

On Being Good

BY MARK NEAL AARONSON

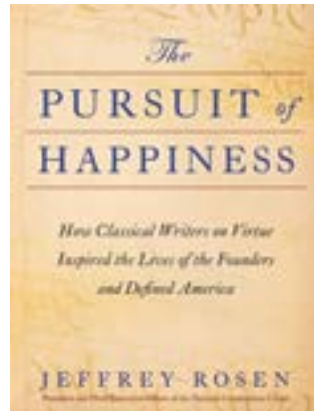
Jeffrey Rosen

THE PURSUIT OF HAPPINESS: HOW CLASSICAL WRITERS ON VIRTUE INSPIRED THE LIVES OF THE FOUNDERS AND DEFINED AMERICA
New York: Simon & Schuster, 2024

THE CALIFORNIA STATE Constitution begins with a Declaration of Rights. It states: “All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.”¹ Almost all the language is from the original 1849 California Constitution.² The initial conceptualization, including “pursuing and obtaining safety and happiness,” was borrowed from Iowa’s 1846 Constitution. Thirty states have similar constitutional provisions, and their collective lineage dates from the Virginia and Pennsylvania Declarations of Rights drafted in May 1776.³ In California, the judicial interpretive record regarding the right to happiness and safety is slim.

Jeffrey Rosen’s focus in *The Pursuit of Happiness* is on historically extracting the founding generation’s philosophical understanding of the pursuit of happiness, not on constitutional interpretation. Nonetheless, as I will turn to at the end of my review, this engagingly written and informative book offers helpful insights for thinking about a revitalized conception of happiness as a source of constitutional protections and aspirations going forward.

In exploring the philosophical and historical meaning of the pursuit of happiness, Rosen took his research cues from the founders themselves. He read not only their



writings but also the works of those whom they read and advised others to read. It was a daunting feat. After discussing these works throughout his narrative, he provides at the end a list of what he found to be the “Most Cited Books on Happiness from the Founding Era.” This list in his ordering is Cicero,

Tusculan Disputations and *On Duties*, Marcus Aurelius, *Meditations*; Seneca’s *Essays*; Epictetus’ *Enchiridion*; Plutarch’s *Lives*; Xenophon’s *Memorabilia of Socrates*; Hume’s *Essays*; Montesquieu’s *The Spirit of the Laws*; Locke’s *An Essay Concerning Human Understanding* and *Treatises on Government*; and Adam Smith’s *The Theory of Moral Sentiments*. The classical texts largely represent or draw on Stoic philosophy, a defining principle being that while you cannot control external events, you can control your thoughts, desires, emotions, and actions. At the heart of Stoic philosophy is the importance of self-discipline and self-restraint, a view consistent with the moral thought of the cited Enlightenment philosophers.

Steeped in this reading, the founders intertwined happiness with leading a virtuous moral life. The ancient Greek word for happiness is eudaimonia, which is usually translated as well-being or flourishing, as in having opportunities to realize and benefit from one’s talents fully. Rosen found in his research that the term was used most frequently in the original texts and in the founders’ writings when addressing character virtues. The notion of happiness as well-being or flourishing was rooted in living ethically. Unlike our contemporary default sense, it was not about seeking pleasure or joy. In Rosen’s framing, the founders’ concept of happiness was a reference to “being good,” not “feeling good.”

Relatedly, the pursuit of happiness was perceived as an ultimate purpose of government, much as some today might refer to the quest for social justice. Happiness as an inalienable right was to be protected and advanced as a highest public good, and obtaining public happiness was a foundational reason for government. For the founders, the pursuit of happiness required individual effort and societal support, and a major key to achieving success was education.

1. Cal. Const., art. I § 1.

2. A voters’ enacted initiative in 1972 replaced the word “men” with “people” and added the word “privacy.” See Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to voters, Gen. Elec. (Nov. 7, 1972), Prop. 11. Subsequently, the California Supreme Court held unconstitutional state laws that prohibited paying medical expenses of poor women who chose to have an abortion. In the lead opinion, Justice Mathew Tobriner wrote: “By virtue of the explicit protection afforded an individual’s inalienable right of privacy by Article I, Section 1 of the California Constitution . . . the decision whether to bear a child or to have an abortion is so private and so intimate that each woman in this state — rich or poor — is guaranteed the constitutional right to make that decision as an individual, uncoerced by governmental intrusion.” *Committee to Defend Reproductive Rights v. Myers* (1981) 29 Cal.3d 252, 284.

3. See Joseph R. Grodin, “Rediscovering the State Constitutional Right to Happiness and Safety” (1997) 25 *Hastings Const. L. Q.*, 1, 3.

Rosen's organizational framework for this book uses Benjamin Franklin's spiritual accounting system as chapter titles. In each chapter, he examines selectively the lives and thoughts of mainly prominent American political figures, mostly from the founding generation. Franklin's system consisted of his evaluating each day whether he had lived up to 13 virtues: Order, temperance, humility, industry, frugality, sincerity, resolution, moderation, tranquility, cleanliness, justice, silence, and chastity. Notably, Franklin found that daily he frequently fell short in meeting his expectation regarding each virtue, and he eventually abandoned the effort. Rosen employs all but chastity as chapter titles.

In each chapter, he turns to several historically notable Americans and draws on their readings, correspondence, and other writings to examine their understanding of happiness as a personal and public goal, their views on acting virtuously, and in multiple instances their moral failings. In addition to Franklin, Rosen's "Table of Contents" lists John and Abigail Adams, Thomas Jefferson, James Wilson (a key participant in the drafting of the U.S. Constitution), George Mason (the principal drafter of the Virginia Declaration of Rights), Phillis Wheatley (an enslaved African American who began writing poetry in her late teens), John Quincy Adams, Frederick Douglass, and Abraham Lincoln. Rosen also weaves in discussions of other political leaders, particularly George Washington. And in his final chapter, subtitled "Pursuing Happiness Today," he relies on his comprehensive knowledge of Louis Brandeis, about whom he wrote a biography, and his extensive interactions with Ruth Bader Ginsburg, about whom he wrote a book based on more than 20 years of conversations. One effect of the book's organization is that Rosen spends most of his time discussing individual happiness from moral and psychological perspectives and much less on connecting institutional and societal conditions to achieving or not achieving public happiness.

For a representative democracy to be successful, the founding generation knew that much rested on the character virtue of voters and representatives. But they also knew that it was extremely hard, essentially impossible, for anyone to be consistently virtuous. Franklin's failings in satisfying his checklist of virtues provide a mundane example. Jefferson's soaring language about equality and his holding and exploitation of slaves is a momentous example. Jefferson knew that slavery was morally wrong, but he constantly lived beyond his means and was frequently in debt. Rosen attributes Jefferson's glaring hypocrisy to avarice and greed.

In structuring a new democratic republic, the founders explicitly acknowledged human frailty and,

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consequently, the potential for destructive abuses of governmental power. In "Federalist No. 51," Madison memorably wrote: "But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself."⁴

The hopeful solution was in constitutional design, most importantly in the separation and overlapping of powers among three branches — legislative, executive, and judicial — and between the states and national governments. Preventing the centralization of power was pivotal. Passions were to confront passions in different arenas with the expectation that reason through compromise would prevail in the end. It also was understood that strong acknowledgment of individual rights as restraints on governmental actions was additionally necessary. Much less envisioned and resolved was the nature, scope, and extent of affirmative public responsibilities in various circumstances.

In his accounting of the pursuit of happiness, Rosen leaves underdeveloped or undeveloped two subjects of specific interest to me. The first has to do with the relative importance of different character virtues for political life. The second is his not addressing happiness and safety together as twinned rights.

The founders' constitutional design is today under extraordinary challenge. Whereas the founders fully understood the danger of democratic rule deteriorating into mob rule under the prompting of a demagogue, the almost immediate development of a two-party system and its effects on the operations of different branches and levels of government were not within their institutional purview. We now have a demagogic former president running again and a major political party that under his domination, along with other contributing reasons, has become morally bankrupt. Although the founders were skeptical about counting on virtuous behavior from voters and leaders, they did not anticipate the consequences of the almost complete absence of virtue on a broad scale.

On page 210, Rosen provides an important framing of virtues and vices that provides an additional perspective on the enormity of the constitutional crisis before us. The framing comes from Jefferson. The virtues highlighted are Prudence, Temperance, Fortitude, and Justice. The opposing vices are Folly, Desire, Fear, and

4. *The Federalist*, New York: Heritage Press, 1945, 348.



“Deceit.” Because Rosen says little to elevate and distinguish these specific virtues and their opposing vices from the many others discussed, a general reader may miss their central and special significance when seeking to understand what “being good,” not “feeling good,” means for the practice of politics. Discussions of pleasure and joy were part of Greek and Roman philosophic thought, but not when the focus was on how to pursue happiness and live virtuously.

Starting with Plato and Aristotle, the four virtues identified have been grouped together and are considered and referred to as the cardinal virtues of mind and character, not only in classical political and moral philosophy but also in early Christian theology. The term “cardinal” is used to underscore that they encompass or relate to all other virtues and, when practiced, function as the secular foundation for a virtuous life and a virtuous society. Prudence is from the Latin translation of the Greek word *phronesis*, for which there are several additional English translations with slightly different connotations — most prominently, practical wisdom, practical reason, and practical or good judgment. Prudence or *phronesis* is a form of reasoning that refers to the ability to take an appropriate course of action in particular circumstances based on knowledge and experience and considering potential consequences. Temperance or Moderation refers to practicing self-control and sound-mindedness, the objective being to avoid excesses in behavior or extremes in positions and actions taken and, interpersonally, to act respectfully and deferentially to others. Fortitude or Courage is the ability to overcome fear but not act foolishly. It involves confronting, not avoiding, uncertainty or potentially risky consequences. Justice here is acting fairly or equitably considering the circumstances of the person and the nature of the situation when interacting with others. Unlike the other cardinal virtues, justice is a quality of mind and character that is mainly outward facing.

The founders had no expectation in designing the federal Constitution that voters and leaders would reliably make decisions based on the four cardinal virtues. Accordingly, they particularly feared the prospect of mob rule. Imagine, though, if they had thought one-third or a near-majority of voters and one of two major political parties mostly based their decision making on folly, uncontrolled desire or passion, fear, and deceit. That is where we are now. Our democratic constitutional republic is at a precipice. Its institutional design may not hold.

If properly understood and argued, the right to happiness may yet become a basis for a new set of rights, ones already firmly recognized in European nations as social rights.

Rosen’s purpose in writing this book was to call attention to the “books of ancient wisdom that shaped Jefferson’s original understanding of the famous phrase in the Declaration of Independence about ‘the pursuit of happiness’” (at page 3). I was surprised, however, that he failed to include as part of his research on happiness the meaning of the phrase and variations of it when, as a declaration, they appear in state constitutions.⁵ Declarations alone are aspirational. Declarations in constitutions are both aspirational and enforceable.

The California State Constitution’s framing, while not universal, is typical. The original language is “pursuing and obtaining safety and happiness.” Why the pairing of “safety and happiness,” and why both “pursuing and obtaining”? One joint answer is that the phrasing emphatically sets two ultimate aims of government. For Enlightenment social contract theorists, like Hobbes, the need for safety was the reason for individuals to agree to be governed. As for happiness, a major theme for Rosen is that for the founders, happiness was an all-encompassing personal and governmental end. Human flourishing was the highest priority ethically and politically.

Rights have multiple functions. One set of issues concerns whether a right is a positive or a negative right. Does its implementation require affirmative governmental programming, or is its purpose to impose restraints on how the government intervenes when it does act? Measures to provide safety — policing, firefighting, military activities — always have involved collective action, sometimes by volunteer brigades. Today such services everywhere are major governmental, programmatic obligations. A right to safety, to be operational, necessarily calls for affirmative governmental action directly or indirectly. Classifying the right to happiness is less certain. Rosen’s analysis of happiness is a step forward, but his understanding is far from commonplace, and the scope of what is covered by a right to happiness is far from clear.

Unlike safety, happiness as well-being or flourishing is an abstract concept. It is more a conceptual umbrella than a defined right. The rights involved are reflective of a range of factors essential to its achievement. For the founders, education was central. Many states now have a constitutionally-based right to education.⁶ That

5. For a thorough review and analysis of the different semantics, state constitutional histories, and potential legal interpretations of the phraseology, see Grodin, *supra* n. 3.

6. Cal. Const., art. IX § 5 requires the state to “provide for a system of common schools by which a free school shall be kept

is overwhelmingly not yet the case in the United States with respect to other social and economic needs, such as housing, healthcare, employment, or a guaranteed income. If properly understood and argued, the right to happiness may yet become a basis for a new set of rights, ones already firmly recognized in European nations as social rights. The close pairing of the right to happiness with the right to safety in the California Constitution provides specific textual support for characterizing happiness as a positive right.

Rosen attributes the forgotten meaning of the pursuit of happiness to cultural changes in the 1960s. My suspicions are that the reasons begin long before and have much more to do with America having had a political revolution — a change in governmental structure, and Europe having had a social revolution — an upheaval of the social order.⁷ The societal, political, and

up and supported in each district.”

7. See Louis Hartz, *The Liberal Tradition in America*, New York: Harcourt Books, 1955.

legal effects of this difference have been and continue to be profound.

The political backdrop to Rosen’s researching and writing *The Pursuit of Happiness* is the gravest American institutional and constitutional crisis since the Civil War period. If we survive as a democratic republic, his resurrected understanding of the right to happiness can be a source of new constitutionally based affirmative rights. The text and history are there, certainly at state constitutional levels. Whether there will be enough virtuous voters, representatives, and judges and the will for such a legally interpretive and politically consequential development is another story. ★

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