

## On the (In)Comparability of the Interpretation of Art and Law<sup>1</sup>

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**Abstract:** *In interpreting law as well as arts, the discursive approach is currently the one that fulfils Ernst H. Gombrich's ideal of a hermeneutic compromise between two extremes – absolute knowledge (totality of knowledge) on the one hand and nihilistic relativism on the other. Discursiveness, as the ability to agree on certain starting points and frameworks of mutual communication, does not thereby represent claims to exclusive and sole objective correctness, but at the same time, it is also not about completely isolated and monological views. It is about views accepted in a certain social framework, within a certain discourse, conversation, or dialogue. This mechanism of interpretation is thereby accepted both in legal scholarship as well as in the history and theory of arts.*

**Key Words:** *Law; Legal Studies; Theory of Arts; History of Arts; Interpretation; Gombrich.*

### Introduction

The contribution follows up on the tradition of connecting art and law, which has been developing in the conditions of the Slovak Republic for the previous 10 to 15 years. The pioneer of this topic was mostly Professor Pavel Holländer.<sup>2</sup> Younger generation authors include Martin Gregor<sup>3</sup> or Natália Lalíková.<sup>4</sup> An attempt to connect and compare the interpreta-

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<sup>2</sup> HOLLÄNDER, P. *Priesečníky umenia a práva*. 1. vyd. Plzeň: Vydavateľstvá a nakladateľstvá Aleš Čeněk, 2019. 159 p. ISBN 978-80-7380-760-3.

<sup>3</sup> GREGOR, M. Reflexie československého práva v „Demokratoch“ Janka Jesenského. *Právněhistorické studie* [online]. 2018, roč. 48, č. 2, pp. 57-74 [cit. 2024-09-02]. ISSN 2464-689X. Available at: <https://doi.org/10.14712/2464689x.2018.39>.

<sup>4</sup> LALÍKOVÁ, N. Advokát umelcom. Umelec advokátom?. *Bulletin slovenskej advokácie*. 2014, roč. 20, č. 1-2, pp. 39-43. ISSN 1335-1079; and LALÍKOVÁ, N. Nad prienikmi práva, filozofie a umenia. *Justičná revue*. 2012, roč. 64, č. 12, pp. 1453-1460. ISSN 1335-6461.

tion of a work of art with the interpretation of a legal text can thereby be considered natural, even *prima facie* at hand. What can be considered a challenge, however, is an attempt to take into account the role of the interpreter (spectator) in this interpretation undertaking. In this contribution, we will therefore introduce and evaluate the transformations of the hermeneutic traditions in art and in law, going in the direction of strengthening the awareness of the subjective element of the interpreter's personality when interpreting a work of art or a legal text.

### **1 Forms of philosophical hermeneutics: Schleiermacher, Gadamer, Vattimo**

Hermeneutics, as a science of understanding or interpretation, has generally two forms. One is philosophical hermeneutics and the other is so-called methodological hermeneutics.<sup>5</sup>

Philosophical hermeneutics is in fact a science of understanding rather than interpretation. It is descriptive, i.e. it basically just describes how people understand a text or an event. Philosophical hermeneutics has its origin in the study of the Bible, that is, in biblical studies, because it was the priests and church fathers who in the beginning tried to interpret the Bible and tried to understand how God really meant the words that he put in the minds of the authors of these sacred texts. Friedrich Schleiermacher, the founder of hermeneutics in its modern understanding, at the turn of the 18<sup>th</sup> and 19<sup>th</sup> Centuries, formulated the doctrine of understanding and interpretation in this way explicitly.<sup>6</sup> According to Schleiermacher, hermeneutics is a science that tries to find out the subjective will of the one who wrote the text, or of the God, who dictated the biblical text. Hence, it tries to understand the historical will of the author. Today's understanding of philosophical hermeneutics also emphasizes this kind of subjective understanding, i.e. how it is possible to understand the author of a text or a piece of work, but it does not provide methodological guidance for this at all.

It was only Hans-Georg Gadamer who innovatively claimed that philosophical hermeneutics as a science of understanding does not necessarily need to adhere to the historical will – that is, researching what the au-

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<sup>5</sup> Cf. HROCH, J., M. KONEČNÁ and L. HLOUCH. *Proměny hermeneutického myšlení*. 1. vyd. Brno: Centrum pro studium demokracie a kultury, 2010. 419 p. ISBN 978-80-7325-231-1.

<sup>6</sup> Cf. BOJDA, M. *Schleiermacherova teorie zprostředkování*. 1. vyd. Praha: Togga, 2015. 288 p. Polemos. ISBN 978-80-7476-099-0.

thor of the text originally meant. Instead, hermeneutics can in a certain way update the historical form, or the historical meaning of the text. Gadamer claims that an interpreter must try to find a compromise – to combine the historical will, that is, what the author of the text originally meant, with contemporary understanding.<sup>7</sup> Gadamer claims that we have a special pre-understanding in us, that is, some experience that affects our interpretation. In this sense, Hans-Georg Gadamer in his work *Truth and Method* talks about a kind of necessary melting of horizons when interpreting past events and texts – a past and a present view of past facts and texts need to be combined.<sup>8</sup> Thus, according to Gadamer, when understanding the past and its artefacts, we should not be primarily concerned with revealing the original intention of the historical author (or the historical context of the event), which often may not even be possible. At the same time, however, we should not stick solely to our present understanding – namely, in the practice of interpreting the past we should ultimately retreat from our own, historically unencumbered view of the event (text, or a piece of art). Interpretation should lead towards a synthesis, an attitude characteristically called by Gadamer as the “melting of horizons” of past and contemporary thinking.<sup>9</sup>

Still, there is even a more extremist approach in hermeneutics taking roots recently. The latest radical approach to philosophical hermeneutics is represented e.g. by the Italian author Gianni Vattimo. Vattimo claims that today’s hermeneutics is essentially radical hermeneutics that completely abandons the original historical will of the author of the text, in order to approach the text from today’s horizon, without even being interested in or having the ability to understand and identify the historical will of the author of the text.<sup>10</sup>

Finally, especially in the USA, analytical hermeneutics is also present, which is trying to understand the text by using formal logic – decomposing the text into logical sentences, expressing sentences in the form of logical notations and formulas.

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<sup>7</sup> GADAMER, H.-G. *Pravda a metoda I: Nárýs filosofické hermeneutiky*. 1. vyd. Praha: Triáda, 2010. 415 p. ISBN 978-80-87256-04-6.

<sup>8</sup> GADAMER, H.-G. *Pravda a metoda I: Nárýs filosofické hermeneutiky*. 1. vyd. Praha: Triáda, 2010. 415 p. ISBN 978-80-87256-04-6.

<sup>9</sup> GADAMER, H.-G. Čo je pravda?. *Filozofia*. 2009, roč. 64, č. 3, p. 260. ISSN 0046-385X.

<sup>10</sup> VATTIMO, G. and S. ZABALA. *Hermeneutic Communism: From Heidegger to Marx* [online]. 1<sup>st</sup> ed. New York: Columbia University Press, 2011. 264 p. [cit. 2024-09-02]. ISBN 978-0-231-52807-8. Available at: <https://doi.org/10.7312/vatt15802>.

To sum up, looking back at the evolution and various approaches to hermeneutics, one can identify three basically different approaches to philosophical hermeneutics, namely: (1.) views that say that we should try to reveal the author's original will, then (2.) views that prefer today's perception of the author's original will, i.e. being aware of a kind of melting of horizons, and finally (3.) a radical approach saying that we cannot discover the historical will, nor do we care about it, because we interpret the historical text through today's lens.

## 2 Legal hermeneutics and its forms

Hermeneutics, in addition to the philosophical branch, has also its methodological branch and even a specific legal form – the legal doctrine of understanding and interpretation. This branch of hermeneutics tries to be prescriptive, i.e. to prescribe or to provide instructions on how to proceed when interpreting the text. Legal hermeneutics is methodological precisely in the sense that it offers methods and instructions on how to proceed when interpreting a legal text. Historically, legal hermeneutics as methodological hermeneutics was thereby subjectivist, that is, it sought for historical meaning, because it arose from philosophical hermeneutics (Savigny, Puchta).<sup>11</sup> In contrast, there was also another subjectivist view where Ihering and also Heck claimed that the interpreter's effort should be to find out the purpose of the text of law.<sup>12</sup> Finally, Hans Kelsen argued that the purpose/meaning of the law is voiced by the judge because the judge is expected to express his subjective opinion on what he understands to be the purpose of the law.<sup>13</sup>

Historically, however, there have also been objectivist views that claimed that we should look for an objectively reasonable solution as to the meaning of the text of legal regulation. Gustav Radbruch was a supporter of the objectivist view, i.e. depersonalization from the subjective view of the purpose of the law. Radbruch was convinced that we could

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<sup>11</sup> Cf. HOLLÄNDER, P. *Zrod a metamorfózy princípov bezrozpornosti a úplnosti práva*. 1. vyd. Praha: Leges, 2022. 176 p. Teoretik. ISBN 978-80-7502-645-3.

<sup>12</sup> HLOUCH, L. *Teorie a realita právní interpretace*. 1. vyd. Plzeň: Vydavatelství a nakladatelství Aleš Čeněk, 2011, p. 28 and following. ISBN 978-80-7380-303-2.

<sup>13</sup> KELSEN, H. *Pure Theory of Law* [online]. 1<sup>st</sup> ed. Berkeley: University of California Press, 1967. 356 p. [cit. 2024-09-02]. ISBN 978-0-520-31229-6. Available at: <https://doi.org/10.1525/9780520312296>.

find objectively reasonable solutions to legal queries.<sup>14</sup> Similarly, Ronald Dworkin argued that there is only one possible correct answer that we can discover, and that would be a systematic solution that does not challenge the legal system, but rather supports it.<sup>15</sup>

Finally, Aharon Barak suggested recently a compromise in that methodological hermeneutics as well as legal hermeneutics should be essentially applied in a combined form. Thus, judges should be free to choose for themselves whether they will proceed subjectively or objectively, i.e., whether they will be searching for the historical meaning or rather accept the current understanding of the law. In practice, judges thus calibrate their interpretative approach in order to arrive at a certain solution which they consider to be the right one.<sup>16</sup>

Still, there was also another form of the polemic between subjective or objective interpretation in legal hermeneutics of the 20<sup>th</sup> Century – going under the labels of reconstructive and integrative hermeneutics. Especially in the mid-20<sup>th</sup> Century, there was namely an effort to reconstruct the historical meaning of the text of the legal regulation, which effectively means a return to theories about the importance of subjective interpretation. This was especially the view of Emilio Betti, the Italian legal historian. However, this view did not prevail, and since the 1970s, the approach of the so-called integrative hermeneutics was preferred.<sup>17</sup> It was called integrative, because on the one hand, it integrates historical elements and contemporary elements in an effort to understand the original intention of the legislator, allowing for updating the text in the light of the present needs. On the other hand, one can also speak of integrative hermeneutics because it essentially integrates both the philosophical and methodological approaches to hermeneutics. It is namely in fact Gadamer's concept of hermeneutics, which has become accepted in jurisprudence (methodological hermeneutics) as well – albeit, not as an exclusive

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<sup>14</sup> SPAAK, T. Meta-Ethics and Legal Theory: The Case of Gustav Radbruch. *Law and Philosophy* [online]. 2009, vol. 28, no. 3, pp. 261-290 [cit. 2024-09-02]. ISSN 1573-0522. Available at: <https://doi.org/10.1007/s10982-008-9036-8>.

<sup>15</sup> DWORKIN, R. *A Matter of Principle* [online]. 1<sup>st</sup> ed. Cambridge, MA: Harvard University Press, 1985. 425 p. [cit. 2024-09-02]. ISBN 978-0-674-26314-7. Available at: <https://doi.org/10.2307/j.ctv1pncpxk>.

<sup>16</sup> BARAK, A. *Purposive Interpretation in Law* [online]. 1<sup>st</sup> ed. Princeton: Princeton University Press, 2005. 423 p. [cit. 2024-09-02]. ISBN 978-1-4008-4126-4. Available at: <https://doi.org/10.1515/9781400841264>.

<sup>17</sup> ŽÁK KRZYŽANKOVÁ, K. *Právní interpretace – mezi vysvětlováním a rozuměním*. 1. vyd. Praha: Wolters Kluwer, 2019. 284 p. ISBN 978-80-7598-404-3.

and the only recognized approach, but in rather combination with other possibilities of interpretation, as Aharon Barak indicated.

The theory of legal interpretation thus currently speaks of a procedure wrapped up in four methodical steps. The methodics of legal interpretation tells us that we have to:<sup>18</sup>

1. find out whether the legal regulation is valid and effective,
2. then to interpret the regulation, either ex officio or based on the adversarial activity of the parties,
3. the third step is to test the result of the interpretation – with the interpreter trying to integrate the interpreted meaning into the overall legal system, that is, verifying whether the result reached by the interpretation is not in conflict with the legal system or does not undermine the legal system,
4. and in the last, fourth step, the interpreter must assess whether the given solution, which they accepted based on the standard interpretation operations, is also fair and reasonable.

### 3 Ernst H. Gombrich and the interpretation of art

To get closer to the main aim of this paper, namely to compare the interpretation of law with the interpretation of art, let us focus here on the theory in interpretation of art as proposed by the famous art historian Ernst H. Gombrich. In his work called “Art and Illusion”<sup>19</sup> one can find quite extensive passages dealing with the interpreter’s role<sup>20</sup> in finding or attributing meaning to a work of art. Thereby, searching for the meaning and attributing meaning are, according to Gombrich, two interrelated operations, but at the same time, these two concepts describe the different degree of participation of the viewer or the percipient (in revealing the pre-given meaning of the work, or, conversely, in the additional attribution of meaning to a specific work). Both concepts, just like in law, are hidden under the unifying term “interpretation” of a work of art.

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<sup>18</sup> Based on the similar theory by SOBOTKA, M. Analogie jako institut soukromého práva. In: T. MACHALOVÁ, M. VEČEŘA, J. HARVÁNEK, L. HLOUCH, M. SOBOTKA and T. SOBEK. *Aktuální otázky metodologie právního myšlení*. 1. vyd. Praha: Leges, 2014, pp. 212-231. Teoretik. ISBN 978-80-7502-060-4.

<sup>19</sup> GOMBRICH, E. H. *Umění a iluze: Studie o psychologii obrazového znázorňování*. 2. vyd. Praha: Argo, 2019. 385 p. ISBN 978-80-257-3031-7.

<sup>20</sup> See KESNER, L. Podíl diváka: Pokus o oživení Gombrichova pojmu. In: F. MIKŠ and L. KESNER, eds. *Gombrich: Porozumět umění a jeho dějinám*. 1. vyd. Brno: Barrister & Prncipal, 2010, p. 38. ISBN 978-80-87029-57-2.

In this context, Gombrich quotes Rorschach, who distinguishes between simple vision on the one hand, and the sorting (classification) of impressions on the other.<sup>21</sup> It is thereby only the operation called “sorting” that Gombrich, referring to Rorschach, understands as interpretation, as opposed to simple vision (perception). An analogy in law would be to distinguish the principle of *clara non sunt interpretanda* from the true interpretation. The classification or sorting just mentioned, considered by Gombrich (referring to Alberti)<sup>22</sup> as being the ability to project meaning into the “seen matter”, is allegedly based either on innate abilities, or acquired knowledge. This ability is considered to be the basis and prerequisite for the birth of art in general – namely, in this understanding, art presupposes the ability to project or assign meanings to a perceived image, or display. Similarly, one could probably distinguish between the literal interpretation of a legal text by a legal layman and the more complex interpretative undertakings by a professional lawyer – it is namely only the lawyer who will be capable of the mentioned “sorting”, in contrast to the layman, who will not be able to understand the context and to interpret the text in such a way as to classify it within the system of law. This ability thus represents a necessary element of a birth of law, just like it is behind the birth of art.

According to E. H. Gombrich, the ability to interpret requires a certain mental presetting and the ability and will to test different possibilities of “reading” the seen work. However, as the very concept of the Rorschach test shows, not everyone sees the same thing in the image, and to a large extent reading or attributing meaning is essentially a subjective act, often projecting the inner mental (rational and emotional) world into the perceived work (image). The objectification and test of the correctness of such an attribution mechanism consist, on one hand, in similar “attribution” and “reading” by the other interpreters, based on the common biological or mental assumptions of the functioning of the mind of each and every sound human being. However, specific cultural and social context of the viewers also plays a special objectifying role in their act of interpretation (ascription, projection) of meaning. Obviously, one can approach legal interpretation in a similar way. It also requires a specific context of understanding, e.g. the lawyer being educated in a legal system

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<sup>21</sup> GOMBRICH, E. H. *Umění a iluze: Studie o psychologii obrazového znázorňování*. 2. vyd. Praha: Argo, 2019, p. 86. ISBN 978-80-257-3031-7.

<sup>22</sup> GOMBRICH, E. H. *Umění a iluze: Studie o psychologii obrazového znázorňování*. 2. vyd. Praha: Argo, 2019, p. 86. ISBN 978-80-257-3031-7.

of a certain type and ideally of the same country, including the knowledge of legal methodology applicable in reading of the legal text.

Gombrich uses here a metaphorical and analogical example of language and its understanding (interpretation of speech and words) for better clarity. Not even in spoken language everything gets fully out-spoken; sentences can be unfinished, even torn out of the linguistic context, but they are always set in the context of a specific event, and therefore, despite the shortcomings, they are understandable in a specific situation. This is due to the help from the so-called “situational keys”. The key is the context within which we interpret works of art, although the context itself may not be fully objectively given, because its knowledge also depends on the degree of its subjective understanding.

These claims so far seem to indicate that art and the ability to interpret a work of art are inevitably largely a subjective matter, with a significant element of psychologism, although with a test of correctness offered by some objective (objectifying) indicators. The social and cultural starting points of the work’s context are objective, as well as the generally (objectively) perceived shapes and properties of the work, and also iconographic and iconological knowledge about its figurative (naturalistic, mimetic) content. In such a case, a large component of the interpretation is relatively objectified by generally recognized and recognizable indicators (descriptors) of the work.

The mentioned factors thus represent, on the one hand, the possibility of more “objective” attribution of the meaning of the work, but on the other hand, they can also limit more subjective and original interpretations, since the art critic or interpreter of a work of art can remain captivated by the objective indicators within the process of projecting (attributing, interpreting) the meaning of the work. In neuroscientific scholarship, Semir Zeki’s cognitive studies research confirms that the perception of naturalistic (mimetic) images stimulates different parts of the brain than non-naturalistic (non-mimetic) images.<sup>23</sup> Naturalistic art specifically activates those parts related to memory and learning, and thus to verbalized and pictorial cognition. Abstract, i.e. non-mimetic, non-naturalistic art, on the other hand, stimulates those brain centres that are responsible for the perception of colours, potentially opening up possibilities for original subjective assessment and interpretation of the work of art.

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<sup>23</sup> MIKŠ, F. *Gombrich: Tajemství obrazu a jazyk umění: Pozvání k dějinám a teorii umění*. 4. rozšíř. vyd. Brno: Books & Pipes, 2021, pp. 53-54. ISBN 978-80-7485-231-2.



In other words, naturalistic depiction leads to a relatively simple assumption of revealing the objective meaning of the work, as attributed to it by its author, the creator. However, the search for or attribution of meaning becomes more complicated in case of non-mimetic, abstract works, or even in situations with a completely missing “situational key”. In that case, the viewer’s subjective contribution to the interpretation of the work of art can be, and indeed sometimes even must be, higher and more significant. Gombrich was apparently aware of this, as he himself emphasized the difference between figurative and non-figurative interpretations.

In this context, a parallel to legal interpretation could be seen in the interpretation of legally unambiguous texts on one hand, as opposed to the solution of “hard cases”, or the determination of indefinite terms on the other. These are situations where, in contrast to relatively generally accepted objective interpretations, there is also space for individual, subjective assessment of the content of a legal concept in the solution of a hard case.

Still, there is a basic difference between Gombrich’s concept of interpretation and the legal interpretation. It is Gombrich’s obvious preference for subjective interpretation over objective interpretation. Despite the search for a common procedural platform of interpretation, Gombrich emphasized a preferred the subjective level of interpretation. This was obviously related to his personal value setting, which was individualistic, pluralistic, and psychologizing, thus standing in opposition to the great metanarratives of the Hegelian type. Still, at the same time, he also rejected boundless relativism, which led him precisely to the efforts to combine the subjective and objective elements of the interpretation of a work of art. He found this “compromise” in the need to identify common, shared, and thus to some extent intersubjective frameworks and procedures of interpretation, while preserving the individuality of the interpreter in the very content of interpretation.

Such a compromise between objective and subjective views can possibly be compared to a certain extent with Aharon Barak’s concept of purposive interpretation of law – as long as the judge uses standard accepted operations of interpretation, although even in order to achieve a subjective and individually desired interpretation goal, such an interpretation can still be considered acceptable. However, this realistic stance is very often criticized as being too subjectivist, and instead, more

objective interpretation rules are preferred in legal scholarship aiming at enhanced legal certainty.

#### **4 Gadamer's influence (also) on artistic interpretation?**

It is probably no coincidence that precisely at the time when Gombrich was thinking about the questions of the psychological elements of the interpretation of artistic depictions, not only new psychologizing approaches were being developed in the natural and social sciences, but at the same time great attention was being paid to the problems of interpretation and, in general, the problem of understanding – hermeneutics. From the mid-20<sup>th</sup> Century, the very idea of interpretation began to represent one of the popular scientific topics, affecting individual scientific disciplines, similarly to the psychological theories, which inspired Gombrich when he wrote the first edition of his book *Art and Illusion*. However, this work remained even in its subsequent editions, for understandable reasons, directed towards psychologizing questions of image perception rather than hermeneutic assumptions of understanding of a visual work. Still, we believe that what Gombrich did not reflect more deeply in later editions of his work, can be compensated for in this paper, in which we will try to “guess” Gombrich’s conclusions about the interpretation of the work of art in the context of the 20<sup>th</sup> Century development of hermeneutic thinking.

It was namely around the same time when Gombrich was writing his book, that Hans-Georg Gadamer created his innovative work on modern hermeneutics, where he was solving essentially the same problem as Gombrich. They both tried to explain the human ability to interpret, or to understand. The subject matter of hermeneutics as a philosophical doctrine of interpretation was thereby set as the effort to objectively understand the “originally” intended meaning of the work, but also to explain the limits of this ability and its subjective elements and pre-conditions.

Gadamer thus faced the same challenge as Gombrich – they both investigated the psychological mechanisms of understanding, but Gadamer did so in relation to a written text rather than a visual piece of art. Still, similarly to Gombrich, Gadamer deviated from the traditional concept of hermeneutics as a science capable of revealing the original and objective meaning of a text (work), which was a statement accepted in the older forms of hermeneutics, built on the biblical foundations of the doctrine of interpretation with the assumption of the possibility of a correct understanding of God’s will objectively captured in the interpreted biblical text.

This idea of objective interpretation nevertheless caused practical problems wherever there was no central authority confirming the authenticity of the interpretation – as it was and still is the case with the Church and its control over interpretation of biblical texts.<sup>24</sup> That is why, instead of looking for historical will, Gadamer indicated that the actual process of understanding or interpretation works differently – because it inevitably mixes and contaminates historical will with updating approaches and current assumptions of the recipient or percipient of the text (work). Gadamer thus speaks of the “melting of horizons”<sup>25</sup> of past and present understanding of the text.

According to Gadamer, it is natural that we approach the work with a certain pre-understanding, in the light of which we subsequently understand and interpret the work. It is at this point that Gadamer’s theory overlaps quite clearly with Ernst H. Gombrich’s theory, at least as far as the interpretation of figurative, mimetic, naturalistic depiction and the viewer’s role in this undertaking is concerned. A similar principle, but possibly to a different extent, will also apply in relation to the interpretation of non-figurative, non-naturalistic, non-mimetic depictions, where the creator’s original intention may or may not be reconstructable or predictable based on generally known “pre-conceptions” and objectively recognized shapes, motifs and their mutual relations. In the extreme case of the absence of closer data about the original idea of the work, and with a high degree of abstraction and non-mimeticity, it will probably no longer be a question of melting of past and present horizons, but rather of the open dominance of the present horizon, preferring rather the updating approach to the interpreted work.

This very case of hermeneutic interpretation of unclear texts inevitably resembles the use of Vattimo’s radical hermeneutics, overcoming and leaving past horizons in favour of a radical re-evaluation of the interpreted work (text, or indeterminate notions in law) through a contemporary lens. Radical hermeneutics presented by authors such as Gianni Vattimo, is clearly inclined today to the possibilities of hermeneutics to reinterpret historical events and past works from a presentist point of view,

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<sup>24</sup> It is a situation similar to legal texts, being interpreted by the supreme courts and constitutional courts.

<sup>25</sup> In GADAMER, H.-G. *Pravda a metoda I: Nárys filozofické hermeneutiky*. 1. vyd. Praha: Triáda, 2010. 415 p. ISBN 978-80-87256-04-6.

even in a politically radical way.<sup>26</sup> This hermeneutics thus offers the possibility to interpret the work from later standpoints and with the passage of time even radically different from the historical intention of its creator. At least in law, this also allows for the meaning of the text and its interpretation to be adapted to the changed circumstances of the society, allowing thus for evolution of the law respecting the needs of the society. Of course, this should be applicable only to a limited extent and only there, where the text is vague, using indeterminate notions, inviting the interpreters to use their discretion in the interpretation undertaking.

This is thereby the position that – interestingly – Hannah Arendt was taking in the same period when Gombrich and Gadamer were writing their books. She herself placed emphasis primarily on the horizon of a current, modern interpreter, albeit this approach could necessarily become subjective and marked by individual and collective prejudices. Arendt was thus clearly paving the way for the postmodern approach in hermeneutics when, like the postmodernists, she criticized the “totalitarian” Hegelian interpretation of history, which was also adopted by Marxists and Marxist-Leninist theory.<sup>27</sup> The postmodern approach namely makes it possible to deny past, in favour of contemporary interpretations. It allows to reevaluate historical events, images and texts always from an actual, current (albeit political) point of view. In such a concept, there is naturally no single correct interpretation, and the purpose of the interpretation is not even to discover the original meaning of works and events in their historical meaning. Thus, while the representatives of the Hegelian concept of history knew exactly (or at least believed in it) what meaning should be attributed to individual historical events, postmodernist thinkers, philosophers, historians, and lawyers alike, do not ascribe such authority to themselves and allow for the constant reevaluation of interpretations.

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<sup>26</sup> VATTIMO, G. and S. ZABALA. *Hermeneutic Communism: From Heidegger to Marx* [online]. 1<sup>st</sup> ed. New York: Columbia University Press, 2011. 264 p. [cit. 2024-09-02]. ISBN 978-0-231-52807-8. Available at: <https://doi.org/10.7312/vatt15802>, also ZABALA, S. *The Remains of Being: Hermeneutic Ontology after Metaphysics* [online]. 1<sup>st</sup> ed. New York: Columbia University Press, 2009. 178 p. [cit. 2024-09-02]. ISBN 978-0-231-52004-1. Available at: <https://doi.org/10.7312/zaba14830>.

<sup>27</sup> GALINDO LARA, C. *Hannah Arendt: política, historia, memoria y narración*. 1<sup>a</sup> ed. Aguascalientes: Universidad Autónoma de Aguascalientes, 2011, p. 45. ISBN 978-607-8227-05-1.

## Conclusions

The reluctance, or even the impossibility, to introduce a uniform binding method in the interpretation (hermeneutics) of law, is usually rationalized by the fact that each case of interpretation is different, special, and in order to achieve discursively accepted goals, one approach may be more appropriate in some cases, and another in other cases. It is only important that the used interpretive method and its outcome is accepted in the given discourse.

Such a discursive approach is currently the one that fulfils also Gombriich's ideal of a hermeneutic compromise between two extremes – absolute knowledge (totality of knowledge) on the one hand and nihilistic relativism on the other. Discursiveness, as the ability to agree on certain starting points and frameworks of mutual communication, does not thereby insist on exclusive one right answer, but at the same time, it is also not about completely isolated and monological views. It is about views accepted in a certain social framework, within a certain discourse, conversation, or dialogue.

Such a compromise between the objective and the subjective approaches to interpretation has its supporters today, for example, in American pragmatism (Richard Rorty)<sup>28</sup> or in German pragmatism (Karl Otto Apel).<sup>29</sup> This dimension would probably also be the one that Gombriich would have reached if he undertook a substantial revision of the work "Art and Illusion". It is namely precisely in a discursive context that subjective, psychologically conditioned attitudes are placed in the inter-subjective dimension,<sup>30</sup> in the context of a discourse and dialogue, rather than monologue.<sup>31</sup> The dialogue thereby ensures at least a partial inter-subjective validity of the "interpreter's share" in the interpretive act, while preserving the most of his or her subjective interpretative input.

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<sup>28</sup> VIŠŇOVSKÝ, E. *Richard Rorty a zrkadlo filozofie*. 1. vyd. Bratislava: Kalligram, 2015. 355 p. ISBN 978-80-8101-917-3.

<sup>29</sup> ANZENBACHER, A. *Úvod do etiky*. 1. vyd. Praha: Zvon, 1994, p. 231. ISBN 80-7113-111-3.

<sup>30</sup> Cf. WALL, J. Moral Meaning Beyond the Good and the Right. In: J. WALL, W. SCHWEIKER and W. D. HALL, eds. *Paul Ricoeur and Contemporary Moral Thought* [online]. 1<sup>st</sup> ed. New York: Routledge, 2002, p. 48 [cit. 2024-09-02]. ISBN 978-1-00-306168-7. Available at: <https://doi.org/10.4324/9781003061687-5>.

<sup>31</sup> BETHKE ELSHTAIN, J. Toleration, Proselytizing, and the Politics of Recognition: The Self Contested. In: R. ABBEY, ed. *Charles Taylor* [online]. 1<sup>st</sup> ed. Cambridge: Cambridge University Press, 2004, pp. 137-138 [cit. 2024-09-02]. ISBN 978-0-511-61083-7. Available at: <https://doi.org/10.1017/cbo9780511610837.006>.


## References

- ANZENBACHER, A. *Úvod do etiky*. 1. vyd. Praha: Zvon, 1994. 292 p. ISBN 80-7113-111-3.
- BARAK, A. *Purposive Interpretation in Law* [online]. 1<sup>st</sup> ed. Princeton: Princeton University Press, 2005. 423 p. [cit. 2024-09-02]. ISBN 978-1-4008-4126-4. Available at: <https://doi.org/10.1515/9781400841264>.
- BETHKE ELSHTAIN, J. Toleration, Proselytizing, and the Politics of Recognition: The Self Contested. In: R. ABBEY, ed. *Charles Taylor* [online]. 1<sup>st</sup> ed. Cambridge: Cambridge University Press, 2004, pp. 127-139 [cit. 2024-09-02]. ISBN 978-0-511-61083-7. Available at: <https://doi.org/10.1017/cbo9780511610837.006>.
- BOJDA, M. *Schleiermacherova teorie zprostředkování*. 1. vyd. Praha: Toggga, 2015. 288 p. Polemos. ISBN 978-80-7476-099-0.
- DWORKIN, R. *A Matter of Principle* [online]. 1<sup>st</sup> ed. Cambridge, MA: Harvard University Press, 1985. 425 p. [cit. 2024-09-02]. ISBN 978-0-674-26314-7. Available at: <https://doi.org/10.2307/j.ctv1pncpxk>.
- GADAMER, H.-G. Čo je pravda?. *Filozofia*. 2009, roč. 64, č. 3, pp. 252-261. ISSN 0046-385X.
- GADAMER, H.-G. *Pravda a metoda I: Nárys filozofické hermeneutiky*. 1. vyd. Praha: Triáda, 2010. 415 p. ISBN 978-80-87256-04-6.
- GALINDO LARA, C. *Hannah Arendt: política, historia, memoria y narración*. 1<sup>a</sup> ed. Aguascalientes: Universidad Autónoma de Aguascalientes, 2011. 219 p. ISBN 978-607-8227-05-1.
- GOMBRICH, E. H. *Umění a iluze: Studie o psychologii obrazového znázorňování*. 2. vyd. Praha: Argo, 2019. 385 p. ISBN 978-80-257-3031-7.
- GREGOR, M. Reflexie československého práva v „Demokratoch“ Janka Jenesského. *Právněhistorické studie* [online]. 2018, roč. 48, č. 2, pp. 57-74 [cit. 2024-09-02]. ISSN 2464-689X. Available at: <https://doi.org/10.14712/2464689x.2018.39>.
- HLOUCH, L. *Teorie a realita právní interpretace*. 1. vyd. Plzeň: Vydavatelství a nakladatelství Aleš Čeněk, 2011. 348 p. ISBN 978-80-7380-303-2.
- HOLLÄNDER, P. *Priesečníky umenia a práva*. 1. vyd. Plzeň: Vydavatelství a nakladatelství Aleš Čeněk, 2019. 159 p. ISBN 978-80-7380-760-3.

- HOLLÄNDER, P. *Zrod a metamorfózy princípov bezrozpornosti a úplnosti práva*. 1. vyd. Praha: Leges, 2022. 176 p. Teoretik. ISBN 978-80-7502-645-3.
- HROCH, J., M. KONEČNÁ and L. HLOUCH. *Proměny hermeneutického myšlení*. 1. vyd. Brno: Centrum pro studium demokracie a kultury, 2010. 419 p. ISBN 978-80-7325-231-1.
- KELSEN, H. *Pure Theory of Law* [online]. 1<sup>st</sup> ed. Berkeley: University of California Press, 1967. 356 p. [cit. 2024-09-02]. ISBN 978-0-520-31229-6. Available at: <https://doi.org/10.1525/9780520312296>.
- KESNER, L. Podíl diváka: Pokus o oživení Gombrichova pojmu. In: F. MIKŠ and L. KESNER, eds. *Gombrich: Porozumět umění a jeho dějinám*. 1. vyd. Brno: Barrister & Principal, 2010, pp. 35-58. ISBN 978-80-87029-57-2.
- LALÍKOVÁ, N. Advokát umelcom. Umelec advokátom?. *Bulletin slovenskej advokácie*. 2014, roč. 20, č. 1-2, pp. 39-43. ISSN 1335-1079.
- LALÍKOVÁ, N. Nad prienikmi práva, filozofie a umenia. *Justičná revue*. 2012, roč. 64, č. 12, pp. 1453-1460. ISSN 1335-6461.
- MIKŠ, F. *Gombrich: Tajemství obrazu a jazyk umění: Pozvání k dějinám a teorii umění*. 4. rozšíř. vyd. Brno: Books & Pipes, 2021. 397 p. ISBN 978-80-7485-231-2.
- SOBOTKA, M. Analogie jako institut soukromého práva. In: T. MACHALOVÁ, M. VEČEŘA, J. HARVÁNEK, L. HLOUCH, M. SOBOTKA and T. SOBĚK. *Aktuální otázky metodologie právního myšlení*. 1. vyd. Praha: Leges, 2014, pp. 212-238. Teoretik. ISBN 978-80-7502-060-4.
- SPAAK, T. Meta-Ethics and Legal Theory: The Case of Gustav Radbruch. *Law and Philosophy* [online]. 2009, vol. 28, no. 3, pp. 261-290 [cit. 2024-09-02]. ISSN 1573-0522. Available at: <https://doi.org/10.1007/s10982-008-9036-8>.
- VATTIMO, G. and S. ZABALA. *Hermeneutic Communism: From Heidegger to Marx* [online]. 1<sup>st</sup> ed. New York: Columbia University Press, 2011. 264 p. [cit. 2024-09-02]. ISBN 978-0-231-52807-8. Available at: <https://doi.org/10.7312/vatt15802>.
- VIŠŇOVSKÝ, E. *Richard Rorty a zrkadlo filozofie*. 1. vyd. Bratislava: Kalligram, 2015. 355 p. ISBN 978-80-8101-917-3.

- WALL, J. Moral Meaning Beyond the Good and the Right. In: J. WALL, W. SCHWEIKER and W. D. HALL, eds. *Paul Ricoeur and Contemporary Moral Thought* [online]. 1<sup>st</sup> ed. New York: Routledge, 2002, pp. 47-63 [cit. 2024-09-02]. ISBN 978-1-00-306168-7. Available at: <https://doi.org/10.4324/9781003061687-5>.
- ZABALA, S. *The Remains of Being: Hermeneutic Ontology after Metaphysics* [online]. 1<sup>st</sup> ed. New York: Columbia University Press, 2009. 178 p. [cit. 2024-09-02]. ISBN 978-0-231-52004-1. Available at: <https://doi.org/10.7312/zaba14830>.
- ŽÁK KRZYŽANKOVÁ, K. *Právní interpretace – mezi vysvětlováním a rozuměním*. 1. vyd. Praha: Wolters Kluwer, 2019. 284 p. ISBN 978-80-7598-404-3.

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