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CHRISTIANITY THEN AND NOW

A Publication of the Claremont Institute
PRICE: $6.95
IN CANADA: $8.95
William Voegeli’s “Diversity and Its Discontents” (Summer 2017) offers a thoughtful critique of much that is wrong with the latest incarnation of multiculturalism, the push for so-called diversity. But as a guide to what immigration policy is best for America and who should decide it, the essay comes up short. Voegeli paints with too broad a brush those who favor an expansive legal immigration policy as open-border types who would destroy any meaningful notion of national sovereignty. More disturbing, Voegeli and CRB more broadly in its various defenses of Trumpism over the last two years ignore the implicit racial appeals made in the name of restricting immigration.

I favor robust legal immigration to the United States, not because it is good for immigrants but because it is good for Americans. We are not a country like others. Our geography encompasses a huge land mass between two oceans and north of the Rio Grande that was largely unpopulated when, first, Spanish and then English colonists arrived in the late 16th and early 17th centuries. Our geographic boundaries expanded through exploration, conquest, and purchase; but our population, both in size and composition, is what it is today because of immigration in the 18th, 19th, 20th, and now 21st centuries. Through much of our history, immigration was unrestricted—anyone with the heart and will to get here, to use Ronald Reagan’s formula, was free to do so. However, immigration has never been popular with the native population, and the efforts to restrict it have frequently been motivated by racial and religious animus, going back to colonial times.

Voegeli accepts that previous generations of immigrants assimilated, but cautions that “past performance is no guarantee of future results, as the brokerage firms’ ads say, particularly given that the biggest single source of immigration today is an adjacent nation.” He gets it wrong on several counts. First, the single largest source of new immigration today is China, followed by India, and only then Mexico, with net migration from the latter below zero since 2013; and Asians have outnumbered Hispanic immigrants overall among new arrivals since 2011. Second, there is no evidence that the current crop of immigrants and their children are assimilating more slowly than previous generations and a plethora of data demonstrating the opposite. Assimilation has always been slow and messy. Immigrants rarely fully assimilate, but their children and grandchildren do. Second-generation Americans universally speak English today, including those whose parents were born in Mexico; and among young adults 21-25 years old, second-generation Mexican Americans are about as likely as whites to be enrolled in post-secondary education, 24% compared with 27% for whites according to Current Population Survey data.

Voegeli summarily dismisses the economic arguments in favor of more immigration, including the benefits of admitting low-skilled immigrants, with an outdated and misleading anecdote about a meat processing plant in Greeley, Colorado. I have some experience in this field, not just as a public policy analyst but as a former director at Pilgrim’s Pride, formerly the largest poultry producer in the country. The description of long lines of native-born applicants willing to take jobs at a Swift meat plant after an immigration raid makes for nice imagery, but the facts on the ground are quite different. Pilgrim’s also experienced raids on its plants in Texas, despite being an early adopter of E-Verify, a voluntary federal program meant to root out non-legal job applicants. But neither Swift nor Pilgrim’s—now both owned by JBS, a Brazilian company—filled those jobs on a permanent basis with American workers, who rarely lasted more than a few weeks, despite better pay. Swift’s Greeley plant now employs mostly Somali refugees—not working-class whites or Mexican Americans who eschew such jobs—and Pilgrim’s ended up in bankruptcy before being bought by JBS.

Last, and most important, current efforts to restrict immigration aren’t being driven by economic factors but cultural fears. The cover of the CRB’s Summer issue, in which Voegeli’s essay appeared, depicts a bug-eyed Uncle Sam surrounded by a horde of sombrero-wearing Mexicans; Asians in coolie hats; turbaned, veiled, and saber-wielding Middle Easterners; a bearded, skull-capped Jew; and a robed Buddhist monk. The image is meant to convey the strangeness—and racial difference—of immigrants, and in the case of Arabs, the danger they pose. The image was repugnant and more suited to a cartoon on some racist website than a respected intellectual journal. A more accurate depiction would have shown new immigrants holding college diplomas (41% in 2013 compared with 30% of all Americans) or displaying professional graduate degrees (18% to 11% for Americans), as well as less educated immigrants doing difficult, dirty jobs that Americans largely shun.

All immigrants are, by definition, foreign—but they don’t threaten American culture today any more than they did in 1848 or 1913—arguably less so. “A high rate of immigration jeopardizes social cohesion, on which republics are more dependent than any other regime,” Voegeli writes. Tell that to the 200,000 German and the 150,000 Irish immigrants who fought to save the Republic in the Civil War, or to the sons of Italian, Jewish, Polish, and Mexican immigrants who stormed the beaches of Normandy and Anzio, or the more than half million current veterans and 80,000 immigrants who joined the military between 1999 and 2010. Does America have the right to admit and exclude people depending on who, in Voegeli’s words, are “most conducive to the existing citizenry’s security, prosperity, domestic tranquility, and social cohesion”? Yes. But race, color, or religion should never be the basis for making immigration policy. We’ve gone down that path before in American history, to our dishonor. Nor should we be worried that too many immigrants are coming now, regardless of where they come from.
The number of newly arrived immigrants to the United States peaked in 2005 and has been declining ever since. The U.S. population is rapidly aging and, but for immigrants and their offspring, would be declining as well with white birthrates now below replacement level. Immigrants are our future as well as our past. By all means, we can debate our current immigration policy—which is outdated and should be reformed. But not on the basis of fear, misinformation, and prejudice.

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William Voegeli replies:

In “Diversity and Its Discontents,” I argued that decent and reasonable people can hold different opinions about how restrictive American immigration policy ought to be. To establish that commonsensical proposition, it was necessary to discuss academics, journalists, and activists who dispute it vigorously. They have stretched the principle of equality to the point of denying the legitimacy of borders and distinct nation-states. Arguing that immigration policy should be this or that requires first establishing the premise, which they contest, that immigration policy is a fit subject for public debate and government action.

My friend Linda Chavez is widely known to be decent and reasonable, and she and I do indeed disagree about immigration policy. She knows more about the issue than I do, and might well convince me that “robust legal immigration” is “good for Americans.” I would be more persuadable if it were clearer in her letter that she thinks decent and reasonable people can disagree about immigration. Chavez stipulates that America has the right to admit some migrants and reject others, and that the nation can debate current policy. Beyond those generalities, she also characterizes immigration restrictionism in terms of “implicit racial appeals,” “racial and religious animus,” and “cultural fears.” Whether she acknowledges the existence or possibility of restrictionist discourse untainted by such prejudices is not clear.

A good-faith debate on immigration certainly has room for Reihan Salam’s recent observation in National Review that in a world where “open borders and welfare states don’t mix,” the pattern is one of trade-offs. The spectrum runs from nations that accept large numbers of immigrants but offer them few “rights or social protections,” to countries with few immigrants that treat them “exceptionally well.” America’s muddled approach, somewhere in the middle, admits more people than we can care for, and too many who can’t care for themselves. As a result, he argues, “households headed by less-skilled immigrants receive far more in benefits than they pay in taxes”—not because they’re lazy or dishonest, but because the long-term decline in the market for unskilled labor limits their earnings and prospects.

The debate should also deal with economist George Borjas’s argument that the overall impact of post-1965 immigration on the U.S. economy has been a wash: 98% of the GDP boost due to immigration has made its way back to immigrants in the form of wages and other transfers. A day or a decade without immigrants would be, in terms of macroeconomic productivity, scarcely noticeable.

It’s interesting that Salam is the son of Bangladeshi immigrants, and that Borjas was born in Havana 12 years before he immigrated to the U.S. with his family. But it should not be important. Their arguments, like those of all participants in any policy debate, must stand or fall on the strength of their logic and evidence. The same contentions would be neither less nor more powerful if made by writers and scholars who belonged to the Mayflower Society. By the same token, no argument (or cover illustration) should be judged on the basis of soul X-rays that purport to determine whether the person who made it had benign or malignant motives.

I have no doubt that my essay “comes up short.” All of mine do. But I don’t know what to make of Chavez’s contention that it not only fails to describe the best immigration policy but to offer a guide as to “who should decide it.” America’s citizens should decide it. Period. If not, who else? As Abraham Lincoln said in his First Inaugural Address, “A majority held in restraint by constitutional checks and limitations, and always changing easily with deliberate changes of popular opinions and sentiments, is the only true sovereign of a free people.”

The immigration debate entails fundamental questions of constitutionality and sovereignty less because of wonky policy issues than because the proportion of foreign-born Americans has nearly tripled in the half-century since the Immigration and Nationality Act of 1965—and no one at the time endorsed or foretold any such transformation. Linda Chavez has done invaluable work at the Center for Equal Opportunity, showing how other Great Society laws, including the 1964 Civil Rights Act, have facilitated policy deformations like affirmative action, thereby undermining republicanism. Such big surprises may result from the Law of Unintended Consequences, or from the Law of Undisclosed Intentions. In either case, the sovereign citizenry is right to feel betrayed. Whatever immigration policy comes next, Americans must regard it as resting on the consent of the governed, not the ineptitude or insincerity of the governors.
Constitutional Virtue

Under the circumstances, Richard Epstein is rather kind in his treatment of George Carey's and my Constitutional Morality and the Rise of Quasi-Law (“Lawless Rules,” Summer 2017). He is uncertain as to where our “proceduralist critique” leads, and the reason can be neither ill-will nor want of intelligence on his part, so he might be forgiven for ascribing it to confusion on ours. The real source of the disconnect, I believe, is the methodological distance between Epstein's law-and-economics based libertarianism and Carey's and my traditional conservatism. Ours is not a lawyerly book because its authors—both trained as political scientists (though one later entered law)—seek first and foremost to understand the limited place of law in our constitutional republic.

Given this journal's emphasis on issues of statesmanship and the relationship between law and the common good, its readers may be more inclined to engage our arguments than a lawyer's lawyer like Epstein. We begin from the observation that laws do not produce either material or social goods; people (alone and in associations) do. Thus, law like government can facilitate, but not produce, the goods of life—including justice. This does not make law irrelevant. Order being the first need of all (without which we may not enjoy such other fundamental goods as life, liberty, and property) the law that Western societies in particular have recognized as essential to order, must be given its proper place and shape.

Unfortunately, too many people believe it is possible for governments to use law to construct the good society. This has produced our current, potentially fatal, crisis. Carey and I begin with this problem: Americans, having surrendered so many of their liberties to the national government in exchange for promises of safety, security, and enforced equality, no longer recognize the incapacity of law to bring about social justice. Our leviathan state cannot rule according to law because law cannot bear the weight imposed by attempts to remake society. Moreover, our Constitution cannot be made to legitimize such a totalist view of law because it was written to establish a government of distinctly limited powers. Most crucially, constitutional morality, that is, rulers' recognition of their duty to abide by the structures and limitations of their constitutional offices, has been forgotten in the rush to legitimize and expand the administrative state.

In making our case, Carey and I present a number of specific arguments concerning the nature of law and constitutionalism. Perhaps most important to our “functionalist critique,” we argue that the rule of law—a system in which order is fostered through predictable laws consistently applied to both rulers and ruled—can survive over time only if the people are willing to accept law's natural limitations. Law can be effective, legitimate, and real only if people limit their expectations of it to the provision of predictable rules protecting more fundamental associations.

At the center of our argument is recognition that the federal administrative state has all but destroyed constitutionalism and rule of law because it abides by neither constitutional procedures nor what legal theorist Lon Fuller termed the internal morality of law (principally consistency and predictability). Here we come to a disagreement with Epstein. We do not argue that delegation is by nature illegitimate, but rather that it must be limited to ministerial functions. Most relevant, in chapter 6 we argue that...
ration of powers requires that most of the work currently done in executive branch agencies (i.e., administrative rulemaking) be done at the state and local level and, where federal action is constitutionally authorized, by expanded congressional staff whose work would be made law through proper legislative procedures. Executive agencies would carry our ministerial functions and, of course, enforcement.

Politically, we have much in common with Epstein, at least at the national level. But Carey, himself a non-believer, joined me in arguing for a different, more traditional vision of our constitutional republic. The promise of our Constitution was of limited government over a virtuous people, meaning most decisions would be taken in local and especially non-political associations, all in accordance with public, religion-based norms. Only recognition of the ordered nature of our being, of the inherent norms prescribed by the limited, yet dignified nature of the person, can provide long term security for rights that depend, after all, on virtue as well as limited government under law.

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Richard Epstein replies:

Let me first thank Bruce Frohnen for his thoughtful response to my review of his book with George Carey. Frohnen treats the differences between us as resting largely on a difference in worldview. He and Carey take the long view of statesmen interested in large questions of political theory and social justice, and attribute to me the somewhat narrower perspective of a libertarian or classical liberal with a law and economics bent. But in this instance, I don’t think that this difference in approach explains the disagreements between us. I have long worked as a student of Roman law and English legal history, and have written several books on political theory. So I appreciate the distinctive strengths of their intellectual orientation.

More specifically, I fully agree with them that law can never be the source of social achievements. Its function is to provide a stable set of institutions, both public and private, that allow all individuals to find excellence in their own distinctive way. The question here is what set of institutions will best achieve that end. Frohnen and Carey are correct to stress the importance of limited and enumerated federal powers, which are no longer respected in this post-New Deal age. But I think that they are profoundly wrong if they believe that a “thin” conception of the rule of law—one which stresses exclusively procedural regularities such as the right to be heard before a neutral and informed judge under prospective rules—of sufficient generality.

These are indispensable requisites of a just society, but the substantive norms matter as well. Systems of private property and freedom of contract are an essential part of the overall picture as well. The first gives individuals the space in which to plan their own course of action; the latter allows them to cooperate in common ventures, and to sell the product of their labor to the public at large. To be sure, this system of private right depends on taxes to supply public goods such as defense, courts, and infrastructure. But once the state is in a position to shrink the institutions of property and contract under some vague rational basis test then the administrative state will inexorably expand, as it has expanded, to undermine civil society. Frohnen writes as if there is some magic way to make people “accept law’s natural limitations,” without making any of these bedrock substantive commitments, which I have defended in my book Design for Liberty: Private Property, Public Administration, and the Rule of Law. But no one should think that the Constitution could have worked without a Bill of Rights, many of whose substantive protections have been frittered away by legislatures and courts alike.

My criticism of their book rests on their unwillingness to take on this substantive struggle.

Jane Jacobs, Madisonian

Brian Anderson’s review of a new biography of Jane Jacobs should make a larger point (“The Living City,” Summer 2017). Jacobs’s The Death and Life of Great American Cities and The Economy of Cities applied James Madison’s great insight from The Federalist regarding a multiplicity of factions, sects, and interests: the greater the multiplicity, the greater the security. Government intervention works against both.

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It’s a Schlamuzzle

Regarding Charles Kesler’s editor’s note “The Health Care Schmozzle” (Summer 2017), the proper word is “schlamuzzle” (said with a long “a”). It was one of my father-in-law’s favorite words with great present applicability.

Schlamuzzle is a very broad definition of a mess. The intensity of the mess can be judged from the degree of emphasis with which the speaker uses the word. E.g., “Oy vey what a schlamuzzle!” “Schlamuzzle” preceded by “Oy vey” is a mess of massive proportions that needs Rabbinical intervention.

E.g., the Trump Administration is a schlamuzzle (said with reasonable intensity), which, however, is repairable and which we hope the president, with the help of General Kelly, soon repairs. E.g., Kesler’s wife is correct that the whole business of Republican Obamacare replacements is a “big disorderly schlamuzzle.” “Schlamuzzle” should also be considered a totality of description and an economy of necessary word usage. “It’s a Schlamuzzle” really says it all!

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