The New Hermeneutics recommends jurisprudence and rhetoric as basic models for hermeneutics because neither separates interpretation and application from one another. The separation of interpretation and application by the philological historical method of the last century and its contemplative historicism is said to be a mistake that was introduced in the attempt to ape the methods of science. It was assumed that science needs intersubjectively identifiable facts in order to have referents for causal laws and hence methods for discovering such objective truths. Even for the sciences this idea might be a mistaken one. In any case, according to the new hermeneutics this idea of method can only create illusions for philological interpretation and history.

For history it creates the purported illusion of identifiable historical facts. For philological interpretation it brings about the purported illusion of an identifiable meaning of the text, a meaning which corresponds to an identifiable original intention of the author and an identifiable understanding of contemporary addressees. Combined with the first canon of hermeneutics—according to which a text has to be understood out of its own context and not out of the context of the interpreter—there arises the general illusion that a text can be interpreted independently of its application. Against these illusions of traditional methodical hermeneutics the New Hermeneutics claims that interpretation and application are not separable, that the context of the text and the context of the interpreter are not separable and concludes that there is neither an identical meaning of a text for interpreters with different contexts nor identical historical facts for historians with different contexts. The first
canon is, therefore, grounded in illusions according to the new hermeneutics.  

The interpretation of the law in jurisprudence is a perfect model because this interpretation is, in the courts, always an application, and the real meaning of the law is changed in each application. Having this model in mind the new hermeneutics recommends that history be recognized as subservient to philological interpretation, here understood as the activity of revealing the truth which eminent texts have for the context of the interpreter. In the same way it proposes that the historian discover the meaning which history has for his context—claiming moreover, that historians never actually did anything else. 

I have tried elsewhere to defend the first canon of hermeneutics, its independence from methodological considerations taken from the natural sciences, and hence the justifiability of traditional methodical hermeneutics. The concern of this paper is to analyse from the viewpoint of traditional methodical hermeneutics the significance of interpretation in jurisprudence. I shall argue that the New Hermeneutics misunderstands the function of interpretation in this, one of its basic models. Specifically, were jurisprudence itself to follow the recommendations about interpreting that the New Hermeneutics offers to philology and history, then all potential defendants in a court of law could not foresee what would happen to them if they performed or did not perform certain actions. It is, however, recognized that no administration of justice is possible if no such foreknowledge is given. In short, the New Hermeneutics, if applied to jurisprudence itself, would destroy precisely the model which, according to the New Hermeneutics, reveals the necessary unity of interpretation and application in the most immediate manner. Before turning to the jurists it will be useful to offer some remarks about the interplay of history and philology and the activities of historians from the viewpoint of methodical hermeneutics. It will be shown later that the basic principles of the philological and historical work as prescribed by methodical hermeneutics are, though slightly modified, also presupposed in interpretation in jurisprudence.

I. Words and Facts in History

From its very beginning historia has been about facts in a very broad sense. It is on the one hand a research which investigates facts concerning all kinds of things, animals, plants, stones and also human beings. On the other hand historia early on became the name of a literary genre which contained reports of the results of such investigations. For example, this