

Never a Matter of Indifference: Sustaining Virtue in a Free Republic

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What kind of citizens are necessary to sustain a republic based on individual liberty and limited government? And is such a republic likely to nurture such citizens and thereby preserve itself?

Thinkers in a long tradition have argued that public liberty rests on the maintenance of civic virtue—that the freedom of a polity, state, or country is a matter of self-government, and that such self-government is best understood in terms of the self-control exercised by individual persons. If that is so, it may be that the only way to maintain liberty in a state is for the state to exercise its power to restrain the impulses of the persons who make up the state. As Quentin Skinner (1998: 33) described that view, “if civic virtue is to be encouraged (and public liberty thereby upheld), there will have to be laws designed to coerce the people out of their natural but self-defeating tendency to undermine the conditions necessary for sustaining their own liberty.” If that is true, then public liberty can only be sustained by deliberately inculcating self-control through the exercise of coercive power.

In contrast, advocates of liberal republicanism have seen the good of public liberty as James Madison did, when he proposed that the Constitution be amended as follows:

That there be prefixed to the Constitution a declaration, that all power is originally vested in, and consequently derived from, the people.

That Government is instituted and ought to be exercised for the benefit of the people; which consists in the enjoyment of life and liberty, with the right of acquiring and using property, and generally of pursuing and obtaining happiness and safety [Madison (1789) 1981: 164].

If the public good is defined as the enjoyment of life and liberty, that would tend to rule out coercive state measures to produce the public good, for such coercion would be incompatible with the nature of the public good itself. There would have to be, then, some other means to generate the virtues necessary to sustain a commitment to the public good—that is, the very liberal republican order that makes possible the enjoyment of life and liberty.

Liberal republicans have looked to the resources of free societies and studied how they generate self-reinforcing virtues. Liberals have argued that personal responsibility tends to produce sobriety, probity, punctuality, and other virtues conducive to the production of wealth and social progress. The harder question for modern advocates of liberal republicanism, however, is whether free societies can generate sufficient passion on the part of a sufficient portion of the public to maintain limited government and the rule of law (i.e., the public good). If not, liberal republics will decay, for there is no dearth of private interests that are at variance with the public good. As Adam Smith ([1776] 1976: 145) pointed out,

People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices. It is impossible indeed to prevent such meetings, by any law which either could be executed, or would be consistent with liberty and justice. But though the law cannot hinder people of the same trade from sometimes assembling together, it ought to do nothing to facilitate such assemblies; much less to render them necessary.

Given the ubiquity of such private interests contrary to the public interest and the willingness of persons to use the state for rent seeking, liberals must address the problem of how to generate countervailing interests in or attachments to the public good sufficient to overcome those private interests that undermine it.

Peter Berkowitz of George Mason University Law School has assembled an interesting mixture of what one would generally call “conservative” approaches to such questions. The quality of the contributions varies, but all at least pose interesting problems. Besides varying in quality, the essays lack a clear thematic connection, so it’s harder to examine the collection as a whole. Accordingly, I’ve opted to examine each essay separately.

In the first essay of the collection, the justly venerated Harvard political theorist Harvey Mansfield offers what my tutors in college used to call “an exercise in the liberal arts” in his essay on “Liberty and Virtue in the American Founding.” Mansfield elegantly examines the kinds of private virtue that the new social order in America was generating alongside the public virtues that were set forth in *The Federalist* and institutionalized in the new Constitution. He mines Benjamin Franklin’s *Autobiography* for the emerging virtues of the new commercial—bourgeois—society (offering some interesting remarks on Montesquieu, as well), and contrasts those with the virtues of Aristotle:

If we compare Franklin’s list with the eleven virtues that Aristotle discusses in his *Ethics*, we see that Franklin has omitted courage, ambition, generosity, magnificence, magnanimity (Aristotle’s magnanimous man, possessed of all the virtues and aware of it, would not keep a little book in which to write down his faults), friendliness, and wit. These are the virtues of nobility (except for friendliness and wit, virtues of sociability for its own sake rather than for utility), virtues that are out of the ordinary. To Aristotle’s list Franklin adds virtues that are instrumental, such as order and cleanliness, that are beneath Aristotle’s moral virtues [p. 14].

Franklin’s list of virtues is homey and geared to the self-improvement of a citizen of a republic of equals. Mansfield finds in *The Federalist* a new republican conception of virtue that is rather different. Whereas Franklin had left ambition out of his list of virtues, Publius (the pseudonym for Hamilton, Madison, and Jay) brings it back in, but “Publius differs from Aristotle, however, in connecting ambition to interest rather than calling it a virtue” (p. 18). Ambition is made to counteract ambition in the interest of preserving liberty.

Mansfield also finds “energy” in *The Federalist* as a virtue of the executive branch, not “a committee chosen by the states, as in the Articles of Confederation, but a single person elected directly by the people” (p. 21). (Mansfield is a bit off here, as the executive is elected by the members of the Electoral College, the choice of whose members is not itself a matter of direct election by the people. Article II, Section 1 states that “Each state shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors.”) As Mansfield sees the matter, “Franklin gives us the virtues enabling us to live in a free society; Publius gives us the virtues for governing it” (p. 24).

The essay—thought provoking and elegant throughout—ends with a fairly cryptic remark: “The lesson overall is that moral philosophy is incomplete without political philosophy” (p. 28). The overall implications of Mansfield’s essay for the maintenance of a liberal republic are not clear to me, but the essay was enjoyable for its own sake.

After that delightful essay, so well grounded in a careful reading of important texts, we come to a provocative but entirely speculative essay by Stanley Kurtz on “Culture and Values in the 1960s.” Kurtz seems to be trying to explain what he thinks has gone wrong with America, but he doesn’t offer us a clear statement of what the problem is to which he offers his highly conjectural diagnosis. In any case, he offers a provocative set of claims (without offering much evidence) to the effect that after the 1960s Americans sought relief from the anomie of modern suburban life in a shared commitment to “left liberalism,” with emphasis on common identification with oppressed groups. The governing metaphor, as Kurtz sees it, is the holocaust. That theme is then applied, quite implausibly, to eco-terrorists (a problem that Kurtz says has “proliferated,” although if so it doesn’t seem to have proliferated all that much). He makes much of an alleged Lawn Liberation Front (LLF) campaign that warned homeowners in a Pittsburgh suburb that spikes had been driven into lawns to stop lawn mowing, for “Grass is a living entity that deserves as much respect as humans” (p. 40). Rather than seeing that as an absurd, silly, and marginal case, Kurtz sees it as emblematic of a very deep problem. Maybe, but I’m not convinced.

Kurtz invokes Durkheim and demonstrates that he knows a bit about Durkheim’s thought and life, but how that tells us much about the development or decline of virtue in modern society is unclear. Kurtz focuses mainly on the impact of intellectuals as they react to events such as growing suburbanization; major events that arguably had a greater impact on the counter culture are not mentioned, conscription and the Vietnam war notable among them. The narrative proceeds without any supporting evidence and smacks of Hegelianism on the cheap; many of the events to which he alludes were contingent, rather than necessary, but they all take their place in an inevitable movement to replace revealed religion with a secular religion based on expressions of solidarity with struggling and oppressed groups. Again, maybe.

Kurtz's essay is full of assertions to which a reasonable response is, "Well, could be, but how could one know that?" By the end of it, I found Kurtz's account to be lacking in useful content. Unlike Mansfield's essay, however, it is decidedly uncharming and offers no insights into interesting or important works of political thought. It concludes with a prophecy of "a long and inconclusive culture war" (p. 55). That's the sort of prophecy, which, like the whole essay, seems incapable of being checked against any evidence, especially since the alleged war will be both "long" and "inconclusive."

The essay by David Davenport and Hanna Skandera on "Civic Associations" takes us from mere speculation to a model that can be checked against evidence. Davenport and Skandera address the claims of some social scientists, notably Robert Putnam (2000), that there has been a decline in civic association in the United States. They argue that the character of civic association has changed in recent decades in the United States as a result of changes in public policy, primarily federal funding opportunities and federal regulation of membership. The former has "encouraged the growth of national advocacy organizations that, in turn, pressed for more funding of nonprofit service agencies" (p. 67) and the latter has meant that "rather than allowing for a diversity of different kinds of associations—or educational institutions, for example—government seeks to require a diversity of members within each individual association" (p. 73). In both cases, the legislative history is described and linked causally with changes in civic associations. The treatment would have benefited greatly from a look into the detailed research of David Beito (2000). Davenport and Skandera conclude by examining some new "models" of civic association and offer a moderately hopeful prognosis for a new awakening of civic association.

In his essay on "Schooling," Chester E. Finn, Jr. offers his thoughts on the role of schools in producing good citizens, the kind who can sustain republican liberty, and finds, unsurprisingly, that government schools don't seem to do a very good job of it, certainly in comparison with non-governmental schools. The reasons why, however, did not seem as well developed as one might hope from a distinguished educational scholar. For example, Finn is very concerned about the proliferation of "post-modern relativism and multiculturalism," and asks (p. 98):

If scholars, teachers, and those who train them abjure fixed distinctions between right and wrong, if all judgments are said to depend on one's unique perspective or background rather than universal standards of truth, beauty, or virtue, if every form of family, society, and polity is deemed equal to all other forms, and if every group's mores and values must be taught (along with its culture, its food, its music, its history, and so on), who is there (in school) to help children determine what it means to be an American, how to behave, and what to believe?"

I fear that Finn has exaggerated the importance of teachers; after all, college graduates have gone through four years of unremitting leftist

propaganda and about half of them come out seemingly unaffected. Nonetheless, without going as far as Finn in deprecating postmodern philosophy, it seems reasonable to wonder whether setting up unreflective relativism as a standard of moral evaluation is such a good thing. It seems that most students and parents, when given a choice, prefer (at least at the elementary and high school level) schools that attempt to include substantive concern for virtue and an ability to differentiate right from wrong. Accordingly, Finn endorses school choice and addresses a number of popular objections to such measures, such as the “balkanization” objection, the “establishment of religion” objection (neatly dealt with by the Supreme Court’s 2002 decision in the *Zelman* case), and so forth. Finn deals with the objections and the evidence judiciously and makes a more-than-merely-plausible case that the civic virtues necessary to sustain liberty are more likely to come out of schools subject to competition than out of non-competitive government monopoly schools.

The last essay in the book, “Marriage and Family,” is by law professor Douglas W. Kmiec. Surely the family is an important incubator of civic virtue, although Kmiec doesn’t tell us how (or even make much of an allusion to that theme). Kmiec’s interesting essay starts with what struck me as a fundamental error: he describes marriage as an example of the “submission of individual freedom” (p. 114), rather than as an example of the *exercise* of freedom. Marriages that are arranged and compulsory would indeed be examples of a loss of freedom, but marriages that are chosen seem no more a submission of individual freedom than any other binding choice. Nonetheless, one can overlook that problem and still find much of interest in Kmiec’s contribution.

Kmiec contrasts two allegedly exclusive models of marriage, “mutually covenantal or contractually individualist” (p. 116). The former is allegedly authored by God and is indissoluble; the latter sees marriage as “a means to individual economic and social fulfillment, not a Divinely-ordained *end*” (p. 118). Kmiec asserts that sexual relations in a “mutually covenantal” marriage are about having babies, although he fudges that claim by some rather sloppy language: “sexual intercourse is not just for individual pleasure,” which he follows with a quotation from Janet E. Smith, who tells us that sex has “the purpose of bringing forth new lives and the purpose of uniting men and women together” (p. 117). So sex is for pleasure, but not just for pleasure, with the implication (not spelled out) that if it is for pleasure but doesn’t bring forth new lives, it’s a bad thing. The claims are not well supported and offer a bit of theology dressed up as social theory. Kmiec tries to tie those claims in to social science when he asserts, without evidence, that increasing divorce, illegitimate birth, and other phenomena are caused by a societal shift toward the “contractually individualist” model. Maybe, but where’s the evidence? It’s hard to blame out-of-wedlock births, for example, on a change in the conception of marriage, since the conception in question took place outside of marriage.

Kmiec tells us that school textbooks are partly to blame, since the examples he cites describe marriage in seemingly casual terms. (But how many kids really take boring and tedious school textbooks *on marriage* seriously? I suspect that, although the examples Kmiec cites are strange enough, they have had virtually zero influence on marital patterns, in comparison to such factors as increasing female workforce participation, welfare policies, birth control, and the like.) He seems on firmer ground when he describes changes in state marital laws that have made divorce somewhat easier and also less burdensome on women, who in the past tended to be harmed by property divisions, since they had invested in the human capital of husbands. Kmiec follows that with some of his thoughts on the impact of female workforce participation, the effect of work on family life, the employment of nannies, patterns of neighborhood development (with some interesting remarks on zoning), and so on. Much of it was suggestive, but it seemed a rather strained piling up of alleged threats to the family and marriage, without much attention to how important they actually are. I really doubt that very many married couples see their homes and lives together as “a place to park the car when not at work” (p. 136).

Kmiec concludes with a list of legal reforms, some of which seem reasonable from the perspective of liberal republicanism (such as allowing people to choose—as they can in Louisiana—a “covenantal marriage,” which is harder to dissolve), and some not, such as intervention into labor markets to create a “family wage” (p. 145). Kmiec has provided us with a list of possible reforms of the law, but few of them are particularly compelling. Many of the proposals and the claims behind them deserve more careful examination, after which I suspect that most would appear less persuasive. For example, Kmiec asserts that family failure “is reflected in troubling increases in violent crime and declines in educational achievement and general levels of civility” (p. 144). But recent years have seen declines, not increases, in violent crime. According to the latest crime victimization survey of the U.S. Department of Justice’s Bureau of Justice Statistics, “The rate of violent crime dropped 14 percent from the period 2000–01 to the period 2002–03,” and “violent and property crime rates in 2003 remained at the lowest levels recorded since the survey’s inception in 1973” (Catalano 2004). Should we conclude that the family is healing itself, or that Kmiec has not taken the time to check the facts? Is his essay a work of faith, or of jurisprudence and social science?

Taken all together, *Never a Matter of Indifference* provides some useful and provocative material for those seriously interested in the question of whether limited government, individual rights, and free markets—central elements of liberal republicanism—can indeed be self-sustaining. Both the character and the quality of the essays are uneven, however, and in some cases (e.g., Kmiec’s essay) are not well tethered to the main question of the volume. This work is best seen as a useful mine of hypotheses

to be checked against the evidence in a more careful and systematic fashion.

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