by Cicero, also, one has to see its always duties, but duties correspond right, so it's a very loyal way of talking about this. If you have a right to something, I have a duty to give it to you. So, you cannot have rights without duties and vice versa.

[00:49:53] Benjamin Straumann: It's correspondingly a little bit thin, so it's not this full blown character education that you would get in, I don't know, Sparta, for example. So, it is large-scale. There's a lot of different people and so that's one of the reasons why, although the 13 colonies were much smaller than current day United States, they were still much bigger than any of the other ancient city states.

[00:50:19] Jeffrey Rosen: Wonderful. Thanks for that update on the state of character education in Europe and also the state of the idea of duties. Well, Scott, the last word in this marvelous discussion is to you, and I'm gonna ask you to do what all three of you have done so well throughout the hour, which is just to channel the enduring relevance of Cicero and sum up for

our great audience of lifelong learners what it is about Cicero's moral and political thought that is relevant in the 21st century today.

[00:50:51] Scott Nelson: Well, apart from the aforementioned I'll conclude then with just one thing that I think both Cicero and the founding fathers would say, and that is make time for study. Make time to study these great texts. You've got plenty of time to read whatever outrageous thing is happening in the news. That's always gonna be there, don't worry about it. Take time to read these great texts, as even Jefferson in a letter to Adams, he talks about how he stopped reading the newspapers. They're just depressing. He's reading his Tacitus and he's much happier for it.

[00:51:22] Scott Nelson: Read these great texts. We're all busy, but the founding fathers were busy founding a great nation, and yet they still took the time to read Cicero, Sallust, Tacitus, Livy and what not.

[00:51:37] Scott Nelson: I can't help but feel that it was precisely because they took that time to do so that the nation is as great as it is. John Adams, I think every year, he'd always make time to re-read Cicero's text on old age, De Senectute. In Latin, of course, so read it in Latin and Greek if you can.

[00:51:56] Scott Nelson: And, as far as I'm concerned, if Marcus Tullius Cicero was good enough for men as enlightened and excellent as the founding fathers, then surely he's good enough for us today.

[00:52:09] Jeffrey Rosen: Beautiful. What a perfect place to end. You are so right, Scott Nelson, that that's inspiring, central practice that the founders had of deep reading into old age of the classics in general and of Cicero in particular, John Quincy Adams took an entire year after he left the White House to re-read all of Cicero in Latin. Jefferson and Adams finding consolation before death. It's an inspiration to all of us. And, as you say, all we need to do is stop browsing and start reading and take advantage of these remarkable screens that we have before us to access all the books of the world. It's so exciting that they're all just available with a single click, and that's why, friends, we put so many of these primary texts online in the New Founders Library, including excerpts from the Tusculan Disputations, from On Duties, and from other key Ciceronian texts.

[00:53:03] Jeffrey Rosen: Caroline Winterer, Benjamin Straumann, and Scott Nelson, I'm so grateful to you for teaching me and all of our great listeners so much about Cicero and friends who are watching, I'm so grateful to all of you lifelong learners for taking an hour out in the middle of your day to learn and grow from these three brilliant scholars who have shone so much light on this crucial topic. Caroline, Benjamin, Scott, thank you so much for joining.

[00:53:32] Jeffrey Rosen: Today's show was produced by Tenea Talbert, John Guerra, and Lana Ulrich and Melody Raue. It was engineered by the MCC's crack AV team. Research was provided by Liam Carer, John Guerra, and Lana Ulrich.

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[00:54:27] Jeffrey Rosen: Sending all of you warm wishes, friends, and see you in 2023. On behalf of the National Constitution Center, I'm Jeffrey Rosen.