

ON IMPROVING MANKIND BY POLITICAL MEANS

LESTER H. HUNT

University of Wisconsin, Madison

Some writers have so confounded society with government, as to leave little or no distinction between them; whereas, they are not only different, but have different origins. Society is produced by our wants, and government by our wickedness; the former promotes our happiness positively by uniting our affections, the latter negatively by restraining our vices. . . . The first is a patron, the last is a punisher.

—*Thomas Paine, Common Sense*¹

CLEARLY, THERE ARE A NUMBER OF WAYS in which one might think that Thomas Paine's remarks restrict too narrowly the ends that laws can legitimately be framed to serve. I will be concerned with one of them. It has been said that the law may be used not only to restrain our vices but to increase our virtue as well: it can make better people of us and thereby positively promote—if not our happiness, necessarily, then—what might be called “the quality of life.” Perhaps the most familiar statement of this notion of the legislator as a moral educator is Aristotle's:

... we become just by the practice of just actions, self-controlled by exercising self-control, and courageous by performing acts of courage. This is corroborated by what happens in states. Lawgivers make the citizens good by inculcating habits in them, and this is the aim of every lawgiver; if he does not succeed in doing that, his legislation is a failure.²

In other words, the law makes us good by compelling us to act as a good person acts. More specifically, I assume that Aristotle is putting forward the following position:³ To be a good person is to possess certain virtues, such as courage. To each of these traits there corresponds a certain class of actions, such as courageous actions. The law instills

these traits by making us perform the acts that correspond to them. This it does, I assume, by declaring what must be done and offering, by specifying punishments for noncompliance, some extra incentive for doing as it says. In complying with such declarations we gradually form certain habits that either are virtues or are naturally transformed into virtues when we reach a certain level of maturity and enlightenment.

Needing a name for it, I will call this model of how virtues arise "the Aristotelian paradigm." Since the method of moral education it recommends is perhaps the most obvious way in which the state might accomplish this aim, I will call it "the political means of improving character" or "the political means" for short. In what follows, I will argue that the Aristotelian paradigm is an incorrect picture of how character is changed for the better. I will also try to show that, for the same reasons, the political means suffers from certain crippling deficiencies as a means of imparting precisely those virtues it seems most likely to impart. These deficiencies should at least inspire caution in legislators who contemplate using it. If I am right, it is in some contexts misleading to call it an instrument of moral education at all.

I will not claim that what I call the political means is the only way in which the law and the state could possibly make us better.⁴ Nor will I claim that it must not play a role in any program of moral education whatsoever. In this way, the case I will make will arrive at a less sweeping conclusion than the most familiar arguments against the political means, which always take the form of showing that the political means should never be used. We shall soon see that these arguments are inadequate, and the need to overcome the most obvious difficulties they encounter will take us directly to one of the most difficult questions of moral psychology: the question of how excellence of character is in fact instilled. Such arguments assume some answer to this question and, as we shall see, it is only by offering a true one that the political means can be plausibly criticized as a pedagogical method. I will offer an alternative answer in which something like the work the Aristotelian paradigm assigns to the state will be performed instead by what Paine called "society." As I do so, I will also offer reasons for rejecting a third alternative, which might be called "the Kantian paradigm," the notion that moral education is accomplished largely by means of the student's own purely autonomous insight. As far as specific policy recommendations are concerned, the case I will make will be unspectacular, but if I manage to shed light on the nature of moral education I think no one should complain.

SOME FAMILIAR ARGUMENTS

One objection to the political means is perhaps more obvious and more often heard than the others. A straightforward example of it

may be found in the writings of the American anarchist Albert J. Nock.⁵ According to Nock, to control human behavior by means of law is to control it "by force, by some form of outside compulsion." Thus it is incompatible with freedom. Freedom, however, is a necessary condition of "responsibility," because to be responsible, Nock believes, means "to rationalize, construct and adhere to a code of one's own." Responsibility, in turn, is a necessary condition of virtue. Thus the effort to create virtue by law destroys the very thing it is intended to bring about. The political means is therefore simply self-defeating.

This line of reasoning poses a number of problems, not the least of which arises from the remarkably narrow conception of responsibility it employs. If this is what responsibility is, it is surely practiced by very few of the people who actually exist in this world: most people do not live by a code they have constructed themselves, nor even by one they have thought about critically to any large extent. For the most part they accept the principles they live by as social conventions; that is, they accept them because they are accepted by others, who have accepted them for the same reason.⁶ This fact presents anyone who holds Nock's position with a dilemma. On the one hand, if this is what responsibility is, social convention is at least as incompatible with it as law is. Thus if Nock's reasoning shows anything about the law it shows that social convention as such prevents people from being responsible. Since such conventions are in large part the basis of human life as we know it, this would seem to mean that most people are not responsible and, presumably, that they have no moral worth. Since such a conclusion must surely seem too harsh even to most cynics, it is a good reason for abandoning this notion of responsibility. But this would destroy the argument as a critique of attempts to create virtue by making it legally obligatory. The argument therefore proves both too much and too little.

We encounter a problem similar to the one confronting Nock's remarks in what is surely the most famous critique of the idea that virtue can be created by enforcing it legally. This is the "fugitive and cloistered virtue" passage in John Milton's *Areopagitica*. In it, he says:

As therefore the state of man now is, what wisdom can there be to choose, what continence to forbear without the knowledge of evil? He that can apprehend and consider vice with all her baits and seeming pleasures, and yet abstain, and yet distinguish, and yet prefer that which is truly better, he is the true warfaring Christian. I cannot praise a fugitive and cloistered virtue, unexercised and unbreathed. . . . Assuredly we bring not innocence into the world, we bring impurity rather: that which purifies us is trial, and trial is by what is contrary.⁷

Like Nock's argument, Milton's assumes a moral theory: virtue requires a certain sort of knowledge, and this knowledge must include

acquaintance with models of bad thought and conduct. Thus, it is precisely by attempting to “banish all objects of lust”⁸ from the community that law defeats the purpose proposed by Aristotle, which is to make us more virtuous. Milton’s alternative is the one expressed in the form of a paradox by the “revised motto” of Mark Twain’s “The Man That Corrupted Hadleyburg”: “Lead us into temptation.”

Milton’s argument suffers from a rather serious shortcoming. He wants to say, not merely that the political means of promoting virtue is a bad one, but that at least in some circumstances there is a better one. “Impurity and remissness, for certain, are the bane of a commonwealth; but there the great art lies, to discern in what the law is to bid restraint and punishment, and in what things persuasion only is to work.”⁹ But why is persuasion ever any better than the law in this respect? To the extent that it works at all, it eliminates temptation from our lives and will presumably produce the same problem he believes to be generated by the law. Indeed, Milton’s argument settles on the one characteristic that *all* means to ethical improvement have in common, to the extent that they are successful.¹⁰ If it proves anything about the law it therefore proves the same thing about all of them. It gives no reason for preferring one successful method over another. Since neither Milton nor anyone else wants to oppose all of them, his argument is at best incomplete. Those who like it as far as it goes can only use it as a criticism of the political means if, at least, they find some feature of some alternative, such as convention, which compensates for the effect exposed by Milton, making it a superior method.¹¹

A little reflection will show that the remarks of Nock and Milton indicate a problem that confronts any attempt to criticize the political means of improving character. It is obvious that social conventions resemble laws in a number of ways. Any attempt to criticize the political means is in some danger of going too far and opposing reliance on social convention as well. Perhaps, as I have suggested, we can only avoid this danger by indicating some relevant difference between these two ways of controlling behavior. I will try to indicate such a difference in what follows, but first I will attempt to diminish the plausibility of the paradigm suggested by Aristotle’s remarks.

VIRTUOUS ACTION

First, it is not difficult to see at least that actions (including abstentions from action) that are done because the law requires them are different in kind from virtuous actions. Whether an action is virtuous or not depends partly on the reason for which it is done: to give something to someone in order to curry their favor is not to be generous. When a lawgiver gives us a law requiring some action that was previously not required by law, he gives us two new reasons for performing that action, and it is for these reasons that it will be perform-

ed more frequently than before. First, laws that require us to act in certain ways are widely seen as commands issued by a body of persons having the authority to do so, and thus those who see it this way will see the fact that the law requires something of them as by itself a reason for doing what it requires. Second, such laws bring with them penalties that make it less desirable to omit the required action than it was before.

It is easy to see that neither of these reasons by themselves can make what we do virtuous. Consider the first one. Suppose that I am a member of a mass movement, an admirer of its charismatic leader. One day our leader issues an order that all members of the movement must give all they have to those in need, and I immediately begin to do it. If this makes me a generous person, then by the same token if my leader cancels his order and forbids us to give to the needy then I immediately cease being a generous person. If he replaces the order with another commanding that we fight the enemies of the movement in spite of the danger involved, I become courageous: if he reverses himself again and commands extreme prudence I become something else. Obviously, virtues—and vices—do not change as easily as authoritative directives do. Such traits are what Aristotle called *hexeis*, relatively permanent dispositions to act in certain ways. Obedience can give one a disposition to act in the same ways, but the disposition is apparently different in kind from those that constitute one's character. Obedience to authority does not generate any virtues by itself.

This is if anything more obvious in the case of the second reason for doing as the laws enjoin. Giving things to people in order to avoid a penalty is no more generous than doing it in order to curry favor.

Separately, neither obedience nor fear of retribution are the sort of reason that virtue requires and they will be equally insufficient when they are combined, as they often are when one does something because the law requires it. What is perhaps more interesting is that what we have seen so far suggests that, in a limited way, Nock was right: virtue does seem to rest on a certain minimal sort of autonomy, if not on the extreme kind he describes. To have a trait like courage or generosity is to act on the basis of one's own notions about the right and the good. This would explain why virtue does not change as easily as the behavior of an obedient person: such notions are themselves relatively fixed characteristics of a person.¹² In acting obediently one acts on the basis of the directives of others, which change much more readily than one's own principles do.

The fact that virtuous conduct is quite different from actions that are done because the law requires them is not fatal to the Aristotelian paradigm. Aristotle himself, in fact, seems to recognize the difference between them.¹³ But if authoritative commands and the penalties attached to them can make us better persons by making us act as better persons act then they must, by making us act that way, teach us the notions about what is right and good that make us better people. By

considering an example, we can see that, in a way, such methods do teach us ideas of this sort, but we can also see that it does not appear to be true in the way that the Aristotelian paradigm requires.

Let us take an extreme case. Mary's son, Peter, is five years old and no more concerned with the welfare of others than most boys his age. She decides that he will not grow up to be a truly charitable person unless she guides him in that direction. She lays down a rule to the effect that he must give his best toy to any needy child he meets. She knows he is a good boy and generally does what she tells him to do, but to help make sure of it she hints that he will be punished if he disobeys. Eventually he forms a painful habit of doing what the rule says. Before long, though, something unforeseen happens: he conceives a powerful disliking for children who have something "wrong" with them. Children who are lame or blind or sick become more odious to him than broccoli or spinach. This odium is in a way quite rational in the present circumstances and is based on something he has learned: namely, that people with disabilities are bad. He has learned this because his mother *has made it true*. She has altered his situation in such a way that people with disabilities have become bad in the sense that they are now *bad for him*, like poison. Even if, due to a certain natural sympathy with the sufferings of others, he minds sacrificing his interests to theirs less than he would have without it, it remains true that they are destructive of his interests. Since all the most powerfully visible evidence he has on the matter leads to this conclusion, it would actually be irrational of him not to draw it. In a way, he has learned the principle she meant him to learn. She meant to teach him that he should act in a certain way and he has learned it. But she also wanted him to learn that others are worthy of respect and concern. This is shown by the fact that she wanted him to be a charitable person and not simply a compulsive giver. But somehow he has learned virtually the opposite of this.

In the Aristotelian paradigm, the formation of a virtue is the formation of a certain habit. We can see now that this is at best only part of the story of how such traits are formed. Mary has given Peter precisely that habit she would be giving him in teaching him to be charitable, but she has not taught him to be charitable. Peter consistently gives to those in need, but he does so with a resentful, teeth-gritting attitude which, as Aristotle tells us, is inconsistent with virtuous giving.¹⁴ What is missing from this sort of account is an explanation of how the moral educator is to impart to the student an understanding, in terms of notions of what is right or good, of the *point* of the activity in which he is being drilled. Any activity, in order to qualify as a form of education, must give the instructor a certain measure of control over how the student sees things after the activity is completed. I have described Mary as using educational resources—namely, authoritative commands and punishments—which are precisely the ones that the political means employs. As I have described the situation so far, the control that the instructor exercises over how the point is taken seems very poor.

The problem remains even if we alter my admittedly extreme example in ways that make it more realistic. We might suppose, for instance, that Mary attempts to impart a rule about giving that is more reasonable than the one I have her trying to instill. But any rule which requires giving to others would ensure that to some extent Peter's interests come into conflict with the interests of others, thus opening the possibility of his drawing the conclusions I have him drawing. Again, we might introduce into the example the familiar fact that moral education proceeds by precept as well as habituation—that authoritative commands and punishments are not the only means employed. That is, we might have Mary telling her son that the point of all this is that others have dignity and importance as well as oneself, and that their welfare thus merits our concern. But why would he believe this? It is true that her—to him—awesome parental authority helps to make her pronouncements credible, but all the *facts* she presents him with lead in another direction. So far, she does not seem to have an even minimally reliable method of influencing which way he will go. What is worse, nothing in all this suggests how he is even to understand what such precepts mean. Such assertions are not self-explanatory, and this one conflicts with all the palpable facts she has presented him with, since they point to the conclusion that others are dangerous to him and therefore to be avoided insofar as they need his concern.

Notice, finally, that the story I have told does not in any way assume that Peter possesses an ineradicable, natural instinct to be “selfish.” I have made two psychological assumptions about him, neither of which commits me to a controversial theory about human nature. First, I have assumed that he has certain desires—whatever their nature and wherever they come from—which run contrary to the rule he has learned. If this were not so, there would be no point in laying down the rule at all. Second, I have assumed that he really believes the rule he has learned. Due to the regard he has for his mother's authority, he may even be quite incapable of doubting the correctness of the rule. Consequently, he believes that he really ought to give his toys to needy children he meets. This is precisely why they have become so odious to him: whenever one of them appears, he thinks he really must do something that is painful to him, something that is peculiarly painful because he does not see the point of it. Though he believes the rule he must, so far, find it more or less meaningless and even, in a way, absurd.

RULES AND UNDERSTANDING

So far, my efforts to undermine the Aristotelian paradigm rather obviously have something in common with the arguments I considered earlier. I have tried to show that the educational efficacy of the law is limited to the extent that its resources are those singled out by the theory I have attributed to Aristotle. It is already obvious, however,

that the same resources are employed in the sort of instruction that occurs in the home, in which we make our initial acquaintance with social conventions. The problem I have posed for the law seems to afflict social convention as well. This is so despite the fact that I have applied a requirement of autonomous moral understanding that is considerably less drastic than the one applied by Nock. Later I will attempt to show that, in fact, such conventions make certain other resources available, in the home and elsewhere, which do meet my less drastic requirement while the political means does not. First, however, I will need to describe in somewhat more detail the problem I have posed.

Both law and social norms serve primarily to regulate our relations with others. Both contain rules which, like the one laid down by Mary in my example, propose that we promote the interests of others. Both also include rules that in various ways require us to refrain from doing things which damage the interests of others. It might be supposed that the difficulties encountered by Mary arise from the fact that she was teaching the first sort of rule, but in fact problems of the same kind are raised by the second sort as well. Rules that prevent us from harming others always either require that we forgo goods we could otherwise secure (by picking pockets, and so forth), or else they require us to give up some good we might otherwise keep (for instance, by refusing to pay our bills). On the whole, it costs us a great deal to observe such rules. In a way, they present other people as threats and obstacles to the pursuit of our own interests. Perhaps even a child can see that we are nonetheless all better off if we all obey rules of this sort. Yet it is rather more obvious that he can see that there is another situation in which he is still better off—namely, that in which everyone else obeys them and he does not. The rules are a help if others follow them and a hindrance if he does.

What is interesting, though, is the fact that, while this is in a way what the rules of morality are like, a moral person does not *see* them that way. If he believes in a rule prohibiting theft, he does not see it as an obstacle to his enriching himself by stealing the purse of the woman standing next to him at the subway station. To see a rule as an obstacle is, in itself, perfectly consistent with believing in the rightness of the rule. I can believe that I really ought to stop for all stop signs and yet be very irritated when one delays me in meeting an important appointment. Why does a moral person not see persons and the moral rules that protect them from harm in this light? The answer suggested by my remarks on the case of Peter is that he “respects” persons in a way that we do not normally “respect” stop signs. Yet the rules themselves do not support any positive attitude toward persons at all, while they do support a certain negative attitude—namely, seeing others as obstructions. On the other hand, while they do not *support* respect, they do *require* it. If we are to acquire any of the virtues expressed by following these rules—honesty, considerateness, and the like—we

must somehow acquire respect for others.¹⁵

It appears that any institution that instills the virtues which both the law and social convention can most plausibly be thought to give us must somehow teach us respect for others. What we need, then, is some insight into what this respect amounts to and how such institutions might teach it. To this end, it will help to draw a distinction—an informal one will be sufficient—between two kinds of rules, one of which I have thus far ignored.

So far, I have treated social norms that are examples of a class of rules that also includes the kind of laws the political means employs: these are rules which tell us what to do and what not to do. In all the examples I have cited, they also, in one way or another, determine the distribution of various goods which, of course, exist independently of the rules that distribute them. Such rules, which might be called “substantive rules,” can be contrasted with what I will call “ceremonial rules.”¹⁶ Ceremonial rules do not declare who shall have goods of this kind. Indeed, they do not even tell us what to do or not to do. They only specify *ways* in which we can engage in certain activities if we wish or need to. We are quite familiar with such rules in virtue of having observed them. We begin an encounter with others by saying “Hello” and asking how they are, we end it by saying “Good-bye.” We make requests and ask permissions; if granted them, we give thanks. If we do not do such things at the time or place which some substantive rule requires, we make apologies and give excuses. As these examples suggest, the activities these rules might be said to regulate would not exist if rules of this kind did not exist. When we say “Hello” we are engaging in an activity called a “salutation” and, if it were not for the rule which says that we can accomplish it by saying “Hello,” and other rules like it, there would be no such thing as a salutation. The same is true of making requests, giving thanks, and all other activities of this sort. Further, these activities are important to us only because of their expressive function and, although it is not always easy to say just what they express, it always has something to do with the agent’s appreciation of the person to whom they are done. The lesson of ceremonial observances seems to be that others must be approached gingerly and left with a benediction: we must not assume too much or handle them too roughly.

It is not difficult to see how a child can be brought to learn this lesson by being taught to follow ceremonial rules. Consider the following story. Young Paul wants to play with a pair of binoculars belonging to his uncle John. John has let him use them in the past and, thinking that John wouldn’t object to his having them now, Paul takes them. But his mother, Martha, makes it clear to him that this is not the way one goes about getting what someone else has already got: you must ask him for it first, and say “please.” Paul asks his uncle if he can please use the binoculars and is immediately told he has done it wrong: one says “may,” not “can.” If your request is granted, you say “thank you.” He soon masters these rules well enough. He cannot

doubt their correctness, since he has them on the infallible authority of his mother. He even possesses evidence of their correctness: somehow, people become angry and unpleasant if you take something they have, even if they have no objection to giving it to you, without first saying words like "may," "please," and "thank you." If you say the words, however, they are soothed and happy. There are many ways in which one must avoid jarring people's feelings, and this is one of them. He has learned his lesson.

Yet Paul is really in more or less the same position that Peter was in after Mary laid down her new rule: he has faith in certain principles but does not understand them. Why do people have such volatile feelings about such things in the first place, and why do these words have the apparently magic power to soothe these feelings? If Paul had the sophisticated intellectual resources of a social scientist or a philosopher there would be many answers he could give to these questions. For instance, he might suppose that people are proud of the things they possess because such things show that they have the power it takes to accumulate them. Thus, they hate to have things taken from them because it is a challenge to their power: they would rather give or lend things than have them taken, since giving or lending shows that they have the power to dispose of what they have according to their whims and without any hindrance. Alternatively, Paul might think that people simply want to keep in their possession as many things as possible, and that they insist on the practice of asking permission because it enables them to say "no," so that they can maintain the size of their hoard. Because he is only a child, however, Paul cannot indulge in such imaginative speculations. Fortunately, though, he does not need to. It is obvious to him that Martha and John understand the rules he has learned; for him, to understand them is simply to know how adults understand them.

This method of understanding rules, unlike the method in which one relies on one's own imagination, can only lead to one conclusion. These principles are related in definite ways to other ideas that adults use, including especially the notions of "yours" and "mine." The practices of asking, granting, and refusing permission are among those which mark the boundaries between what is yours and what is mine. Paul is aware that he need not seek permission to use something that already belongs to him; he also knows that he need not seek permission in order to come into possession of something which he is being given as a gift, or which he is taking in trade.

Sometimes, though, Paul wants to get to use, on his own initiative, something that is not his and for which he offers nothing in trade. The practices concerning permissions make it possible to accomplish this without simply taking what he wants. The use of this complicated apparatus makes sense to him when he realizes that it is one indication of the fact that, in the adult world, people are ordinarily seen as having a *right* to determine what happens to the things they possess: this is part of what it means to say that these things are *their* things. Asking permission is a practice that makes it possible for Paul to acquire

something possessed by someone else without violating that right, which he would be violating if he were to simply take it. If he understands this, he can understand the moves in the game he has been taught in the way that adults understand them. By saying "may" rather than "can" he signifies that he is asking that a right be transferred from someone else to him rather than asking for information. By saying "please" and "thank you" he expresses an appreciation for the fact that the thing he is asking for is not already his by right—that it comes to him, if it does, as a gift. The entire activity, then, expresses a respect for the boundaries between "mine" and "yours"—it expresses a respect for the rights of others.¹⁷ If he comes to see and to pursue the activity in this way, he has acquired in some degree the respect for others that I have said underlies decent relations between people.

The kind of training Paul has undergone is a more effective form of moral instruction than the sort to which Peter was subjected. It is possible, on the basis of what I have said, to explain this fact. The rule Peter learned was one of the substantive rules that regulate our relations with others. It was an example of the sort of substantive rule that governs the distribution of things which, independently of these rules, are regarded as good. Rules of this sort always require that we forgo or relinquish such goods. Consequently, they have a certain tendency to make us see others as threats or obstacles to the promotion of our interests. It was precisely what Peter could see in light of his rule that prevented him from grasping what respect is.

In a limited way, Paul's circumstances were like Peter's; they also involved a substantive rule requiring him to forgo or relinquish something antecedently regarded as good. This is the rule prohibiting one from simply taking things which do not belong to oneself. But of course it was not from this rule that Paul learned respect. He learned it from a ceremonial rule and not from a substantive one. Ceremonial rules in general are relatively costless to follow.¹⁸ It is not in itself against one's interest to ask permission (rather the contrary, in fact). This is true even if one knows in advance that the request will probably be refused. These rules make possible an activity which obviously expresses something, and which is quite mysterious to someone in Paul's position because he does not yet understand what it expresses. As such it *invites* him to try to understand it. We have seen that the practice he is confronted with, and others associated with it, provide him with the materials he needs to succeed. Once he understands it, he also understands substantive rules like the one that prohibits him from simply taking things that do not belong to him: once he comes to see others as having rights, he can appreciate rules that specify what rights others have, and that is what rules like this one do. We have also seen that to understand this practice is, in part, to understand what it is to regard others with respect; it is also clear from what I have said that to come to understand such respect under the influence of a certain sort of authority is, to some extent, to come to possess it.

CONCLUSION

It is time to stop and review the argument I have laid down so far, to see what it has come to. Early on, I said Nock's argument has certain undesirable consequences because of a rather extreme assumption he makes regarding the sort of autonomy required for virtue. These consequences can be avoided if one replaces this assumption with the much more reasonable one that one must act on principles which one understands. The political means however cannot reliably impart this kind of understanding because of the nature of the class of rules of which the relevant kinds of laws are instances: such rules, in general, place barriers in the way of achieving this sort of understanding. There are certain conventions, however, which do have the capacity to impart this sort of understanding. This capacity is sufficient to deliver us from the difficulties that I said were entailed by the assumptions behind Milton's familiar criticism of the political means. It shows that not all ways of promoting decent behavior are equal in this respect; there is one that has virtues which compensate to some extent for whatever limitations they might have in common.

What may we conclude concerning the relative merits of these two kinds of rules as instruments of moral education? It is perhaps important to notice the difference here between what follows and what does not. What follows is that, if they are considered separately, one of them has the character of an instrument of education and the other does not: one tends to lead to the required sort of understanding and the other is apt to block it. However, it is obvious that such instruments are not used separately in the world we live in. As far as what I have said is concerned, it is possible that substantive rules can acquire such a character when they work in the context of a whole system of educational means. It is possible that such rules could contribute something worthwhile to such a system, while other parts of the system overcome the bad effects which, as I have claimed, they are likely to produce. Indeed, we have good reason to believe that such a system is possible, because the one we use to raise our children seems to be precisely of this sort: their behavior is held in place by all sorts of substantive rules while other means of moral education do their work. This is how I have described the case of Paul earlier. It is part of the value of the practices having to do with making requests that they enable Paul to understand certain substantive rules such as the one which prohibits him from simply taking what he wants. Presumably, by helping him to grasp the point of such rules it also enables him to follow them with greater alacrity than before.

As I said at the outset, my argument does not imply that the political means ought never to be used.¹⁹ However, it does imply several other things which were not obvious in the beginning. First, even in the context of the sort of system I have just imagined, the political means has a rather peculiar status: if the system works, it is because the other means function as adequate *antidotes* to the political

means. They overcome its ill effects. This in turn suggests a second point. If a legislator is pressing for a new use of the political means, if he is trying to pass a new law to instill a virtue that will improve the way his subjects treat one another, it is not enough for him to claim that the actions enjoined by the proposed law are indeed those which would spring from the neglected virtue itself. The measure he proposes is apt to have effects that run counter to his own purpose and they will be overcome, if at all, by a complex system of beliefs and practices over which he has little control. He must claim the undesirable effects of this measure are not too weighty to be overcome by this system. This is a kind of claim which is obviously capable of being false. It would be false, for instance, if it were made of the rule that I have imagined Mary laying down for Peter. The difficulties involved in making such a claim may not be serious in the parent-child relationship, where it is possible to see all the important effects and easy to change the rule if it does not appear to be a good one. For legislators, who in most states control the behavior of millions of people they can never know, they are much more likely to be formidable. Whether they can be surmounted or not, they should not be ignored.

What I have said here also implies a third and more metaphysical point, one which concerns the relative positions of society and the state in the foundations of the moral life. The Aristotelian paradigm, as I have defined it, depicts the process by which virtue is taught as being fundamentally like the one in which a drill instructor teaches his soldiers to march. I have tried to show that part of the process of acquiring the other-regarding virtues which the law seems most likely to instill is more like learning a language than it is like learning to march or stand at attention, and that ceremonial rules provide the materials for this crucial aspect of moral education. They provide the expressive actions the meaning of which the student must grasp. This suggests that legislators in fact cannot originate such rules. It is impossible for the same reason that it is impossible for the law to originate a new language. The resources of the political means—authoritative commands and punishments—can make people do what the legislator wants them to do, but they cannot make them mean what the legislator wants them to mean by what they do.

To the extent that what people mean is not a product of individual fiat, it seems to arise from social conventions like those which govern the use of language. We do not need to have a theory showing precisely how such rules originate in order to know that they are not made by a specialized social organ which, like the state, imposes its rules on those outside it. They appear to arise somehow from voluntary relations among individuals. In a way, the position I have taken here can be seen as a variant of the theme, which appeared above, that virtue depends on freedom. But it is rather widely different from the variants I considered there. Specifically, I have avoided the assumption that virtue can only arise from purely autonomous individual insight. I

have avoided suggesting that the individual must devise his principles himself (by deriving them, perhaps, from the dictates of pure practical reason), or even that he must subject them to critical examination. However, I have supposed that he must *understand* them, and I have tried to show that here the individual relies on the social background of his actions. On this point, Aristotle, with his insistence that man is a social being (*zoon politikon*), seems closer to the truth than an extreme individualist like Kant.²⁰

1. In Merrill Jensen, ed., *Tracts of the American Revolution* (Indianapolis: Bobbs-Merrill, 1977), pp. 402-403.
2. Aristotle, *Nicomachean Ethics*, trans. Martin Ostwald (Indianapolis: Bobbs-Merrill, 1962), 110362-5.
3. This is not an essay in Aristotle scholarship, and I do not insist that this is Aristotle's position. It seems attractive enough to be worth discussing on its own merits, even if he did not hold it.
4. For examples of other possible ways, see Aristotle's *Politics* 7, chaps. 13-15 and 17. I have argued elsewhere that the criminal law produces an effect of this kind by removing opportunities for vengeful thoughts and feelings on the part of the victims of crime. But this happens by means of a process that bears no resemblance to what I am now calling the political means. See "Punishment, Revenge, and the Minimal Functions of the State," in *Understanding Human Emotions*, ed. Fred D. Miller, Jr., and Thomas W. Attig (Bowling Green, Ohio: Applied Philosophy Program, 1979).
5. All quotations in this paragraph are from his short essay, "On Doing the Right Thing," reprinted as an appendix to his *Our Enemy the State* (New York: Free Life Editions, 1973), pp. 93-99.
6. For a more complete account of what social conventions are and how they work, see my "Some Advantages of Social Control: An Individualist Defense," in *Public Choice* 36 (1981): 3-16.
7. *Areopagitica*, in *John Milton: Complete Poems and Major Prose*, ed. Merrit Y. Hughes (New York: Odyssey, 1957), p. 728.
8. *Ibid.*, p. 733.
9. *Ibid.*
10. It is worth noticing that, in Mark Twain's story, convention has precisely the effects Milton says the law has. It creates a sort of virtue which is not genuine and is easily corruptible, simply because it works too well in eliminating temptation. The virtue of Hadleyburg is exemplary only because it has never been subjected to a trial, but this means it is only apparent virtue, because it will fail any genuine trial it meets.
11. Perhaps I should point out in passing that the issue dealt with in these remarks of Nock and Milton is distinct from that of "the enforcement of morals" as it is presented in the writings of J. F. Stephen and Patrick Devlin, although the two issues are connected in a way. Someone who believes in the enforcement of morals could conceivably agree with Nock and Milton that the law actually makes us worse—he might think for instance that, if we obey the strictures of morality because it is the law, we are doing it for *reasons* which are vicious rather than virtuous. Yet he might think that immoral *acts* are so horrible as such that it is worthwhile to debase people somewhat in order to reduce the frequency with which such acts are done. Where victimless crimes are concerned, this may be an uncomfortable position to hold, but it is not contradictory. It is possible to hold that "morals" should always be enforced while admitting that this would not improve anyone's character.
12. See my "Character and Thought," *American Philosophical Quarterly* (July 1978), where I argue at length that both virtues and vices rest on such notions. I also attempt to show that beliefs about the right and the good are in fact more difficult to change than other beliefs are.
13. See *Nicomachean Ethics* 1144a13-18 and 1105a18-1105b18.
14. *Nicomachean Ethics* 1120a30-31.

15. In addition, respect seems essential to the value we place upon having these rules observed by others in their conduct toward us. It is obvious that both laws and social norms serve to protect the conditions of our well-being—our property, our health, our “territories,” and so forth—against destructive acts on the part of others. It has been pointed out, though, that damage of this kind is not the only evil we perceive in the offenses thus discouraged. Adam Smith remarked that “what chiefly enrages us against the man who injures or insults us, is the little account which he seems to make of us. . . .” We read offenses against us as expressive acts in which the offender shows that “he seems to imagine, that other people may be sacrificed at any time, to his convenience or his humour.” Adam Smith, *The Theory of Moral Sentiments* (Indianapolis: Liberty Press, 1969), p. 181. A large part of the value of living in a community in which our rights are observed is the fact that it seems to show that our rights are *respected*. It may be possible for the social and political apparatus to secure such observance solely through fear of the penalties it imposes, but order obtained in this way, even if it were perfect, would be hollow and flat.

16. This distinction is a reformulation of one made by Emile Durkheim. See chapter 2 of Erving Goffman’s *Interaction Ritual* (Garden City, N.Y.: Doubleday, 1967). The account of ceremonial norms in this paragraph is largely drawn from Goffman. See also his *Relations in Public* (New York: Harper, 1971), chaps. 2 and 4.

17. Paul can come to this conclusion because it explains a coherent system of practices of which this activity is a part. His reaching this conclusion is an instance of what Gilbert Harman calls an inference to the best explanation.

18. Of course, this generalization has exceptions, but since the activities these rules make possible are important only because of their expressive function, the exceptions can only be cases in which the meaning of the act is one that one finds unpleasant to express. An obvious case of this is the activity of apologizing, in which we express a conviction that we have wronged the person to whom the activity is directed. Also, in some cultures, there are conventions for greeting religious and political leaders by performing intrinsically self-abasing gestures, like banging one’s forehead on the ground. In addition, there may be some conventions that some people find abasing while others do not. It is conceivable, for instance, that some people find it unpleasant to say thank you because it includes an acknowledgment that people other than themselves have rights. If this sort of unpleasantness were a common feature of ceremonial observances then, naturally, the account of moral education I am offering would be no good. However, I doubt that, in our culture at least, they are very common.

19. It seems obvious that such a position could only be a sensible one if applied to adults. It may turn out that it can only be adequately supported by an argument that is not pedagogical, like mine, but *moral*. It can perhaps only be supported by defending a principle like the one which H. L. Mencken called “Mencken’s Law”: “When A annoys or injures B on the pretense of saving or improving X, A is a scoundrel.” *Newspaper Days: 1899–1906* (New York: Knopf, 1941), pref. This is the sort of argument John Locke gives throughout the *First Letter Concerning Toleration*.

20. This paper was improved by comments from acquaintances, colleagues, and students too numerous to thank by name, but I should mention that Charles King, John Kekes, Gilbert Harman, Amelie Rorty, Michael Stocker, Morton Winston, and James D. Wallace were good enough to provide comments in writing. An earlier version was presented at the April 1980 Liberty Fund Conference on Virtue and Political Freedom. A fellowship from the Mellon Foundation made writing it much easier than it would have been otherwise.