Hermeneutics for Legal Research and Analysis

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HERMENEUTICS FOR LEGAL RESEARCH AND ANALYSIS

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I. INTRODUCTION

Research undertaken in areas of humanities relies on interpretation of texts that must be understood, interpreted, and recombined in a manner which adds something new to existing knowledge. This process is "hermeneutics." The word hermeneutics comes from Greek hermeneuein, meaning to interpret, and the noun hermeneia, meaning interpretation;[1] hermeneia, in turn, gets its origin from the Greek god Hermes, who was an interpreter, a messenger, a liar, and a schemer.[2]

Hermeneutics, as a methodology, is different from empirical research. In empirical research, imaginary dialogue, there both the procedure and the results are independently observable and can be repeated by others; while in hermeneutics, the entire process of understanding texts occurs within the mind of the researcher and this process is not directly replicable. This distinction, between methods of the mind and empirical research, tempts

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1. Muhammad Bilal Farooq, *A Review of Gadamerian and Ricoeurian Hermeneutics and Its Application to Interpretive Accounting Research*, 13 QUALITATIVE RSCH. ORGS. & MGMT. 261, 262 (2018).

2. Anshuman Prasad, *The Contest Over Meaning: Hermeneutics as an Interpretive Methodology for Understanding Texts*, 5 ORGANIZATIONAL RSCH. METHODS 12, 29–30 (2002).

the researcher not to explain the methodology of textual analysis and leave the issue of method to a general concept of "standard legal scholarship" or other similarly amorphous terms.[3] These "amorphous terms," with some notable exceptions from legal scholars advocating the use of hermeneutics,[4] usually relate to certain canons of construction and methods of interpretation that are difficult to explain. This is because approaching a text with a toolbox of specific techniques is contrary to the goal of understanding the wide breadth of cultural and historical experiences imbedded in the text.[5] In the discussion below, I demonstrate the issues relating to hermeneutic research and the role of hermeneutics in justifying the validity of knowledge obtained from textual interpretation.[6]

In order to explain the issues involved in textual analysis, I will follow the key debates among F.D.E. Schleiermacher,[7] Emilio Betti,[8] and Hans-Georg Gadamer.[9] The hermeneutic approach described by Gadamer integrates many of the ideas of Hegel, in particular the concept of "Geist" (spirit) and the Geist's central role in enabling understanding of texts across different time periods and cultures.[10] Consequently, substantial discussion of

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3.   Edward L. Rubin, *The Practice and Discourse of Legal Scholarship*, 86 MICH. L. REV. 1835, 1835 (1988) ("[Standard legal scholarship] seems to lack a unified purpose, a coherent methodology, a sense of forward motion, and a secure link to its past traditions. It is bedeviled by a gnawing sense that it should adopt the methods of other disciplines but it is uncertain how the process is to be accomplished. The field even lacks a conceptual framework within which to criticize itself.").

4.   *See generally*, John Stick, *Can Nihilism Be Pragmatic?*, 100 HARV. L. REV. 332 (1986) (discussing hermeneutics in normative legal decisions); David Couzens Hoy, *Interpreting the Law: Hermeneutical and Poststructuralist Perspectives*, 58 S. CAL. L. REV. 135, 136 (1985) (discussing hermeneutics, critical theory, and poststructuralism).

5.   *See* Rubin, *supra* note 3, at 1877–78 (drawing upon "the totality of our historical and cultural experience" when using hermeneutics instead of more text-bound literary tools).

6.   *See generally* Konstantin Vertsman, *Gadamerian Hermeneutics in Practice as a Paradigm for Legal Interpretation and Analysis*, 54 ST. MARY'S L.J. (2023) (highlighting contrasting judicial approaches and explaining their influence of prejudices in juridical analysis).

7.   *See generally* F.D.E. SCHLEIERMACHER, HERMENEUTICS: THE HANDWRITTEN MANUSCRIPTS (Heinz Kimmerle ed., James Duke & Jack Forstman trans., Scholars Press for the Am. Acad. of Religion 1977) (analyzing the meaning of understanding).

8.   *See generally* EMILIO BETTI, HERMENEUTICS AS A GENERAL METHODOLOGY OF THE SCIENCES OF THE SPIRIT (Mariano Croce & Marco Goldoni eds., Routledge 2021) (1962) (characterizing Betti's interest as "theoretical, not practical").

9.   *See generally* HANS-GEORG GADAMER, TRUTH AND METHOD (Joel Weinsheimer & Donald G. Marshall trans., Continuum 2d rev. ed. 2004) (1975) (defining "*Bildung* as 'the properly human way of developing one's natural talents and capacities'" and questioning "its association with the aesthetic taken as an ideal of life[]").

10.   *Id.* at 11.

G.W.F. Hegel's The Phenomenology of Spirit[11] is necessary to gain an understanding of the concepts and references within Gadamer's Truth and Method and other works mentioned above.

Overall, the more compelling perspective in these debates is that of Gadamer, who can be regarded as the central figure in hermeneutics.[12] Gadamer sees hermeneutics more as a phenomenological description of how texts are interpreted, rather than as a specific method for textual analysis. Application of aphorisms or canons of construction cannot be executed suitably or justified logically when undertaking an analysis and interpretation of textual material, which has been created over the course of more than 100 years and involves authors from a variety of cultures. Consequently, Gadamer's perspective shows the tension, or perhaps contradiction, between the idea of truth and the idea of method within the humanities.[13] As Gadamer explains, hermeneutics comes as a precursor to the logic of scientific discovery, particularly in the moral sciences, or Geisteswissenschaften,[14] where the object of discovery necessarily becomes the researcher himself.[15] In 1883, Wilhelm Dilthey referenced the term Geisteswissenschaften as "sciences of spirit," or sciences of the human mind, specializing in understanding and claiming objectivity in essentially a different manner from the cause-and-effect approach of the natural sciences.[16]

Unfortunately, much of the literature on hermeneutics was originally written in German,[17] which creates a limitation on our understanding because "[m]astering the language is a necessary precondition for coming to an understanding in a conversation."[18] A translation is in itself an interpretation rather than simply a reproduction; consequently, "to depend

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11. G.W.F. HEGEL, THE PHENOMENOLOGY OF SPIRIT 6 (Michael Inwood trans., Oxford Univ. Press 2018) ("Culture and the emergence from the immediacy of substantial life will always have to begin . . . . with universal principals and points of view . . . .").

12. Stick, *supra* note 4, at 334 n.7.

13. *See* GADAMER, *supra* note 9, at 559 ("In my work, heightening the tension between truth and method had a polemical intent.").

14. Emilio Betti interprets *Geisteswissenschaften* as "sciences of the spirit" in the title of the book, *Hermeneutics as a General Methodology of the Sciences of the Spirit*. *See generally* BETTI, *supra* note 8, at xi (explaining the translation of Betti's title).

15. *See* GADAMER, *supra* note 9, at 556 (discussing a metaphysical connection between scientific research and the one conducting that research).

16. AUSTIN HARRINGTON, HERMENEUTIC DIALOGUE AND SOCIAL SCIENCE: A CRITIQUE OF GADAMER AND HABERMAS 8 (2001).

17. *Id.*

18. GADAMER, *supra* note 9, at 387.

on an interpreter's translation is an extreme case that doubles the hermeneutical process . . . ."[19]   Nonetheless, this doubled hermeneutic process is frequently necessary; fully understanding a language is not simply understanding how to speak it, but also living it to bypass an interpretive process.[20]   Beyond the limitation inherent in translation, there is also an issue of the meaning of words, which shifts among authors, among writings by the same author, and within the same language over the course of time.[21]

In further laying out the hermeneutic approach discussed in this Article, this section is structured in a manner that imitates the hermeneutic methodology followed by a reader.   First, there is a brief introduction of contemporary hermeneutics, which serves to provide some level of pre-understanding.   This general discussion is then followed by a more detailed discussion and contextualization of the issues within hermeneutics in a manner analogous to an editor's note, foreword, and afterword.   This type of approach predisposes a reader's further understanding of the hermeneutical methodology followed in this Article.   As further explained, initial pre-understandings necessary to engage this writing must come from within the interpreter based on the shared human nature between the text and the interpreter.

II.   CONTEMPORARY USE OF HERMENEUTICS IN SCHOLARLY RESEARCH

Hermeneutics may be separated into romantic, philosophical, and critical hermeneutics.[22]   Romantic hermeneutics provide a general theory for understanding difficult texts involving both objective and subjective elements to understand the author's original intended meanings.[23] Philosophical hermeneutics looks to interpretation of texts from the perspectives of the author and the independent subjectivity of the reader

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19.   *Id.*

20.   *See id.* at 387–88 (describing a translator's dual role of preserving language and attempting to emphasize an author's non-textual cues).

21.   For example, translating the concept of *Bildung* is difficult because the term has several meanings: formation, culture, education.   *See* JEAN GRONDIN, THE PHILOSOPHY OF GADAMER 24 (Kathryn Plant trans., Routledge 2014) (1999) (providing an explanation of how *bildung* has been used since the time of Goethe and the evolving meaning of this term).

22.   *See*, *e.g.*, Prasad, *supra* note 2, at 14 (classifying hermeneutics into three categories "for analytical convenience").

23.   *See* Farooq, *supra* note 1, at 264 (emphasizing language as the portal for understanding and knowledge between humans).

given the cultural environment surrounding the interpreter.[24] Philosophical hermeneutics rejects the separation between the text and the reader, as well as the pursuit of the author's intended meaning.[25] Instead, philosophical hermeneutics emphasizes the role of traditions and prejudices in interpretation, the dialogue between the text and the interpreter, and that interpretation does not need to conform to the intention of the author.[26] Critical hermeneutics builds upon philosophical hermeneutics to include "a critique of the ideological aspects of the text being interpreted."[27]

Although these three categories are separated in contemporary academic articles on hermeneutics, the distinction between critical hermeneutics and philosophical hermeneutics is not substantial. Specifically, critical hermeneutics may be attributed to Habermas with a focus on the interpreter's critique of ideological aspects of texts, while the philosophical hermeneutics of Gadamer requires engagement with the text and preserves a collaborative role between the interpreter and the text.[28] To the extent critical hermeneutics identifies an objective meaning that requires criticism, it would behave as romantic hermeneutics albeit with social commentary. To the extent the understandings of the interpreter are included in the interpretation along with the understandings of the author, the critical hermeneutic approach would not be different from the philosophical hermeneutics of Gadamer.

III. KEY ISSUES IN HERMENEUTICS

One of the major difficulties in hermeneutics relates to the concept of the hermeneutic circle. The hermeneutic circle relates to the reality that text is understood from its parts, while the parts are understood in terms of the whole text. The problem arises in how to approach this circle; to read the whole one must understand the parts, and to understand the parts one must

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24. *See* Prasad, *supra* note 2, at 15 (characterizing philosophical hermeneutics as a focus on philosophies of interpretation).

25. *Id.* at 16.

26. *Id.*

27. *Id.*

28. *See id.* (describing the intensity of the Gadamer-Habermas debate); *see also* Farooq, *supra* note 1, at 265, 269 ("Philosophers following the approach of critical hermeneutics include Habermas and Ricoeur (Byrne, 2001). Habermas (1990) believed that it was necessary for interpreters to adopt a critical perspective (a critique of ideology) when interpreting a text; a perspective which Ricoeur (1991) argues was missing from Gadamerian hermeneutics.").

read the whole.[29]   Also, how does one get out of this circle and reach understanding?[30]   The resolution to this issue comes in different forms from different schools of thought in hermeneutics. For Schleiermacher, to resolve this problem:

> One must begin by ascertaining the usage of the given word from the context of the sentence in which it occurs. Then, by comparing all known applications of the word, one can determine the general sphere in a provisional way. This provisional grasp of the general meaning becomes the point of departure for the hermeneutical operations specifically directed toward determining the special application in each particular case.[31]

Rather than looking for another method to initially enter the hermeneutic circle to begin to ascertain the initial "context" or "word", Schleiermacher substitutes completeness with *feeling*.[32]   On the other hand, Gadamer has the interpreter engage in a dialogue examining the text until there is an agreement and a "fusion of the horizons" between the text and the interpreter, resolving the hermeneutic circle.[33]   Finally, Ricoeur, in his critical hermeneutics, attempts to build onto the ideas of Gadamer, while also providing a more methodical approach to this dialogue by separating the reading into three stages: surface or naïve interpretation; structural analysis; and depth interpretation with "critical reflexivity to remove unproductive" prejudices.[34]   However, Ricoeur's methodological approach is difficult to execute. Ricoeur presumes interpreters have control over their prejudices, and fails to resolve the logical issue of entering into the hermeneutic circle because even a naïve understanding would be impossible without some pre-existing background.

   A second major issue in hermeneutics relates to the role of intuitive reasoning or *common sense*. Hegel, Schleiermacher, and Gadamer approached the issue of common sense with differing skepticism. In explaining the nature of hermeneutics in his *Compendium of 1819*, Schleiermacher wrote: "It is commonly believed that by following general principles one can trust

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29.   *See* GADAMER, *supra* note 9, at 189 (noting Schleiermacher's approach of following Frederick Ast in approaching the hermeneutic circle as logically circular).

30.   *See id.* (noting Schleiermacher's approach of following Frederick Ast in approaching the hermeneutic circle as logically circular).

31.   SCHLEIERMACHER, *supra* note 7, at 32.

32.   *Id.* at 77.

33.   Farooq, *supra* note 1, at 266–67.

34.   *Id.* at 270–72, 276.

one's common sense. But if that is so, by following special principles, one can trust one's natural instincts."[35] Presumably, Schleiermacher held *natural instincts* above *common sense*, but neither concept is sufficiently explained within Schleiermacher's hermeneutics manuscripts to understand his positions on these concepts. For Hegel, common sense was an appeal to *feeling* or internal oracle, which effectively prevented meaningful discussion or pursuit of agreement between people engaging in a dialogue.[36] Likewise, Gadamer defined *feeling* to be very similar in nature to common sense. Namely, Gadamer defined *feeling* as "an immediate, sympathetic, and [congenial] understanding."[37] With Gadamer relying predominantly on Hegel's philosophy, Gadamer did not find appeals to *feeling* or *common sense* necessary for his theory of hermeneutics. Overall, only Schleiermacher found intuitive reasoning acceptable, albeit in limited circumstances. By contrast, Gadamer and Hegel both rejected explicit reliance on intuition, with Hegel treating intuitive reasoning as nothing more than pernicious indolence.

Another unavoidable issue in discussing hermeneutics is the concept of *Geist*, which is frequently translated as "spirit." The development of the concept of *Geist* occurred throughout Hegel's writings in the early 19th century. Hegel "distinguishes three stages of [*Geist*]: 'subjective spirit' (roughly, the individual mind), 'objective spirit' (the collective social life of a people), and 'absolute spirit' (art, religion, and philosophy)."[38] In *The Phenomenology of Spirit*, Hegel refers to the individual mind as the "soul,"[39] leaving the *Geist* more oriented towards the objective and absolute spirit.

> Spirit, then, is *consciousness* in general, which comprehends within itself sensory certainty, perception, and the understanding, insofar as in its self-analysis spirit holds fast to the moment of *being* an *objective* actuality to itself, and abstracts from the fact that this actuality is its own Being-for-itself. . . . Spirit is the *ethical life* of a people insofar as spirit is the *immediate truth*; the individual that is a world.[40]

The *Geist,* according to Hegel, is the essence of the commonwealth:

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35.   SCHLEIERMACHER, *supra* note 7, at 96.

36.   HEGEL, *supra* note 11, at 32.

37.   GADAMER, *supra* note 9, at 190.

38.   Michael Inwood, *Glossary of Some Key Terms*, *in* G.W.F. HEGEL, THE PHENOMENOLOGY OF SPIRIT 323, 329 [hereinafter *Inwood Glossary*].

39.   *Id.*

40.   HEGEL, *supra* note 11, at 175.

> [T]he *actual substance* [] is *a people*, and as *actual consciousness* a *citizen* of that people. *This* consciousness has its *essence* in the simple spirit, and the certainty of itself in the *actuality* of this spirit, in the people as a whole, and immediately therein it has its *truth*, thus not in something that is not actual, but in a spirit that *exists* and *prevails*.[41]

In this sense, the *Geist* can also be called "human law" because it includes the universality of law, government, and custom.[42] Borrowing from this broad concept of Hegel's *Geist*, Gadamer frequently invoked the *Geist* in hermeneutics, as did Schleiermacher, in terms of the "objectification of spirit."[43]

The discussion relating to *Geist* brings forth the idea of objectification, as well as the difference between an "I and Thou" relationship among humans versus the "I and It" relationship between a person and an object.[44] The term *objectify* can have a German translation to *vergegenständlichen*, *versachlichen*, and *objektivieren*; furthermore, although this term can be used in a derogative sense to mean the "depriv[ation] of inner soul" or "to violate,"[45] this term can also be used to mean "give objective form to" or to "regard [something] as an object" for the purpose of analyzing it as a datum.[46] Habermas, in his lecture on Martin Buber, explained that a dialogical "I-Thou" relationship exists between a speaker who addresses a person, with that person able to become a speaker in turn and address the first speaker.[47] While with an object, "the observer's gaze is fixed on asymmetrically upon an object—

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41. *Id.* at 177.

42. *Id.*

43. *See* BETTI, *supra* note 8, at 7 (devoting a chapter to "Objectivations of the spirit"); *see also* GADAMER, *supra* note 9, at 336 (criticizing "the objectifying replacement of the interpreter by the original reader" of a text); SCHLEIERMACHER, *supra* note 7, at 210–12 (discussing the debate between Ast and Wolf with regard to the need to understand the spirit of the author and the spirit of the relevant age).

44. *See* Jürgen Habermas, A Philosophy of Dialogue (May 2012), *in* DIALOGUE AS A TRANS-DISCIPLINARY CONCEPT 11 (Paul Mendes-Flohr ed., 2015) ("The interpersonal relationship between a first and a second person, between an 'I' and a 'Thou,' is different in kind from the objectifying relationship between a third person and an object, between an 'I' and an 'It'.").

45. HARRINGTON, *supra* note 16, at 13. The connection between labor and the objectification of human spirit is one of the issues which must be discussed when approaching art or text produced by humans. This critical sense of *objectify* originates with Karl Marx and his critique of Hegel and the nature of capitalism, which turns people's labor "into petrified objects that stand over against us with an apparent magical life of their own." *Id.* at 14.

46. *Id.* at 13 (internal quotation marks omitted).

47. Habermas, *supra* note 44, at 11.

which cannot return the gaze of the observer."[48] With a "Thou," the focus is selective on the essential features of the person, while with an object the observer shifts from one detail to another.[49] Nonetheless, a person can have a "shielded ego[]" where they end up separating themselves and treating others "not as second persons but as objects—not as partners in dialogue, but instrumentally, like a doctor operating on the body of a patient, or strategically, like a clever bank manager palming off loans upon his customers."[50] This is a twofold concept in that the person addressed must also be open to being confronted by another in the "I-Thou" relationship.[51]

IV.   GENERAL OVERVIEW OF HERMENEUTICS

For romantic hermeneutics, Schleiermacher's goal was "a general hermeneutics which sets forth the art of understanding every linguistic statement, oral and written."[52] However, in his academy address in 1829, Schleiermacher presented the real difficulty of finding a unified method of hermeneutics, and provided the best criticism of his own early works:

> [F]or my own sake as well as for that of my audience, when I began to lecture on hermeneutics I searched for the best treatment of the method. But my search was in vain. Neither the numerous theological compendia—though many of them, such as Ernesti's book, are considered products of sound philological study—nor even the few purely philological essays on interpretation offered more than compilations of individual rules extracted from the researches of the masters. Moreover, although these rules were sometimes clear, frequently they were quite ambiguous; and although they were now and again arranged in a helpful fashion, at other times the arrangement was unsatisfactory.[53]

Schleiermacher's statement could have just as easily been made today directed at the countless canons of textual construction being provided in the legal field, with many of these canons disorganized, ambiguous, or

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48. *Id.*
49. *Id.* at 11–12.
50. *Id.* at 12.
51. *Id.* at 13.
52. SCHLEIERMACHER, *supra* note 7, at 3.
53. *Id.* at 176 (footnote omitted).

contradictory; however, none of these defects have prevented these canons from continuing to propagate and motivate scholarly research.[54]

In this vein, the Supreme Court of the United States recently demonstrated the evident problems with the use of romantic hermeneutics in its opinion in *Facebook, Inc. v. Duguid*.[55] In *Duguid*, the Court's majority opinion relied on several somewhat contradictory canons of statutory construction to justify the judgment;[56] however, in a concurrence, Justice Alito pointed out that the canons being used were not particularly helpful in the case and the existence of those canons is merely "an attempt to describe the English language as it is actually used."[57] Despite recognizing the problems with canons of construction, Justice Alito's hope for solving these problems rests in his statement: "[P]erhaps someday it will be possible to evaluate these canons by conducting what is called a corpus linguistics analysis, that is, an analysis of how particular combinations of words are used in a vast database of English prose."[58] In reading the *Duguid* opinion, one can see many parallels to the reasoning from Schleiermacher's 1819 Compendium—particularly with regard to Schleiermacher's focus on grammatical interpretation through a detailed understanding of language.[59]

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54. *See* Thomas R. Lee & Stephen C. Mouritsen, *Judging Ordinary Meaning*, 127 YALE L.J. 788, 795 (2018) (discussing the various interpretations of the "ordinary meaning" rule of construction); *see also* Bradley Silverman, *Statutory Ambiguity in* King v. Burwell: *Time for a Categorical* Chevron *Rule*, 125 YALE L.J. F. 44, 45 (2015) (discussing the difficulty in constructing clear statutory language which may contradict clear legislative history); M'Culloch v. Maryland, 17 U.S. (4 Wheat.) 316, 329, 354–55, 379, 385 (1819) (utilizing several canons of construction, including preeminence of the 1st U.S. Congress, the long practice of supporting constitutionality of that practice, the rule that revisions of text should look to changes in words, the special attention given to similar words being used differently, and the rule that structure of a document helps understand meaning, etc.); S.D. Warren Co. v. Me. Bd. of Env't Prot., 547 U.S. 370, 376, 378, 384 (2006) (making use of canons instructing that words not defined, or terms of art, are used in their ordinary usage; words are known by the company they keep; changes in definitions are intentional; and including language in one area and omitting it in another is presumed to be intentional).

55. Facebook, Inc. v. Duguid, 141 S. Ct. 1163 (2021).

56. *See id.* at 1169–72 (relying on the "series-qualifier canon" for the premise that a modifier at the end of a list modifies every member in the list while rejecting the application of the "rule of last antecedent," which provides that limiting terms only modify the preceding term; rejecting the "distributive canon" which requires application of modifiers by context of the sentence, while noting that in cases of "linguistically impossible" outcomes the canons of construction should not be applied).

57. *Id.* at 1174 (Alito, J., concurring) (quoting BRYAN A. GARNER, THE CHICAGO GUIDE TO GRAMMAR, USAGE, AND PUNCTUATION 1 (2016)) (internal quotation marks omitted).

58. *Id.*

59. *See* SCHLEIERMACHER, *supra* note 7, at 117–22 (discussing the necessity of building a highly detailed understanding of the author's language when interpreting texts).

Romantic hermeneutics emphasizes the hermeneutic circle to explain that to understand the whole of a text, one must understand the parts and vice versa.[60] This observation, beyond being logically circular, can also be seen as something relating to a quasi-method of interpretation. Presumably, if some text is unclear or illogical when read in isolation, that same text may make certain sense when read in context with other material.[61] Even in recent times, the U.S. Supreme Court continues to repeat this very intuitive canon.[62] Another frequently used canon of construction relates to the effort of obtaining the original intention of the author, which, according to Schleiermacher, means one must know the author better than the author knows himself.[63] Finally, this search for apparent objectivity was also presented by the historicist movement, which wanted interpretation to completely eliminate the present standpoint and instead seek "total immersion in the ethos of the chosen period."[64] In the words of Leopold von Ranke, "Some have endowed history with the task to pass judgment on the past, and to educate the world for the benefit of years to come. The present essay does not lay claim to an office as high as this: it only wants to say how things actually were."[65]

With Gadamer, hermeneutics moved further away from canons, and even from an art of construction, and towards textual interpretations phenomenologically. In the words of Gadamer in his letter to Betti: "Fundamentally, I am *not proposing a method*; I am describing *what is the case*. That it is as I describe it cannot, I think, be seriously questioned."[66] In response, Betti criticized Gadamer, saying "what actually happens" does not deal with the epistemological problem of justification of knowledge.[67] Nonetheless, Gadamer's approach does obtain justification of knowledge, which is done ultimately through the model of the Platonic dialectic.[68] The

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60. HARRINGTON, *supra* note 16, at 37.

61. *See id.* (recommending the reader "exhaust all possibilities" before concluding an author contradicted themselves or made a logical error).

62. *See* Gustafson v. Alloyd Co., 513 U.S. 561, 575 (1995) ("[A] word is known by the company it keeps . . . .").

63. SCHLEIERMACHER, *supra* note 7, at 112; HARRINGTON, *supra* note 16, at 31.

64. HARRINGTON, *supra* note 16, at 31.

65. Lars Vinx, *Some Untidy Reflections on the Betti-Gadamer Debate*, *in* EMILIO BETTI, HERMENEUTICS AS A GENERAL METHODOLOGY OF THE SCIENCES OF THE SPIRIT 17 n.2 (Mariano Croce & Marco Goldoni eds., Routledge 2021) (1962) (citation omitted).

66. GADAMER, *supra* note 9, at 512.

67. BETTI, *supra* note 8, at 61.

68. GADAMER, *supra* note 9, at 356.

Platonic "dialectic proceeds by way of question and answer" which involves bringing a question whose answer is not yet settled into the open for discussion.[69]   What is questioned "has to be brought into this state of indeterminacy, so that there is an equilibrium between the pro and contra."[70] However, the question's horizon binds openness of the question and requires establishing the presuppositions to understand what part of the question remains open.[71]   The art of dialectic is to seek truth from questioning, to test with questions, and to prevent suppression of questions.[72] The Socratic dialogue is between partners in dialogue, but it looks at the logic of the subject matter which is revealed in the dialogue.[73]

The dialectic "is the art of forming concepts through" forming common meanings.[74] The dialogue is an interactive form of question and answer which requires the bringing of an alienated text back into conversation.[75] "When it is interpreted, written tradition is brought back out of the alienation in which it finds itself and into the living present of conversation, which is always fundamentally realized in question and answer."[76] A similar dialectic can be seen in Hegel's preface to *The Phenomenology of Spirit*, where Hegel criticizes a hypothetical geometer who learns the relationship of angles within triangles by empirically measuring many triangles instead of relying on mathematical proofs.[77] The fault of this empirical geometer is in his failure to understand that the mathematical proof is external to the object (the specific triangles).[78]   From this foundation, Hegel explains that in philosophical cognition there is not only the ontological knowledge, such as in mathematics, but also that knowledge then moves to the mind and culminates in philosophy and logic.[79]

In Gadamer's hermeneutic theory, he relies on Plato's dialectic to justify the truth obtained from hermeneutics through logos; however, to obtain this truth, it is necessary to understand how a dialogue can occur and the

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69.   *Id.* at 357.

70.   *Id.*

71.   *See id.* ("A question that lacks this horizon is, so to speak, floating.").

72.   *Id.* at 361.

73.   *Id.*

74.   *Id.*

75.   *Id.* at 361–62.

76.   *Id.* at 362.

77.   HEGEL, *supra* note 11, at 20; Michael Inwood, *Commentary*, *in* G.W.F. HEGEL, THE PHENOMENOLOGY OF SPIRIT 331, 353–54 (Michael Inwood trans., Oxford Univ. Press 2018) [hereinafter *Inwood Commentary*].

78.   HEGEL, *supra* note 11, at 20; *Inwood Commentary*, *supra* note 77, at 353–54.

79.   *Inwood Commentary*, *supra* note 77, at 331, 353–54.

need to resolve the hermeneutic circle. Gadamer relies on anticipations or prejudices, in a neutral sense[80] of the word, to enter into the hermeneutic circle and engage in dialogue.[81] This dialogue between the text and the interpreter must reach an agreement to have a successful interpretation.[82] According to Gadamer, all understanding must emerge entirely as a result of prejudices which, when they are shown to be incorrect, are replaced with new prejudices.[83] These prejudices are the result of development (*Bildung*), which Gadamer traces back to the concept of *Geist* as it is related to language and culture.[84] It is the temporal distance between the interpreter and the text that: first allows for the use of productive prejudices to assist understanding, and second, allows for the suppression of false prejudices which result in misunderstandings.[85] In this manner, the meaning and the interpretation both occur in the present and require application.[86]

Gadamer's explanation of a dialogue and the necessity of application not only resolved the issue of epistemology and the issue relating to entering the hermeneutic circle, but also eliminated the need for special hermeneutics for normative interpretation, such as in the case of theology or law. The special problem relating to law or theology was that law or theology has to be applied to specific current circumstances and the text must be interpreted in light of these circumstances.[87] Lars Vinx put the problem eloquently by noting that "juristic hermeneutics must rely on an idealizing method that does not aim to track the actual psychological intentions of the lawgiver, but

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80. *See* GADAMER, *supra* note 9, at 273 ("The history of ideas shows that not until the Enlightenment does [the concept of prejudice] acquire the negative connotation familiar today. Actually 'prejudice' means a judgment that is rendered before all the elements that determine a situation have been finally examined. In German legal terminology a 'prejudice' is a provisional legal verdict before the final verdict is reached.").

81. *See* GRONDIN, *supra* 21, at 85 (noting debate about anticipations is necessary to develop or change them).

82. *See id.* at 126 ("To understand . . . is primarily to agree . . . with somebody about a thing, an understanding which has the mode of agreement (or an explanation).").

83. *See id.* at 85 (observing there can be no understanding without the existence of prejudice); *see also* GADAMER, *supra* note 9, at 269 ("A person who is trying to understand a text is always projecting. He projects a meaning for the text as a whole as soon as some initial meaning emerges in the text. Again, the initial meaning emerges only because he is reading the text with particular expectations in regard to a certain meaning. Working out this fore-projection, which is constantly revised in terms of what emerges as he penetrates into the meaning, is understanding what is there.").

84. *See* GADAMER, *supra* note 9, at 13 (describing the historical and linguistic concepts that make up "prejudices").

85. *See* GRONDIN, *supra* note 21, at 89 (listing the effects of "temporal distance").

86. *Id.* at 101.

87. *Id.* at 108.

rather to ensure that the application of laws to particular cases leads to reasonable outcomes."[88]   Quoting Hobbes, Lars Vinx continues: "The Intention of the Legislature is always[] supposed to be equity: For it were a great contumely for a [j]udge to think otherwise of the Soveraigne."[89] Gadamer used this problem of legal hermeneutics to make a broader application of the necessity of the past and present to penetrate historically affected consciousness,[90] and to reject the philologist's understanding their texts only for their vestiges of a grand narrative of history rather than for their meaning.[91]   In effect, Gadamer rejected interpretation guided by "purely philological criteria of fidelity to the original" and required interpretation that is guided "by a process of convergence between different historical outlooks: by what [Gadamer] calls a 'fusion of horizons' (*Horizontverschmelzung*) between the world of the interpreters and the world of the interpretandum."[92] The interpretation of texts done by a judge or a legal historian must require the same effort and reflection and there is only a need for a single hermeneutics.[93] In all hermeneutics, "the meaning to be understood is concretised and fully reali[z]ed only in interpretation, but the interpretive activity considers itself wholly bound by the meaning of the text. Neither jurist nor theologian regards the work of application as making free with the text."[94]

Having covered the core idea of philosophical hermeneutics, I now turn to a brief discussion of critical hermeneutics along with the Gadamer-Habermas debate over issues of historical tradition and cultural authority versus enlightenment and critique of ideology.[95]   Both Gadamer and Habermas would agree that all interpretation should be done in the form of a dialogue to form a consensus across time and cultural distance; researchers should not attempt to overcome their values which serve as preconditions to understanding; and, failure to enter into a dialogue objectifies the text in

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88.   Vinx, *supra* note 65, at 12.

89.   *Id.*

90.   *See* GRONDIN, *supra* note 21, at 110 (stating philology and history together make for clearer understanding).65

91.   *Id.* at 109.

92.   HARRINGTON, *supra* note 16, at 29–30.

93.   *See* GRONDIN, *supra* note 21, at 107 (relaying how the level of attention given to the interpretation of a text is the same between those inside and outside the legal field).

94.   *Id.* at 108.

95.   *See* HARRINGTON, *supra* note 16, at 23 (mentioning the core points of the Gadamer-Habermas debate).

a problematic way.[96] Habermas believes that Gadamer's approach to interpretation gives the author of the text and the author's viewpoint too much influence on the interpretation of the text simply because of its otherness in relationship to the interpreter.[97] Habermas also supports Donald Davidson's belief that an interpreter should be charitable in understanding the unfamiliar or the apparently irrational in order to have a basis for obtaining the truth.[98] Beyond this foundation, Habermas claims an interpreter's right to criticize others and the interpreter's assessment of validity claims within the text is a part of the process of determining meaning.[99] According to Habermas, to take a text's claim seriously, the interpreter must be willing to engage with the text's propositional truth, moral-practical righteousness, and aesthetic-expressive authenticity.[100] Overall, Habermas's approach is guided by the "'emancipatory interest' of the critical social sciences in social self-reali[z]ation and autonomy, represented by the paradigm cases of Marxian ideology-critique and Freudian psychoanalysis."[101] Although Habermas makes critique of underlying texts more explicit than Gadamer, Gadamer's reference to a Platonic dialectic involving dialogue would already include many of the ideas from Habermas. Therefore, Gadamer and Habermas can generally be treated analogously without focusing on their distinct areas of emphasis.

After our discussion of Gadamerian hermeneutics, it would only be appropriate to mention concerns that are directly evident from the Gadamerian approach. The first concern relates to the peculiarity of the "imaginary dialogue."[102] The second concern is that the dialogue described by Gadamer appears to reach understanding simply for the sake of reaching understanding rather than for the goal-oriented purposes of the text and the interpreter.[103] The third concern relates to the validity and objectivity of an interpretation as a result of the value-judgments imbedded in the

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96. *See id.* at 1–2 (showing agreement from two different experts in how to go about interpreting a text correctly).

97. *Id.* at 32–33.

98. *Id* at 37 ("If we cannot find a way to interpret the utterances and other behaviour of a creature as revealing a set of beliefs largely consistent and true by our own standards, we have no reason to count that creature as rational, as having beliefs, or as saying anything.").

99. *See id.* at 33 (moving on to the next step in determining meaning).

100. *Id.* at 34.

101. *Id.* at 18.

102. *Id.* at 110.

103. *Id.*

interpretation.[104]   Betti takes a particular exception to the subjective approach of interpretation since such an approach completely eliminates the canon of hermeneutic autonomy and risks the interpreter doing nothing more than simply re-enforcing their "pre-understandings."[105]

   At this point, having covered the overall debate within hermeneutics, I must delve deeper into the core thinking behind hermeneutics. I undertake this process of going into greater detail after providing a general summary as a means to mimic a "fusion of horizons," which completes and merges understandings of prior authors of hermeneutics with my own understanding and the understanding of the reader of this Article. Consequently, it is now appropriate to focus in great detail on four key scholars in hermeneutics: Hegel, Schleiermacher, Betti, and Gadamer. After a more thorough understanding of the concepts of hermeneutics is achieved, a section on the application of hermeneutics to legal research will provide a bridge between the theory of textual analysis and its application.[106]

V.   GEORG WILHELM FRIEDRICH HEGEL

> The true shape in which truth exists can only be the scientific system of truth. To help bring philosophy closer to the form of science—to the goal of its being able to give up the name of love of knowledge and become actual knowledge—that is what I have set out to do. The inner necessity that knowledge should be science lies in its nature, and the only satisfactory explanation of this is the presentation of philosophy itself.[107]—Hegel

   Hegel provides a more detailed understanding of the underlying concepts of hermeneutics; nonetheless, some of Hegel's thoughts are in direct response to the works of Schleiermacher and Schleiermacher's followers.[108] Schleiermacher's and Hegel's life, as well as their works, were contemporary

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   104.   *See id.* at 117 (questioning how valid an interpretation can be if value-judgements are integral to the process).
   105.   *See* BETTI, *supra* note 8, at 40 (recognizing others have also questioned and found fault with Gadamer's way of reaching understanding).
   106.   Vertsman, *supra* note 6 (undertaking a united legal interpretation theory separate from the methodology often presented in legal opinions).
   107.   HEGEL, *supra* note 11, at 6.
   108.   *See Georg Wilhelm Friedrich Hegel*, BRITANNICA ACAD., https://academic.eb.com/ levels/collegiate/article/Georg-Wilhelm-Friedrich-Hegel/108411   [https://perma.cc/9L9V-X7TX] [hereinafter *Georg Wilhelm*] (explaining Hegel criticized Schleiermacher school for elevating "feeling to a place in religion above systemic theology").

with each other,[109] raising issues regarding the use of the same terms, which differ in their definitions. Namely, Schleiermacher's reference to spirit is primarily related to the Holy Spirit of the Christian religion and Schleiermacher's reference to *feeling* refers to the religious *feeling* or intuition of the Christian God that works within the human experience.[110] By contrast with Schleiermacher, Hegel's understandings of the Holy Spirit, Christianity, and Jesus were inspired by Kant's belief that Christianity was following a pattern of "rational morality" that could be grasped by reason.[111] In accordance with this belief, Hegel sought to reinterpret the Christian Gospel and to understand Christianity through reason.[112]

In that vein, Hegel's *Phenomenology of Spirit* will serve as our basic dictionary for the concepts of *Bildung,* common sense (including, "genius" and *feeling*), and *Geist.* In following Hegel's explanations, we will be able to address the philosophical foundation of these theological concepts to approximate the understanding of Schleiermacher, Betti, and Gadamer discussed below. A discussion of the influence that Hegel had on Karl Marx[113] and the potential to eliminate the theological basis behind Hegel's philosophy is beyond the scope of this Article. Due to some ambiguity in translation between German and English, and due to the usefulness of direct quotations, the word spirit and the word *Geist* will be generally used interchangeably within this Article.

Although Hegel is crucial for our understanding of Gadamer's hermeneutics, his works are notoriously difficult to interpret either in terms of individual sentences or in terms of the whole work.[114] One of the key difficulties is Hegel's usage of German words with multiple meanings being implied or used at the same time. Furthermore, these meanings shift

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109. Schleiermacher (1768–1834) and Hegel (1770–1831) moved to Berlin in 1807 and 1818, respectively where Schleiermacher was a professor of theology and Hegel was chair of philosophy. *Friedrich Schleiermacher*, BRITANNICA ACADEMIC, https://academic.eb.com/levels/collegiate/article/Friedrich-Schleiermacher/66148 [https://perma.cc/TW6K-RU85]; *Georg Wilhelm, supra* note 108.

Schleiermacher's *Die Weihnachtsfeier* and *Der christliche Gaube* were published in 1805 and 1821, respectively, while Hegel's *Phänomenologie des Geistes* was published in 1807. *See Georg Wilhelm, supra* note 108 (comparing the timeline of events in Hegel's life with Schleiermacher's life); *Friedrich Schleiermacher, supra* note 109 (laying out the life Friedrich Schleiermacher).

110. *See Friedrich Schleiermacher, supra* note 109 (providing an overview of Schleiermacher's career as a theologian and his understanding of "feeling" as a core part of the religious experience of God).

111. *See Georg Wilhelm, supra* note 108 (noting Kant's influence on Hegel's own beliefs).

112. *See id.* (discussing the effect of Kant's philosophies on Hegel's religious understanding).

113. *See id.* (acknowledging but not discussing Hegel's influence on Marx).

114. Michael Inwood, *Editor's Introduction, in* G.W.F. HEGEL, THE PHENOMENOLOGY OF SPIRIT vii, vii [hereinafter *Inwood Editor's Introduction*].

through their usage, and the reader is often left to determine the specific meaning or meanings that are intended.[115] This is further exemplified with the word "*aufheben*," which translates as "sublate" and has the simultaneous meanings of elevate, destroy, and preserve.[116] In this respect, it is important to repeatedly emphasize that this section's purpose is not to provide an analysis or an overview of Hegel's philosophy, but rather to briefly provide the necessary background of some vocabulary and philosophy for a more comprehensive understanding of hermeneutics.

A.   Bildung

The German word "*Bildung*" is very difficult to interpret, with different translators assigning a different equivalent English word; furthermore, *Bildung* has changed its meaning and evolved over its usage since the eighteenth century.[117] Gadamer believes that Hegel has provided a good foundation on the meaning of "*Bildung*" and the connection between *Bildung* and the phenomenology of the *Geist*.[118] In the *Phenomenology of Spirit*, Hegel used *Bildung* to mean: education and culture, which suggests cultivating and forming (*bilden*).[119]

1.   Education

Bildung as education relates to the movement from the initial sensory consciousness which lacks spirit through the long course of becoming authentic knowledge through the generation of an element of science as a pure concept of science in itself.[120] Hegel further explains that the process of education of the universal human individual is done through the education of individual people, who move from their existence only for themselves and towards the collective human universal individual, which is also undergoing education.[121] This relationship between the education of the universal spirit and the single entity is linked since the single entity must

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115.   *See id.* at vii n.1 (noting the difficulty a person may have read Hegel's work outside the original language).

116.   *See id.* (providing an example of some of the difficulties of translating a written work from one language to another).

117.   *See* GADAMER, *supra* note 9, at 8–15 (discussing the meaning and etymology of *Bildung*).

118.   *Id.* at 11.

119.   *Inwood Commentary*, *supra* note 77, at 449.

120.   HEGEL, *supra* note 11, at 14.

121.   *See id.* (describing Hegel's idea of the process of the universal human individual's education).

also pass through educational stages of the universal spirit with earlier stages "prepared and levelled."[122]

> [The] former ages occupied [by] men of mature spirit, [have] been reduced to the level of information, exercises, and even games of boyhood[.] . . . [E]ducation, considered from the side of the individual, consists in his acquiring what is thus present before him, absorbing into himself his inorganic nature, and taking possession of it for himself. But, considered from the side of the universal spirit as substance, this is nothing but the fact that the substance gives itself its self-consciousness, and produces its becoming and its reflection into itself.[123]

The role of science is to present the education that "has already been reduced to a moment and property of spirit."[124] The goal of science is to understand the "spirit's insight into . . . knowledge[,]" which requires focusing in detail on each individual shape of the spirit and of the individual, which in turn is accomplished by taking the current spirit and deconstructing it.[125] In other words, the education of the universal individual or world *Geist* leads to the secondary education of an individual into world culture, which leads to the tertiary education of Hegel's students.[126] Through this process of education, there is no sublation of the prior forms of the *Geist*, but rather the prior forms remain represented and recollected by the *Geist* without the *Geist* expending any effort on those forms.[127] Likewise, education is the historical progress of "genuine" philosophy and other disciplines, as well as the progress of the individual who can produce genuine philosophy that "lies at the end of a long journey of education, a movement as rich as it is profound, through which spirit arrives at knowledge."[128]

Speaking in a more pedestrian manner, the education (*Bildung*) of the individual, science, and the *Geist* happen together so that when individuals

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122. *See id.* at 15 (connecting two seemingly opposite concepts and explaining how the two are connected).

123. *Id.*

124. *Id.*

125. *Id.*

126. *See Inwood Commentary*, *supra* note 77, at 343–44 (following the process of second and tertiary education of the universal individual).

127. HEGEL, *supra* note 11, at 15.

128. *Id.* at 31. This relates to the difference between "education" producing "genuine" philosophy in contrast to "common sense." Further discussion on this topic is provided in the section on "common sense." *Infra* Part V.B. Common Sense, Genius, and Feeling.

undergo education, science and *Geist* are also educated and the more educated *Geist* produces future individuals that start at a more educated level and undergo further education. Consequently, education of the *Geist* involves individuals folding into and out of the *Geist* and undergoing their individual education. Science effectively deconstructs and structures this education of the *Geist*. Throughout this process of education, the less educated forms of *Geist* do not get completely eliminated as in the case of a transformation where the new form destroys the old form, but rather get reduced into background knowledge which can be recalled at any time but is not something which requires continuous focus or effort.

2. Culture (*Bildung*), Cultivating, and Forming (*Bilden*)

When referring to "culture" as *Bildung*, it becomes necessary to consider the relationship between *Geist* and its "realm of culture."[129] Culture as being used in reference to *Bildung* involves self-consciousness giving up its individuality and cultivating itself into a universal through "every aspect of social life."[130] "Culture" is the movement of consciousness into leaving itself behind in order to integrate into a culture so that the individual no longer exists but rather becomes a "soul of its society."[131] Culture or *Bildung* emerges from the "immediacy of substantial life;" then this beginning of culture unfolds to the "serious business of 'life in its fullness.'"[132]

This concept of *bilden* as forming or cultivating is demonstrated in part through the lordship and bondage dialectic.[133] Briefly speaking, the lordship bondage dialectic revolves around the self-consciousness obtaining its pure abstraction of existence for itself and for another through a battle with another self-consciousness.[134] The self-consciousness sees its existence as life, but the self-consciousness is not certain of itself or of another self-consciousness since it is not being recognized by the other self-consciousness.[135] To achieve the truth of existence of itself and the other,

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129.   *See* HEGEL, *supra* note 11, at 175 (introducing the idea of "realm of culture" and how it applies to the concept of *Geist*).

130.   *Inwood Commentary*, *supra* note 77, at 449.

131.   *Id.* at 450.

132.   *Id.* at 331.

133.   *See* HEGEL, *supra* note 11, at 96 (describing the concepts of lordship and bondage and how it relates to *Bilden*).

134.   *See id.* at 78 (describing the confronting nature of consciousness to ascertain its existence separate from its existence in life).

135.   *Id.*

the self-consciousness needs to show a disassociation from any physical existence (i.e., life).[136] This is done through itself and through the other: the self-consciousness must pursue the death of the other self-consciousness while also risking its own life.[137] This way, the self-consciousness proves that life is nothing but a vanishing moment for it, and likewise for the other self-consciousness since,

> as each stakes its life, so each must aim at the other's death; for it values the other no more than itself; its essence presents itself to it as an other, it is outside itself and must sublate its Being-outside-itself; the other is a manifoldly entangled consciousness that simply is; it must intuit its otherness as pure Being-for-itself or as absolute negation.[138]

If one or both die in this "trial by death," then no recognition can be obtained from the dead person or to the dead person; therefore, it is necessary that both survive this trial.[139] If both do survive this trial, then one will be an "independent consciousness" or the lord, and the other will be a "dependent consciousness" or the bondsman.[140]

This role of the lord as the independent consciousness and the bondsman as the dependent consciousness reverses itself.[141] This reversal occurs for the lord because the bondsman is an object for the lord and lacks independent consciousness; therefore, the bondsman is unable to provide the lord with his certainty of existence.[142] For the servile consciousness of the bondsman, its independent consciousness and existence is established by its overwhelming fear of the death and of the lord.[143] Therefore, through its serving, the fixed elements in the servant have been dissolved and what was left was pure essence of self-consciousness for itself, but not an existence for itself.[144] This existence for itself is cultivated through work

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136.   *Id.*

137.   *Id.*

138.   *Id.* (footnote omitted).

139.   *Id.*

140.   *Id.* at 79; *see also Inwood Commentary*, *supra* note 77, at 400 (discussing the existence of the lord and bondsman internally in one person versus their existence externally in two persons).

141.   HEGEL, *supra* note 11, at 80.

142.   *Id.*

143.   *Id.*

144.   *See id.* at 80–81 (explaining how the act of serving strips the bondsman of any ability to exist for a reason other than serving the lord).

as desire which is "held in check" or resisted.[145] Likewise, in relation to an object, for the worker the object maintains its permanence and independence; by contrast, in the case of a fulfilled desire, the object disappears and lacks the objective side or subsistence (i.e., the object is consumed by the lord).[146] This creates a permanence of self-consciousness as existing for itself; furthermore, the cultivating of the object has resulted in the sublating of the form of the lord so the servant consciousness takes the place of the lord as its own negative essence becomes for itself an existence for itself.[147] "Through this rediscovery of itself by itself, the serving consciousness realizes that it is precisely in its labour, wherein it seemed to have only an alienated mind, that it acquires a mind of its own."[148] This occurs through the modes of service, fear, cultivating, and through the forming of consciousness.[149]

In a separate discussion, Hegel considers how the individual cultivates itself into culture[150] and into the *Geist*, which is pure culture.[151] The *Geist* cultivates itself into a new form of *Geist*.[152] According to Hegel, the "individuality cultivates itself into what it is in itself, and only by so doing is it in itself and has actual Being-there; it has as much actuality and power as it has culture."[153] In this transformation of the estrangement of the individual is the transition from thought to actuality and from determinate individuality into essentiality.[154] The culture of the single individual is the individuality cultivating itself—"the coming about of the individuality as the universal, objective essence, i.e. the coming about of the actual world."[155] The individual estranges itself and becomes realized in its culture and its own actuality.[156] As the individual "has been refined by the culture of service into pure existence, . . . there is present the *spirit* of this real world of

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145. *Id.* at 81.

146. *See id.* (demonstrating what could happen if the sense of existence for itself is not cultivated).

147. *See id.* (reaching the pinnacle of the switch between the bondsman and lord roles of consciousness).

148. *Id.*

149. *See id.* (recognizing reaching existence for itself is not possible without these elements).

150. *Id.* at 196–97.

151. *Id.* at 208.

152. *Id.* at 320–21.

153. *Id.* at 196.

154. *See id.* (observing the results of the transformation of the individual).

155. *Id.*

156. *See id.* at 197 (stating the next step of the individual's transformation to reach understanding).

culture, a spirit *conscious* of itself in its truth and of its *concept*."[157]   The movement of the individual as refined by culture brings forth the *Geist* of the "real world of culture," which is the pure culture and isolation of actuality and thought.[158]

Hegel's use of *Bildung* and *bilden* through the translated words of culture, cultivating, and forming goes far beyond the ordinary usage of those words in the English language. Hagel uses the culture and cultivating as something more fundamental in terms of the steps of the individual into existence, then into *Geist*, then *Geist* into further iteration of *Geistes*, which in turn is the infinitude of God.[159]

B.   *Common Sense, Genius, and Feeling*

> The familiar in general, precisely because it is *well-known*, is not known. The commonest way in which we deceive ourselves and deceive others is to presuppose in inquiry something as familiar, and to accept it automatically; for all its talking to and fro, such knowing never gets anywhere, and it does not know what is happening to it.[160]

In this manner, Hegel is highly critical of philosophers who support their arguments based on common sense, genius, or *feeling*. Hegel goes on to castigate his contemporary philosophers, especially those relying on genius even further:

> It is not pleasant to observe that ignorance and the crudity without form or taste, that cannot itself focus its thinking on a single abstract proposition, still less on the connection of several propositions, sometimes claims to be freedom and tolerance of thinking, sometimes even genius. Genius, as we know, was once all the rage in poetry, as it now is in philosophy; but when the production of this genius made any sense, instead of poetry it generated trivial prose or, if it went beyond that, deranged speeches.[161]

According to Hegel, genuine philosophy must take the long journey to arrive at knowledge, rather than attempting any shortcuts through common sense

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157.   *Id.* at 207–08 (footnote omitted).

158.   *Id.*

159.   *See id.* at 207–08, 321 ("[F]rom the chalice of this realm of spirits foams forth for Him his own infinitude.").

160.   *Id.* at 16.

161.   *Id.* at 31.

or through genius, to obtain an immediate revelation of divine knowledge.[162] In contrast to common sense, genius is supposedly available to very few individuals, but both common sense and genius are a form of natural philosophizing providing immediate knowledge.[163]

Hegel's criticism of common sense is not so much for its pretentiousness or its generation of "deranged speeches," but rather in its logical inconsistency. First, Hegel criticizes common sense for revealing nothing more than trivial truths, which are purported to have significance in the heart or pure consciousness and are supposedly also in the hearts of others.[164] Consequently, this common sense is purported to be self-evident and cannot be challenged; however, explaining this common sense is a waste of time since it has been long available in popular proverbs or catechisms.[165] Furthermore, these truths that are found in common sense are often contradictory, which often forces those who advance these truths to fall into further confusion or into outbursts where they arbitrarily claim that a certain truth must prevail.[166]   However, Hegel's most stinging criticism for common sense comes from showing there is a contradiction between common sense, which is supposedly divinely inspired, and the human nature of reasoning:

> Since common sense appeals to feeling, to its internal oracle, it has nothing to do with anyone who does not agree; it must explain that it has nothing more to say to anyone who does not find and feel the same in himself;—in other words, it tramples underfoot the root of humanity. For it is the nature of humanity to press for agreement with others, and its existence resides only in the achieved community of consciousnesses. The anti-human, the bestial, consists in confinement to feeling, and in being able to communicate only by this means.[167]

Hegel ends his discussion on common sense and genius by criticizing the former as laziness and the latter as conceit.[168] In the same vein, Hegel also

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162. *Id.*

163. *Inwood Commentary*, *supra* note 77, at 367 (referencing the Kantian concept of genius as a "talent for producing something for which no determinate rule can be given, not a predisposition consisting of a skill for something that can be learned by following some rule or other." (citation omitted) (internal quotation marks omitted)).

164. HEGEL, *supra* note 11, at 31–32.

165. *Id.*

166. *Id.*

167. *Id.* at 32.

168. *Id.* (dispelling a "gift of reason corrupting itself by indolence and conceit of genius").

criticizes reliance on secondary sources, such as summaries and prefaces of philosophical works, since such reliance creates a deceptive feeling of understanding or revelation of thoughts that are immediate and overly simple.[169] For Hegel, there are no shortcuts of genius or common sense; rather, understanding is achieved only through the effort of "self-conscious reason."[170]

C.   *The* Geist

The purpose of the *Phenomenology of Spirit* is to understand the nature of *Geist* while being within the *Geist*.[171] This is a problem analogous to recreating the map of the Earth while sitting behind a desk in a single building. This brings forth a great deal of philosophy underlying hermeneutics as a theory of human understanding, which must trace its roots back to some modicum of commonality. Hegel outlines a system finding this commonality in the form of the *Geist*, which is the "*I* that is *We*, and *We* that is *I*."[172] However, beyond this pithy statement, the *Geist* takes on various forms, which are all in coexistence and, for our purposes, both supplement and replace the Christian God within this dialectic.

Future authors, such as Gadamer, use the term *Geist*, and this term becomes the very basis for some of the theories of hermeneutics discussed in this Article. For Hegel, the *Geist* is not a single *Geist* in a state of stasis, but rather multiple manifestations of *Geist* that exist simultaneously while also evolving and becoming the *Geist's* more advanced forms.[173] Therefore, it is not enough to see a reference to the *Geist*, and it is important to understand which manifestation is being referenced. However, Hegel himself changed his partitioning of the *Geist* in the *Phenomenology of Spirit*; for example, "[i]n Enc. III, Hegel explicitly distinguishe[d] three stages of [*Geist*]": subjective spirit, objective spirit, and absolute spirit.[174] The subjective spirit would be the individual mind, while the objective spirit included the collective life of a people, and the absolute spirit would include art, religion, and philosophy.[175] By contrast, in the *Phenomenology of Spirit*, Hegel organizes the *Geist* in four moments: "consciousness, self-

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169.   *Id.*

170.   *Id.* (footnote omitted).

171.   *Inwood Editor's Introduction*, *supra* note 114, at xi–xii.

172.   HEGEL, *supra* note 11, at 76.

173.   *Inwood Editor's Introduction*, *supra* note 114, at vii-viii.

174.   *Inwood Glossary*, *supra* note 38, at 329.

175.   *Id.*

consciousness, reason, and spirit[,]"[176] which are completed through religion into the whole *Geist*.[177] Consciousness is the understanding of one's own existence and self-consciousness is the understanding of the existence of others.[178] However, reason involves going beyond one's self through the law of the heart, which is the law that goes beyond the individual and aims towards the universal and is then cultivated towards virtue.[179] Then, *Geist*, as reason, considers the phenomenon of a produced work.[180] Consciousness bifurcates the physical work between the author's intended work and the actual work, which is taken away from the author and dissolved among universal consciousness.[181] The spirit, as part of the *Geist*, refers to the commonwealth or society as a whole where the individual is absorbed into an "ethical substance."[182] Religion then combines all the shapes or attributes of *Geist* into the whole spirit and is then turned into the completed "world-spirit," which allows the emergence of science as the "spirit's true knowledge of itself."[183]

To further elucidate on the four moments of *Geist*, religion, and the whole spirit, we must now take all of these moments in turn. This exercise of taking the long-way to our understanding of hermeneutics will draw out the *Geist* paradigm and provide the foundation for our interpretation of the remainder of this Article.

1.   Consciousness and Self-Consciousness

The first two forms of *Geist* relate to a consciousness's existence or emergence of which another consciousness recognizes and becomes a self-consciousness. For the purpose of our discussions of hermeneutics, these forms of *Geist* relate to the individual beyond their physical life,[184] the existence of these forms the bondsman subsequently recognizes, dialectic discussed above. Hence, these forms provide for the two most basic

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176.   HEGEL, *supra* note 11, at 269–70.

177.   *Id.*

178.   *Id.* at 272–73.

179.   *Inwood Glossary*, *supra* note 38, at 272–73.

180.   HEGEL, *supra* note 11, at 161.

181.   *Id.* at 161–63.

182.   *Id.* at 174–75.

183.   *Id.* at 318.

184.   *See Inwood Commentary*, *supra* note 77, at 373 (explaining the "soul" is analogous to a "natural consciousness" and the soul replaces the "subjective spirit," or the "individual mind," before it acquires complete self-knowledge for the purpose of the *Phenomenology of Spirit* as compared to the "Enc. III").

elements of *Geist* before it moves beyond itself and towards its forms as reason and the commonwealth.

The consciousness forms the initial element of *Geist*, which starts from a natural consciousness seeking true knowledge.[185]   In this manner, the natural consciousness pursues knowledge through various forms promoting a purified form of *Geist* and, by fully experiencing itself, it becomes "aware[] of what it is in itself."[186]   The experiences that consciousness undergoes and understands are, in fact, the whole system of consciousness and the whole of the truth of *Geist*.[187]   The forms of consciousness, which are a form of *Geist*, progress as knowledge itself—knowledge that goes beyond what is limited to itself, and towards consciousness that understands its own essence, leading to absolute knowledge.[188]

The step towards self-consciousness occurs when the consciousness seeks an object of desire, which can even be the self-consciousness itself making the self-consciousness both an "I" and an "object".[189]   The self-consciousness is the inflection point from which an individual consciousness bound by its present perception of existence as the *Geist* moves towards a more "diverse" self-consciousness, which, along with other self-consciousnesses, unifies into the "*I* that is *We*, and *We* that is *I*."[190]   The lordship and bondage dialectic demonstrates that, through a mortal struggle between two consciousnesses, the subservient consciousness recognizes the existence of its labor and self-existence, creating a self-consciousness.[191]   For the subservient consciousness, the object of labor that was done for lord is separate from its consciousness; thereby, causing the consciousness to become aware of itself as an essence and creating "a consciousness that *thinks* or is a free self-consciousness."[192] This free self-consciousness is thinking and moving through concepts, rather than shapes or representations, and finds these concepts as having an existence distinct from the existence of self-consciousness, but not distinct from the actual self-consciousness; since for a concept to exist, it must be

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185.   HEGEL, *supra* note 11, at 37.

186.   *Id.*

187.   *Id.* at 41–42.

188.   *Inwood Commentary*, *supra* note 77, at 379–80.

189.   HEGEL, *supra* note 11, at 76.

190.   *Id.*

191.   *See id.* at 76–81 (discussing the emergence of the self-consciousness through the lordship and bondage dialectic).

192.   *Id.* at 82 (emphasis in original).

conceptualized.[193]   This understanding leads to the conclusion that consciousness is a "thinking essence."[194]   Further, from this thinking essence arises a representation of reason, which exists in itself as a certainty of consciousness.[195]

2.   Reason

"[Reason] is certain of itself as actuality, or certain that actuality is none other than itself; its thinking is itself immediately actuality; and thus it adopts towards actuality the attitude of idealism."[196]   Reason provides certainty to "consciousness that it is all reality," in which there are no other objects, and consciousness is "all reality and all presence" expressed as "I am I".[197] "Reason appeals to the *self*-consciousness of each and every consciousness: *I am I*, my object and essence is I; and no consciousness will deny reason this truth."[198]   However, in proclaiming itself the only essence to other self-consciousness, reason also realizes that it must exist for an "other" as an object and essence, or that it exists as an object and essence to itself; consequently, reason is becoming conscious of itself as the world-spirit.[199] Reason provides a pure abstraction and certainty of reality in the forms of universals, such as the pure essentiality of things in the abstract.[200]   To understand the *Geist* in the form of reason, we will go through reason in the following four segments: observing reason, the law of the heart, the work (the thing itself), and law giving and testing.

a.   Observing Reason

"Observing reason" relates to the certainty of one's observations and senses.[201]   Reason, which is deeper than the self-consciousness or the "pure I," sees itself in actuality and tries to find itself as a thing; however, reason first must complete itself in order to experience itself before it can experience other things.[202]   In contrast to self-consciousness, now the *Geist* sees the objective reality in a superficial manner while maintaining the self-

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193.   *Id.*
194.   *Id.* at 83 (footnote omitted).
195.   *Id.* at 94.
196.   *Id.* at 95.
197.   *Id.* at 95–97.
198.   *Id.* at 96.
199.   *Id.*
200.   *Id.* at 97.
201.   *Inwood Commentary*, *supra* note 77, at 429.
202.   Hegel, *supra* note 11, at 99.

consciousness as the essence of reality.[203]   At this point, the self-consciousness understands that there is another self-consciousness, which is not a foreign object but rather that self-consciousness which recognizes itself and is also part of itself—"it is *spirit* that has the certainty of having its unity with itself in the duplication of its self-consciousness and in the independence of both."[204]   This observation is a key step towards understanding the *Geist* as both the individual consciousness and the community of individuals.

Through the life of the people, self-consciousness is actualized into reality by having the self-consciousness see the independent thinghood of others as a negative of itself.[205] Reason acts as the "fluid universal substance" and the "unchangeable simple thinghood."[206] This substance explodes into many independent self-conscious essences and dissolves the absolute existence from which these individual essences arose.[207] For the individual essence, the universal substance is the soul and essence, while for the universal essence it is the work of the individual essences.[208] This paradigm conceptualizes an individual as part of the universal essence, which remains a part of their being, while the communal absolute essence is the product of individual activities.

b.   Law of the Heart

The law of the heart is, in many ways, analogous to the concept of natural law, the understanding of which can be traced at least back to Sophocles in his play, *Antigone*,[209] a play Hegel quotes in his discussion.[210] Aristotle's *Rhetoric*, likewise referenced a universal law of nature presenting "a natural justice and injustice that is binding on all men, even on those who have no association or covenant with each other."[211] St. Thomas Aquinas wrote

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203.   *Id.* at 141–42.

204.   *Id.*

205.   *Id.* at 141.

206.   *Id.*

207.   *Id.*

208.   *Id.*

209.   *See, e.g.*, Richard W. Minadeo, *Antigone's Flaws*, *in* SOPHOCLES' OEDIPUS PLAYS: OEDIPUS THE KING, OEDIPUS AT COLONUS, & ANTIGONE (Chelsea House Publishers 1996) 56, 57 (appealing to a greater authority to justify the burial of her brother, despite doing so is in violation of the law of the society in question).

210.   HEGEL, *supra* note 11, at 173 ("Its life is not of yesterday or today, but everlasting, [a]nd no one knows at what time it appeared.").

211.   I ARISTOTLE'S RHETORIC 1373b, KAIROS, [https://perma.cc/S84X-BBZQ].

that natural law "is in infants and in the damned who cannot act by it."[212] St. Aquinas also provided a natural law framework, linking natural law to "eternal law," "divine law," and to "human law."[213]

According to Hegel, the law of the heart is immediately present in the existence of self-consciousness and is a shape of self-consciousness, which is immediately aware of the universal law within itself; however, unlike prior shapes, this shape has its existence as a necessary or universal.[214] In the building of the law of the heart, the law is at first only for the consciousness itself and is not yet actualized and is not yet a concept; however, the heart is confronted with a contradiction between the heart and actuality.[215] The actuality has a law by which individuality is oppressed through "a violent ordering of the world which contradicts the law of the heart" with humanity not following "the law of the heart," but rather being subject to an alien necessity.[216]   This actuality over consciousness is the "discordant relationship of individuality and its truth, the relationship of a cruel necessity by which the former is oppressed."[217]   To resolve this conflict, each individual will find the "hearts of men themselves," rather than a rigid law opposing the individual.[218] Finally, the individual consciousness will move from being the immediate universality and the necessity of the heart and towards the truth of the "*universal in itself*," which is a singular consciousness and the alienation of the individual.[219] The individual finds the divine and human order to be, in fact, "animated by the consciousness of all, that it is the law of all hearts."[220] This leads the individual to actualize the law of its own heart, becoming a part of the universal object in which the individual does not recognize itself within the universal order.[221] In this manner, Hegel's discussion of the law of the heart recognizes the individual consciousness, and the universal consciousness as being intertwined and being a common essence.

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212.   ST. THOMAS AQUINAS, THE SUMMA THEOLOGICA, pt. I–II, Q. 94 art. 1 (Benziger Publ'g Co. 1947), *reprinted in* ST. THOMAS AQUINAS ON LAW AND JUSTICE, EXCERPTS FROM SUMMA THEOLOGICA 1008 (Leslie B. Adams, The Legal Classics Library 1988).

213.   *Id.* at art. 4–5, 1011 (providing support for natural, eternal divine, and human law).

214.   HEGEL, *supra* note 11, at 147.

215.   *Id.*

216.   *Id.*

217.   *Id.*

218.   *Id.* at 149.

219.   *Id.*

220.   *Id.*

221.   *Id.*

c.   The Work (The Thing Itself)

The discussion on the work is as close as Hegel came to directly addressing hermeneutics. According to Hegel, a work in effect becomes two works: one is *die Sache selbst* (the Thing itself) and another is *Sache* (the Thing), in turn, is comprised of what really matters in actuality and the *Ding* (the thing), which is perceived within reality and remains insignificant.[222] Through the movement of these forms, Hegel utilizes the work to show how an individual creation of consciousness moves through actuality towards being coopted by everyone and to become reformed into the *Geist*: "The work is the reality which consciousness gives itself . . . ."[223]

An individual forms the work, and through the work an individual moves through universality, and becomes the universal consciousness.[224] This universal consciousness goes beyond the determinate work and fills the void, "which is left unfilled by the work."[225] In effect, the individual work becomes foreign to the author and to others seeking to replace this work and make the work their own such that the work and the author are lost.[226] The individuality vanishes in the work, and the work holds supremacy over the individual's concept of self, becoming objective actuality.[227] The consciousness, the truth, only exists in "*true work*" from the unity of the consciousness with its doing, existence, willing, and achieving.[228] This conflict between the objective actuality and the true work causes the consciousness to reflect back into itself and, from the transient work, consciousness can experience the momentary actuality of doing, then establishing the unity of doing and universality.[229] This unity is the Thing itself "which[] endures independently of the Thing" or a thing which depends on the individual doing, circumstances, means and actuality.[230]

There are two works: the permanent Thing itself, which is the ideal work intended and is not reduced to actuality, and the Thing or a thing that is left

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222.   *Inwood Commentary*, *supra* note 77, at 438. Although in German there is a clearer distinction between the Thing itself, the Thing, and a thing, I use the English terms in order to avoid translation errors.

223.   HEGEL, *supra* note 11, at 161.

224.   *Id.*

225.   *Id.*

226.   *Inwood Commentary*, *supra* note 77, at 437.

227.   HEGEL, *supra* note 11, at 163.

228.   *Id.*

229.   *Id.* (existing in consciousness).

230.   *Id.*

to the circumstances of actuality.[231]   The Thing itself is likewise an intersection and unity of actuality and individuality, the pure doing and the doing of the specific individual, and the actuality existing for consciousness.[232] Therefore, the Thing itself shows the spiritual essentiality in which consciousness is certain of itself as an objective essence or the Thing that self-consciousness created as its own free and authentic object.[233] It is through self-consciousness and for self-consciousness that the Thing has its significance and distinguishes itself from being only a thing.[234] The Thing is in effect the work which is being interpreted by the individual and is being imbued in its significance by uniting the factors within the work: "individuality, actuality, doing, purpose, and the transition into actuality . . . ."[235]

The Thing itself is the objective self-consciousness that itself has obtained consciousness of its substance, which is an immediate consciousness in the form of the simple universal essence.[236]   The Thing itself counts as the essence and contains all the individual moments of the Thing of a particular individual: the purpose, the means, the doing itself, and of the actuality.[237]

With regard to the individual, this person's doing is analogous to the pure doing, to actuality, and the Thing.[238] The individual is concerned with the Thing itself in the abstract, with the individual's own doing, with the Thing as the person's own Thing, the Thing in general, and with enduring actuality.[239]   However, one cannot approach a pure Thing alone since others will come along and find in their consciousness they also approach a Thing as their own Thing.[240] When everyone approaches an individual's doing and expresses that individuality, others also find themselves in the Thing, which broaches the Thing itself.[241] Consciousness experiences both the individual and the others in the Thing, and shows the Thing is an essence existing as a doing of a single individual and of all individuals.[242] The Thing

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231. *Inwood Commentary*, *supra* note 77, at 438.
232. HEGEL, *supra* note 11, at 163.
233. *Id.*
234. *Id.*
235. *Inwood Commentary*, *supra* note 77, at 438.
236. HEGEL, *supra* note 11, at 163–64.
237. *Id.* at 163–65.
238. *Id.* at 165.
239. *Id.*
240. *Id.*
241. *Id.* at 166.
242. *Id.* at 166–67.

is the doing that is for others, and the doing of each and every one; the Thing is "the essence which is the essence of all essences, the *spiritual essence*."[243] The Thing itself is the substance permeated by individuality— both as specific individuality and, equally, the individuality of all individuals.[244] The Thing itself is the universal existence as the doing of all and each, and consciousness knows the Thing itself "as its own singular actuality and as the actuality of all."[245]

> d.   Law Giving and Law Testing

After our understanding of the Thing itself as an ethical substance and its consciousness as ethical consciousness,[246] this Article must reconsider the law of the heart, discussed above, in terms of law giving and law testing. The ethical substance contains a difference of consciousness and divides itself into the determinate laws of the absolute essence, and these laws are immediately recognized without any justification or origin beyond the essence as self-consciousness itself.[247] Self-consciousness is a moment of basic existence within the ethical substance allowing it to know the law and the validity of the law immediately, and expresses "the law as follows: *sound reason* knows immediately what is *right* and *good*."[248] From this, self-consciousness can state, "[T]his *is* right and good," and these are the determinate laws.[249] These laws arise immediately through ethical certainty and are approached immediately in the same sense as sensory perception.[250] In effect, our ethical intuition requires immediate consideration of that intuition without any outside reflection.[251]

The law is an immediate thought of the absolute self-consciousness, thus, ethical self-consciousness is one with the spiritual essence.[252] Because the law is universal, one cannot ask about its origin or validity as the act of asking would put the self-consciousness above the universal and subject the universal to individual insight.[253] The self-consciousness is within the

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243. *Id.* at 167.
244. *Id.*
245. *Id.*
246. *Id.*
247. *Id.* at 167–68.
248. *Id.* at 168.
249. *Id.*
250. *Id.*
251. *Inwood Commentary*, *supra* note 77, at 439.
252. Hegel, *supra* note 11, at 172.
253. *Id.* at 173.

ethical substance, and the substance is the essence of self-consciousness that is the actuality of the basic existence of the substance; therefore, it is impossible to test or make laws because what is right is within the substance itself.[254]

3.   Spirit as Ethical Substance and Essence of the Commonwealth

The *Geist* in the form of spirit as an ethical substance completes the *Geist* as the "*I* that is *We*, and *We* that is *I*."[255]   Hegel goes on to build from the communal spirit further into areas of the ethical world, human and divine law, ethical action, state of right, culture, enlightenment, freedom and terror, and so on.   For the purpose of understanding the *Geist,* I will not address each of these topics because it is sufficient to focus only on the basic form of the *Geist* as it has moved from being an individual consciousness to being in the form of communal essence.

As an ethical substance in which everyone takes their share and does their work, the *Geist* is dissolved essence.[256]   With this dissolution, the essence gives self and soul to everyone, and the essence is actual and alive.[257]   *Geist* is "*consciousness* in general," and has the perception and sensory certainty within itself, which allows it to understand itself and engage in self-analysis and realize its own existence, as is the case in *The Phenomenology of Spirit*.[258]   With the *Geist* intuiting itself with reason as within itself, the *Geist* is reason, truth, and actual ethical essence.[259]   The *Geist* is likewise the ethical life of a people, as it goes through the various cultures, time, and shapes of the world to attain self-knowledge.[260]   The *Geist* is realized in the multiplicity of consciousness and is the essence of the commonwealth.[261]   "The commonwealth is spirit which is *for itself* in that it maintains itself in the *counterglow of individuals*,—and it is *in itself* or substance, in that it maintains

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254.   *Id.*

255.   *Id.* at 76.

256.   *Id.* at 174–75.

257.   *Id.* at 175.

258.   *Id.*

259.   *Id.*

260.   *See id.* ("Spirit must advance to the consciousness of what it immediately is, must sublate the beautiful ethical life, and by way of a series of shapes attain to knowledge of itself.   These shapes, however, are differentiated from the previous ones by the fact that they are the real spirits, proper actualities, and instead of shapes merely of consciousness, are shapes of a world." (footnote omitted)).

261.   *Id.* at 177.

them within itself. As the *actual substance* it is *a people*, and as *actual consciousness* a citizen of that people."[262]

4.   Religion and the Whole Spirit

From all the prior configurations of *Geist*, we reach religion and the completion of *Geist*. Prior to religion, the *Geist* was in four configurations— (*Gestaltungen*)[263] of consciousness, self-consciousness, reason, and the immediate spirit (*Geist*, which was not yet conscious of spirit)—that together constituted the *Geist* in its basic worldly existence, while religion is the totality of the four configurations or the absolute self.[264] These four configurations, plus religion, do not have a basic existence distinct from each other and, hence, have no temporal existence apart from the completed *Geist*.[265] However, the configurations would distinguish themselves into shapes, and these shapes continue to belong to the whole *Geist* and, consequently, these shapes continue to be distinguished in time, but with later shapes retaining their preceding forms.[266] With the self-knowing *Geist* complete, the shapes developed within the four configurations belong to the *Geist* in general, and the determinate shape of religion selects the shape corresponding to it.[267]   In this manner, religion corresponds its development with the configurations of *Geist*.[268]

With the completed *Geist*, we can see all the configurations gathered together as a single bundle, with each configuration shaped within the *Geist*.[269] All the configurations are contained in *Geist* and in each *Geist*, but the configurations are the specific ways in which they are expressed and

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262.   *Id.*

263.   There is a degree of inconsistency and ambiguity in the translation of *Gestaltungen*, with Inwood using the word "configurations" for *Gestaltungen* and "shapes" for *Gestalten*, while the main text from Hegel uses the word "moments" to reference *Gestaltungen* and "shapes" for *Gestalten*. *Compare Inwood Commentary*, *supra* note 77, at 476 ("Worldly spirit involves all five 'configurations' (*Gestaltungen*) considered so far, from consciousness in chapters I–III to spirit (in a narrower sense) in chapter VI, not yet divided into 'shapes' (*Gestalten*) such as sensory certainty."), *with* HEGEL, *supra* note 11, at 270 ("Only the whole spirit is in time, and the shapes, which are shapes of the whole *spirit* as such, present themselves in a succession . . . . But the *moments* of this whole, consciousness, self-consciousness, reason, and spirit, just because they are moments, have no Being-there different from one another.").

264.   HEGEL, *supra* note 11, at 270.

265.   *Id.*

266.   *Id.*

267.   *Id.*

268.   *Id.*; *see Inwood Commentary*, *supra* note 77, at 476 (stating Hegel corresponds the stages of development of religion in a manner that parallels the development of the stages of spirit).

269.   HEGEL, *supra* note 11, at 271.

ways in which the *Geist* becomes aware of its configurations.[270] The *Geist*, complete and a world-spirit, becomes a self-conscious *Geist*; therefore, religion makes it possible to know *Geist* before science can reveal it, but science is nonetheless *Geist's* true knowledge of itself.[271] In the words of Hegel's translator, Michael Inwood: "Only at the end can we fully understand the beginning, and why we began in that way."[272]

VI.   FRIEDRICH SCHLEIERMACHER

Unlike Hegel, Schleiermacher directly addressed the topics of hermeneutics and is considered the "father"[273] or "founder"[274] of modern hermeneutics. This section approaches Schleiermacher in two parts. First, this section considers Schleiermacher's early thoughts on hermeneutics as expressed in his first manuscript, *Manuscript 1: The Aphorisms of 1805 and 1809–10*,[275] and his second manuscript, *Manuscript 2: The First Draft of 1809–10*.[276] Second, this section approaches Schleiermacher's later thoughts on hermeneutics based on his speech to the academy, *Manuscript 5: The Academy addresses of 1829: On the Concept of Hermeneutics, with Reference to F.A. Wolf's Instructions and AST's Textbooks*,[277] and based on Schleiermacher's third, and most important manuscript, *Manuscript 3: Hermeneutics: The Compendium of 1819 and the Marginal Notes of 1828*[278] supplemented with his fourth manuscript, *Manuscript 4: The Separate Exposition of the Second Part (1826–27)*;[279] and his sixth manuscript, *Manuscript 6: The Marginal Notes of 1832–33*."[280]

A.   *The Early Manuscripts*

Schleiermacher's first two manuscripts cover the period from 1805 to 1810 and are predominantly concerned with rules of construction or aphorisms. These manuscripts are pithy and provide convenient rules to

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270.   *Id.*
271.   *Id.*
272.   *Inwood Commentary*, *supra* note 77, at 498.
273.   Prasad, *supra* note 2, at 14.
274.   James Duke, *Translator's Introduction*, *in* F.D.E. SCHLEIERMACHER, HERMENEUTICS: THE HANDWRITTEN MANUSCRIPTS, *supra* note 7, at 15.
275.   SCHLEIERMACHER, *supra* note 7, at 41–65.
276.   *Id.* at 67–93.
277.   *Id.* at 175–214.
278.   *Id.* at 95–159.
279.   *Id.* at 161–73.
280.   *Id.* at 215–27.

help with managing specific problems of understanding.[281]   In Manuscript 1, Schleiermacher provides two maxims for understanding: "(1) I am understanding everything until I encounter a contradiction or nonsense. (2) I do not understand anything that I cannot perceive and comprehend (*construiren*) as necessary."[282] These maxims were rephrased in the second manuscript as: "Everything is understood when nothing nonsensical remains. Nothing is understood that is not construed."[283]

Based on these maxims, Schleiermacher provided over one hundred aphorisms.[284] Below is a sample of a few self-explanatory aphorisms from Schleiermacher:

> In reality, each word, even a particle, has only one meaning (*Bedeutung*), and the various meanings of words must be understood by tracing them back to their original unity. . . .[285]
>
> . . . .
>
> On the value of definitions in language. The only true definitions are those constructed from language's own combined forms of derivation. . . .[286]
>
> . . . .
>
> Every child comes to understand the meanings of words only through hermeneutics. . . .[287]
>
> . . . .
>
> One must already know a man in order to understand what he says, and yet one first must become acquainted with him by what he says. . . .[288]
>
> . . . .
>
> The understanding of a particular is always conditioned by an understanding of the whole. . . .[289]
>
> . . . .

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281. *See id.* at 41 ("Therefore, by making a special application of the universal rules, hermeneutics may offer suggestions for the proper use of commentaries, but not for writing them.").

282. *Id.* at 41.

283. *Id.* at 68.

284. *Id.* at 41–64.

285. *Id.* at 43.

286. *Id.* at 49.

287. *Id.* at 52.

288. *Id.* at 56.

289. *Id.* at 59.

> The whole is first understood as a genre. []New genres develop only from larger spheres, and, in the final analysis, out of life itself.[290]

Some of Schleiermacher's aphorisms are not self-explanatory and appear to show ideas that Schleiermacher grasps more fully in the later manuscripts. For example, Schleiermacher believes that several authors may be viewed as a single school, and that changes within the school may serve for clarification of confusing texts.[291] This aphorism is stated in terms of analyzing biblical texts since they are written by different authors, but this aphorism may also be helpful in considering other texts, such as legal texts, which are written by different authors with a shared goal or philosophy. Another idea Schleiermacher brings up relates to the original basis for any understanding: "The understanding of a given statement (*Rede*) is always based on something prior, of two sorts—a preliminary knowledge of human beings, a preliminary knowledge of the subject matter."[292] However, Schleiermacher does not explain how the knowledge of human beings or of subject matter originally arises. Finally, Schleiermacher provides an aphorism directing the interpreter to combine the objective and subjective elements "so that the interpreter can put himself 'inside' the author" and understand the author better than the author understands himself.[293] This aphorism lays the groundwork for Schleiermacher's later manuscripts and the bifurcated approach requiring both grammatical and technical interpretation.

The second manuscript provides some clarification on the nature of hermeneutics, emphasizes the iterative process of understanding language, and provides extra emphasis on the difference between general and special hermeneutics. First, the nature of hermeneutics is the understanding of texts, while the presentation of what is understood is a production text and not hermeneutics.[294] Second, Schleiermacher emphasizes the naming of an object becomes definite through many experiences over time, and the inner unity of an object can only be grasped by a "particular instance of the

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290. *Id.* at 60.
291. *Id.* at 56.
292. *Id.* at 59.
293. *Id.* at 64.
294. Although a narrow meaning of hermeneutics is discussed here, a broader meaning is also necessary in this Article predominantly because Gadamer's use of "play" requiring texts be "performed" for understanding. *Id.* at 68. This principle is repeated again in an aphorism at the beginning of "The Compendium of 1819." *See id.* at 96 ("To the contrary, [hermeneutics] presupposes a familiarity with both the contents and the language of a text.").

intuition" which is never complete and has to be substituted by *feeling*.[295] Third, Schleiermacher addressed the distinction between general and special hermeneutics.[296]   Schleiermacher notes the Bible requires special hermeneutics, but special hermeneutics can only be understood in terms of general hermeneutics.[297] Schleiermacher pushes this position further in *The Compendium of 1819* by begrudging that "there is no general hermeneutics as the art of understanding but only a variety of specialized hermeneutics."[298] However, by 1833, Schleiermacher made explicit the only justification for special hermeneutics that exists for the biblical interpretation is the complexity of biblical language, and the only justification that exists for legal hermeneutics is the need to look beyond authorial intent and towards normative results.[299]   Nonetheless, Schleiermacher noted the great similarity between special hermeneutics and general hermeneutics and observed that general hermeneutics is likely to be sufficient for both legal and biblical analysis.[300]

B.   *The Later Manuscripts*

During this later period, Schleiermacher moved away from listing aphorisms and towards developing a system of hermeneutics based on grammatical and technical interpretation. For Schleiermacher, there were to be no methods of interpretation other than his recursive approach of grammatical and technical interpretation,[301] yet Schleiermacher also believed no rules can stipulate precisely how to undertake his recursive approach.[302] Schleiermacher believed grammatical and technical tasks of interpretation are completely equal in importance,[303] and neither task could be executed without the other with each of the two tasks presupposing the

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295.   *See id.* at 76–77 (explaining the substitute for completeness cannot be another method rule, but rather is "feeling [which] must be the substitute for completeness."). *Id.* at 190 ("It is to be overcome by *feeling*, by an immediate, sympathetic, and con-genial understanding. Hermeneutics is an *art* and not a mechanical process.").

296.   *Id.* at 67.

297.   *Id.*

298.   *Id.* at 95.

299.   *Id.* at 216.

300.   *See id.* ("Even a special hermeneutics occasioned by both [biblical and legal] considerations is still related to general hermeneutics in such a way that we could manage quite well with the general alone.").

301.   *Id.* at 103.

302.   *Id.* at 100 ("[I]t is necessary to move back and forth between grammatical and psychological sides, and no rules can stipulate exactly how to do this.").

303.   *Id.* at 161.

other.[304]   Nonetheless, in an ideal situation, understanding would be achieved within each task in abstraction from the other task;[305] however, in reality one must move back and forth between the grammatical and technical side since to complete the grammatical task in isolation, one would need to have complete knowledge of the language, and to complete the technical task in isolation, one would need complete knowledge of the author.[306] Likewise, it would be impossible to reconstruct the whole text until the details are addressed.[307]

Schleiermacher takes the approach that, for significant texts, misunderstandings occur as a matter of course and proper understandings require will and effort by the interpreter.[308]   Furthermore, active misunderstanding occurs when the interpreter's own bias causes the interpreter to read something into the text that prevents the author's meaning from emerging.[309]   Schleiermacher breaks down misunderstandings into a matrix of qualitative versus quantitative and objective versus subjective misunderstandings, with each misunderstanding having the potential to give rise to other misunderstandings.[310] These misunderstandings are summarized as follows: (1) "[o]bjective qualitative misunderstanding occurs when one part of speech in the language is confused with another"; (2) "[s]ubjective qualitative misunderstanding occurs when the reference of an expression is confused"; (3) subjective quantitative misunderstanding is failing to see the potential value of a part of speech or emphasis to which a speaker gives; (4) objective quantitative misunderstanding is failing to see the degree of importance of the speech.[311] To avoid these misunderstandings, Schleiermacher looks to the historical and divinatory, as well as the objective and subjective methods of reconstruction of a given statement.[312] These methods make up a matrix of four methods, each needed to avoid misunderstandings: (1) objective-historical method analyzes a "statement in [its] relation to the language as a whole" and considers the knowledge contained in the statement; (2) objective-prophetic method considers how the statement develops the

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304.   *Id.* at 162.
305.   *Id.* at 161.
306.   *Id.* at 100–01.
307.   *Id.* at 162.
308.   *Id.* at 110.
309.   *Id.* at 111.
310.   *Id.*
311.   *Id.*
312.   *Id.*

language; (3) subjective-historical method considers how the statement emerged from the author's mind; and (4) subjective-prophetic method recognizes how the thought in the statement will affect the author.[313] The task of understanding is infinite, since the author's statement is passed into the infinite future, leaving the specific question on how such a task is to be undertaken to specialized hermeneutics.[314]

Returning to Schleiermacher's basic paradigm of grammatical and technical interpretation, we must give full consideration to both the language and the thinking of the author:[315]

> [E]ach person represents one locus where a given language takes shape in a particular way, and his speech can be understood only in the context of the totality of the language. But then too he is a person who is a constantly developing spirit, and his speaking can be understood as only one moment in this development in relation to all others.[316]

In effect, understanding must occur in terms of language since linguistic heritage modifies the *Geist*; and, the act of speaking must be understood as an author's development because the individual is able to influence the development of the language.[317] For grammatical interpretation, the determination of any point in the text is decided based on "the use of language common to the author and his original [audience]";[318] hence, the interpreter must "establish the same relationship between himself and the author as existed between the author and his original audience."[319] The interpreter needs to be familiar with "the sphere of life and relationships between author" and his original audience[320] to understand the discourse in terms of language so that "[t]he person and his activity disappear and seem to be merely an organ of the language."[321]

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313. *Id.* at 112.

314. *Id.* (emphasizing the importance of understanding an author's meaning when interpreting text).

315. *Id.* at 98.

316. *Id.*; *see supra* text accompanying notes 172–175 (discussing Hegel and *Geist*).

317. *See* SCHLEIERMACHER, *supra* note 7, at 98–99 ("How grammatical and psychological interpretation are related to dialectical and rhetorical thinking. Each makes use of the other. Grammatical and psychological remain the main divisions.").

318. *Id.* at 117.

319. *Id.* at 216.

320. *Id.*

321. *Id.* at 161.

The second canon of grammatical interpretation defines each word in the text based on its context.[322] Grammatical interpretation is aimed at a particular language as a whole rather than as aggregation of discrete units.[323] Therefore, the text makes up the general view (*Aneschauung*) of grammatical interpretation compared to the general view of the author's total literary output in the case of technical interpretation.[324] Admittedly, the general view gives rise to the hermeneutic circle because joining together partial views, understood in terms of the general unity of the text, is the only way to gain the general view.[325]

Technical interpretation is the understanding of human thought in terms of shared humanity.[326] "The language and its determining power disappear and seem to be merely an organ of the person, in the service of his individuality, just as in grammatical interpretation the personality is in the service of the language."[327]   Through technical interpretation, the interpreter discovers the individuality of the author,[328] learns everything about the author that caused the author to write the text,[329] and recognizes with definiteness how the author's individuality is expressed.[330] Technical interpretation looks at "the possible ways of combining and expressing thoughts—not as general concepts, as logical laws, or as an empirical aggregate, but as a function of the nature of the individual person."[331] Schleiermacher notes at times a class or school may represent individual authors without distinct individuality or authors with no individuality or style at all, grouping them together as a whole based on type.[332] Somewhat contradictorily, Schleiermacher also states that individuality comes from subject matter or artistic form more than from within the author and some authors manifest "mannerisms" that are contrary to their own character and are not indicative of an author's individuality or style.[333]

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322. *Id.* at 127 (comparing the first canon serving "only to exclude certain possibilities" against the second cannon, which "seems to be determinative").

323. *Id.* at 162 (describing the workings of grammatical interpretation).

324. *Id.*

325. *Id.*

326. *Id.* at 161.

327. *Id.*

328. *Id.* at 162.

329. *Id.* at 147–48.

330. *Id.* at 162 (describing, like grammatical interpretation, technical interpretation "is divided into two contrasting tasks").

331. *Id.* at 162–63.

332. *Id.* at 165–66.

333. *Id.* at 165.

There are two general methods of technical interpretation: divinatory and comparative.[334] The divinatory method requires the interpreter to transform himself into the author and attain "an immediate comprehension of the author as an individual."[335] The comparative approach requires considering the work in itself then breaking up the whole of the work and typecasting the author;[336] this approach is most appropriate for elements that clearly show an author's individuality.[337] The divinatory and comparative approaches require the interpreter to understand the vocabulary and history of the time period in which the author lived and require multiple readings.[338]

Finally, Schleiermacher's hermeneutic circle requires special attention because it is logically circular; the part and the whole are only understood together; and it is inherently difficulty to independently understand and resolve this hermeneutic circle.[339] Schleiermacher provides a couple approaches for resolving the hermeneutic circle in his third and fourth manuscripts. In his third manuscript, Schleiermacher provides this algorithm:

> (a) Begin with a general overview of the text. (b) Comprehend it by moving in both directions simultaneously. (c) Only when the two coincide for one passage does one proceed to another passage. (d) When the two do not agree, it is necessary to go back until the error in calculation is found.[340]

Schleiermacher's fourth manuscript added nuance to his methods. The algorithm becomes a two-step process analogous to what he described in terms of divinatory and comparative methodology: "The unity of the whole is grasped and then seen in its relation to the various sections within the whole. The first task shows the author's idea to be the basis for the composition. The latter task shows his actual way of grasping and presenting it."[341] Schleiermacher distinguishes the unity from the purpose of the work, explaining the unity can be found when comparing a work's

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334. *Id.* at 150.
335. *Id.*
336. *Id.*
337. *Id.* at 167.
338. *Id.* at 113.
339. *Id.* at 115–16.
340. *Id.* at 116 n.13.
341. *Id.* at 168.

true beginning and end to bind the whole work.[342] Schleiermacher gives such an example; through erroneous interpretation of biblical books, the ending of the Book of John may serve as the ending to the whole Bible rather than as a conclusion to an individual section.[343] The second task involves understanding the individuality of the work through "immediate intuition (*Anschauung*) and comparison with other works."[344] Both intuition and comparison are necessary because "[i]mmediate intuition cannot be communicated[,]"[345] and pure comparison is unable to penetrate true individuality.[346]

This section provides a summary of the core theories of hermeneutics presented by Schleiermacher in his manuscripts, and, to the extent that some of these theories still appear unsatisfactory, we can find solace in Schleiermacher's self-reflection on his own search for hermeneutic theories. Towards the end of his career, Schleiermacher himself admitted that after his long search for the best methodology of interpretation, he was confronted with the reality that his search was in vain and resulted only in numerous discrete rules of interpretation, many of which were ambiguous and lacked satisfactory organization.[347] Overall, despite Schleiermacher's harsh self-criticism, Schleiermacher has moved his analysis beyond aphorisms and into a system of interpretation, and much of his approach continues to be utilized and defended for interpretation of texts in contemporary times.

VII.   EMILIO BETTI

Moving forward more than a century beyond Hegel and Schleiermacher, I now turn to Emilio Betti who continues to stand as one of the cornerstones of modern hermeneutics.[348] Betti was an Italian jurist with a focus on procedure and international-comparative law.[349] In 1954, Betti presented his thoughts in the *Hermeneutisches Manifest* and in *Zur Grundlegung*

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342.   *Id.*

343.   *Id.* at 169.

344.   *Id.* at 171.

345.   *Id.*; *cf. supra* text accompanying notes 160–170 (exploring Hegel's criticism of arguments based on common sense, genius, or feeling).

346.   SCHLEIERMACHER, *supra* note 7, at 171.

347.   *Id.* at 176.

348.   Vinx, *supra* note 65, at ix.

349.   *Id.*

einer allgemeinen Auslegungslehre.[350]   In 1955, Betti's masterpiece work on hermeneutics was published in two volumes in Italy under the name *Teoria Generale della Interpretazione.*[351]   Unfortunately, Betti's work did not receive much attention in Germany, motivating Betti to write a more succinct version of his views in *Die Hermeneutik als allgemeine Methodik der Geisteswissenschaften zugleich ein Beitrag zumi Unterschied zwichen Auslegung und Sinngebung,* published in Germany two years after Gadamer's publication of *Wahrheit und Methode* (Truth and Method).[352]   For a review of Betti's theories, I will be relying on a 2021 English translation of the second edition (1972 edition) of the *Die Hermeneutik als allgemeine Methodik der Geisteswissenschaften*[353] or, in English, "Hermeneutics as a General Methodology of the Sciences of the Spirit."[354]

A.   *Theory and Canons of Construction*

For Betti, interpretation is a triadic process of achieving understanding involving the mediation of two extremes: the interpreter, who is a living spirit, and the objectified spirit, which exists in the representative form.[355] The mediation is the process where the objectified spirit shows itself to the interpreter as "irremovable objectivity."[356]   "To understand is, then, a re-cognition and a re-construction of a meaning and with the meaning a recognizable spirit through the representative forms of its objectifications and that speaks to the learning spirit, which feels itself similar to it in the commonality of human nature."[357]   This process requires the interpreter to reproduce the thought of the author and to make it his own, while still maintaining the interpreter's thought as being objective and something other than the thought of the interpreter.[358]   This maintenance of objectivity is difficult since it demands genuine subordination by the

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350.   Georgio A. Pinton, *Editorial Preface*, EMILIO BETTI, HERMENEUTICS AS A GENERAL METHODOLOGY OF THE SCIENCES OF THE SPIRIT xxvi (Mariano Croce & Marco Goldoni eds., Routledge 2021) (1962).

351.   BETTI, *supra* note 8, at xxvi.

352.   Pinton, *supra* note 350, at xxvi.

353.   *Id.*

354.   BETTI, *supra* note 8, at 1.

355.   *Id.* at 9–10 ("It is always a question of an exigency that solicits the spiritual spontaneity of one person that is called upon to understand . . . .").

356.   *Id.* at 10.

357.   *Id.* at 11.

358.   Vinx, *supra* note 65, at xii-xiii.

interpreter.[359]   Correct understanding happens when the process in the mind of the interpreter constitutes the exact reversal of the creative process of the author.[360]   Consequently, the meanings conveyed by the author are objective facts, and the interpreter's only goal is to capture these meanings rather than to either judge or learn.[361]   From this worldview, Betti provides four fundamental canons of hermeneutics: autonomy of object, totality of interpretation, actuality of understanding, and adequacy of meaning.[362]

The canon of hermeneutic autonomy of the object is a canon of "immediate evidence"; namely, the objects of interpretation are objectifications of spirituality and, therefore, must be understood in terms of the spirit which is objectified within these objects.[363]   Betti explicates that these objects are not to be understood in terms of a spirit or thought of an agent other than the author; rather, they must be "understood in their autonomy, in the way of their own law of formation, in the context into which they will be involved, and according to their inner necessity, coherence, and rationality."[364]   Betti vehemently opposes any denial of objectivity, including attribution of meaning based on the initial situation of the text or a pre-understanding within hermeneutics.[365]   The canon of autonomy of object requires that the interpreter must come to the text with the presupposition that the texts will provide information which is not yet known and exists independently from the interpreter's attribution of meaning.[366]   In this manner, inferring meaning into texts and violating the canon of autonomy of object puts the objectivity of all humanities in doubt.[367]

Betti's second canon is the canon of coherence of meaning,[368] which draws upon Schleiermacher's hermeneutic circle and its focus on the reciprocity between the individual elements of the work and the whole of the work.[369]   In that vein, Betti likewise believes in Schleiermacher's focus

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359.   BETTI, *supra* note 8, at 12.
360.   Vinx, *supra* note 65, at xii.
361.   *Id.* at xii–xiii.
362.   *Id.* at xiii–xv.
363.   BETTI, *supra* note 8, at 14.
364.   *Id.*
365.   *Id.* at 40.
366.   *Id.*
367.   *See id.* at 41 (highlighting the fundamental dangers of pre-understandings).
368.   Larx Vinx refers to this canon as the "canon of totality" since the whole and the parts inform each other and stand in reflective equilibrium. Vinx, *supra* note 65, at xiii.
369.   BETTI, *supra* note 8, at 16.

on an author's entire life as an influencer of each of the author's individual works and with each such work influencing other works and comprising the author's life and personality.[370] However, the "totality" can only be understood by reference to the cultural system within which the work is interpreted because the interpreter's cultural system acts to limit meanings to those works which are of a similar kind and content.[371] Consequently, there will still be some preliminary understanding at the initial level that will progressively be consolidated and enriched towards an understanding.[372]

Betti's third canon is the canon of actuality of understanding, which involves the interpreter relating the work to their own experiential background to reason with the ideas of the text, and to understand the writer in terms of the writer's motivations as a form of "sympathetic understanding".[373] The interpreter must reverse the author's process of writing and reconstruct within the interpreter the thoughts of the author.[374] The interpreter should take a memory or personal experience of the author and absorb it as the interpreter's own experience in order to meet a "spiritual horizon" where the work is reconstructed.[375] The nature of this process reasons that it is impossible to completely free interpretation from subjectivity.[376] Nonetheless, objectivity can be maintained despite this type of objectivity that exists in humanities being different from the type of objectivity within the hard sciences.[377]

The fourth and final canon is the canon of hermeneutical correspondence of meaning.[378] "According to this canon, the interpreter should strive to bring its own lively actuality into the closest adhesion and harmony with the message that it receives from the object in such consonant way that the one and the other resonate in harmony and perfect unison."[379] In this canon, the interpreter invokes an "ethical and reflective human spirit" in the form of being unselfish and self-effacing by decisively overcoming the interpreter's personal prejudices and approaching the object of

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370. *Id.* at 17.
371. *Id.*
372. *Id.* (extrapolating on the ultimate results of achieving preliminary understanding).
373. Vinx, *supra* note 65, at xiv.
374. BETTI, *supra* note 8, at 21.
375. *Id.*
376. *Id.*
377. *Id.* at 23–24.
378. *Id.* at 62.
379. *Id.*

interpretation with a "congenial attitude animated by sentiment of strict affinity."[380]

B. *Betti-Gadamer Debate*

Betti promotes adherence to his four canons of construction, arguing the ultimate context to interpretation "is the totality of the life" and mind of the author.[381] Betti's approach seeks to maintain hermeneutic autonomy of the object, but provides an inadequate solution to the problem of judicial hermeneutics which, according to Hobbes, requires more than sympathetic reading, but rather the application of laws which "reads in" the legislative intent that the laws are just and are consistent with the laws of nature.[382] Another argument for historic hermeneutics being a separate hermeneutics is that law requires special hermeneutics, since law must be interpreted in a way that engages the interpreter's convictions in order for law to serve its normative purpose, while this would not apply for historic hermeneutics, where the interpreter is simply attempting to understand an accurate picture of the past.[383] This contrast between the judicial hermeneutics as the only appropriate hermeneutics versus judicial hermeneutics as a form of special hermeneutics rests at the core of Betti's and Gadamer's disagreements.[384]

In criticizing Gadamer, Betti focuses on three arguments: first, Betti criticizes Gadamer for justifying his hermeneutics by simply stating that it is descriptively accurate of what actually happens; second, Betti criticizes Gadamer for attempting to separate true and false prejudices; and third, Betti criticizes Gadamer's approach to the hermeneutic circle. The first criticism is very direct, with Betti citing Kant to argue that the epistemological problem is one of justification rather than an explanation of "what actually happens."[385] Betti also published correspondence from Gadamer where Gadamer explains that no one can ever be entirely free from prejudice, and even if the inability to put aside one's prejudice is a defect, one should consider why this defect is unavoidable and focus on "what is" rather than "what ought to be or could be."[386]

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380. *Id.*
381. Vinx, *supra* note 65, at xiv–xv.
382. *Id.* at xv.
383. *Id.* at xvi.
384. *Id.*
385. BETTI, *supra* note 8, at 61.
386. *Id.* at 62 n.4.

Betti's second argument criticizes Gadamer's distinction between true and false prejudices, with particular criticism directed at the "fore-conception of completeness of the object."[387] Gadamer believes that the prejudice of completeness implies "that a text should completely express its meaning—but also that what it says should be the complete truth."[388] According to Gadamer, this expectation is necessary for any understanding to happen at all, since "[t]o disagree with a source or to question the truth of some of her claims is possible only against a background of far-reaching implicit agreement."[389] For Betti, this is a form of "auto-deception" that prevents trustworthy or valid results.[390] In effect, Gadamer's interpretation violates the autonomy of the interpretive object and it is impossible to obtain any type of detached understanding. With Gadamer's approach to interpretation, there is a conflation between deriving and imposing meanings; therefore, it becomes impossible to obtain any results that would allow for the humanities to be regarded as a science.[391] Betti, on the other hand, believes that understanding can only be correct when the interpreter succeeds in recreating the thought that the author was trying to convey in the object.[392]

Finally, Betti criticizes Gadamer's conception of the hermeneutic circle as being based on the interpreter's beliefs rather than on the canon of totality and the relationship of the parts and the whole of the object.[393] According to Betti, Gadamer gives the interpreter the acquired possession of the object of interpretation, at least as a form of checking this object.[394] By contrast, Betti requires that the interpreter limits himself to being receptive to the alien opinions which are incorporated in a text and letting the text speak.[395]

VIII. GADAMER

Gadamer's hermeneutics does not conflict with the strict methodology of science but rather behaves as a new and creative method which mediates between philosophy and science.[396] Gadamer traces hermeneutics from

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387. *Id.* at 48.

388. Vinx, *supra* note 65, at xvii.

389. *Id.*

390. BETTI, *supra* note 8, at 48.

391. Vinx, *supra* note 65, at xix–xx.

392. *Id.* at xxi.

393. *Id.* at xvii.

394. BETTI, *supra* note 8, at 52.

395. *Id.*

396. GADAMER, *supra* note 9, at 555–56.

the nineteenth century and advocates for hermeneutics as the basis of all humanities, freeing hermeneutics from its prior role of being only related in supporting theology and philology.[397]   In this metamorphosis, hermeneutics went beyond its initial purpose of facilitating understanding of difficult texts.[398]   Rather, hermeneutics became the unlocking and mediating spirit for "everything that is no longer immediately situated in a world—that is, all tradition, whether art or the other spiritual creations of the past: law, religion, philosophy, and so forth . . . ."[399]

In *Truth and Method*, Gadamer criticizes romantic hermeneutics and looks towards inspiration from Hegel and Heidegger for a more realistic approach.[400] In developing his new approach to hermeneutics, Gadamer outlines concepts such as *Bildung*, play, and symbols, and then explains how the hermeneutic experience achieves understanding and provides the epistemological justification for knowledge.[401]

A.   *Criticism of Romantic Hermeneutics*

Although Gadamer recognized Schleiermacher for pioneering hermeneutics as an independent method, he also strongly criticized the logical flaws within Schleiermacher's approach to textual interpretation.[402] The most devastating attack concerns Schleiermacher's attempt to reconstruct the original circumstances which gave rise to the original text.[403] In Gadamer's words: "Reconstructing the original circumstances, like all restoration, is a futile undertaking in view of the historicity of our being. What is reconstructed, a life brought back from the lost past, is not the original. In its continuance in an estranged state it acquires only a derivative, cultural existence."[404]   Gadamer presents this historicity as simply trying to conserve dead meaning, analogous to taking works of art from museums and putting them in places originally intended—this ritual

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397. *Id.* at 157.

398. *Id.*

399. *Id.*

400. *See id.* at 161 (discussing the fundamental superiority of Hegel's hermeneutic idea of "*thoughtful mediation with contemporary life*" over Schleiermacher's hermeneutics based on historical reconstruction).

401. *See generally id.* (describing Gadamer's approach and the concepts used to inform its development).

402. *Id.* at 179.

403. *Id.* at 159–60. For a thorough discussion on Schleiermacher's hermeneutics, see *supra* Part VI.

404.   GADAMER, *supra* note 9, at 159.

does not re-create what those objects were originally, but rather reduces them to simple tourist attractions.[405] To further advance his point, Gadamer references a passage from Hegel's *Phenomenology of Spirit*, which explains the works are like fruits presented by someone who has already picked them, these fruits do not possess their real life or the elements that brought them into existence.[406] In the words of Hegel,

> "the spirit of the fate that present those works of art to us is more than the ethical life and actuality of that people, for it is the re-collection of the spirit that in them was still *externalized*—it is the spirit of the tragic fate that gathers all those individual gods and attributes of the substance into the single pantheon, into spirit conscious of itself as spirit."[407]

According to Gadamer, the above passage shows that Hegel points to an entire dimension of understanding which goes beyond Schleiermacher: the understanding of the text by the self-consciousness "in a higher way" as absolute knowledge.[408] In that vein, hermeneutics is carried out by the self-penetrating spirit as a counter-position to the historical consciousness, which is replaced with a thinking relation to the past which is not restoration of the past but a mediation of the past with contemporary life.[409]

 Gadamer goes on to address the issue of epistemology, which arose in the humanities after empirical research effectively discredited the Hegelian system.[410] Going back to Schleiermacher, Dilthey, Schleiermacher's biographer, sought epistemological justification by making the method of knowledge in the humanities appear similar to the methodology of natural sciences.[411] Dilthey focused on the concept of "results" and, with romantic hermeneutics, he framed the object of understanding as the deciphering of a text and the understanding of meaning.[412] In this way, for romantic hermeneutics, the text takes the form of a "Thou," and the meaning of the text is the "encounter of the spirit with itself."[413] The text itself is both familiar enough to be intelligible and strange enough to require

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405. *Id.* at 159–60.
406. *Id.* at 145.
407. *Id.* at 297 (footnote omitted).
408. *Id.* at 161.
409. *Id.*
410. *Id.* at 216.
411. *Id.* at 233.
412. *Id.*
413. *Id.*

hermeneutics to understand it.[414] Romantic hermeneutics takes the "I-Thou" relationship between the text and the interpreter from Schleiermacher's approach that texts are able to be understood in the same way as another person.[415] Therefore, the author's meaning can also be divined from the original text by placing the interpreter in a position where he is contemporaneous with the author of the text.[416] The apparent methodological nature of Dilthey's approach—as inspired by Schleiermacher—creates an illusion of equating hermeneutics with natural science with the hermeneutic researcher examining the evidence in the form of a text in the same way as a natural scientist examines natural phenomenon.[417]

Gadamer criticizes the Schleiermacher approach directly and effectively reduces the claim of methodological and objective practice of exegesis into a contradiction. Among the criticisms presented by Gadamer: the psychological understanding within the hermeneutic circle "is a logically circular argument";[418] interpreting the parts in terms of the whole was expanded in the eighteenth century to include the "totality of the historical reality to which each individual historical document belonged";[419] the concept of "original reader" is a crude limitation on the horizon of a text's meaning;[420] and Schleiermacher's implied belief that, although individuality could never be fully understood, this understanding could be approximated through "*feeling*, by an immediate, sympathetic, and congenial understanding."[421]

Gadamer's criticism of "methodologism" expands further to criticism of twentieth century contemporaries such as Betti for their persistent focus on various rules and the applications of those rules at the expense of grasping the fundamental structure necessary for all understanding.[422] Betti and others, in turn, have claimed that Gadamer's hermeneutics weakens scientific objectivity[423] because Gadamer, by focusing on phenomenology, is reducing hermeneutics to a question of fact rather than a question of

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414. *Id.*
415. *Id.*
416. *Id.*
417. *Id.* (summarizing the analogous relationship presented by Dlithey).
418. *Id.* at 189.
419. *Id.* at 177–78.
420. *Id.* at 190.
421. *Id.*
422. *Id.* at 559.
423. *Id.*

principle.[424] Gadamer explains that his starting point is with the way things are—not with the way things ought to be or could be.[425] Additionally, Gadamer's method goes beyond the concept of methodology held in science and towards an approach which explains how understanding of information always occurs; furthermore, conceiving of hermeneutics entirely as a problem of method is in itself regarding knowledge as entirely subjective.[426]

B.   Bildung, *Play, and Symbols*

Much of our vocabulary relating to common words such as "play" or "symbol" are taken for granted, but these words have a great deal of philosophy and history attached to them.[427] The following discussion of the key concepts of *Bildung*, play, and symbols is meant to provide a brief foundation for the nature of words and the process phenomenology of understanding, which will be addressed more fully later.

1.   *Bildung*

Gadamer starts with a review and an update of the concept of *Bildung*, which he borrows from Hegel.[428] Although the common use of the word *Bildung* in German means culture as in "developing one's capacities or talents[,]" this word "evokes the ancient mystical tradition according to which man carries in his soul the image of God, after whom he is fashioned, and which man must cultivate in himself."[429] The Latin equivalent word for *Bildung* is *formatio*, which has related words in English—form and formation—and German—*formierung* and *formation*.[430] However, these words "lack . . . the mysterious ambiguity of *Bild*, which comprehends both *Nachbild* (image, copy) and *Vorbild* (model)."[431] Gadamer describes original usage of *Bildung* as being different from its modern meaning in German because original *Bildung* does not have a goal at the end of some type of formation.[432] *Bildung*, as used by Gadamer, refers to a continual *Bildung*

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424.   *Id.* at 513.
425.   *Id.*
426.   *Id.*
427.   *Id.* at 9.
428.   *Id.* at 11.
429.   *Id.* at 10.
430.   *Id.*
431.   *Id.* (emphasis added). The difference and role of model and copy will be analyzed further. *Infra* Part VIII.b.iii.
432.   GADAMER, *supra* note 9, at 10.

with no goals other than *Bildung* itself, so that whatever is formed belongs entirely to one's self and the means of forming is never lost.[433]

Hegel demonstrated that the independent existence of work gives the working consciousness self-awareness and contains all the elements that make up "practical *Bildung*," which is "the distancing from the immediacy of desire . . . and the exacting demand of a universal."[434] Practical *Bildung* is the whole fulfillment of one's profession and "theoretical *Bildung*" is going beyond one's knowledge and experience and towards the universal viewpoints so as to become spiritual with the culture of the people which, in turn, the individual makes his own.[435] In this manner, *Bildung* is a part of *Geist* but it is not tied to Hegel's philosophy of the absolute *Geist*.[436] *Bildung* is in effect the already-formed scholarly consciousness in which exists the movement of judgment and knowledge of the humanities.[437] An example of this *Bildung* is demonstrated by the faculty of memory, which is not conceived as a simple talent.[438] Rather, memory provides a mind with "special free mobility" and is itself a part of *Bildung*—through the act of forgetting, memory allows for renewal, reevaluation, and "the capacity to see everything with fresh eyes, so that what is long familiar fuses with new into a many leveled unity."[439] Through *Bildung* a cultivated consciousness can be developed in an omnidirectional universal sense which exceeds all of the sense in the natural sciences.[440] This universal sense and common sense based in the tradition of *Bildung* is more suitable as a paradigm to understand the humanities as a science than through the scientific method.[441]

2. Play

Although every interpretation is a re-creation, the concept of play is what preserves the original work instead of creating recursive interpretations of a work to the point that the original work is completely lost.[442] As Gadamer

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433. *Id.*
434. *Id.* at 12.
435. *Id.*
436. *Id.* at 13. Gadamer attempts to separate *Bildung* from Hegel's *Phenomenology of Spirit*; however, this does not appear very persuasive when looking at Hegel's explanation of *Geist* and the related concept of *Bildung*. *Supra* Part V.
437. GADAMER, *supra* note 9, at 13–14.
438. *Id.* at 14.
439. *Id.*
440. *Id.* at 16.
441. *Id.*
442. *Id.* at 118.

explains: "[P]lay itself is a transformation of such a kind that the identity of the player does not continue to exist for anybody. Everybody asks instead what is supposed to be represented, what is 'meant.' The players (or playwright) no longer exist, only what they are playing."[443] Play, same as language, goes beyond the mind or subjectivity of the speaker—it is phenomenological.[444] Play is fulfilled through the player taking the play seriously and losing himself in the play with the players themselves not being the subject of the play, but rather being the mode by which the play is presented.[445] Through play, the interpretation is a representation of the meaning that the interpreter found in the work, rather than a re-creation of the creative act of the work, which avoids the issue of recursively reinterpreting the original work.[446] This is to contrast with an interpretation that changes the meaning of the original, which includes presentations that attempt to re-create historical authenticity: for example, by playing historical music on historical instruments.[447]

In his discussion of play, Gadamer is taking a passing shot at Schleiermacher's historicism and referencing Hegel's "fruit plucked from a tree" phenomenon discussed previously. Gadamer further connects play to interpretation. He emphasizes mediation is not differentiated from the work, suggesting the experience is the experience of the work, rather than the experience of the interpretation.[448] Consequently, works that stretch across long time periods are not merely part of the historical consciousness; rather, these works continue to fulfill their purpose in every age of their existence, even if they are merely located in a museum.[449] These works do not lose the basis of their original purpose which allows them to be reconstructed to the past, but their existence, even in a museum next to other works of art, still maintain their own origin and purpose as an integral part of themselves.[450]

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443. *Id.* at 111.

444. *See id.* ("Thus transformation into structure means that what existed previously exists no longer. But also that what now exists, what represents itself in the play of art, is the lasting and true.").

445. *Id.* at 103.

446. *Id.* at 118.

447. *Id.*

448. *Id.*

449. *Id.* at 119.

450. *Id.*

3.   Symbols

Gadamer follows a path from symbol and allegory towards the artistic concepts of copy, image and picture, then returns to texts that are also interpreted as experiences of art.[451]   The concept of symbol relates to metaphysics and the idea of some spiritual spark that exists beyond the visible world that underlies religious worship.[452]   The symbolic representation and the symbolic function of language through metaphors is a part of Kantian thought, which can be summarized as: "Everything that happens is a symbol, and, in fully representing itself, it points towards everything else."[453]   The essence of a symbol is that what is presented is substituted and the meaning exists within the symbol itself.[454]   The opposite of a symbol is a sign which signifies pure substitution: a sign is supposed to indicate a concept or idea outside itself such as the case of a traffic sign and not direct any attention to itself outside of being a simple pointer.[455]

To build on the concept of symbol, Gadamer takes a detour into the understanding of the "truth of art," which he also considers a part of hermeneutics.[456]   Since understanding art requires an experience and encounter with the art itself, it is an understanding that is outside what can be understood through the scientific method.[457]   Art can be understood in terms of aesthetic differentiation, where the work and the artist transcend their place in the world and what remains is a "pure work of art" that belongs to aesthetic consciousness.[458]   Aesthetic differentiation is an abstraction from the original content in the picture:[459] a work of art, such as a statue, which may include a commemoration of an event such as a peace treaty or a battle, goes beyond simply recalling a well-known event, but rather adds something new of its own.[460]   From this understanding of art, we need to understand how art and symbols relate to each other to abstract them to the understanding of texts.

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451.   *Id.* at 157.
452.   *Id.* at 64.
453.   *Id.* at 66 (internal quotations omitted).
454.   *Id.* at 145.
455.   *Id.* at 145–46.
456.   *Id.* at 87.
457.   *Id.*
458.   *See id.* at 74.
459.   *Id.* at 146.
460.   *Id.* at 143.

In terms of art, it is helpful to distinguish between a picture, a copy, and an image. Gadamer uses the definition of a "picture" from the artistic ideal of the Renaissance, which regards a picture as a unified and closed structure where nothing can be taken from it and nothing added without its destruction.[461] The purpose of this definition of picture, which is related to philosophical aesthetics, is to draw a comparison to a copy and an image.[462] In essence, a picture maintains an existence on its own and does not directly imitate the original in terms of the source material; for example, a play based on world events does not re-create those events, but has its own existence and presents an appearance of the world events.[463] In this way, a picture is between a sign and a symbol since the picture does more than simply point to something else.[464] Opposite of a picture is a "copy," which is supposed to merely point to the original and resemble the original as closely as possible.[465] Finally, an ideal copy would actually not be a copy, but rather an "image" like a reflection in the mirror, since this reflection would not have any existence at all outside of the original.[466] The mirror image preserves both unity and non-differentiation because the image is not a copy: the image is connected and inseparable to the original.[467]

To further explain the nature of a picture and to argue against historicism in hermeneutics, Gadamer turns to the example of a "genre picture or a figure composition."[468] Unlike in portraits, in a genre picture it would be considered a defect and break immersion if an observer recognized an artist's typical model who was used in the production of the picture.[469] This is because the model that is recognized in the picture is "untransformed material," which was supposed to lose its original appearance and schema and become integrated into the picture by the artist.[470] Likewise, for works of literature, interpreting those works in terms of the biographies of the authors or historical sources is analogous to interpreting paintings on the basis of an artist's models.[471] This type of interpretation in effect fails to

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461. *Id.* at 131.
462. *Id.* at 132–33.
463. *Id.*
464. *Id.* at 145.
465. *Id.* at 133.
466. *Id.* at 133–34.
467. *Id.* at 134.
468. *Id.* at 139.
469. *Id.*
470. *Id.*
471. *Id.*

accept the work's claim to meaning and interrogates it as a historical document, looking to contextualize the work in terms of the age of its production.[472] Although in some instances this context may be related to the work's specific allusions and claims to meanings, typically this type of historical and background information would not be visible to typical modern observers and would not be important for the meaning of the work as a whole.[473]

   The remaining topics of copy and the dialectic of image are later connected to writings in the manner of words and language. Language behaves in a manner that goes beyond being a sign and more towards a copy or image with words in a language having some relationship to what they are imaging.[474] This relates to the theory of language and the role of words and how experience finds words to express itself.[475] This in turn leads to theological discussions on comparing the divine Word to human words, which are formed as an incomplete image of God's Word.[476] Although these theological topics are beyond the scope of this Article, these discussions provide a perspective on our understanding of language.

   Moving further into literature, Gadamer draws a parallel between the actualization of a work of art occurring in play (the point where audience sees the art when it is actualized) and the actualization of texts occurring in the process of understanding, which transforms those texts into living meaning.[477] "Reading with understanding is always a kind of reproduction, performance, and interpretation. Emphasis, rhythmic ordering, and the like are part of wholly silent reading too. Meaning and the understanding of it are so closely connected with the corporeality of language that understanding always involves an inner speaking as well."[478] Works of literature pass between different locations and time periods, and interpreting these works involves a process of reading where a dead text is transformed into contemporary familiarity.[479] This contemporary familiarity is unique for writings since, unlike architecture or other physical records of the past,

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472. *Id.* at 140.

473. *Id.*

474. *Id.* at 416.

475. *Id.* at 417.

476. *See id.* at 419–23 (discussing the intersection of human words and theological words).

477. *Id.* at 156–57.

478. *Id.* at 153.

479. *Id.* at 156.

writings retain their originality and can expose the reader to thoughts across time and location.[480]

C.   *The Hermeneutic Experience*

The hermeneutic experience for Gadamer involves prejudices of the interpreter and a different conception of the hermeneutic circle: a hermeneutic circle that is resolved through a meeting of the horizons (or prejudices) between the interpreter and the author.[481]   From this framework, Gadamer uses the example of legal hermeneutics[482] and the common experience of language[483] to approach the fundamental hermeneutic problem of method.

1.   Prejudice and the Hermeneutic Circle

The concept of prejudice, as borrowed from Heidegger and used by Gadamer, is free of the negative connotations that were acquired by this word during the Enlightenment; instead, for Gadamer, prejudice means a provisional expectation before a final decision can be reached.[484] This type of prejudice or pre-conception should still avoid arbitrary biases or habits.[485] An interpreter must be sensitive to a text's otherness without equating it to neutrality, but rather the interpreter must put personal prejudices and pre-conceptions to the foreground and allow the text to present its otherness against an interpreter's foreground of prejudices.[486]

This phenomenological description of interpretation comes from Heidegger and is in effect what happens when a reader is "reading what is there."[487] By contrast, Schleiermacher relied on the hermeneutic circle, which required that the background of the text must be used to understand the text on its own terms and the partiality of the interpreter and over hastiness would cause errors in understanding.[488] Schleiermacher's approach can be refuted with Hegel's example of "classical," which are self-

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480.   *Id.*

481.   *See id.* at 304–06 (discussing how the fusion of various horizons plays a vital role in understanding).

482.   *Id.* at 518.

483.   *See id.* at 436–84 (discussing "language as the medium of hermeneutic experience").

484.   *Id.* at 273.

485.   *Id.* at 269.

486.   *Id.* at 271–72.

487.   *Id.*

488.   *Id.* at 279–80.

significant and self-interpretive[489] works in that they "speak[] in such a way that it is not a statement about what is past—documentary evidence that still needs to be interpreted—rather, it says something to the present as if it were said specifically to it."[490]   Consequently, understanding, which is validated by hermeneutics, is the participation in tradition and the constant mediation between the past and present.[491]

The process of understanding adds a new dimension, with the interpreter being incorporated into the object of interpretation.[492]   In order to understand a text, an interpreter must project his own understanding onto to a text to create meaning from the text—in this way, all understanding is a form of self-understanding.[493]   This is because understanding involves not only understanding the explicit meaning of a text but also the hidden meanings and "knowing one's way around" the text.[494] Because traditional hermeneutics fails to acknowledge the projective role of the interpreter; traditional hermeneutics operates with an overly narrow horizon of understanding.[495]   Projection by an interpreter starts as soon as any initial meaning emerges from a text and continues with the interpreter continuously revising his "fore-projection" until the meaning is penetrated and understanding of the text is achieved through recursive substitutions of prior fore-projections with progressively more suitable fore-projections.[496] These fore-projections are not to be reduced to circle, but rather to achieve a fundamental type of knowing while "never . . . allow[ing] our fore-having, fore-sight, and fore-conception to be presented to us by fancies and popular conceptions, but rather to make the scientific theme secure by working out these fore-structures in terms of the things themselves."[497]

Gadamer traces the concept of the hermeneutic circle to ancient rhetoric and the desire to "understand meaning centrifugally,"[498] however, Gadamer's hermeneutic circle is not formal, objective, or subjective; rather it presents the interaction between the textual tradition and the interpreter

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489.   *Id.* at 290.

490.   *Id.*

491.   *Id.* at 291.

492.   *Id.* at 254; *see also supra* Part V (discussing Hegel's *Geist* in the form of reason and the role of individuals attempting to take possession of a work which has been reduced to actuality).

493.   GADAMER, *supra* note 9, at 251.

494.   *Id.*

495.   *Id.*

496.   *Id.* at 269.

497.   *Id.*

498.   *Id.* at 291.

which is a matter of common tradition.[499] Gadamer's hermeneutic circle differs from Schleiermacher's attempt at divination of authorial intention.[500] Instead, Gadamer's hermeneutic circle attempts to merge the temporal horizons of understanding—not as a method but rather as an existence of understanding.[501] Through the basic commonality between the author and the interpreter, some fundamental enabling prejudices, which are not at the disposal of either the author or the interpreter, must be achieved in order to start the hermeneutic process—these basic prejudices come from the common language or tradition of the text.[502]

Through temporal distance, the meanings contained in a text go beyond the author and the interpretation; this is not a matter of reproduction of meaning, but is instead a productive activity.[503] Therefore, the interpreter does not understand the text better than the author; the interpreter understands it in a different way.[504] This new understanding breaks through the hermeneutic circle, since the text is understood through its own claim to truth rather than as an expression of a state of being.[505] Temporal distance allows textual content to be exposed with the fading of the circumstances leading to the creation of the text.[506] Consequently, temporal distance is a means of understanding, not a barrier that must be overcome through historicism.[507] The horizon of understanding is "everything which can be seen from a particular vantage point" and is constituted by the relevant prejudices or fore-understanding.[508] Therefore, to approach and understand the hermeneutic problem, one must first obtain the proper horizon for the encounter with the text.[509]

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499. *Id.* at 293; *see also supra* Part V (discussing Hegel's *Geist* in the form of Commonwealth and society as a whole).

500. *See* GADAMER, *supra* note 9, at 293 ("This view of understanding came to its logical culmination in Schleiermacher's theory of the divinatory act, by means of which one places oneself entirely within the writer's mind and from there resolves all that is strange and alien about the text.").

501. *Id.* at 293–94.

502. *Id.* at 295.

503. *Id.* at 295–96.

504. *Id.* at 296.

505. *Id.*

506. *Id.* at 297.

507. *Id.*

508. *Id.* at 301–02.

509. *Id.* at 305–06.

2.   The Fundamental Problem of Application

To approach the problem of application, it is first necessary to merge the elements of hermeneutics and eliminate special hermeneutics. As a first step, Gadamer combines the traditional elements of understanding, interpretation, and application into a single process which he sees less as a method and more of a "particular finesse of the mind."[510] This combination is suitable because interpretation is simply an explicit form of understanding which, in turn, is simply the application of the material being interpreted to an interpreter's prejudices.[511] As a second step, Gadamer considers the traditional delimitation of literary or philological hermeneutics, which was established as a methodology of research in the humanities by contrast to legal hermeneutics and theological hermeneutics.[512] The delimitation of hermeneutics by purpose as cognitive, normative, and reproductive interpretation created difficulties of categorization of particular interpretations in areas such as theology and law which involve both cognitive and normative functions.[513] For legal hermeneutics, the discovery of the meaning of a text and its application is a unitary process.[514] Furthermore, since the process involved in translating legal texts, imitating texts or reading them out loud are all the same as the process for philological hermeneutics,[515] it would be appropriate to follow the approach of legal or theological hermeneutics as the general case for philological hermeneutics.[516]

The circumstances of legal and theological hermeneutics involve breaking the distinction between dogmatic and historical interest.[517] For a jurist, original meaning or historical knowledge of the law is helpful only for determining the content of the law; however, a jurist must not be constrained by legislative history, but must account for the modern circumstances that would fulfill the underlying normative purpose of the legislation.[518] For a historian, the knowledge of the law is likewise gained by looking at history's continuity with the present and the preservation of

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510. *Id.* at 306.
511. *Id.* at 306–07.
512. *Id.* at 307–08.
513. *Id.* at 308–09.
514. *Id.*
515. *Id.* at 309.
516. *Id.* at 310.
517. *Id.* at 321.
518. *Id.* at 323.

the tradition of a legal idea;[519] hence, legal hermeneutics acts to restore the unity of hermeneutics.[520] For theological hermeneutics, interpretations of the Bible will be different depending on the prejudices of the interpreters, which would also be based in religion: for example, the interpretation of the old testament would be different depending on whether the interpreter is a Christian, Jew, or Marxist.[521] Therefore, historically-effected consciousness that is involved when a judge supplements the meaning of the original text of the law for contemporary circumstances is at play in all hermeneutics.[522] In law, it is more evident that it is impossible to simply apply the law based on the original intention of the legislature and subsume the concrete case of an individual entirely under a universal principle.[523] Ironically, the gap between the law and the particular case will always exist even when there are no apparent historical or social changes between a particular case and the passage of a law.[524]

Gadamer references Hegel for the concept of experience and historically affected consciousness.[525] The concept of historically affected consciousness relates to Hegel's lord-bondsman dialectic through which self-consciousness recognizes and is recognized by another self-consciousness.[526] Likewise, experience is what consciousness has with itself and when it recognizes within itself what is foreign to itself.[527]

Drawing a parallel to Hegel's explanation of the self-consciousness recognizing itself and another self-consciousness, Gadamer conceptualizes hermeneutics as a tradition which teaches us knowledge in the form of language and which expresses itself like a "Thou."[528] This Thou is not an object, since it relates itself to us and it not simply an opinion of another person.[529] Rather, the textual meaning is separated from the person who meant it and "tradition is a genuine partner in dialogue, and we belong to it,

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519. *Id.*

520. *Id.* at 325.

521. *Id.* at 327–28.

522. *Id.* at 336.

523. *Id.* at 518.

524. *Id.*

525. *Id.* at 338.

526. *See id.* at 341 (describing "historically affected consciousness" in terms of one mind recognizing itself in another mind); Part VIII.c.ii (discussing Hegel's lord-bondsman dialectic).

527. GADAMER, *supra* note 9, at 348–49; *see supra* Part V (discussing the consciousness's shedding of alien material to recognize itself relates to the consciousness recognizing its own existence in Hegel's lord-bondsman dialectic).

528. GADAMER, *supra* note 9, at 352.

529. *Id.*

as does the I with a Thou."[530] The Thou experience is a special relationship with us as human nature, another person, and a form of self-relatedness.[531] Historical consciousness is parallel to this Thou, since in the otherness of the past there is a personal transcendence awareness of the other as an experience, instead of as an attempt to master or dominate the past.[532] An interpreter, treating the text as a Thou, experiences an openness allowing the Thou to convey a message that creates a human bond; such openness permits voluntary acceptance of things that are contrary to the interpreter's views.[533]

Once the text is personified as a Thou, the interpreter must question the text in such a way that the text is reanimated into a living conversation with the interpreter through a process of question and answer.[534] Through the process of question and answer appears the logos, which transcends the subjective opinions of the interpreter and the text.[535] In approaching a text, the interpreter receives a question from the text and to understand the text, the interpreter must understand the question.[536] The nature of this question is set by the horizon of the question which is also the hermeneutic horizon.[537] A question beyond the horizon goes outside what was written in the text, but for each question within the horizon there are multiple answers; hence, the meaning exceeds the initial text which brought forth the question.[538] The horizon is a fusion of the contemporary and historical horizons because a reconstructed historical horizon cannot provide a comprehensive and relevant question; it can only occur when the question is open and beyond the author's own knowledge or consideration.[539] "Making the text speak" is not arbitrarily driven by the interpreter, but is rather related to the answer anticipated within the text.[540] This fusion of horizons, which drives comprehension, is the understanding which occurs

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530. *Id.*; *cf. supra* text in this Article accompanying notes 255–262 and Part V generally (discussing the communal and individual nature of Geist).

531. *Id.* at 352–53. Here, Gadamer appears to move Hegel's conception of the "work" which was a part of Hegel's *Geist* as reason into the category of self-consciousness through the lord-bondsman dialectic. *See supra* Part V (discussing Hegel's discussion on *Geist* as self-consciousness and as reason).

532. GADAMER, *supra* note 9, at 354.

533. *Id.* at 355.

534. *Id.* at 362.

535. *Id.* at 361.

536. *Id.* at 363.

537. *Id.*

538. *Id.*

539. *Id.* at 367.

540. *Id.* at 370.

only through the idea coming into language which is an achievement of language in itself.[541]

Hermeneutics is a verbal experience,[542] with words and history received in the present from the past.[543] Therefore, hermeneutics is a method of listening in a way that the interpreter keeps the text at a distance.[544] The interpreter must quickly abandon assumptions and prejudices when they are contradicted by a sense of the text in the same manner as happens intuitively with oral dialogue.[545] This process of continuous expectations of total meaning, which are constantly abandoned and revised, permit the meaning of the text to emerge.[546] This movement involves arguments of opposition so that the word which interpretively fits the text expresses the whole meaning in a finite way.[547] Although the involvement of the interpreter's own knowledge and existence shows the limits of methodology, this limit does not impede hermeneutics as a science or its ability to present truth.[548]

IX.   HERMENEUTICS FOR LEGAL RESEARCH AND INTERPRETATION

As exemplified in *Duguid*, the current approach to hermeneutics for legal interpretation continues to rely predominantly on the thinking traced back to Schleiermacher and Betti.[549] In contrast, there is often no coherently stated method of research at all for legal research.[550] The perceived advantage of using the methods employed by Schleiermacher and further advocated for by Betti is the appearance of a scientific detachment by the interpreter of the autonomous text.[551] Thereby, the interpreter provides an appearance of being "scientific" through an illusion of removing himself from the text and sanitizing his analysis of a text to be simply retelling what is written.

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541.   *Id.* at 370–71.

542.   *Id.* at 440.

543.   *Id.* at 459.

544.   *Id.* at 461.

545.   *Id.*

546.   *Id.*

547.   *Id.*

548.   *Id.* at 484.

549.   *Duguid* exemplifies the legal reasoning of these two authors. *See generally* Facebook, Inc. v. Duguid, 141 S. Ct. 1163 (2021) (providing an example of the modern use of the reasonings of Schleiermacher and Betti).

550.   Rubin, *supra* note 3, at 1835.

551.   *See* Vertsman, *supra* note 6 (demonstrating contrary legal opinions and their results through various judicial strategies applied to law interpretation).

Phenomenologically, this attempt, at only reading what is written without adding anything new, inevitably fails, as seen empirically through non-unanimous judicial decisions, involving learned judges and scholars who read the same text and come to contradictory understandings regarding its content.[552] This contradiction between the proposed objective unitary meaning of a text and the failure of jurists and scholars to agree upon that meaning may give rise to an appearance of political bias or impropriety, or, even worse, an appearance that a computer may make for a better jurist than a human.[553] Ultimately, this attempt at objectivity can never be successful because it focuses on the mechanics of language while ignoring the underlying essence of language involving common shared meaning between socially connected individuals.

Gadamer provided a phenomenological description of how texts are being interpreted and simplified some of Hegelian's ideas in metaphysics. Additionally, Gadamer provided an elegant solution to the problem of each textual interpretation being comprised of multiple interpretations, moving through the steps of visually recognizing the text, reading the text, then understanding the performed text. Through the concepts of play, image, and memory, Gadamer helped resolve the apparent problem that each reading was in effect a derivative work, and that the derivative work's relationship to the recorded text would be too attenuated for the interpretation to provide meaning. Because each reading is in effect a performance, the reading serves as a reflection of the original text, and the comprehension of the reading is as linked to the text as an image in the mirror is linked to what is being reflected: the object and the reflection do not exist apart from each other.

Gadamer's approach to a text acting as another person or a Thou provided for a simplification of Hegel's approach. Hegel's approach placed a work as a part of *Geist* as reason, beyond the individual and as an intermediate point between the *Geist* as an individual, aware of other individuals, and the *Geist* as a commonwealth. Gadamer's approach, nonetheless, brought the Thou of the text back into the community understanding through the use of language as a part of the shared human experience. In summary, Gadamer relied heavily on Hegel while working

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552. *Duguid*, 141 S. Ct. at 1174 (Alito, J., concurring) (considering it may be possible in the future to understand text by relying on an analysis of language use obtained from a vast database); *see* cases cited *supra* notes 55–62 and accompanying text (recognizing issues with the use of the canons of construction).

553. *Duguid*, 141 S. Ct. at 1174.

to eliminate some of the religious overtones, which may have also deemphasized some of the communal nature of understanding. However, it is this specific communal nature of understanding from shared language and *Geist* that is crucial when approaching text in a cross-cultural or a global environment. The discussion between the text and the interpreter must take an explicitly open form so that the "reason" or "logos" of the text can be exposed and it can be understood in terms of its cultural artifacts and the *Bildung* within both the local and the world culture. This approach allows for greater meaning and understanding among cultures lacking a shared language or background and allows for significantly different cultures to draw reciprocal inspiration from each other's texts.

A core question remains: How does one actually implement Gadamer's and Hegel's theories to research or resolve legal cases?[554] First, for terms or sections of text that are not contentious or difficult, one can understand those sections intuitively without formally reflecting on the process of understanding. However, the parts of the text that are not contentious and not difficult depend entirely on the level of commonality between the contemporary audience and the interpreter (the contemporary author). Therefore, the threshold for explicit hermeneutical analysis is comparatively lower in international context and in situations where there is a greater temporal distance between the interpreter and the origin of a text. For contentious or difficult parts of the text, the focus should be on an imaginary dialogue to make explicit the meaning from the intersection of the I and the Thou (the text) and the communal values that may or may not be shared by either the I or the Thou. In this way, the relevant text or work is not the one intended by the original author for the original audience, but rather the work which has been acquired by the interpreter who is surrounded by his own contemporary culture. Therefore, the role of Schleiermacher's grammatical and psychological interpretation should be reduced to cases of very simple misunderstandings by the interpreter. This limitation would not require an explicit imaginary dialogue, but rather a simple notice in order to make a mechanical correction of a mistake an interpreter would easily realize and rarely challenge.

After engaging in an "imaginary dialogue" as a hermeneutic activity, one would in turn need to engage in a productive activity of documenting the interpretation as an artifact to be used by others. To document the

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554.   See Vertsman, *supra* note 6 for a consolidated paradigm and alternate view on different standards of deference or scrutiny applied in judicial review).

imaginary dialogue, there should be an explicit section in the interpretation that makes explicit the prejudices or pre-conceptions of the interpreter being used as a part of the interpretation. This should be an explicit section in the vein of "discussion" or "analysis" in order to permit the readers to not only compare those prejudices to their own prejudices, but to also make predictions on how future analogous cases may be decided. Admittedly, people are not aware of all their relevant prejudices and few people would be capable or willing to express those prejudices for public evaluation or criticism. Notwithstanding this reality, many of these prejudices would be exposed during the hermeneutic or "imaginary" dialogue; even a limited discussion of some of the more crucial prejudices can provide for more predictable judicial judgments and can provide a clearer view for academic legal research, especially when certain perspectives have been omitted or overrepresented in scholarship. Furthermore, even for those who do not share the same prejudices, the discussion of prejudices should provide for a closer tailoring between the conclusion of an opinion or research and the justification upon which the conclusion is founded. This would reduce the perception of bias or ulterior motives, provide the community with an opportunity to evaluate whether decision makers share the same community values, and expose ideological or cultural fault lines.

The imaginary dialogue should partially replace the current approach of looking to legislative history or to canons of statutory construction. Such an imaginary dialogue should take the form of a Socratic question and answer posed to the text to create a disequilibrium followed by a reconstruction of new knowledge.[555] This would follow the education or *Bildung* which we observe in law school discussions or lectures.[556] In a manner analogous to a student being questioned by a professor serving as a model for all the students in the class, the judge or scholar would act as a proxy for the reader or society as a whole in questioning the text and anticipating the answers based on the common perception of communal values, grammar of the text, as well as elements relating to the text's creation. In this imaginary dialogue, the questions and answers reveal the biases of the judge or scholar as well as provide for an explicit critique of the underlying text. This process also ameliorates institutionalized unfairness since it would be an absurdity for the text to argue for a blatantly unfair

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555.   Deborah L. Borman & Catherine Haras, *Something Borrowed: Interdisciplinary Strategies for Legal Education*, 68 J. LEGAL EDUC. 357, 382 (2019).

556.   *See generally* George S. Grossman, *Clinical Legal Education: History and Diagnosis*, 26 J. LEGAL EDUC. 162 (1973) (detailing legal training in the United States since 1870).

result. Such arguments would be absurd because they imply a malevolent legislature and, furthermore, that the interpreter may be willing to achieve malevolent ends. In effect, this potential absurdity is in itself a constraint on interpretation as it would be a blatant misinterpretation to regard the law giver as irrational or as seeking injury to the public.

Finally, the phenomenologically more accurate approach to hermeneutics, which involves both the text and the interpreter, provides for a more cohesive methodology for both normative and philological interpretation. Exploring a text with extraneous information about its author, the intended audience, and the grammar within the text allows for an appearance of objectivity and attempts to minimize the role of the interpreter; however, in reducing a text to an object, we also reduce humans to simply existing as imperfect machines that mechanically apply aphorisms. Beyond providing a despondent appraisal of the human condition, this approach to textual interpretation is conceptually incorrect. The idiosyncratic elements of the present culture and the interpreter are incorporated within every interpretation along with the idiosyncratic elements of the past and of the original author. In appreciating these elements, we obtain richer understanding, and by making our prejudices explicit, we elevate hermeneutics to its proper position as a method and as a science.