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BELIEF AND INTERPRETATION: MEDITATIONS ON PELIKAN'S "INTERPRETING THE BIBLE AND THE CONSTITUTION"

Francis J. Mootz III[†]

Is belief a prerequisite of interpretation? Can we interpret a document if we do not believe that it has something to say to us, if we do not anticipate that we can learn from the text? Jaroslav Pelikan's assessment of the similarities and differences in constitutional and Biblical hermeneutics¹ does not raise this question expressly, but his eloquent description of how the faithful struggle to remain true to their guiding texts inexorably leads one to question the role of belief. In this essay, I first acknowledge the unavoidable significance of belief in the elaboration of a textual tradition. Then, I argue that rhetorical and hermeneutical principles clarify the distinction between a faithful interpretation rooted in belief and the inauthentic manipulation of a text for strategic goals.

Belief fosters commitment to the text, which legitimizes and authenticates an interpreter's efforts. We readily distinguish the constitutive exegetical rhetoric that girds social life from the "mere" rhetoric employed by sophistic interpreters, characterizing the former as a vital and productive development of a tradition and the latter as a corruption of the tradition. Pelikan claims that his goal is to formulate a general methodology of faithful interpretation, but his reflections confirm that there can be no neat methodological distinction between a legitimate reading rooted in belief on one hand, and a strategic manipulation of a text designed to undermine the cause for belief on the other. Making this distinction requires a judgment that can be rhetorically defended but never methodologically justified; the faithful may prove themselves only in the "dangerous maybe"² of debate and

[†] Professor of Law, Penn State Dickinson School of Law, fjmootz@psu.edu. © Francis J. Mootz III 2006. An earlier version of this essay was presented at the 2005 Annual Meeting of the Association for the Study of Law, Culture and the Humanities in Austin, Texas. I thank my fellow panelists, Gene Garver and John Valauri, and the audience for their comments.

1. Jaroslav Pelikan, *Interpreting the Bible & the Constitution* (Yale U. Press 2004).

2. I endorse Nietzsche's famous "dangerous maybe" as expressing a willingness to break from bivalent thinking and embrace the realm of rhetorical engagement that deals only with probabilities. Francis J. Mootz III, *Nietzschean Critique and Philosophical Hermeneutics*, 24

persuasion. As Gene Garver has argued, Aristotle's great advance was to show that rhetoric is an art of character and not just a matter of logic.³ I would add that there can be no methodology of interpretation because there can be no methodology for developing one's character.

If belief is central to interpretation, though, this would appear to consign interpretation to a wholly conventional practice immune from critical insight. A popular image in academia of one who believes is of one who does not listen to others (those who, presumably, *know* rather than *merely believe*). It may come as a surprise, then, that I will argue that belief is also central to critique. As Gianni Vattimo concludes, in the post-metaphysical age we find that belief returns to the forefront, although not in the form of the dogmatic religiosity of past eras.⁴ The relationship between belief and interpretation is thus paradoxical: we must come to grips with the fact that belief is the prerequisite of critique, even as we acknowledge that it is only through critique that living belief—as opposed to *doxa* transmitted through idle chatter—is possible. Hermeneutical responsiveness and rhetorical elaboration are entwined expressions of a faithful relation to the text; belief nourishes a critical exegesis, which in turn enriches our beliefs.

PELIKAN: INTERPRETING THE GREAT CODES FAITHFULLY AND AVOIDING CORRUPTION

Pelikan displays an impressive breadth of learning and depth of thought by taking a productive tack on the well-worn analogy between

Cardozo L. Rev. 967 (2003). Nietzsche criticizes philosophers for being unwilling to recognize that truth is deeply connected to deception, and he insists on asking the dangerous question: is the value of truth

insidiously related, tied to, and involved with these wicked, seemingly opposite things—maybe even one with them in essence. Maybe!

But who has the will to concern himself with such dangerous maybes? For that, one really has to wait for the advent of a new species of philosopher, such as have somehow another converse taste and propensity from those we have known so far—philosophers of the “dangerous maybe” in every sense.

Friedrich Nietzsche, *Beyond Good and Evil*, ¶ 2 at 10-11 (Walter Kaufmann trans., Vintage Books 1966).

3. Eugene Garver, *Aristotle's Rhetoric: An Art of Character* 183 (U. Chi. Press 1994): To rule on the basis of the law alone is a character flaw. Aristotle condemns the man who stands on his rights in demanding an ethically excessive sort of precision concerning justice in the distribution of goods. . . Similarly here. To argue on the basis of reason alone is a character flaw, a failure of *éthos*, and therefore a failure to persuade. Excessive precision is in both cases unethical because it takes something which should be within the range of praxis and judgment and makes it into a subject for more precise, scientific determination.

4. *Infra* nn. 35-41, and accompanying text.

constitutional and Biblical hermeneutics.⁵ One of Pelikan's four essays⁶ describes how we can distinguish legitimate interpretive developments of a textual tradition from corruptions of that tradition when interpreters face "cruxes of interpretation." A *crux interpretum* involves difficulties in interpreting a text, either because the words are difficult to understand or because they raise doctrinal conundrums.⁷ These cruxes generally are resolved by the ordinary Magisterium (in the everyday practices of the community) and sometimes by the extraordinary Magisterium (in the official pronouncements by the church or Supreme Court).⁸ But resolving an interpretive difficulty is not the same as resolving it correctly. Pelikan emphasizes that it is imperative to distinguish healthy growth in a textual tradition from a cancerous growth that is at once vibrant and self-destructive.

The development of doctrine in both religion and law has involved "the ongoing and cumulative interpretations of the Great Code in the form of tradition and precedent."⁹ The significance of Vatican II to the Catholic Church is precisely that it epitomizes "the ongoing development of doctrine as a faithful interpretation of the original deposit in Scripture and even a faithful interpretation of the subsequent tradition."¹⁰ Neither originalism nor literalism standing alone provides an adequate criterion for correctly interpreting the Bible or the constitution.¹¹ Therefore, Pelikan turns for guidance to Cardinal Newman's *An Essay on the Development of Christian Doctrine* to account for the dynamic, historical, and tradition-bound activity of interpreting the Great Codes.¹²

Newman proposed "to discriminate healthy developments of an idea from its state of corruption and decay"¹³ by offering seven "notes"

5. My review essay highlights a particular theme emerging from Pelikan's work. For a more general review essay, see Gregory L. Kalscheur, S.J., *Christian Scripture and American Scripture: An Instructive Analogy*, 21 J. L. & Relig. 101-142 (2005-06).

6. Pelikan's book was first delivered as four talks at the Yale Law School in 2003 under the joint auspices of the Law School and the Divinity School, which were then prepared for publication.

7. Pelikan, *supra* n. 1, at 38. In a wonderful example, he cites the passage from scripture in which Jesus says "[s]earch the [s]criptures," noting that it is ambiguous whether this is a divine imperative that girds literalist biblical exegesis or whether it is an indictment of those so busy reading holy texts that they don't look to the face of God. *Id.* at 42.

8. *Id.* at 55-56.

9. *Id.* at 115.

10. *Id.* at 122.

11. *Id.* at 76-114.

12. *Id.* at 119-149.

13. *Id.* at 124 (quoting John Henry Newman, *An Essay on the Development of Christian Doctrine* 171 (U. Notre Dame Press 1969) (originally published 1878)).

regarding the harmonization of tradition and the changing social context. Because the proper development of doctrine cannot be proved by a Euclidean theorem or demonstrated by an Aristotelian syllogism,¹⁴ the seven notes are not a methodology for developing doctrine as much as they are *topoi* one should employ in defending the legitimacy of a particular interpretation.

Pelikan succinctly relates Newman's seven notes with excellent examples drawn from both religion and law. The first note is "Preservation of Its Type," by which Newman means adhering to the type of textual tradition at issue and refusing the temptation to engage in a different discourse altogether. One might regard this as a commonsensical injunction not to approach the Bible as a scientific monologue or to approach the Constitution as a literary effort so as to avoid corrupting these texts and their interpretive traditions, but there is an important point in making this "universally accepted criterion"¹⁵ explicit. Newman's first note emphasizes that an interpreter must approach the text from within the history of its effects within a culture, and that failure to do so amounts to a relinquishment of the "calling" to serve as an interpreter.¹⁶ The Protestant Reformation represented a dramatic schism in Christianity, but the Protestant confessions embraced the same general type of interpretive tradition that had preceded Martin Luther's actions; indeed, they claim to preserve the tradition that had been corrupted by the Roman church.

The second note is a substantive corollary to the first, with "Continuity of Its Principles" calling for the preservation of animating principles despite changes in the details of the textual tradition. Pelikan argues that the development of the doctrine of the Trinity permitted the Church to preserve the competing principles of monotheism and the incarnation of God in the person of Jesus.¹⁷ Just as an interpreter must approach the text with respect for its type, so too the interpreter must maintain the fundamental principles of the textual tradition, even if doing so requires significant doctrinal development.

Newman's first two notes will strike the modern critical consciousness as extremely problematic: how can one critically appraise and develop a tradition if one is consigned to approach the text within its received tradition? And yet, Pelikan surely is justified in recalling Newman's insights, inasmuch as one cannot imagine developing a

14. *Id.* at 123.

15. *Id.* at 125.

16. *Id.*

17. *Id.* at 133.

textual tradition that spans centuries or millennia without requiring adherence to its genre and core principles. But this is just to say that belief inevitably is at the center of the interpretive undertaking. The interpreter must give herself over to the tradition by respecting its type and established principles and believing in the legitimacy and worth of the tradition, even if there is an unending dispute among believers about what faithfulness may require in particular interpretive situations.

The next four notes in Newman's account elaborate the goal of developing principles within a genre. The third note, "Its Power of Assimilation," concerns the necessity of incorporating knowledge external to the tradition into its development, as occurs when Biblical interpreters take account of natural science and constitutional interpreters take account of social science.¹⁸ The fourth note is designated, "Its Logical Sequence," by which Newman means that interpretations must develop doctrine in a manner that appears almost compelled by the preceding tradition, with precipitous shifts viewed as a corruption of interpretation.¹⁹ The fifth note, "Anticipation of Its Future," is related to the fourth, in that a healthy development of a textual tradition requires that contemporary developments be regarded as having been anticipated in the tradition, although these anticipations might be "vague and isolated."²⁰ Finally, the sixth note, "Conservative Action upon its Past," declares the importance of preserving antecedent developments and avoiding the corruption that occurs by making a sharp break from the prior tradition.²¹ Interpretive developments must conserve the past and bring its principles to bear in the present, rather than rejecting the foregoing tradition altogether.

These four notes provide unexceptional gloss on the idea that interpreters must remain faithful to the tradition and believe that the text continues to speak to the interpreter's world; they counsel interpreters to mediate adaptation and preservation, innovation and constraint, and literalism and dynamism. But finding the golden hermeneutical mean in practice is no easy task. In light of the postmodern declaration of the

18. *Id.* at 134-137. Pervasive racism in America has shaped the constitutional doctrines announced in *Plessy*, *Korematsu* and *Brown*, Pelikan writes, and so the task is to determine if the assimilation of such external principles are valid or invalid in light of the developing textual tradition. *Id.* at 136-137.

19. *Id.* at 137-140. Pelikan suggests that *Marbury v. Madison* succeeds by presenting its conclusions as the logical deductions of constitutionalism itself, such that one cannot reject the *Marbury* development of tradition without rejecting the constitutional structure itself. *Id.* at 140.

20. *Id.* at 140-142. Thus, *Brown v. Bd. of Educ.* is offered by the Court as the fulfillment of anticipations stretching back to the Bill of Rights and the Fourteenth Amendment, although these anticipations were certainly "vague and isolated." *Id.* at 142.

21. *Id.* at 143-146.

death of the author and her replacement by the interpreter, one might question whether celebrating belief in a text and its interpretive trajectory will, in political effect, result in a balkanization that undermines the possibility for communal traditions. Pelikan speaks to this concern in his discussion of the final note.

Newman's seventh note provides the ultimate criterion for distinguishing valid growth from a cancerous corruption of the tradition: "Its Chronic Vigor." Pelikan agrees that this note is "in some ways a summary recapitulation of the other six. Because, he [Newman] argued, 'corruption cannot be of long standing,' it followed that '*duration* is another test of a faithful development.'"²² The "test of time" is the ultimate arbiter of faithful interpretation simply because corruptions of the tradition cannot be long-standing. Pelikan quotes Newman's homage to centuries of development in the Biblical tradition despite facing tremendous adversity, in which Newman celebrates the fact that the Christian tradition is

still living, if there be a living [...] philosophy in the world; vigorous, energetic, persuasive, progressive; *vires acquirit eundo* [it gathers strength as it moves along]; it grows and is not overgrown; it spreads out, yet is not enfeebled; it is ever germinating, yet ever consistent with itself.²³

Pelikan concludes that Newman's triumphant assessment applies equally to the long tradition of constitutional hermeneutics.²⁴

Newman's seven notes purport to be criteria of faithful interpretation and to suggest the means for distinguishing corruptions of that tradition, but Pelikan fails to acknowledge that Newman's assessment of the Catholic tradition necessarily issues from *within* that tradition. Newman speaks as a *believer*; his assessment might be persuasive, but it will not operate as a proof when directed to non-believers. What are we to make of the claims by Protestant confessions that Catholicism represents some manner of a corruption of the Christian faith, or Judaism's assertion that Christianity itself is a corruption of the original Covenant with God? In the modern era, we readily accept a plurality of incommensurable religious faiths, all of which assert their primacy within a liberal legal tradition that tolerates them all as useful cultural resources but officially subscribes to none. Newman may speak to fellow believers and persuade them of the vitality of the Roman Catholic interpretive tradition, but he cannot disprove the vitality of

22. *Id.* at 146 (quoting Newman's 1878 rev. ed.).

23. *Id.* at 149.

24. *Id.*

Islam or Judaism from an extra-traditionary perspective.

Although we may have agreed to adopt a relativist perspective as to competing interpretations of spirituality such that no single faith may lay claim to truth or universalism in the public sphere, it should be obvious that we cannot do so with respect to our “civic religion” of constitutionalism. The very challenge of constitutionalism is to faithfully develop a continuous governance tradition that is legitimate for the entire polity. To allude to the concessions that we have made in respect of our contemporary religious pluralism: can we suffer a situation in which Anti-Federalists and Federalists both assert that they have defined the core of our constitutional tradition; can we permit royalists to persist in challenging the break with England as a fundamental corruption of our legal tradition; can we take account of anarchists who simply do not believe in the authority of law; can we, in other words, consign constitutionalism to a matter *merely* of belief?

Pelikan’s work leads me to the questions that motivate this essay. Can healthy and valid developments of a textual tradition be recognized only by believers? If so, does this discount the possibility of rigorous critique of interpretive traditions and consign these traditions to be insular and self-replicating, leaving us with competing traditions each of which have believers but none of which can definitively establish itself as a legitimate and vital tradition? Pelikan’s assessment of the similarities of Biblical and constitutional hermeneutics only raises these questions; contemporary hermeneutical and rhetorical philosophy supplements his discussion and points toward a resolution.

GADAMER: THE CONTRIBUTION OF PHILOSOPHICAL HERMENEUTICS

Hans-Georg Gadamer’s philosophical hermeneutics acknowledges the central role of belief in understanding and critique, and so I turn first to his philosophy in an effort to expand on Pelikan’s themes.²⁵ Gadamer argues that textual understanding emerges from a “hermeneutical circle” rather than as the product of a linear methodology.²⁶ The hermeneutical circle refers to the constant relational tension between the text in its entirety and the specific part of the text under consideration. Critics often charge that this circle is vicious because the interpreter can’t

25. The following synopsis of Gadamer’s philosophy is best explained in detail in his *magnum opus*, Hans-Georg Gadamer, *Truth and Method* (Joel Weinsheimer & Donald G. Marshall rev. & trans., 2d rev. ed. Crossroad Publg. 1989). For my application of these themes to legal theory, see Francis J. Mootz III, *Rhetorical Knowledge in Legal Practice and Critical Legal Theory* (U. Ala. Press 2006).

26. Gadamer, *supra* n. 25, at 190.

understand a part of the text without understanding the whole, but at the same time the interpreter can gain an understanding of the entire text only by understanding its discrete parts.²⁷ Martin Heidegger's path-breaking work demonstrated that the hermeneutical circle is vicious only when viewed through the myopic lens of modern methodologism.²⁸ Just as the "chicken or the egg" dilemma poses a problem only when one looks at both objects atemporally and then attempts to discern a causal link between the static entities, so too the relationship of whole and part becomes problematic when the activity of understanding is drained of its dynamic and historical character. Gadamer expands on Heidegger's early phenomenology by emphasizing that an interpreter comes to a text with fore-understandings (or, prejudices) that help to shape the interpreter's anticipation that the text carries a coherent message. The reader's "anticipation of completeness" is constantly revised in the course of reading; consequently, the relationship of whole to part is neither hierarchical nor directing, but rather is mutually implicating.²⁹

These basic premises of philosophical hermeneutics amount to a phenomenology of the role of belief in interpretation. The reader's prejudices (including the prejudice that the work bears a coherent message that can be understood) represent the reader's belief in the value of the text. Interpretation occurs in the structure of question and answer: the reader poses questions to the text, but the text also poses questions to the reader. It is the reader's faith in the value of this interpretive conversation that drives her to engage the text.

Critics challenge Gadamer for conferring authority on the text and permitting faith to devolve into uncritical deference.³⁰ This charge is familiar in both Biblical and constitutional hermeneutics. How can a

27. *Id.* at 266-267.

28. Heidegger emphasizes that to see viciousness in the hermeneutical circle of historical understanding "*and to look for ways to avoid it, even to 'feel' that it is an inevitable imperfection, is to misunderstand understanding from the ground up. . . .* What is decisive is not to get out of the circle, but to get in it in the right way." Martin Heidegger, *Being and Time* 143 (Joan Stambaugh trans., SUNY Press 1996) (p. 153, 7th German ed. 1953).

29. Gadamer discusses this problem in broader terms by discussing the role of experience in the development of moral-practical wisdom. A person can't make an ethical choice without having practical wisdom, but practical wisdom can't be cultivated except by making ethical choices. Following Aristotle, Gadamer argues that this situation highlights the centrality of experience as the means by which this hermeneutical circle of decision and action is enacted. Gadamer, *supra* n. 25, at 346-362.

30. Paul Ricoeur famously mediated the Gadamer-Habermas dispute, arguing in a charitable and responsible fashion that Gadamer's hermeneutics tended to discount the possibility and role of critique. See Paul Ricoeur, *Hermeneutics and the Critique of Ideology*, in *From Text to Action: Essays in Hermeneutics, II* (John B. Thompson trans., Northwestern U. Press 1991). Ricoeur seeks to secure faith against the suspicions of modernity and the naivete of tradition.

believer interpreting the Bible, or a judge interpreting the Constitution, rise above dogmatism and the historical context of oppression and scholasticism in which these documents have been applied in the past? Gadamer's answer is that the interpreter's faithful embrace of the text is precisely what permits the reader to achieve critical distance. He captures this dimension of interpretation with his notion of the "fusion of horizons."³¹

When interpreting a text, the reader's horizontal pre-understandings are confronted and affected. Gadamer regards the text as an active dialogue partner, arguing that understanding occurs as the text takes on meaning in light of the reader's prejudices and the reader's prejudices are adjusted in light of the text. This amounts to a "fusion of horizons," not in the sense of merging into a unity but rather as a mutual engagement.³²

Gadamer uses the metaphor of conversation to explore the critical distance inherent in interpretation. By conversation, he does not mean superficial banter or social pleasantries; rather, he calls to mind genuine conversations as a dialogic activity that engages the participants. He rejects the exegetical model of a reader prostrate before a classical text that must be honored with reverent deference for the truths contained within it. Instead, the text is a provocation and challenge that has an evolving "effective history." The interpreter finds that her prejudices are put at risk and brought up short, and this is the moment of critical insight.³³

31. See Francis J. Mootz III, *The Quest to Reprogram Cultural Software: A Hermeneutical Response to Jack Balkin's Theory of Ideology and Critique*, 76 Chi-Kent L. Rev. 945, 977-989 (2000) (arguing that Gadamer's philosophy is profitably read in this manner through the work of P. Christopher Smith and Calvin Schrag).

32. Gadamer, *supra* n. 25, at 306-307.

33. Gadamer emphasizes that it is the willingness to engage a text, fueled by a belief that the text has something to offer, that generates critical distance. Gadamer equates a text with a conversation partner, and so the following quote applies equally to a reader who seeks to interpret a text.

Who has not had the experience—especially before the other whom we want to persuade—of how the reasons that one had for one's own view, and even the reasons that speak against one's own view rush into words. The mere presence of the other before whom we stand helps us to break up our own bias and narrowness, even before he opens his mouth to make a reply. That which becomes a dialogical experience for us here is not limited to the sphere of arguments and counterarguments the exchange and unification of which may be the end meaning of every confrontation. Rather, as the experiences that have been described indicate, there is something else in this experience, namely, a potentiality for being other [*Andersseins*] that lies beyond every coming to agreement about what is common.

Hans-Georg Gadamer, *Text and Interpretation*, in *Dialogue and Deconstruction: The Gadamer-Derrida Encounter* 21, 26 (Diane P. Michelfelder & Richard E. Palmer eds., Dennis J. Schmidt & Richard E. Palmer trans., SUNY Press 1989).

The conversational structure of interpretation distinguishes it from both the strategic manipulation of a text by a reader and the dogmatic obeisance to the text by a reader. Critique implies distance, and in interpretation this requires critical distance from one's own prejudices and also from the traditional power of the text. Only in a dialogic engagement can this distance be achieved, and it is only by virtue of belief in the power of the text as a conversation partner that the reader can risk her prejudices in a de-centering fusion of horizons.³⁴

If a reader approaches the Bible with the goal of demystifying it and proving that it has nothing to say to contemporary readers, she is not interpreting the Bible (although she may be interpretively engaged with another text as a guide to this demystification). Similarly, if a reader encounters the Bible for the purpose of reaffirming all that has gone before, there is no interpretation at work. In both cases, understanding has been thwarted because nothing has been risked; the reader lacks belief in the text and has anchored her belief elsewhere. Gadamer reinforces the notion that belief is central to interpretation, but also emphasizes that belief, as embodied in openness to the dialogic encounter with a textual tradition, is the engine of critical insight.

34. After completing this essay, I discovered that George Taylor has made a very similar argument about the implications of Paul Ricoeur's critical hermeneutics. See George H. Taylor, *Derrick Bell's Narratives as Parables* (unpublished manuscript on file with author, to be published in 31 N.Y.U. Rev. L. & Soc. Change (forthcoming 2006)). In the course of arguing that Derrick Bell's narratives should be regarded as parables rather than analogies, Taylor considers Ricoeur's famous discussion of the dynamic interplay between symbolic religious meaning and the need to interpret this meaning without draining the symbol of its complexity and opacity, stating:

How does this tension between symbol and thought or the metaphoric and the speculative operate? Ricoeur's answer is unabashed. The relationship is circular: "We must understand in order to believe, but we must believe in order to understand." We must believe in order to understand: the interpreter will never come near to what a text says unless he or she lives "in the aura of the meaning that is sought." The interpreter need not necessarily "believe-with," share the faith of the home community or the individual author, but "reading and interpretations through imagination and sympathy [are] the minimum condition for access to the meaning of the[] texts." In two senses we must also understand in order to believe. We must decipher the poetic meaning by interpretation, and we must apply interpretive tools—such as textual criticism, historical criticism, and literary criticism—so that we may *hear* again, so that we may hear what the text is trying to say.

Does the interpretive circle permit critique? Yes. The circle is not viciously circular—autologous, simply self-confirming—but alive and dynamic. More broadly, Ricoeur differentiates the elements of understanding as comprised of both understanding—the sympathetic regard for meaning—and explanation—analytic inquiry. Understanding is mediated by explanation.

Id. at 36-37 (quoting Paul Ricoeur, *The Symbolism of Evil* 351 (Emerson Buchanan trans., Beacon Press 1969) and Paul Ricoeur, *The Nuptial Metaphor*, in Andre LaCocque & Paul Ricoeur, *Thinking Biblically* xvii (David Pellauer trans., U. Chi. Press 1998)).

Gadamer's hermeneutic account will not seem sophisticated enough to address the question at hand. Critics may doubt that the de-centering experience of putting prejudices at risk in interpretation is possible and suggest that readers simply fool themselves and either foist their prejudices on the text or uncritically absorb the dogma of the text. How can we be sure that genuine interpretation founded in belief is possible, and that we are not consigned either to slavish exegesis to outmoded texts or hubristic manipulation of the texts by a contemporary interpreter? Has Gadamer's philosophical discourse added anything to Newman's characterization of the healthy development of a tradition?

VATTIMO: NIETZSCHEAN HERMENEUTICS AND THE RETURN OF BELIEF

Gianni Vattimo's "weak thought" brings Gadamer's hermeneutical insights to bear on these questions in a very direct manner. Although Vattimo claims to be siding with Nietzsche against his former teacher, Gadamer, I have argued elsewhere that his work can be seen as an appropriate extension of Gadamer's themes.³⁵ Vattimo emphasizes the central paradox of post-modernity: the collapse of methodologism and its dream of complete de-mystification has opened the space for a return to belief.³⁶ Religion is a fact of the world, inasmuch as society is indelibly marked by the effective-history of religious texts. Philosophy simply has no standing to declare that this influence is "false" or to

35. I contend that Vattimo helps to show how we might read Gadamer and Nietzsche together productively, and reject Vattimo's overly sharp distinction between his hermeneutical philosophy of "weak thought" rooted in Nietzsche and the later Heidegger, and Gadamer's philosophical hermeneutics rooted in both the early and later Heidegger. Mootz, *supra* n. 2, at 1017-1026.

36. Vattimo suggests that demythification "has finally turned against itself," and "the untenability of scientific and historicist rationalism—both of which repudiated the very possibility of religion—has been widely accepted as a given in our culture." Gianni Vattimo, *Belief* 29 (Luca d'Isanto & David Webb trans., Stanford U. Press 1999). As Vattimo's translator summarizes,

Nietzsche's nihilism opens, paradoxically, the way to the recovery of the divine in our culture. The disappearance of the moral-metaphysical God (the foundation principle of metaphysics), then, may signify that the divine source may announce itself in the drift of interpretation.

Luca d'Isanto, *Introduction*, in Vattimo, *id.* at 1, 16-17.

On a personal level, Vattimo argues that he was attracted to the philosophies of Heidegger and Nietzsche precisely because they spoke to a Christian substrate that remained part of him even while becoming disaffected under the conditions of modernity.

In short: I have begun to take Christianity seriously again because I have constructed a philosophy inspired by Nietzsche and Heidegger, and have interpreted my experience in the contemporary world in the light of it; yet in all probability I constructed my philosophy with a preference for these authors precisely because I started with the Christian inheritance, which I have now found again, though, in reality, I had never abandoned it.

Vattimo, *Belief*, *supra*, at 33.

provide a means of completely overcoming this heritage (*Überwindung*). Rather, philosophy is a means of working through a situation of thrownness (*Verwindung*), of awakening to find that we are still dreaming and can only continue the dream creatively.³⁷ Vattimo concludes that he can only assert that he believes that he believes, acknowledging a lived condition of thrownness (*Abgrund*) in which he is a believer without access to a means of validating his belief as truth.³⁸ Belief is a lived condition that can't be disavowed; it can only be taken up and advanced more or less persuasively.³⁹

Vattimo's nihilistic "weak thought" radicalizes Gadamer's account of interpretation. It does not refute the criticisms of interpretations grounded in belief as much as it simply moves on. Radical critique—in the sense of stepping outside our beliefs to see the world as it really is, unmediated by textual traditions—is a modernist fairy tale; philosophy is incapable of rescuing us from belief. But this is not to say that Vattimo is a nihilist in the commonly accepted sense of the word. His "weak thought" rejects the possibility of strong foundational truths but continues to place faith in thinking, however "weak" and chastened thinking may now be.⁴⁰

Vattimo regards the central event of Christianity, the Incarnation, as the defining feature of our post-Enlightenment condition. God is not an abstract or metaphysical entity, but rather has participated in human

37. Gianni Vattimo, *The Trace of the Trace*, in *Religion* 79-94 (Jacques Derrida & Gianni Vattimo eds., David Webb trans., Stanford U. Press 1996). Vattimo writes:

Perhaps not by its essential nature, but *de facto*, . . . religion comes to be experienced as a return. In religion, something that we had thought irrevocably forgotten is made present again, a dormant trace is reawakened, a wound re-opened, the repressed returns, and what we took to be an *Überwindung* (overcoming, realization and thus a setting aside) is no more than a *Verwindung*, a long convalescence that has once again come to terms with the indelible trace of its sickness.

Id. at 79.

38. Vattimo, *supra* n. 36, at 70.

39. This frequent theme in Vattimo's work is perhaps most succinctly stated in Gianni Vattimo, *Beyond Interpretation: The Meaning of Hermeneutics for Philosophy* 109 (David Webb trans., Stanford U. Press 1997).

40. Vattimo's "weak thought" represents a return to the wisdom of rhetoric now that the project of metaphysical thinking has dissembled. Vattimo's "project of nihilism is to unmask all systems of reason as systems of persuasion, and to show that logic—the very basis of rational metaphysical thought—is in fact only a kind of rhetoric." Jon R. Snyder, *Translator's Introduction*, in Gianni Vattimo, *The End of Modernity: Nihilism and Hermeneutics in Postmodern Culture* vi, xii (Jon R. Snyder trans., Johns Hopkins U. Press 1988). Vattimo makes clear that his rejection of metaphysical truth, Truth with a capital "T," does not mean that we cannot experience truth in a manner that is subject to interpretation, debate and persuasion. He describes his philosophy as "a way, however 'weak,' of experiencing truth, not as an object which can be appropriated and transmitted, but as a horizon and a background upon which we may move with care." Vattimo, *End of Modernity*, *supra*, at 13.

finitude. The kenosis, rather than an abasement of divinity, represents the power of being within a historical horizon, the power of the Word made flesh.

Vattimo can speak of God as the one who is incarnated into language or, better, into an announcement which has lost the oppressive weight of the foundational principle. God is disclosed as a trace that makes itself felt in our language, and which appeals to us through the dialogical force of charity. In turn, if charity is understood in the light of kenosis, the self-exhaustion of God, then it constitutes the most sublime act of abandonment for the sake of the other. To participate in the hermeneutic experience, then, might mean to welcome the other in the name of the dialogical principle of charity, that is, by listening to the non-violent reasons of the other.⁴¹

God is an announcement within our history that must be continually interpreted by the guiding light of charity. This foundational faith brings Vattimo back to Christianity, from which he had never really escaped, as an ongoing project rather than a dictate from outside history.

What does Vattimo's work teach us about Biblical and legal hermeneutics? Vattimo argues that the return of religion is a symptom of our time and that post-metaphysical philosophy clears the way for the recognition of belief. This means that the connection between legal interpretation and scriptural interpretation runs much deeper than Pelikan suggests, and in a different direction. It is not fruitful to seek a general methodology of interpretation by examining these two disciplines, but it is fruitful to recognize in these practices our fate as interpretive beings.⁴² Law and religion are undecidable. Both require a leap of faith to sustain a practice that will never come to an end. The

41. D'Isanto, *Introduction*, *supra* n. 36, at 13-14.

42. After writing this essay, I came across Steven Smith's intriguing paper, *Hollow Men? Law and the Declension of Belief*. Steven Smith, *Hollow Men? Law and the Declension of Belief* (U. San Diego Legal Studies Research Paper No. 06-03, Feb. 2005) (available for download from Social Science Research Network, <http://ssrn.com/abstract=672681>). Smith argues that belief is the defining feature of our humanity.

We are creatures oriented to truth, and yet . . . in our mortal, finite, fallen condition, our grasp of truth is tenuous. For the most part, we walk by faith seeing through a glass darkly, believing as well and as truly as we can: that seems to be our distinctive fate and our special glory. And what we most essentially are—as individuals, as societies—is to a significant extent determined by what we centrally believe.

Id. at 3. Smith bemoans the declension of belief, in which notions of belief and truth are downgraded to pragmatically useful fictions in a world in which we no longer see anything beyond or behind positive law, *id.* at 9-13, and he examines how actual legal practice subverts this intellectualized declension, *id.* at 19-23. Smith aligns himself with a Christian hermeneutics that would have substantial critical bite, uncovering the necessity and role of belief in law.

idea that we might achieve perfect justice on earth is as implausible as the idea that we might complete our encounter with God. Vattimo emphasizes that we find ourselves in the midst of belief, believing only that we believe, and augmenting our belief through the hermeneutical and rhetorical practices that Gadamer artfully describes.

Vattimo's thought may be "weak," but it has critical bite. Gadamer reveals that the de-centering experience of critique occurs when the interpreter risks her prejudices by engaging a text, and Vattimo extends these insights by emphasizing that this experience is always already underway and fated never to be completed. Belief propels us to relinquish our subjective designs and to attend to the other (person or text) that we encounter in dialogue. This is the Word: not a command to be followed, but a conversation to be taken up faithfully.

CONCLUDING THOUGHTS: THE DESTABILIZING AND CRITICAL
DIMENSIONS OF BELIEF AS A CONSTITUTIVE FEATURE OF INTERPRETING A
TEXTUAL TRADITION

Jaroslav Pelikan concludes that Cardinal Newman's "notes" for assessing a vibrant hermeneutical tradition apply equally well to law and religion. These notes will trouble the methodological mind, for they provide no means to prove that an ongoing tradition is vibrant rather than corrupted. This does not indicate that Pelikan has failed, for any assessment of a tradition is no less hermeneutical and rhetorical in nature than the development of the tradition. Gadamer and Vattimo help to show that the notes illuminate our condition, and that this condition is one of belief. There is no methodological means to perceive the truth of a textual tradition, and so it is hardly an indictment of Pelikan that he does not provide a description of what cannot be done.

Belief is not uncritical or dogmatic. Vattimo embraces the message of the Christian gospels, even though he is a gay, progressive public intellectual who rejects much of Italian institutionalized Catholicism. It is Vattimo's deep and abiding belief in the Christian tradition that fuels his critique of the modern Catholic Church. Episcopal Bishop John Shelby Spong provides a similar example. Spong has provocatively challenged the Christian tradition as a believer, finding in his beliefs a critical distance from the pre-modern worldview of institutionalized religion. His dissenting declaration resonates well with legal critics, much as Newman's homage to religion resonates with them.

So while claiming to be a believer, and still asserting my deeply held commitment to Jesus as Lord and Christ, I also recognize that I live in a state of exile from the presuppositions of my own

religious past. I am exiled from the literal understandings that shaped the creed at its creation. I am exiled from the worldview in which the creed was formed.

The only thing I know to do in this moment of Christian history is to enter this exile, to feel its anxiety and discomfort, but to continue to be a believer.⁴³

Thus is our fate—in law, religion and life. The ethical question is how we take up the challenge that is our inheritance as believers.

43. John Shelby Spong, *Why Christianity Must Change or Die: A Bishop Speaks to Believers in Exile* 20 (Harper 1998).

