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October 27, 2012: Your Starting Point is Your Endpoint

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Title: Your Starting Point is Your Endpoint

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10/27/2012—Yesterday, I gave a talk as part of a panel at Elon Law School. The panel was part of a Symposium sponsored by the Elon Law Review. Articles are to follow. The title of the Symposium was Emerging Issues in First Amendment Jurisprudence: Interpreting the Relationship Between Religion and the State in the Modern Age. A lot of really good people and interesting commentary. But two observations as I pack to go back to Pittsburgh. First, law professors are not as a group concerned with the bigger picture of the areas they treat. The breakdown in civility manifested in this election season particularly in the very topic they were discussing was not on their minds, or at least not in their talks. This gave the talks a rarified, unreal air. Second, law professors are unaware or at least resistant to the suggestion that their basic sympathies decide everything about their scholarship. This was clear in the first panel. Harry Tepker of Oklahoma gave a terrific talk about the original meaning of natural rights and religion that suggested that prohibitions against gay marriage violate the founders' understanding of the separation of church and state. John Inazu gave a very good talk about the need for group pluralism in the constitutional system in order to promote liberty—in particular to protect the rights of religious groups for the good of society. They were fair and reasonable. But when asked whether the contraception mandate was constitutional, they were predictable. Tepker said yes. Inazu said no. All nuance left the building. Nor did they wish to reformulate the question or suggest some alternative approach. It was just a moment. But it reminded me that ideas and reasoning follow commitments. Not the other way around. Hume would not be surprised. Neither would Heidegger.