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Faithful Hermeneutics

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FAITHFUL HERMENEUTICS

*Francis J. Mootz III**

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INTRODUCTION

The dilemmas of legal hermeneutics have not arisen as an abstract topic in the modern research university; they are fundamental questions that have persisted for millennia. In the Western tradition,¹ ancient Greece and Rome provide enduring exemplars of the first efforts to grapple with the problem of law and interpretation. Aristotle famously discusses equity as a necessary feature of legal practice to soften the harshness of general rules and to make justice possible. Cicero’s discussions of the role of the orator in law and in civic life provide a different angle, but one that equally shapes contemporary thinking. Unfortunately, too many scholars note these classical touch points before turning quickly to the Enlightenment as the source of our modern traditions of law and politics. In the process, legal hermeneutics acquires an ancient patina but is regarded as a resolutely modern activity.

Patrick Nerhot reminds us that we err by fast-forwarding from the ancient polis to the modern nation-state. In the early centuries of the second millennium a “premodern theologico-juridical episteme” emerged in which religious thinking was “totally impregnated with legal culture just as legal

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1. A much more complex story would trace the development of legal and religious hermeneutics in the Middle East and Far East, but such an undertaking even in summary form would be impossible in this essay format and in any event is well beyond my limited competence.

thought [was] bathed by religious culture.”² These commingled practices defined authenticity and a unitary truth for the community. The great schism of the Protestant Reformation affected a fundamental shift in this defining reality, moving away from the authority of the author as secured by patristic practices and toward the discovery of truth through direct investigation of authoritative texts. Reformulated in a philological manner, this development appeared to “undermine theology at the root.”³ However, Nerhot argues that the ongoing practices of the jurist provided an abiding link with previous traditions:

His work is always to reconstitute the truth of something that happened, on the basis of every type of record, written or spoken evidence. His instrument, proof, is a translation of the way we know nature: the jurist’s interpretation and argumentation thus come to apply that science, which characterises a society and institutes the signs one must know how to interpret.⁴

Legal hermeneutics and religious hermeneutics are deeply entwined; unfortunately, this link all too often is misunderstood, repressed, forgotten, or denied.

There are many ways to assess the connections between legal and religious hermeneutics. I focus my discussion in this Essay by reflecting on the concept of “faithful hermeneutics.” The ambiguity evoked by this phrase is intentional. On one hand, it suggests an investigation of the relationship between legal and religious interpretation by comparing hermeneutical activities undertaken by faithful adherents to these two different textual traditions. In this first sense, it is to compare how these practices are the *hermeneutics of the faithful*. On the other hand, the phrase suggests an analysis of how interpreters in these two traditions remain faithful to the nature of their practice. In this second sense, it is to compare how *hermeneutics can be faithfully accomplished*. My point, of course, is that these two senses are connected. The fact that it is faithful adherents who engage in the interpretive practice in large part defines how they can, and should, remain faithful to the interpretive enterprise.

I. HERMENEUTICS BY THE FAITHFUL

I take as my point of departure Hans-Georg Gadamer’s essay, “Hermeneutics and Historicism,” written shortly after the publication of *Truth and Method*.⁵ Gadamer discusses the broad development of hermeneutics

2. PATRICK NERHOT, LAW, WRITING, MEANING: AN ESSAY IN LEGAL HERMENEUTICS 63-64 (Ian Fraser trans., Edinburgh Univ. Press 1992) (1992).

3. *Id.* at 128.

4. *Id.* at 128-29.

5. Hans-Georg Gadamer, *Hermeneutics and Historicism*, in TRUTH AND METHOD 505-41 (Joel Weinsheimer & Donald G. Marshall trans., 2d rev. ed. 2004). The first German

with liberal reference to law and theology. Early in this essay, he notes that legal interpretation is distinguished from other hermeneutical practices because it is an act of norm creation rather than a matter of technique or method applied to a text.⁶ Later in the essay, he notes that the vibrant theoretical debate in Protestant theology reveals a similarity to law, inasmuch as the hermeneutical questions go beyond methodology and address “faith and its right proclamation.”⁷ Legal and religious hermeneutics share a distinctive feature that precludes reduction to a scientific, philological method that can be applied to a text as if it were an object under investigation. Gadamer insists that law and religion are not fixed texts to be decoded with hermeneutical methods; instead, both are historically-unfolding creations of meaning within different realms. Law and religion are *activities*. They are not simply areas of *study*.

Gadamer discusses law and theology in the course of explaining how hermeneutics overcomes the *aporia* of historicism. The effort to apply scientific methodologies to texts—regarded as vessels that contain meaning communicated from the past—has run aground most clearly in these fields because meaning is lived rather than discovered. He discusses the form-criticism of Protestant theologian Rudolf Bultmann, who drew on Heideggerian themes to reveal that the biblical text is not a transparent communication of historically accurate events, but rather an event of understanding that must necessarily end unfinished, with death.⁸ Religious faith has primarily shaped our consciousness of historicity, Gadamer claims, because this consciousness occurred “only with the Christian religion and its emphasis on the absolute moment of the saving action of God.”⁹ This understanding of history altered previous historical accounts that were premised on “a mythical past or by seeing the present in relation to an ideal and eternal order.”¹⁰ The hermeneutical significance of *kerygma*—the proclamation and call for response—is that we must recognize that the text and interpreter are co-participants in a historical movement and therefore cannot be ontologically

edition of TRUTH AND METHOD was published in 1960. The essay originally was published in 1965, and was included as “Supplement I” in the English translations of TRUTH AND METHOD.

6. Gadamer argues that law’s distinctiveness follows from the fact that “the interpretation of the law, is in a juridical sense, an act that creates law,” such that hermeneutical issues “do not merely present methodological problems but reach deeply into the matter of law itself.” *Id.* at 517. Thus, Gadamer argues, a “layman,” by which he means persons such as himself, can speak about legal interpretation only in general terms and note that legal hermeneutics is backing away from the methodological approach of positivism. *Id.* at 510.

7. *Id.* at 520. Here, again, the “layman can make no comment” because interpretive questions are “interwoven with exegetical and dogmatic questions.” *Id.*

8. *Id.* at 524-28.

9. *Id.* at 527.

10. *Id.* at 528.

distinguished as subject and object.¹¹ Gadamer summarizes the most radical account that follows from this insight: “The argument runs, more or less, thus: the mode of being of Dasein is defined in an ontologically positive way. It is not presence-at-hand but futurity. There are no eternal truths. Truth is the disclosure of being that is given with the historicity of Dasein.”¹²

Gadamer’s insights are directly relevant to my thesis that hermeneutics in law and theology is premised on the faith of the interpreter. In both cases, interpretation is an ongoing response to a call that is never completed. One does not understand “justice” or “God” as one might understand the answer to a question about specific data that is contained in a document. One can understand the demands of justice or God’s message only through commitment and participation, which is to say that one understands only by first having faith. Faithful hermeneutics is different from the interpretive project of the critic who proceeds on historicist principles. From that perspective, the Bible would be regarded as a text that was compiled at a certain point in history, and therefore it would be understood as a cultural artifact that has had a certain influence in human history. Similarly, the Constitution of the United States would be regarded as a document that was negotiated, authored, and adopted within a cultural context, and that now serves as an important political reference point in American culture. Regarded purely as historical artifacts that hold cultural significance for others, these documents would make no claim on the interpreter, who stands apart as a disciplined scientific investigator.

Gadamer agrees that historicism fails because both legal and religious hermeneutics depend on the interpreter believing in the tradition, exhibiting faith in the call to justice or righteousness. In short, legal and religious hermeneutics are grounded in the belief that the text has something to say, and in the faith displayed by the interpreter that she can learn from the text. H.L.A. Hart famously argued that theorists must adopt a hermeneutic perspective to understand a legal system, which in effect meant that they must put themselves in a position of faith, even if they are not acting on that faith as the participants of the system must act.¹³ Scientific examination of a legal system fails to capture the essence of legal practice as it is practiced by those who adopt an internal, or faithful, approach to law. Hart’s assumption that a legal theorist could adopt the perspective of a faithful participant only for theoretical purposes might be questioned for its romanticist presupposi-

11. *Id.* at 525.

12. *Id.* at 526.

13. For an excellent overview of this aspect of Hart’s approach and the contemporary debates surrounding it, see Brian Bix, *H.L.A. Hart and the Hermeneutic Turn in Legal Theory*, 52 SMU L. REV. 167 (1999).

tions, but he quite clearly claims that this perspective is necessary if the theorist is to be successful.

There is an interesting echo of Gadamer's philosophical claim in the theology of faithful hermeneutics proposed by (then) Cardinal Joseph Ratzinger in a 1988 talk at a conference in New York on biblical interpretation.¹⁴ Ratzinger targets the historical-critical method of biblical exegesis for cannibalizing itself, rendering biblical interpretation vacuous or leaving it in the hands of fundamentalist anti-intellectualism.¹⁵ He argues that this situation can be reversed only by recognizing that the Bible speaks to people today, and is not just a historical riddle to be decoded through methodological inquiry.¹⁶ Although the historical-critical method strives to uncover historical truths by bracketing God as ineffable, this is a restricted view of human understanding. Cardinal Ratzinger promotes a critique of historical consciousness from within historicism, which leads to the recognition that the limits of science are not the limits of understanding, much as Gadamer argues in his essay. Cardinal Ratzinger concludes:

[The] point is rather that there is no getting around the demand for readiness to open oneself to the dynamism of the Word. For the Word can be brought to understanding only in a sympathy that is ready to experience something new, to be taken on a new path. What is required is not the closed hand, but the open eye. . . .¹⁷

The notion of the "open eye" is a readiness to encounter what Gadamer has termed the "effective-history" of the text, permitting it to speak to the present. Ratzinger explains:

True, texts must first be restored to their historical locus and interpreted in their historical context. But this must be followed by a second phase of interpretation, however, in which they must also be seen in light of the entire historical movement and in terms of the central event of Christ. There is no understanding of the Bible until both methods operate in harmony. If the first phase of interpretation was largely absent from the Fathers and the Middle Ages, so that the second phase easily lapsed into caprice, it is this second phase that we are lacking today.¹⁸

Cardinal Ratzinger stresses that exegesis is not accomplished by grasping historical fact through neutral methods; rather, it is a product of a faithful encounter. Exegesis "must acknowledge this faith as the hermeneutic, as the locus of understanding, which does not dogmatically force itself upon

14. Joseph Cardinal Ratzinger, *Biblical Interpretation in Conflict: On the Foundations and the Itinerary of Exegesis Today*, in *OPENING UP THE SCRIPTURES: JOSEPH RATZINGER AND THE FOUNDATIONS OF BIBLICAL INTERPRETATION 1-29* (José Granados et al. eds., Adrian Walker trans., 2008) (2003).

15. Cardinal Ratzinger notes that the "method itself seems to require these radical approaches: it cannot stop at some arbitrary point in its attempt to get to the bottom of the human process behind sacred history." *Id.* at 2.

16. *Id.* at 3.

17. *Id.* at 21.

18. *Id.* at 25.

the Bible, but is the only way of letting it be itself.”¹⁹ In a later essay, he insists on the necessary and productive element of faith in interpretation: “Faith is itself a way of knowing; the attempt to set it aside does not produce pure objectivity, but sets up a cognitive standpoint that rules out a certain perspective and refuses to acknowledge the contingency of the conditions of the vision it itself has opted for.”²⁰ He does not argue against historical understanding developed from outside the faith to which the text speaks, but he does argue against the modern prejudice that this encompasses all possible knowledge of the text, contending that the faithful relation also produces knowledge and understanding.

Gadamer and Cardinal Ratzinger both criticize contemporary historicism from a Heideggerian perspective, and both find in theology an exemplary instance of their theme. But even if we agree that faith is a necessary component of religious hermeneutics, one might naturally ask if we pay too high a cost to embrace such a presupposition in legal interpretation. How can we distinguish faith from prejudice, exegesis from dogmatism, and understanding from ideology? If we interpret the Constitution as faithful adherents rather than skeptical critics, we might worry that we will remain trapped within a closed circle of misunderstanding that can have disastrous social consequences. Of course, these questions suggest that faithful hermeneutics is a retrograde approach that persists in the irrational world of religious interpretation but should hold no sway for legal interpretation. It is this very attitude that Gadamer sought to undermine by recognizing the poverty of historicism in both theological *and* legal hermeneutics. It is not the case that we *should engage* in legal hermeneutics in the same manner as religious hermeneutics, but rather that legal and religious hermeneutics both underscore the *nature of all interpretation*.

Gadamer stresses that he is developing a philosophical hermeneutics. He is not interested in the methods of exegesis which might vary from discipline to discipline, or even from text to text. Instead, he writes about the phenomenology of textual understanding that cannot be cabined by method—what “happens to us over and above our wanting and doing”²¹—and which can be related only by “a theory of the real experience that thinking is.”²² Essential to understanding is a giving over of oneself to the event of the text, a willingness to belong to the unfolding message of the text rather than to impose one’s will on the text through sophistic manipulation.

This orientation is manifest in myriad themes of Gadamer’s hermeneutics. The interpreter must attend to the saying of the matter of the text

19. *Id.* at 29.

20. Joseph Cardinal Ratzinger, *Exegesis and the Magisterium of the Church*, in OPENING UP THE SCRIPTURES, *supra* note 14, at 126-36.

21. Gadamer, *supra* note 5, at xxvi.

22. *Id.* at xxxvi.

itself (*die Sache*), rather than subjecting the text to her interpretive designs. The hermeneutical circle is an effort to enter into the text as a whole and to anticipate that it holds meaning for the interpreter. The “anticipation of completeness” is a prejudice brought to the text, but it is what Gadamer would term a “productive” prejudice that permits the text to confront other prejudices that the interpreter brings to the interpretation.²³ In short, Gadamer provides a phenomenology of the critical role of belief—faith—in interpretation. The reader’s prejudices (including the anticipation that the work bears a coherent message that can be understood) support 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.²⁴

Legal hermeneutics involves this dimension of faith no less than theological hermeneutics, and Gadamer argues that they both exemplify the battle against historicist reductionism. The question is not whether legal hermeneutics should adopt the faithful posture of theological hermeneutics, but instead how these two endeavors exemplify what happens in all interpretation. Hermeneutics is always a practice of the faithful if it results in understanding, and law cannot insulate itself from this ontological condition.

Gadamer’s discussion of the hermeneutical challenges facing the judge and the legal historian make this point clearly. The practical demands facing the judge reveal quite clearly that the text is understood only through application. The judge cannot determine the full historical meaning of the text in advance and then easily answer all questions posed to the court. As Gadamer makes clear, there is no meaning in itself that can first be apprehended, and then from which the answer to specific legal problems may be deduced.

Against the belief that the legal historian recovers an original meaning of a legal text, as distinguished from the efforts by the judge to apply this meaning to present circumstances, Gadamer provides an analysis that serves as the lynchpin of his philosophical argument:

Historical knowledge can be gained only by seeing the past in its continuity with the present—which is exactly what the jurist does in his practical, normative work of “ensuring the unbroken continuance of law and preserving the tradition of the legal idea.”

23. *Id.* at 375. For a discussion of Gadamer’s concept of the anticipation of completeness, see GEORGIA WARNKE, *GADAMER: HERMENEUTICS, TRADITION AND REASON* 82-91 (1987).

24. I have developed the points made in this paragraph in greater depth at Francis J. Mootz III, *Belief and Interpretation: Meditations on Pelikan’s “Interpreting the Bible and the Constitution,”* 21 *J.L. & RELIGION* 385 (2006).

We must consider, though, whether the case we have been discussing is really characteristic of the general problem of historical understanding. The model from which we started was the understanding of a law still in force. Here the historian and the dogmatist were concerned with the same object. But is this not a special case? A legal historian who turns to the legal cultures of the past, and certainly any other historian who is seeking to understand a past that no longer has any direct continuity with the present, would not recognize himself in the case we have been considering—namely a law still in force. He would say that legal hermeneutics has a special dogmatic task that is quite foreign to the context of historical hermeneutics.

In fact the situation seems to me just the opposite. Legal hermeneutics serves to remind us what the real procedure of the human sciences is. Here we have the model for the relationship between past and present that we are seeking. The judge who adapts the transmitted law to the needs of the present is undoubtedly seeking to perform a practical task, but his interpretation of the law is by no means merely for that reason an arbitrary revision. . . .

On the other hand, the historian, who has no juridical task before him but is trying to discover the legal meaning of this law—like anything else that has been handed down in history—cannot disregard the fact that he is concerned with a legal creation that needs to be understood in a legal way. He must be able to think not only historically but also legally. It is true that it is a special case when a historian is examining a legal text that is still valid today. But this special case shows us what determines our relationship to any traditional text. Trying to understand the law in terms of its historical origin, the historian cannot disregard its continuing effect: it presents him with the questions that he has to ask of historical tradition. . . . The truth is that historical understanding always implies that the tradition reaching us speaks into the present and must be understood in this mediation—indeed, *as this mediation. In reality then, legal hermeneutics is no special case but is, on the contrary, capable of restoring the hermeneutical problem to its full breadth and so re-establishing the former unity of hermeneutics, in which jurist and theologian meet the philologist.*²⁵

Gadamer thus issues a philosophical challenge to historicist modes of legal understanding that continually rise up and assert an “originalist” approach to law. He rejects the empty promise to provide, once and for all, a firm scientific foundation for law that eliminates the alleged subjectivism of judging.

If Gadamer is correct that all understanding is the hermeneutics of the faithful, it is not clear that we have secured the validity and integrity of legal interpretation as much as we have transposed these questions to the broader arena of all interpretation. The problem is not whether legal hermeneutics can afford the risk of ideology presented by theological hermeneutics, but whether all interpretation is inevitably ideological in this manner. We now confront the second question of this Essay: How can the hermeneutics of the faithful be accomplished in a manner that is faithful to the project of interpretation, which is to say in a critical and non-dogmatic fashion?

25. Gadamer, *supra* note 5, at 323-25.

II. FAITHFULLY ENGAGING IN HERMENEUTICS

If faith is a particularly strong prerequisite of interpreting the Constitution and sacred scripture, this hermeneutical reality shapes how these interpretative practices should be judged. It is easy to claim that an interpretation is legitimate when it follows from a faithful commitment to the hermeneutical activity, but how can one judge whether an instance of interpretation is legitimate? There is no *definitive method* for judging whether an interpreter has faithfully interpreted, but there clearly is a *basis for judgment*. We make just this judgment when we draw a distinction between a rhetorical invention that girds social life and a sophistic manipulation of a guiding text for strategic reasons. As Holmes famously noted, even a dog knows the difference between being kicked and being tripped over. We display no less ability than canines when we recognize that there is a difference between a good faith—what I would call faithful—exegesis of the demands of the law in a certain case and “mere rhetoric” in the form of a sophistic manipulation of legal precedent. Making this distinction requires a judgment that can be rhetorically defended but never methodologically justified. The faithful may prove themselves only by engaging in the “dangerous ‘maybe’” of debate and persuasion.²⁶

The relationship between faith and critique is paradoxical. Only by coming to grips with the fact that the subject de-centering posture of the faithful makes interpretative understanding possible can we find the resources for a critical understanding. Critique is not the opposite of faith, but rather a result—although certainly not the only possible result—of an authentic faithfulness. Faithfully attending to the matter of the text and its tradition amounts to a check on the subjective hubris of the interpreter, without erasing the interpreter altogether. As Gadamer explains:

The hermeneutical experience also has its own rigor: that of uninterrupted listening. A thing does not present itself to the hermeneutical experience without an effort special to it, namely that of “being negative toward oneself.” A person who is trying to understand a text has to keep something at a distance—namely everything that suggests itself, on the basis of his own prejudices, as the meaning expected—as soon as it is rejected by the sense of the text itself. Even the experience of reversal (which happens unceasingly in talking, and which is the real experience of dialectic) has its equivalent here. Explicating the whole of meaning towards which understanding is directed forces us to make interpretive conjectures and to take them back again. The self-cancellation of the interpretation makes it possible for the thing itself—the meaning of the text—to assert itself.²⁷

26. I refer to Nietzsche’s famous willingness to break from bivalent thinking—to face the danger invited by choosing to answer: “maybe.” FRIEDRICH NIETZSCHE, *BEYOND GOOD AND EVIL* 10-11 (Walter Kaufmann trans., Vintage Books 1989) (1966).

27. Gadamer, *supra* note 5, at 461.

The resulting “fusion of horizons,” in Gadamer’s famously misleading phrase, is not a holistic commonality; rather, it is the event of drawing both the interpreter and the text out of their prejudiced horizons.²⁸ This is at once the demonstration of one’s faith in the text and also the root of critical insight. Hermeneutical responsiveness and rhetorical elaboration are entwined expressions of a faithful relation to the text. Faithfulness nourishes a critical exegesis, which in turn enriches and revitalizes faith.

There will be critics who regard this point to be too superficial to address the problem of dogmatism. Even if interpretation involves a de-centering experience of putting one’s prejudices at risk in an interpretive encounter with the text, they will question whether we can be sure that the reader is not fooling himself and either foisting his own beliefs on the text or uncritically absorbing the ideology represented by the textual tradition. This is the problem raised by Gadamer’s notoriously vague claim that interpretation permits us to identify unproductive prejudices without eliminating our prejudiced forestructure of understanding entirely.²⁹ The critical identification of unproductive prejudices requires a resolutely hermeneutical posture. One may not appeal to the uninterpreted word of God, or to the pure meaning of the legal code, to vouchsafe an interpretation. In Gianni Vattimo’s famous rendering, we are left only with “weak thought,” which facilitates a continuation of the hermeneutic practice on its own terms but offers no intellectual safe harbor.³⁰

Vattimo’s “weak thought” is instructive because it refuses the urge to posit a hermeneutic foundationalism as a new ground upon which interpretive practices may be constructed. The urge arises from the Enlightenment tradition of “strong thought,” inasmuch as it seeks to discipline itself. In contrast, Vattimo argues that the hermeneutic lesson of postmodernity is that, as finite beings, we have only “weak thought” at our disposal. Weak thought rejects the hope that we might step outside of present beliefs to see the world as it really is, unmediated by textual traditions, but it does not abandon critical thinking. Vattimo’s weak thought represents a return to the wisdom of rhetoric now that the philosophical 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 rhetor-

28. *Id.* at 304-05.

29. For example, in discussing the productive nature of time for interpretation, Gadamer writes: “Often temporal distance can solve [the] question of critique in hermeneutics, namely how to distinguish the true prejudices, by which we *understand*, from the *false* ones, by which we *misunderstand*.” Gadamer, *supra* note 5, at 298.

30. Gianni Vattimo, *Dialectics, Difference and Weak Thought* (T. Harrison trans.), 10 GRAD. FAC. PHIL. J. 151 (1984) (translation of Vattimo’s groundbreaking article on this theme). See generally WEAKENING PHILOSOPHY: ESSAYS IN HONOR OF GIANNI VATTIMO (Santiago Zabala ed., 2007).

ic.”³¹ In this environment, he finds that Christianity returns again—after the demythologizing ideologies that purported to replace God finally have consumed their own metaphysical bases—as a persistent belief that must be attended to hermeneutically.³²

Weak thought, then, is an exercise of finite capacities in the face of an infinite call, whether from God or on behalf of Justice. Religion and law both remain undecidable, and both require a leap of faith to sustain a practice that will never be finished. The belief that we might achieve perfect justice on earth is as implausible and blasphemous as the belief that we might complete our encounter with God. Vattimo argues that we are thrown without grounding (*Abgrund*) and always begin in the midst of faith, believing that we believe, and engaging in hermeneutical and rhetorical efforts to unfold this belief faithfully. Recall Cardinal Ratzinger’s insistence that faith is “a way of knowing” and his rejection of an effort to achieve “pure

31. Jon R. Snyder, *Translator’s Introduction* to GIANNI VATTIMO, *THE END OF MODERNITY: NIHILISM AND HERMENEUTICS IN POSTMODERN CULTURE* xii (Jon R. Snyder trans., Johns Hopkins Univ. Press 1988) (1985). Vattimo recognizes in a genuinely Nietzschean manner that his own efforts also are just a rhetorical plea.

I am trying to propose arguments, which, even though they do not claim to be definite descriptions of things as they really are, seem to be reasonable interpretations of our condition *here and now*. The rigour of post-metaphysical discourse consists in the effort to cultivate an attitude of persuasion without proclaiming a “universal” viewpoint, which is no viewpoint at all, an attitude that is aware of coming from and addressing someone belonging to the same process, of which it has no neutral vision but risks an interpretation. In this case, a neutral reason is not only impossible but literally senseless, as if one were to try to pull out one’s eyes in order to see things objectively.

GIANNI VATTIMO, *BELIEF* 46 (Luca D’Isanto & David Webb trans., 1999) (1996) (hereinafter VATTIMO, *BELIEF*).

32. As Vattimo explains:

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.

Gianni Vattimo, *The Trace of the Trace*, in *RELIGION* 79-94 (Jacques Derrida & Gianni Vattimo eds., David Webb trans., Stanford Univ. Press 1998) (1996). As a liberal gay man in modern Italy, Vattimo has many problems with the hierarchy of the Catholic church, but he emphasizes that the “return” of religion in his life is a metaphor of the movement of belief within culture:

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* note 31, at 33.

objectivity” that “sets up a cognitive standpoint that rules out a certain perspective and refuses to acknowledge the contingency of the conditions of the vision it itself has opted for.”³³

We can better understand the hermeneutical and rhetorical dimensions of the critical encounter with tradition by comparing Cardinal Ratzinger’s (surprisingly liberal) institutional defense of Catholicism with Vattimo’s (surprisingly respectful) challenge to Catholic orthodoxy. Both thinkers find critical understanding in the active engagement with the textual tradition, and their rhetorical elaborations of these hermeneutical encounters reveal the space for critique. Cardinal Ratzinger readily acknowledges that the Church in the past has displayed an anti-intellectual misunderstanding that any criticism of the Bible as accurate history posed a threat to faith. In a dialogue with Jürgen Habermas, Cardinal Ratzinger accepted that science and the Church each have spheres of inquiry, and that even taking these two traditions together does not encompass all possible knowledge to which everyone must submit.³⁴

If we are to discuss the basic questions of human existence today, the intercultural dimension seems to me absolutely essential—for such a discussion cannot be carried on exclusively either within the Christian realm or within the Western rational tradition. . . .

. . . .

. . . [A]lthough the two great cultures of the West, that is, the culture of the Christian faith and that of secular rationality, are an important contributory factor (each in its own way) throughout the world and in all cultures, nevertheless they are de facto not universal. . . .

. . . In other words, the rational or ethical or religious formula that would embrace the whole world and unite all persons does not exist; or, at least, it is unattainable at the present moment. This is why the so-called “world ethos” remains an abstraction.³⁵

The Church recovered from the error of the Galileo affair, and also from the error of believing that the Gospels must have been written in their entirety by four distinct individuals contemporaneously with the events described.³⁶ Even still, Cardinal Ratzinger insists that Christian faith requires a commitment to certain core historical truths, including “the reality of Jesus’ birth from the Virgin Mary, the real institution of the last Supper by Jesus him-

33. Joseph Cardinal Ratzinger, *Exegesis and the Magisterium of the Church, in OPENING UP THE SCRIPTURES*, *supra* note 14, at 135.

34. Joseph Ratzinger, *That Which Holds the World Together: The Pre-Political Moral Foundations of a Free State, in THE DIALECTICS OF SECULARIZATION: ON REASON AND RELIGION* 53-80 (Florian Schuller ed., Brian McNeil trans., Ignatius Press 2006) (2005).

35. *Id.* at 73, 75-76.

36. Joseph Cardinal Ratzinger, *Exegesis and the Magisterium of the Church, in OPENING UP THE SCRIPTURES*, *supra* note 14, at 134.

self, [and] his bodily Resurrection from the dead.”³⁷ In addition, he dogmatically claims that any efforts to undermine these historical truths are “an example of method overestimating itself. That having been said, it is true that many details must remain open and be left to the efforts of responsible exegesis. We have learned this much in the last fifty years.”³⁸

Faith presupposes something beyond historical inquiry. In the foregoing passage, Cardinal Ratzinger paradoxically claims that the Church has learned its lesson about denying historical fact even as he places certain historical facts beyond question as a matter of faith. He reveals the backdrop of faith against which all inquiry, even historical inquiry, now takes place within the Catholic tradition as announced by the Magisterium. If historians definitively established that the apostles took Jesus’ body from the tomb, it appears that Cardinal Ratzinger would see two options: the historical evidence would be disregarded, or the Catholic tradition would come to an end. But this identification of the tenets of faith upon which all inquiry rests is an expression of faith that is not compelled. Cardinal Ratzinger recognizes the core of faith that animates a religious tradition, but so did the Church fathers who rejected Galileo. The poverty of historicism has demonstrated clearly that we cannot inquire without faith, but it is altogether unclear what the contours of faith must be. Perhaps most provocatively, Episcopal Bishop John Shelby Spong suggests that Christian faith need not circumscribe historical and scientific inquiry at the points drawn by Cardinal Ratzinger, thereby risking the end of the tradition. Rather, Spong proposes that Christians can and should persist as believers, even as they find themselves in “exile” from the pre-modern worldview that shaped the creed.³⁹

In contrast, Vattimo’s Heideggerian weak thought yields a reinvigoration of religious belief as a natural evolution of the historical horizon within which the West has developed. Vattimo notes that the “religious problem

37. *Id.* at 134-35.

38. *Id.* at 135. This dogmatic line-drawing that rejects historical understanding as to certain matters makes one wonder whether the post-War intellectual lessons have truly been absorbed by the Church. There can be no doubt, however, that Cardinal Ratzinger has displayed intellectual honesty and subtlety in his recognition that both faith and science are limited and unable to abolish the other.

39. Bishop Spong concludes:

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.

JOHN SHELBY SPONG, *WHY CHRISTIANITY MUST CHANGE OR DIE: A BISHOP SPEAKS TO BELIEVERS IN EXILE* 20 (1998).

seems to be always the recovery of an experience that one has somehow already had. None of us in our western culture—and perhaps not in any culture—begins from zero with the question of religious faith.⁴⁰ Perhaps most dramatically, Vattimo acknowledges that the path of his thought is shaped by his Christian inheritance, and that his lifetime of thinking has brought him full-circle to embrace the faithful commitments that the Enlightenment had purported to vanquish.⁴¹ His philosophical tenet that the history of Being is the emergence of weak thought is “nothing but the transcription of the Christian doctrine of the incarnation of the Son of God.”⁴²

It is perhaps most intriguing that Vattimo construes the secularizing forces of modernity as the legacy of the Christian principle of charity.⁴³ He explains:

Secularization as a “positive” fact signifying the dissolution of the sacral structures of Christian society, the transition to an ethics of autonomy, to a lay state, to a more flexible literalism in the interpretation of dogmas and precepts, should be understood not as the failure of or departure from Christianity, but as a fuller realization of its truth, which is, as we recall, the kenosis, the abasement of God, which undermines the “natural” features of divinity.

. . . .

Twentieth-century theological literature has plenty of reflections on secularization as the purification of the Christian faith, the progressive dissolution of the “natural” religious attitude in favour of a more open recognition of faith’s authentic essence.⁴⁴

But his striving to return to the charitable essence of the historical movement of Christianity is—understandably, for a liberal gay professor living in Italy—a virtual rejection of the significance of the community of believers.

All of us should claim the right not to be turned away from the truth of the gospel in the name of a sacrifice of reason demanded only by a naturalistic, human, all too human, ultimately unchristian, conception of God’s transcendence.

Am I trying to substitute an easy Christianity for the harsh and paradoxical one presented by the defenders of the “leap”? I would say that I am only trying to cling more faithfully than them to Jesus’ paradoxical affirmation that we should no longer consider ourselves to be servants of God, but his friends. It is not, therefore, an easy Christianity, but rather a friendly one, just as Christ himself preached it to us.⁴⁵

40. VATTIMO, BELIEF, *supra* note 31, at 21.

41. *Id.* at 33.

42. *Id.* at 36.

43. *Id.* at 43.

44. *Id.* at 47.

45. *Id.* at 55. He elaborates this point by underscoring the rhetorical nature of his inquiry even as he remains steadfast in his postmodern commitments:

As one can see, I am simply trying to unfold, in a comprehensive and hopefully persuasive manner what was for me the significance of the “rediscovery” of the

Vattimo is open to the religious message of charity, but not of obedience and submission to God's will. In this way, he displays his post-Enlightenment prejudices no less than Cardinal Ratzinger displays his pre-Enlightenment prejudices.

These two meditations on faith—by the man who would become Pope and by the academic who would join the European Parliament as a leftist politician—reveal the struggles of the faithful to engage in interpretation faithfully. It is impossible to come to the text without a prejudiced fore-structure of understanding that motivates one to seek answers from the text. But it is also imperative that one not bend the effective history of the text to one's own designs so as to eliminate the critical de-centering that accompanies understanding. In their own ways, Cardinal Ratzinger and Gianni Vattimo struggle to remain open to the textual tradition of Catholicism without abdicating to the ideology of scientism or mysticism. In their struggles, we see the struggles of faithful hermeneutics.

In religion and law the dimensions of faithful hermeneutics are cast in sharp relief, but this does not provide us with an easy method for faithfully interpreting legal and religious texts. The struggle of the faithful to interpret guiding texts is common to law and religion. These struggles, however, are not unique to these disciplines. Rather, these activities reveal the character of human life by illustrating the challenge of all interpretation, because human life is interpretive. And this means that human life is rooted in faith. The law requires its faithful to embrace the broad range of critical inquiry exhibited by comparing the positions taken by Cardinal Ratzinger and Vattimo. This range speaks to the fact that there is no definitive outcome to the engagement with a text by which to test one's interpretation. Perhaps by learning this lesson in law and religion, we might be in the best position to gain some understanding of that most mysterious of texts: ourselves.

CONCLUSION

Today, tourists are likely to take a taxi or bus to St. Peter's Basilica in Rome. As dodgy as the traffic in Rome might be, the transportation is comfortable and efficient; it ends with the drive down Via della Conciliazione,

nexus between weak ontology and secularization as the positive meaning of Christian revelation. This discovery provides me not only with a unitary perspective from which to view the epoch in which I live: the history of modernity, the meaning of social rationalization, of technology; it also paves the way for a renewed dialogue with the Christian tradition, to which I have always belonged (as the rest of modernity), yet whose meaning has become incomprehensible to me, led astray (scandalized, literally: obstacles placed in my path) by the metaphysical rigidity of the philosophical mindset of modernity and of the Church's dogmatic and disciplinary narrow-mindedness.

Id. at 65.

passing uniform light posts guiding the way toward the looming church. Many tourists undoubtedly will regard the “Road of the Conciliation” as an aptly named passage for the faithful to approach the place of God: a straight and direct path in which one’s eyes fix on the Basilica from the time one crosses the Tiber.

In fact, this boulevard is one of the most unfortunate architectural features of modern Rome. The original plan of St. Peter’s was premised on the narrow and twisting medieval streets that surrounded the immense square. As pilgrims approached, they would have glimpses of the cupola in the sunlight as they walked the dark and circuitous path. Eventually, they would emerge into the square and into the light, suddenly finding themselves in the presence of God in what must have been a powerful moment of humility and awe.

The intended access to St. Peter’s was destroyed by the fascists, who aspired to link the historical power of the Church to their ascendant political power. The “conciliation” celebrated by the creation of the broad avenue is that between religious authority and political authority. The medieval streets were destroyed to provide an unobstructed view between St. Peter’s and the Castle Saint Angelo, a pre-Christian symbol of the center of Rome. If history teaches one lesson well, it is that all too often church leaders render unto Rome what is God’s. The broad and straight path designed for the people collectively to find their way between politics and religion now supersedes the individual journeys of those who made their way through the serpentine streets of the Borgo to find St. Peter’s.

Faithful hermeneutics in law and religion share fundamental characteristics, and in this Essay I have discussed some of these common points. But I close with a caution that we not too quickly destroy the architecture that defines our secular age, in which faithful hermeneutics occurs in different, even if complimentary, realms. Patrick Nerhot helpfully reminds us of the deeply connected practices of religious and legal hermeneutics throughout our history, but it is no less important to understand that these practices are no longer unified. The faithful hermeneut might seek justice, God, or both, but these are not the same journey. There are many twisting paths to travel, and it would be an error to flatten them all to create a wide boulevard that wholly conflates the journey of politics and religion. We need to be faithful hermeneuts who seek justice and who practice religion without attempting to place both on the same open plain, in which faith is unnecessary because the truth is arrayed before oneself even when standing at a great distance. We should prefer glimpses of truth that appear in sudden insights that come only through the laborious and seemingly endless efforts undertaken in the dark and uncertain pathways of faithful hermeneutics.