

Cicero and the Constitution

November 18, 2022

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[00:00:00] Melody Rowell: Welcome to live at the National Constitution Center. The podcast sharing live constitutional conversations and debates hosted by the center in-person and online. I'm Melody Rowell, the center's podcast producer. How did Marcus Tullius Cicero, a Roman Statesman and philosopher influence the Founding Generation, the Constitution and American political thought. Last week, the National Constitution Center hosted a conversation exploring the political ideas of Cicero, his impact on America and what we can learn from him today. Our guests were 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 the Revolution*, and Caroline Winterer, author of *The Culture of Classicism: Ancient Greece, and Rome, and American Intellectual Life 1782 to 1910*. Jeffrey Rosen, president and CEO of the National Constitution Center moderated. This conversation streamed live on November 18th 2022, enjoy the show.

[00:01:12] Jeffrey Rosen: Hello, friends. I'm Jeffrey Rosen and welcome to today's convening of America's Town Hall. 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 of today. You're teaching the 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.

[00:01:50] Caroline Winterer: Yeah. 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 the Third 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 overweening tyrannical forces that were gathering on the horizon. And so 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.

[00:03:10] Caroline Winterer: I'll read you a, just a quick quotation that John Adams wrote to his son, John Quincy, who was all a 14 years old. So, you know, you could 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." 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.

[00:03:51] Jeffrey Rosen: Ah, so inspiring. What a great introduction, and 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." *alteri seculo*. So committed was he to such an influence, just marvelous. Benjamin Straumann, in your really powerful, new book, *Crisis and Constitutionalism: Roman Political Thoughts on 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. Tell us about Cicero's unique blending of the classic and liberal influences and how simple they were at the Founding.

[00:05:08] 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 that's not really personal as it really the

Commonwealth men of the 1770 century, as an English Republicans or is it really Montesquieu after all those back then. In this whole debate was maybe a little bit forgotten is that someone like Cicero is 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. 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 year 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 and the remedy against this kind of collapse.

[00:06:24] Benjamin Straumann: And the remedy that he put forward was at least to a large extent, it was a legal remedy, right, it was, it had to do with institutions and with law more than with virtue. And so that's another reason why I think that's maybe a bit proceeded 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, I think founders such as Adams, and Wilson and Hamilton, Madison anyway shared.

[00:07:02] 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, and Madison getting his Locke in conclusion from Cicero as well. 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.

[00:07:52] Scott Nelson: Sure. And thank you very much for having me. I mean I think that the Cicero's political thought, has a few different pillars, certainly the constitutional one. But also I do think, that *De Officiis* On Duties is important as well as *De Auditore*, the role played by reason and speech in the public sphere. I mean, we after all, we pride ourselves in our public today on the power of persuasion, you know, not forcing conclusions or outcomes but rather persuading other people because we believe that we all share in reason and 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. 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. And I think that once you've established that point, the lives rather easily fit into the natural rights doctrine of the Founding Fathers.

[00:09:13] Scott Nelson: 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-evident that belong to us all the right to life, liberty and the pursuit of happiness for life, life, liberty and property. I think that another major issue of importance Cicero in his republica, for example is the notion of balance? So 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 the monarchy and 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 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. The virtue of a monarchy is that in times of crisis, well, when you need a decision to be made, an action to be taken, then it's much easier for a single individual to take that responsibility and do it than to have everybody, you know, talking with, with different ideas.

[00:10:30] Scott Nelson: And then 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, 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. I think that those are, in a nutshell, some of Cicero's ideas.

[00:11:04] Jeffrey Rosen: That was just a wonderful, this 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 a polity. Caroline, so helpful to think about Cicero's thought as an integrated whole, both as moral and as 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.

[00:12:16] Caroline Winterer: Well, I can only pretend to represent the founders' view of Cicero rather than what Cicero really was, because you know 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. And you're absolutely right. 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. And 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 booger 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 and the stoics were in favor of.

[00:13:38] Caroline Winterer: So that might be, for example, women who were known to be nothing but the entirely reconstituted up 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, the Latin word for man within it was feminine frivolity or, or luxury. And so they were on the lookout against these sorts of things. 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, you know, along with people like Tacitus and Sallust, you know, a little later who would tell them about how to bring about the bedrock of the republics through a control of reason rather than the passions.

[00:14:53] Caroline Winterer: Probably one of the greatest exponents of this that your listeners will have heard of is Thomas Paine in Common Sense. And in the title of Common Sense doesn't mean common sense in the way that we think about it today as, you know, look both ways before you cross the street, right, that's how we think of common sense. 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 in our senses like the passions, then you might as well forget about it. It'll be a despotism before you know it. So that is the sort of passion, reason, duty, influence that they are looking for in Cicero.

[00:15:45] Jeffrey Rosen: So interesting. Reminding us of the fact that that word virtue which you say is the word for male. Talking about this place of women, and enslaved people and when we met last year, you called our attention to how classically educated women like Abigail Adams who signed herself, Portia, would embrace that idea of restraining your passion so that you could achieve this kind of virtue. And the music point is so great as well. And several of you quote John Adams invoking handles music as the model of balance and harmony. And you remind us, Caroline Winterer, that there are other kinds of music that excited the passions in ways that were considered bad for the soul. 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 will rely on Cicero for the idea that we're born in a state of nature with, with certain b- rights and duties. And that 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.

[00:17:04] Benjamin Straumann: This distinction between reason on the one hand and the passion 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. So one key ingredient in Cicero's thought is, and this has to do with something Scott mentioned earlier, it's the fact that reason is seen as a capacity to gain insight in- into what the natural law demands of us, what the natural law consists in. 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 stoics sages, those who are really wise actually can gain access to this natural law. Cicero however, interestingly expands the scope of those who can gain insight. He thinks in principle, we can all just, you know, as a matter of being human beings actually, and as a matter of being part of the human species of the [foreign language **00:18:50**] 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.

[00:18:30] Benjamin Straumann: And so that is, 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 knowing 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, it's a pretty neat price, right? It's kind of nice hard to get. But if you are really supremely rational, then you will get the good life. 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 what we need to get there.

[00:19:14] Benjamin Straumann: And so he writes another work, *De Finibus*, you know, on ends and what's the goal of human life. And there he discusses all the Greek proposals for that. But dialogue ends in a somewhat operative note. It's, we can't really figure this out. So what he comes up with all the words such as in, you know, in his political theories, the republic, the laws, and in this strange mix of political theory in moral philosophy, that is the *On Duties*, *De Officiis*, what he comes up with there is a kind of natural law for skeptics. It's, you know, we may not know the highest good, we do not have access to a solid conception of the highest good. But what we do know is this natural law that generates rights and obligations for all of us, that, for us who are not sages. And in the *De Officiis* it even generate some obligations vis-a-vis slave, which is quite unheard of in the Roman context, of course. And so, there's really this push of the idea that we all have access to reason, you know, by a reason to the, what the natural law demands.

[00:20:23] Benjamin Straumann: So that's the, I think, in a way the most important part of what this entails is, of course that he, you know... If virtue is great, if we can get it, but he wants in his political theory, he always, what's called mentions his qualms about the, the good constitutions, the simple good constitution is usually that, you know you have a really just king, that's neat. But even the justest king such as King Cyrus, the Persian king who had a good reputation, "He will invariably tilt into the worst tyrant of all into a kind of followers," 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, and 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.

[00:21:22] Benjamin Straumann: So when it comes to political order to all of us in the aggregates, then he in a way, he moves reason onto the constitutional domain. You might say, it, reasons sits in the rules that govern all of us. So that, that is the broad tendency that I think is attractive to some of the founders. You

know, and also it's just one quote if, because John Adams is usually seen as this kind of the last classical republican who bangs on virtue. But of course you can read in Adams defense of the Constitutions of government of the United States first of all, you can read sentences 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." So there you can see this Ciceronian skepticism vis-avis. It's a nice thing. Individually, we tried to get to it, but in the aggregate, let's not rely just on that.

[00:22:33] Jeffrey Rosen: 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 governments in that the one, the few, and the many event. 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. 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.

[00:23:19] Scott Nelson: Sure. Yeah actually just one of the things that Benjamin was mentioning reminds me, you know, how even virtue can go too far, even virtue pose certain dangers. It reminds me of that bit from Montesquieu's Spirit of the Laws where he says, "Ah, who would've thought, even virtue has need of limits." And I think that that, thinking is very much latent in Cicero as Benjamin has mentioned. I would point, for example to really On Duties, when he talks about decorum, or translated as propriety or seemliness it includes moderation as well. One of the functions of seemliness for Cicero is that he keeps some of these other virtue, some of these other duties in check. 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, but it ended up outstripping justice. He lost sight of justice. He went too far. And so he needs to have more moderation.

[00:24:21] 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 hands, then, of course, you know, you can end up in a sort of despotism, which is why you've got to keep them under control. And Caesar is another interesting example of that. Because there's a lot of people for example, who might look at politics and say well, it's about we want to get power for example,

and Caesar is a wonderful example of how one, let's say, can get power. 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 he actually, his power ends up undermining itself in another way. Very late in life when he's dictator when he sole dictator of Rome, Cicero writes a eulogy of Cato, and then Caesar incensed at this, writes an anti-Cato in response.

[00:25:15] Scott Nelson: Now Caesar, to Caesar's credit, he chooses to actually to respond with words and then 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 a character Cato the Younger was. And isn't that such a poignant thing? Because Caesar fails to achieve, his goal of thrashing Cato kill Cato's name. And isn't that poignant? Because Caesar, the most powerful man in Rome at the time is powerless against the ghost of Cato, you know. and that speaks, I think very much to also Cicero's philippics, you know, written at the end of his life. The immediate effect of Cicero's philippics is that they irritate Marc Anthony, and it ends up with Cicero's head and hands chopped off and nailed to the rostrum.

[00:26:06] Scott Nelson: But the long-term effect of such a noble and at times, very humorous work as the philippics is that is it makes such an eloquent case for liberty against tyranny. So I think though what I was going to say, though, in terms of reason and passion is that even a guy as awesome as, and as full of greatness of Caesar, because he cannot control his lust for power, he's undone by that and he ends up bested by a ghost effectively. Cicero, by contrast would say, "Well, if you are attaching your happiness to, let's say the acquisition of wealth, or popular acclaim, or power for that matter, then you are 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. The only thing over which you have perfect control is your own individual virtue, your own inner virtue.

[00:27:07] Scott Nelson: And if you cultivate that, then you're guaranteed to be happy regardless of what the world throws at you. And I think that's effectively the conclusion that he arrives at, at the end of his Tusculan Disputations in book five, that virtue is the key to true happiness. And I can't help but feel that this must have been at the back of the minds of the Founding Fathers when they talked about life, liberty and the pursuit of happiness.

[00:27:32] 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 or 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. And I want to read it because it just sums up the definition of the pursuit of happiness you just gave us, that a control in your own thoughts to cultivate the tranquility of mind that will allow us to be free from the vagaries of fortune.

[00:28:25] Jeffrey Rosen: 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. Here it is. "Therefore the man, whoever he is, whose soul is tranquilized by restraint and the consistency, and who is at peace with himself so that he neither pines away in distress, nor is broken down by fear, nor consumed with the thirst of longing in pursuit of some ambition, nor maudlin in the exuberance of meaningless, eagerless, he is the wise man of whom we are in quest. He is the happy man." 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?

[00:29:13] Caroline Winterer: First of all, thank you for reading it out again because it's so inspiring. You know, today we will all attempt that version of happiness. I think happiness is one of those 18th century keywords 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. And, yet we all agree that it's something very important. 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 peace. I think of it a little bit as an inner metronome, you know, as someone who grew up playing the piano with, with a taskmaster of a Hungarian piano teacher. There was always a metronome keeping me, you know, right in line. And, that version of happiness is a little bit like that. You know, 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.

[00:30:36] Caroline Winterer: And the Declaration of Independence is the most public of public judgments, and it's intended in some sense, as a, 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, what we're all about and that you can form trade agreements and political alliances with us." So if you imagine that they mean life, liberty and social, or public happiness 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, you know, insurgents of various kinds. And so I think that there's, it will always remain a mystery what Jefferson meant because he knew that this document was really intended for this external audience, it's a diplomatic document. And so does he mean life, liberty and internal peace? Or does he mean life, liberty and national security for this new and very fragile republic?

[00:31:58] Caroline Winterer: I don't think we'll ever going to 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 builds on the will of the people really needs in order to survive. And what I would love is if every American out there revisited 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 you know, 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.

[00:33:00] 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 raise 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. Benjamin Straumann, I'd love your thoughts on how to reconcile those ideas of public and private happiness. And I wonder if Caroline's suggestion made me think it... Might, might we say that first, 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?

[00:33:56] Benjamin Straumann: Yeah. I mean, I think that's certainly a very influential image this analogy of our invert balance and that this is seen in

analogy to the constitutional makeup of a state is, of course, 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 played with, but very much Cicero's, I think he can't go all the way. So for Cicero, maybe it's more important to have a carved out domain where you actually can have all to them 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, it's, on this country estates. 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 more mode really. But it isn't, it's in sharp tension with what he says in all the works, like De Finibus.

[00:35:06] Benjamin Straumann: So he's a stoic when you catch him as such, as a Tusculan, there he is, 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 great conception of happiness. He's a fallibilist in that regard and he thinks maybe we'll figure it out. But right now, I don't think he has the confidence that he shows at the Tusculan that the next day he will have less confidence. You can see also in his correspondence, how these things move around a bit. But on the, when it comes to the, to the political order, there, I think for sure he does follow Polybius to a certain extent in you know, 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.

[00:36:04] Benjamin Straumann: And 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. And he's learned in the Roman law as well, so he used sleek private law analogies all the time to explain the political legal order and 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, into De Finibus written in the late fifties, perhaps in the forties, it's hard, there's a bit of dispute about that. But as the republic collapses in that's there's the looming Civil War already the Civil War, he puts forward really, as set of laws that he says are and formulating natural law and that are supposed to give shape to the state. 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.

[00:37:17] Benjamin Straumann: But with Cicero, the founders now start perceiving this foundational order as based on natural laws as Scott pointed out,

but also, as really a kind of law and it enters constitutional thought, you know. You see, Wilson during the ratification debates, defend the supremacy court, by saying, "Sure, this is actually law. And if lower levels of law do conflict with it, then, you know, they have go, they have to be declared void or we have to somehow make sense of this hierarchy." And I think this hierarchy in 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.

[00:38:04] 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 one, a Bible. So crucially insightful. Scott, you started, you introduced the *Tusculans 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 a 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. Might that work, or how would you describe the Ciceronian conception of the relation between public and private happiness?

[00:39:01] Scott Nelson: I mean I think that they're certainly related. I mean, unfortunately it's rather banal of me to say that you sort of need to have both. When, you just mentioned there, it kind of reminds me though part of 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 going to have to wait for a very long time indeed." You know. So we might start with the freedom first even though it might lead to some bad outcomes from time to time. Indeed that's the view that Cicero seems to take as well, because the polity Rome is not about making citizens virtuous. And I mean, it should, we should try to tend in that direction, 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.

[00:39:52] Scott Nelson: But in terms of though, yeah, 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. But also we can start to talk about what Cicero does in *De Officiis*, we can start to talk more about

duties. Now I know it's going to 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 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 namely when we talk about rights so often, we end up becoming the passive recipients of rights. It's everything that you know, that is owed to us by other people. And when we don't get it, then we see ourselves as being victims.

[00:40:51] Scott Nelson: 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. And that's actually key to our, 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 we should do, I don't mean what we as a society should do because society, if everyone is responsible for something than no one's responsible for something. What I mean is that as Scott Nelson, I need to look closely in my life and decide, you know what it is that I should do. Jeff, you look close to your life, you decide what you should do, et cetera, et cetera. We may actually find ourselves a lot more empowered, a lot feeling a lot better, and also incidentally contributing to our community, so the public good. And that brings me to another point. I mean, because we, we talk a lot about, today its said that when 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." 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 what not, who do you want to listen to you and what effect do you really want that to have? Cicero by contrast always had a very clear idea of who his audience was, was it a, you know, 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 wants to do when he opened his mouth and when he spoke. 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.

[00:42:36] Scott Nelson: And you know, one of the things that Cicero brings up at the beginning of *De Auditore* 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, 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? And so I think that Cicero, which would ask us, "Yes, civic duty is 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.

[00:43:34] Jeffrey Rosen: Ah, crucially wise words. And just as you say, Cicero was so focused on audience, on what you're trying to accomplish. And you just introduce 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. Caroline Winterer, why did the language of duties fall out of the curriculum? In your amazing book, the Culture of Classicism, you trace 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-Douglas read selections from classical texts you know, in translation.

[00:44:28] Jeffrey Rosen: But in the 1960s, in particular, it seems like that fell out of the curriculum. And I'm just 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?

[00:44:57] 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. And 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 altermatons, the way they imagined Soviet children must be, that they were being educated for totalitarianism while Americans were being educated for Freedom. 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.

[00:46:19] 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, very unclear. 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 I'm not... We have people who are in the European educational system with us. So clarify me if... You know, 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. So those are some of my rather unformed thoughts on the question.

[00:47:25] Caroline Winterer: 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, as top-down as it was in the 18th century curriculum.

[00:48:00] Jeffrey Rosen: Well wonderful, thanks so much for that great answer. As you say, it's so much to discuss, and then 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. 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 as it... 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?

[00:48:40] Benjamin Straumann: Yeah. I think speaking from the beating heart of Western European, republican is mainly 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 of this, on this kind of thing especially in Switzerland. But it did, it also shows it's a bit of a two-edged sword. I mean, in many ways, this kind of, you know, character education that is being dished out here and also in primary schools, like my kids, there's a bit more attention on these things it's a bit like Montesquieu, on the, on the small scale ancient republics. It also, it does have a, I'll say, a mindfully and perhaps repressive or constraining aspect to it, and it's very, it's homogenizing in a way this brings us maybe back to the Cicero discussion, the Cicero question.

[00:49:34] Benjamin Straumann: One reason why the Founders were attracted to Cicero, and all the reasons which we may not have talked about sufficiently, but which is key in my view is that the founders, you know, 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, and Montesquieu said, "You just don't get it. You can't have a large-scale, a big territorial state without the king, that just doesn't work." And they said, "No, we can look. There is actually this huge thing. It's the Roman Republic." and their replies are usually, "Yeah, but that thing also collapse, how are going to do that?" And then the reply to that is usually, "Well, but Cicero has kind of an answer to that too."

[00:50:15] Benjamin Straumann: So, and there is a little bit of falling away of, you know, virtue talk and all of that. Duties very much. Like *De Officiis* by Cicero, but in *De Officiis* by Cicero also one has to see it is, it's always, its duties, but duties, correspond right. So it's actually, 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. And 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, sport 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 in the United States, they were still much bigger than any of the other ancient city-state.

[00:51:06] 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 going to ask you to do it. All three of you have done so well throughout the hour which is just 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.

[00:51:39] 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 got plenty of time to read whatever outrageous thing is happening in the news, that's always going to 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 tonicities and he's much too happier for it. Read these great texts because the Founding Fathers were 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, you know, the tonicities and whatnot. And 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. I mean John Adams, I think he, at every year, he'd always make time to reread Cicero's text on old age, [inaudible 00:54:20] in Latin, of course. So read your, read it in Latin and Greek if you can. And as far as I'm concerned, if Marcus Tullius Cicero was good enough for men as enlightened, and excellent as the Founding Fathers, and surely he's good enough for us today.

[00:52:57] Jeffrey Rosen: Beautiful. What a perfect place to end. You are so right, Scott Nelson, and 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 reread 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 text. 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 shown so much light on this crucial topic. Caroline, Benjamin, Scott, thank you so much for joining. And thanks to all the, see you soon.

[00:54:24] Melody Rowell: Today's show was produced by John Guerra, Lana Ulrich, Sam Desai, Tanaya Tauber, and me, Melody Rowell. It was engineered by the NCC's AV team. For a list of resources mentioned throughout this episode, visit constitutioncenter.org/debate. While you're there, check out our upcoming shows and register to join us virtually. You can join us via Zoom, watch our live YouTube stream, or watch the videos later in our media library at constitutioncenter.org/constitution. If you like the show, please help us out by rating and reviewing us on Apple Podcasts or by following us on Spotify. On behalf of the National Constitution Center, I'm Melody Rowell.