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The City and the Soul: Character and Thriving in Law and Politics

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THE CITY AND THE SOUL: CHARACTER AND THRIVING IN LAW AND POLITICS

Sherman J. Clark

ABSTRACT

This Article describes a way of thinking about law and politics that is ancient in origins but largely absent from modern legal scholarship. It poses a two-part question: how do our law and politics influence our character, and how does that in turn influence how well and fully we live?

Much legal scholarship asks how law can be more efficient and effective in making us richer, healthier, safer, and such. This is good: wealth, health, and safety are—or can be—good things. But material conditions are not the only things that make for a rich and full life. What also matters—and beyond a certain threshold may matter much more—is what sort of people we are. If, for example, we are wise and brave, we will likely live better and more fully than if we are foolish and fearful. This much should be uncontroversial. What goes unaddressed, however, is that law and politics, whether we like it or not, have an impact on what sort of people we become. Granted, the impact is incremental and marginal, but it may also be cumulative and substantial—just as an incremental cumulative exposure to asbestos can lead to cancer. We can ignore it; but that does not make it go away. We can claim that it is not the business of law to think about character; but that is an irresponsible dodge.

This Article argues that we should acknowledge and take responsibility for the impact our law and politics have on our character and thus on our capacity to live well. To that end I describe several ways in which law and politics may influence the sort of people we become. I then offer a way of thinking about what traits and capacities may conduce to our thriving—as democratic citizens and human beings. Just as a dose or two of poison every day can cause illness, nutrition and exercise can build strength. If our law and politics inevitably have some impact on the sort of people we become, as I argue they do, we should ask whether and how we can nurture the strengths we need—for our city and our souls.

TABLE OF CONTENTS

INTRODUCTION.....	418
I. A NEW, OLD, AND UNAVOIDABLE QUESTION.....	420
A. <i>The Uses of Virtue</i>	420
B. <i>An Ancient Greek Problem</i>	422
C. <i>A Contemporary American Problem</i>	423
D. <i>An Unavoidable Problem</i>	424
II. HOW LAW IMPACTS CHARACTER.....	428
A. <i>Exhortation</i>	428
B. <i>Cultivation</i>	429
C. <i>Argument</i>	432
D. <i>Discouraging Debasement</i>	433
E. <i>Expression</i>	434
F. <i>Nurturing Seedbeds</i>	436
G. <i>Proxies for Conversation</i>	437
H. <i>Enabling Exemplars</i>	438
I. <i>What Follows?</i>	440
III. HOW CHARACTER IMPACTS THRIVING	440
A. <i>A Socratic Account of Character: What We Desire</i>	442
CONCLUSION	445

INTRODUCTION

In this Article, my aim is to describe and seek help in pursuing an approach to law and politics grounded in the connection between two things—character and thriving. By character I do not mean simply general goodness, as the term is sometimes used. Rather, I mean particular traits, capacities, and attitudes. By thriving I do not mean simply happiness as studied by happiness researchers or even positive psychology, although that research may be useful. Rather, I use the term thriving to signal the need to think about what conduces to or constitutes a good life. The term also serves to highlight what we know to be true but in our law and politics tend to ignore—that a rich and full life rests on more than material goods and external circumstances. It rests, at least to some extent—and in ways we should explore and acknowledge—on what sort of people we are. And our law and politics, whether we like it or not—whether we take responsibility for it or not—help make us who we are.

My claim, in a nutshell, is this: because law and politics may have an impact on character, and character may impact thriving, law and politics should pay attention to both what sort of people we become and how that in turn impacts our capacity to thrive.

Character—what sort of people we are—greatly influences how well and fully we are able to live. This is the operating premise in much of classical ethics. Plato’s Socratic dialogues, for example, are misunderstood when read as if they address primarily the question of right and wrong, as modern ethics tends to conceive it. Rather, the Socratic inquiry is essentially this: what sort of person should we strive to become—what traits, capacities, and attitudes should we nurture—if we hope to live fully and well? The classical insight is that human thriving is largely a consequence of character.

To this insight I join another—equally ancient but now often ignored. Law and politics inevitably, albeit indirectly, influence character. If, therefore, law and politics are to help us live well, theorists and lawmakers should attend to the ways in which law and politics indirectly make us who we are and thus influence our capacity to thrive. Over the years, I have explored this way of thinking in a series of papers addressing particular institutions and practices including: the jury,¹ direct democracy,² criminal procedure,³ legal argument,⁴ and legal education.⁵

So far, however, I have failed to articulate a clear and coherent theoretical framework for these inquiries—sometimes framing the project as a form of virtue ethics, sometimes as a question of community identity, and other times as a way of making sense of legal doctrine. In particular, I have not clarified the distinction between my essentially consequentialist approach and recent normative theories of what has come to be called “virtue jurisprudence.” I have also failed to respond adequately to the concern that I am asking law and politics to do something illegitimate. Whatever precisely I mean by character and thriving, it

1. Sherman J. Clark, *The Juror, The Citizen, and The Human Being*, 8 CRIM. L. & PHIL. 421 (2014).

2. Sherman J. Clark, *Ennobling Direct Democracy*, 78 U. COLO. L. REV. 1341 (2007); Sherman J. Clark, *The Character of Direct Democracy*, 13 J. CONTEMP. LEGAL ISSUES 341 (2004).

3. Sherman J. Clark, *An Accuser-Obligation Approach to the Confrontation Clause*, 81 NEB. L. REV. 1258 (2003).

4. Sherman J. Clark, *An Apology for Lawyers*, 117 MICH. L. REV. 995 (forthcoming 2019) (manuscript at 1001) (draft available at <https://michiganlawreview.org/classic-revisited-an-apology-for-lawyers-socrates-and-the-ethics-of-persuasion/>).

5. Sherman J. Clark, *The Seventh Letter and the Socratic Method*, U. MICH. J. L. REFORM CAVEAT (2015), https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1047&context=mjlr_caveat; Sherman J. Clark, *Law School as Liberal Education*, 63 J. LEGAL EDUC. 235 (2013).

sounds to many like something law and politics ought to stay out of. Here, I hope to clarify and defend this way of thinking about law and politics.

In Part I, I argue that the questions I raise have ancient roots and are of contemporary significance. I also argue that it is appropriate and legitimate for liberal democratic law and politics to confront these questions. In Part II, I describe eight interrelated ways in which law and politics may impact character. In Part III, I argue briefly for a particular way of thinking about the impact of character on thriving and for a set of eight interrelated traits we might aim to nurture or at least not undercut.

These thoughts are offered in the spirit of illustration and inquiry. Should readers disagree about the particular ways in which law and politics may impact character and/or especially about the particular traits law and politics ought to nurture, I will consider this argument a success. That is exactly the sort of conversation I hope to generate—a conversation about the ways in which law and politics may make us who we are and thus impact how well and fully we live.

I. A NEW, OLD, AND UNAVOIDABLE QUESTION

A. *The Uses of Virtue*

The way of thinking I outline here is, to my knowledge, distinct from any line of inquiry currently being pursued—at least in the legal scholarly literature. The closest approach so far is recent scholarship on “virtue jurisprudence,” which is sometimes described as seeking “aretaic” theories of law.⁶ Recognizing the rise or re-emergence during the second half of the Twentieth Century of virtue ethics in philosophy, scholars have sought to apply the insights of philosophical virtue ethics to law. They have, for example, explored the question of what makes for a virtuous judge,⁷ and for virtuous legal decision-making more broadly.⁸ They have recognized that some form of human flourishing ought to be

6. See, e.g., LAWRENCE SOLUM, VIRTUE JURISPRUDENCE (Colin Farrelly & Lawrence Solum eds., 2008); Ekow N. Yankah, *Virtue's Domain*, 2009 U. ILL. L. REV. 1167, 1170; Kyron Huigens, *On Aristotelian Criminal Law: A Reply to Duff*, 18 NOTRE DAME J. L. ETHICS & PUB. POL'Y 465, 468 (2004); Kyron Huigens, *Virtue and Inculcation*, 108 HARV. L. REV. 1423 (1995).

7. See, e.g., LAWRENCE SOLUM, JUDICIAL SELECTION: IDEOLOGY VERSUS CHARACTER, U. SAN DIEGO PUBLIC LAW AND LEGAL THEORY RESEARCH PAPER SERIES NO. 04-07 (2014), <https://ssrn.com/abstract=516585> (click “Download This Paper” for PDF of article).

8. See, e.g., SOLUM, *supra* note 6.

an aim of or consideration in law and politics, and thus have recognized the need for more encompassing theories of virtue and law generally.⁹

In a sense, therefore, the approach I advocate might be described as building on the emerging virtue jurisprudence. However, I am not here using conceptions of virtue or character to judge or evaluate conduct. Nor am I addressing the question of what traits are intrinsically good or morally right or constitutive of human excellence. A fuller inquiry would tackle those questions. In particular, a fuller account in the classical tradition would recognize that some traits, capacities, and attitudes may be not merely *conducive to* but also *components of* a rich and full life—ends as well as means. I have views on some of those matters; but my focus in this Article is narrower. My concern here is with the instrumental value of traits and capacities. I am interested in the extent to which the development of particular traits might help us live well and fully.

I do not attempt here to specify the content of a good and full life. Nor is it necessary to do so to think usefully about the role character may play in helping us live well and fully. As I describe below, some at least tentative account of what *conduces* to thriving is necessary. That is why I am offering this account. But it is possible to identify traits, capacities, and attitudes that are likely to help us thrive according to very wide range of plausibly appealing visions of human thriving. In the physical realm, health is useful in a wide range of endeavors; strength can help you lift whatever you want to lift; and clear vision is useful pretty much no matter what you want to see.

So this Article asks two questions. What traits, capacities and attitudes are like health, strength, and clear vision but for the soul rather than the body? And what if anything can or should law and politics do to help nurture those traits?

9. Lawrence B. Solum, *Natural Justice*, 51 *Am. J. Juris.* 65, 76 (2006) (“A complete virtue jurisprudence would include a virtue-theoretic account of the ends of legislation, a virtue-centered theory of judging, and an aretaic account of the nature of law.”); Chapin F. Cimino, *Private Law, Public Consequences, and Virtue Jurisprudence*, 71 *U. PITT. L. REV.* 279, 312 (2009) (“With time and attention, theorists will eventually uncover the specifics of the theory’s potential impact on law.”); COLIN FARRELLY & LAWRENCE B. SOLUM, *An Introduction to Aretaic Theories of Law*, in *VIRTUE JURISPRUDENCE*, *supra* note 6, at 232 (“An aretaic theory of legislation would naturally begin with the premise that the telos or proper end of law is the promotion of human flourishing. If the purpose of law is to enable humans to acquire, maintain, and exercise the human excellences or virtues, it seems likely that there will be important implications for familiar debates.”).

B. An Ancient Greek Problem

In a sense, it is ironic that I should struggle to frame this inquiry, for it is not a new problem. It was, in fact, at the heart of the first and still most provocative conversation about the city and the soul—the conversation described in Plato’s *Republic*.¹⁰ And as old as these questions are, equally old is the tendency to find them difficult and challenging, and thus to take refuge in arguments about justice or utility—as if such concerns could be somehow isolated from the underlying questions of what makes for a good life and the role played by law and politics in nurturing such a life. Enter Cephalus; or rather *exit* Cephalus—for it is his departure from which we can learn.

Cephalus is a character in Plato’s *Republic*—a prosperous old man in whose home the long conversation occurs.¹¹ He says that he is concerned about two things—the same two things, in fact, that are the subject of most legal scholarship. First, he hopes to provide materially for those for whom he is responsible. Second, he wants to behave justly.¹² So, like modern legal academics and policymakers, Cephalus purports to care about both consequentialist and deontological concerns. In addition, Cephalus says that he is eager for argument about these matters, as he claims to desire thoughtful conversation of the sort Socrates offers.¹³

Socrates takes Cephalus at his word and starts a conversation. He begins in his usual way—by calling into question the coherence of Cephalus’s conventional understanding of justice.¹⁴ As we know, the inquiry will ultimately involve and call into question an entire set of assumptions on which Cephalus and those like him have made sense of their lives and work.

But Cephalus is having no part of it. Before the conversation even gets rolling—a conversation he claimed to have desired, on matters in which he claimed to have keen interest—Cephalus abruptly departs, saying that he must go see to the sacrifices.¹⁵ He is unwilling, perhaps even unable, to see that questions of justice and questions of utility are both incoherent absent an underlying account of the relationship between politics (including law), character (understood primarily as what one cares about and

10. Plato, *THE REPUBLIC OF PLATO* (Allan Bloom trans., HarperCollins Publishers 1991).

11. *Id.* at 4–5.

12. *Id.* at 4–6.

13. *Id.* at 4.

14. *Id.* at 4–7.

15. *Id.* at 7.

pursues), and thriving (understood as not merely happiness but *eudaimonia*).

My hope is to emulate those among Socrates's interlocutors who were willing to tackle—however tentatively and inconclusively—the questions that Cephalus and others like him are so eager to duck.

C. *A Contemporary American Problem*

Nor are these questions of merely historical or theoretical significance. The widespread discontent evident in contemporary American politics no doubt has many causes; and many of those causes are concrete. Economic insecurity and lack of opportunity produce stress and undercut hope. Persistent and systemic racism and discrimination frustrate and anger marginalized people; while at the same time a sense of eroding privilege frightens and unsettles those not yet quite at the margins. Widening income inequality engenders resentment. Terrorism and violence create fear and insecurity. All of these are to some extent failures of governance. Law and politics have not responded adequately to these and other concrete difficulties. And people are not happy about it.

I suggest here, however, that there is also a deeper failure at work. We have failed to address the question of what people really need. We seem to act on the implicit assumption that maximizing material goods will conduce to well-being. But we may well be mistaken. Granted that a certain level of certain material goods—health, wealth, safety, and the like—is necessary or at least useful to human thriving, it is another thing entirely to behave as though we believe those are the only things that matter. We have massive bodies of work devoted to thinking about how to meet material needs—for wealth, health, security, and the like. Yet we seem persistently unwilling to think about whether and how we might nurture the deeper things people may need if they are to thrive and be happy. This, I argue here, is our deepest and most dangerous failure.

One possible partial corrective to this mistake would be for law and politics, while still focusing on material goods, to more fully recognize the marginal utility of such goods. This would mean trying to ensure that as many people as possible have some requisite level of certain material goods—rather than trying to maximize the sum or average. Identifying what goods are requisite, and at what level, would draw on some version of the capabilities

approach advocated by Martha Nussbaum, Amartya Sen and others.¹⁶

I would embrace this partial corrective. But here I want to suggest that we should do more than identify the basic material goods requisite to thriving. We should also ask what deeper things people need. In particular, we should think about whether law and politics might help us develop the traits, capacities, and attitudes—the character—that will enable us to thrive. At the very least, we should consider whether our law and politics may actually be undercutting the development of the traits, capacities, and attitudes we most need.

If it seems as though I am calling for something inconsistent with a core commitment to democracy, recall the document that launched ours. The Declaration of Independence grounded our experiment on the claim that people are entitled to three things—life, liberty, and the pursuit of happiness.¹⁷ The first of those three, life, recognizes the material needs we rightly strive to protect. The second, liberty, highlights the autonomy concerns we must respect in the process.

But what of the third? What do we mean—what should we mean—by happiness? And what does it mean that our commitment is to the *pursuit* of happiness, rather than to the thing itself? This framing seems to suggest that it is something we should facilitate rather than provide; but how? This question we have so far evaded, as our law and politics have focused to the first two components of our founding commitment. I suggest that we turn our attention to the part we forgot.

D. *An Unavoidable Problem*

It will be objected that liberal democracy avoids the question of what conduces to human thriving. This objection can be framed in terms of democratic legitimacy (we must not consider such matters) or in terms of pragmatic caution (we should not consider such matters). Either way, the upshot of the objection is that law and politics should strive only to create the basic conditions necessary for thriving—material security, for example—and should

16. See, e.g., MARTHA NUSSBAUM, *Nature, Functioning and Capability: Aristotle on Political Distribution*, in 6 *ANCIENT PHILOSOPHY* 145–184 (Oxford Studies 1988); Amartya Sen, *Capability and Wellbeing*, in *THE QUALITY OF LIFE* 30–53 (Martha Nussbaum & Amartya Sen, eds., 1993).

17. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

take no position at all on further questions of what traits, capacities and attitudes might help us thrive.

That objection, however, assumes away the key question. It assumes that we know or agree upon the basic conditions necessary for human thriving. We do not. We simply act as though we do—while pretending to take no position on the matter.

In particular, utilitarian approaches to law and politics—including the entire edifice of law and economics—are grounded in some account of what conduces to if not constitutes human thriving. Either that or they are pointless. By way of illustration, imagine that legal and policy scholars were to devote enormous effort and resources to figuring out how to make people's hair marginally more blonde. That would strike us as silly. Why? Because we have no reason to believe that making people marginally blonder will actually make them better off or happier. So instead scholars devote their energy to figuring out how to make people marginally richer, safer, healthier, and the like. And those efforts are not silly at all. Why? Because we assume that those things are important conditions or components of thriving. Utilitarian theories are thriving theories; with the caveat that they assume, rather than defend, the significance for thriving of the ends they pursue.

Nor can we responsibly dodge the question by simply taking as our goal the satisfaction of preferences. First of all, to take preference satisfaction as a goal is to assume that having one's preferences satisfied conduces to or constitutes part a good life. However plausible that theory may be, it manifestly is a theory of thriving—rather than a way of avoiding the need for such a theory. And it is probably not a very good theory.

More to the point, preferences are not exogenous. They are outputs as well as inputs. Law and politics impact what we want, and we should take responsibility for that impact. To situate the point within the context of the approach I advocate here, preferences are aspects of character—the very character that is inevitably influenced by law and politics. Indeed, in the Socratic terms to which I will return, the most helpful way to think about character is in terms of what we desire. If Socrates had it right, what we learn to want largely determines whether and how well we thrive. And law and politics at least influence what we want. It is simply an evasion to suggest that law and politics should limit their focus to providing people with whatever they already happen to desire when law and politics are shaping those very desires.

Justice- or fairness-based theories of law and politics might claim to need no account of thriving, but that too is at least to some

extent an evasion. To the extent that justice-based arguments focus on the fair distribution of goods, for example, they make use of some at least implicit account of what counts as a good. Imagine a policy providing that members of one group get free health care while members of another group get free piano lessons, and members of yet another group get government cheese. Such a policy would be rightly criticized as not only expressively problematic and/or inefficient on utilitarian grounds but also as distributionally unjust. It would be unfair. Why? In part because we assume that health care is necessary to thriving, while piano lessons, perhaps conducive to well-being, are not necessary, and cheese is neither. Or perhaps some would argue that music is more essential to thriving than health. The point is that there is some theory of value at work, and any such theory implicitly draws upon some account of what constitutes or conduces to well-being.

To pretend to take no position on what helps make for a rich and full life is often simply to deny responsibility for the way we have implicitly answered it. Some theory of human thriving often—if not inevitably—informs legal and political discourse and decision-making. If so, the theory should be a good one—or at least one we have thought about as well as we can. Otherwise, law and politics may not only fail to help people thrive; they may actually make people worse off.

Granted that law and politics inevitably rest on some at least tentative account of human thriving, it is yet another step to claim that character ought to be part of the calculus. Perhaps it should suffice to build on the work of happiness researchers and focus solely on what sort of external circumstances and conditions best conduce to well-being. Perhaps it is unnecessary or illegitimate for law and politics to attend to character—to what sort of people we are or should be. In particular, it will be objected that concern for character represents a problematic intrusion on individual autonomy.¹⁸ This is a fair concern, but not a fatal objection.

As a preliminary matter, it is worth noting that arguments about autonomy can themselves operate as evasions—implicitly assertions that it is acceptable to do anything we want to people as long as we get them to agree to it. The use of lotteries to raise public funds offers an example. Such a highly regressive form of taxation is defensible only on the basis that people choose to play—as if we bear no responsibility for the things we manage to persuade

18. See, e.g., Heidi M. Hurd, *Why Liberals Should Hate "Hate Crime Legislation,"* 20 L. & PHIL. 215 (2001).

people to do.¹⁹ In this way, the freedom that many autonomy-based arguments seem often to protect is the freedom to exploit predictable cognitive failures, information asymmetries and the like for our own benefit.

But granting that respect for real autonomy is both an essential principle and a prerequisite to democratic legitimacy, it still does not follow that attention to the traits and capacities indirectly nurtured by law and politics runs counter to that principle. And this is true for two reasons.

First, some traits and capacities augment individual autonomy, but can best or only be nurtured collectively. It does not offend autonomy for law and politics to take an interest in whether people get infectious diseases or whether people learn to read. Health and basic education give people more autonomy. And given that those and similar matters are inevitably impacted by public policy, it would be an evasion for law and politics to adopt a willful blindness to the impact they have. Similarly, some traits and capacities enhance people's ability to make and follow through on autonomous choices about how to live and thrive. A real respect for real autonomy and freedom calls for the nurturing of such traits—and for a reluctance to inadvertently nurture traits that limit and enslave.

Second, some traits are useful or even necessary to maintaining the very democracy that in turn makes real autonomy possible. We have long recognized that it is legitimate and consistent with a commitment to individual autonomy for democratic law and politics to impose limits on conduct—even demand certain conduct—where necessary or important to preserve the very system that protects that autonomy. So too is it legitimate to nurture the traits and capacities that are similarly necessary or important. This is especially true where the traits and capacities we nurture also themselves directly augment individual autonomy.

Of course, law and politics are not the only or even the main things that make us the sort of people we are. Culture, family, community life, even marketing all may have a larger effect on who we are. But law and politics matter. And, of course, character is not the only thing that impacts thriving. Basic material needs—safety, health, economic security, and the like—certainly matter; and people also need a sense of meaning and purpose. I will suggest that a certain way of thinking about character may also help address these other needs. For now, however, the key point is that

19. See, e.g., Rick Wolff, *Lotteries as Disguised, Regressive, and Counterproductive Taxes*, 9 INT'L J. MENTAL HEALTH & ADDICTION 136, 139 (2011).

law and politics help make us who we are, and that who we are plays at least some role in how well we live. If so, to ignore the impact that law and politics have on character—and thus on whether and how we thrive—is simply an evasion and a denial of responsibility.

II. HOW LAW IMPACTS CHARACTER

As Plato and Aristotle both point out, our character is shaped by both what we do and the environment in which we do what we do; and law and politics inevitably influence both. Any political or legal system will influence what we do, even if just by forbidding certain conduct—or indeed even by deciding not to forbid anything at all. And any legal or political system will influence the environment in which we do what we do. On this score, a libertarian or minimalist political system creates a particular environment just as much as a paternalistic or interventionist system does. There is no such thing as a legal/political system that does not influence what we do or the environment in which we do it; thus, there is no such thing as law and politics that do not at least potentially influence our character. The question is how. Beyond the direct regulation of specific conduct and the creation of the general background environment in which we live and act, how might law and politics influence our character?

Here I suggest eight potential mechanisms. This part of my argument is inevitably incomplete. Thinking about the myriad and subtle ways law and politics may help shape character is a central aspect of the ongoing project for which I am calling in this Article—not something I can nail down here. I can, however, illustrate the sort of thing I mean. To this end, here are eight overlapping ways in which law and politics, whether intentionally or inadvertently, may have an influence on the sorts of people we become. The labels we might give these various and interrelated mechanisms, and the distinctions between them, are somewhat arbitrary; but the following descriptive terms will suffice: 1) exhortation; 2) cultivation; 3) argument; 4) discouraging debasement; 5) expression; 6) nurturing institutions; 7) enabling exemplars; and 8) providing proxies for conversation.

A. *Exhortation*

Most obviously, law and politics might be vehicles through which we directly exhort ourselves to certain traits. Think of Roosevelt

calling for courage or Kennedy calling for a spirit of public service. However, without dismissing the possibility that particularly charismatic leaders might directly inspire virtue, this sort of overt inculcation of character is not my primary concern here. As I will suggest below, rhetoric matters a great deal to character formation, but indirectly; so direct hortatory exhortation is not likely to be the most important way law and politics influence who we are. It is also not the most dangerous. Direct and overt efforts to nurture character are evident for what they are, and can be embraced, rejected, or ignored as we choose. What need attention are the indirect ways in which law and politics may make us who we are.

B. *Cultivation*

Law can influence character indirectly, by encouraging or discouraging conduct that might indirectly cultivate particular traits. Someone trying to lose weight and get in shape might intentionally park farther from his or her workplace. Or, a baseball player might avoid playing slow-pitch softball out of concern that adjusting his swing to hit lobbed softball pitches will throw off his mechanics. We recognize, and thus can either make use of or guard against, the possibility that the demands we put on ourselves physically may have indirect consequences, good or bad, for our bodies. We can and should do the same thing for our souls. We should be aware of the indirect impact on our character of what we allow or require ourselves to do—of how we regulate our lives.

One obvious example would be integration or anti-discrimination law. We might hope that integrated and diverse institutions will allow or require us to interact with others from different backgrounds and thus indirectly help us develop desirable traits of tolerance or open-mindedness—or that requiring ourselves to work with others with varying viewpoints will help us develop the wisdom that comes through seeing things from different perspectives. Similarly, we might regulate pornography and/or prostitution not just to protect from harm those directly impacted, and not just to express our normative views about pornography, but also to avoid engendering in ourselves the trait of misogyny, which we think might come about through participation in, or exposure to the systematic exploitation of women and girls.²⁰

20. See, e.g., Laurie Shrage, *Should Feminists Oppose Prostitution?*, 99 ETHICS 347 (1989).

And the indirect effects may be subtler still. Consider the constitutional prohibition of cruel and unusual punishment. Most obviously, this protects those who would be the object of such punishment; but we might also eschew cruelty because of what it does to us. Engaging in behavior we feel to be cruel and unusual may, for example, encourage or even require us to distance ourselves from our actions—to reduce our willingness to see ourselves in what we do. If so, it may indirectly undercut the capacity for self-reflection arguably critical to the development of other virtues.

Perhaps the most well-known argument about the potential effect of legal doctrine on character was that made by Warren and Brandeis in their argument that law should discourage invasive gossip mongering:

Nor is the harm wrought by such invasions confined to the suffering of those who may be the subjects of journalistic or other enterprise. . . . Even gossip apparently harmless, when widely and persistently circulated, is potent for evil. It both belittles and perverts. It belittles by inverting the relative importance of things, thus dwarfing the thoughts and aspirations of a people. When personal gossip attains the dignity of print, and crowds the space available for matters of real interest to the community, what wonder that the ignorant and thoughtless mistake its relative importance. Easy of comprehension, appealing to that weak side of human nature which is never wholly cast down by the misfortunes and frailties of our neighbors, no one can be surprised that it usurps the place of interest in brains capable of other things. Triviality destroys at once robustness of thought and delicacy of feeling. No enthusiasm can flourish, no generous impulse can survive under its blighting influence.²¹

My point in quoting Warren and Brandeis at such length is obviously not to argue for a right to privacy, nor even to endorse the underlying claim about the corrupting nature of gossip. The point is simply that they knew how to and were willing to talk about the consequences of law for the sort of people we become.

Just as how what we do impacts our character, so too does how we do it. In particular, the ways in which we go about making

21. Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 196 (1890).

salient decisions may have as much impact on who we are as what we decide. By way of illustration, consider why parents might choose to involve children in discussions of family decisions. They might do so in part to develop in the children a capacity for deliberation of decision-making, or to nurture a sense of shared responsibility. Nor does the principle depend on infantilizing or disrespecting those in whom one might want to nurture traits. A law faculty, for example, might choose methods of deliberation and decision-making not solely in order to get things done efficiently or even decided as well as possible, but also in an effort to cultivate in ourselves a sense of community, shared responsibility, mutual respect, and the capacity for the collective articulation of mission and purpose. Mine does.

The clearest example of this principle at work in American law and politics may be the use of juries. It has long been recognized that jury service may play an educative role.²² I suggest as well that jury service may, despite its relative rarity, nurture important traits and capacities. Jury service, in particular in criminal trials, requires jurors to bear a certain sort of moral weight and responsibility. And, as athletes recognize in the context of physical capacities, the burdens we require ourselves to bear can help us build the strengths we need. As I have suggested, jury service, properly structured and conceived, may build traits of responsibility taking, empathy, and the capacity for deliberation.²³

I say “properly structured and conceived,” and there’s the rub. Once we have recognized the potential character-building effects of legal and political processes, we can better think about whether and how to structure and conceive of those processes so as to meet those ends—while of course still serving the essential consequentialist decision-making function of the process in question.

This matters because an institution or process that might otherwise nurture desirable traits might, if arranged and understood without attention to such matters, actually undercut important virtues. The institutions of democratic political participation, for example, may in many cases nurture desirable personal and civic virtues. But they can do the opposite. As I have argued elsewhere, direct democracy, which is often defended as a form of edifying civic participation, may actually nurture

22. *E.g.*, Andrew G. Ferguson, *Jury Instructions as Constitutional Education*, 84 U. COLO. L. REV. 233 (2013).

23. *See generally* Clark, *supra* note 1; Sherman J. Clark, *The Courage of Our Convictions*, 97 MICH. L. REV. 8 (1999).

irresponsibility, selfishness, and narrow decision-making.²⁴ It does so, arguably, by encouraging voters to exercise power over others without confronting their own responsibility for those exercises of power, and by fostering and reifying a notion of political participation as the mere assertion of preferences.

C. *Argument*

More subtly still, we become who we are not just through what we do, but also through how we understand and justify our conduct. An obvious example would be the use of dehumanizing rhetoric in war. But other less-obviously problematic ways of talking and thinking also can be constitutive, and potentially corrupting. Well-intentioned, seemingly uncontroversial, and ostensibly neutral ways of talking and thinking about law and politics potentially undercut the very thriving law and politics are presumably intended to make possible.

I have explored this potential dynamic at some length in other work;²⁵ so here let me just highlight the central point. When we persuade, we do so not through the force of abstract logic but by finding or making space in the worldviews—the understanding, and priorities—of those we persuade. Unless we believe that the understandings and priorities of those we persuade are fixed, we should recognize that when we persuade we do not simply find but, crucially, sometimes also may make space in their worldviews. If so, we should take responsibility not just for what we persuade people to do but also for what we do to those we persuade.

Imagine that as a lawyer or legislator or political candidate you could advance a useful project if you were to make arguments that appeal to racism and fear. Perhaps you want to build a new school that will serve the less advantaged children in your city; and you recognize that you could win support for the project if you subtly emphasize that having a new school will keep those (black) kids from having to travel across town to attend your (white) school. Granted, a heavy-handed argument might well backfire, and thus be bad argumentative strategy. But you might well hesitate to make this argument even if you think it would work. And you might hesitate not only because the argument is distasteful, but also because you would recognize that by appealing to racism and fear

24. Clark, *supra* note 2.

25. Clark, *supra* note 4.

you would not just be pandering to those things. You would be helping to construct them in your community.²⁶

Appeals to racism and fear, however, are too obvious as illustrations. The troubling reality is that the impact of rhetoric may be less obvious, and thus disregarded. It is easy to see that Donald Trump's rhetoric does not just pander to xenophobia—it fuels it. And it is equally clear that Lincoln's Second Inaugural did not just appeal to the better angels of our nature—it nurtured them. For those of us who are neither Lincoln nor Trump, the constitutive impact of any one speech or argument is likely to be small and at the margins. We won't see it. But invisible increments add up.²⁷

A less obvious example would be the extent and insistence with which our arguments focus on marginal increases in wealth or material comfort or safety. Those arguments are not obviously destructive. But nor should we be surprised if—after relying on such arguments to the exclusion of others—we find ourselves in a society so focused on those things that we are less capable of sustaining public conversation about other things that matter more. We are reaping what we—in part through our ways of speaking and arguing—have sown.

D. *Discouraging Debasement*

Marketers want to sell us things; and they are willing to debase us to get us to buy. They do not think in terms of debasement, of course. They just appeal, with great sophistication, to what works—whether that means appealing to our vanity, greed, fear, or whatever. But in light of the insight described above, that is a problem. If indeed we nurture those traits to which we appeal, marketing may be making us more vain, greedy, and fearful. As with political and legal rhetoric, the impact of any one advertisement will be insignificant, marginal. But ads add up.

Advertisers know that “People Don't Buy Products, They Buy Better Versions of Themselves.”²⁸ They know they are selling us a set of traits—a way of seeing and thinking of ourselves. And they do not care whether that way is good for us. Granted, it might be possible to sell some sorts of things by appealing to and thus

26. For a detailed discussion of the impact of public language on character and conduct, see JASON STANLEY, *HOW PROPAGANDA WORKS* (2015), especially Chapter 4.

27. See *id.*

28. Zander Nethercutt, *People Don't Buy Products, They Buy Better Versions of Themselves*, MEDIUM (July 7, 2018), <https://medium.com/s/buy-yourself/people-dont-buy-products-they-buy-better-versions-of-themselves-d481390bfcee>.

nurturing useful traits. But many of the things we might buy are appealing to our desires for pleasure or status. To anticipate the Socratic account of virtues described below, a desire for pleasure and a desire for status are arguably the very attitudes we should strive not to nurture. But those are the attitudes marketers often must appeal to—and thus potentially cultivate—if they are to get us to buy.

Law and politics might mitigate the ability of marketers to debase us. While content restrictions based on potential debasement would be difficult to sustain against a First Amendment challenge, other measures might be possible. Commercial speech may constitutionally be regulated by means that are reasonable in light of a legitimate state interest.²⁹ Time, place and manner restrictions could thus limit the reach and scope of ads—if not their content. We ban cigarette ads on TV to limit the ability of tobacco companies to exploit our addictive tendencies and poison our lungs. Might we not at least curtail other sorts of ads to prevent other sorts of marketers from exploiting our deeper cognitive biases and poisoning our souls?

E. *Expression*

Recent decades have seen a number of what are referred to as expressive theories of law and politics, the common thread in which is that it not only matters what law does but also what it says.³⁰ What is not addressed, however, is just *why* it matters what law says. There are a number of potential good answers to this question. Law can, for example, express and thus help construct substantive norms of conduct. In this way, criminal law not only deters, protects against, and punishes certain conduct; it can also communicate that certain conduct is considered wrong or unacceptable. Expression through law can also be seen as important for its own sake, or because it can communicate and

29. *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n*, 337 U.S. 557, 569–70 (1980) (explaining that the content of non-misleading commercial speech can be constitutionally regulated when a substantial government interest is at stake, the regulation directly advances that interest, and the regulation is no more extensive than necessary). *But see Bd. of Trs. v. Fox*, 492 U.S. 469, 480 (1989) (clarifying the test by holding that only a “reasonable fit” must be necessary between the state interest and the regulation).

30. For the first prominent defense of such expressive theories, see Joel Feinberg, *The Expressive Function of Punishment*, 49 *MONIST* 397 (1965). For later defenses of it see, e.g., Igor Primoratz, *Punishment as Language*, 64 *PHIL.* 187 (1989); R.A. Duff, *PUNISHMENT, COMMUNICATION, AND COMMUNITY* 27–30 (2001); Chris Bennett, *State Denunciation of Crime*, 3 *J. MORAL PHIL.* 288 (2006).

thus construct values important for their own sake.³¹ In this way, we might aim to express, through law, respect for equality and dignity; and we might seek to avoid expressing disrespect or intolerance.

I suggest here that an additional reason expression matters is that it can articulate and thus encourage the formation of character. And it can do so in much the same way as the persuasive rhetoric described above. One way people figure out who to be and how to live is by noticing what traits and ways of being are described and lauded by others in their community—and by their community itself. This can happen at a personal level, when people we respect express views about desirable and undesirable traits. As a teenager, I happened to overhear my father speak disdainfully of men who treat women poorly. That expression, along with my desire to be respected by a man I respected, had more impact on my own attitudes—and on my own unwillingness to admit misogyny into my character—than could any combination of direct exhortation, philosophical argument, or material incentives. Similarly, when law expresses, directly or indirectly, admiration or respect for certain ways of being, that can—if the law and its expressions are worthy of respect—encourage the development of the traits it has extolled.

Tort law, for example, can express the value of mutual respect for equal dignity. It does so through particular so-called dignitary harms,³² but also more generally simply by empowering people to demand that others be called to account for mistreatment. Tort law primarily protects and empowers victims, of course, but it also works on all of us—indirectly communicating that respect for the rights and interests of others is an admirable trait and an essential component of democratic citizenship.

More indirectly still, particular aspects of doctrine may communicate something similar. Consider the objective standard for negligence in tort. That can certainly be described and defended as a matter of pragmatic necessity, or simply flowing from the internal logic of the negligence principle. But it also expresses something. It expresses the view—arguably at the heart of not just tort law but of democracy itself—that everyone deserves to be treated as equally competent citizens. A similar message may be expressed by the processes employed by law and politics, such as the use of juries, and indeed the various institutions of democracy

31. For an influential example of this approach see Jean Hampton, *The Moral Education Theory of Punishment*, 13 PHIL. & PUB. AFF. 208 (1984).

32. See, e.g., *Alcorn v. Mitchell*, 63 Ill. 553, 553–54 (1872) (illustrating that spitting in someone's face, while not causing physical injury, has long been recognized as an affront to dignity worthy of legal response under the heading of offensive battery).

itself. How well or fully our institutions currently express such visions of respect and equality is a separate and significant question—one beyond the scope of this Article. The point here is that decision-making processes may often, albeit implicitly, be understood to say something about how much we respect the people who do or do not get to make decisions.

F. *Nurturing Seedbeds*

Law and politics can also influence character by encouraging or facilitating the development of other institutions through which traits are articulated or developed. For example, law can facilitate, or inhibit, the development of philanthropic, fraternal, or religious institutions through which individuals and groups construct and pursue visions of themselves.³³ More subtly, zoning regulations and land use policies can influence the shape of our communities, thus making it easier or more difficult for people to live and work together in ways conducive to the development of character trait such as cooperation and a sense of shared responsibility, as opposed to isolated individualism or gated us-versus-them ways of conceiving of public life.

But civic virtue or public-spiritedness is of course not the only character trait that might be articulated or constructed through institutions which law or politics might or might not in turn encourage or facilitate. Most salient—at least on the tentative Socratic account of valuable virtues sketched below—educational and artistic institutions might nurture a love of truth and beauty. Military organizations might help people construct and aspire to courage and loyalty. Educational institutions might nurture a love of truth. Religious organizations might help articulate and provide an arena for the development of temperance or spirituality. Sporting organizations may offer vehicles through which people understand and develop traits of persistence, toughness, or teamwork. Fraternal organizations often self-consciously define themselves as instruments for the construction of visions of manhood, responsibility, and/or charity.

Nor, however, is it all necessarily for good. Military and sporting organizations can under some circumstances become arenas for the development of traits of violence or misogyny. Religious and fraternal organizations can foster intolerance or provincialism.

33. For example, the government might fund some such activities and/or grant some such organizations tax exempt status.

My point, therefore, is not to advocate for support of any particular institution, but rather to suggest that when we decide what public policy choices to make, we should do so with an awareness of how those choices will influence our character. In particular, we should think about whether those choices will facilitate or undercut the institutions through which we articulate or develop our sense of who we are. If we, for example, decide how to regulate or tax fraternal organizations, or how to control land use, or whether to fund a sports leagues or stadiums, based entirely on the measurable economic consequences, or in terms of aggregating preferences, we will be missing much of what matters. The institutions we build or encourage do not just help us get what we want; they are also the arenas in which we learn how to be.

G. Proxies for Conversation

Law and politics are not merely vehicles through which we may nurture pre-defined or agreed-upon character traits. They are fora through which we understand and construct them. Our law and politics do not merely help or hinder us from being the sort of people we want; they help us figure out who we want to be. It is possible, of course, to engage in theoretical discussion of the virtues—to analyze and argue about what forms of what virtues are desirable and why, given various views of what it means to thrive. I engage in some of that below.

Legal and political issues also provide concrete contexts for defining and discussing character. Consider guns, for example. As Dan Kahan and Donald Braman have shown, American's views over gun control are determined largely by what they call cultural values.³⁴ People make arguments about safety, or the text of the Second Amendment; and they are not necessarily disingenuous in doing so; but what seems really to drive views on the issue are a deeper and perhaps unexamined set of ideals about what guns mean, and what it would mean to regulate them.³⁵

But what Kahan and Braman describe are not merely competing views of what is right, but also accounts of arguably admirable character traits—self-reliance and courage and independence on the part of gun rights advocates competing with non-violence and shared community responsibility on the part of gun control

34. Donald Braman & Dan M. Kahan, *Overcoming the Fear of Guns, the Fear of Gun Control, and the Fear of Cultural Politics: Constructing a Better Gun Debate*, 55 EMORY L.J. 569, 571 (2006).

35. *Id.*

advocates, for example.³⁶ Nor is it merely that views on the issue are informed by competing visions of community character.

Rather, community character *is* the issue, with gun control serving as a vehicle or proxy for a conversation we could not have, or not have as well, in the abstract. If so, we should help people articulate those concerns, flesh them out, and think well about the connections between various accounts of identity and character and various visions of individual or collective thriving. The concrete issue can provide the grounding and context necessary for a richer conversation about what kind of people we want to be.

H. *Enabling Exemplars*

Even with the benefit of the concrete contexts provided by law and politics, it remains difficult to talk well about character traits and their impact on thriving. It can be rather like trying to choose or design clothes by arguing about what they will look like. Often it can be helpful to have someone wear the clothes for us—model them for us. And it can be especially helpful when people model clothes that we would not have had the creativity to imagine or design from scratch.

So, rather than merely defining virtues in the abstract, we construct them in part through molds and models. A person says to himself or herself: I want to be brave like my father, wise like my teacher, tough like my coach. Or, alternatively: I do not want to be weak or foolish or irresponsible like X, and Y, and Z. We also use famous people, or what we think we know of them, to embody traits to which we aspire or which we hope to eschew. The point here is not just that these people *represent* traits of character in our imagination. More than that, they are also the vessels through which we construct those traits. We do not have some agreed-upon and clear idea of courage or wisdom, which a father or teacher them comes to stand for in our minds, or an unambiguous picture of greed or materialism, for which a particular villain, real or fictional, becomes a shorthand. Those people are the ways in which we come to conceive of those ways of being.

So, what does law have to do with this process? Directly, not much; but indirectly perhaps a great deal, by providing, or undercutting, conditions under which those who might exemplify character traits can thrive and inspire emulation. While law and politics can overtly and intentionally create opportunities for

36. *Id.* at 577–79.

and/or celebrate role models and heroes—such as in the context of military or other public service; the subtler effects are again likely to be equally significant.

Consider Title IX, for example, as applied to college athletics. On its face, Title IX is a straightforward anti-discrimination statute, modeled after Title VI and Title VII, prohibiting discrimination in education on the basis of sex.³⁷ I suggest that there is something missing from the debate over Title IX. Title IX is also, albeit indirectly, about character. Most obviously, again, anti-discrimination law can express a commitment to a particular vision of fairness; and Title IX may do that. But that is not my point here. Here, I am looking to Title IX as one of the ways in which law can facilitate the flourishing of exemplars through which we can understand and aspire to traits of character. Title IX does not just help the women and girls who gain opportunities thereby. It helps us all. By encouraging and allowing women and girls to excel in sports at the highest and highest profile levels, it provides us with more and better heroes.

We do not look for every virtue in or through athletes. Wisdom and temperance, for example, are not necessarily traits we associate with or look for in young athletic heroes. We do, however, look to them to help us imagine a set of traits including perseverance, toughness, teamwork, and the like. But we can do that well or poorly. Given a limited set of models, we might, for example, come to see the virtues of endurance, perseverance, strength, and the like as associated with, even inevitably tied to other, less desirable traits such as a tendency to violence or disrespect for women. Boys will be boys, as we say—but only if they are always boys. We associate these sorry traits with the admirable ones, and thus have a lesser picture of what it is possible to be, in part because we see the relevant virtues always or often modeled by a particular and narrow set of exemplars—men and boys. If we had more women and girls among our athletic heroes, perhaps we could see these traits better, develop a richer conception of them, imagine ways in which they need not be understood as tied to other less desirable traits often found in young men. Our very conception of virtues can be richer or more impoverished depending on the vessels through which we conceive of them.

Nor is Title IX the only possible example. Many areas of law are likely to have some impact, direct or indirect, on whether those who might embody and help us construct richer versions of virtues can thrive and do so. Intellectual property law, for example, does

37. 20 U.S.C. §§ 1681–1688 (2018).

not merely encourage invention and creative works, but can also nurture exemplars of ingenuity and creativity. Tax and antitrust and corporate law help determine the extent to which small business people can thrive and inspire emulation of entrepreneurial virtues. Immigration law can broaden or narrow our sense of possible ways of being by allowing for or inhibiting the flourishing of those who might help us see or construct those ways. Policies encouraging diversity in educational institutions can serve a similar role.

I. *What Follows?*

In the eight overlapping ways described above (and perhaps in other ways as well), rules and practices designed primarily to serve utilitarian or deontological ends can also indirectly impact character. Indeed, some such impact is likely to be inevitable. So we should—in ways consistent with other ends—craft doctrine, structure process, and conduct conversation with those constitutive consequences in mind.

Of course, by framing the matter at that level of generality, I have rather elided the most difficult but essential question. What character traits should we seek to nurture? I am tempted to demur, given that my primary aim in this Article is simply to highlight and call for attention to some of the ways in which law may construct various traits or capacities. That itself is an important conversation; but we cannot continue at that level indefinitely. We need to be willing to make, and listen to, arguments about the particular ways of being to which we ought to aspire if we hope to thrive. So it is as much in the spirit of illustration as argument that below I highlight one possible—and I think compelling—Socratic account of account of how we might strive to be if we hope to thrive.

III. HOW CHARACTER IMPACTS THRIVING

There are any number of ways to think and talk about character. For example, it is common and in some contexts useful to think of character primarily in terms of conduct and define character traits in Aristotelian terms as persistent habits of action.³⁸ On that way of thinking, courage, for example, is simply the persistent tendency to behave bravely in the face of danger.³⁹

38. ARISTOTLE, *NICOMACHEAN ETHICS* 25–28 (W. D. Ross trans., Batoche Books 1999).

39. *Id.* at 43–49.

Both classical and modern thinking about character, however, have found it illuminating to focus on internal attitudes, and motivations. On this way of thinking, courage is better understood as a certain stance or orientation toward danger. This is the approach I take here. Following the account offered by Socrates in Plato's *Republic*, I suggest that a particularly useful way to think about character—at least in its connection with thriving—is not so much in terms of what we do, but more essentially in terms of what we think, and in particular, what we desire.⁴⁰

Along those lines, I suggest that law and politics might best try to help us nurture or retain eight particular virtues. This is not an exhaustive list, or even a list of the traits one might consider most conducive to thriving in general. For example, not included in my list are grit (which seems to be much favored by a certain school of thought lately), or charity (although I do believe some of the traits I highlight would conduce to charitable conduct). I aim here to identify traits that seem to me particularly important to thriving (at least on the tentative Socratic account which grounds my thinking), and particularly important in a democracy. These traits are also, I believe, susceptible to being nurtured indirectly through law and politics, and are of a sort that enhance, rather than undercut, the autonomy of citizens.

I would highlight identify eight such traits, divided into two parallel groups of four.

The first four are perhaps not of primary importance to individual thriving, but flow from the account described above and are arguably particularly important public virtues in a democracy. These first four are: 1) a sense of *shared responsibility*, for which one might well use the more common term civic virtue; 2) *self-restraint*, to counteract the tendency of democratic free market society (and the marketers who profit in it) to encourage futile self-indulgence; 3) *intellectual humility* to foster the authentic engagement necessary to democratic deliberation and decision-making; and 4) *fellow-feeling*, by which awkward term I mean the capacity to recognize not just our shared responsibility but also our shared humanity.

To these I would add four more—variations on the above. These next four are inward-looking versions to the classical virtues. Collectively, they embody the classical Socratic account of character and thriving offered above and are more directly focused on individual thriving than on community life. That said, as they all arguably augment, rather than restrict, real autonomy, it would

40. Plato, *supra* note 10, at 262–64.

not offend principles of autonomy for law and politics to engage in the partially-paternalistic effort to nurture these traits.

The four internal analogs to the classical virtues are: 1) a form of internal *courage*, understood as internal responsibility taking—the willingness to acknowledge our agency in what we do; 2) a form of *temperance*, understood as freedom from slavery to pleasure or praise; 3) a form of *wisdom*, understood as love of knowledge or truth or; and 4) something corresponding to *piety*, for which I use the term *aspiration*, understood as the willingness and ability to reach for things we cannot quite grasp.

I have in other work started to explore, explain, and defend the importance of these particular traits;⁴¹ but this Article is not the place to attempt a thorough theory of character and thriving—even if it were within my capacity to do so. Indeed, such an effort here would misrepresent and distract from the aim of this Article, which is that law and politics should attend to these questions, not that I have answered them.

I can, however, at least be explicit about the Socratic perspective on character and thriving that underpins the tentative list of traits I suggest might be usefully and legitimately cultivated by law and politics. That will, I trust, be controversial enough, and will serve to illustrate the sort of inquiry for which I am calling.

A. *A Socratic Account of Character: What We Desire*

Plato's *Republic*, nominally an extensive dialogue on the particular virtue of justice, in fact offers a broader theory of character and human thriving. It does so, moreover, through the lens of community life, and thus provides a template for thinking about not only which traits we might hope to cultivate, but as well about the role law and politics might play in cultivating them. I describe it as a Socratic, rather than Platonic, account because my emphasis here is on the framework established by the character Socrates in the early books, rather than on the some of the elaborate doctrines—including the doctrine of the forms—which have always struck me as places where Plato's desire to expound his own metaphysics rather overwhelmed his fidelity to the character and vision of his teacher Socrates.

But to whomever we attribute the insights contained therein, the first and crucial step in looking to *The Republic* to think about law and politics is to recognize that *The Republic* is *not* essentially a

41. See Clark, *supra* notes 1–5.

book about law and politics. It is a book about the soul. The Republic uses the construction of a highly artificial and impracticable (even undesirable) city/state as a lens through which to think about the individual. Socrates makes this absolutely explicit in Book 2.⁴²

Socrates describes three elements of the community, defined by what they each desire, and corresponding to aspects within each individual.⁴³ This Socratic geography of the soul is not meant to be a literal psychology. It is a way of thinking about character—useful because it focuses our attention not just on what we do but what we seek. Specifically, it asks us to think about who we are in terms of our aspirations—by thinking carefully about where we set our sights.⁴⁴

In Socrates' imagined city, the most numerous and naturally powerful segment of the community is made up of those who desire and seek pleasure—whether in the form of physical gratification or material goods.⁴⁵ If that element is allowed to rule, Socrates argues, the city will not thrive. They provide the energy, the might, and the productive force of the community. But they cannot and should not govern the whole.⁴⁶ So too for the individual. We each have within us a part of ourselves that desires pleasure and comfort. This, Socrates suggests, is naturally the strongest or at least most forceful element in each of us. This is the part that is prone to fall into the belief that more stuff will make us happy. This part is neither wise nor thoughtful enough to see the way in which things recede, and therefore will, if allowed to govern our souls, have us blindly chasing one pleasure after another, one possession after the next.⁴⁷

The second element of the city described by Socrates is made up of those who desire and seek honor.⁴⁸ Fewer in number but strong, they provide protection and security. Placing honor above comfort or safety, they can be brought to place the city's safety above their own. This class is essential—necessary to protect the city from both outside threats and from the restless thoughtless hunger of the pleasure-seeking masses.⁴⁹ But they cannot govern the whole any

42. Plato *supra* note 10, at 45.

43. *Id.* at 262–64.

44. *Id.*

45. *Id.* at 50.

46. *E.g., id.* at 50 (“[Desire] whose presence in cities most of all produces evils both private and public.”); *id.* at 232, 239 (stating unnecessary desires ought not rule).

47. *Id.* at 239.

48. *Id.* at 53–56.

49. *E.g., id.* at 48–49.

more than can the pleasure seeking many.⁵⁰ So too, Socrates suggests, do we each have within us a part that loves honor. We should cultivate this part, and train it to our use. Like a good and loyal dog, this part of the soul can protect us—both from others and from ourselves. It can enable us to rise above pleasure and fear. But nor can this part be permitted to govern the soul, because honor is ultimately no more capable of bringing sustained well-being than is pleasure. Should this part be permitted to govern, we would simply trade the fruitless pursuit of pleasure for the equally fruitless hunger for praise.⁵¹

Socrates famously concludes that the city will not thrive—will see no end of evils—unless governed by the third and least numerous element—philosophers.⁵² By philosophers, however, he does not mean professional theorists, nor even merely those who possess prudence. He means *philosophia*—the love of knowledge and truth. Those who ultimately govern, whose aspirations set the course of the city, must be those who love not pleasure or praise but knowledge—those who seek truth and comprehension.⁵³ Again, the analogy to the soul is clear. If we hope to thrive as human beings, we need to find within ourselves that part which loves knowledge. We need somehow to cultivate that part, educate it, protect it. And above all we need to find a way to put that part of ourselves in charge.⁵⁴

How should we understand and to what extent should we embrace the Socratic claim that wisdom, understood in this way as the love of truth, is central to thriving? That is the core of the matter, really. For now, it is enough to say that the upshot of my argument is manifestly *not* that philosophers should make our laws. Rather, we should look to our laws to help us retain, or at least not undercut, our capacity to be true philosophers—to love something like knowledge and truth more than pleasure or praise. I say “something like” knowledge and truth because in a pluralist free society, the Socratic love of knowledge must at best serve as a place-holder for an entire range of higher aspirations. Obviously, if any useful talk about human thriving were to require us first to agree on a precise account of the ultimate good, we would be stuck.

Fortunately, a place-holder will suffice. We need not nail down the precise nature of the good we should seek before we can begin thinking about how to help ourselves and one another continue

50. *Id.* at 227

51. *Id.*

52. *E.g., id.* at 264–70.

53. *Id.*

54. *Id.*

seeking it. Leaving L.A. for New York on a cross-country car trip, fellow-travelers can cover a lot of ground before having to agree whether Brooklyn or The Bronx will be the ultimate destination. The varied accounts of the higher and better good similarly seem to lie in the same direction. In particular, we can agree that neither pleasure nor praise will suffice. That alone is enough to get us headed in the right direction. Couple that with the tentative corollary that the something more we need is something analogous to or at least intimated by ideas such as love of knowledge, truth, and beauty, and we have enough to get us well along the road. If so, if the Socratic account is right and appealing in the direction it points, if not in every particular, then the eight traits I described above would seem to be particularly conducive to thriving.

CONCLUSION

In conclusion, return to the last of the eight traits briefly cataloged above—the trait for which I have used the term “aspiration.” Of the traits I have attempted, here and elsewhere, to describe, that is the most difficult to define. But it is, I believe, crucial. The label—“aspiration”—is imperfect, with its unfortunate connotation of ambition or goal-setting. I would simply use the classical term piety, but the modern connotations of formal religiosity and weak or thoughtless devotion are misleading.

I mean instead a kind of strength—the capacity and courage to keep our eyes not just on but above the bottom line and out of the mud. It is the ability and willingness to care about and strive for things deeper and beyond those we can define clearly or measure with precision. This is, I argue, an essential vehicle for, and element of, human thriving; and we should guard against the possibility that our law and politics, including the ways in which we talk about and teach and justify what we do, may be diminishing this crucial capacity by turning us into the sort of people who believe, or behave as though we believe, that more safety, health, prosperity, or prestige will make us happy.

