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STRUGGLING WITH TEXT AND CONTEXT: A HERMENEUTIC APPROACH TO INTERPRETING AND REALIZING LAW SCHOOL MISSIONS

FRANK S. RAVITCH*

INTRODUCTION

Why do some law schools have missions that exist on paper but not in reality, while others have lived missions that do not match their written missions to one degree or another? It seems that some schools find it difficult to effectuate their missions in varying social and temporal contexts.¹ This article explores one possible method for understanding and addressing this phenomenon. It is intended to illuminate the interpretive difficulties that may occur when a law school with changing social, economic, and intellectual situations seeks to implement its stated mission over a period of time. This article will also address the often unstated impact those difficulties have on whether a school “lives” its mission, simply acknowledges it, or falls somewhere in between. Lastly, this discussion will focus on ways in which these interpretive difficulties can be overcome so that a law school can live its mission over time, without ignoring the realities facing the school, its faculty, administration, staff, and students. While the focus will be on religiously affiliated law schools, the suggestions contained herein are equally applicable to secular law schools struggling to follow their mission statements.

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¹ One of the themes at the First Conference of the Religiously Affiliated Law Schools was the complex challenges these schools face both internally and externally in regard to their goals and missions. *See generally* Steven M. Barkan, *The First Conference of Religiously Affiliated Law Schools: An Overview*, 78 MARQ. L. REV. 247 (1995). Moreover, through experience in academics, most of us are aware of a number of schools in this situation.

Given the internal and external pressures facing law schools as we enter the new millennium, it is not surprising that some schools are not effectively carrying out their mission statements.² This failure can be better understood and addressed through hermeneutic theory; more specifically, through the philosophical hermeneutics of Hans-Georg Gadamer, as augmented by the work of Paul Ricoeur.³ I have been working with hermeneutic theory recently in my research on the religion clauses of the First Amendment, and when thinking about this symposium, the potential relevance of that theory to law school mission statements was inescapable.

For those not familiar with hermeneutic theory, this article will first explain the basic concepts of that theory as understood by Gadamer and Ricoeur. Particular attention will be paid to the interplay between the text and the interpreter in the process of interpretation.⁴ Next, hermeneutic theory will be applied to suggest why some law schools are unable or unwilling to effectuate their written mission statements over time. Finally,

² See *id.* at 250–53.

³ There are a number of primary and secondary texts that set forth and discuss Gadamerian hermeneutics. Perhaps most important is Gadamer's *magnum opus*, HANS-GEORG GADAMER, TRUTH AND METHOD (Joel Weinsheimer & Donald G. Marshall trans., The Crossroad Pub. Corp. 2d rev. ed. 1989) (1960) [hereinafter GADAMER, TRUTH AND METHOD]. Two of Gadamer's other works are worth consulting for a discussion on his approach to hermeneutics. See HANS-GEORG GADAMER, PHILOSOPHICAL HERMENEUTICS (David E. Linge ed. & trans., Univ. of Cal. Press 1976) [hereinafter GADAMER, PHILOSOPHICAL HERMENEUTICS]; HANS-GEORG GADAMER, REASON IN THE AGE OF SCIENCE (Frederick G. Lawrence trans., The MIT Press 1981) (1979) [hereinafter GADAMER, REASON IN THE AGE OF SCIENCE]. In addition to Gadamer's work, there are a number of valuable books that can serve as introductions to the subject. See, e.g., JEAN GRONDIN, INTRODUCTION TO PHILOSOPHICAL HERMENEUTICS (Joel Weinsheimer trans., Yale Univ. Press 1994) (1991); JOSEF BLEICHER, CONTEMPORARY HERMENEUTICS: HERMENEUTICS AS METHOD, PHILOSOPHY AND CRITIQUE (Routledge & Kegan Paul 1980). Two excellent sources for Ricoeur's work in hermeneutics are PAUL RICOEUR, HERMENEUTICS AND THE HUMAN SCIENCES (John B. Thompson ed. & trans., Cambridge Univ. Press 1981) (1981) [hereinafter RICOEUR, HERMENEUTICS AND THE HUMAN SCIENCES] and PAUL RICOEUR, THE HERMENEUTICS OF ACTION (Richard Kearney ed. & trans., Sage Publications 1996) [hereinafter RICOEUR, THE HERMENEUTICS OF ACTION]. Examples of sources addressing legal hermeneutics include: LEGAL HERMENEUTICS: HISTORY, THEORY, AND PRACTICE (Gregory Leyh ed., 1992) [hereinafter LEGAL HERMENEUTICS] and William N. Eskridge, Jr., *Gadamer/Statutory Interpretation*, 90 COLUM. L. REV. 609 (1990).

⁴ See generally, GADAMER, TRUTH AND METHOD, *supra* note 3, at 186 (explaining that interpretation involves a dialogue between text and interpreter). This dialogue will be addressed in Part I of this article.

this article will suggest that by understanding the role of both the text (the mission statement) and the interpreter (the law school administration, faculty, students, etcetera) in interpreting and effectuating a law school's mission statement, a law school can carry out its mission in a way that both maintains the "core values" of the mission statement and remains functional in the ever-evolving law school environment.

Two things should be underscored at this juncture. First, the hermeneutic theory I am working with in this article is not a methodology for reaching objective meaning.⁵ Those familiar with the term have seen it in the context of biblical hermeneutics,⁶ historical hermeneutics,⁷ or romanticist hermeneutics,⁸ which imply the possibility of a clear methodology to reach objective interpretations.⁹ An underpinning of Gadamerian theory is that there is no absolute methodology for interpretation. Instead, interpretation is a result of the interaction between the text and the interpreter seeking to understand the text.¹⁰ While Ricoeur's approach differs from Gadamer's in many ways,¹¹ the two approaches compliment one another in the present context and in their relation to legal thought.

⁵ Gadamer rejects the idea that one can use any specific methodology to understand a text or glean an objective meaning. See GADAMER, TRUTH AND METHOD, *supra* note 3, at 476 (arguing that "objectifying procedures of natural science . . . [appear] to be an abstraction when viewed from the medium that language is"). *But see* GRONDIN, *supra* note 3, at 118 ("[U]nderstanding what is said cannot be reduced to a cognizing subject's intellectual comprehension of an objectivizable, isolable content.").

⁶ See BLEICHER, *supra* note 3, at 11–13 (providing a basic overview of the history of biblical hermeneutics); see also RUDOLF BULTMANN, FAITH AND UNDERSTANDING (Robert W. Funk ed. & Louise Pettibone Smith trans., SCM Press Ltd. 1969) (1966) (addressing Bultmann's theological hermeneutics, which while addressing biblical issues, are more appropriately considered an aspect of modern philosophical hermeneutics).

⁷ See BLEICHER, *supra* note 3, at 16–26 (providing a basic overview of historical hermeneutics); see also Eskridge, *supra* note 3, at 619–20 (discussing Gadamer's critique of historicism).

⁸ BLEICHER, *supra* note 3, at 13–16 (providing a brief overview of romanticist hermeneutics and discussing the important role of Schleiermacher who inspired Dilthey, one of the most important hermeneutic theorists). Dilthey played a significant role in regard to historical hermeneutics. See *id.* at 19–23.

⁹ See *id.* at 11–26.

¹⁰ See GADAMER, TRUTH AND METHOD, *supra* note 3; see also GRONDIN, *supra* note 3, at 106–37 (providing an overview of Gadamer's work in this area); Eskridge, *supra* note 3, at 614–24 (same).

¹¹ See BLEICHER, *supra* note 3, at 229–35.

Second, this article might prove most relevant to schools that have had trouble realizing their missions, or have failed to do so. It should be particularly useful to those schools that have abandoned any realistic attempt to live their mission statements because those statements seem out of touch with current realities, and have thus become simply lofty goals or inspirational statements with little practical significance. There are, of course, schools that are able to effectuate their missions daily—I happen to teach at one now. It appears that these schools engage in some of the give and take that I will discuss below,¹² at least implicitly, in order to realize their missions over time. Even for these schools, the approaches discussed below can be useful to help perpetuate this success. Of course, as will be seen, the nature of the mission statement itself plays an important role in facilitating or complicating this process.¹³

I. THE STRUGGLE BETWEEN TEXT AND CONTEXT: GADAMER, RICOEUR, AND THE SEARCH FOR MEANING

The purpose of this section is to provide a basic overview of Gadamerian and Ricoeurian hermeneutics.¹⁴ Continental philosophy can be difficult to penetrate for those with little formal training—as this author has personally experienced. It is part of a discourse that might, at first, seem alien to many law professors and lawyers. One of the goals of this section is to bridge this potential gap. Bridging the gap is well worth the effort given the major contribution this branch of philosophy has to offer, both in terms of the issues discussed herein and other issues of concern within the legal and academic communities.¹⁵

In this article, I will not attempt to provide an exhaustive discussion of Gadamer's philosophical hermeneutics or Ricoeur's hermeneutic theory. Gadamer's thought is focused on a universal concept of "being" far beyond the scope of this article,¹⁶

¹² See *infra* Part I.A.

¹³ See *infra* Parts I.C, II.

¹⁴ It might be more accurate to say that the purpose of this section is to provide a basic overview of Gadamerian hermeneutics and to explore those portions of Ricoeur's work that mediate some major criticisms of Gadamerian hermeneutics. See *infra* Part I.B. As will be explained, Ricoeur's hermeneutic theory is much broader than this. See RICOEUR, HERMENEUTICS AND THE HUMAN SCIENCES, *supra* note 3; RICOEUR, THE HERMENEUTICS OF ACTION, *supra* note 3, at 51–53.

¹⁵ See LEGAL HERMENEUTICS, *supra* note 3; see also Eskridge, *supra* note 3.

¹⁶ See generally GADAMER, TRUTH AND METHOD, *supra* note 3 (providing a

although his construct of interpretation, discussed below, is central to his broader work.¹⁷ Ricoeur's hermeneutics involves a melding of phenomenology and hermeneutic theory that also seeks a broad concept of understanding; this melding, however, cannot be addressed or explained adequately in this brief article.¹⁸ Instead, I will focus on how Ricoeur helps explain and mediate some of the concerns raised by Gadamer's theory—specifically, the concerns raised by Jürgen Habermas.¹⁹

A. Gadamer

Gadamer suggests that there is no absolute method of interpretation.²⁰ Each interpreter brings his or her own pre-understandings into the act of interpreting a text or a situation.²¹ Moreover, these pre-understandings are influenced by the tradition and social context in which the interpreter exists.²² This tradition provides the interpreter with a horizon that includes both her obvious predispositions and a range of more subtle ones.²³ This horizon can be influenced by many factors, including the social context in which interpretation occurs and the social bias and personal traits of the interpreter—all of which are influenced by tradition.²⁴

more in-depth discussion on this subject); *see also* GRONDIN, *supra* note 3, at 106–39 (providing an outstanding overview of Gadamerian hermeneutics).

¹⁷ *See* GADAMER, TRUTH AND METHOD, *supra* note 3. The term “universal” as used in this context should not be confused with “foundational.” *See id.* at 256–57, 350–51 (discussing Heidegger's fundamental ontology and universality of experience respectively).

¹⁸ *See* RICOEUR, HERMENEUTICS AND THE HUMAN SCIENCES, *supra* note 3; RICOEUR, THE HERMENEUTICS OF ACTION, *supra* note 3.

¹⁹ *See* PAUL RICOEUR, *Hermeneutics and the Critique of Ideology*, in HERMENEUTICS AND THE HUMAN SCIENCES, *supra* note 3, at 63 [hereinafter RICOEUR, *Hermeneutics and the Critique of Ideology*].

²⁰ *See generally* GADAMER, TRUTH AND METHOD, *supra* note 3, at 471, 522, 533–34; HANS-GEORG GADAMER, *Hermeneutics as Practical Philosophy*, in GADAMER, REASON IN THE AGE OF SCIENCE, *supra* note 3, at 88, 105 [hereinafter GADAMER, *Hermeneutics as Practical Philosophy*].

²¹ *See* GADAMER, TRUTH AND METHOD, *supra* note 3, at 265–71. Gadamer suggests that “[t]he concept of ‘prejudice’ is where [one] can start” when developing his or her own hermeneutical theory. *Id.* at 271.

²² *See id.* at 271, 533–34; *see also* Eskridge, *supra* note 3, at 621–22.

²³ *See* GADAMER, TRUTH AND METHOD, *supra* note 3, at 305 (“To acquire a horizon means that one learns to look beyond what is close at hand . . . in order . . . to see it better . . .”).

²⁴ *See id.* at 265–307.

Moreover, the text has its own horizon of meaning.²⁵ That horizon is influenced by the context or tradition in which it was written, factors influencing or interpreting it over the passage of time, the words used, and the context of the original author or authors.²⁶ Philosophical hermeneutics suggests that to understand a text, a give and take must occur between the text and the interpreter. It is a dialogue between one's being and the object that one seeks to understand.²⁷ This conversation transforms both the text and the interpreter as they engage in the exchange.²⁸

The interpreter must necessarily project his or her own horizon into the interpretive process and must also reflect upon it and the horizon of the text.²⁹ The horizon of the text has a binding quality because when an interpreter openly enters into dialogue with the text, the horizon of the text will limit the range of pre-understandings the interpreter can consistently project.³⁰ Because the text and the interpreter are engaged in a dialogue to reach a common truth, neither the text nor the interpreter are the sole source of meaning.

Unlike some earlier hermeneutic thinkers, Gadamer does not seek a scientific methodology for interpreting texts and experiences.³¹ In fact, he sees the quest for such absolute methods as interfering with the process of interpretation by obfuscating what is really occurring. It is not that interpretive methodology is useless, but rather that it does not do what it purports to do, that is, reach an objective and unquestionable meaning. The process of reaching meaning requires a constant dialogue between the text or object, and the interpreter. Thus, this process contains a subjective element. This subjectivity, however, is mediated by tradition.³²

²⁵ See *id.* at 369–70.

²⁶ See *id.* at 370, 374–75; GADAMER, *Hermeneutics as Practical Philosophy*, *supra* note 20, at 98 (suggesting that this may actually be an under-inclusive list).

²⁷ This dialogue is central to Gadamer's theory of interpretation in TRUTH AND METHOD, *supra* note 3.

²⁸ See GADAMER, TRUTH AND METHOD, *supra* note 3, at 265–66.

²⁹ See *id.* at 267 (“A person who is trying to understand a text is always projecting.”).

³⁰ See *id.*; Eskridge, *supra* note 3, at 627.

³¹ See *supra* note 10 and accompanying text.

³² See GADAMER, TRUTH AND METHOD, *supra* note 3, at 266–67, 276–77. Use of the term “context” instead of tradition, however, is preferred for reasons explained below. See *infra* note 49 and accompanying text.

Significantly, Gadamer does not believe that the lack of a clear interpretive method prevents one from reaching truth or understanding. It simply demonstrates that truth can be variable when different texts and interpreters engage in the hermeneutic dialogue, or when that dialogue is engaged in over time by the same interpreter. Contrary to the suggestions of some critics, this is not a form of relativism in which all interpretations are seen as equal and correct.³³ Interestingly, it rejects relativism in the sense that through a proper dialogue between the text and the interpreter, one can reach a better understanding of the text than one who simply assigns a reflexive meaning to the text and does not engage in such dialogue. Thus, while there is no clear interpretive method in Gadamerian hermeneutics, there is a better method for text and interpreter to interact to reach a meaning that is both consistent with the text and cognizant of the role the interpreter plays in reaching that meaning.

An illustration from the legal arena will be useful to enable the reader to apply this theory to law school missions in the next section, and to demonstrate that while this theory may seem abstract, it actually has practical significance.³⁴ This example is provided by the interpretive concepts of textualism and “plain meaning,” which are sometimes utilized in constitutional and statutory construction. The hermeneutic theory discussed in this article suggests that the “plain meaning” of a law may not be nearly as “plain” as a court presumes, and that the methods ascribed to textualism do not lead to the “true” meaning of the text being interpreted—although they may be a useful part of the dialogue in appropriate cases.

This should not come as a shock given the fact that there are many cases in which “plain” meaning was divined in a five to four opinion of the Supreme Court overturning an opinion of an appeals court panel or state supreme court.³⁵ In such cases, five

³³ See GRONDIN, *supra* note 3, at 142 (“Those who talk about relativism presuppose that there could be a truth without the horizon of this conversation—that is, an absolute truth separate from our questions.”).

³⁴ Gadamer himself sees hermeneutics as a practical philosophy. See generally GADAMER, *Hermeneutics as Practical Philosophy*, *supra* note 20; HANS-GEORG GADAMER, *Hermeneutics as a Theoretical and Practical Task*, in GADAMER, REASON IN THE AGE OF SCIENCE, *supra* note 3, at 113.

³⁵ See LAWRENCE M. SOLAN, THE LANGUAGE OF JUDGES 55–63 (1993) (documenting a capital punishment case on the interpretation of jury instructions).

Justices may find on the face of a statutory provision that it is only subject to one interpretation, despite the fact that four other Justices, and a number of lower court judges did not find the meaning that was gleaned to be plain.³⁶ Moreover, once plain meaning is found, courts generally do not look at legislative history, context, or administrative interpretations, even when these sources provide direct evidence that the supposedly plain meaning was not intended by the authors of the statutory provision and is not the most logical interpretation of it in context.³⁷ It has been suggested with some force that in these cases, plain meaning is used as an allegedly objective methodology to justify a decision reached for other reasons.

Hermeneutic theory seeks to understand these other reasons and provide a basis for a dialogue between the judge or judges, as interpreter, and the statutory or constitutional provision, as text, which will enable a more open and honest interpretation. To do so, one must look to the horizon and context/tradition of the text, and apply it to the situation at hand—all while understanding and acknowledging that in applying it, we are mediating it through our own lens, which is influenced by our personal contexts and traditions.

The use of tradition in Gadamerian hermeneutics has been the subject of a great deal of controversy.³⁸ After all, if Gadamer were suggesting that tradition set the boundaries for interpretation, there would be significant limits on the ability of those outside a given tradition, or those oppressed and marginalized by it, to effectuate change. Jürgen Habermas has criticized Gadamer on this very point.³⁹ Habermas is a

³⁶ See *id.*

³⁷ An excellent example of this is provided by *Sutton v. United Airlines*, 527 U.S. 471 (1999). This decision was severely criticized for failing to consider these factors in Frank S. Ravitch & Marsha B. Freeman, *The Americans With "Certain" Disabilities Act: Title I of the ADA and the Supreme Court's Result Oriented Jurisprudence*, 77 DENV. U. L. REV. 119 (2000).

³⁸ See Eskridge, *supra* note 3, at 624–32 (providing a general overview of the major attacks on Gadamer's theory). This article will only focus on the controversy between Gadamer and Jürgen Habermas. An excellent overview of this debate is contained in BLEICHER, *supra* note 3, at 152–64, and Jürgen Habermas, *The Hermeneutic Claim to Universality*, in BLEICHER, *supra* note 3, at 181 [hereinafter Habermas, *The Hermeneutic Claim to Universality*].

³⁹ See BLEICHER, *supra* note 3, at 155 (criticizing Gadamer's reluctance to engage in abstract thinking); Habermas, *The Hermeneutic Claim to Universality*, *supra* note 38.

proponent of critical hermeneutics and the critique of ideology, which seeks, among other things, to understand the role of social hierarchy and bias, and to empower people to overcome such stratification. As Paul Ricoeur succinctly put it:

The gesture of hermeneutics is a humble one of acknowledging the historical conditions to which all human understanding is subsumed in the reign of finitude; that of the critique of ideology is a proud gesture of defiance directed against the distortions of human communication. By the first, I place myself in the historical process to which I know that I belong; by the second, I oppose the present state of falsified human communication with the idea of an essentially political freedom of speech, guided by the limiting idea of unrestricted and unconstrained communication.⁴⁰

Therefore, Gadamer's reliance on tradition is naturally troubling for Habermas. Indeed, if Habermas' initial concerns about Gadamer's use of tradition were accurate, the implications would be troubling for many who support Gadamer's approach—including Gadamer.

As it turns out, however, Gadamer's use of tradition is not nearly as conservative as Habermas initially thought.⁴¹ Gadamer does not see tradition as an insurmountable barrier, but rather, as a reality that influences interpretation, one which must be understood to effectuate change.⁴² If one really wants to effect change, one must be cognizant of the factors that influence the current system—to Gadamer, tradition is the biggest such factor. The debate between Gadamer and Habermas forced Gadamer to clarify this, and ironically demonstrated that the two approaches are not necessarily mutually exclusive.⁴³ Ricoeur has done a truly brilliant job of demonstrating this.⁴⁴

Thus, "tradition" in the context of Gadamerian hermeneutics

⁴⁰ RICOEUR, *Hermeneutics and the Critique of Ideology*, *supra* note 19, at 87.

⁴¹ See GRONDIN, *supra* note 3, at 129–35 (explaining the shift within hermeneutic philosophy to include the claim of universality propounded by Habermas); see also RICOEUR, *Hermeneutics and the Critique of Ideology*, *supra* note 19, at 63 (explaining how hermeneutic philosophy goes beyond social science and into philosophy in general); Eskridge, *supra* note 3, at 630–32.

⁴² See GADAMER, TRUTH AND METHOD, *supra* note 3, at 269–70 (explaining that tradition is part of the understanding of text, not a hindrance).

⁴³ See GRONDIN, *supra* note 3, at 131–33 (stating that Gadamer believed that tradition could be used to help understand the current context).

⁴⁴ See RICOEUR, *Hermeneutics and the Critique of Ideology*, *supra* note 19, at 87–100 (explaining the role of tradition in contemporary hermeneutics).

is not an absolute boundary to interpretive possibilities. Instead, it is a significant factor in shaping the horizons of both the text and the interpreter, a factor that is necessarily injected into the interpretive process—the dialogue between text and interpreter. Gadamer learned this from Heidegger who asserted that “our existence is inherently contextual—we are ‘thrown’ into a pre-existent world—our understanding is conditioned by the traditions of the world into which we are thrown.”⁴⁵ Thus

[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. . . . [T]he initial meaning emerges only because he is reading the text with particular expectations in regard to a certain meaning.⁴⁶

The interpreter seeks to work out his pre-understandings in light of the text. Thus, the interpreter does not seek to simply confirm his pre-understandings, but rather, to determine which, if any, of the pre-understandings are consistent with the horizon of the text.⁴⁷ This can only occur through a reflective dialogue between the text and the interpreter, where the interpreter is willing to give up pre-understandings that do not work out in light of the text.⁴⁸

Perhaps it is a result of my own horizon when I read Gadamer, but I prefer the term “context” to the term “tradition.” Tradition implies something that necessarily comes from the past, but when one reads Gadamer, it is apparent that tradition, as he uses that term, is influenced by present context as well.⁴⁹ Tradition shapes our present, but present circumstances shape the path of tradition. Moreover, in our pluralistic, complex, and ever-changing society, with almost unlimited access to information, context may be a more accurate term. Like Gadamer’s use of the term tradition, context includes, but is not limited to, our social context, biases, and preferences. Even if it is only a matter of semantics, context seems a better term, especially in light of the concerns raised by Habermas.

⁴⁵ Eskridge, *supra* note 3, at 621 (citing GADAMER, TRUTH AND METHOD, *supra* note 3, at 265–71).

⁴⁶ GADAMER, TRUTH AND METHOD, *supra* note 3, at 267.

⁴⁷ *See id.* at 269 (stating that the reader of the text is waiting for the text to tell him something and apply it to what he or she already believes or knows).

⁴⁸ *See id.* at 269 (“The hermeneutical task becomes of itself a questioning of things.”).

⁴⁹ *See id.* at 266–68.

Therefore, in this article I sometimes use the term “context” in place of the word “tradition.”

In his wonderful article, *Gadamer/Statutory Interpretation*, William Eskridge, Jr. provides an excellent summary of the interpretive dialogue envisioned by Gadamer, noting that

[j]ust as the horizon of the text changes over time, partly through interpretive encounters, so too the interpreter’s viewpoint, or horizon, is transformed in the encounter. The historical conditioning of our understanding does not preclude revising our pre-understandings in light of the text. The dynamic process of interpretation works thus: Upon our first approach to the text, we project our pre-understandings onto it. As we learn more about the text, we revise our initial projections, better to conform with the presumed integrity of the text as it unfolds to us. Essential to the interpreter’s conversation with the text is her effort to find a common ground that will both make sense out of the individual parts of a text and integrate them into a coherent whole. The assumption that the text has something to teach us, therefore, exercises a constraining influence on interpreters.⁵⁰

The dialogue between text and interpreter enables the interpreter to shed biases and pre-understandings that are inconsistent with the horizon of the text, but the remaining horizon of the interpreter has a similar impact on the possible meanings of the text. Thus, the dialogue is a two way process: The horizon of the interpreter influences the meaning of the text and the horizon of the text limits the range of pre-understandings the interpreter can project that will work out in light of the text.

B. Ricoeur

As noted above, my discussion of Ricoeur’s work will focus only upon the ways in which Ricoeur’s concept of interpretation helps explain and mediate some of the concerns raised by Gadamer’s theory. Given the purpose of the present discussion, this is appropriate, but it is essential to point out that Ricoeur’s work is much richer and deeper than the small piece of it discussed in this article may suggest.⁵¹ If all Paul Ricoeur had done in the discourse of hermeneutics was clarify the nature of

⁵⁰ Eskridge, *supra* note 3, at 627.

⁵¹ See *supra* note 18 and accompanying text.

Gadamer's work in light of Habermas' criticisms, and thus to an extent, mediate the perceived conflict between philosophical hermeneutics and the critique of ideology, his contribution would have been significant.⁵² This, however, is only a small piece of his body of work in this area—a body of work that could be called exceptional rather than merely significant.⁵³

In mediating the dispute between Habermas and Gadamer, it is clear that Ricoeur has significant differences with the traditionalism he sees in Gadamerian hermeneutics.⁵⁴ He acknowledges that this does not make hermeneutics inherently conservative and tradition-preserving, nor does it make it a bar to an emancipatory goal.⁵⁵ Habermas' critique of Gadamer suggests that the role of tradition in his hermeneutics precludes a critique of ideology, for if we are constrained by our tradition in interpreting the world around us, we will not see the oppression wrought by our ideology.⁵⁶ Ricoeur explains that this supposed tension may be nothing more than a "straw-man;" in fact, philosophical hermeneutics and its focus upon tradition may not conflict with a critique of ideology and emancipatory goals.⁵⁷

In addressing this supposed conflict, Ricoeur initially notes:

I hasten to say that no plan of annexation, no syncretism, will preside over this debate. I readily admit, along with Gadamer, that each of the two theories speaks from a different place; but I hope to show that each can recognise the other's claim to universality in a way which marks the place of one in the structure of the other.⁵⁸

Later in the same essay, Ricoeur addresses why it may be consistent to focus upon the past and cultural influence/tradition, as well as an ideology of emancipation from the domination of oppressive ideologies:

⁵² See RICOEUR, *Hermeneutics and the Critique of Ideology*, *supra* note 19, at 87–100 (indicating that each school of thought raises its own legitimate claims).

⁵³ See BLEICHER, *supra* note 3, at 217–56 (explaining the importance of Ricoeur's work and including a translation of one of his works).

⁵⁴ See RICOEUR, *Hermeneutics and the Critique of Ideology*, *supra* note 19, at 87–95.

⁵⁵ See *id.* at 87–100.

⁵⁶ See GRONDIN, *supra* note 3, at 129–35; Eskridge, *supra* note 3, at 630–32.

⁵⁷ See RICOEUR, *Hermeneutics and the Critique of Ideology*, *supra* note 19, at 96–97.

⁵⁸ *Id.* at 64.

The task of the hermeneutics of tradition is to remind the critique of ideology that man can project his emancipation and anticipate an unlimited and unconstrained communication only on the basis of the creative reinterpretation of cultural heritage. If we had no experience of communication, however restricted and mutilated it was, how could we wish it to prevail for all men and at all institutional levels of the social nexus? It seems to me that critique can be neither the first instance nor the last. Distortions can be criticised only in the name of a *consensus* which we cannot anticipate merely emptily, in the manner of a regulative idea, unless that idea is exemplified; and one of the very places of exemplification of the ideal of communication is precisely our capacity to overcome cultural distance in the interpretation of works received from the past. He who is unable to reinterpret his past may also be incapable of projecting concretely his interest in emancipation.⁵⁹

If, as Ricoeur suggests, we engage in a “creative reinterpretation” of our cultural heritage, the implications for present purposes are significant. In the course of the dialogue between text and interpreter,⁶⁰ the law school community, as interpreters, might reinterpret the mission statement in light of some overriding concern with the ideology underlying it. If such a creative reinterpretation were totally inconsistent with the horizon of the text, this would directly conflict with Gadamer’s approach, but as Ricoeur implies, the horizon of the interpreter(s) may allow for creative reinterpretation of a text that is consistent with both its horizon and current social concerns, and which may call into question the ideology underlying the text.

The debate between Habermas and Gadamer, and Ricoeur’s attempt to demonstrate common ground, are far less important in the context of law school mission statements. It is worthwhile, however, to include this discussion of Ricoeur because a discussion of Gadamerian hermeneutics is likely to raise some of the concerns expressed by Habermas. Because few in the legal community are familiar with Gadamer, it is important to anticipate and address such concerns with his emphasis on tradition in advance because, as he and Ricoeur point out, that emphasis is not at all inconsistent with change or

⁵⁹ *Id.* at 97.

⁶⁰ It should be noted here that Ricoeur does not necessarily see the process of interpreting a written text as one of dialogue. *See id.* at 91.

emancipatory goals. In fact, the hermeneutic approach might facilitate those goals. As noted in the preceding paragraph, this creates a broader conception of the possibilities opened up by the interpretive process than that which a reader might experience if she were only exposed to Gadamer's initial framing of the concept in *Truth and Method*.⁶¹ Again, quoting Ricoeur: "[N]othing is more deceptive than the alleged antinomy between an ontology of prior understanding and an eschatology of freedom [between Gadamer's concept of the role of tradition and Habermas' focus upon overcoming oppression and domination]. We have encountered these false antinomies elsewhere: as if it were necessary to choose between reminiscence and hope!"⁶²

C. *The Implications of Hermeneutic Theory in the Present Context*

Hermeneutic theory is ideal for understanding the failure of many schools to realize their missions, and it also provides a means for interpreting those missions in order to enable their realization in the modern context. Some schools may have mission statements that, at least on paper, seem out of touch with the current realities facing the law school, its faculty, and students.⁶³ In addition, outside influences such as accrediting bodies may affect the ways in which schools carry out their missions.⁶⁴ Indeed, if schools look at the text of a mission statement alone, the stated mission might seem impossible to achieve, out of date, or overly broad in the world of the twenty-first century law school. This may lead to a view that the mission statement is simply advisory or an unattainable "wish-list" of sorts.

When a school operates day-to-day while ignoring the existence of its mission, that school has lost an opportunity to define itself, its goals, and the changes it wants to make in the world and in the lives of its faculty and students. This latter point is especially important for religious schools, regardless of

⁶¹ In this regard it should be noted that Gadamer himself opposed such a cramped conception of the interpretive process. See GRONDIN, *supra* note 3, at 129-35.

⁶² RICOEUR, *Hermeneutics and the Critique of Ideology*, *supra* note 19, at 100.

⁶³ See generally Barkan, *supra* note 1.

⁶⁴ See *id.* at 249 (suggesting this influence is a factor to one degree or another, with some seeing it as a factor secondary to more informal challenges facing these schools).

whether the mission reflects a specific religious heritage or simply a distinct ethical commitment.⁶⁵

Through the give and take between the mission text and the text's interpreter (the current law school administrator, professor, or student), a mission can be revitalized by maintaining its core values, while at the same time avoiding unnecessary conflict with the horizon of the interpreter. The interpreter is prevented from ignoring the text of the mission statement by the horizon of the text, but at the same time can interpret the mission statement so that it is consistent with evolving social context and reality.⁶⁶ In this way, a school can realize its mission even as times change. The mission does not become obsolete because it is not textually absolute.

Another implication of hermeneutic theory to law school mission statements involves the drafting or revision of mission statements. In writing the text of a mission statement, a school is shaping, although not absolutely determining, the horizon of the mission statement. Naturally, the drafters of mission statements are careful about the goals they seek to express. If they draft a statement too narrowly, it might be ignored after time for the reasons set forth in the next section. Conversely, if it is drafted too broadly, the horizons of different interpreters over the years could easily lead to interpretations inconsistent with the drafter's core objectives—from a hermeneutic perspective, there is nothing necessarily wrong with this. The drafters should consider focusing on the core values they seek to infuse into the mission, and draft the statement so that these core values infuse it throughout; yet it should be drafted broadly enough to allow the manner in which those values are realized to change over time.⁶⁷

An excellent example of the requisite balance is the Barry University mission statement. It contains a core of important

⁶⁵ By "distinct ethical commitment," I mean a mission statement at a religiously affiliated law school that does not reflect a sectarian mission, but does reflect a religious dimension and/or a distinct commitment to ethics and making the world a better place.

⁶⁶ See *supra* Part I.A.

⁶⁷ While the passage of time and the horizon of future interpreters might alter the intended meaning of the drafters, if those drafters understand the hermeneutic dialogue that will be engendered by the text, they can try to shape the horizon of the text in a manner that will project a somewhat consistent conception of core values into future dialogues with interpreters.

values such as a commitment to ethics, serving the under-served, a religious dimension, and so forth. Furthermore, the mission statement is worded broadly enough to allow these goals to be achieved in a variety of ways as times change and pluralism increases.⁶⁸ This enables the core values to be an inescapable aspect of the horizon of the text while allowing interpreters with differing horizons to understand the text and make it their own over time.⁶⁹ The way the core values are lived and effectuated may change, but those changes do not erase the core values themselves. While some of the words of the mission statement could be subject to a much narrower reading, the text as a whole and the horizons of those who have interpreted it over the years make such a reading inconsistent with the text as a whole.

While Barry is a Catholic university, the ethical commitment and religious dimension reflected in the mission statement are augmented by a commitment to diversity that enables the school to welcome faculty and students from a diverse array of faiths or no faith at all. We share a commitment to ethical behavior and helping those in need, and our diversity enhances these goals. Thus, while I am Jewish and rather liberal, I am, along with all my colleagues, part of Barry's inclusionary mission. We are not marginalized—that would be inconsistent with the caring environment aspect of the mission. Thus, despite our differing horizons, we can “live the mission”

⁶⁸ The core of the Barry University Mission Statement is as follows: “The primary purpose of Barry University, as stated in the Charter, is to offer students a quality education. Furthermore, Barry commits itself to assuring a religious dimension and to providing community service and presence within a more caring environment.” *Barry University Mission* (visited Feb. 1, 2001) <<http://www.barry.edu/About-BU/misaccre.htm>>.

⁶⁹ A recent example of this is the addition of the law school to Barry University. The law school is diverse both in terms of students and faculty. A number of the faculty and students, including myself, are not Catholic or even Christian. We can embrace the mission, however, because from the start it was clear that Barry is less concerned about what faith you are than about how you live your life. Do you really care about making a difference in the community through your scholarship, teaching, community service, or the like? Do you really care about providing a quality legal education to your students and fostering a caring environment? These are the questions that matter most, and the mission is interpreted to foster creativity and diversity in the ways the mission is carried out. There has been tremendous support for the clinical program and community service activities, and the law school greatly encourages scholarship. For example, when one writes an article that has the potential to help someone down the road, or engages in pro bono work, or simply takes some extra time to help a struggling student, she is thereby contributing to the mission.

because of its inherent flexibility and the fact that the school has continued to interpret the mission in a manner that maintains the core values with such flexibility. Barry University, along with other schools that successfully realize the ideals embodied in their mission statements, is instinctively engaging in the hermeneutic dialogue.

II. APPLYING HERMENEUTIC THEORY TO REALIZE THE IDEALS CONTAINED IN LAW SCHOOL MISSION STATEMENTS

At the First Conference of the Religiously Affiliated Law Schools, held at Marquette University Law School in 1994, a number of the participants pointed out the difficulties faced by law schools, particularly religiously affiliated law schools, in realizing their core missions.⁷⁰ Some focused on internal pressures such as economic concerns or shifts in the orientation of faculty, administration, and students.⁷¹ Others focused on external pressures such as the requirements of accrediting bodies, the larger university community, and the views of peers.⁷² All of these factors could easily contribute to a school's failure to realize its mission, especially if that mission is perceived as being at odds with the current situation facing the school. As I will suggest below, however, this need not be the case, because the core values underlying the mission statement may be realized if the mission statement is approached from a hermeneutic perspective.

One caveat that should be noted here is that the suggestions

⁷⁰ See generally, *Symposium on Religiously Affiliated Law Schools*, 78 MARQ. L. REV. 247 (1995).

⁷¹ See Lynn R. Buzzard, *A Christian Law School: Images and Vision*, 78 MARQ. L. REV. 267 (1995) (discussing how factors relating to identity and those relating to environment are crucial in realizing the vision of a Christian law school, which is usually distorted by each person's own perception of what a Christian law school should be); Douglas Laycock, *Academic Freedom, Religious Commitment, and Religious Integrity*, 78 MARQ. L. REV. 297 (1995) (discussing methods the schools could employ to prevent shifts in faculty); Steven R. Smith, *Accreditation and Religiously Affiliated Law Schools*, 78 MARQ. L. REV. 361 (1995) (discussing how the accreditation process affects religiously affiliated schools through affirmative action and other programs).

⁷² See Robert A. Destro, *ABA and AALS Accreditation: What's "Religious Diversity" Got To Do With It?*, 78 MARQ. L. REV. 427 (1995) (focusing specifically on accrediting bodies). Other symposium participants considered accrediting bodies as a secondary issue. See Buzzard, *supra* note 71; Laycock, *supra* note 71; Smith, *supra* note 71.

below might not be as useful for a religious institution with a highly sectarian mission statement that is in tension with modernity, and the issues facing law schools in the twenty-first century. In such a case, the mission statement will foreclose some of the give and take between text and interpreter.⁷³ Of course, the hermeneutic thought discussed in this article might be useful even in the context of such a limiting mission statement. While my application of hermeneutic theory in this section helps to moderate between the interpreter living in the present and a broadly designed text that may have been created under a very different set of conditions, it could still moderate between a much narrower text and the modern interpreter.

From a hermeneutic perspective, there are several key possibilities that might explain why so many law schools have trouble realizing their missions. One of the most obvious is the absolute failure of dialogue between text and interpreter. If law school administrators and others within the law school community see the school's mission statement as out of touch with current reality, they may simply ignore it. It then becomes merely words on paper. If the law school community does not engage in a dialogue with the text, there will be no opportunity to glean the core values embodied in the mission statement or their possible relevance to the school's current situation. Instead of exploring whether there is a way to effectuate the core values of the mission statement in light of the horizon of the modern law school, the school will take the path of least resistance, and over time, the mission statement becomes irrelevant.

Another possibility is that the school does remember its mission, and instead of attempting to engage in an ongoing dialogue with the mission statement to carry it on through time, the school sees it as an unattainable "wish list," or as simply a suggestion. Perhaps even more cynically, a school may see it as nothing more than a marketing tool. Such a school may sometimes act consistently with its mission, but there is no concerted attempt to realize that mission or to understand the

⁷³ This give and take will be foreclosed unless the interpreter seeks to "creatively reinterpret" the mission statement because of a concern that it embodies an ideology inconsistent with the current goals of the school and/or social conscience, and the horizon of the text does not foreclose the possibility of such a creative reinterpretation (which would require an exceptionally narrow and closed ended text). See *supra* text accompanying notes 59–62 (discussing creative reinterpretation in the context of the Habermas/Gadamer debate).

possibilities it opens up. This may be because the “wish list” seems impossible to achieve given the current realities facing the school. Yet, as Gadamer suggests, only a rigid reading of the text would preclude its horizon and that of the school from coming together to give the text life despite ever-changing circumstances.⁷⁴ There is nothing inconsistent with a mission statement that is effectuated differently over time, so long as the core values are realized. There is also nothing wrong with reinterpreting those core values as the distance of time sheds additional light on the possible range of meanings presented by the text’s horizon.⁷⁵ The key is that neither the text nor the interpreter can be taken out of the search for meaning.

Unfortunately, because the current context facing a school might make the text of the mission statement seem alien, or unattainable, there may be no ongoing dialogue between the text and the interpreter. The text may be seen as absolute and problematic. For example, the current law school community, including administrators, faculty, and students, may feel the mission statement must be interpreted based on the intent of its drafters who are known to have had a more narrow view of its meaning. This historically embedded belief may be projected into the text and limit the possibilities the text could otherwise open up.

All of this suggests why so many schools have not realized their missions over time. Ultimately, when the interpreter does not interact with the text, or views the text as outdated, useless, or simply suggestive, it is easier to overlook the text altogether if it appears to conflict with issues and context currently confronting the interpreter. If, however, law schools, including faculty, students, and administrators, are able to engage in a give and take with the text, that text may be revitalized and useful without losing its core aspirations.

What might this process look like? As suggested above, when the interpreter initially engages with the text, the interpreter is likely to project his or her pre-understandings onto it,⁷⁶ including biases that mission statements are not terribly important, up to date, or practical. At the same time, the

⁷⁴ See *supra* Part I.A.

⁷⁵ See GADAMER, TRUTH AND METHOD, *supra* note 3, at 297–99.

⁷⁶ See *supra* notes 21–24 and accompanying text; see also *supra* note 50 and accompanying text.

interpreter may hold other pre-understandings, that is, goals he or she wants the school to achieve that may seem to conflict with the mission. This includes concerns about current problems in the local community, nationally, or internationally, that need to be addressed, a view of the world that values diversity or does not, etcetera. After carefully reviewing and reflecting upon the text, the pre-understandings initially projected onto the text may be revised if they do not agree with the text as it unfolds to the interpreter.⁷⁷ The interpreter must seek to find a common ground with the text.⁷⁸ In doing so, the interpreter's other pre-understandings might find some consistency with underlying values inherent in the mission statement when it is viewed as a "coherent whole."

If there are parts of a statement that seem to conflict with the horizon of the interpreter and the meaning of the statement when read as whole, the interpreter will seek to integrate them into the coherent whole. The interpreter will try to find some common ground that allows the interpretation to proceed.⁷⁹ If this can not be done, the interpreter may need to reevaluate the basis for common ground with the text and continue the dialogue to reach such a goal. Even if the statement seems to embody an ideology inconsistent with the goals of the school or one that might marginalize groups that the school seeks to welcome, the text could be creatively reinterpreted by exposing and rejecting the imposing ideology. At the same time, it may discover and effectuate other values that are consistent with the school's current horizon and social conscience. In this case, as Ricoeur suggested, by critically evaluating the "tradition," the interpreter can identify and challenge the oppressive ideology embodied in it,⁸⁰ and through creative reinterpretation, continue the life of the text. If the mission statement turns out to be truly incapable of standing on common ground with the interpreter's horizon, it could be amended, still rendering the dialogue productive.⁸¹

⁷⁷ See *supra* note 50 and accompanying text.

⁷⁸ See *id.*

⁷⁹ See *id.*

⁸⁰ See RICOEUR, *Hermeneutics and the Critique of Ideology*, *supra* note 19, at 97.

⁸¹ The interaction between text and interpreter will have found a meaning for the text that requires amendment to fulfill the school's mission as viewed by the interpreter, in this case, the interpretive community of the school. Still, the mission statement will have been acknowledged and thought about. The end result will be a

The text constrains the possible range of interpretations the interpreter can give the mission statement, but the horizon of the interpreter may expand the possibilities created by the text.⁸² Thus, the process of dialogue between the law school and its mission statement can open up possibilities for realizing the stated mission that would not have seemed possible if the statement were viewed as textually absolute, either because of the perceived intent of its drafters or the words used. It is axiomatic in the philosophical hermeneutic context that the subjective intent of, or the words used by, the drafters does not absolutely dictate the possibilities opened up by the text.⁸³ The text must be interpreted in such a way to give it life, and in the act of interpretation both the text and the interpreter are transformed.⁸⁴ Therefore, law school missions can be realized differently over time.

This is not simply theory. Think about a school that has made no effort to realize its stated mission in recent years. It may be doing some things consistent with that mission, but it has not directly sought to fulfill it. If the school continues to ignore the mission, it loses the opportunity to interpret it, but if the school seeks to engage its mission in dialogue, it may find consistency between some of its institutional values/concerns and those reflected in the mission. From this common ground, the school can continue the dialogue with its mission statement so that the core values embodied therein can be effectuated in the school's current context. The result may not be exactly what the drafters of the statement intended yet it could still be consistent with their underlying intent. Because the drafters may not have foreseen the factors influencing the school's horizon, there is no reason their specific intent should govern the dialogue.⁸⁵ Rather their broader intent, the core values, may be realized over time.⁸⁶ If nothing else, the process of engaging the

new mission statement capable of being carried out; a mission statement that may have never come into existence but for the dialogue between its predecessor and the interpretive community.

⁸² See *supra* Part I.A.

⁸³ See *supra* Part I.A.; Eskridge, *supra* note 3, at 624–25.

⁸⁴ See *supra* Part I.A.

⁸⁵ See Eskridge, *supra* note 3, at 624–25. This is also reflected in Gadamer's understanding of the dialogue between text and interpreter, temporal distance, and "meta-intent." *Id.*

⁸⁶ See *id.*

mission statement in dialogue of the sort envisioned by Gadamer should stimulate ideas and foster constructive discourse.

CONCLUSION

A world of possibilities opens up when schools actively seek to engage in dialogue with their mission statements. As Gadamer suggested, an interpreter must be willing to engage the text in dialogue in order to understand it. In the context of law school mission statements, such dialogue would be useful because it will force each school to think about its mission and what it means, and can mean, to the school today. As Gadamer might say, the dialogue would unfold the world of possibilities raised by the text. Moreover, the dialogue will enable schools grappling with the task of realizing their missions over time to determine what those missions mean both in light of the text of the mission statement and the continually evolving context of the school.

Schools that have not tried to realize their missions might find the concepts described herein a useful way to begin the process. For those that have partially realized their missions, the hermeneutic approach offers the possibility of understanding those missions better, so that they can be further realized despite changing circumstances and dynamics. Finally, for schools that are effectively realizing their missions, hermeneutic philosophy provides the hope of continued realization of those aspirations well into the future. One thing is certain, if schools do not interact at all with their mission statements, those statements are mere words on paper, and will almost certainly never be realized.