

# VIRTUE AND INTELLIGENCE IN A DEMOCRATIC REPUBLIC

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The rule of law in a democratic republic does not guarantee the efficacy of civic virtue. This problem was addressed in Plato's *Republic* by acknowledging the need to place "philosopher kings" (wise rulers) at the top of the governmental ladder. The early Roman Kingdom and the later Roman Republic addressed the same problem at least in part by instituting a Senate (an assembly of elders) as an experienced council of advisors to an executive magistrate ("king" or otherwise). We know the history. Such tactics haven't worked. We cannot institute wisdom and/or virtue by statutory law, and it is foolish to think that we may rely on the wisdom of our elders *carte blanche*. It would be naive moreover to think it might be enough, and pathetic to think it might be effective, merely to moralize about how citizens and their representatives in a democratic republic ought to be virtuous. Might some other kind of political machinery solve this problem to guarantee the rule of virtue? For example, in the US, Madisonian checks and balances among separate but equal powers of government were designed to counteract regional, cultural, and economic factionalism. But history, beginning with George Washington's presidency, clearly shows that these checks and balances fail as such to engage with issues of civic vice, and so they fail to secure virtue and thus justice in the US.

Evidence of this long standing failure was available as of 25 May 2020 as people the world over witnessed the inhumane killing of George Floyd by police officers in Minneapolis. This killing occurred in plain sight.

This public killing was made possible, some have asserted, because corruption (racist and otherwise) has been allowed to thrive within the ranks of local police forces. Individual officers in too many cases enjoy a guarantee that their disciplinary records will be sealed against public review (a guarantee secured by police unions in negotiations with local governments, advanced in no small part by Maryland's 1973 "Law Enforcement Officers' Bill of Rights" and

similar laws passed thereafter in 15 other States, including Minnesota). It is thus more than possible (as actualized by 1977 in Maryland) that many police officers simply will not be held accountable for their own professional misconduct. These *ad hoc* protections have a kind of “underworld” quality to them. They highlight a methodological weakness in the law that has been dangerously exploited, and not only by police unions. Such protections are in fact protections against the rule of law in any normal sense that applies to the rest of us.

Consider the consequences. So far as police officers and police unions are concerned, corruption may be concealed and may move from one locale to another whenever it becomes so egregious that even police union lawyers cannot immediately conceal it. Worse, we cannot confidently deny that more often than not such corruption *can* be and *is* immediately concealed. Is that how George Floyd’s killer(s) survived to appear on cue at the intersection of East 38th Street and Chicago Avenue in the Powderhorn Park neighborhood of Minneapolis on 25 May 2020? Maybe not; but in general, how could we possibly know, given the blanket concealment of police disciplinary records? We may never know in any given case short of airing the relevant records of the officers involved in such killings. Something is amiss here. If the killing of George Floyd was preventable except for this police-union-lawyerized concealment of police disciplinary records, then that killing was not just heart-rendingly bad. It was horribly tragic, so completely avoidable except for lawyering that was blind to concerns for promoting civic virtue versus civic vice.

The fear here, then, is that vice is being allowed to operate on the streets of Minneapolis aided and abetted by the rule of law, for sure, but law that has been corrupted by police union lawyers. So we are back to where we started. If the rule of law cannot protect us against civic vice, then what can?

The killing of George Floyd is just one of many results of civic vice operating on public streets and within various halls of government, from top to bottom. Civic vice may operate in the hearts and minds and actions of individual citizens, or among mobs of such individual citizens. It may operate in the White House, in Congress, or in the Supreme Court, just as easily as it may operate within the administrations of police unions and among individual police officers on the streets of our local communities.

The extent to which such corruption is allowed to persist and fester in *any* of its streets or anywhere within the halls of its government measures how much a democratic republic's moral fiber will have weakened and rotted (if it was ever sound in the first place). Thus, here we are as of June 2020, with no way to guarantee that we might not have, e.g., a narcissistic megalomaniacal demagogue in the White House all the way down to, say, a self-protectionist, foot-dragging, distractionist, abusive, racist president of the Minneapolis Police Union.

Maybe there were reasons at some point for government police forces to become as armed and ruthless as might be needed to counter organized crime, foreign and domestic, etc.; but these government forces have for much longer, before and after, been corrupted from within—perhaps by forces mustered in the form of State slave patrols (so-called *well-regulated militias*) to chase down runaway slaves before the Civil War, joining after 1865 with the Ku Klux Klan (a private club for Confederate veterans, and eventually a secret terrorist society) to enforce “black codes” and Jim Crow laws that legalized racial segregation and repression, etc. Police forces ever since and almost everywhere have not excluded and thus may easily have included such elements, perhaps even having become agents of their own distinctive strain of organized crime, racist and otherwise. That may only be paranoid anxiety speaking, but what do we do now, specifically with regard to racism, especially where local police forces

fail to police themselves properly in regard to their own legal conduct?

After 401+ years of facing and/or ignoring the problems of racism in what is now the US, there seem to be few if any plausible candidate solutions to which a preponderance of the current citizenry of the US would agree (by votes in open and fair elections). Various moves are once again being made in sporadic ways in some locales against the hegemonic influence of police unions. Yet we as a nation are so polarized (along orthogonal lines of wealth, skin-color, etc.) that it is far too likely that we will soon take yet another moral holiday and slip back into subliminally fearful ignorance of the many clear and present dangers of racial injustice.

Things are really messed up, yet we would just as soon take a moral nap?

This tendency to lapse into civic oblivion is evidence of a fundamental weakness in the design of US governance. The US Constitution provides no protections against our nation's falling into such willful ignorance of assaults on civic virtue. Worse, few of us the people seem to be cognizant of this defect in US law (other than those who understand how it may be exploited with impunity). This is a seriously present and dangerous flaw in our legal system.

John Dewey repeatedly highlighted the gravity of these problems and repeatedly proposed a singular insightful solution. He states, in short, that the only way to successfully counter civic vice is not just to advise against vice as such but actually to institute laws and methods of *intelligence (science, logic)* as laws and methods of the land, at every level of governance, federal to local, top to bottom. Translation: methods of civic science are the best if not only effective way to counter forces of civic vice. In Dewey's own words:

Democracy is a way of personal life controlled not merely by faith in human nature in general but by faith in the capacity of human beings for intelligent judgment and action if proper

conditions are furnished. . . . For what is the faith of democracy in the role of consultation, of conference, of persuasion, of discussion, in formation of public opinion, which in the long run is self-corrective, except faith in the capacity of the intelligence of the common man to respond with commonsense to the free play of facts and ideas which are secured by effective guarantees of free inquiry, free assembly and free communication? I am willing to leave to upholders of totalitarian states of the right and the left the view that faith in the capacities of intelligence is utopia. For [this faith in the capacities of intelligence] is so deeply embedded in the methods which are intrinsic to democracy that when a professed democrat denies the faith he convicts himself of treachery to his profession. [LW14.227; emphasis added]

This particular passage was written in 1939 in the context of addressing Nazism and pointing out the hypocrisy of denouncing the latter while at the same time maintaining “racial, color, or other class prejudice” in the US.

The latter in turn was addressed in the context of pointing out that our democratic republic is not a perpetual motion political machine running effortlessly somewhere in Washington DC or in State capitol buildings. We cannot afford to take moral or legal holidays as if some such fictional political machine will continue to operate without our attention. We must consistently, consciously, and proactively apply intelligent (scientific, logical) methods at every turn, at every moment, in every case, to preserve civic virtue. In 1941, Dewey continues:

If this view were generally held, there would be assurance of introduction on a large scale of the rational factor into concrete evaluations of legal arrangements. For it demands that intelligence, employing the best scientific methods and materials available, be used, to investigate, in terms of the context of actual situations, the consequences of legal rules and of proposed legal decisions and acts of legislation. The present tendency, hardly more as yet than in a state of inception, to discuss legal matters in their concrete social setting, and not in the comparative vacuum of their relations to one another, would get the reinforcement of a consistent legal theory. [LW14:122; emphasis added]

One could go on citing Deweyan texts. See Dewey 1928 [LW3:177ff] and 1939b [LW14:367–368] which likewise emphasize the need to incorporate methods of intelligence (science, logic) into the operations of governance, federal or local or anywhere in between. The Trump administration's refusal to heed medical science in the face of the COVID-19 pandemic is just the tip of a very chilling iceberg. The entire federal government's chronic inability to restrain if not prevent such incompetence is not the result of refusing to heed a science or logic *of governance* but is due to a complete lack of recognition that there *is* any such science or logic of governance.

Why is this? In the short run, a vote for the other political party may serve as some kind of corrective to such incompetence. But that will not address the systemic ignorance of science and logic that pervades all sides of however many political aisles there may be from one election to the next. Suffice it to say that we cannot rely on our ever being graced with wise rulers or councils of virtuous elders. We have to face up to the fact that, in the long run, we can rely only on our own efforts *as a unified nation* to exercise methods of intelligence

as a matter of course and not just as an occasional blessing from on high.

This is Dewey's answer to the question of corruption in the execution of the law. Literally, it means that objective, disinterested, impartial, unbiased, unprejudiced methods of science—methods of intelligence—should be recognized and required as overarching constraints on democratic governance, i.e., that the principles that distinguish proper scientific inquiry (what Dewey, following Peirce, referred to as laws of deductive, inductive, and/or abductive inference) should somehow be instituted as laws of the land.

This assertion is not designed just to praise *Modus Ponens* per se, nor only to emphasize the importance of random sampling or multi-phased testing of hypotheses, nor only to glorify insightful hypothesis formation. It is designed rather to highlight the essential importance of all such aspects of legitimate logical inference insofar as they are supposed to function singularly *and* together in an integrated way, each with their own normative constraints but all together according to functional constraints that constitute intelligent inquiry—in this case, in the machinations of federal legislative, executive, and judicial governance.

In effect, by requiring the exercise of intelligent inquiry in this sense within any and all procedures of democratic republican governance, the rule of law might thus steel itself against inclinations toward civic vice, from top to bottom, from the halls of Congress to the streets of Minneapolis.

Specifically with regard to racism, legalizing such methods would mean that we must inevitably ignore skin color as a measure of civic virtue. (Do the science, correctly, if you are not already convinced of that fact.) With regard to recent events circa June 2020, another corollary is that individual police officers' disciplinary records would not be sealed, that these officers' conduct would not be immune from public review, given that that is only a way of tampering with data

(which is bad science). Rather, they (and any other policing agency) would as a matter of course be held accountable for their own professional misconduct. Science requires it. This sort of thing would not render civic vice nonexistent among our police forces, but it might work effectively to debilitate it.

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