

The Concept of Tradition: A Problem Out of MacIntyre

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“NATIONAL REVIEW . . . stands athwart history, yelling Stop.”
—William F. Buckley¹

1. Introduction

Tradition is one of those words whose sense, reference, and evaluative force depends on who uses it and why. The concept of tradition is conspicuous in contemporary debates, both among those who reject traditional marriage or education as well as among those who affirm it.² It is also central to Alasdair MacIntyre’s work both as an educator and a cultural critic, and an essential resource for the development of whatever answer his admirers may give to the question, “What is to be done?” Many a revolution has been spurred by the desire to restore a tradition that the pursuit of external goods such as wealth has corrupted, but it remains to be seen whether MacIntyre’s philosophy supports this sort of revolution or any other form of political practice.

MacIntyre, like Karl Marx, is proposing a philosophy of practice; the context of his philosophical investigations is the difficulty experienced by followers of Leon Trotsky in finding grounds for condemning Stalinism, and more broadly finding a point of purchase for their moral judgments in history.³ There is more to MacIntyre than the concept of tradition, but his turning away from the politics of the nation-state to that of the local

¹ William F. Buckley, “Our Mission Statement,” *National Review*, November 19, 1955, accessed online at: <http://www.nationalreview.com/articles/223549/our-mission-statement/william-f-buckley-jr>.

² On the rejection of historical marriage as a bad thing, see the references in David Blankenhorn, *The Future of Marriage* (New York: Encounter, 2007), pp. 161-63.

³ For MacIntyre’s Trotskyist background, see Paul Blackledge and Neil Davidson, eds., *Alasdair MacIntyre’s Engagement with Marxism* (Chicago, IL: Haymarket, 2009). On the need for a philosophy of practice, see especially *ibid.*, pp. 103, 422, and 424.

community does not help matters here. Such communities will have to make decisions concerning both their internal policies and their external relations, and in both cases the issue will arise concerning how much flexibility they can find in their governing traditions. Hence, MacIntyre's inability to answer questions of application would mean that his philosophy had failed. How much guidance MacIntyre, or any philosopher, is required to supply is a complicated question; the demand that social and political philosophy should translate immediately into a political program is unreasonable, but detached contemplation of our social and political life is not an option either. It would be a severe problem for MacIntyre's view if he ended up returning us to politics as usual.⁴

2. The Ambiguity of the Concept

As one commentator has put it, MacIntyre holds the following view:

We should steer a middle path between the conservatism of Edmund Burke, who exalts tradition over and against rationality, and the liberalism/radicalism of a Condorcet and other Enlightenment figures, who exalt abstract rationality over and against tradition.⁵

The question I am asking here is whether such a middle ground exists.⁶

Advocates of tradition argue that it is an inescapable part of our reasoning about both theoretical and practical matters. Yet the concept of tradition on MacIntyre's view suffers from an ambiguity, one that often appears in similar theorists, such as Cardinal John Henry Newman⁷ and, despite MacIntyre's hostility to them both, David Hume⁸ and Edmund Burke.⁹

⁴ I address this question further in my "Politics after MacIntyre," 2012, accessed online at: <http://philipdevine.wordpress.com/2012/02/01/politics-after-macintyre-2/>.

⁵ Thomas D. D'Andrea, *Tradition, Rationality, and Virtue* (Aldershot: Ashgate, 2006), p. 67.

⁶ My colleague Michael O'Neill has suggested that Robin George Collingwood, Georg Hegel, Marx, and Yves Simon can fill the gaps in MacIntyre's account of historical rationality. This suggestion needs to be spelled out.

⁷ On Newman, see Owen Chadwick, *From Bossuet to Newman*, 2nd ed. (Cambridge, MA: Cambridge University Press, 1987).

⁸ Julia Annas queries MacIntyre's rejection of Hume as a traitor to the Scottish tradition in her "MacIntyre on Traditions," *Philosophy and Public Affairs* 18, no. 4 (Autumn 1989), pp. 392ff., unfortunately relying too much on Hugh Trevor-Roper's hostile account of pre-Humean Scottish culture.

⁹ Even critics from the Left have faulted MacIntyre for undue hostility to Burke; see Jeffrey Stout, *Democracy and Tradition* (Princeton, NJ: Princeton University Press, 2003), p. 320, n. 25. For a briefer version of Stout's critique of MacIntyre, see his

In *Oedipus Rex* Laius, fearing that his son will displace him, has him exposed to the elements. Regardless of how powerful and ruthless fathers may be in suppressing their children, though, they always end up displaced.¹⁰ The same is true of the status quo, however abstractly considered, for no set of rules, however detailed, can provide for all possible conflicts. The open-texture of our concepts means that our rules will always require interpretation, and the clashing interests and outlooks that exist in any society imply that we will always face divergent interpretations of our inherited ideas. (An illuminating counter-example is the rules of chess; an illuminating counter-example to the counter-example is the rules for conducting chess tournaments.)

Some of these interpretations will be innovative or even radical. John Locke, while a key figure in the libertarian side of our tradition, can be interpreted as a social conservative,¹¹ but arguments drawn from his writings can also undermine his traditional views,¹² and thus make the prohibitions on suicide and infanticide that inform his political theory entirely arbitrary.¹³ In Newman, the true course of development of doctrine is discerned intuitively in a way that gives no guidance in cases of real doubt. In any case, a tradition could not guide its adherents if it did not also constrain them; if it did not rule out some possibilities it would be useless.

3. Understanding Tradition

MacIntyre draws on the thought of Thomas Kuhn and Imre Lakatos¹⁴ to define tradition as an element of an ongoing practice of inquiry, which

“Homeward Bound,” *Journal of Religion* 69, no. 2 (April 1989), pp. 220-32, where the point about Burke is at p. 228, n. 9. I am also indebted to an email exchange with Stout.

¹⁰ I owe this point to Todd Gitlin; see his *The Sixties* (Toronto: Bantam, 1987).

¹¹ As Thomas West shows in his Witherspoon Lecture, “Vindicating John Locke: How a Seventeenth-Century ‘Liberal’ Was Really a Social Conservative” (Family Research Council, 2001), accessed online at: <http://johnbalouziyeh.blogspot.com/2009/10/vindicating-john-locke.html>.

¹² As Thomas Pangle shows in his *Spirit of Modern Republicanism* (Chicago, IL: University of Chicago Press, 1988).

¹³ For a related discussion of the problems for Locke and the larger tradition, see Irfan Khawaja, “Review Essay: Edward Feser’s *Locke* and Eric Mack’s *John Locke*,” *Reason Papers* 32 (Fall 2010), pp. 155-71.

¹⁴ Christopher Stephen Lutz, *Tradition in the Ethics of Alasdair MacIntyre* (Lanham, MD: Lexington Books, 2009), pp. 47-60, and Tom Angier, “MacIntyre’s Understanding of Tradition” (unpublished 2010) discuss the relative roles of Thomas Kuhn and Imre Lakatos in understanding MacIntyre. The issue seems to be the extent to which the process of revising tradition can be governed by articulate standards.

might include large revisions of inherited theory and practice. Another model for understanding a tradition is that of a craft; crafts, like traditions, can develop or degenerate. And similar issues arise: Does Andy Warhol develop the visual arts, or does he represent their degeneration? (Even Warhol's admirers might draw the line at rural lawn sculpture.¹⁵)

Yet another model for tradition is a natural language, and so the possibility that a person might become an adherent of, or at least understand, two different traditions is analogous to the possibility of his becoming bilingual. The canons of religious orthodoxy, the rules of law, and the kinship structures that designate some forms of sexual relation as incestuous, are all analogous to the rules of grammar. We learn a tradition as we learn a language, that is, by authoritative teaching and by imitation of practice. In both cases, the two sometimes diverge. Ludwig Wittgenstein provides an enlightening picture of language, and hence also of the broader tradition carried along with it:

Our language can be seen as an ancient city: a maze of little streets and squares, of old and new houses, and of houses with additions made from various periods; and this surrounded by a multitude of new boroughs with straight regular streets and uniform houses.¹⁶

Our city includes not only the stable elements Wittgenstein mentions, but also regions under construction, zones of conflict, and burnt-out districts not yet rebuilt. It also includes regions in decline. As Simon Blackburn puts it, "To paraphrase Wittgenstein, when we start to abandon a way of thought, the lights do not go out one by one, but darkness falls gradually over the whole."¹⁷

MacIntyre's philosophy requires that we find a middle ground between ideas in Platonic heaven and entrenched social habits. Traditions in the relevant sense involve claims to truth, but they also must inform the lives of their adherents. They are historical-cultural facts as well as systems of belief, and they could do what they do for human beings were they otherwise. All of them have to be transmitted from generation to generation, and the process of doing so is emotionally fraught. Socrates, Plato, and Aristotle were ancient Greeks looking for a common human nature, with equal emphasis on both sides of this proposition. Thus, those features of our existence that liberals dismiss as accidents of birth, such as birth on a certain territory or from certain sorts of parents, retain their relevance.

¹⁵ Such sculpture is too tacky to be found even on the World Wide Web; a typical example depicts a young boy urinating and showing the crack in his buttocks.

¹⁶ Ludwig Wittgenstein, *Philosophical Investigations*, trans. G. E. M. Anscombe (New York: Macmillan, 1953), para. 18.

¹⁷ Simon Blackburn, *Spreading the Word* (Oxford: Clarendon Press, 1984), p. 151.

In any event, we can distinguish two kinds of inquiry. One consists in the attempt of adherents of a tradition to understand it more deeply and apply it to problem situations. The other form of inquiry steps, at least to some extent, outside of the rival traditions and asks whether some tradition has exhausted itself and whether some other tradition can solve the resulting problems more adequately.

At this point in the argument, we can exclude some forms of radicalism. Some people claim that they can stand over and above the Western tradition and judge it as a whole to be a failure. (Such a claim is itself characteristically Western; Marx was never guilty of radicalism in this sense.) In MacIntyre's sage words, however,

[c]laims about hallucinations, illusion, distortion of thought, and the like can be made only from the standpoint of claims that the contrast can be clearly drawn between hallucinatory, illusory and distorted modes of perception or thought, on the one hand, and genuine perceptions of reality or rigorous or undistorted reflection and deliberation, on the other. Hence, to identify ideological distortion one must not be a victim of it oneself. The claim to a privileged exemption from such distortion seems to be presupposed when such distortion is identified in others.¹⁸

Yet our problems arise not from outside agitators, but within the practice of our society, and lead to disputes among those usually considered conservative.

What may be called the "integralist" impulse tries to rid a cultural tradition of extraneous elements, but at the risk of eliminating important truths. On the other hand, the "cafeteria" approach to intellectual issues, which picks and chooses among inherent ideas according to need or even mood, gives one every opportunity for adapting one's beliefs to one's purposes, even in the most cynical way.

4. MacIntyre's Contribution

As MacIntyre has observed, "traditions are defined retrospectively," often because some challenge makes their adherents aware that all of them, whatever their differences, are contributing to the same enterprise.¹⁹ Tradition is then further defined by granting authoritative status to some documents of the past, as the New Testament accorded authority to what Christians call the Old Testament and St. Thomas called Aristotle "the Philosopher";

¹⁸ Alasdair MacIntyre, "Ideology, Social Science, and Revolution," *Comparative Politics* 5 (1975), p. 22.

¹⁹ Alasdair MacIntyre, *God, Philosophy, Universities* (Lanham, MD: Rowman and Littlefield, 2009), p. 165.

contemporary scientific naturalists adduce Galileo and Charles Darwin and literary modernists look back to James Joyce and T. S. Eliot.

Tradition is a feature of a community that unites author and reader, but there is also a long-standing practice of “unorthodox” reading. In consequence, the most important issues for a tradition arise from disagreements among adherents of the tradition itself, who are at least presumed to be able to apply its governing concepts competently. When adherents of a tradition disagree, they look for core elements in the tradition immune to change in terms of which disputes on the periphery can be adjudicated. However, different adherents often find the core in different places, in which case we have two or more traditions where we previously had one—in other words, a schism. Two sorts of situation can be distinguished: A set of rules and principles fails to determine a result in some case, so that competent representatives of the same tradition reach different conclusions. And a tradition divides into two or more sub-traditions, which differ systematically in their conclusions. These two situations are but different sides of the same phenomenon.²⁰

MacIntyre’s most important contribution to this debate has been to forge a link between rationality and tradition. He points out that it is possible for a tradition to fail by its own standards, and thus encounter an incurable epistemological crisis. Adherents of such a tradition might discover that some other tradition better solves its problems than the tradition itself can do. Hence, he has hopes of avoiding relativism.

Reflective traditionalism admits the need for change while insisting on the demands of continuity—after all, Burke was a Whig, not a Tory. Yet Burkean traditionalism threatens to become an empty rhetorical form, casting “decent drapery” or a “politic veil” over the results of power politics, whatever they might be.²¹ A revision of Buckley’s quotation at the opening of this article that is sometimes proposed—“The dominant strain of conservative thought has stood athwart history, yelling ‘Slow Down!’”²²—keeps us on a slippery slope on which we might find ourselves, even that from Weimar to Adolf Hitler, albeit going down slowly. Standard conservative and progressive accounts of tradition lack the resources to offer us a change of direction.

Jeffrey Stout reads MacIntyre as demanding a highly structured tradition as the only alternative to conceptual and moral chaos:

²⁰ I am here indebted to conversations with Josef Velazquez.

²¹ Edmund Burke, *Reflections on the Revolution in France*, ed. Conor Cruise O’Brien (London: Penguin, 1986), pp. 103 and 171.

²² Dale Carpenter, “A Conservative Defense of *Romer v. Evans*,” *Indiana Law Journal* 76 (2001), p. 422.

Equally essential to the rationality of a practice, according to MacIntyre's account, is its embodiment in institutions that are capable of securing agreement on a doctrine of the human good (presumably by means of catechism directed at newcomers and a combination of magisterial suasion, discipline, and excommunication directed at dissidents).²³

Citing Susan Moller Okin's "incisive" critique of MacIntyre, Stout observes that feminism, though not a tradition in the sense of being defined by authoritative texts, is a tradition in the sense of being "a not yet completed narrative," an argument about the goods that constitute the tradition."²⁴

This argument, however, confuses traditions in general with the particular tradition MacIntyre has embraced or even with a relatively stringent version of that tradition. And it is false that feminism lacks an authoritative core. Just try defending a pro-life position on the abortion issue around contemporary "mainstream" feminists, and you will discover that the concept of heresy is alive and well.²⁵ This is not to say that the present situation among feminists is necessarily permanent; there are pro-life feminists²⁶ and they might prevail in subsequent discussions within the tradition. As Stout observes, "All discursive practices involve authority and deference to some extent. . . . The difference is a matter of how, when, and why someone defers or appeals to authority, not a matter of whether one does so at all."²⁷ Heresy, let us recall, is not just any error, but an error by a purported adherent of a tradition that puts him or her outside its boundaries. Even the most loosely structured traditions can make it clear that someone has committed heresy. All traditions have their canons of orthodoxy and their internal debates, including debates between hard-liners and soft-liners. Yet traditions behave

²³ Stout, *Democracy*, p. 136.

²⁴ *Ibid.*, p. 135, citing Susan Moller Okin, *Justice, Gender, and the Family* (New York: Basic Books, 1989), p. 61.

²⁵ Patrice DiQuinzio, "Feminist Theory Reconfigured," *Reason Papers* 18 (Fall 1993), pp. 17-29, praises the "instability" of feminist theory, but does not meet the point made in the text.

²⁶ See, for example, Juli Loesch Wiley, "Why Feminists and Prolifers Need Each Other," *New Oxford Review* 60 (November 1993), pp. 9-14; Celia Wolf-Devine, "Abortion and the 'Feminine Voice,'" *Public Affairs Quarterly* 3, no. 3 (July 1989), pp. 81-97; and Mary Crane Derr, Rachel MacNair, and Linda Naranjo-Huebl, *Pro-Life Feminism: Yesterday and Today*, 2nd ed. (Bloomington, IN: Xlibris Corporation, 2006). The tradition is now represented by Feminists for Life of America, accessed online at: <http://www.feministsforlife.org/>. Feminists for Life publishes the *American Feminist*.

²⁷ Stout, *Democracy*, p. 212.

more like drops of mercury than like organisms, merging and splitting almost at will.

Appeal to tradition is frequently appeal to the confluence of more than one tradition. In one of the stronger appeals to tradition in contemporary political argument, same-sex marriage opponents find it incredible that people at so many different times and places, whose beliefs and ways of life are in so many respects so different, could all have been wrong in their understanding of a crucial human institution. Greco-Roman pederasts did not marry their boyfriends. That the emperor Nero is reported to have “married” Sporus (whom he had had castrated) as a man and Doryphorus as a woman shows nothing about what was considered healthy or normal even in imperial Rome. The moral of the story is that, as emperor, Nero could do—or thought he could do—whatever he wished.²⁸

Some traditionalists appeal to a sacred tradition going back to the origins of humanity and existing, often in distorted form, in all cultures.²⁹ But even this formulation gives us great liberty in distinguishing “sacred” tradition from its subsequent corruptions. There are aspects of “traditional marriage” that no one would now defend, such as use of daughters, and to a lesser extent of sons, as pawns in intra-familial politics. This practice persists in some communities, but is increasingly marginal even there.

Historically observable traditions change, or at least develop, often through an attempt to return to their origins. When we move from a more rigorous to a less rigorous rendering of the same tradition—say, from pre-Vatican II to post-Vatican II Roman Catholicism—there is both gain and loss. The advantages of a greater flexibility in dealing with the problems of human existence have been much celebrated, but the costs are increased confusion and, for any tradition faced with an aggressive cosmopolitan culture hostile to its understandings, the loss of the ability to resist externally generated pressure.³⁰

5. Development versus Degeneration

Some understandings of tradition, however, do not allow for the possibility of development.³¹ If we refuse the immobilist option, that is to say,

²⁸ See Suetonius, *Lives of the Twelve Caesars*, Nero, chaps. 28-29, accessed online at: http://penelope.uchicago.edu/Thayer/L/Roman/Texts/Suetonius/12Caesars/Nero*html.

²⁹ See Josef Pieper, *Tradition: Concept and Claim*, trans. E. Christian Kopff (Wilmington, DE: Intercollegiate Studies Institute, 2008), esp. chaps. 4 and 5.

³⁰ For an argument that raises this worry, see John T. Noonan, Jr., *A Church That Can and Cannot Change* (Notre Dame, IN: Notre Dame University Press, 2005).

³¹ For a contemporary example, see Pieper, *Tradition*, esp. chap. 2, p. 47.

that of resisting any change whatever, we face the urgent but difficult issue of distinguishing development from decadence. We cannot appeal to the verdict of history to resolve the question; as Jerome B. Schneewind puts it in a slightly different context, “If we must wait for it in order to know the solution to a problem, then that knowledge will have no role in the actual give and take of life.”³²

The American Revolution and the New Deal have been defended on traditionalist grounds. Even the French Revolution carried out the Bourbon tradition of the centralized absolute state: those of the revolutionaries’ decisions that Burke and his followers find most horrifying—the trial and execution of the king and the nationalization of the Church—followed English precedents. If before the modern period, the trial, as opposed to the murder, of a king was an unthinkable proceeding, credit or blame for the change must rest squarely on the shoulders of Oliver Cromwell.³³ Likewise, it was Henry VIII, not the Jacobins, who took the lead in placing the goods of the state in the possession of the nation (though, in practice, it was Henry VIII and his cronies who did this). Burke would have had no more sympathy with the radical Protestantism of the Puritans and their forebears than with the Enlightenment Deism of the French Revolutionaries.

There is a gap in MacIntyre’s account between the concept of a practice and the concept of a tradition. This gap is most evident in his *Three Rival Versions of Moral Enquiry*,³⁴ in which he moves from tradition as inherited practice to three broad intellectual traditions, in which not all “plain persons” participate or are even aware of being part of a tradition. Granted, we must be initiated into a practice before we reflect upon it. We still, however, have to show how practices combine to form a tradition—whether a cultural tradition like that of the Sioux or a civilization-wide tradition like that of the Enlightenment—capable of regulating practice. Such traditions have to go back either to creative figures immune to the normal dependence of human beings on their cultural past or else to some deity.

What is needed to fill this gap is a philosophical ecclesiology—a philosophical understanding of the sort of historically embodied community that sustains a particular tradition.³⁵ While attending to the historical data, the philosophical ecclesiologicalist will attempt to abstract conceptual and normative

³² Jerome B. Schneewind, “MacIntyre on the Indispensability of Traditions,” *Philosophy and Phenomenological Research* 51, no. 1 (March 1991), p. 168.

³³ Despite Michael Walzer, *Regicide and Revolution* (New York: Columbia University Press, 1992).

³⁴ Alasdair MacIntyre, *Three Rival Versions of Moral Enquiry* (Notre Dame, IN: University of Notre Dame Press, 1990).

³⁵ I am indebted to the editors of *Reason Papers* for probing this issue.

principles from this data, examining such concepts as *schism*, *fidelity*, *fundamentalism*, and the distinction between *development* and *decadence*.³⁶

6. The American Legal and Political Tradition

Traditions are historical entities that have founders, and which sometimes come to an end. I solve the problem of individuating traditions by citing traditions that are articulately defended as such in the contemporary world. Here I consider among self-identified traditions those with which I to some degree identify. As examples of the sorts of considerations that are relevant, I make some judgments on controversial matters, which I could not fully justify without going too far afield. Readers who disagree with my judgments will have to make similar judgments of their own. Further inquiry would require the study of the survival and break-up of a variety of other traditions, both religious and secular.³⁷

I now offer a brief survey of the American legal and political tradition, whose outcome will support MacIntyre's claim that we live among ruins. In the early 1980s, MacIntyre identified himself with the American political tradition that combines procedural justice with republican virtue.³⁸ By 1987, however, his question had become "How to Be a North American," and Canadians and Mexicans, despite their very different political histories, were included in the community supporting the American tradition, along with the Founding Fathers, Southern rebels, African-Americans, Native Americans, and Japanese and other immigrants.³⁹ Though the social embodiment of a tradition need not be a nation-state, I do not see why North

³⁶ For a historian of religion who foregrounds the conceptual issues, see Bruce B. Lawrence, *Defenders of God* (Columbia, SC: University of South Carolina Press, 1995). Decadence, as I understand it, is a cultural phenomenon, that of a community that has lost the capacity to transmit itself, biologically and culturally.

³⁷ In addition to the examples considered here, see Walter Shurden, ed., *The Struggle for the Soul of the S[outhern] B[aptist] C[onvention]* (Macon, GA: Mercer University Press, 1993); Bradley J. Longfield, *The Presbyterian Controversy* (New York: Oxford University Press, 1991); Leszek Kolakowski, *Main Currents of Marxism*, trans. P. S. Falla (Oxford: Clarendon Press, 1978). On the Anglican Communion, see Stephen Bates, *A Church at War* (London: Tauris, 2004); R. R. Reno, *In the Ruins of the Church* (Grand Rapids, MI: Brazos, 2002), esp. Pt. II; and Ephraim Radner and Philip Turner, *The Fate of Communion* (Grand Rapids, MI: Eerdmans, 2006).

³⁸ See Alasdair MacIntyre, "The Idea of America," *London Review of Books* 2, no. 21 (November 6-19, 1980), p. 14; Alasdair MacIntyre, "Public Virtue," *London Review of Books* 4, no. 3 (February 18-March 3, 1982), p. 14. For these and the following reference I am indebted to Kelvin Knight.

³⁹ Alasdair MacIntyre, *How to Be a North American* (Washington, DC: Federation of State Humanities Councils, 1988).

America, as opposed to say Euro-America or the Western hemisphere, is a useful way of specifying the social embodiment of a tradition.

In any event, I here focus on the American *political* tradition and its important legal aspect, which is inevitably linked to the history of a particular nation-state. There are three major components of our political tradition: reliance on the U.S. Constitution as a legal document; the English-speaking liberal tradition founded by John Milton and Locke; and the “Judeo-Christian tradition,”⁴⁰ on which we rely, as we once relied on “mainstream” Protestantism, when we emphasize the need for cultural continuity and public virtue.

If we treat Anglo-American liberalism as a tradition of dealing with value conflict, in a complex relationship with the “civil religion” tradition of Jean-Jacques Rousseau, we can avoid the severity of MacIntyre’s judgment of contemporary moral discourse and political practice, and hence also the question concerning how, on MacIntyre’s showing, he could possibly write his books.⁴¹ Recall here the “catastrophe theory” defended in his *After Virtue*⁴²: “This time however the barbarians are not beyond the gates; they have already been governing us for quite some time.”⁴³

Neither MacIntyre nor anyone else, however, has found a way of bridging the gap between the Evangelical and the Enlightenment wings of the American tradition or addressing effectively the related conflict between the demand for a virtuous citizenry and our reliance on institutional checks and abstract rights to manage the corrupt nature of humanity. The libertarian side of our tradition limits the role of the state to maintaining public order, but relies on non-state communities to maintain the degree of virtue any functioning society requires. (In the case of a libertarian society, the most important social virtue is self-reliance.) The question is how to ensure that, when the state shrinks, sufficiently robust non-state communities arise.

Americans appeal to the law, and especially the Constitution, to resolve the ambiguities of our political tradition and make it possible for

⁴⁰ The phrase “Judeo-Christian tradition,” though out of favor, still has its defenders; for example, Wilfred McClay, “The Judeo-Christian Tradition and the Liberal Tradition in the American Republic,” in *Public Morality, Civic Virtue, and the Problem of Modern Liberalism*, ed. T. William Boxx and Gary M. Quinlivan (Grand Rapids, MI: Eerdmans, 2000), pp. 124-37. The most important polemic against this idea is Arthur A. Cohen, *The Myth of the Judeo-Christian Tradition* (New York: Harper and Row, 1970).

⁴¹ For this criticism, see Stout, “Homeward Bound,” who uses MacIntyre’s criticism of Herbert Marcuse against MacIntyre himself.

⁴² Alasdair MacIntyre, *After Virtue* (Notre Dame, IN: University of Notre Dame Press, 1981), chap. 1.

⁴³ *Ibid.*, p. 245. I am grateful to the editors of *Reason Papers* for probing this point.

adherents of divergent strands to live together. Even the least traditional elements in American society appeal to the Bill of Rights and the Fourteenth Amendment, which they sometimes seem to regard as the entire Constitution. No one thinks that the U.S. Supreme Court is infallible, however, even setting aside the notoriously fraught issue of abortion. John Rawls, for whom the Court embodies “public reason,”⁴⁴ finds some of its decisions “profoundly dismaying”⁴⁵ and would find some of its more recent decisions even more so. Apologies for Supreme Court decisions can be as divisive as criticisms of them. Mark Graber defends the 1857 *Dred Scott* decision, hitherto reprobated by Democrats and Republicans alike.⁴⁶ Yet if just any Supreme Court decision can be rejected, then constitutional jurisprudence is a game without rules. However, if whatever the Court decides to do can be provided with decent jurisprudential drapery, we are faced with the collapse of constitutional jurisprudence into power politics.

Nativist constitutional lawyers now argue that the provision of the Fourteenth Amendment conferring citizenship on “all persons born . . . in the United States” does not extend to the children of undocumented aliens, whom such jurists think of as akin to an invading army.⁴⁷ Authoritarian lawyers are prepared to argue that, as Richard Nixon once said, “When the President does it that means that it is not illegal.”⁴⁸ A horrifying example of this doctrine is provided by John Yoo, who believes that the president has a higher-law right to torture children when he deems that national security so requires.⁴⁹

⁴⁴ John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996), Lect. VI, sec. 6.

⁴⁵ *Ibid.*, p. 359. Rawls’s examples are the campaign finance decisions *Buckley v. Valeo*, 424 U.S. 1 (1976) and its sequel *First National Bank v. Bellotti*, 435 U.S. 765 (1978).

⁴⁶ Mark Graber, *Dred Scott and the Problem of Constitutional Evil* (Cambridge, MA: Cambridge University Press, 2006); for a roster of critics of *Dred Scott* from every jurisprudential persuasion, see *ibid.*, pp. 14-16.

⁴⁷ See John Eastman, “From Feudalism to Consent: Rethinking Birthright Citizenship,” Heritage Foundation Legal Memorandum, March 30, 2006, accessed online at: <http://www.heritage.org/research/reports/2006/03/from-feudalism-to-consent-rethinking-birthright-citizenship>; and Lino A. Graglia, “Birthright Citizenship for the Children of Illegal Aliens: An Irrational Public Policy,” *Texas Review of Law and Politics* 14, no. 1 (Fall 2009), pp. 1-14. James C. Ho, “Defining ‘American,’” *The Green Bag*, 2nd ser. 9, no. 4 (Summer 2006), pp. 367ff., defends the received view.

⁴⁸ “Interview with David Frost” (May 19, 1977), printed in *The New York Times*, May 20, 1977, p. A16.

⁴⁹ In a debate with Doug Cassell, Chicago, 2006; see “John Yoo Says President Bush Can Legally Torture Children,” accessed online at: <http://www.youtube.com/watch?v=hZ01hN9l-BM>. The exchange went as follows:

A legal realist approach to such issues collapses not only the distinction between law and politics, but also that between politics and war. The only question then becomes: “Who gets to decide?” Moreover, issues like abortion, immigration, and war, as well as the use of judicial power to stigmatize certain moral and political positions as unconstitutional, all have to do with our relationship with outsiders, both within and without the boundaries of America. They engage the distinction between friends and enemies, and the sovereign power to draw the line between them.⁵⁰ Thus Carl Schmitt defends the Night of the Long Knives from a *legal* point of view⁵¹: “the act of the Leader was a genuine act of jurisdiction [*Gerichtsbarkheit*].”⁵²

It was the need to control payback violence that led to demands for the rule of law in the first place. We now observe the transformation of law into politics, of politics into war (the result of which is sometimes called “lawfare”), followed by the transformation of war into payback violence in the style of Rambo. This collapse of law into might has its correlates among elite scholars. Legal scholars across the jurisprudential spectrum now join the Critical Legal Studies movement⁵³ in holding that American law is an incoherent system, from which any position you please can be persuasively

“Cassel: If the president deems that he’s got to torture somebody, including by crushing the testicles of the person’s child, there is no law that can stop him? Yoo: No treaty. Cassel: Also no law by Congress—that is what you wrote in the August 2002 memo. Yoo: I think it depends on why the President thinks he needs to do that.”

⁵⁰ See Carl Schmitt, *The Concept of the Political*, trans. George Schwab (Chicago, IL: University of Chicago Press, 1996); Carl Schmitt, *Political Theology: Four Chapters on the Theory of Sovereignty*, trans. George Schwab (Chicago, IL: University of Chicago Press, 2005). For an account of Schmitt’s intellectual and political development, see Gopal Balakrishnan, *The Enemy* (London: Verso, 2000); for an account of the constitutional crises and controversies that shaped his work, see Peter Caldwell, *Popular Sovereignty and the Crisis of German Constitutional Law* (Durham, NC: Duke University Press, 1997). I am indebted to the revival of interest in Schmitt led by the journal *Telos*; see Ellen Kennedy et al., “Special Section: Carl Schmitt and the Frankfurt School,” *Telos* 71 (Spring 1987), pp. 37-109; and Paul Picone et al., *Special Issue: Carl Schmitt: Enemy or Foe?* *Telos* 72 (Summer 1987). The discussion continues in *Telos* 73 (Fall 1987) and 74 (Winter 1987-1988).

⁵¹ For a good brief description of the Night of the Long Knives, see Richard J. Evans, *The Third Reich in Power* (New York: Penguin, 2005), pp. 31-41.

⁵² Carl Schmitt, “Der Führer schützt das Recht [The Leader Protects the Right],” *Deutsche Juristen-Zeitung* 15 (August 1934), pp. 945-50, accessed online at: <http://delete129a.blogspot.de/2007/09/aamasone-uebergesetzliche-staatsnotwehr-a-eine-deutsche-tradition/>.

⁵³ See Roberto Magnabeira Unger, *The Critical Legal Studies Movement* (Cambridge, MA: Harvard University Press, 1986); and Duncan Kennedy, *A Critique of Adjudication* (Cambridge, MA: Harvard University Press, 1997).

supported.⁵⁴ Episodes such as the O. J. Simpson trial confirm the popular impression that American law is a farce, for many Americans rightly believed, before the verdict, both that Simpson was guilty and that he would get off.⁵⁵

The mutual tolerance that underlies the American constitutional order is not a transcendent requirement standing above all of our other beliefs. The reasons for holding that tolerance does not stand outside the other goods of social life are also reasons for holding that militancy is not a transcendent requirement either.⁵⁶ Hence, the survival of our traditions of political civility is an open question.

7. Religious Traditions and the Development of Doctrine

A tradition can die, as MacIntyre rightly insists, because it degenerates into inarticulate prejudices or because—as has happened with some forms of Islamic and Thomist thought—it ceases to support further inquiry.⁵⁷ In Islamic thought, the issue turns on the continued possibility of *ijtihad*, or individual interpretation.⁵⁸ When this happens, it becomes a treasured museum piece, which its supposed adherents ignore when it stands in the way of their important purposes. A tradition can also die because it loses its ability to harmonize the results reached by its adherents. Inquiry can mean anything from filling in tiny gaps to throwing the whole project into question (as MacIntyre does for some traditions).

Some traditions limit themselves to accumulated human wisdom, others claim divine revelation, and others, like Thomism, invoke a mixture of the two. Likewise, traditions sometimes speak about human nature and flourishing (and the requirements of justice among human beings), sometimes

⁵⁴ See Paul F. Campos, *Jurismania* (New York: Oxford University Press, 1998); Pierre Schlag, *Laying Down the Law* (New York: New York University Press, 1996); Steven D. Smith, *Law's Quandary* (Cambridge, MA: Harvard University Press, 2004); Paul F. Campos, Pierre Schlag, and Steven D. Smith, *Against the Law* (Durham, NC: Duke University Press, 1996). Louis Michael Seidman and Mark V. Tushnet, *Remnants of Belief* (New York: Oxford University Press, 1996), reach the same result from other political and jurisprudential premises.

⁵⁵ I owe this point to Robert Huguenor.

⁵⁶ This sentence is directed against Stanley Fish, e.g., *There's No Such Thing as Free Speech, and It's a Good Thing, Too* (Oxford: Oxford University Press, 1994), and Stanley Fish, "Mission Impossible: Settling the Just Bounds between Church and State," *Columbia Law Review* 97, no. 8 (December 1997), pp. 2255-2333.

⁵⁷ I owe this point to O'Neill.

⁵⁸ For detailed discussion, see Wael B. Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge, MA: Cambridge University Press, 2005); and Joseph Schacht, *Origins of Muhammadan Jurisprudence* (Oxford: Clarendon Press, 1950).

about divine revelation, and sometimes about both. The problems I have found for the concept of tradition arise for both its human and its divine aspects. I therefore now turn to religious traditions.

The two-sided character of the concept of religious tradition, as MacIntyre explains it, reflects the concept of God: “theistic belief has a double aspect, at once problematic and unproblematic. As the former, it invites ruthless and systematic questioning. As the latter it requires devoted and unquestioning obedience.”⁵⁹ Doctrines such as the Trinity are “to be piously believed and not impiously questioned,” as St. Columban puts it.⁶⁰ Against those people who claim a patent or copyright on God, we must maintain that He is greater than any conceptual and normative structure we may be able to formulate. Yet God also addresses us—or at least is believed to address us—with quite definite requirements of belief and practice. We see this tension at work in the endless dialogue between creative, and therefore dissident, Catholic theologians and the Church’s doctrinal watchdogs (and consequently the “police court” theology assessing the authority of various documents and the resulting limits on dissent). Catholic authority is now searching for a “hermeneutics of continuity,” which avoids *both* repudiation of Vatican II as heretical *and* the claim that the “spirit of Vatican II” authorizes limitless departures from past belief and practice,⁶¹ but it is not evident how this can be done.

We are not Platonic philosopher-kings (or -queens) creating institutions *de novo*. Hence, the advice a philosopher can give theologians and community leaders is limited. We need not only to reflect on our traditions, but also to live them, and this means that interaction with human experience in its many forms cannot be avoided. There is no algorithm to distinguish legitimate developments of a tradition from degenerations of it, but considerations drawn from the need of the adherents of a tradition to maintain and transmit it to future generations can at least provide persuasive arguments. The vitality of any tradition requires respectful attention to the convictions of one’s fellow adherents, both living and dead.

Martin Luther’s “humanist” opponents, such as Erasmus and Thomas More, were right to foresee that his theology entailed fragmentation—since his day, the extreme fragmentation—of Christendom. (Although Protestants do not view schism as gravely as do Catholics, even many Protestants find the present chaos disquieting.) There is something profoundly wrong, even apart from the issues of substance, about the way that

⁵⁹ Lutz, *Tradition*, p. 8.

⁶⁰ *Sermons of Columbanus*, Sermon I (Cork, Ireland: University College, 2004), accessed online at: www.ucc.ie/celt/published.

⁶¹ See Benedict XIV, “Christmas Message to the Roman Curia,” December 22, 2005, *Adoremus Bulletin* 13, no. 8 (November 2007), accessed online at: http://www.adoremu.org/1107BXVI_122205.html.

liberals in the Anglican Communion pursued the issues of the ordination of women and open homosexuals.

8. Conclusion

At this point, it is necessary to warn against the fundamentalist solution to the problem of fragmentation in tradition, namely, to find one authoritative source (the Pope, the Bible, or something else) and cleave to it through thick and thin. The identity, scope, interpretation, and methods of application of any authority all depend on the tradition in which the authority finds its place. This does not mean, as Liberal Protestants are accused of saying, that the Church wrote the Bible and can rewrite it.⁶² Neither the authorities themselves, nor the way they are customarily received, supports such a reading.

It will not do to take the *Zeitgeist* as our authority, since contemporary people disagree about all of the pertinent issues and many phenomena are both characteristically modern and horrible. If we were Germans living in 1930, “getting with it” would be the last thing any sane person would do. There is also the mishmash or worse that results when an individual favors whatever bits of tradition happen to favor his mood, inclinations, or political program and he puts the bits together; such phenomena can range from secular *bar mitzvahs* to Visigothic blessings of same-sex unions conducted by Anglican bishops. One wonders whether even the authors of such concoctions take the results seriously; the rest of us are under no obligation to do so. Even here the criterion is pragmatic and aesthetic. Some people end up taking very gravely what others regard as campy jokes or examples of guerilla theater. (I here deal with postmodern developments within pre-existing traditions, not with postmodernism or genealogy as traditions in their own right.⁶³)

One would like some way of knowing in advance the practical consequences of proposed innovations, but we inevitably judge by results in fact (in the Anglican case, high-profile secessions among its more traditional adherents and a loss of over one third of its membership).⁶⁴ For the rest, we need to return to the rough ground of moral, political, and religious argument.

⁶² I do not know of anyone who holds this view explicitly, though there are plenty of people who act as if they did.

⁶³ On which, see MacIntyre, *Three Rival Versions of Moral Enquiry*.

⁶⁴ I calculate the decline of membership from 1968, when the House of Bishops declined to take action against Bishop Pike for his unorthodox theological views. For details on membership, see “Episcopal Church Reports Lowest Membership in 70 Years,” 2001, accessed online at: <http://www.catholicnewsagency.com/news/episcopal-church-reports-lowest-membership-in-70-years/>; David Virtue, 2011, accessed online at:

Traditionalists need to defend their stances not only as venerable, but also as true or valuable in a way that can be recognized today. That long-standing elements of our traditions should not easily be set aside is an important consideration, but no more than that. Traditionalists about marriage, for example, cannot rely on the antiquity of heterosexual marriage alone, but will have to appeal also to our need for an institution making regular provision for the procreation and the rearing of the next generation, and to the danger that admitting rival forms of “marriage” will undermine this institution by inviting heterosexuals to regard their marriages as no more binding than gay relationships.⁶⁵

<http://www.virtueonline.org/portal/modules/news/article.php?storyid=15087#Tx9SmKXIN6E>; Richard Yeakley, Religion News Service, 2011, accessed online at:

http://www.usatoday.com/news/religion/2011-02-16-church_growth_15_ST_N.htm.

On the importance of 1968 for the Episcopalian Church, see Eric A. Badertscher, *The Measure of a Bishop: The Episcopi Vagantes, Apostolic Succession, and the Legitimacy of the Anglican “Continuing Church” Movement*, 1998, accessed online at: <http://anglicanhistory.org/essays/badertscher/chapter1.pdf>, chap. 1 n. 6, and accompanying text.

⁶⁵ This essay was read to a meeting of the International Society for MacIntyrean Enquiry at Providence College in July 2011. I am indebted to the participants at that meeting, especially my student Luis Pinto de Sa, and to an anonymous reader for their comments.

