

The Antidogmatic and Cooperative Message of Hermeneutics

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Distinguished President, esteemed *Profesores honoris causa*, dear Colleagues, in expressing my deep gratitude to the International Institute for Hermeneutics, to its President and to all of you for the undeserved high honor you have bestowed on me by calling me to be part of the small and prestigious list of *Profesores honoris causa* at IHH, I wish to address a short message of homage to the community of the International Institute for Hermeneutics, to that interpretative approach to reality, which binds us despite our differences, and which have deeply involved our vital interests, the object of our studies, the responsibility for our daily activities as teachers and educators.

“Der Ausdruck ‘hermeneutisch’ leitet sich vom griechischen Zeitwort ἐρμηνεύειν her. Dies bezieht sich auf das Hauptwort ἐρμηνεύς, das man mit den Namen des Gottes ‘Ἐρμῆς zusammenbringen kann in einem Spiel des Denkens, das verbindlicher ist als die Strenge der Wissenschaft. Hermes ist der Götterbote. Er bringt die Botschaft des Geschickes; ἐρμηνεύειν ist jenes Darlegen, das Kunde bringt, insofern es aus auf eine Botschaft zu hören vermag. (M. Heidegger, Untenwegs zur Sprache, in Id., Gesamtausgabe, Band 12, p.115).

In the refined etymological game of this passage from Heidegger, which reminds us of the theological origin of the term hermeneutics in the Western philosophical tradition, we can find all the richness and density of a culture capable of containing a complex variety and ambivalence of meanings.

In fact, we find the same term in one of Aristotle's most important works, the *περὶ ἑρμηνείας*, that is, in a treatise that concerns the minimum linguistic unit, which can be true or false. Plato's *Cratylus*, on the other hand, brings the *ἑρμενεύειν* closer to the god Hermes, so called because he is the interpreter and messenger of the gods, but also a thief and deceiver in speeches. The hermeneut is therefore the one who makes explicit and understandable obscure discourse. In giving life to hermeneutics, Hermes did not dictate a text to repeat it for posterity, he did not exercise any form of dogmatism. Rather, he has placed his trust in the distance imposed by its saying, and therefore in an anti-dogmatic attitude that constitutes the authentic message of hermeneutics.

Therefore, in the consistency of the Greek concept of *ἑρμηνεία* we also find the fruitful ambiguity of interpretation, which brings with it the mediation and power of discourse, but also the possibility of error, misunderstanding and deception. And more specifically, two essential aspects of interpretation are suggested to us: the methodical-reproductive one, for which interpretation tries to make understandable what is obscure, and the reproductive one, for which interpretation is contributing to forming meanings, making them explicit and communicating them.

We can trace these two moments in the subsequent history of hermeneutics, linked on the one hand to the exegesis of written texts, and in particular of sacred texts, and on the other to the understanding of historical and social facts. To some extent they mark the watershed between pre-Heideggerian romantic hermeneutics and Heideggerian and post-Heideggerian ones, linked to the extraordinary fortune of Hans Georg Gadamer's work.

Until the publication of *Wahrheit und Methode*, hermeneutics had not been very interested in the legal problem, except in the traditional and ancillary terms of its use entirely internal to the exegesis of normative texts. Philosophers and jurists have been slow to become fully aware of the structural and foundational character of the link that binds law and interpretation together. Yet the law has characteristics, such as the fact that it exists only in its applications, the prerogative of consolidating itself in written texts, the need to mediate between different languages and different world views, which determine its indisputable relevance for the hermeneutic approach. All this is demonstrated both by the work of some authoritative German jurists in the second half of the twentieth century (such as J. Esser, A. Kaufmann, M. Kriele, W. Hassemer), and by some perspectives developed by authors from the Anglo-Saxon area (such as R. Dworkin and C. Taylor) who originally and fruitfully used some fundamental Gadamerian notions within the legal and political field. Unlike Emilio Betti, I have

never considered hermeneutics exclusively as a method, but above all as a philosophical reference: my intent has always been to establish a solid connection between philosophy and the theory of law and hermeneutic philosophy, showing how within juridical experience some aspects are present and indeed central that seriously call into service hermeneutic philosophy.

To consider law not only with a sectoral approach, but as a whole, intertwined with morality, politics, and economics, it must be seen as a *social practice* that develops in a context of intersubjective relationships. This means reconnecting it to the level of *practical reason*, to the field of human activities, to common processes of action, which aim to coordinate individual and social actions, to resolve disputes and conflicts and to ensure justice. The critique of *objectualism* and the primacy of social practices in determining the meaning of the texts and of the “things” of which the texts speak, the relevance of axiologically oriented choices both in cognitive and deliberative processes: all this belongs from the very beginning to the genetic code of the hermeneutic tradition. Today it is rediscovered and valued in a context of profound crisis of formalistic conceptions of law and the need to provide solid elements for a more realistic and truthful representation of the process of applying the law. Today, philosophy and theory of law find themselves intersecting in an increasingly marked way with adjacent areas of knowledge, such as political philosophy, moral philosophy, sociology, economics.

It is in fact the juridical one, a field in which the absolute certainty and cogency of mathematical proof can never be achieved, but only the probability and plausibility of the interpretation, argumentation and intersubjective forms of justification. This means that we are almost always in the presence not of a single, but of a plurality of interpretations, and that interpretation always lurks, as Paul Ricoeur and Umberto Eco have shown from different points of view, the possibility of error and of misunderstanding; but it also gives us reason for the complementarity between *explanation* and *understanding*: each of these polarities of knowing is never exclusive, but is forced to resort to the other, without being able to completely exclude it.

How to distinguish a correct interpretation from an incorrect one? This problem has haunted legal hermeneutics since its inception, causing it to focus on the criteria of rationality of a judicial decision. An interpretation can be said to be correct not only in light of its results, but also on the basis of its assumptions. The logical coherence between the premises and the conclusions of the juridical reasoning is not enough, a coherence of meaning is needed between the facts and their juridical qualification. The “productive” value that the temporal distance brings with it forces the interpreter to enrich the sense of the rules by harmonizing them with the needs of

the present. Interpretation is called upon to retrace and reconstruct the meanings of legal texts and the facts that are connected to them. But it is inseparable from the argument, from the solidity of the reasons on which it is based. And such reasons are never incontrovertible.

Hermeneutics today finds itself facing the relevant problem of the interpretative community, since for it the interpreting subject is not the individual, but the member of an interpretative community, which shares common values and social practices. Interpretation is, as has been said, intersubjective. But this requires a culturally homogeneous society, a community of values that is seriously endangered by the radical pluralism of our time, which is a pluralism of conceptions of life, juridical pluralism, institutional pluralism. This means that hermeneutics is no longer measured only with the diachronic problem of bridging the distance of the texts with the present, but also with the synchronic problem of mediating between the different forms of life present in contemporary societies, in the trust that the spirit of cooperation makes coexistence possible between individuals and groups who do not intend to renounce their own identity. But whoever thinks that assuming a hermeneutical attitude means embracing relativism, has not understood anything about hermeneutics, on the contrary, it mystifies its very core, which consists precisely in questioning relativism and dogmatism.

Hermeneutics is not only the art of interpreting, but also more deeply a conception of the way of dealing with language and even more deeply a general philosophical perspective connected to the primacy of practical reason. Hermeneutics has never been for me a doctrine or a theory with which to explain the things of the world: in my opinion, its essential core is that of an approach that is constitutively open to different perspectives, to forms of dialogue with different traditions and knowledge. In short, it is an attitude, a style of philosophical and philosophical-legal investigation, rather than a perspective characterized by content, a flexible working style that dialectically places different or opposing positions in dialogue to draw on what is common to them.

Dialogue, the confrontation between different positions, its anti-dogmatism is the quintessence of philosophical practice. It is also the constitutive figure and the original trait of the heterogeneous community of the International Institute for Hermeneutics. The hope is that the variety of our voices does not obscure the profound meaning of the dialogue, the *Mitdenken* of our statements and those of others.