Once again, I want to express my thanks to Fordham University and to Father McShane for their wonderful hospitality. Most especially, I want to express my continuing gratitude to Father Ryan for inviting me to participate in this very significant occasion. He has again selected a most provocative topic for his presentation, and I am grateful to him for inviting me to share some of my own thoughts with you on the subject.

Now you no doubt imagine that you have come to participate in the McGinley lecture. But the fact of the matter is that in reality, all of us seem to be sharing in the Wilfred Cantwell Smith Memorial celebration. It was Smith who made indelibly clear to me, and perhaps to Father Ryan as well, that there is no such thing as RELIGION—capital R: homogeneous, monolithic, completely of one piece. Much as fundamentalists of all traditions wish to assert that their religion is as it was at the beginning and is everywhere and always the same, religious reality, as Smith would cause us to understand it, is, like Joseph’s coat: variegated and multihued. It is subject to the varieties engendered by time and geography. It evolves. It is understood differently by different groupings of its adherents, indeed from individual to individual, perhaps even within the same individual at different times and under different circumstances. And it is for this reason that Smith chose to use the word religious as an adjective rather than the noun religion, and to describe this aspect of the human experience with the term “tradition,” rather than with the word “religion,” which has the effect of hypostasizing that which it describes.

Understanding religious traditions in this way opens the possibility of recognizing the analysis of the ways in which any religious tradition evolves itself as an appropriate area of study. It is in that context that we are looking tonight at the dimension of internal self-criticism as one of the engines of such evolution.

Though we are accustomed to conceiving of scripture as immutable, what is striking, once we begin to be attuned to it, is the frequency with which we see evidence of evolution within the Bible itself. We can discern the development of the sacrificial cult; the roles of priests, and of prophets; dietary laws; the structure, content, and meaning of the various festivals; the development of Biblical religion into a text focused practice; even—strikingly—the way in which the Deity is named and understood. The Book of Job appears to have been included in the canon as an argument against the mechanistic application of the doctrine of reward and punishment articulated in the Deuteronomic books.

Between the Bible and the Jewish tradition which derives from it, the process of evolution is no less evident. Even while the second Temple was standing, and the revived priestly practices of the sacrifice were in place, the religious group which we identify as the Pharisees introduced and advocated for radically new institutions, practices, and ideologies. The rationale for this transformation is articulated in numerous places. In the opening verse
of *Pirkei Avot* (The Wisdom of the Fathers) the rabbis present their self-understanding of their role in the unfolding of revelation:

Moses received the Torah at Sinai and handed it over to Joshua. Joshua gave it to the elders, the elders to the prophets and the prophets handed it over to the men of the Great Assembly.

Of the men of the Great Assembly nothing is known, save that they appear to represent, for the rabbis, the transition between the prophetic role and their own. What is indisputable is the implication in this scenario that the authoritative voice had gone through many permutations until it devolved to the rabbis themselves. It was they who now determined what Torah meant.

This understanding is exemplified dramatically in an episode recounted in the Talmud. The rabbis were debating a halachic issue involving ritual impurity. They arrived at an essential consensus on the issue. But one of the sages, Rabbi Eliezer, insisted on the opposite conclusion. Eliezer invokes a series of miraculous occurrences, to convince his colleagues of the divine sanction for his perspective, to no avail. Finally, he asserted, “If I am correct, a voice from heaven will cry out to confirm my position.” At this point a heavenly voice is heard affirming Rabbi Eliezer’s interpretation. The rabbis then vote again and came to the conclusion that “we do not listen to heavenly voices,” basing their decision on the Biblical statement that “the Torah is not in heaven” (Deut 30:12). The implication of this episode is transparent. The rabbis are clearly arrogating to themselves the right to assert what the Torah means. It is no longer in heaven…it belongs to them. This is a remarkable depiction of the self-conscious, if not necessarily prophetic, unfolding of a religious tradition. It is this self-understanding that undergirds the entire structure of Halacha and Aggadah by which the rabbis commented upon the Biblical text, applied its generalizations to specific practices and, in the process, evolved an entire construct of Jewish religious life quite different from what one would be entitled to anticipate from an unmediated reading of Hebrew Scriptures.

The evolutionary changes which most immediately come to mind involve areas of ritual and observance. But perhaps more consequential is ethical evolution within the Bible and between the Bible and subsequent Jewish tradition. The underlying question that pertains to this subject is ‘how does a tradition deal with material or perspectives in its foundational texts from which it stands at an ethical distance?’ And, not inconsequentially, this same question continues to have implications for contemporary members of all religious traditions. The contemporary Jewish thinker Yitz Greenberg has famously said of the different “branches” of Jewish life, “I don’t care which denomination you belong to as long as you are ashamed of it.” But we will confine ourselves to more classical realities.

The late Yosef Hayim Yerushalmi spoke of an ethical irritant that motivated a religious tradition to abandon a previously help position to embrace a new one. As a corollary we might note that frequently the offending attitude was found wanting by being viewed through the lens of yet another value from within that tradition itself. I will suggest three strategies for such internal critiques which result in ethical evolution.
There are numerous instances in which the Biblical text appears to be in conversation with itself. We are all familiar with the literary foreshadowing and echoing that characterize the Bible. What is germane to the topic at hand are the many occasions in which the text includes what appear to be comments of later periods upon values and practices that characterized earlier generations. We can regard this as a form of internal Midrash, the text offering commentary upon itself or in the language of current scholarship, intertextuality.

Frequently the Bible will include statements that explicitly contradict earlier assertions. Father Ryan has done a thorough job of presenting the evolution of the idea of individual culpability. Other examples are abundant.

This same strategy of self-critique is found in the explicit antagonism of the prophets to the sacrificial cult. Clearly, in ancient Israel religious life consisted entirely of fidelity to the sacrificial system. One’s obligations consisted predominantly, perhaps exclusively, of coming to Jerusalem at the appropriate times and offering the indicated sacrifice in the approved fashion. Perhaps the Judean or Israelite citizen imagined that such adherence to the received tradition discharged them of any further obligation to the Deity. If so, numerous prophetic voices sought to disabuse them of this attitude. They taught that there were more profound, more consequential, debts that were owed to G-d and they were not timid in proposing the ideal of ethical behavior, even at the expense of cultic fidelity:

With what shall I come before the Lord?
And bow myself before G-d on high?
Shall I come before Him with burnt offerings?
With year old calves?
[Really!] Will the Lord be pleased with a thousand rams?
With ten thousand rivers of oil…
[No!] It has been told you O man what is good
And what the Lord requires of you
Only to do justly, love mercy
And walk in modesty with your G-d (Mic 6:6-8).

Even stronger is Isaiah, chapter 58, which one can imagine the prophet proclaiming to an errant people on one of the regular fast days, or a special day of fasting enacted in the face of some imminent catastrophe:

Is such the fast I have chosen?
The day for a man to afflict his soul?
Is it to bow down his head like a bulrush?
And to spread sackcloth and ashes over himself?
Will you call this a fast?
And an acceptable day to the Lord
Is not this the fast I have chosen:
To loose the fetters of wickedness,
To undo the bands of the yoke,
And to let the oppressed go free, and that ye break every yoke
Is it not to deal your bread to the hungry
And that you bring the cast-out poor into your home
When you see the naked to cover them
And that you hide not yourself from your own kin? (Isa 58:5-7)

The same sense of privileging matters of the spirit or interpersonal ethics over ritual punctiliousness persisted in Jewish life throughout the millennia. It is evident in the variegated approaches represented in different responsa/the obiter dicta of different religious authorities. In more modern times it finds expression in several different articulations of Jewish life.

The Chasidic movement came to dominate Eastern European Jewish life within a century of its birth in the eighteenth century. This was due, in large part, to its rejection of what it perceived as the overly formalistic, study-based approach to Judaism which was, in any event, available primarily to the economically privileged members of the community and foreclosed to the masses of Jews who barely eked out a subsistence existence. In place of this Judaism of punctilious practice and the book, the Chasidim emphasized simple devotion and religious fervor. They presented a Judaism that included a more immediate relationship with an accessible G-d. Such was their sense of attachment to G-d that matters of study or even conventional practice assumed secondary significance. Of the volumes of stories told about various Chasidic masters, one, attributed to Levi Yitzchak of Berditchev (1740-1809), will be representative. At his Passover Seder one year, Levi Yitzchak was attentive to all the details of the preparation and the service. And yet his intense joy was shattered when he heard a voice saying, “more pleasing to Me than your seder is that of Hayim the water-carrier.” The next day Levi Yitzchak and his disciples went to ask Hayim what had been so wonderful about his Seder. When they arrived at his house his wife told them that Hayim was “indisposed.” He had had a great deal to drink last night and was still sleeping it off. When they finally managed to rouse the water-carrier he gave them this account of his Seder that was deemed more pleasing than Levi Yitzchak’s own:

Rabbi, I shall tell you the truth. You see, I always heard that it is forbidden to drink brandy the eight days of the festival, so yesterday morning I drank enough to last me eight days. And so I got tired and fell asleep. Then my wife woke me, and it was evening, and she said to me: “Why don’t you celebrate the seder like all other Jews?” Said I, “What do you want with me? I am an ignorant man, and my father was an ignorant man, and I don’t know what to do and what not to do. But one thing I know: Our fathers and mothers were in captivity in the land of the Gypsies, and we have a G-d, and He led them out into freedom. And see: now we are again in captivity and I know, and I tell you that God will lead us to freedom too.” And then I saw before me a table, and the cloth gleamed like the sun, and on it were platters of matzot and eggs and other dishes, and bottles of red wine. I ate of the matzot and eggs and drank the wine and gave my wife to eat and drink. And then I was overcome with joy, and lifted my cup to G-d and said: “See, G-d, I drink this
cup to You! And do You lean down to us and make us free!” So we sat and drank and rejoiced before G-d. And then I felt tired, lay down and fell asleep.³

Another movement called Musar swept the non-Chasidic sector of Orthodox Judaism in Eastern Europe in the nineteenth century. These Orthodox Jews strove to emphasize the moral and spiritual elements of Jewish teaching over obsessive attention to ritual practice. Characteristic of the Musar movement is a story told about one of its early leaders, Rabbi Israel Salanter (1810-1883). One year Salanter was given the task of overseeing the production of matzah for Passover in his community. As Passover drew closer his students came to ask him if there was anything in particular that they should watch for. He replied, “Yes absolutely. The women making the matzah are very poor. They have families to support. Make sure they are properly paid.”

The third modern stream that represents a rejection of the tradition as heretofore practiced is the Reform Jewish movement which first came to formal expression in Germany 200 years ago this year. It came to call itself prophetic Judaism in tribute to what it characterized as the antinomian spirit of the Biblical prophets who, it maintained, were less interested in ritual than in social justice. One of its early and most extreme statements is one of the planks of the Pittsburgh Platform of 1885, the first formal statement of Reform principles in America:

We hold that all such Mosaic and rabbinical laws as regulate diet, priestly purity, and dress originated in ages and under the influence of ideas entirely foreign to our present mental and spiritual state. They fail to impress the modern Jew with a spirit of priestly holiness; their observance in our days is apt rather to obstruct than to further modern spiritual elevation.

Divergent as these movements may be, all shared the characteristic of explicitly challenging the dominant approach to tradition in the name of advocating for a more values-based approach to Jewish living. All share the strategy of explicit rejection of elements of the tradition that they felt were not in keeping with essential spirit of Judaism as they had come to understand it. All remind us that it does not alienate us from our religious tradition to be explicit in challenging aspects of it.

In addition to this strategy of direct and explicit rejection, two other strategies of self-criticism and evolution may be mentioned, though I will do so here in much abbreviated form.

The first of these I will call mitigation. As we read the Bible we find present practices which we would, frankly, prefer not to have included in our sacred scripture. From a list more extensive than we would wish, I will mention only two: the practice of war and the institution of slavery. Modern people would just as soon have the Bible proscribe both phenomena outright. But the Bible was not written in modern times. And it does not reflect a modern sensibility. It emerged out of a particular time and place. As the rabbis teach us, “the Torah speaks in the language of man,” that is, it is reconciled with the prevailing cultural patterns. The Bible does accept the reality of war; indeed at times it
appears to embrace it rather enthusiastically. This reality is disturbing to modern ears. And yet it does not represent the entirety of the Biblical engagement with the phenomenon of war. What seems remarkable about the Biblical approach to warfare is not that it accepts this reality of its cultural environment; but that it seems to find ways to push against this cultural pattern and mitigate the full horror of that practice. This bifurcated attitude is displayed in all its extremity in Deuteronomy chapter 20. One portion of it seems to embrace armed combat in its most brutal expression. And yet, in that same chapter are found verses which, if applied, could only have the effect of subverting the phenomenon of war as it is customarily practiced:

When you lay siege to a city for a long time, fighting against it to capture it, do not destroy its trees by putting an ax to them, because you can eat their fruit. Do not cut them down. Are the trees of the field people, that you should besiege them? However, you may cut down trees that you know are not fruit trees and use them to build siege works until the city at war with you falls (Deut 20:19-20).

It is only later that warfare is addressed in the strategy of overt rejection in the words of Isaiah and Micah. But long before those prophets the lineaments of a negative valuation had been laid down, even in the midst of statements that seemed to take its normativity for granted.

Mitigation is found with regard to other institutions as well, such as slavery, the role of women or corporal punishment. Though not overtly rejecting of dominant attitudes, the strategy of mitigation has the effect of passing judgment on practices they appear to endorse and imposing limits on them beyond what were conventional in that cultural setting. It seems to follow a strategy of both accepted and subverted the prevailing cultural patterns. All of these mark, in their own way, I would suggest, a form of self-critique. I would propose that we include this strategy, no less than overt rejection, under the category prophetic.

This mechanism is present in post-Biblical Judaism as well. It is exemplified in the elaborate logic by which rabbinic authorities found ways to mitigate the observance of the religious practices that they themselves were charged with overseeing. It is a commonplace of the rabbis of the Talmud, for instance, when considering the initiation of a practice to “go and see what the people are doing”. Hardly the heavy yoke that Paul would imagine they imposed. Similarly in more recent times it was a commonplace for rabbis, when called upon to make a ruling on some subject affecting people’s lives to take into consideration the situation of the person who brought the question to him. Conversely it was, and remains, the case in traditional communities for people to be selective about which rabbi to bring such a question, knowing who was more disposed to compassion rather than stricture. The spirit of the “easy” rabbis seems very much in keeping with the mitigating strategy we found in the Bible.

The final strategy I would consider is one which takes the strategy of mitigation even farther. Like mitigation, it involves no overt rejection of earlier practices. Indeed, it represents itself as conscientiously applying the injunctions of earlier periods. But it does
so in such a way as to utterly invalidate the practice it purports to apply. I will cite but one example from a vast inventory that could be presented. It involves the way the rabbis applied the Biblical embrace of capital punishment.

Once again modern readers might be dismayed that the Bible seems clear in embracing practices which they might consider anathema. Capital punishment is such a practice: “Whosoever sheds man’s blood, by man shall his blood be shed” (Gen 9:6); “He that strikes a man so that he dies shall surely be put to death….And if a man comes presumptuously upon his neighbor to slay him with guile….he shall die. And a man that strikes his father or his mother shall surely be put to death” (Lev 21:12-15). In truth the list in this chapter is considerably more extensive. And the Bible enumerates many more examples of crimes punishable by death (Deut 21 and elsewhere). The modern opponent of the death penalty can only be disappointed with the text. Unlike the instances of mitigation of practices like warfare, slavery and other, no such limitation is found in the Bible, save with the exception of the accidental murderer for whom cities of refuge are established (Num 35:9-15, Deut 4:41-43, Josh 20). But capital punishment, itself, is in no way limited. The modern reader can only find themselves at some distance from their sacred text.

Such was, apparently the predominant view of the rabbis as well. What we know about the rabbinic application of the death penalty suggests that they applied the “law” in such a way as to actually nullify it. The rabbis established a system that made the application of capital punishment virtually impossible. They were very selective in determining who might sit on a court deciding a capital case. According to Rabbi Judah, a person whose disposition is cruel should be excluded from sitting in judgment in such cases. The stringent demands on witnesses in capital cases rendered almost impossible the likelihood that a defendant would be convicted. To ensure that a witness’s testimony was not based on conjecture, e.g., circumstantial evidence, hearsay, simple rumor, or the observations of another witness, the court would “fill the witness with fear.” Witnesses were asked to establish the day and hour of the crime and explain the circumstances surrounding it. They were then warned that they would be subject to rigorous questioning and relentless cross-examination and held personally responsible should the accused be falsely condemned. Bearing false witness in a capital case was in itself a crime punishable by death. A witness in a capital case had to have seen the entire crime as it was being committed; circumstantial evidence was inadmissible. Not only did witnesses have to see the crime take place, they had to have warned the perpetrator prior to the act that he was about to commit a capital offense. According to Rabbi Judah, a warner even had to inform the perpetrator of the type of execution prescribed for his crime. The perpetrator was then obliged to have verbally acknowledged this warning by saying something like, “I know I am warned not to do this;” to have admitted his liability to death by adding something like, “even though I shall be punished by such-and-such manner, yet I want to go ahead and commit this crime;” and to have committed the murder within the time needed to make such an utterance. The great eleventh-century commentator Rashi explains this last restriction by suggesting that if a murder was delayed longer than the time necessary to make an utterance, the plea might be accepted that the perpetrator had forgotten the warning altogether. Furthermore, two or three witnesses had to have similarly interacted with the accused. And on the unlikely chance that such witnesses could be found, the court
could convict the accused only if guilt could be proven beyond a reasonable doubt. According to the Talmud, “A doubt in capital charges should always be for the benefit of the accused.”

Rabbinic attitudes concerning the death penalty are also reflected in statements such as “a Sanhedrin that effects an execution once in seven years is branded a destructive tribunal.” Rabbi Eliezer Ben Azariah said, “Once in seventy years.” Rabbis Tarfon and Akiba said, "If we were members of a Sanhedrin, nobody would ever be put to death." What we have seen with regard to the issue of capital punishment can be replicated in numerous other instances. Later tradition without repudiating, or mitigating a practice embraces it in such a way as to make it inoperative. This strategy of nullification reflects, no less than the other strategies an ethical evolution. Earlier attitudes and values no longer applied. Reverence for the received tradition prevented an explicit rejection of it. And yet the values promulgated by that same tradition, in this case reverence for life, made it impossible to implement it. So a strategy of nullification was applied. It continues to be practiced within Jewish life as in any living religious tradition.

To cease evolving, growing, changing is to die. To cling desperately to past practices and values, just because they have been received from the past, is to ossify and shrink into irrelevance in a world that is constantly changing and demands change. Through the strategies of outright rejection, mitigation, and nullification, Judaism has practiced self-criticism and correction. In the process it has evolved and continued to be a vital force in the lives of its adherents.
NOTES

1 Pirkei Avot 1:1

2 Baba Metzia 59a.

3 Buber, Tales of the Hasidim, Early Masters, 220f

4 What follows is adapted from Daniel Polish, “Judaism and the Ultimate Punishment, Reform Judaism, (Summer 2002): 32ff.

5 Sanhedrin 36B

6 Sanhedrin 2B

7 Sanhedrin 9B, 32B, 86A, & 89A

8 Sanhedrin 8B

9 Makkot 6A

10 Baba Batra 50B, Sanhedrin 79A