ABSTRACT. This essay argues that to understand much that is most central to and characteristic of the nature and behaviour of law, one needs to supplement the 'time-free' conceptual staples of modern jurisprudence with an understanding of the nature and behaviour of traditions in social life. The article is concerned with three elements of such an understanding. First, it suggests that traditionality is to be found in almost all legal systems, not as a peripheral but as a central feature of them. Second, it questions the post-Enlightenment antinomy between tradition and change. Third, it argues that in at least two important senses of 'tradition', the traditionality of law is inescapable.

Legal philosophers disagree about many things, few more than the nature of law. Notwithstanding these differences, there are significant family resemblances among contemporary approaches to this question. I am struck by three. First, it is common for law to be conceived as a species of some other more pervasive social phenomenon: commands, norms, rules, rules-and-principles, rules, principles and policies, and so on. Though this runs

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the risk of explaining the obscure in terms of the more obscure, there are compensating benefits. Important among these is the opportunity of bringing to light central aspects of the complex set of phenomena known compendiously as ‘law’, which are encompassed by the concept(s) one favours but not by those of which one is critical. Thus Hart on rules versus habits, and on power-conferring laws versus command theories of law. Thus too, Dworkin on the importance of principles rather than rules alone, in hard cases. The aim is not merely to replace one word with another, but to draw attention to important legal phenomena not adequately grasped, or even likely to be much considered, in terms other than those one proposes.

Secondly, legal philosophy typically makes such progress as it does, without making discoveries. When Hart sought to show the significance of rules, or Dworkin of principles, for an understanding of law, they relied (and stressed that they relied) on extremely familiar elements of contemporary legal systems. Their aim, and I believe their achievement, was not to unearth hitherto unknown truths about law, but to focus attention on what was already familiar; frequently so familiar as to escape notice altogether. This is no small contribution, for as Wittgenstein observed, ‘The aspects of things that are most important for us are hidden because of their simplicity and familiarity. (One is unable to notice something – because it is always before one’s eyes)’.¹

I have no quarrel with these characteristic moves in legal philosophy; on the contrary, I endorse and wish to continue them. One thinks differently, and more, about the character of law when one considers the ways in which it is like, and unlike, rules and principles – let alone habits, commands, obligations, rights, goals, policies.

However there is a third characteristic of modern legal philosophy which I would not wish to emulate. At least since Hobbes, theories of the nature of law have, as it were, lived in an ever-