

Intention and Interpretation in Literary Theory and Legal Hermeneutics

The following discussion offers an investigation into the concept of intention in the humanities, in the broadest sense of the word. My main interest is literary theory – specifically the approach exemplified and represented by Northrop Frye – and legal hermeneutics. Both are concerned with human culture and have societal, communal and public bearings but as US Supreme Court Justice William Brennan has said, “Unlike literary critics, judges cannot merely savor the tensions or revel in the ambiguities inhering in the text – judges must solve them.”¹ This pragmatic requirement in legal hermeneutics was certainly one of the reasons why the idea of intention as a guiding principle has been retained in legal interpretation, whereas, in the absence of this practical demand, the role of intention experienced a rapid decline in literary theory as modern and post-modern theories entered the academic field. But apart from this pragmatic aspect, jurisprudence has always been based upon such principles as righteousness and justice, principles attached to ethics, a concept whose role for literature – as the “asymmetric counterconcept” of aesthetics – has been the subject of much debate in literature and literary theory since the last third of the 19th century.² For all the differences, however, legal hermeneutics and literary theory are both concerned with the interpretation of texts, which alone offers the opportunity to compare their respective interpretative strategies. In what follows I will first

1 Quoted in Annabel Patterson, “Intention,” in: *Critical Terms for Literary Study*, eds. Frank Lentricchia and Thomas McLaughlin (Chicago: University of Chicago Press, 1995), p. 136.

2 See Zoltán Kenyeres, “Kérdések az etikumról és esztétikumról,” in: *Irodalomismeret* (2000/4), p. 65.

discuss literary theory and will proceed on to legal hermeneutics in the second part of this paper.

The concept of authorial intention was largely deprived of its legitimacy and banned from literary criticism in the second half of 20th century as an old fashioned and simple method which restricts interpretation and which is established on a faulty and deficient theoretical basis. As Jeremy Hawthorn has remarked, "in the 1950s and 1960s use of the word 'intention' alone was sufficient to make many critics reach for their revolvers."³ Northrop Frye's theory, too, moved along this path and rejected the importance of authorial intention in the interpretation of works of literature.

In *Fearful Symmetry*, Frye rejected the notion that the poet is necessarily, or even could be, the definitive interpreter of himself. This notion was in line with the basic tenets of the New Criticism, but Frye traced it to Blake's following comments on Wordsworth: "I do not know who wrote these Prefaces – Blake said – they are very mischievous & direct contrary to Wordsworth's own Practice."⁴ Frye believed that "it is a blunder to limit the meaning of art to what the artist may be presumed to have intended," for the "artist's intentions are often on levels of consciousness quite unknown to himself."⁵ Frye maintained and developed this idea in *Anatomy of Criticism*, where he claimed that the artist is not equipped with the tools to unravel his own art or that of other poets and that it is the task of the critic to unveil the poet's world of imagination through his creative work.⁶ Thus it is not very surprising that Frye concluded that "Wordsworth's Preface to the Lyrical Ballads is a remarkable document, but as a piece of Wordsworthian criticism nobody would give it more than a B plus."⁷

In his effort to set up the principles of literary criticism, Frye was reluctant to use psychological terms, but accepted that "poetry is the product of not only of a deliberate and voluntary act of consciousness, like discursive writing, but of processes which are subconscious or preconscious or half-conscious or unconscious as well."⁸ This was a rejection of Husserlian intentionality, at least as

3 Jeremy Hawthorn, *A Glossary of Contemporary Literary Theory* (London: Edward Arnold, 1992), p. 119.

4 Quoted in Northrop Frye, *Fearful Symmetry: A Study of William Blake* (Princeton U P, 1947), pp. 112–113.

5 Frye, *Fearful Symmetry*, p. 112.

6 See Northrop Frye, *Anatomy of Criticism: Four Essays* (Princeton: Princeton U P, 1957), pp. 5–6.

7 Frye, *Anatomy of Criticism*, p. 5.

8 Frye, *Anatomy of Criticism*, p. 88.

far as works of literature were concerned, since – as it is well-known – Husserl believed that it is not possible to consider the world independently of human consciousness and that our consciousness always relates to something, since consciousness is always a consciousness of something and the objects of the world are correlates of the individual's intentional acts. Frye did not oppose this idea, but claimed that poetry is creation, not “an act of consciousness,” and “creation, whether of God, man, nature, seems to be an activity whose only intention is to abolish intention, to eliminate final dependence on or relation to something else, to destroy the shadow that falls between itself and its conception.”⁹ This latter view echoed the *Critique of Pure Reason*, in which Kant stated, albeit in another context, that: “Otherwise it would not be the exactly same thing that exists, but something else, but something more than we had thought in the concept; and we could not, therefore, say that the exact object of my concept exists.”¹⁰

Frye traced the “intentional fallacy,” the concept that the poet's primary intention is to convey meaning to the reader – and that the main obligation of the critic is to evoke that intention – to the failure to distinguish between “fiction and fact, hypothesis and assertion, imaginative and discursive writing.”¹¹ In his view, intention belongs to “discursive writing,” where there must be a valid correspondence between the words and what they describe. In discursive writing a statement is true if it corresponds to the reality which it literally denotes. On the other hand, “a poet's primary concern is to produce a work of art [...] in other words, a poet's intention is centripetally directed. It is directed towards putting words together, not towards aligning words with meanings.”¹² In brief, the “poet may have intended one thing and done another,”¹³ or “A snowflake is probably quite unconscious of forming a crystal, but what it does may be worth study even if we are willing to leave its inner mental processes alone.”¹⁴

One of the most extreme manifestos of this line of critical thought, detaching the author from the work of art, was made by Roland Barthes, among others (like Foucault), who claimed that it is an error to assume that there is an author behind the text, because such a presumption delimits the text and restricts its

⁹ Frye, *Anatomy of Criticism*, pp. 88–89.

¹⁰ Quoted in John Hick, ed., *Classical and Contemporary Readings in the Philosophy of Religion* (Englewood Cliffs, N.J.: Prentice Hall, 1990), p. 449.

¹¹ Frye, *Anatomy of Criticism*, p. 86.

¹² Frye, *Anatomy of Criticism*, p. 86.

¹³ Frye, *Anatomy of Criticism*, p. 87.

¹⁴ Frye, *Anatomy of Criticism*, p. 89.

interpretation by assigning a deciphering activity to the critic in place of a disentangling process.¹⁵ Barthes' famous statement, that the "birth of the reader must be at the cost of the death of the Author,"¹⁶ was a logical conclusion in a line of thought that may be taken back to Nietzsche. Nevertheless, despite the rhetorical power of Barthes' assertion, the argument of a long line of earlier critics following the same path, including Frye, stating, for example, that "the author brings the words and the reader the meaning" and that "it is the exact description of all works of literary art without exception,"¹⁷ it is naive to believe that the research of intention is a simple or easy hermeneutic question. The unabridged version of the above Frye quote is the motto of E.D. Hirsch's "defence of the author" in *Validity in Interpretation*, suggesting as if Frye had been his opponent, but Hirsch's attack was more specifically directed against Gadamer.¹⁸ Hirsch defines "verbal meaning" as "what the author meant," i.e. "the author's meaning" and distinguishes it from "understanding," which is the reader's own construction of verbal meaning, "interpretation," which is the explanation of verbal meaning and "significance" which "names a relationship" between verbal meaning and a person, who is the reader of the text.¹⁹ Hirsch's book-length study gave complex reasons for the necessity of an author-centred approach, countering the predominant currents of twentieth century literary theory from Eliot to Derrida (opposing the latter in his *Aims of Interpretation*). One of his key arguments was

15 Barthes claims that "[o]nce the Author is removed, the claim to decipher a text becomes quite futile. To give a text an Author is to impose a limit on that text, to furnish it with a final signified, to close the writing. Such a conception suits criticism very well, the latter then allotting itself the important task of discovering the Author (or its hypostases: society, history, psyché, liberty) beneath the work: when the author has been found, the text is 'explained' – victory to the critic" (Roland Barthes, "The Death of the Author," in: *Image, Music, Text*, essays selected and translated by Stephen Heath [New York: Noonday Press, 1988], p. 147).

16 Barthes, p. 148.

17 Frye, *Fearful Symmetry*, pp. 427–428.

18 E. D. Hirsch, Jr., *Validity in Interpretation* (New Haven: Yale University Press, 1967), p. 1, but the same quotation is also cited by Wolfgang Iser, *The Act of Reading: A Theory of Aesthetic Response* (Baltimore: Johns Hopkins UP, 1978). For investigations into the opposing views of Gadamer and Hirsch, see Péter Dávidházi, "A filológia kihívása az amerikai kritikaelméletben," in: *Filológia Közöny*, xxx/4 (Budapest, 1984), pp. 402–407, and Tibor Fabiny, *Shakespeare and the Emblem: Studies in Renaissance Iconography and Iconology* (Szeged, 1984), pp. 40–44.

19 Hirsch, *Validity in Interpretation*, pp. 8 and 25. For the four categories in Hirsch, see Wendell V. Harris's explanation in Irena R. Maryk, ed., *Encyclopaedia of Contemporary Literary Theory: Approaches, Scholars, Terms* (Toronto Buffalo London: University of Toronto Press, 1993), p. 360.

that to "banish the original author as the determiner of meaning was to reject the only compelling normative principle that could lend validity to an interpretation."²⁰ In opposition to Derrida and J. Hillis Miller, M.H. Abrams struck a very similar tone in "The Deconstructive Angel," claiming that interpretation should approximate what the author meant. Knowing that Hirsch's compelling logic and Abrams' "traditional humanistic scholarship" (as David Lodge calls it)²¹ supports the "traditionalistic" side of the debate, it is perhaps not utterly wrong to assert that retaining the concept of the author and of authorial intention may reveal an underlying system, the very core of that which comes to light, and this, in turn, may help solve questions which are otherwise utterly complicated or cannot be resolved at all. In brief, such methodology may offer assistance in seeing things hidden from the sight of the critic, things that are relevant not because they belong to the author but because they pertain to the reader's understanding of what he can see in the text.

In the light of the foregoing it is interesting to observe that there was a shift in Frye's own view concerning the question of intention in the 1980s. This issue did not assume a central role in his thought, but, given his previous conviction, one cannot overlook some queer statements scattered in his last works. Frye never accepted the importance of authorial intention, but the intentionality of the text was a concept which he started to invoke. For Frye, the point of departure remained to be the text, and not the author, but he accepted the idea of intention which was recreated by and through the text, as if being in the mind of the text. For example, in *The Great Code* he asserts: "What I am saying is that all explanations are an *ersatz* form of evidence, and evidence implies a criterion of truth external to the Bible which the Bible itself does not recognise,"²² suggesting that the Bible has its own integrity and the capability of deciding on such matters, or as was for long held: "Scriptura Scripturam interpretat" or "Scriptura sui ipsius interpres." This concept is repeated in another statement, which includes reference to the mentality of the Bible's presumed author as well: "the Bible itself could not care less whether anyone finds an ark on Mount Ararat or not: such "proofs" belong to a mentality quite different from any that could conceivably

²⁰ Hirsch, *Validity in Interpretation*, p. 5.

²¹ See David Lodge, ed., *Modern Criticism and Theory* (London and New York: Longman, 1988), p. 264. "The Deconstructive Angel" is reprinted in the same volume, pp. 265-276.

²² Northrop Frye, *The Great Code: The Bible and Literature* (San Diego: A Harvest/HJB Book, 1983), p. 44.

produced the Book of Genesis."²³ Then again, Frye refers to intention in the following sentence: "Once we have realized that the Bible is not primarily literary in intention, it may seem curious that it should be so full of figures of speech."²⁴ Answering a question posed by a student, Frye said that it was important to respect the religious intentionality of the Bible,²⁵ and in the "Hypnotic Gaze of the Bible," he said: "Well, I was confronted with the difficulty that the Bible seemed to have all the characteristics of literature, such as the use of myth and metaphor, and yet at the same time it was clearly not intended to be a work of literature."²⁶ It is clear from these statements that Frye thought both of the mind of the text and, vaguely, of the author of the text, but these scattered remarks are insufficient to conclude that he turned towards an intention-centred approach. These assertions merely demonstrate that he took into consideration some kind of intention, whether emanating from and created by the text or deriving from the author; however, there is no doubt that the internal, centripetal world of the text continued to be at the focal point of his thought, and he did not make a major revision to his views on intention.

The example of other scholarships where the question of authorial intention has not been excluded from the field of research is also suggestive. Not in the sense that these scholarships managed to solve the question of intention once and for all in their own hermeneutics, but in the sense that they demonstrate that this question is a very complex one, to which no general rules can be applied.

In art history, the claim that Baroque churches were over-decorated in order to attract attention and thus help regain people for Catholicism is surely dismissed by most art historians as a commonplace, but not as a statement founded on a false theoretical basis.²⁷ Alois Riegl's analysis of the origin of the early Christian basilica investigates why in early Christian churches the communal space was emancipated by the unusual placing of the altar in the centre, and finds that the answer lies in the architect's artistic volition to direct the perceiver's attention towards the ceiling and towards the sky above it, suggesting that the believer's

²³ Frye, *The Great Code*, p. 44.

²⁴ Frye, *The Great Code*, p. 53.

²⁵ See "Introduction: an approach, Episode No. 1," in: *The Bible and Literature* [video series] (Toronto: Media Centre, University of Toronto, 1982).

²⁶ Robert D. Denham, ed., *A World in a Grain of Sand: Twenty-Two Interviews with Northrop Frye* (New York: Peter Lang, 1991), p. 222.

²⁷ The statement is not true for countries where Baroque art was not connected to the Counter-Reformation, such as Baroque architecture in England.

awareness should be concentrated on the presence which is above, both inside and outside of the building.²⁸ In art history, intentionality, *Kunstwollen*, is a valid and applicable concept, which László Beke has recently brought into connection with Foucault's concept of *epistémé*.²⁹ Indeed, already Wölfflin defined the essence of *Kunstwollen* as "not everything is possible in any age." Although the concrete manifestation of *Kunstwollen*, according to Riegl, defines individual periods of art, his usage of the concept was very broad and he applied it to the individual artist as well: "in the age of modern superindividualism, each artist believes that he must write a book on his own *Kunstwollen*, out of the well-founded fear that the public would not be able to understand his artistic conceptions from his works."³⁰

Gadamer, drawing on Aristotle, distinguished between *phronesis*, i.e. moral knowledge, *epistémé*, i.e. theoretical knowledge and *techné*, i.e. the knowledge of a skill. He saw a connection between *phronesis* and modern hermeneutic problems, and referred to legal hermeneutics as an example of *phronesis*.³¹ Gadamer's hermeneutic theory, of course, proceeded to other conclusions, but his analogy leads one to the area of jurisprudence, which both in theory and practice accepts that an act (action) should be interpreted and judged, at least partially, in accordance with the will, or intent, that caused it to become realised. In criminal law, intention is a concept which distinguishes one degree of crime from another: murder is different from manslaughter in that murder is the illegal deliberate killing of a human being, whereas manslaughter is the crime of killing a person illegally, but not intentionally. Therefore, murder carried out by premeditated malice is different from manslaughter by negligence, exactly on the basis of the intent underlying it, even if the same axe is used.

But to move from the corpse to the corpus, it is clear that law must deal with other cases, too, where the examination expands from a written text, whether a law, a contract or a testament, to the context outside it. The recreation of the intention of the lawmaker, the contracting parties or the testator is an essential element of judicial systems around the world, which brings the interpreter of legal

28 See Alois Riegl, "Az ókeresztény bazilika keletkezéséhez," in: *Emlék márványból vagy homokkőből*, ed. Marosi Ernő (Gondolat, 1976), pp. 357–360. [My translation.]

29 See László Beke, "Utószó," in: Alois Riegl, *Művészettörténeti tanulmányok*, ed. László Beke (Budapest: Balassi Kiadó, 1998), p. 316.

30 Quoted in Beke, p. 319. [My translation.]

31 See Hans-Georg Gadamer, *Igazság és módszer: egy filozófiai hermeneutika vázlatja* (Budapest: Gondolat, 1994), pp. 222–240.

texts into an extratextual area, back to the intent of the persons who created them. But here as well, the issue of intention is not free from debates.

Even in criminal law, intention is not necessarily the primary principle deciding the case. The story of the publication of *Histriomastix* in 1632 and of the cruel punishment of its author, the Presbyterian reformer William Prynne, serves as a good example to illustrate this fact. Prynne's book was a severe attack against the stage and all theatricals, including those enjoyed or performed by rulers, such as Nero. The English royal family of the time were fascinated by court plays and when Prynne's book was finally published after seven years of hard work and several futile attempts to obtain a licence, Queen Henrietta Maria and her women were engaged in rehearsing a pastoral play for a performance at Whitehall. Among other implicit attacks against the monarchy, Prynne, whether deliberately referring to the queen or not, placed in the table of contents of his book an expression stigmatising women actors as "notorious whores." He was immediately summoned before the Star Chamber and was found guilty of the crime of seditious libel. He was condemned to stand in the pillory, to have both his ears cut off (on two separate occasions, first the upper parts of his ears and later what remained of them), to be branded as a seditious libeller (S. L.) on both cheeks, to pay a fine of Pounds 5000 and, to top it all, to life imprisonment.³² This pitiless verdict was based on his judges' conviction that "though not in expresse tearmes, yet by examples and other implicit means [he argued that] for acteinge or beinge spectatours of players or maskes it is just to laye violent hands upon kings and princes. [...] It is said, hee had noe ill intencion, noe ill harte, but that hee maye bee ill interpreted. That must not be allowed him in excuse, for hee should not have writtten any thinge that would bear [that] construccion, for hee doth not accompanye his booke, to make his intencion knowne to all that reads it."³³ Thus, the reasons for Prynne's sentence in 1634 already contained the principle which became one of the key tenets of modern literary theory: the text cannot be reduced to the author's intentions or as Wimsatt and Beardsley asserted: "The poem belongs to the public."³⁴

³² See, for example, J. Dover Wilson, "The Puritan Attack upon the Stage," in: *The Cambridge History of English and American Literature*, Part Two], eds. A.W. Ward and A.R. Waller (Cambridge: UP, 1910), Vol. VI, pp. 404-405.

³³ Quoted in Patterson, p. 135.

³⁴ "The Intentional Fallacy," in: David Lodge, ed., *20th Century Literary Criticism: A Reader* (London: Longman, 1972), p. 335.

However, legal hermeneutics as a general rule does not dismiss the concept of intention, although the extent to which it is taken into consideration and the method by which it is used vary from case to case and from author to author. The US constitutional debate in the 1980s serves as a good example to illustrate the complexity of the question. Whereas Attorney General Edwin Meese attempted to define and fix the meaning of the American Constitution by reference to the intentions of its framers in 1787, Supreme Court Justice William Brennan concluded from the records of the ratification that "all that can be gleaned is that the Framers themselves did not agree about the application or meaning of particular constitutional provisions, and hid their differences in cloaks of generality. [...] [Moreover] It is far from clear whose intention is relevant – that of the drafters, the congressional disputants, or the ratifiers in the states."³⁵ Yet, Justice Brennan firmly believed that the Constitution as a text reveals certain intentions – to change society for the better – which are not bound to the situation of 1787 but can be extended to later developments, such as the abolition of slavery. In this way, Justice Brennan went as far as to claim that capital punishment is the greatest instance of the "cruel and unusual punishment to which the Eighth Amendment was directed and that opposition to capital punishment is consistent with the amendment's 'essential meaning.'"³⁶

Today, three basic approaches may be distinguished regarding intention, at least as far as the Anglo-American legal systems are considered. The first roughly corresponds to the principle laid down in Roman law and does not allow for the use of extrinsic evidence unless it is to clarify or explain the integrated writing; extrinsic evidence is never admissible when it would contradict the writing for the basic principle is that intention inheres in the text. As Charles E. Odgers stated, the parties "are presumed to have intended to say that which they have indeed said, so their words as they stand must be construed."³⁷ The second approach focuses on the interpreter. The exaggerated form of this school argues against the precedence of written texts and regards the legal interpreter as all-important. This concept was advocated in the so-called Critical Legal Studies movement (in the 1970s in the work of Roberto Unger and Duncan Kennedy), and a more moderate and applicable form of this concept is represented by Professor Ronald Dworkin.

³⁵ Quoted in Patterson, p. 136.

³⁶ Quoted in Patterson, p. 137.

³⁷ Charles E. Odgers, *The Construction of Deeds and Statutes* (4th ed.; London: Sweet & Maxwell, 1956), p. 21.

The third school of legal hermeneutics comprises the “original intent” camp thinkers who believe (such as Chief Justice John Marshall or Robert Bork) that texts must be understood in their original sense.

The question of intention in civil law can be traced to Roman law, which, after a number of debates taking place before the *Corpus Iuris Civilis* was compiled in the 6th century, firmly holds – to a large extent relying on the earlier work of Servius Sulpicius Rufus, Celsus and Paulus – that the subjective intention of the person making a legal statement cannot be taken into consideration if the objective content of the statement is clear. In the event of any ambiguity in the text, however, the true content of the statement can only be established on the basis of the intent of the person making the statement.³⁸

Since the *Corpus Iuris Civilis* became the ultimate model for the legal system of virtually every continental European nation, it is not surprising that the Hungarian Civil Code is in line with the above concept. Section 207 of Act IV of 1959 on the Civil Code explicitly defines how contracts and legal statements should be interpreted. It reads as follows (in its literal translation): “(1) In the event of a dispute, a contractual statement shall be interpreted in such a way as the other party, in view of the presumed intent of the person making the statement and the circumstances of the case, must have construed it in accordance with the generally accepted meaning of the relevant words.”³⁹

But how should this construction be made? The Commentary on the Civil Code explains that

it is clear that what must be clarified during the interpretation is what the other party must have meant by the given statement and this may be specified by assessing

- (a) the generally accepted meaning of the relevant words;
- (b) all the circumstances of the case;
- (c) the presumed intent of the person making the statement.

³⁸ See András Bessenyő, *Római magánjog I: A római magánjog az európai jogi gondolkodásban* (Budapest & Pécs: Dialóg Campus Kiadó, 2000), p. 171.

³⁹ The original Hungarian text of Section 207 of the Civil Code reads this: “(1) A szerződési nyilatkozatot vita esetén úgy kell értelmezni, ahogyan azt a másik félnek a nyilatkozó feltehető akaratára és az eset körülményeire tekintettel a szavak általánosan elfogadott jelentése szerint értenie kellett” (*ComPLEX CD Jogtár*, ed. Dr. László Jablonszky [Budapest: KJK KERSZÖV, 02/1999]).

[...] In judicial practice, however, interpretative questions are often solved by investigating the true transactional intent of the parties – that is of each party – instead of revealing the intent of the person making the statement.⁴⁰

It is obvious, therefore, that in judicial practice the text of the law is simplified since what the Hungarian Civil Code provides for to be considered is not the intent of the party making the statement but his intent as interpreted or presumed by the other party. It should be conceded, though, that the original text of the law is almost impossible to put into day-to-day judicial practice and some simplification seems inevitable. At the same time, it is interesting to note that while in literary theory the question of intention is generally *rejected* as an all-too-easy approach, in judicial practice it is *avoided* and simplified as an all-too-complicated matter.

Ever since Marcel Duchamp's "Fountain" urinal was exhibited in 1917, the nature of art has become increasingly vague, elusive and indefinable.⁴¹ Instead of "what is art?" the question has changed into "how do we understand it?" Since there are no tangible criteria to decide what art is – apart from, perhaps, those based on common sense – classifying or distinguishing between different texts has become problematic, and, at the same time, irrelevant as well. This change in the nature of art has had a tremendous impact on literary interpretation, too, and, as a result, literary theory today can cope with – in fact it can devour – any text. Such titles as "The law as literature" (1961) "Law as Literature" (1984) or "Constitutional law as fiction: narrative in the rhetoric of authority" (1995) illustrate that law can be read and interpreted as "literature." But can this situation be reversed and "literary" texts interpreted in the context of legal hermeneutics? Can the spirit of the law be applied to literature to see if the passage between literary and legal theory is two-directional? Given that philosophy, history, sociology and the other "neighbouring sciences" can be used in the interpretation of literary works, the question of law may not be so odd as it first appears. Section 207 of the Hungarian Civil Code seems to be a suitable provision to test this issue, for at least two reasons: it relates to texts which are similar to works of literature in that they involve "authorship" (as they are "unilateral statements") and the texts concerned are ambiguous (as they are subject to a debate).

⁴⁰ Source: *Complex CD Jog:ár.*

⁴¹ This date, like any other, is of course arbitrary. Duchamp started producing his ready-mades in 1914 ("bottle rack"), but perhaps it is not an exaggeration to say that no work is more singularly identified with the transformation of art in the twentieth century than his "Fountain."

Adapting Section 207 of the Hungarian Civil Code to works of literature, we reach the following statement: "literary works should be interpreted in such a way as the reader, in view of the presumed intent of the author and the circumstances of the creation of the work, must have construed it in accordance with the generally accepted meaning of the relevant words." This statement contains the "original intent" or "sensus originalis," historic aspect, though in a twisted form, viewed from the then contemporary reader's perspective. In that way it bears resemblance to canonical criticism, which asserts that the meaning of the Bible derives from the one-time believers, the canonising community, and the Biblical text can be truly understood only if the interpreter shares the "spirit" of that community.⁴² However, if the past tense of the statement is changed to the present tense, the key phrase is "must construe it," which does not express an imperative but a logical necessity, involving interaction between reader and text, and referring to the situation in which the text is interpreted in the ideal manner. Therefore, the description is valid to the reader who renders such ideal or implied interpretation and in that way it relates to a reader who can be brought into connection with the "ideal reader" (Didier Coste) and the "implied reader" (Wolfgang Iser). So our hypothetical definition goes: "a work should be interpreted in such a way as the ideal/implied reader, in view of the presumed intent of the author and the circumstances of the creation of the work, construes it in accordance with the generally accepted meaning of the words."

This hypothetical definition is of course not to serve as a "definition" and is merely an initial attempt to demonstrate that, despite the important differences between the two disciplines and their respective subject-matter, the passage between legal and literary interpretation is open: literary theory and legal hermeneutics may venture into the area of the other. This is the point where the overlap between literary theory and jurisprudence becomes apparent and tangible, but also the point where this discussion must end.

42 See Tibor Fabiny, "Új irányzatok a Biblia értelmezésében," in: *Szóra bírni az Írást: Irodalomkritikai irányok lehetőségei a Biblia értelmezésében*, ed. Tibor Fabiny, Hermeneutikai Füzetek 3 (Budapest: Hermeneutikai Kutatóközpont, 1994), p. 17.