

1962

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Recommended Citation

Rev. John J. Wright, *The American Tradition and Its Implications for Law, The American Tradition and its Religious Inspiration*, 30 Fordham L. Rev. 403 (1962).

Available at: <https://ir.lawnet.fordham.edu/flr/vol30/iss3/2>

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The American Tradition and Its Implications for Law, The American Tradition and its Religious Inspiration

Cover Page Footnote

Bishop of the Diocese of Pittsburgh.

THE AMERICAN TRADITION AND ITS RELIGIOUS INSPIRATION

THE MOST REVEREND JOHN J. WRIGHT*

THE dedication of these modern law school facilities in a great American university calls for reflection on the American tradition of which this university and the lessons taught here form no small part. The origins and growth of Fordham under the aegis of specifically religious idealism suggest that, quite apart from any personal or official preoccupations proper to me, I should speak of the religious inspiration of the American tradition, especially in certain of its legal and educational elements.

Foreign observers of the American scene have almost invariably been impressed by the major part that religion has played in the formation of the American heritage, its content and the institutions by which it has been transmitted. In each generation foreign students of the American character have noted the role of religion and of religious values in areas of life, thought, and action which would have been largely, if not entirely, secular in the parts of Europe influenced by the so-called "enlightenment" and the French Revolution. I choose but one example of numerous such European appraisals.

Writing in his book, *The Americans in their Moral, Social, and Political Relations*, Francis Grund, Bavarian journalist and diplomat, could note in 1837 that "religion and morality preside over the councils of Americans." He said:

Whatever contributes to confirm a people in the habitual exercise of freedom is an additional guarantee of its continuance; and whatever has been instrumental in procuring that freedom, or is associated with it in their minds, must be preserved with religious care, lest liberty itself should suffer in their estimation. This is the case with the doctrines of Christianity in the United States. Religion has been the basis of the most important American settlements; religion kept their little community together; religion assisted them in their revolutionary struggle; it was religion to which they appealed in defending their rights, and it was religion, in fine, which taught them to prize their liberties. . . . It is to religion they have recourse whenever they wish to impress the popular feeling with anything relative to their country; and it is religion which assists them in all their national undertakings. The Americans look upon religion as a promoter of civil and political liberty; and have, therefore, transferred to it a large portion of the affection which they cherish for the institutions of their country. . . .

Religion presides over their councils, aids in the execution of the laws, and adds to the dignity of the judges. Whatever is calculated to diminish its influence and practice has a tendency to weaken the government, and is, consequently, opposed to the peace and welfare of the United States. It would have a direct tendency

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to lessen the respect for the law, to bring disorder into their public deliberations, and to retard the administration of justice.¹

No small part of this place of religion in the American tradition has been both symbolized and brought to pass by the national regard for the Bible. The Bible has been a principal source of characteristically American Protestantism. What other nation in Christendom would have a readily recognizable area of its geography indentified as the "Bible belt"? In no other nation does the Bible hold the place of unique privilege and prestige which it holds in our presidential inaugurations, our law courts and public ceremonies, indeed, in our very hotels!

Nor has this central place of the Bible in the American tradition been either fortuitous or without effect. Woodrow Wilson once made this plain in an eloquent discourse that he gave on the relationship of Sacred Scripture to our national spirit in its political as well as religious expressions. President Wilson declared:

America was born a Christian nation. America was born to exemplify that devotion to the elements of righteousness which are derived from the revelations of Holy Scripture. . . . Can you imagine a man who did not believe these words, who did not believe in the future life . . . standing up before the king himself and saying, "Sir, you have sinned and done wrong in the sight of God, and I am His messenger of judgment to pronounce upon you the condemnation of Almighty God. You may silence me, you may send me to my reckoning with my Maker, but you cannot silence or reverse the judgment." That is what a man feels whose faith is rooted in the Bible. And the man whose faith is rooted in the Bible knows that reform cannot be stayed, that the finger of God that moves upon the face of the nations is against every man that plots the nation's downfall or the people's deceit; that these men are simply groping and staggering in their ignorance to a fearful day of judgment; and that whether one generation witnesses it or not the glad day of revelation and of freedom will come in which men will sing by the host of the coming of the Lord in His glory, and all of those will be forgotten—those little, scheming, contemptible creatures that forgot the image of God and tried to frame men according to the image of the evil one.²

These, of course, are clearly religious concepts; they echo phrases from the Battle Hymn of the Republic and other American self-expressions. They are, moreover, relevant to the American tradition, to our religious heritage, but also to the native genius of our national political history, notably our American Revolution.

True, Bible religion in the period of America's first growth was largely Protestant, as was, all but entirely, the theology of seventeenth and eighteenth century America. But at its heart were certain dogmas which were

1. *America in Perspective: The United States Through Foreign Eyes* 69-71 (Commager ed. 1961).

2. *1 Selected Literary and Political Papers and Addresses of Woodrow Wilson* 353-55 (Tarbell ed. 1926).

and are basic to all traditionally Western religious inspiration, dogmas which have therefore been powerful in their influence on the American tradition. One such was the dogmatic concept of the Providence of God, a Providence at work in America's discovery, development, and destiny, in all our affairs, personal and social, sacred and secular, private and public.

Such emphasis in America's traditional self-consciousness on a "divine vocation" behind the history of the Nation has occasionally taken crude forms. Sometimes, perhaps, it has been characterized less by spiritual humility, born of insight through faith into God's Providence, than by a certain political arrogance—the ungraceful by-product of privileged abundance, as when we talked with headstrong and excessive clarity of America's "manifest destiny." Sometimes, too, rigid Calvinism, always strong in the American tradition, must have irritated more humanistic spirits by its assumption of our "election" as a Chosen People among the nations and of our American call by God to enlighten and to organize the world.

For example, his personal critics and many of the critics of America, frequently felt that Woodrow Wilson exemplified in annoying degree this perennial trait of our national tradition, and they resented his strong sense of that special predestination of America which had been felt, however, from the beginning of our history; not only from the period of the American Revolution but even from the days of Plymouth Rock. One thinks of Plymouth this month and finds himself happy that the aggressive secularism of the moment has not yet laid legislative or judicial hands on next week's uniquely and significantly American holiday, the day of mingled patriotic and religious piety which is Thanksgiving Day—a typically and authentically American acknowledgment of the Providence of God in our temporal as well as spiritual affairs.

In fact, this sense of dependence on God and of God's Providence in American, as in all human history, however naive or oversimplified its expression, is fully warranted by sound Christian theology; it is one of the features of the American tradition that reveals our national debt to, and place in the theological heritage of Israel, the People of God, and Christendom, the brethren of God's Son.

With all due guard against political perversion of the concept of "national vocation," it remains true that sound theology concurs with St. Augustine's contention that it is "in no way credible that [God] would leave the kingdoms of men, and their bondages and freedoms loose and uncompromised in the laws in His eternal Providence."³ None

3. "Qui non solum coelum et terram, nec solum angelum et hominem; sed nec exigui et contentibilis animalis viscera, nec avis pennulam, nec herbae flosculum, nec arboris

of the elected spokesmen of the American tradition has had a more sensitive awareness of America's relationship to the Providence of God than did Woodrow Wilson. His reflections on this in a talk to the students of the Military Academy at West Point is worth quoting because it sheds light on the religious inspiration of the American tradition as representative Americans have long acknowledged it. President Wilson said:

America came into existence for a particular reason. When you look about upon those beautiful hills, and up this stately stream, and then let your imagination run over the whole body of this great country from which you youngsters are drawn, far and wide, you remember that while it had aboriginal inhabitants, while there were people living here, there was no civilization which we displaced. It was as if in the Providence of God a continent had been kept unused and waiting for a peaceful people who loved liberty and the rights of men more than they loved anything else, to come and set up an unselfish commonwealth. It is a very extraordinary thing. You are so familiar with American history . . . that it does not seem strange to you, but it is a very strange history. There is none other like it in the whole annals of mankind—of men gathering out of every civilized nation of the world on an unused continent and building up a polity exactly to suit themselves, not under the domination of any ruling dynasty or of the ambitions of any royal family; doing what they pleased with their own life on a free space of land which God had made rich with every resource which was necessary for the civilization they meant to build up. There is nothing like it.⁴

Wilson often spoke of God's Providence in our national history. So did Lincoln. So did Washington. So have our representative best in every chapter of our history. The founders of our organized state, in whose tradition these men spoke, appreciated that the divine attributes of liberty and authority, analogously present among men, could only be reconciled in our topsy-turvy world if God Himself would somehow work among us unto their reconciliation. Our fathers did not believe that it is enough for God to be in His Heaven in order that all be well with the world. They knew that in the Providence of God, Heaven and earth must work together if the earth is ever to achieve something, at least, of the order which prevails in Heaven, and if the sons of men are finally to win the freedom of the sons of God.

Our Founding Fathers, for reasons of prudent realism, provided in their constitutions for the separation of the organized Church and the organized State; but their idealism, even in temporal matters, was nonetheless informed and inspired by the Judaeo-Christian tradition, and especially by the Revelation transmitted by the Church; and so there is

folium sine suorum partium convenientia, et quadam veluti pace dereliquit: nullo nodo est credendus regna hominum eorumque dominationes et servitutes a suae providentiae legibus alienas esse voluisse." De Civitate Dei, lib. V, cap. II, PL 41, col. 154.

4. 2 The Public Papers of Woodrow Wilson 202 (Baker and Dodd ed. 1926).

reflected in the basic laws which they wrote for the preservation of both liberty and authority, a blend of the divine and the human, a happy medley of the hopes of Earth and the will of Heaven.

The men who chiefly fashioned our tradition realized that in God's Holy Providence all society, religious and civil alike, exists for the perfection of human personality. They would have understood the social and legal implications of the doctrine which Pope Pius XI so succinctly summarized:

It is therefore according to the dictates of reason that ultimately all material things should be ordained to man as a person, that through his mediation they may find their way to the Creator. In this wise we can apply to man, the human person, the words of the Apostle . . . "all things are yours, [whether it be Paul or Apollo, or Cephas, or the world, or life or death, or things present, or things to come; for all are yours;] and you are Christ's and Christ is God's."⁵

Hence the necessity in the American tradition, a necessity clear from Reason and confirmed by Revelation, that the law weigh all things in the scale that measures their effects on human personality. The celebrated Declaration of the Rights of Man,⁶ despite its debatable premises and its lamentable omissions, enunciated at least one proposition that, so far as it goes, is beyond dispute, namely that ignorance of and contempt for the rights of man are the chief cause of public evils and the corruption of governments.

The men who wrote the original laws of our land were not thus ignorant nor thus contemptuous. The legal tradition which they sought to establish so respected human personality that even before a child was born the state was dedicated to protecting his human rights, his right to life and his right to be born (prior to the rise of pressures for legal abortion); and even, in accordance with a famous decision⁷ of a century ago, his right to inherit. Indeed, the rights of the unborn child were, before the rise of secularism, sacred in our American tradition under a double title: they are the rights of a human and of a human incapable of pleading his own right, and therefore with a greater claim, not a lesser, on the protection of the state as our fathers understood it. The law's insistence on the right of a child to be born often demanded, in our medical and moral tradition, certain acts of heroism which many in our day profess to find superhuman; but our forefathers considered heroism to be a matter of duty when there is question of the inviolable rights of

5. Encyclical *Divini Redemptoris*, English text, in *Five Great Encyclicals 187-88* (Paulist Press 1939).

6. Decreed by the French National Assembly in the sessions of August 21st, 23d, 24th, and 26th, 1789, and accepted by the King.

7. *Marsellis v. Thalhimier*, 2 Paige 35, 21 Am. Dec. 66 (N.Y. Ch. 1830).

human personality. The students taught by this university are taught in this same tradition.

The child is not born immediately into civil society. Logically, at least, he enters that society, as our forefathers understood it, through the medium of his parents, or more precisely, through his family. In the American tradition of law the family is the elementary social unit; for that tradition, democracy meant a plurality of families, cooperating by consent, for the collective protection and promotion of those God-given natural rights which the family by itself might be powerless to secure for the individual person. But democracy meant, even more, sovereignty of the family in its own essential work of the rearing of children.

The development of the child's faculties, the formation and refinement of his character, his initiation to the requirements and the discipline of existence in society—all these are the work of the family, and no agency can supplant the parent, the American tradition considered, in these works. The consequent amount of legislation in the United States protecting the right of the parent over the child is impressively large. Our forefathers followed Blackstone in his suggestion that the positive precepts of the law should correspond, as accurately as possible, to a natural necessity decreed by that divine Providence which has provided for the welfare of children, as never could the state, by implanting in the breast of the normal parent an insuperable affection, more imperious than any written law, and which not even the wickedness, ingratitude, and rebellion of children can totally suppress or extinguish.⁸

And so, our American tradition recognized that the normal family is, in its own way, sovereign; only the abnormal inadequacy of a particular family places its members within the competency of the courts. Even then, whenever possible, it is the tradition of America to do all that artifice can do to supply the defects of Nature by providing the homeless child with the nearest possible approach to a family life and training.

This same tradition, for reasons rooted in religious values, recognized the ends and the purposes of matrimony; the American tradition considered marriage to be the creative cause of the social unit, the family. Justice De Courcey, of the Supreme Judicial Court of Massachusetts, interpreted the tradition of his Bay State predecessors concerning the special dignity of the marriage contract in these rational and exalted words:

By the law of this commonwealth marriage is regarded as more than a civil contract. After cohabitation, at least, it ripens into a status, which affects the parties thereto, their posterity and the whole community. . . . It is a change which, for important

8. 1 Blackstone, Commentaries *447.

reasons, the law recognizes, and it inaugurates conditions and relations which the law takes under its protection.⁹

In an earlier case, authoritatively described by Justice De Courcey as a basic case in our jurisprudence, Justice Bigelow used no uncertain language. He said:

The law, in the exercise of a wise and sound policy, seeks to render the contract of marriage, when once executed, as far as possible indissoluble. The great object of marriage in a civilized and Christian community is to secure the existence and permanence of the family relation, and to insure the legitimacy of offspring. It would tend to defeat this object, if error or disappointment in personal qualities or character was allowed to be the basis of proceedings on which to found a dissolution of the marriage tie.¹⁰

How far we have wandered from this sane and salutary concept, led or followed by recent courts, he who runs can read from our daily press!

The graduate from our schools finds himself protected on every hand by legislation which our forefathers wrote to guarantee his right to choose his own work, to contract at will for payment, to acquire property, and otherwise to enjoy the fruits of his toil. If these personal rights be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in its long-established constitutional sense, a sense historically acquired from religious ideas and norms.

Something of that sense, as our forefathers understood it, is expounded by Mr. Justice McReynolds in a classic decision interpreting, among other things, the constitutional understanding of personal liberty. He said:

Without doubt, it denotes not merely freedom from bodily restraint but also the right . . . to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.¹¹

This is a decision in the letter and spirit of the legislative tradition of the general American community. Behind that tradition is the testimony of human reason in its highest moments and the remembrance, at least, of the revelation which God made to Israel of old through the prophets and which He perfected in the teachings of Jesus Christ. No one can read these cases and fail to recognize that the men who wrote our

9. *Richardson v. Richardson*, 246 Mass. 353, 354, 104 N.E. 73 (1923), quoting from *Smith v. Smith*, 171 Mass. 404, 407, 50 N.E. 933, 934 (1898).

10. *Reynolds v. Reynolds*, 85 Mass. (3 Allen) 605-07 (1862).

11. *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

law were the products of a tradition of religious faith, a tradition whose genealogy goes back through the great scholastics to the Fathers of the Church, to the Mount of the Beatitudes, and the heights of Sinai. The law of this land, as our forefathers wrote it and as our courts have transmitted it, is religious in its inspiration and in its letter.

Indeed the United States Supreme Court, speaking by Mr. Justice Brewer, once permitted itself to describe in remarkably direct terms the organized Christian character of the American tradition. The Court said:

If we pass beyond these matters to a view of American life as expressed by its laws, its business, its customs and its society, we find everywhere a clear recognition of the same truth. Among other matters note the following: the form of oath universally prevailing, concluding with an appeal to the Almighty; the custom of opening sessions of all deliberative bodies . . . with prayer; the prefatory words of all wills, "in the name of God, amen"; the laws respecting the observance of the Sabbath, with the general cessation of all secular business, and the closing of courts, legislatures, and other similar public assemblies on that day; the churches and church organizations which abound in every city, town and hamlet; the multitude of charitable organizations existing everywhere under the Christian auspices. . . . These, and many other matters which might be noticed, add a volume of unofficial declarations to the mass of organic utterances that this is a Christian nation.¹²

So far the words of Mr. Justice Brewer; nor is their import obscure. Without prejudice to the strict religious tolerance that obtains for all faiths, without disparagement of the notable influence on our national life of the devout members of other faiths, this nation is in its traditional law and life a Christian nation; the habits of mind and the attitudes of our people, as well as their major institutions, have been developed under the strong influence of the Christian faith, embryonic in the promises made to Israel, born together with the Church on Pentecost twenty centuries ago, and coming to maturity with a strength so vital that it communicated itself to the cultures of those peoples who once made Europe great and America possible.

The American tradition came into autonomous existence, so to say, with the Declaration of Independence. Often our schools treat the Declaration of Independence almost in passing, as if it were of antiquarian interest alone, a declaration of grievances against a British king long dead.

But the permanent significance of the Declaration of Independence lies in those sentences which voice the American ideal of law and life. Not to remember these is to neglect the very heart of the American legal tradition.

The Declaration is less a protest against the king than it is an appeal

12. *Holy Trinity Church v. United States*, 143 U.S. 457, 471 (1892).

to God, the Author of life and of human rights, to justify the rebellion of the Colonies against England. And so, God is mentioned in the Declaration four times, each time in a deliberate and significant manner.

In his first version, Jefferson wrote the name of God but once, but he did this in a basic context.

When, in the course of human events it becomes necessary for one people to dissolve the political bonds which have connected them with another, and to assume, among the powers of the earth the separate and equal station to which the laws of nature and of nature's god entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.¹³

We note, then, that Jefferson justified the historic severance of national relations by an appeal to the "law of nature," a "higher law," established by God through creation and instilled in the minds and the hearts of men, in the very nature of things.

A second mention of God appears in a revision Jefferson made of his first draft. Here he wishes to emphasize that our fundamental liberties, which we receive through "natural law," derive ultimately from God. Thus, he disassociates himself from the deism which would have put everything in the laws of nature. We read: "We hold these truths to be self-evident; that all men are created equal, that they are endowed by their creator with inherent and unalienable rights; that among these are life, liberty, and the pursuit of happiness . . ." ¹⁴

In his first draft Jefferson had written: "and from that equal creation they derived rights inherent and unalienable." But later he changed, in his own hand, this phrasing to read: "They are endowed by their creator with certain unalienable rights."

God is next present in the Declaration at the beginning of the last paragraph. Jefferson had written: "We therefore the representatives of the United States of America in General Congress assembled do, in the name and by the authority of the good people of these states, reject and renounce all allegiance. . . ." ¹⁵ The "Committee of Five" had made no change. But the Congress inserted, after the words "Congress assembled," the phrase, "appealing to the supreme judge of the world for the rectitude of our intentions. . . ." ¹⁶ Congress, too, explicitly hoped to find in the law of God the justification for their part in the formation of the new American Nation.

In the last sentence of the Declaration the Congress revealed once again the religious preoccupation that is characteristic of our tradition.

13. Becker, *The Declaration of Independence* 160 (1942).

14. *Id.* at 161.

15. *Id.* at 170.

16. *Id.* at 180.

Into Jefferson's copy they inserted, after the words "support of this declaration," the phrase "with a firm reliance on the protection of divine providence. . . ."

In sum, the basic document of the American tradition acknowledges and proclaims God as Creator, Judge, Provider, and Source of all our basic rights. The God of the American tradition is the God of the Judaeo-Christian tradition; that religious tradition is an integral part of our American heritage.

There is no doubt that our Founding Fathers firmly believed that a rejection of God would be a rejection of the premises of American government as they understood it. They would have found strange any plea for a "secularist" or non-religious way of life, such as is defended by some legalists today.

The men who thus set the direction of our national traditions subscribed to a theology which the ancient Catholic faith was bound to eschew as heretical in many points; they preached certain moral conventions which their own sons and daughters have felt free to relax as excessively austere. But lament as one may their dogma and fret as one may at their restraints; for this may their names never die: *the men who wrote our law feared God, and they were resolved never to fear any man.*

They feared God with a holy and a wholesome fear, and because they did, they wrote into the preambles of the constitutions of their individual states devout words of homage to their Creator, recognition of their dependence on Him, and prayer for His direction in the mighty task of building here their commonwealth. Because they feared God, they did not talk glibly of a "freedom to worship God" which they had no intention of exercising or implementing. Rather, they wrote in the second article of the constitution of Massachusetts, for example, words of right and duty: "It is the right as well as the duty of all men in society, publicly, and at stated seasons to worship the SUPREME BEING, the great Creator and Preserver of the universe. . . ."¹⁷

Such provisions as these strike many ears in our days as "reactionary"; they seem to a few to be "shackles" binding us to the past. But the conservatism of our forefathers was not designed to enslave us in the name of the past; it was calculated to save us from enslavement in the name of the future. It recognized that hard-won liberties can be speedily lost under the seduction of easily promised future freedom; that the God-given heritage of the past and the sacred liberties of the present can be sacrificed in the name of a future which may never be, which perhaps were better not.

17. Mass. Const. art. II.

The conservatism of our forefathers is particularly saving in time of crisis; it reminds us that there will be, when the tumult and the shouting die, no new Heaven and no new Earth. It reminds us that the citizens of the brave new world to be, will still be men, not gods. It reminds us that any future world can only be built out of whatever good survives from the old. It warns us never to hold lightly the good which our forefathers built so patiently here in this land; never to gamble with the liberties which are the heart and soul of that good; never to permit the religious faith, which taught us those liberties, to grow cold; never to forget the blessings on our traditions by which Almighty God has confirmed the wisdom of these who, building it, honored Him and His chief creature, the spiritual person.

Yet even in America are sometimes heard the voices of new prophets who spread a teaching forgetful of our fathers' God and of their reverence for the dignity of the human person. These new teachers write their laws without reference to God, and indifferent to Sacred Scripture with its warning that we put not our trust in princes, they propose, sooner or later, a government of men, not laws. They talk little of the family, less of the sovereignty of parents, and not at all of the spiritual roots of personality. They speak rather of race, of tribe, of class-consciousness, of nationalism or of internationalism, not of the person. They hold in contempt or neglect, by studied silence, the earthly beginnings of the Kingdom of God, and they boast of their readiness to build, without the help of Heaven, a self-sufficient City of Man. They repudiate the religious revelation which is the heart of our tradition of faith and they reject the legal concept of objective *natural law* which was the heart of our tradition of freedom. The phrases which meant so much to our Founding Fathers that they enshrined them in the basic documents of our national life—phrases which spoke of *natural law* and of God's *authority*—"the laws of nature and of nature's God"—have no meaning whatsoever for many who now seek to write or construe the laws of our land and to shape its educational policy.

People tell us blandly, "Our courts are no longer 'natural law' courts." Or concerning legislation governing education, marriage, or other partially moral matters, they assert, "Our democracy is strictly secular. Its citizens may individually reverence their God, gods, or moral laws, but the State is not concerned with sacred matters nor with moral values!"

All this may be, but it was not always so. Some of the men who occupy our courts may not accept the natural law, but the men who founded these courts did accept such "higher law" and gave our courts a religious aura for their protection. Our democracy may have become more amoral

or unreligious in days of secularism, but in the days of its original inspiration and initial strength those who launched it talked of the endowments man has from his Creator and of his consequent accountability to God; *that is how our Republic came to be founded.*

No defense of Christianity and of the values which it taught our forefathers could be more effective than the present straits to which these new prophets, contemptuous of the faith, have reduced our society. Nothing could better warrant meditation of the lesson our forefathers learned so well, a lesson that the Catholics of Poland taught Catherine II of Russia: "We love *liberty* and therefore we love *religion* even more; we are *free because we love religion.*"

A Christian university, above all its law school, is the servant of both faith and freedom when it perpetuates and increases regard for that religious inspiration which is the soul of the American tradition.