

Custom and Convention

INTRODUCTION

THE contrast between the artificial and the natural is generally understood in terms of the contribution which man does or does not make to the origin or character of a thing. Works of art are man-made. The artificial is somehow humanly caused or contrived. The contrast between the natural and the conventional or customary involves the same point of difference. Though customs are not, in the strict sense, *made* by man, as are works of art, they do grow only as the result of the kind of acts which men perform voluntarily rather than instinctively. Similarly, conventions, like contracts, are social arrangements or agreements into which men enter voluntarily.

The fundamental notions with which this chapter deals are thus seen to be closely related to ideas and distinctions treated in the chapters on ART and NATURE. For example, the distinction between human action and production, or doing and making, helps us to understand how the conventional and the artificial differ from one another as opposites of the natural. Art involves voluntary making. Customs result from voluntary doing. In both cases, the distinction between the voluntary and the instinctive—the latter representing the natural—seems to be presupposed.

A third term—habit—is traditionally associated with the consideration of the voluntary and the instinctive. Like these others, it seems to have a critical bearing on the discussion of custom and art. Aristotle, for example, conceives art as an intellectual virtue, that is, a habit of mind, an acquired skill. For Hume the customary and the habitual are almost the same. Whether they are to be identified or only connected causally, the relation of habit to custom not only throws some light

on the nature of custom but also calls our attention to the fact that the words “custom” and “convention” cannot be treated simply as synonyms.

In the tradition of the great books, the word “convention” has at least two meanings, in only one of which is it synonymous with “custom.” When “convention” is used to signify habitual social practices, it is, for the most part, interchangeable with “custom.” In this significance, the notion of convention, like that of custom, is an extension of the idea of habit. What habit is in the behavior of the individual, customary or conventional conduct is in the behavior of the social group.

The other meaning of “convention” does not connote the habitual in social behavior but stresses rather the voluntary as opposed to the instinctive origin of social institutions, arrangements, or practices. For example, different sorts of family organization are conventional in the sense that at different times or in different communities men have set up their domestic arrangements in different ways. In each case they tend to perpetuate the particular institutions which they or their ancestors originated. Whatever is conventional about social institutions might have been otherwise, if men had seen fit to invent and adopt different schemes for the organization of their social life. This indicates the connection between the two senses of the word “convention,” for all customs are conventional in origin, and all conventions become customary when perpetuated.

THE FACT THAT men can depart from, as well as abide by, their conventions—that they can transgress as well as conform to custom—

seems to indicate that custom and convention belong to the sphere of human freedom. Yet there is also a sense in which custom is a constraining force, which reduces the tendency of individuals to differ from one another, and which has the effect of molding them alike and regimenting their lives. All the great novelists and playwrights in this set—notably Austen, George Eliot, Balzac, Cervantes, Dickens, Twain, Dostoevsky, Ibsen, Cather, Conrad, Chekhov, O'Neill—tell stories in which the leading characters are embroiled in conflicts with customs and conventions.

The repressive effect of custom can be seen, according to Freud, in the neurotic disorders from which men suffer when their instinctive impulses come into conflict with “accepted custom.” Discussing the influence of custom upon the developing individual, he says that “its ordinances, frequently too stringent, exact a great deal from him, much self-restraint, much renunciation of instinctual gratification.” It becomes, therefore, one of the aims of psychoanalytic therapy to release the individual from his bondage to custom, or at least to make him conscious of the way in which certain desires have been submerged or distorted, and his whole personality shaped, by the constraints which the mores and taboos of the tribe have imposed upon him.

Considered in relation to society, custom also seems to exercise a conservative, if not repressive effect. Established customs tend to resist change. They are sometimes thought to impede progress. But to the extent that they conserve the achievements of the past, they may be indispensable to progress because they provide the substance of what we call “tradition.” A passage in Francis Bacon’s *Advancement of Learning* illustrates these apparently contrary effects of custom.

Overemphasis upon either antiquity or novelty seems to Bacon a disease of learning, or an obstacle to its advancement. “Antiquity envieth there should be new additions,” he writes, “and novelty cannot be content to add but it must deface.” If custom tends to support antiquity against novelty, it may also encourage inventions or discoveries which genuinely enhance the tradition without defacing it. “An-

tiquity deserveth that reverence,” Bacon says, “that men should make a stand thereupon and discover what is the best way; but when the discovery is well taken, then to make progression.” As the preserver of antiquity, custom thus appears to afford a basis for progress.

One other fact about customs which most commentators from Herodotus to Montaigne, Freud, Weber, Frazer, and Lévi-Strauss, have observed is their variety and variability. Customs differ from time to time, and from place to place. But this diversity and variation in custom does not necessarily mean that no uniformity at all exists in the actions of men. “Were there no uniformity in human actions,” Hume points out, it would be impossible “to collect any general observations concerning mankind.” At least enough uniformity is found, in his opinion, for it to be “universally acknowledged that human nature remains still the same.” To whatever extent human behavior is purely natural or instinctive, it is common to all members of the species, and does not, like customary conduct, vary remarkably from one part of the human race to another, or from generation to generation.

“The more we know about customs in different parts of the world,” Dewey writes, “the more we learn how much manners differ from place to place and time to time . . . The particular form a convention takes has nothing fixed and absolute about it. But the existence of some form of convention is not itself a convention. It is a uniform attendant of all social relationships. At the very least, it is the oil which prevents or reduces friction.”

The diversity and variation of customs seems therefore to be of their essence and to show that they are both man-made and voluntary in origin. “If they were not devices of men,” Augustine writes, “they would not be different in different nations, and could not be changed among particular nations.” The distinction between nature and convention can be formulated, therefore, partly in terms of the contrast between the constant and the variable, and partly in terms of the difference between the instinctive and the voluntary.

The early Greeks had an apt way of expressing this. As Aristotle phrases their insight,

they referred to the natural as "that which everywhere has the same force and does not exist by people's thinking this or that," as, for example, "fire burns both here and in Persia." The conventional and those things which are "not by nature but by human enactment are not everywhere the same." The laws of Persia differ from the laws of Greece, and in Greece or in Persia, they change from time to time.

THE VARIABILITY of custom in contrast to the constancy or uniformity of nature puts the distinction between nature and convention at the service of the skeptic. One form of the skeptical attack upon natural law, universal moral standards, and the objectivity of truth or beauty consists in making custom the only measure of the acceptability of human actions or judgments. To say, for example, as Hume does, that the connection which the mind seems to make between cause and effect is based on custom rather than reason, has the skeptical effect which Hume intends. It substitutes the arbitrary for the rational. It dispossesses reason as a source of either the validity or the intelligibility of our conclusions concerning cause and effect.

As the chapters on KNOWLEDGE and OPINION indicate, the skeptical argument takes other forms. The reduction of all human judgments to opinion makes the differences between men, in either action or thought, unresolvable by argument or debate. One opinion can predominate over another only by force or by the weight of numbers. When it predominates by weight of numbers, it prevails by custom or convention. It is the opinion which the majority have agreed upon at a given time or place. To settle every controversy about what men should think or do by counting heads is to hold that everything is a matter of opinion and purely conventional.

Whether the skeptic reduces everything to opinion or to convention, he achieves the same effect. What he means by calling everything an "opinion" or a "convention" is equally inimical to reason. In either case, the willful or arbitrary is enthroned in reason's place and only force can be finally decisive. The two ideas—opinion and convention—

seem to be corollaries of one another. Both imply a kind of relativity. Opinion normally suggests relativity to the individual, custom or convention relativity to the social group. Either may be involved in the origin of the other. The individual may form his opinions under the pressure of prevailing customs of thought or action; the customary beliefs or practices of a society or culture may, and usually do, result from opinions which have come to prevail.

The Greek Sophists, we learn from the dialogues of Plato, appealed to the distinction between nature and convention and to the distinction between knowledge and opinion in exactly the same way. They used the notions of opinion and convention with equal force in their efforts to question absolute standards of conduct and the objectivity or universality of truth. The most familiar of all the sophistic sayings—the remark attributed to Protagoras that "man is the measure of all things"—is interpreted by both Plato and Aristotle to mean that what men wish to think or do determines *for them* what is true or right. Man's will governs his reason, and convention, or the agreement of individual wills, decides what is acceptable to the group.

In the *Gorgias*, which is named after another of the leading Sophists of the day, Plato puts into the mouth of Callicles the sophistic position that there is no law or standard of justice except the rule of the stronger. Insisting that "convention and nature are generally at variance with one another," Callicles attempts to show that all of Socrates' efforts to discover an absolute standard of justice come to naught, because he cannot help but resort "to the popular and vulgar notions of right, which are not natural, but conventional."

As they appear in Plato's dialogues, the Sophists are obviously impressed by the kind of information which fills *The History* of Herodotus—information about the great diversity of human beliefs and practices which anyone could discover for himself if he traveled, as Herodotus did, from people to people, observing their institutions and collecting their legends. Herodotus himself does not explicitly draw the skeptical conclusion, yet his own suspended judgment on many matters betokens a

turn of mind made by the impact of contrary opinions and conflicting customs.

In the Hellenistic period when the main stream of Greek philosophy divides into a number of Roman schools of thought, the skeptical position receives what is perhaps its fullest and most explicit statement. But in the writings of Lucian and Pyrrhon, to take two examples, it is not so much the conflict of customs as it is what Lucian calls "the warfare of creeds," which occasions universal doubt. Yet whatever the source of doubt, Pyrrhonism states the traditional denials of the skeptic in their most extreme form. The senses are entirely untrustworthy. Reason is both impotent and self-deceiving. Men possess no knowledge or science. No truth is self-evident; none can be demonstrated.

THE CRITICAL TEMPER of the Greek Sophists, and of an observer of men and manners like Herodotus, reappears later in the questionings of Montaigne—sharpened somewhat, perhaps, by his acquaintance with the Roman skeptics. In his case, perhaps more than any other, it is the implications of custom which, everywhere expatiated on in his *Essays*, give them their skeptical tone. Not himself a traveler in distant parts, Montaigne traverses the world of time and space by reading. He becomes conversant with the strange customs of the aborigines and of the Orient through the reports of returned explorers. He culls from the historians and geographers of antiquity every difference in custom which their books set forth as fact or fable.

Montaigne's insatiable appetite for collecting and comparing customs is not an aimless fascination on his part with the spectacle of human variety. It steadfastly leads him to the conclusion which is for him the only one possible. Since every belief or practice can be paired with its opposite in the customs of some other time or place, no belief or practice can demand unqualified or universal assent. "There is nothing," he writes, "that custom will not or cannot do; and with reason Pindar calls her . . . the queen and empress of the world."

To say, as Montaigne does, that "the taste

of good and evil depends in large part on the opinion we have of them" and that "each man is as well or as badly off as he thinks he is," amounts to saying that all moral judgments are matters of opinion, either individual or customary in origin. Beauty, too, is a matter of taste. "We imagine its forms to suit our fancy," according to Montaigne. As may be seen in the chapter on BEAUTY, Montaigne assembles an abundance of evidence to show that standards of beauty vary with different peoples. The tastes or preferences of one group are as unaccountable as they are frequently revolting to another.

Even in the field of speculative thought about the nature of things, Montaigne regards the things men hold to be true as nothing more than prevailing opinions—the cultural conventions of a time or place. "We have no other test of truth and reason," he declares, "than the example and pattern of the opinions and customs of the country we live in. *There* is always the perfect religion, the perfect government, the perfect and accomplished manners in all things."

Of all human deceptions or impostures, none is worse than that which flows from a man's unwillingness to qualify every remark with the admission that *this is the way it seems to me*. In Montaigne's eyes, "there is no more notable folly in the world" than the failure to recognize that we reduce truth and falsity "to the measure of our capacity and competence." When new ideas or the strange beliefs of others at first seem incredible simply because they are not our own, "we shall find that it is rather familiarity than knowledge that takes away their strangeness." For his own part, Montaigne makes his "motto" the question, "What do I know?" This, he says, sums up his Pyrrhonian philosophy.

ACCORDING TO the modern social scientist who claims that custom is the ultimate standard of conduct and that it provides the only criterion of moral judgment, no questions can be raised about the goodness or evil of particular customs. The customs of one people cannot be judged by another, at least not objectively or impartially, for those who judge

must do so on the basis of their own customs. Since there is no arbiter above conflicting customs to say which is right, a particular custom has validity only for the group in which it prevails. Within that social group the character or conduct of its individual members is measured by conformity to the prevailing customs.

"Among most primitive peoples," writes Lévi-Strauss, "it is very difficult to obtain a moral justification or a rational explanation for any custom or institution . . . Even in our own society, table manners, social etiquette, fashions of dress, and many of our moral, political, and religious attitudes are scrupulously observed by everyone, although their real origin and function are not often critically examined."

The *descriptive* science of sociology or comparative ethnology thus tends to replace the *normative* science of ethics—or moral philosophy. The only scientifically answerable questions about human conduct take the form of "How *do* men behave?" or "How *have* they acted individually or in groups?" but not "How *should* they?" The study of morality, as in William Graham Sumner's *Folkways*, becomes a study of the mores—how the customs which measure conduct develop and dominate; or, as in the writings of Freud, it becomes a study of how the individual is psychologically formed or deformed by the mores of his tribe and culture, according to the way in which the growing child reacts to the pressures which the community imposes through parental discipline.

With these views, many philosophers and theologians, both ancient and modern, take issue. But their opposing doctrine seldom goes so far as to deny that morality has certain conventional aspects. In arguing that there are "no innate practical principles," Locke, for example, like Montaigne, cites instances of contradictory customs to show that "there is scarce that principle of morality to be named, or rule of virtue to be thought on . . . which is not, somewhere or other, slighted and condemned by the general fashion of whole societies of men, governed by practical opinions and rules of living quite opposite to others."

But Locke does not leave this observation

of the diversity of customs unqualified. He goes on to assert that "though perhaps, by the different temper, education, fashion, maxims, or interest of different sorts of men, it fell out, that what was thought praiseworthy in one place, escaped not censure in another; and so in different societies, virtues and vices were changed: yet, as to the main, they for the most part kept the same everywhere. For, since nothing can be more natural than to encourage with esteem and reputation that wherein every one finds his advantage, and to blame and discountenance the contrary; it is no wonder that esteem and discredit, virtue and vice, should, in a great measure, everywhere correspond with the unchangeable rule of right and wrong, which the law of God hath established . . . Even in the corruption of manners, the true boundaries of the law of nature, which ought to be the rule of virtue and vice, were pretty well preferred."

For Locke, then, as for many others, there appear to be, underlying the variety of customs, moral principles of universal validity that draw their truth from the nature of man which represents a constant and common factor throughout the diversity of cultures. Accordingly, it would seem to follow that just as habits are modifications of instinct or developments of the individual's native capacities for action, so customs are conventional elaborations of what is natural to man as a social animal. On this theory, the conventional cannot be understood except by reference to the natural, *i.e.*, the nature of man or society.

THE VIEW THAT conventions have a natural basis is most readily exemplified by Aristotle's theory of natural and legal (or conventional) justice, and by the teaching of Aquinas concerning natural and positive law. For the Greeks the legal and the conventional are almost identical, so that it is a kind of justice rather than a kind of law which Aristotle calls "natural." Roman philosophers like Cicero, and Roman jurists like Gaius and Ulpian, make what seems to be an equivalent distinction in terms of law rather than justice. In his analysis, Aquinas follows the Latin, not the Greek vocabulary.

The Roman system of jurisprudence, Gibbon tells us, distinguished between those laws which are "positive institutions" and those which "reason prescribes, the laws of nature and nations." The former are man-made—the "result of custom and prejudice." This holds true of both written and unwritten laws, although only the unwritten precepts are now usually called "customary laws." These customary laws are *positive* in the sense that they are humanly instituted or enacted—posited by the will of the legislator rather than merely discovered by the reason of the philosopher. They are *conventional* in the sense that they represent some voluntary agreement on the part of the members of the community they govern, whether that consist in obeying the edicts of the emperor or in giving consent to the enactments of the senate.

So far as it is conventional, the law of one community differs from another; and within the history of a single community, the positive law changes from time to time. But such bodies of law, "however modified by accident or custom," the Roman jurists, Gibbon says, conceived as "drawn from the rule of right." The fact that "reason prescribes" this rule was their explanation of certain common elements which all bodies of positive law seem to contain.

The principles underlying all codes of civil law, whether discovered directly by reason or drawn inductively, as Grotius later suggests, from the comparative study of diverse legal systems, comprise the precepts of what the Romans, and later Aquinas, call "natural law." Thus these writers seem to reaffirm, though in somewhat different language, Aristotle's point that what is naturally just is the same for all men everywhere and always, while the laws of Greece and Persia represent diverse conventional determinations of the universal principles of justice.

The theory of natural right and natural law, as expressed in the writings of Hobbes, Locke, and Kant, as well as in the ancient and medieval tradition, is, of course, more fully treated in the chapters on JUSTICE and LAW. But one example of the distinction between natural and conventional justice may be instructive here.

Aquinas conceives positive rules as "determinations" of, rather than "deductions" from, natural law. He treats such precepts as "Thou shalt not kill" and "Thou shalt not steal" as conclusions that reason can draw deductively from the first principle of natural law, which is sometimes stated in the form of the command: *Do good, harm no one, and render to each his own*. Because these precepts are the prescriptions of reason rather than enactments of the state, they can be interpreted as declaring that murder and larceny are always and everywhere unjust. But what sort of killing and taking of what is not one's own shall be defined as murder and theft; and how offenders shall be tried, judged, and punished—these are matters which natural justice or the precepts of natural law leave open for determination by the positive laws of each community, according to its own constitution and its local customs.

The theory thus exemplified, of the relation between conventional and natural justice, or between positive and natural law, applies to moral rules and ethical standards generally. For the same reason that a positive law which violates natural justice cannot be called "just" even though it is harmonious with the customs of the community, so no rule of conduct, however much it represents prevailing custom, can be approved as morally right if it violates the right as reason sees it. The defenders of natural law, which is also sometimes called "the law of reason," proclaim the existence of an absolute standard, above the diversity and conflict of customs, by which their soundness is measured.

Conflicting ethical doctrines raise many issues concerning what it is right for men to do or good for them to seek; but the moralists at least agree that morality is based on reason or nature. For them the facts of human nature or the intuitions of reason will ultimately decide the points in issue. However far apart Plato and Aristotle, Aquinas and Hegel, Kant and J. S. Mill may be in their conceptions or analyses of the right and the good, they stand together, at least negatively, on the question of how their disputes can be resolved: *not* by appealing to the mores of the tribe, *not* by looking to the conventions of the community

as a measure, *not* by letting the customs of the majority decide.

The deepest of all moral issues therefore exists between those who think that morality somehow derives from nature or reason and those who, like the ancient Sophists or Montaigne or Freud, find its source in custom and convention. According to the side a man takes on this issue, he does or does not believe it possible to discover standards independent of custom, thereby to judge whether customs are good, bad, or indifferent. On one belief, public manners are conventional determinations of moral principles or they are sometimes violations of them, just as positive laws are either determinations or violations of natural law. On the other belief, the individual may be approved or condemned for conforming to or transgressing the manners or mores of his group; but those manners or mores, whether they are liked or disliked by the individual, are above any tenable, objective criticism.

The controversy in jurisprudence and morality between the naturalists or rationalists who appeal to man's nature or reason, and the positivists who hold that human customs cannot be appealed from, parallels a controversy in the theory of knowledge or science. The parallel issue, considered at greater length in the chapters on HYPOTHESIS and PRINCIPLE, can be stated by the question whether the foundation of science—even of such sciences as logic and mathematics—consists of postulates or axioms.

Axioms, like the precepts of natural law, are supposed to have a universality derived from the nature of human reason. They are self-evident truths, compelling assent. Postulates, on the contrary, are like rules of positive law—voluntarily accepted assumptions which, when agreed upon by the experts in a certain science, become its conventional basis. In science as in law, the positivists recognize nothing beyond the agreement of men to determine what shall be *taken for granted* as true or just.

THE DIFFERENCE between nature and convention also enters into the traditional discussion of two of the most characteristic activities of man: speech and political association.

No one disputes whether the faculty of speech is natural to man. It is as natural for man to speak as for dogs to bark or birds to sing. But the question is whether any human language, having a certain vocabulary and syntax, is natural or conventional. The answer seems to be dictated at once by the facts of the matter.

Human languages exist or have existed in great number and diversity, and those which still endure have gradually developed and are undoubtedly subject to further change. Hence, according to the traditional understanding of the natural and the conventional, these various tongues must represent conventional languages—originally invented by this human group or that, perpetuated by custom, altered by the conventions of usage. In contrast, the expressive sounds instinctively made by other animals show themselves to be natural by the fact that they are common to all members of a species and do not change as long as the species endures.

Nevertheless, as the chapter on LANGUAGE indicates, the writers of the great books consider the hypothesis of a natural human language. The Old Testament story of the Tower of Babel is sometimes interpreted as implying the existence of one language for all men before God confounded their speech and diversified their tongues. The story of Adam's giving names to the various species of plants and animals in the Garden of Eden is also cited by those who think there can be natural as well as conventional signs. In Plato's *Cratylus* the attempt is made to discover the natural names for things, or at least to discern some natural basis for the words of a conventional language like Greek.

These who reject the hypothesis of a single human language from which all others have developed by diversification, or who regard a purely natural language as impossible in the very nature of the case, sometimes acknowledge the possibility of certain common elements—principles of syntax, if not words—present in all human languages. The discovery of the common rules of speech was the object of the speculative grammarians in the Middle Ages, and of those who, like Antoine Arnauld

and others, later tried to formulate a "universal grammar." On their view, all languages, even if they are conventional as written or spoken, may have the same natural basis in the fact that they are all used to express what men can naturally perceive or think.

As in the case of language, so in the case of society, the question is whether the family and the state are wholly natural, wholly conventional, or partly one and partly the other—their institutions being erected by choice and custom upon a natural basis. And as in the case of language, here too the great books do not, for the most part, give either of the extreme answers. They do not say that the state is entirely natural, that it is the expression of human instinct as the beehive and the ant mound are instinctive formations. Nor do they say that the state is completely conventional, that it comes into existence *only* as the result of voluntary association on the part of men contracting to live together in a political community.

While Aristotle says that "man is by nature a political animal," and that the state is, therefore, "a creation of nature," he also distinguishes between the ways in which men and other animals are gregarious. Unlike the association of animals, which he attributes to instinct, the society of men rests on reason and speech. "Man is the only animal," he writes, "endowed with the gift of speech . . . intended to set forth the expedient and the inexpedient, and therefore likewise the just and the unjust." Because of these things, cities differ from one another, as beehives or ant mounds do not.

The diversity of states represents for Aristotle a deliberate inventiveness on the part of reason and an exercise of free choice—certainly insofar as states are politically constituted, each with its own constitution. Aristotle's remark that while "a social impulse is implanted in all men by nature," yet "he who first founded the state was the greatest of benefactors," may look self-contradictory; but its two parts can be read as quite consistent with one another, if the first is taken as signifying the natural basis of the state (in a social impulse), and the second as saying that a certain convention (a constitution) is required to

shape that impulse before any state is actually established.

As Aristotle is sometimes interpreted to uphold the theory that the state is entirely natural, so Hobbes, Locke, and Rousseau are often read as maintaining the opposite extreme—that it is entirely conventional. The extreme interpretation is based on the sharpness with which each of them distinguishes between men living in a state of nature and in a state of civil society.

Though they differ among themselves in their exposition of these two conditions of man, they seem to agree that for men to pass from a state of nature, whether hypothetical or historical, in which men live in anarchy or at least in isolation, it is necessary for them to enter into a contract or compact with one another. Since this social contract is the original, or originating, convention by which the commonwealth or civil society is established, it would seem to follow that, on their view, the state is entirely a product of convention, and in no way natural.

Yet Hobbes, Locke, and Rousseau, each in his own way, add a qualification in favor of the naturalness of the state, just as Aristotle qualifies his remark that "the state is a creation of nature" by praising the man "who first founded the state." The exponents of the social contract theory of the state's origin find in the nature of man or in his reason an instinct, a need, or a law which impels or bids him to seek association with others for the sake of advantages which he cannot enjoy apart from civil society. This suffices to affirm the existence of a natural basis for the convention or contract which establishes the state.

These apparently opposed theories of what is natural and what conventional about the state thus appear to approach each other, though one starts from an emphasis on the state's naturalness, the other from its conventional origin. The whole problem is, of course, further treated in the chapters on FAMILY and STATE; but one point which the foregoing discussion suggests receives special consideration in still another chapter. The point concerns the relation between the idea of a constitution and the idea of a social contract. Both

are conceived as the basic or primary convention which establishes the state. The question whether the two ideas are interchangeable or only analogous is examined in the chapter on CONSTITUTION.

CUSTOM IS BOTH a cause and an effect of habit. The habits of the individual certainly reflect the customs of the community in which he lives; and in turn, the living customs of any social group get their vitality from the habits of its members. A custom which does not command general compliance is as dead as a language no longer spoken or a law no longer observed. This general compliance consists in nothing more than a certain conformity among the habits of individuals.

The continuity between custom and statute as parts or phases of the positive law rests upon the relation of both to habit. "Custom," according to Aquinas, "has the force of a law, abolishes law, and is the interpreter of law" precisely because it operates through the habits of the people. "By repeated external actions," such as produce a custom, "the inward movement of the will and the conceptions of the reason are most revealingly declared," and, according to Aquinas, "all law proceeds from the reason and will of the lawgiver." The law which a prince or a people enacts, to become effective as social regulation, must develop a particular habit of conduct in many individuals. Then and only then does a new enactment obtain the full force of law. To remain effective it must continue to have the support of "the customs of the country."

Without that support it may be a law on the books but not in practice, for the authority of a law cannot long prevail against a contrary custom, except through a degree of coercion so oppressive as to produce rebellion. That is also why the customary or unwritten rule—usually the primitive form of positive law—is less flexible, less amenable to change or modification. Custom is a conservative factor. "There is nothing more difficult to take in hand," writes Machiavelli, nothing "more perilous to conduct, or more uncertain in its success, than to take the lead in the introduction of a new order of things. The innovator

has for enemies all those who have done well under the old conditions, and lukewarm defenders in those who may do well under the new."

Just as custom may either support the written law or render it ineffective, so custom works in opposite directions as a social force. It is both a factor of cohesion and of division among men—a cause of what is called "social solidarity" and a barrier separating peoples from one another. When the Athenians refuse to ally themselves with the Persians, they chide the Spartans, according to Herodotus, for fearing that they "might make terms with the barbarian." For all the gold on earth, they tell the Spartan envoys, they could not "take part with the Medes." To do so would betray "our common brotherhood with the Greeks, our common language, the altars and sacrifices of which we all partake, and the common character which we bear."

The barbarians or the gentiles—to use the traditional names for aliens or foreigners—are excluded by a social, not a geographic, boundary line, the line drawn between those who share a set of customs and all outsiders. When the stranger is assimilated, the group does not adopt him; he adopts the customs of the community. The very word "community" implies a multitude having much in common. More important than the land they occupy are the customs they share.

The Federalists, advocating the political union of the thirteen American states, could urge its feasibility on the ground that a social union already existed. "Providence has been pleased to give this one connected country," Jay writes, "to one united people—a people descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles of government, very similar in their manners and customs."

Those who today advocate world federal union cannot similarly point to a world society already in existence. They can only hope that if the separate states were to unite politically, the social cohesion of the world's people might subsequently develop as a result of the fostering of universal customs by universal law.