

The Practice of Hermeneutics: The Legal Text and Beyond

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Abstract

This article attempts to show the continuing practical relevance of hermeneutics through the example of legal interpretation. The article begins with the very concrete nature of legal hermeneutics that forms everyday legal practice—the interrelation of meaning and application—and expands at a more theoretical to show how legal hermeneutics, and hermeneutics more generally, offers what Ricoeur calls an interpretive “choice in favor of meaning.” The choice in favor of meaning underscores the restorative character of hermeneutics that legal hermeneutics can epitomize. The article concludes with some of the challenges facing contemporary legal hermeneutics.

Key terms *Ricoeur, Gadamer, hermeneutics, legal hermeneutics, critical hermeneutics*

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In many parts of the world, the humanities are in a state of crisis.² Due to government and private economic difficulties, funding for the humanities in many universities is facing significant challenges. In similar fashion, many students are being urged to direct their attention away from the humanities to supposedly more viable careers in business, economics, and practical sciences such as engineering. A candidate in the United States running for the 2016 Republican Party nomination for President declared that university philosophy students would be better off to enter the vocation of welding.³ Closer to our own concerns, some current hermeneutic scholars wonder whether hermeneutics will be taught by generations of future scholars.⁴

In response to these troubling developments, defenses of hermeneutics can be raised at the levels of both theory and practice. While, as I will indicate, I support the ambitions of hermeneutics at the level of theory, I want to concentrate on hermeneutics as an eminently practical activity very much worth preserving and extending. I offer some thoughts on the insights of practical hermeneutics from the vantage point of my home field, law. My argument develops eight motifs about legal hermeneutics and moves

² Nash Jenkins, “Alarm Over Huge Cuts to Humanities and Social Sciences at Japanese Universities,” *Time*, September 16, 2015, <http://time.com/4035819/japan-university-liberal-arts-humanities-social-sciences-cuts/>; Alex Preston, “The War Against Humanities at Britain’s Universities,” *The Guardian*, March 29, 2015, <http://www.theguardian.com/education/2015/mar/29/war-against-humanities-at-britains-universities>; Ella Delany, “Humanities Studies Under Strain Around the Globe,” *New York Times*, December 1, 2013, http://www.nytimes.com/2013/12/02/us/humanities-studies-under-strain-around-the-globe.html?_r=0.

³ Alan Rappeport, “Philosophers (and Welders) React to Marco Rubio’s Debate Comments,” *New York Times*, November 11, 2015, <http://www.nytimes.com/politics/first-draft/2015/11/11/philosophers-and-welders-react-to-marco-rubios-debate-comments/>.

⁴ The pressures arise due to cuts in philosophy programs and, a separate issue, the apparent loss in programs that support continental philosophy faculty as they become increasingly analytic in orientation over time. Due to these factors, there is significant anecdotal evidence of the struggles of younger hermeneutic scholars to find full-time academic positions.

from the more specific to the more general. Along the way I offer some thoughts on the interrelation between hermeneutic practice and hermeneutic theory more broadly as informed by legal hermeneutics. I want to consider what may be the abiding and fundamental contributions of hermeneutics both to contemporary discourse and to the difficult task of confronting our many contemporary problems.

The Relevance of Hermeneutics to Legal Practice

Motif one begins with the inextricability and creativity of hermeneutics in relation to legal practice. I would raise three subcategories here. I start off with some considerations that may seem ordinary but relate the inextricable value of hermeneutics to legal evaluation. First, hermeneutics forms the very concrete basis of everyday legal practice as lawyers seek to interpret legal texts. In a course on Legislation and Regulation I teach to first-year law students, for example, we analyze the ways that interpretation is involved at all stages of understanding a legal text: is the meaning of a word itself ordinary or technical; is the meaning of a disputed word in a phrase informed by other terms in a list; is there parallelism across sentences or across paragraphs or, indeed, across the meaning in different statutes? Many students find the task of text interpretation difficult, particularly because it does not contain building blocks within one doctrinal area, as do most of their other courses. Plus, even at these more specific levels there is debate about interpretive approaches, and interpretive canons that must address countercanons. But students come to appreciate that the process of interpretation allows for a critical lens that can finely assess what may be at issue in evaluating the meaning of a contested passage. Hermeneutics here is very practical and very useful.

In a second subcategory of motif one, this stage also reminds us why Gadamer spoke of “the exemplary significance of legal hermeneutics” to hermeneutics more generally.⁵ Legal meaning must be determined not in abstraction but through application to the specific factual and legal context presented. Unless a law is unusually composed to address one specific factual circumstance, its words are more general, and the interpretive question arises of how to translate those generalities to apply to the factual and legal delineations of a particular case. My students learn that in the United States a major interpretive debate lies between those commentators and judges who advocate for an “originalist” approach to meaning—that attempts to restrict application to the original meaning of textual terms at the time of enactment—and a more “purposivist” approach—which permits the meaning of terms to evolve dynamically over time.⁶ For example, a case recently before the U.S. Supreme Court required interpretation of an essential provision of President Obama’s health care Act, and the outcome was determined by whether justices in favor of a more literal originalist approach secured a majority or whether justices in favor of a more purposive approach did. In that case, the more purposive approach prevailed.⁷

The hermeneutics of Gadamer and Ricoeur, as opposed to that of Betti,⁸ supports the more purposive and dynamic approach of the majority decision. Gadamer rejects the attempt to follow “original

⁵ Hans-Georg Gadamer, *Truth and Method*, 2nd rev. ed., trans. Joel Weinsheimer and Donald G. Marshall (New York: Crossroad, 1992), 324.

⁶ For a discussion, see George H. Taylor, “Ricoeur and Law: The Distinctiveness of Legal Hermeneutics,” in *Ricoeur Across the Disciplines*, ed. Scott Davidson (New York: Continuum, 2010), 84–101.

⁷ *King v. Burwell*, 135 S.Ct. 2480 (2015).

⁸ See Emilio Betti, “Hermeneutics as the General Methodology of the *Geisteswissenschaften*,” in *Contemporary Hermeneutics*, ed. J. Bleicher (Boston: Routledge and Kegan Paul, 1980), 51–94.

meaning” as a “legally untenable fiction,” because we always find ourselves at a distance from the original understanding.⁹ Legal hermeneutics involves not a matter of subsumption of a specific case under the enacted legal principle but a “creative supplementing of the law.”¹⁰ Application is not predetermined according to some inherent logic of the law but is a *judgment*, a creative extension of the law to these new circumstances.¹¹ I have found particularly insightful in Ricoeur’s analysis of legal interpretation his appropriation of Kant’s theory of reflective judgment in the third *Critique*. Interpretation in law is the path, Ricoeur writes, that “the productive imagination follows once the problem is no longer to apply a known rule to a presumably correctly described case, as with determinative judgment, but to ‘find’ a rule *under* which it is appropriate to place a fact that itself must be interpreted.”¹² In such cases, the productive imagination extends and transforms a rule as it applies the rule to a new context. Legal hermeneutics is engaged in the role of creative judgment, both by lawyers in fashioning arguments and by judges in interpreting them.

A third subcategory of motif one highlights an element of the dynamic interpretive process. In Ricoeur’s vocabulary, there is an interplay of tradition and innovation,¹³ and the attributes of innovation challenge the law’s and legal interpretation’s reliance on

⁹ Gadamer, *Truth and Method*, 326. Historians contest whether there typically is such a thing as a uniform historical meaning. See Jack Rakove, *Original Meanings: Politics and Ideas in the Making of the Constitution* (New York: Vintage Books, 1997).

¹⁰ Gadamer, *Truth and Method*, 329–30.

¹¹ I disagree with Gadamer, though, that the creative work of application leads to a determinate answer. Gadamer argues that “the just weighing up of the whole” is available to anyone who has immersed himself or herself in the legal situation at hand, and that this weighing up leads to a “legal certainty.” In principle, he continues, every attorney is able to predict accurately the judge’s decision on the basis of existing law. *Ibid.*

¹² Paul Ricoeur, *The Just*, trans. David Pellauer (Chicago: University of Chicago Press, 2000), 126.

¹³ Paul Ricoeur, *Time and Narrative*, vol. 1, trans. Kathleen McLaughlin and David Pellauer (Chicago: University of Chicago Press, 1984), 68.

the pattern effectuated by tradition. It is a common maxim in U.S. law that to preserve expectations and order it is more important that the law be settled than it be settled correctly.¹⁴ Legal education and legal practice are trained on examination of legal precedent and finding an existing case on point. But this orientation toward the past lies in tension with the question whether the existing pattern, the existing legal precedent, speaks adequately to the new factual, historical, and legal situation. The U.S. Supreme Court's recent deliberation about whether same-sex marriage is protected as a matter of the constitutional requirements of liberty and equal protection is for us a prominent example today.¹⁵ Lawyers and law students need to know how to engage proactively in the extension and reworking of the legal tradition in novel ways.¹⁶ This creative role also grants greater empowerment to lawyers as agents for legal renovation rather than just mechanics ensuring the smooth operation of a vehicle whose structure preexisted them.

Under this first analytic motif, then, the claim is that the role of legal judgment is very practical and very concrete, and at the same time the creative character of legal judgment also highlights to me a most salient theoretical point. In a period when many universities are being pushed toward quantitative analysis and away from humanistic interpretation, legal hermeneutics documents the continuing need and value of talent in creative judgment, judgment that cannot be reduced to quantification or to algorithm. In contrast

¹⁴ See Henry Paul Monaghan, "Stare Decisis and Constitutional Adjudication," *Columbia Law Review* 88 (1988): 723–73.

¹⁵ *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015).

¹⁶ I have found quite illuminating the parallels between legal training and medical training both in their reliance on diagnostic patterns and in their challenge to break out of these patterns when more standard diagnoses do not fit the case presented. See Jerome Groopman, *How Doctors Think* (New York: Houghton Mifflin Harcourt, 2007).

to much philosophical theory, where discussion often proceeds at a quite abstract level, legal hermeneutics assesses meaning in the context of very rich, fact-specific contexts where application is uncertain and innovative.

Legal Hermeneutic Attentiveness to the Other

In a second motif, legal hermeneutics operates practically at a more generic level in terms of its openness and attentiveness to the other. I have in mind here less interpretation of texts and more regard for the other in situations of legal dialogue. Let me offer an example to illustrate what I mean. In a famous U.S. case in 2009, former financial advisor Bernard Madoff was charged with execution over many years of a financial scheme that defrauded a long list of clients of their investments in his firm. Among the clients were a number of middle-class citizens who lost their life savings. At the time of his sentencing, Madoff was 71 years old, and his clients knew that any lengthy prison sentence for him was largely symbolic, as he would not live out the prison term. At that time it was also unclear how many assets Madoff retained to repay his clients.¹⁷ Why, then, did over one hundred clients take the time to send in letters to influence the judge's sentencing decision, and why did nine other clients present to the court their victim statements? Madoff's return of any remaining assets to his client was important but very uncertain. And, given his likely short remaining life span, the victim statements would have no impact on the length of time Madoff would actually serve in prison. In news accounts of the

¹⁷ By 2012, Madoff repaid clients on average only about one-third of their losses. Aaron Katersky, "Madoff Victims: The Check is in the Mail," *ABC News*, September 20, 2012, <http://abcnews.go.com/Blotter/madoff-victims-check-mail/story?id=17280721>.

sentencing hearing, it is quite apparent that the speakers were well aware of these factors, and yet wanted to speak anyway.¹⁸

I am struck that these victims principally wanted to be heard. They wanted their day in court, so that they could tell their heart-wrenching stories, even as they knew that these stories would make little difference to their economic redress. One of the powerful contributions of hermeneutics here is precisely its posture of hearing, of trying to bridge distance in order to understand.¹⁹ While not affecting their financial loss, being heard would offer some assistance to these victims' recovery. Stereotypically, the law focuses on economic damages, but legal hermeneutics can contribute to the larger, growing field of restorative jurisprudence.²⁰ Helping someone who has suffered injury to recover often requires more than monetary compensation. For the injured to become whole—or at least to move in that direction—requires a more holistic orientation to issues of affect, dignity, and integrity. This task of hearing has been shown to be relevant in other kinds of cases such as medical malpractice, where apology may be one essential element of redress.²¹ The task of hearing has also been critical in systemic transactions such as truth and reconciliation commissions.²² Legal hermeneutics here, of course, should enter more into conversation with work that Ricoeur

¹⁸ Peter Lattman and Annelena Lobb, "Victims' Speeches in Court Influenced Judge's Ruling," *Wall Street Journal*, June 30, 2009. The judge sentenced Madoff a maximum possible sentence of 150 years.

¹⁹ See Paul Ricoeur, "Explanation and Understanding," in *From Text to Action*, trans. Kathleen Blamey and John B. Thompson (Evanston, IL: Northwestern University Press, 1991), 125–43.

²⁰ See, e.g., Judy C. Tsui, "Breaking Free of the Prison Paradigm: Integrating Restorative Justice Techniques into Chicago's Juvenile Justice System," *Journal of Criminal Law and Criminology* 104 (2014): 635–65.

²¹ Richard Boothman and Margo M. Hoyler, "The University of Michigan's Early Disclosure and Offer Program," *Bulletin of the American College of Surgeons*, March 2, 2013, <http://bulletin.facs.org/2013/03/michigans-early-disclosure/>.

²² For an example, see South Africa's Truth and Reconciliation Commission, www.justice.gov.za/trc.

himself undertook on apology and pardon. Along these lines I would argue that Ricoeur may give too much weight to the differences between apology or pardon and law—what more generally he writes of as the dialectic between love and justice. As I have intimated, I by contrast see apology, pardon, and basic regard for the other as more integral to an expanded notion of the humanistic and hermeneutic aims of the law.²³

I do not neglect that all these settings face the difficult challenge of sorting between a genuine form of hearing and a more instrumental one where the regard for the other is not substantive but designed merely to lessen monetary damages or the jail term imposed. I would add that the task is not just for the one injured to be heard by the one who has injured, as it is critical both for the injured's attorney and for the court to hear also. Often the client's attorney is so focused upon imposing the grid of legal doctrine on a case, so to navigate the case through the legal dispute that the attorney neglects that imposition of the legal categories may not allow the client to be heard, either by the legal system or by the attorney. Legal hermeneutics has much to offer at this level. I would urge also that legal hermeneutics here very demonstrably helps reinsert ethics into the requirements of legal practice. Consistent with other themes within restorative jurisprudence, legal hermeneutics expands the boundaries of what the law rightly encompasses. Legal hermeneutics is in this sense not incidental, not just a pat on the victim's head before the law turns to the more serious debate about economic redress; legal hermeneutics is integral

²³ For a discussion, see George H. Taylor, "Ricoeur and the Limits of Law?," paper presented at the International Conference on Paul Ricoeur, Hermeneutics, and Asia, Taipei, Taiwan, May 29–31, 2014.

to making a person whole. Hermeneutics here could also engage in fruitful interchange with Ricoeur's work on recognition.²⁴

The Hermeneutic and Legal Hermeneutic Choice in Favor of Meaning

A third motif of analysis offers a strategy for legal hermeneutics that builds on the insights of the second just discussed. Part of the challenge for legal hermeneutics is that it must stake out its claim about the significance within the law of human meaning against quite different and flourishing claims that the law is appropriately understood on the basis of other, social or natural scientific criteria. For instance, the field of law and economics has had great sway within the law over the past forty years or so.²⁵ Law and economics' assertion is that descriptively and normatively we humans are individualistic maximizers of our economic utility, and the law does and should reflect that reality. For recent alternative perspectives, we might consider a second generation of economic analysis called behavioral economics, which builds on pioneering work in cognitive psychology to argue that humans in fact are not rational self-maximizers but prey to significant cognitive biases,²⁶ or we might address theories of behavioral biology—focusing on reproductive success²⁷—or the innovative field of neurolaw—the conditioning of human decision by the operation of the brain.²⁸ I do not need to

²⁴ Paul Ricoeur, *The Course of Recognition*, trans. David Pellauer (Cambridge, MA: Harvard University Press, 2005).

²⁵ See, e.g., Richard A. Posner, *Economic Analysis of Law*, 9th ed. (Austin, TX: Wolters Kluwer, 2014).

²⁶ See, e.g., Daniel Kahneman, *Thinking, Fast and Slow* (New York: Farrar, Straus and Giroux, 2011).

²⁷ See, e.g., Owen D. Jones and Timothy H. Goldsmith, "Law and Behavioral Biology," *Columbia Law Review* 105 (2005): 405–502.

²⁸ See, e.g., Henry T. Greely, "Neuroscience, Mindreading, and the Courts: The Example of Pain," *Journal of Health Care Law and Policy* 18 (2015): 171–204.

treat any of these theories in any detail except to say that they work to supplant, as nonscientific and nonsubstantiated, a hermeneutic emphasis on meaning.

In response, we might reconsider Ricoeur's more well-known tripartite scheme differentiating between a naïve understanding, a second stage of explanation—that incorporates the insights of the sciences, as Ricoeur did with structuralism, for instance—and then move to a critical form of understanding.²⁹ In the beginning and end points of this model of analysis, Ricoeur is consistent with the hermeneutic lineage of Heidegger and Gadamer. They all want to open up and preserve a space for hermeneutics at an ontological level. Due to our thrown being, hermeneutics is “grounded in the fore-structure belonging to understanding on the plane of fundamental ontology.”³⁰ At this level understanding is “a mode of being, the mode of that being which exists through understanding.”³¹ The claim is that hermeneutics as an ontological form of understanding is more foundational than the social sciences as epistemological.³² While Ricoeur diverges from Heidegger and Gadamer in wanting to reintegrate the epistemological methods of the social sciences with the ontological foundations of hermeneutics,³³ the ontological form of understanding remains grounding. My tack is different. For reasons to which I will return at a later level of my analysis, I do not reject the significance of Ricoeur's moves here, but I do question their sufficiency. Instead, I would argue that within the social sciences' realm of analysis of human understanding and

²⁹ Ricoeur, “Explanation and Understanding.” For Ricoeur's discussion of structuralism, see, e.g., Paul Ricoeur, “Structure and Hermeneutics,” in *The Conflict of Interpretations*, 27–61.

³⁰ Paul Ricoeur, “The Task of Hermeneutics,” in *From Text to Action*, trans. Kathleen Blamey and John B. Thompson (Evanston, IL: Northwestern University Press, 1991), 69.

³¹ Paul Ricoeur, *The Conflict of Interpretations* (Evanston, IL: Northwestern University Press, 1974), 7.

³² Ricoeur, “The Task of Hermeneutics,” 69.

³³ *Ibid.*, 63, 69.

behavior, the hermeneutic approach must accept descriptively that it is but one among several forms of interpretation or analysis. The claim of hermeneutics to be foundational is either not accepted by or viewed as irrelevant to the social and natural scientific analyses I have just mentioned or, indeed, even by advocates of the hermeneutics of suspicion. It is therefore inadequate to plant the flag asserting that the land of interpretation is hermeneutics' to govern, because that authority is quite contested. We cannot label hermeneutics as a more foundational form of understanding and leave it at that. In this sense, hermeneutics is more limited because it is not accepted as foundational across all forms of interpretation. Yet in this restriction also lies its strength, because the assertion of hermeneutic meaning becomes a task. As raised in the second motif of my analysis, the focus is no longer simply on textual meaning but on a more ontological character of meaning, one that works its way through the hermeneutics of suspicion.

I find substantial support for this approach to hermeneutics in aspects of Ricoeur's own hermeneutic model. Let me try to develop my claim here with some specificity. I find particularly revealing here those moments when Ricoeur explicitly acknowledges that his interpretation does *violence* to the text. How can hermeneutics as hearing the other, opening to the other, do violence to the text? I join those such as David Kaplan in arguing that hermeneutics is properly conceived as a *critical* hermeneutics. In his book, *Ricoeur's Critical Theory*, Kaplan rightly argues: "What Ricoeur wants to show is that hermeneutics, properly conceived, is also critical and evaluative. . . . [D]istanciation belongs to the mediation [of texts and text analogs]." ³⁴ We can find the role of *distanciation* within critical

³⁴ David M. Kaplan, *Ricoeur's Critical Theory* (Albany: SUNY Press, 2003), 37. Kaplan goes on to argue that Gadamer's theory does not contain this critical element, a subject worthy of discussion but one that I do not attend here.

understanding in other major Ricoeur motifs. Ricoeur's famous emphasis on the semantic autonomy of the text³⁵ entails that textual meaning is not, as in E. D. Hirsch,³⁶ limited to the author's own perspective. The world that the text unfolds may include elements that the author did not anticipate or may have subconsciously repressed. Similarly, Ricoeur of course makes it plain in *Time and Narrative* that the reader has a proper role in refiguring the text that the author has configured.³⁷

The role of critical understanding on the basis of the autonomy of the text and the reader's refiguration of it provide the transition to what Ricoeur means when he acknowledges that he is doing violence to a text. These examples of doing violence, I argue, help us hone the nature of Ricoeur's critical hermeneutics. It is essential here to comprehend that Ricoeur's hermeneutic does not simply incorporate critical, explanatory moments drawn from elsewhere—from the social sciences, for example—but *itself* takes a critical perspective. Critical hermeneutics does not just listen to whatever the other wants to say. Although it is open to the other, critical hermeneutics is an oriented and directed form of interpretation. It ultimately seeks to extract the availability of ontological meaning from the other. In this sense, critical hermeneutics itself imposes an interpretive grid on its approach to the other. It applies an interpretive sieve that sifts through the other's statements to uncover the flecks of what it considers positive ontological meaning.

The vocabulary of doing violence to the text appears at several junctures in Ricoeur's corpus, and let me quickly delineate several to

³⁵ Paul Ricoeur, "Hermeneutics and the Critique of Ideology," in *From Text to Action*, trans. Kathleen Blamey and John B. Thompson (Evanston, IL: Northwestern University Press, 1991), 298.

³⁶ E. D. Hirsch, Jr., *Validity in Interpretation* (New Haven: Yale University Press, 1967).

³⁷ Ricoeur, *Time and Narrative*, 70–82.

set the stage for more detailed examination of his expanded use of that vocabulary when interpreting Weber. In the beginning chapter to the first volume of *Time and Narrative*, Ricoeur admits that he is doing “violence to the text”³⁸ of Augustine in initially separating the analysis of time apart from Augustine’s ultimate focus on the relation between eternity and time. Ricoeur finds some justification for this isolation of time in Augustine himself and anticipates redress of the imbalance when returning at a later point to the question of eternity. But Ricoeur’s own agenda orients his interpretation of Augustine.

In the eighth study in *Oneself as Another*, Ricoeur raises the question whether he has “done violence to the Kantian text” when he finds available within Kant’s focus on universality the intuition in the Golden Rule, “inherent in solicitude, of genuine otherness at the root of the plurality of persons.”³⁹ The inquiry is “ontological,”⁴⁰ and Ricoeur finds elements in Kant’s analysis that Kant does not pursue. There is a “discordance”⁴¹ in Kant’s text that Ricoeur wants to explore. In reading Kant he goes further than Kant himself would allow.

Perhaps prototypical of doing “violence” to the text is, of course, Ricoeur’s book on Freud. Ricoeur does not use the vocabulary of interpretive “violence” in that work, but he does pose whether he has engaged in “overinterpretation” of Freud. In Ricoeur’s view, his elaboration of a teleology of consciousness internal to Freud’s psychoanalytic reduction of consciousness generates in fact “a better

³⁸ Ibid., 5.

³⁹ Paul Ricoeur, *Oneself as Another*, trans. Kathleen Blamey (Chicago: University of Chicago Press, 1992), 225.

⁴⁰ Ibid., 226.

⁴¹ Ibid.

reading of Freud.”⁴² But Ricoeur acknowledges that he mines Freud for an orientation that is not the one that Freud wants to take. He has done violence to Freud’s intentions.

Similarly, in the *Lectures on Ideology and Utopia*, Ricoeur allows that his reading of Marx does “apparent violence” to Marx’s texts.⁴³ By emphasizing the possibilities of real human praxis in the face of the role of economic structures and the alienation of labor,⁴⁴ Ricoeur again contends that he has succeeded in reading Marx’s text better; his interpretation “recognizes a dimension of the text.”⁴⁵

As I have anticipated, the most dramatic example of Ricoeur’s engaging in “violence” to the text occurs in his interpretation of Weber, also in the *Lectures on Ideology and Utopia*. I have written on this context elsewhere in elaborating Ricoeur’s theory of legitimation,⁴⁶ but I focus on it here for the discussion’s hermeneutic implications. Ricoeur develops his theory of legitimation on the basis of appraisal of the following Weber statement. In analyzing the motives that individuals have for adherence to the state’s authority, Weber writes, “[C]ustom, personal advantage, purely affectual or ideal motives of solidarity do not form a sufficiently reliable basis for a given domination. *In addition* there is normally a further element, the *belief* in legitimacy.”⁴⁷ We must appreciate Ricoeur’s response to Weber’s insertion of “in addition.” Legitimacy is not established by the factors Weber addressed but only by the addition

⁴² Paul Ricoeur, *Freud and Philosophy*, trans. Denis Savage (New Haven: Yale University Press, 1970), 473.

⁴³ Paul Ricoeur, *Lectures on Ideology and Utopia*, ed. George H. Taylor (New York: Columbia University Press, 1986), 214.

⁴⁴ *Ibid.*, 102.

⁴⁵ *Ibid.*, 214.

⁴⁶ George H. Taylor, “Developing Ricoeur’s Concept of Political Legitimacy: The Question of Political Faith,” in *Paul Ricoeur and the Task of Political Philosophy*, ed. G. S. Johnson and D. R. Stiver (Lanham, MD: Lexington Books, 2013), 159–82.

⁴⁷ Ricoeur, *Lectures on Ideology and Utopia*, 200 (emphasis added).

of belief. What is striking to Ricoeur about Weber's statement is that the notion of addition is mentioned here, mentioned again in the next paragraph,⁴⁸ and then completely dropped. While Weber returns at several points to mention the citizenry's *belief* in legitimacy, he never discusses this theme. Instead, Weber focuses completely on the political authority's *claim* to legitimacy. Ricoeur's entire theory of legitimacy as a form of ideology is built on the "empty space" in Weber's theory for the role of belief.⁴⁹

What is remarkable methodologically is that Ricoeur's theory is built upon an *absence* that he finds in Weber. While hermeneutics gives attention to the meaning that the other is expressing in discourse or text, at the same time Ricoeur explicitly notes that his hermeneutic methodology is oriented.⁵⁰ It may extract kinds of meaning that the author does not attend. Hermeneutics in this sense can be "deconstructive," if not in Derrida's way of showing the limitations or failures of a text to offer meaning or presence,⁵¹ then in unpacking the text and taking it in a direction it does not want to go, in showing that the text offers a meaning that it does not accept as its own. Ricoeur is fully aware that he takes this hermeneutic posture toward Weber. He grants that he has in fact "done more violence to Weber than to Marx."⁵² He has "compelled" Weber "to say what he did not want to say."⁵³ In his analysis of Weber, Ricoeur "read between the lines" and found something that was "not in the text" in the sense of something that Weber intended.⁵⁴ The

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid., 202.

⁵¹ See Jacques Derrida, *Of Grammatology*, trans. Gayatri C. Spivak (Baltimore: Johns Hopkins University Press, 1974).

⁵² Ricoeur, *Lectures on Ideology and Utopia*, 214.

⁵³ Ibid., 214–15.

⁵⁴ Ibid., 202.

semantic autonomy of the text allows Ricoeur methodological authority to recognize a dimension of the text that Weber as author does not.⁵⁵

Weber does not realize that when he uses the language of “in addition” to describe the role of belief in establishing legitimacy, he is characterizing belief as a supplement necessary for legitimacy to exist. Custom, personal advantage, or motives of solidarity do not suffice. There must be an additional component of belief. Ricoeur argues: “[I]here must be something more in the belief than can be rationally understood in terms of interests, whether emotional, customary, or rational.”⁵⁶ Despite itself, Weber’s analysis goes on to offer evidence of the nature of this belief, but it is evidence that Weber does not recognize. Weber rests the validity of legitimacy on various *claims* to legitimacy that ruling powers offer; he does not see in his own language the ways the claims must be met by belief. Although the specific context of discussion is political legitimacy, the larger context lies in the realm of philosophical anthropology, of the positive possibilities of what it means to be human.

Perhaps for those attentive to the dimensions of hermeneutics as critical, Ricoeur’s posture when he undertakes apparent violence to the text is not surprising. For me, it is rather remarkable, as it contests the portrayal of hermeneutics as a form of listening and invitation. Directed and motivated, this hermeneutics extracts something other than what the author wants to say. To claim that Ricoeur’s approach here is simply consistent with his views on the autonomy of the text does not, in my view, seem to be adequate. For Ricoeur’s manner in these moments is more assertive. The

⁵⁵ Ibid., 214.

⁵⁶ Ibid., 201.

interpretive posture is something other than hospitality. At these moments, Ricoeur is revealing something distinctive and underthematized about hermeneutics. The hermeneutic interpreter is not a passive host engaged merely in listening but is actively searching in the text for the “meaning” of being even when the text is engaged in another project. The hermeneutic interpretation is itself a reading directed toward a predetermined objective. At a rare juncture, Ricoeur acknowledges: “The *choice in favor of meaning* is thus the most general presupposition of any hermeneutics.”⁵⁷

The implications for hermeneutics are several. First, in contrast to the hermeneutics of suspicion or the methods of the social sciences, the hermeneutic interpretation of understanding is itself selective in what it frames as “understanding.” This is contrary to our usual evaluation of hermeneutics. If, as previously discussed, hermeneutics typically frames its orientation to understanding as foundational across all human domains, in the present context hermeneutics argues for its orientation to understanding against other methodologies. Ricoeur ponders “what happens to an epistemology of interpretation . . . when it is touched, animated, and, we might say, inspired by an ontology of understanding.”⁵⁸ While Ricoeur’s usual approach in this relation between understanding and explanation is to open the path for a return to understanding as ontological, my interest is different. In allowing for violence to the text, hermeneutics itself becomes “an epistemology of interpretation,”

⁵⁷ Paul Ricoeur, “Phenomenology and Hermeneutics,” in *From Text to Action*, 38 (emphasis added). In *Freud and Philosophy*, Ricoeur speaks similarly of hermeneutics as “the manifestation and restoration of a meaning” and as the “exegesis of meaning” (Ricoeur, *Freud and Philosophy*, 27, 33). See also Johann Michel, *Quand le Social Vient au Sens: Philosophie des Sciences Historiques et Sociales* (Brussels: P.I.E. Peter Lang, 2015), 91 (“l’herméneutique . . . fait de la question du sens [et corrélativement du non-sens, de l’opacité . . .] son arc fondateur”).

⁵⁸ Ricoeur, “Existence and Hermeneutics,” in *The Conflict of Interpretations: Essays in Hermeneutics*, ed. Don Ihde (Evanston, IL: Northwestern University Press, 1974), 7.

a mode of knowledge, a form of explanation and analysis. Hermeneutics imposes its own interpretive framework on other kinds of understanding, even other forms of ontological understanding—think of Derrida, for example.

A second implication is that the hermeneutic interpretation of understanding is not a “natural” form of reading but, as Ricoeur explicitly states, a “choice,” a choice in favor of meaning. Again think of Derrida as a point of contrast in relation to a mode of understanding. More broadly, other interpretive approaches view their own explanatory orientations as better clarifications of the human predicament. In claiming that the hermeneutic interpretation of understanding is not natural but a choice, I want to assert that as a choice it cannot be something foundational in the sense of beyond dispute, a grounding beyond controversy. I would similarly criticize other motifs in Ricoeur such as his assertion, in *History and Truth*, of a “primary affirmation,” an inherent victory of being over nonbeing.⁵⁹ I like much better Ricoeur’s later, more modest emphasis on attestation, where we witness to a truth that we hold, but that witness is a matter of belief—even deep-seated belief⁶⁰—and not a matter of logical, foundational entailment, as in the primary affirmation.

The third and final implication for hermeneutics as a “choice in favor of meaning” is correlative and, to me, the most significant and pressing. As a choice, the hermeneutic approach must *wager* for the merits of its approach as over against other interpretive approaches, including approaches more insistent on explanation rather than

⁵⁹ Paul Ricoeur, “Negativity and Primary Affirmation,” in *History and Truth*, trans. Charles A. Kelbley (Evanston, IL: Northwestern University Press, 1965), 305–28.

⁶⁰ Ricoeur, *Oneself as Another*, 21.

understanding. We cannot assume the ineluctability or undeniability of hermeneutics as “the” foundational form of interpretation. Hermeneutics must prove its merits in a culture, both within the humanities and within the social and natural sciences, which today often engages in interpretation in ways where the hermeneutic orientation toward “meaning” is subordinated or dismissed. I hope that it is apparent that I side with hermeneutics in this struggle. I simply urge that hermeneutics cannot rest on its laurels or assume that its approach will be victorious over time due to an assumption that its approach is more ontologically accurate, more ontologically grounded. Doing violence to the text suggests recognition of dispute and contestation, of a struggle that must be fought. The victory of hermeneutics is not inalienable.

Let me close this motif with a positive example drawn from Ricoeur of what I mean. In the first volume of *Time and Narrative*, Ricoeur recognizes that a “violence of interpretation” may occur in narrative to the extent that narrative “puts consonance where there was only dissonance.”⁶¹ This violence is one that Ricoeur rejects. This interpretation grants priority to narrative order and dismisses the dissonant. Ricoeur of course rejects the opposite extreme that would find in time simply discordance. As we know, Ricoeur instead insists on “a fundamental dialectic of discordant concordance.”⁶² I have written elsewhere about my doubts whether Ricoeur maintains this dialectic in *Time and Narrative*,⁶³ but my reference to this dialectic takes a different direction here. I would urge that as an interpretive choice, hermeneutics undertakes the *task* of seeking meaning across

⁶¹ Ricoeur, *Time and Narrative*, 72.

⁶² *Ibid.*, 73.

⁶³ George H. Taylor, “Prospective Political Identity,” in *Poetics, Praxis, and Critique: Paul Ricoeur in the Age of Hermeneutical Reason*, ed. Roger Savage (Lanham, MD: Lexington Books, 2015), 123–38.

the discordant. It is a task because ontological meaning is not something given. Instead, in our fractious, contentious, and heterodoxical times, the availability of meaning is very disputed, very fragmented, and very precious. We must seek both to establish this meaning and to preserve it when found, both of which are demanding and uncertain tasks. When Ricoeur writes that we must “speak of humanity . . . as in fact a task, since humanity is given nowhere,”⁶⁴ I argue that we must say the same of human meaning. Human meaning remains a task as it is given—in an undying, foundational sense—nowhere. I offer this argument as a philosophical one. The theological valences will be different.

The choice in favor of meaning underscores the restorative character of hermeneutics that, as noted in motif two, I find legal hermeneutics can epitomize. The contributions of hermeneutics to law at this larger level of meaning is distinctive and separates legal hermeneutics from other dominant theories of knowledge and understanding in law such as, as I have mentioned, economics, behavioral economics, behavioral biology, and neurolaw. At a time when the humanities are under challenge because not sufficiently practical enough, this orientation of hermeneutics toward protection and revival of a more ontological sense of meaning seems a most meritorious contribution.

The Challenge of Legal Hermeneutics to Other Approaches

In a fourth motif, legal hermeneutics must take on the challenge of establishing both the necessity of legal hermeneutics as an interpretive approach and the insufficiency of other models such as economics. As we know, Ricoeur undertook this challenge more

⁶⁴ Ricoeur, *Lectures on Ideology and Utopia*, 253.

generally in his work on Freud, structuralism, and his dialogue on neuroscience with Jean-Pierre Changeux.⁶⁵ I see two subcategories here. First, as I have tried to suggest, understanding human behavior and motivations in law is incomplete without the broader approach to meaning that legal hermeneutics offers. But this means the hard work of taking on other disciplinary approaches and showing, within law, their limitations. As in the Madoff case, while economic compensation was vitally important in those contexts, dollars and cents did not adequately address the repair of dignity costs. It is not adequate for hermeneutics, or legal hermeneutics, to remain a discussion among only ourselves. I have found, for instance, that teaching a course on Law and Human Behavior has required my exposure to many other intellectual domains within the law and required me to assess, at least academically, the continuing relevance of legal hermeneutics to the larger project of human meaning. The challenges here are quite significant. What space is available for finding human meaning to act beyond economic self-maximization? Is altruism reducible to evolutionary pressures to support the biological survival of kin? Are free will and human agency anything more than superstructural and ephemeral constructs of the brain's neuronal activity?

A second subcategory here is to challenge these other intellectual orientations on the basis of their own criteria and show not only the insufficiency of their approach, which I have just raised, but also their own need for hermeneutics as an interpretive enterprise. It has been of interest to me, for example, that the brain's neuronal activity is not in fact algorithmic but based on patterns that become over

⁶⁵ See Ricoeur, *Freud and Philosophy*, "Structure and Hermeneutics," in *The Conflict of Interpretations*, 27–61; *What Makes Us Think?* (with Jean-Pierre Changeux), trans. M. B. DeBevoise (Princeton, NJ: Princeton University Press, 2000).

time either reinforced or weaker and pruned.⁶⁶ I find analogies here to narrative—and the interpretive task of seeking a narrative across disjuncture—quite illuminating. As another example, Thomas Kuhn writes of how he conceives his own analysis of scientific development to be hermeneutic.⁶⁷ Similarly, in Ricoeur’s work on imaginative insight—the inspirational generation of meaning—he finds helpful analogies in the natural sciences use of “models for,” which inspire the transformative scientific vision then tested through analysis and experimentation. Ricoeur finds that this epistemological imagination runs across the range of human thought, and this understanding is something that hermeneutics can capture.⁶⁸ Todd Mei’s work in economics is also a good example of scholarship extending a hermeneutic challenge to the sufficiency of economics on its own terms.⁶⁹ I am aware as well of fruitful work where phenomenology takes on the task of interrelation with the sciences of the brain.⁷⁰ The social and natural sciences cannot remain insular unto themselves. When Stephen Hawking writes that “philosophy is dead” because it “has not kept up with modern developments in science,” we must show why Hawking is wrong, whatever the particular field of science may be.⁷¹ Legal hermeneutics

⁶⁶ See, e.g., Peter R. Huttenlocher, *Neural Plasticity* (Cambridge, MA: Harvard University Press, 2002).

⁶⁷ Thomas S. Kuhn, *The Essential Tension* (Chicago: University of Chicago Press, 1977), xiii, xv.

⁶⁸ Paul Ricoeur, *Lectures on Imagination*, ed. George H. Taylor, Patrick Crosby, and Robert D. Sweeney (forthcoming 2017), chapter 18. Attention to the interrelation between hermeneutics and the natural sciences appears to be growing. See, e.g., Kenneth A. Reynhout, *Interdisciplinary Interpretation: Paul Ricoeur and the Hermeneutics of Theology and Science* (Lanham, MD: Lexington Books, 2013).

⁶⁹ Todd Mei, “An Economic Turn: A Hermeneutical Reinterpretation of Political Economy with Respect to the Question of Land,” *Research in Phenomenology* 41, no. 3 (2011): 297–326.

⁷⁰ See, e.g., *Cognitive Phenomenology*, ed. Tim Bayne and Michelle Montague (Oxford: Oxford University Press, 2011).

⁷¹ Stephen Hawking and Leonard Mlodinow, *The Grand Design* (New York: Bantam Books, 2010), 5.

and hermeneutics more generally will thrive only to the extent that they engage in debate with other predominant theories of human understanding and evaluation. Legal hermeneutics and hermeneutics are themselves fields of explanation that help account for our understanding. We must not talk just among ourselves; we must be not just armchair critics; we must enter the interdisciplinary fray. One of the values I ascribe to being a law professor is that the law cannot and does not sit back; it is not a seminar; we must decide, and interpretations have real consequences. People's lives are at stake. Legal hermeneutics is not ornamental.

The Relevance of Other Approaches to Legal Hermeneutics

In a fifth motif, which I will treat only briefly, we can reverse the interrelation between hermeneutics and other disciplines and become more aware of the insights of the other disciplines for hermeneutics. I have found, for example, work in behavioral economics and the descriptive critique of the assumption of autonomous rational decision making very helpful in thinking about legal interpretation. I would also argue that both hermeneutics and legal hermeneutics should not necessarily fear the movement toward quantification and big data. If quantification moves away from the close reading that lies near to the heart of the hermeneutic enterprise, the “distant reading” across texts fostered by big data can be revealing as well.⁷²

⁷² See, e.g., George H. Taylor and Fernando Nascimiento, “Reading Ricoeur with the Methods of the Digital Humanities,” presented at the conference, “Paul Ricoeur in Asia: Reflections on Politics, Society, and Religion,” Manila, Philippines, November 19-21, 2015

The Interplay between Meaning and Structure

In a sixth motif, hermeneutics requires appreciation of the interplay between meaning and structure.⁷³ The structure may range from linguistic structure to political, social, and legal structure. The role of this structure is particularly relevant for legal hermeneutics. Hermeneutics, Ricoeur writes, is “a struggle against the estrangement from meaning itself.”⁷⁴ As we know, the estrangement from meaning was a familiar theme in twentieth-century thought. Charles Taylor writes of the “wide sense of malaise at the disenchanting world, a sense of it as flat, empty, a multiform search for something within, or beyond it, which could compensate for the meaning lost with transcendence.”⁷⁵ Not only has nature been reduced to objects but so have our social relations. We hear echoes of Weber’s critique of bureaucratic reason and of Marx on alienation. Ricoeur notes the tendency in much Western thought during this period to advocate turning away from institutions and appeal instead to possibilities that can break from this prison house in “categories of a leap, of deviation, of fracture, crisis, revolution.”⁷⁶ In his own work on imagination and utopia, Ricoeur has shown himself attentive to these possibilities too. Yet he also wants to preserve a positive notion of objectification, one that he finds in Marx as well. Hermeneutics, Ricoeur writes, “proceeds from the *objectification* of the creative energies of life in works. . . .”⁷⁷ Ricoeur quite overtly draws out the interrelations

⁷³ For a more extended discussion, see George H. Taylor, “Ricoeur and Just Institutions,” *Philosophy Today* 58 (2014): 571–89.

⁷⁴ Paul Ricoeur, “What is a Text? Explanation and Understanding,” in *From Text to Action*, ed. and trans. John B. Thompson (Cambridge: Cambridge University Press), 119.

⁷⁵ Charles Taylor, *A Secular Age* (Cambridge, MA: Belknap Press, 2007), 302.

⁷⁶ Paul Ricoeur, *Memory, History, Forgetting*, trans. K. Blamey and D. Pellauer (Chicago: University of Chicago Press, 2004), 224.

⁷⁷ Ricoeur, “What is a Text,” 112 (emphasis added).

between the various manifestations of objectification in discourse, action, history, labor, and art. “[D]iscourse,” he says, “displays a quite high level of objectification, similar to that of the products of work in relation to the process of production.”⁷⁸ Humans objectify themselves through the works of their discourse, as they do through the products of their craftsmanship, and their art. Ricoeur insists that exteriorization or objectification is an ineluctable element of human activity; it is as primitive and radical—that is, to the root—as possible.⁷⁹ If an aspect of hermeneutics in its more expansive sense is protection and cultivation of meaning, so must hermeneutics protect and cultivate meaning through institutions, whether linguistic, political, or legal. Institutions do not inevitably entail oppression. Ricoeur argues that the ethical intention is defined “as aiming at the ‘good life’ with and for others *in just institutions*.”⁸⁰ If the larger project of hermeneutics is one of giving heed to the other, we need to be examining how to create institutions that nurture qualities of tolerance, hospitality, and welcoming. Bernard Dauenhauer helpfully summarizes Ricoeur’s stance here: “Ricoeur has consistently refused to join the ranks of those who tend to regard all institutions as nothing more than sites of domination. He accepts the Hegelian insight that the mediation effected by institutions is essential for the constitution of the ethical subject. . . .”⁸¹ In a recent paper on Ricoeur, John Arthos writes in quite illuminating fashion of the double hermeneutic in Ricoeur that is responsive to both institutional critique and institutional reform and applies this to renovation of the

⁷⁸ Paul Ricoeur, “Philosophical Hermeneutics and Theological Hermeneutics,” *Studies in Religion/Sciences Religieuses* 5 (1975–1976): 21.

⁷⁹ Ibid.

⁸⁰ Ricoeur, *Oneself as Another*, 172 (emphasis added).

⁸¹ Bernard Dauenhauer, *Paul Ricoeur: The Promise and Risk of Politics* (Lanham, MA: Rowman and Littlefield Publishers), 157.

humanities.⁸² We must move beyond simply critique or the hermeneutics of suspicion.

As a law professor, I am of course particularly interested in the implications of positive objectification for legal hermeneutics and legal institutions. Did not the failure of the French Revolution, Ricoeur asks in *The Just*, have something to do with its incapacity to “stabilize itself through a constitution”?⁸³ Neither Ricoeur nor I swing to the opposite extreme and find legal institutions inherently positive and productive. In my view, the law remains often a very crude instrument, always a matter of more or less justice, always a matter of a continued aspiration. But institutions such as the law can help shield the often fragile flame of human meaning. For example, if we seek to preserve and enhance hermeneutics over time, do we need to be thinking about institutions we should create that will help us do so? Within the field of Ricoeur studies, the Fonds Ricoeur in Paris, the Society for Ricoeur Studies, and Cristal Huang’s new Ricoeur Research Center in Taiwan offer valuable models for these considerations.⁸⁴

Regional Hermeneutics

A seventh motif, we need to be attentive to the fact that all hermeneutic approaches, including legal hermeneutics, are what might be typed regional hermeneutics. As I have written on elsewhere, for instance, Ricoeur often assumes that hermeneutics per se pertains to the object of self-understanding, while that is not the case for the legal hermeneutics employed by the judge or

⁸² John Arthos, “Paul Ricoeur and the Re(con)figuration of the Humanities in the Twenty-First Century,” *International Journal of Philosophy and Theology* 75 (2014): 115–28.

⁸³ Ricoeur, *The Just*, viii.

⁸⁴ See www.fondsricoeur.fr; www.ricoeursociety.org; www.myweb.scu.edu.tw/~ricoeur.center.

attorney.⁸⁵ Within legal hermeneutics, there is considerable debate itself between approaches more receptive to Gadamer and Ricoeur and those to Betti or those like him. It is often surprising more generally, though, how insulated various schools of hermeneutics often are. If our present task is considering the practicality of hermeneutics, one practical task is greater dialogue across the field of hermeneutics itself. Conversation between Ricoeurians and Gadamerians is one avenue.⁸⁶ So is conversation with those more endorsing of a hermeneutics of suspicion. And so is greater conversation and synergy across the various disciplines in which hermeneutics is advanced: not only philosophy or law but theology, rhetoric, musicology, political theory, psychology, sociology, and so on. Further, a very welcome development of international Ricoeur conferences has been greater cross-cultural hermeneutics, which requires sensitivity both in terms of text interpretation and larger hermeneutic postures as well. The East-West conversation has arisen in the context of Ricoeur conferences in Asia, in Taiwan in 2014 and in the Philippines in 2015.⁸⁷ North-South conversations are increasing also. The fourth Iberoamerican Ricoeur Congress was held in Argentina in 2015.⁸⁸ Conversations in hermeneutics between the West and Islam are starting to occur too. We have hopes for an international Ricoeur conference in Turkey in the next couple years. All of these developments hold considerable prospects and considerable practical prospects for hermeneutics and need to be

⁸⁵ Taylor, "Ricoeur and Law: The Distinctiveness of Legal Hermeneutics."

⁸⁶ See, e.g., Francis J. Mootz III and George H. Taylor, eds., *Gadamer and Ricoeur: Critical Horizons for Contemporary Hermeneutics* (London: Continuum, 2011).

⁸⁷ International Conference on *Paul Ricoeur, Hermeneutics, and Asia*, Taipei, Taiwan, May 29–31, 2014; International Conference on "Paul Ricoeur in Asia: Reflections on Politics, Society, and Religion," Manila, Philippines, November 19–21, 2015.

⁸⁸ IV Congreso Iberoamericano Paul Ricoeur: Las Ciencias Sociales y Humanas en Diálogo, La Plata, Argentina, August 13–15, 2015.

encouraged. These conversations also add to our sense of hermeneutic humility and partiality even as they add to the range of hermeneutic breadth.

Criticisms of the Hermeneutic Posture

In my eighth and final motif, I conclude by offering some criticisms of the hermeneutic posture in law and more generally that I have offered. First, any extension of hermeneutics to practice, including in law, must be attentive to the violence that it may impose. Here I focus not on interpretive violence but actual physical violence. As legal scholar Robin West has argued, legal interpretations do not resolve simply questions of meaning; they also impose the coercive power of the state as to legal penalty and punishment.⁸⁹ Practical hermeneutics is not an abstract and theoretical venture but may have real, stark consequences, even if we get it right but even more tellingly when we get it wrong. Ricoeur I think adverts to the problems here well when he insists upon the tragic nature of action and of practical wisdom.⁹⁰ Perhaps a hermeneutic contribution lies in recognition of these limitations of action. A second challenge, quite well-known, is the claim that hermeneutics is too reformist, when the time requires more searching reevaluation. A third challenge to hermeneutics concerns whether, even if practice moves us away from alienation and disenfranchisement toward positive senses of meaning, hermeneutics remains a necessary contribution to this development and debate. In the United States, legal interpretation remains a very lively subject of debate, but a specific reference explicitly to hermeneutics internal to that debate is rare. Some may

⁸⁹ Robin L. West, "Adjudication is Not Interpretation: Some Reservations About the Law-as-Literature Movement," *Tennessee Law Review* 54 (1989): 203.

⁹⁰ Ricoeur, *Oneself as Another*, 241–49.

say here that the lessons of hermeneutics have been learned, and we can move forward on its basis without further theoretical elaboration. Others would claim that legal interpretation has always proceeded sufficiently well on the basis of its own interpretive criteria, and the vocabulary and ontological concerns of legal hermeneutics are too ethereal and academic an enterprise. More broadly, the question is whether hermeneutics—or philosophical inquiry more generally—is, in both a descriptive and normative sense, being supplanted by more empirical and social scientific fields such as cognitive psychology. Can the restorative jurisprudence I referenced earlier get along just fine without any mention of hermeneutics, and is the case for this jurisprudence in fact enhanced because it is built upon the rigor of empirical social science? Fourth, did hermeneutics have its historical moment in, say, the 1970s, when hermeneutics became a pervasive theme but that fad is long over? What about the negative references to hermeneutics as a totem for academic pretense and abstruseness?⁹¹ Are Gadamer and Ricoeur simply dead, white European males whose time has passed and whose own attentions have passed? As my earlier remarks have indicated, I do not believe in the adequacies of these critiques. In my view, in today's world of fraction, division, and aggression, hermeneutic openness, listening, and regard for human meaning are

⁹¹ In September 2014, reviewing a new host of a popular weekly news program, *New York Times* television columnist Alessandra Stanley commented on how refreshing it was to have a show hosted by someone who spoke in direct English rather than convoluted political jargon: "Network news programs can be as baffling in their own way as academia, where dissertations on literary theory are often so contorted and abstruse (hermeneutics!) that they barely seem written in English." Alessandra Stanley, "Chuck Todd Begins as Host of NBC's 'Meet the Press,'" *New York Times*, September 7, 2014. Consider also the intent in Alan Sokal's spoof of postmodern appropriations of quantum physics when he included "hermeneutics" in the subtitle. See Alan D. Sokal, "Transgressing the Boundaries: Toward a Transformative Hermeneutics of Quantum Gravity," *Social Text* 14, nos.1–2 (Spring/Summer 1996): 217–52. Sokal later expanded the critique into a book. See Alan Sokal and Jean Bricmont, *Fashionable Nonsense: Postmodern Intellectuals' Abuse of Science* (New York: Picador, 1999).

precisely what the world in fact needs. But there is no inevitability to the case for hermeneutics. The case is a wager, and the winning of the wager requires compelling ideas, effort, and organization.

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