


Constitutional hermeneutics: The art of interpreting

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Fernando Nunes Madeira¹ and Maxwel Mota de Andrade²

ABSTRACT

This article explores the concept, forms, and challenges of constitutional hermeneutics, highlighting its importance for the realization of fundamental values and principles. The different interpretative approaches are presented, such as literal, historical, teleological, systematic, according to the Constitution, evolutionary and pluralist. The methodology adopted was the literature review. The results show that constitutional interpretation is a complex activity, requiring from the interpreter not only legal knowledge, but also sensitivity, creativity and ethical commitment. It is concluded that constitutional hermeneutics is an essential science and art for the construction of a democratic and just society, guided by the ideals of freedom, equality and human dignity, allowing the interpreter to act as guardian of the Constitution and transforming agent of social reality.

Keywords: Constitutional Hermeneutics, Interpretation, Constitution.

¹ Doctoral student in Legal Science at the University of Vale do Itajaí - UNIVALI. Autarchy Attorney. Porto Velho/RO, Brazil.

E-mail: fnunesmadeira@hotmail.com

² Doctoral student in Legal Science at the University of Vale do Itajaí - UNIVALI. Attorney of the State of Rondônia. Porto Velho/RO, Brazil.

E-mail: maxwel@pge.ro.gov.br



INTRODUCTION

The Constitution is the fundamental law of a State, which establishes the bases of political organization, defines fundamental rights and guarantees, and outlines the limits of State power. More than a legal document, the Constitution is an instrument of social transformation and the construction of national identity. As Konrad Hesse says, the Constitution is not only the expression of a being, but also of a duty to be, that is, of a given reality, but also a programme for the future.³

However, in order for the Constitution to fulfill its role, it must be properly interpreted and applied. Thus, constitutional hermeneutics emerges, defined by Inocência Mártires Coelho as the art of interpreting, applying and integrating the Constitution, with a view to solving the concrete problems of social life".⁴

Constitutional interpretation has peculiarities in relation to the interpretation of laws in general, due to the political and principled nature of the Constitution. As Luís Roberto Barroso teaches, constitutional interpretation is a modality of legal interpretation, but it differs from the interpretation of laws in general by presenting specificities and complexities that are inherent to it.⁵

Constitutional hermeneutics represents a fundamental field of study within Constitutional Law, acting as an essential mechanism for the interpretation and application of constitutional norms in a constantly evolving legal and social context. This article aims to explore the concept and explanation of constitutional hermeneutics, its various forms, and ultimately the art of interpreting the Constitution.

Through a critical analysis of hermeneutic approaches and interpretative methods, it seeks to understand how constitutional hermeneutics is positioned not only as a set of interpretative techniques, but as a true legal science that contributes to the realization of the principles and values inscribed in the Constitution. Constitutional interpretation transcends mere textual analysis, involving a complex interaction between the constitutional text and the sociopolitical reality in which it is inserted.

In this sense, constitutional hermeneutics presents itself as a field of interdisciplinary study, which dialogues with philosophy, sociology, and political theory, among other areas, to provide a richer and more contextualized understanding of constitutional norms. This article, therefore, not only addresses the traditional methods and principles of constitutional hermeneutics, but also reflects on the contemporary challenges faced by constitutional interpreters, such as the need to adapt the interpretation of the Constitution to social, political, and technological transformations, thus ensuring the relevance and effectiveness of the constitutional text in the twenty-first century.

³ HESSE, Konrad. *The Normative Force of the Constitution*. Porto Alegre: Sergio Antonio Fabris Editor, 1991, p. 15.

⁴ COELHO, Inocência Mártires. *Constitutional Interpretation*. 4th ed. São Paulo: Saraiva, 2011, p. 23

⁵ BARROSO, Luís Roberto. *Course on Contemporary Constitutional Law*. 8th ed. São Paulo: Saraiva Educação, 2019, p. 321.



Constitutional hermeneutics plays a fundamental role in the study of Law, being responsible for the interpretation of constitutional norms. In this article, we will address the essential concepts of constitutional hermeneutics and their importance in the art of interpreting the Constitution.

The purpose of this article is to present a view on constitutional hermeneutics and the art of interpreting.

The methodology adopted was the bibliographic review carried out through books, articles and scientific works that deal directly or indirectly with the theme. Through a review of the specialized literature and the analysis of specific hermeneutical approaches, this article contributes to the academic debate on constitutional hermeneutics, offering *insights* into the ways in which constitutional interpretation can promote the realization of the fundamental rights and democratic objectives enshrined in the Constitution.

By exploring constitutional hermeneutics as an art of interpreting, it seeks to highlight the importance of legal sensitivity, creativity and ethical commitment of interpreters in the application of constitutional norms, reaffirming the central role of the Constitution as the foundation of the legal order and life in society.

CONCEPT OF CONSTITUTIONAL HERMENEUTICS

Interpretation can be defined as the process of attributing meaning to something, whether it is a text, a work of art, a situation, or a set of facts. In law, interpretation is essential to understand and apply legal rules to concrete cases. As Maria Helena Diniz explains⁶, to interpret a legal norm is to discover or attribute a meaning to a normative text, based on certain methods and according to certain criteria.

According to Alexandre Issa Kimura⁷, hermeneutics is the science that, abstractly, presents to interpretative action the methods and processes that must be observed by the interpreter. Interpretation, therefore, operates in the concrete case, giving the subject the task of extracting the real scope, the meaning of the legal norm.

In the constitutional sphere, hermeneutics acquires special relevance, given the open and principled character of constitutional norms. According to Böckenförde⁸, constitutional interpretation is of decisive importance for the consolidation and preservation of the normative force of the Constitution.

⁶ DINIZ, Maria Helena. Compendium of Introduction to the Science of Law. 25th ed. São Paulo: Saraiva, 2014, p. 421.

⁷ KIMURA, Alexandre Issa. Hermeneutics and Constitutional Interpretation. pg 1.

⁸ BÖCKENFÖRDE, Ernst-Wolfgang. Studies on the Rule of Law and Democracy. Madrid: Trotta, 2000, p. 17



Gilmar Mendes⁹, in his work, *Curso de Direito Constitucional* (Constitutional Law Course), argues that constitutional interpretation is the activity that consists of establishing the meaning of the norms of the fundamental law – whether these norms are rules or principles, with a view to solving practical problems, if and when the simple reading of the texts does not allow, on the plane, the understanding of their meaning and scope.

In this sense, Canotilho¹⁰ defines constitutional interpretation as the attribution of a meaning to one or more linguistic symbols written in the constitution in order to obtain a normative-constitutionally based decision on practical problems. This attribution of meaning, however, does not occur freely or arbitrarily, but must be guided by rational and controllable criteria and methods.

Häberle¹¹ points out that constitutional interpretation is, however, an activity that potentially concerns everyone, and is not an exclusive task of judges and courts. This is because the Constitution, as a fundamental norm of the State, radiates its effects on the whole society, demanding the participation of the various social actors in the construction of its meaning.

For Lenio Streck¹², constitutional hermeneutics is not limited to a specific method, but involves a deep understanding of constitutional norms and their application in concrete situations. The importance of finding a balance between the rules that guide the interpreter, the application of the text to concrete cases and the overcoming of false oppositions between subjectivity and objectivity in interpretation is highlighted.

Therefore, constitutional hermeneutics can be defined as a branch of Constitutional Law that is dedicated to the study and development of theories, methods, and principles for the interpretation of constitutional norms. As Barroso points out¹³, legal hermeneutics is the part of the science of Law that has as its object the study and systematization of the processes applicable to determine the meaning and scope of the expressions of Law.

Constitutional hermeneutics seeks, therefore, to establish parameters for the proper understanding of the constitutional text, taking into account not only its linguistic and grammatical aspects, but also the historical, teleological and systematic elements that inform the constitutional order.

⁹ MENDES, Gilmar Ferreira; COELHO, Inocêncio Mártires; BRANCO, Paulo Gustavo Gonet. *Curso de Direito Constitucional*. 5th ed. São Paulo: Saraiva, 2010, p.155.

¹⁰ CANOTILHO, J. J. Gomes. *Constitutional law and theory of the constitution*. 7. ed. Coimbra: Almedina, 2003, p. 1210.

¹¹ HÄBERLE, Peter. *Constitutional hermeneutics: the open society of the interpreters of the Constitution: contribution to the pluralist and "procedural" interpretation of the Constitution*. Trad. Gilmar Ferreira Mendes. Porto Alegre: Sergio Antonio Fabris, 1997, p. 13.

¹² STRECK, Lenio. *Constitutional Hermeneutics*. In *Enciclopédia Jurídica da PUCSP, tome II* (electronic resource): administrative and constitutional law / coord. Vidal Serrano Nunes Jr. [et al.] - São Paulo: Pontifical Catholic University of São Paulo, 2017, p. 3, 5.

¹³ BARROSO, Luís Roberto. *Course on contemporary constitutional law*. São Paulo: Saraiva, 2009, p. 291.



Thus, constitutional hermeneutics presents itself as a complex and challenging field of study, which seeks to provide theoretical and practical instruments for the proper interpretation of constitutional norms, always with a view to the realization of fundamental rights and the preservation of the democratic order.

Likewise, the interpretation of constitutional clauses requires a comprehensive knowledge not only of the fundamental principles of constitutional hermeneutics (considered true guiding principles of the system of political-legal values of the Constitution), but also of the so-called constitutional precepts that are found in the context of the normative structure of the Constitution.¹⁴

For this specific reason, the interpretation of constitutional provisions requires a broad knowledge not only of the guiding principles of constitutional hermeneutics (as authentic governing principles of the political-legal valuation system of the Constitutional Text), as well as of the so-called constitutional precepts present in the scope of the systemic standardization of the Constitution.

This fundamental concept highlights the importance of constitutional hermeneutics as a field of study dedicated to understanding constitutional provisions.

Constitutional hermeneutics seeks to go beyond the simple literal reading of constitutional norms. It recognizes that the Constitution is a complex and multifaceted document, which requires careful interpretation to determine its true meaning and scope. In this sense, constitutional hermeneutics involves the application of methods and techniques that allow the interpreter to fully understand the meaning of constitutional norms.

Therefore, the concept of constitutional hermeneutics highlights its nature as a discipline dedicated to the interpretation of constitutional norms, with the aim of fully understanding their meaning and scope. Through this understanding, interpreters can correctly apply constitutional provisions and ensure their effectiveness within the legal system.

FORMS OF CONSTITUTIONAL HERMENEUTICS

Constitutional hermeneutics, as a field of study dedicated to the interpretation of constitutional norms, presents different forms and methods to achieve its objective. These forms of interpretation seek to unveil the meaning and scope of constitutional provisions, taking into account not only the normative text, but also the historical, social, and political context in which the Constitution is inserted.

The Constitution, therefore, is not just a set of rules to be followed, but a living text that must be constantly interpreted and reinterpreted by all citizens. This interpretation can occur at various levels, including the Legislative, through the elaboration of complementary laws or interpretative rules; the Executive, in the use of its power to sanction or veto laws; and the Judiciary, through

¹⁴ FRIEDE, Reis. Constitutional Hermeneutics. *Revista da SJRJ*, Rio de Janeiro, v. 23, n. 47, p. 13-32, nov.19/fev.20, p.15.



decisions in direct actions of unconstitutionality or declaratory of constitutionality, thus exercising repressive control of constitutionality.

There are different approaches and forms of constitutional hermeneutics, which can be applied according to the purpose of the interpretation. Among the classic forms of constitutional hermeneutics, literal or grammatical interpretation, historical interpretation, teleological interpretation, and systematic interpretation stand out.

In addition to these classic forms of constitutional interpretation, contemporary doctrine has developed new hermeneutical approaches, which seek to adapt the interpretation of the Constitution to the challenges and complexities of today's society. Among these new perspectives, interpretation in accordance with the Constitution, evolutionary interpretation, and pluralist interpretation stand out.

HERMENÊUTICA LITERAL

Literal interpretation, also known as grammatical, verbal, textual, semantic, or philological, is the starting point of the interpretive process. In this approach, the interpreter focuses on the literal meaning of the normative text, analyzing the lexical meaning and syntactic structure of the language used.¹⁵ The objective is to understand the meaning of each word, phrase or period, taking into account the external form of the legal text. The most evident meaning of the text is sought, considering the syntactic structure and the immediate context.

By employing the grammatical method, the interpreter seeks to unveil the meaning of the law from the written text, from the letter of the law itself. This analysis of the words of the law (*verba legis*) constitutes the initial stage of interpretation, since the interpretative process always begins with the understanding of the literal meaning of the terms used by the legislator.¹⁶ It seeks to understand the common and ordinary meaning of the terms used, without delving into extratextual considerations.¹⁷

To correctly interpret a legal text by the grammatical method, Iara Menezes Lima¹⁸ argues that it is necessary to understand both the common language and the legal language used. The interpreter must prioritize the technical meaning of the terms used, since in the legal context words have a specific meaning. This approach is fundamental for the interpretation of laws in general, except for constitutional norms, since the terms used in the Constitution must be understood in their

¹⁵ MENDES, Gilmar Ferreira; BRANCO, Paulo Gustavo Gonet. Course on constitutional law. 13. ed. São Paulo: Saraiva, 2018, p. 93.

¹⁶ SILVA, José Afonso da. Course on positive constitutional law. 25. ed. São Paulo: Malheiros, 2005, p. 118.

¹⁷ BASTOS, Celso Ribeiro. Hermeneutics and constitutional interpretation. 2. ed. São Paulo: Celso Bastos Editor, 1999, p. 57.

¹⁸ LIMA, Iara Menezes. Classical Methods of Interpretation in Constitutional Law. Brazilian Journal of Political Studies. p. 67.



common, ordinary (vulgar) sense, and not in the technical-legal sense, and can only be done if this was the unequivocal intention of the constituent legislator. This is because the Constitution is a creation of the people and must be accessible to them.

Although it is an important starting point for constitutional interpretation, literal interpretation cannot be considered sufficient, since constitutional norms often have an open and principled character, requiring a more comprehensive analysis.

HISTORICAL HERMENEUTICS

The historical interpretation takes into account the historical context in which the Constitution was drafted and the circumstances that motivated the inclusion of certain provisions. As Bonavides explains¹⁹, historical interpretation is made through the reconstruction of the thought of the constituent legislator, in order to accurately reach the meaning and scope of the constitutional norm. This form of interpretation is especially relevant to understand the original intention of the constituents and the values that guided the elaboration of the Magna Carta.

For Barroso²⁰, it is an important tool to understand the meaning and scope of constitutional norms, taking into account the historical, social and political context in which they were elaborated. This method seeks to identify the ideas, feelings and interests dominant at the time of the creation of the law (*occasio legis*), revealing the will of the constituent legislator.²¹

When applying the historical method, the interpreter makes use of several elements, such as the preparatory work for the creation of the law and legislative precedents, when they exist. Preparatory work includes parliamentary discussions, proposed amendments, justifications presented and reports prepared during the legislative process. These documents provide valuable insights into the intentions and motivations of constituents when drafting the constitutional text.²²

Legislative precedents, in turn, are previous laws and norms that dealt with the same or related subjects. The analysis of these precedents allows the interpreter to understand the historical evolution of the legal treatment given to the matter and to identify possible changes in understanding over time.²³

However, it is essential to emphasize that the historical method should not be used in isolation or absolutely. Constitutional interpretation must be carried out in a systematic manner, considering other interpretative methods and taking into account the evolution of society and

¹⁹BONAVIDES, Paulo. Course on constitutional law. 15. ed. São Paulo: Malheiros, 2004, p. 437.

²⁰BARROSO, Luís Roberto. Course on contemporary constitutional law. São Paulo: Saraiva, 2009, p. 292.

²¹LIMA, Iara Menezes. Classical Methods of Interpretation in Constitutional Law. Brazilian Journal of Political Studies. p. 77

²²MENDES, Gilmar Ferreira; BRANCO, Paulo Gustavo Gonet. Course on constitutional law. 13. ed. São Paulo: Saraiva, 2018, p. 93.

²³SILVA, José Afonso da. Course on positive constitutional law. 25. ed. São Paulo: Malheiros, 2005, p. 119.



constitutional values. The will of the constituent legislator, although relevant, cannot be the only criterion for understanding constitutional norms, under penalty of adopting a static and anachronistic view of the Constitution.²⁴

TELEOLOGICAL HERMENEUTICS

Teleological hermeneutics, also known as finalistic interpretation, seeks to identify the purpose of the normative precept, the reason for its creation, and then determine its real meaning and scope. This method is based on the investigation of the *ratio legis*, that is, the reason that justifies and grounds the existence of the norm.²⁵

This reason is closely linked to the human need that the norm aims to support, its practical purpose. After all, every legal norm is created with a purpose, a justification, and it is this reason that allows its true meaning and scope to be revealed. In other words, teleological interpretation consists of inquiring the "why" of the legal norm, that is, the purpose for which it is intended.²⁶

In the constitutional sphere, teleological hermeneutics gains special relevance, since the Constitution is a political-legal document that establishes the foundations and objectives of the State. As Inocência Mártires Coelho teaches, the interpretation of any norm of the Constitution imposes on the interpreter, always, in any circumstance, to walk along the path that is projected from it – from the norm – to the Constitution.²⁷

Thus, when interpreting a constitutional norm, the hermeneutic must seek not only its literal meaning, but mainly its purpose, the values and principles that it aims to protect. In this sense, Konrad Hesse²⁸ points out that constitutional interpretation is subject to the principle of optimal implementation of the norm, that is, the interpretation that best achieves the constitutional purposes and values must be sought.

This understanding is shared by Luís Roberto Barroso²⁹, who states: "The teleological method consists of the search for the end of the norm, the value or legal good aimed at by the legal system with the edition of a given precept. [...] In the final analysis, the ultimate goal of every constitutional norm is the protection and promotion of human dignity."

²⁴ BARROSO, Luís Roberto. Course on contemporary constitutional law. São Paulo: Saraiva, 2009, p. 292.

²⁵ LIMA, Iara Menezes. Classical Methods of Interpretation in Constitutional Law. Brazilian Journal of Political Studies, p. 82.

²⁶ Op. cit. p. 82

²⁷ COELHO, Inocência Mártires. Constitutional interpretation. 4. ed. São Paulo: Saraiva, 2011, p. 131.

²⁸ HESSE, Konrad. The normative force of the constitution. Trad. Gilmar Ferreira Mendes. Porto Alegre: Sergio Antonio Fabris, 1991, p. 22.

²⁹ BARROSO, Luís Roberto. Course on contemporary constitutional law. São Paulo: Saraiva, 2009, p. 292.



An example of the application of teleological hermeneutics in Constitutional Law is the interpretation of the principle of equality. As Gilmar Ferreira Mendes explains³⁰, the application of the principle of equality necessarily implies the consideration of the purpose of the rule, in order to verify whether the differentiation or equivalence promoted has a reason that justifies it.

Teleological hermeneutics is an essential instrument for the achievement of constitutional values and objectives, allowing norms to be interpreted in a way that promotes justice, human dignity and fundamental rights.

SYSTEMATIC HERMENEUTICS

Systematic hermeneutics is a method of interpretation that considers the Constitution as an integrated and coherent normative system, in which norms and principles must be understood in their interrelation and unity. As J. J. Gomes Canotilho explains³¹, the principle of the unity of the constitution gains autonomous relevance as an interpretative principle when it is meant that the constitution must be interpreted in such a way as to avoid contradictions (antinomies, antagonisms) between its norms, so that the interpreter must always consider constitutional norms not as isolated and dispersed norms. but rather as precepts integrated into a unitary internal system of norms and principles.

In this sense, systematic interpretation seeks to harmonize constitutional norms, avoiding conflicts and contradictions. According to Luís Roberto Barroso³², the idea of system translates into the notion that constitutional norms should be interpreted in terms of each other, and not in isolation. Thus, the content of a given constitutional norm is arrived at by comparing it with other norms and by its integration into the system as a whole.

In other words, the interpretation considers the legal system as a coherent and organized whole, in which the norms are interconnected and hierarchically structured, and the norms of lower hierarchy must conform to the norms of higher hierarchy.³³

One of the fundamental principles of systematic hermeneutics is the principle of practical agreement or harmonization. As Inocência Mártires Coelho teaches³⁴, with this principle – which looks more like a postulate – what is meant is that none of the constitutional norms can be interpreted in isolation, outside the context of the other norms of the Constitution.

³⁰ MENDES, Gilmar Ferreira; BRANCO, Paulo Gustavo Gonet. Course on constitutional law. 13. ed. São Paulo: Saraiva, 2018, p. 213.

³¹ CANOTILHO, J. J. Gomes. Constitutional law and theory of the constitution. 7. ed. Coimbra: Almedina, 2003, p. 1223.

³² BARROSO, Luís Roberto. Course on contemporary constitutional law. São Paulo: Saraiva, 2009, p. 299.

³³ LIMA, Iara Menezes. Classical Methods of Interpretation in Constitutional Law. Brazilian Journal of Political Studies, p. 79.

³⁴ COELHO, Inocência Mártires. Constitutional interpretation. 4. ed. São Paulo: Saraiva, 2011, p. 142.



It should be said that systematic hermeneutics analyzes each constitutional statement in its articulation with the entire text, seeking a harmonious interpretation that avoids antinomies. The Constitution is taken into account as a structured whole, interpreting each part in the light of the general context.

In this context, when two constitutional norms appear to be in conflict, the interpreter must seek a solution that harmonizes them, preserving the effectiveness of both as much as possible. In the words of Gilmar Ferreira Mendes³⁵, in case of visible conflict between constitutional norms, one must adopt the interpretation that reconciles them, preserving, as much as possible, the normative force of all of them.

An example of the application of systematic hermeneutics is the interpretation of fundamental rights. As Ingo Wolfgang Sarlet explains³⁶, fundamental rights, due to their normative structure and their function in the constitutional system, are subject to a logic of competition and weighting, requiring a systematic and harmonizing interpretation.

Thus, systematic hermeneutics is an essential method for understanding the Constitution as a unitary and coherent whole, allowing the harmonization of its norms and principles and the realization of fundamental rights.

HERMENEUTICS ACCORDING TO THE CONSTITUTION

Interpretation in accordance with the Constitution is a hermeneutical principle that seeks to ensure the unity and coherence of the legal system.

As José Afonso da Silva teaches³⁷, interpretation in accordance with the Constitution is a principle that is within the scope of the control of constitutionality, and not just a rule of interpretation. This interpretative method is based on the premise that infra-constitutional norms must be understood and applied in accordance with the precepts and values enshrined in the Constitution. This means that, by using this method, the interpreter is not only seeking the most appropriate meaning of the infra-constitutional rule, but also making a judgment of compatibility between it and the Constitution.

Interpretation in accordance with the Constitution gains special relevance when an infra-constitutional norm admits multiple interpretations, some of which may be incompatible with the Magna Carta. In these situations, the interpreter must prefer the interpretation that is in accordance with the Constitution, ruling out those that violate its fundamental precepts.

³⁵ MENDES, Gilmar Ferreira; BRANCO, Paulo Gustavo Gonet. Course on constitutional law. 13. ed. São Paulo: Saraiva, 2018, p. 93.

³⁶ SARLET, Ingo Wolfgang. Course on constitutional law. 7. ed. São Paulo: Saraiva, 2018, p. 223.

³⁷ SILVA, José Afonso da. Course on positive constitutional law. 25. ed. São Paulo: Malheiros, 2005, p. 227.



Luís Roberto Barroso³⁸ points out that interpretation in accordance with the Constitution can involve three types of situation: (a) interpretation in accordance with text reduction; (b) the conforming interpretation without text reduction; and (c) the conforming interpretation without pronouncement of nullity, but with a change in the meaning of the rule.

In the interpretation in accordance with text reduction, the interpreter excludes from the scope of the infra-constitutional rule certain hypotheses of application that would be incompatible with the Constitution. In the case of conforming interpretation without text reduction, the interpreter adopts a restrictive interpretation of the rule, making it compatible with the Constitution without changing its text. Finally, in the case of conforming interpretation without pronouncing nullity, but with a change in the meaning of the rule, the interpreter modifies the original meaning of the rule, adapting it to the constitutional precepts.³⁹

It is important to emphasize that interpretation in accordance with the Constitution finds limits in the text of the infra-constitutional rule itself. As Gilmar Mendes and Paulo Branco warn⁴⁰, the interpretation in conformity with the Constitution is only legitimate when it does not contradict the literal meaning of the text, does not alter the meaning of the normative text, with a radical change in the original conception of the legislator.

In addition, interpretation in accordance with the Constitution cannot be used as an instrument of judicial creation of the Law, replacing the legislative function. The interpreter must respect the separation of powers and the limits of his or her performance, always seeking to achieve constitutional values without exceeding the limits of the normative text.⁴¹

Interpretation in accordance with the Constitution is a valuable hermeneutic method that aims to guarantee the supremacy and normative force of the Constitution, harmonizing the legal system and removing unconstitutional interpretations of infra-constitutional norms. It seeks to preserve the unity of the legal system and the coherence between the different normative levels, always having as a guide the values and principles enshrined in the Magna Carta.⁴²

EVOLUTIONARY HERMENÊUTICA

Evolutionary interpretation is a hermeneutic method that seeks to adapt the meaning of constitutional norms to the social, political, and economic changes that occur over time. This approach is based on the premise that the Constitution is a living document, which must be understood and applied dynamically, following the evolution of society.

³⁸ BARROSO, Luís Roberto. Course on contemporary constitutional law. São Paulo: Saraiva, 2009, p. 301.

³⁹ Op. Cit., p. 301-302.

⁴⁰ MENDES, Gilmar Ferreira; BRANCO, Paulo Gustavo Gonet. Course on constitutional law. 13. ed. São Paulo: Saraiva, 2018, p. 93.

⁴¹ Op. Cit., p. 93-94.

⁴² SILVA, José Afonso da. Course on positive constitutional law. 25. ed. São Paulo: Malheiros, 2005, p. 227-228.



As Konrad Hesse teaches⁴³, constitutional interpretation is subject to the principle of optimal implementation of the norm, which means that the interpreter must seek the meaning that best corresponds to contemporary needs and values, without neglecting the essence of the constitutional norm.

Evolutionary interpretation gains special relevance when it comes to constitutional norms with an open texture, such as indeterminate legal principles and concepts. In these cases, the interpreter has greater freedom to adapt the meaning of the rule to the new realities, as long as it preserves its essential core and its original purpose.⁴⁴

An example of evolutionary interpretation is the application of the principle of equality. As Gilmar Mendes and Paulo Branco point out⁴⁵, equality has had its content redesigned over time, with a striking example being the evolution of the role of women in society. Thus, an evolutionary interpretation of the principle of equality must consider historical achievements and current demands for greater equality of gender, race, and sexual orientation.

Another fertile field for evolutionary interpretation is that of fundamental rights. With technological advancement and changes in social relations, new dimensions and challenges arise for the protection of human dignity. In this context, the interpreter must use an evolutionary approach to ensure the effectiveness of fundamental rights, such as the right to privacy, freedom of expression, and a balanced environment.⁴⁶

However, evolutionary interpretation cannot be used in an unrestricted or arbitrary way. As Inocência Mártires Coelho warns⁴⁷, evolutionary interpretation has limits, and cannot cross the boundary between the application of law and the creation of law. The interpreter must respect the constitutional parameters and the fundamental choices of the constituent, avoiding distorting the original meaning of the rule under the pretext of updating it.

In addition, the evolutionary interpretation must be used with caution and transparency, always substantiating the reasons that justify the change in the meaning of the constitutional rule. The interpreter must demonstrate that the new interpretation is compatible with the constitutional system as a whole and that it meets the legitimate desires of society.⁴⁸ It is an important hermeneutic method that allows the updating of the meaning of constitutional norms, adapting them to social transformations and the new challenges of contemporaneity.

⁴³ HESSE, Konrad. *The normative force of the constitution*. Trad. Gilmar Ferreira Mendes. Porto Alegre: Sergio Antonio Fabris, 1991, p. 22.

⁴⁴ BARROSO, Luís Roberto. *Course on contemporary constitutional law*. São Paulo: Saraiva, 2009, p. 292.

⁴⁵ MENDES, Gilmar Ferreira; BRANCO, Paulo Gustavo Gonet. *Course on constitutional law*. 13. ed. São Paulo: Saraiva, 2018, p. 178.

⁴⁶ SARLET, Ingo Wolfgang. *The effectiveness of fundamental rights: a general theory of fundamental rights in the constitutional perspective*. 13. ed. Porto Alegre: Livraria do Advogado, 2018, p. 67.

⁴⁷ COELHO, Inocência Mártires. *Constitutional interpretation*. 4. ed. São Paulo: Saraiva, 2011, p. 115.

⁴⁸ BARROSO, Luís Roberto. *Course on contemporary constitutional law*. São Paulo: Saraiva, 2009, p. 293.



PLURALISTIC HERMENEUTICS

Pluralist interpretation is a hermeneutic approach that recognizes and values the diversity of perspectives and actors in the construction of the meaning of constitutional norms. This conception is based on the idea that the Constitution is an open and dynamic document, which must be interpreted in the light of the different views and experiences present in society.

As Peter Häberle points out⁴⁹, in the process of constitutional interpretation, all state organs, all public powers, all citizens and groups are potentially bound, and it is not possible to establish a closed or fixed list of interpreters of the Constitution with *numerus clausus*. Thus, pluralist interpretation seeks to broaden the circle of interpreters, including not only judges and courts, but also the legislator, the public administration, organized civil society, and citizens in general.

This perspective recognizes that the Constitution is a collective project, which must be built and rebuilt continuously through dialogue and democratic participation. As Konrad Hesse states⁵⁰, constitutional interpretation is in reality one more element of the open society" and "all public powers, material participants in the social process, are involved in it.

Pluralistic interpretation values the diversity of voices and experiences in society, seeking to incorporate the perspectives of historically marginalized and vulnerable groups. As Jane Reis Gonçalves Pereira points out⁵¹, constitutional interpretation must be sensitive to the demands of stigmatized groups and to the demands for recognition and social inclusion. Thus, a pluralistic approach must be attentive to issues of gender, race, ethnicity, sexual orientation, disability, among others, seeking to promote equality and respect for difference.

In addition, the pluralist interpretation values the role of democratic institutions and the public sphere in the construction of constitutional meaning. As Cláudio Pereira de Souza Neto points out⁵², constitutional interpretation cannot be monopolized by the Judiciary, but must be shared with the Legislature and civil society. In this sense, mechanisms such as public hearings, *amicus curiae* and collective actions are important instruments to expand social participation and democratic control over constitutional interpretation.

However, pluralistic interpretation also faces challenges and limits. As Gilmar Mendes warns⁵³, "openness of constitutional interpretation cannot lead to a 'judicial populism', in which

⁴⁹ HÄBERLE, Peter. Constitutional hermeneutics: the open society of the interpreters of the Constitution: contribution to the pluralist and "procedural" interpretation of the Constitution. Trad. Gilmar Ferreira Mendes. Porto Alegre: Sergio Antonio Fabris, 2002, p. 13.

⁵⁰ HESSE, Konrad. The normative force of the constitution. Trad. Gilmar Ferreira Mendes. Porto Alegre: Sergio Antonio Fabris, 1991, p. 22.

⁵¹ PEREIRA, Jane Reis Gonçalves. Constitutional interpretation and fundamental rights. 2. ed. São Paulo: Saraiva, 2018, p. 217.

⁵² SOUZA NETO, Cláudio Pereira de. Constitutional theory and deliberative democracy: a study on the role of law in guaranteeing the conditions for cooperation in democratic deliberation. Rio de Janeiro: Renovar, 2006, p. 5.

⁵³ MENDES, Gilmar Ferreira. Fundamental rights and control of constitutionality: studies of constitutional law. 4. ed. São Paulo: Saraiva, 2008, p. 1.



popular pressure overrides legal rationality". It is necessary to find a balance between democratic legitimacy and the preservation of constitutional values, preventing pluralist interpretation from resulting in arbitrary or counter-majoritarian decisions.

In addition, pluralistic interpretation requires a posture of dialogue and openness on the part of official interpreters, especially judges and courts. As Inocêncio Mártires Coelho points out⁵⁴, the new constitutional hermeneutics requires from the law enforcers an open, dialogical and reflective posture, which is capable of recognizing and valuing the plurality of perspectives and experiences present in society. This implies developing listening, empathy and intercultural translation skills, seeking to understand and incorporate different social views and demands.

Pluralist interpretation is a hermeneutic approach that seeks to expand and democratize the process of constructing constitutional meaning, recognizing and valuing the diversity of actors and perspectives present in society. Through dialogue and social participation, it seeks to promote a more legitimate and inclusive interpretation of the Constitution, capable of responding to the desires and challenges of contemporaneity. As Peter Häberle points out⁵⁵, "the pluralist interpretation of the Constitution is the appropriate response to the pluralistic society of our time".

Thus, constitutional hermeneutics is an art of interpreting that transcends the mechanical application of methods, engaging with the essence of the Constitution and its fundamental role in society. It reflects the tension and the solution between comprehensibility and incomprehensibility, highlighting the universality and importance of the hermeneutic problem in the context of the human sciences and, by extension, in constitutional law.

These methods are not exclusive, but complementary, and must be used in an integrated and thoughtful manner by the constitutional interpreter. As Konrad Hesse teaches, "the different methods of interpretation have no autonomous meaning; they only acquire meaning in the context of interpretive activity as a whole."⁵⁶

THE ART OF INTERPRETING

Constitutional interpretation is a complex and challenging activity, which requires from the interpreter not only solid legal knowledge, but also sensitivity, creativity and ethical commitment. More than a mere technique, constitutional interpretation is a true art, which requires specific skills and a reflective and critical posture.

⁵⁴ COELHO, Inocêncio Mártires. *Constitutional interpretation*. 4. ed. São Paulo: Saraiva, 2011, p. 159.

⁵⁵ HÄBERLE, Peter. *Constitutional hermeneutics: the open society of the interpreters of the Constitution: contribution to the pluralist and "procedural" interpretation of the Constitution*. Trad. Gilmar Ferreira Mendes. Porto Alegre: Sergio Antonio Fabris, 2002, p. 18.

⁵⁶ HESSE, Konrad. *Elementos de direito constitucional do República Federal da Germany*. Translated by Luís Afonso Heck. Porto Alegre: Sergio Antonio Fabris, 1998, p. 65.



CONSTITUTIONAL HERMENEUTICS AS A SCIENCE

Constitutional interpretation is a scientific activity, guided by rational and controllable methods and principles. As Inocêncio Mártires Coelho points out⁵⁷, "the interpretation of the Constitution, as a scientific activity, must be rational and objective, in the sense that its results can be justified and controlled intersubjectively".

This means that the constitutional interpreter must follow methodological rigor, basing his interpretative choices on consistent and transparent legal arguments. Constitutional interpretation cannot be an act of pure discretion or arbitrariness, but rather a rational and controllable process.

In this sense, constitutional interpretation cannot be an act of pure discretion or arbitrariness, but rather a rational and controllable process. The interpreter is not free to attribute any meaning he wishes to constitutional norms, but must base his choices on solid and coherent legal arguments. This requires from the interpreter a deep knowledge not only of the constitutional text, but also of the theory of interpretation and legal argumentation.

The interpreter must, therefore, use these methods in a judicious and justified manner, always seeking the best possible understanding of the constitutional text and the realization of fundamental rights and principles. As Konrad Hesse points out, "constitutional interpretation is subject to the principle of the optimal implementation of the norm",⁵⁸ which means that the interpreter must always seek the maximum effectiveness of constitutional norms, within the limits of their democratic legitimacy and their adequacy to concrete cases.

In addition, constitutional hermeneutics must take into account the peculiar nature of the Constitution, which is a political and legal document that establishes the fundamental guidelines of the State and society. For this reason, constitutional interpretation cannot be limited to a formalistic or strictly legalistic analysis of the text, but must also consider the values, principles and objectives that give meaning and unity to the constitutional order.⁵⁹

Another important aspect of constitutional hermeneutics as a science is the need to substantiate interpretative decisions. The interpreter cannot simply state what the meaning of the constitutional rule is, but must present the reasons and arguments that support its interpretation. This reasoning must be clear, coherent and rational, allowing other interpreters to understand and critically evaluate the choices made. Only in this way will it be possible to establish a true dialogue between interpreters and society, ensuring the legitimacy and acceptability of interpretative decisions.

⁵⁷ COELHO, Inocêncio Mártires. *Constitutional interpretation*. 4. ed. São Paulo: Saraiva, 2011, p. 115.

⁵⁸ HESSE, Konrad. *The normative force of the Constitution*. Translated by Gilmar Ferreira Mendes. Porto Alegre: Sergio Antonio Fabris Editor, 1991, p. 22.

⁵⁹ BARROSO, Luís Roberto. *Interpretation and application of the Constitution: foundations of a transformative constitutional dogmatics*. 7. ed. São Paulo: Saraiva, 2009, p. 296-297.



In this sense, constitutional hermeneutics as a science seeks to overcome the idea that interpretation is a purely subjective or discretionary activity, subject only to the will of the interpreter. On the contrary, it affirms the need for objective and controllable criteria, which can guide the interpretative process and guarantee the rationality and legitimacy of decisions. Only in this way will it be possible to build a true "science of constitutional interpretation", capable of facing the challenges and complexities of contemporary society.

PRINCIPLES OF CONSTITUTIONAL HERMENEUTICS

Constitutional interpretation is guided by specific principles, which guide the interpreter in the search for the meaning and scope of constitutional norms. Among these principles, the following stand out:

- a) Principle of the unity of the Constitution: "the constitutional interpretation must be carried out in such a way as to avoid contradictions between its norms".⁶⁰ The interpreter must seek a systematic and coherent reading of the Constitution, harmonizing its provisions and principles.
- b) Principle of practical agreement or harmonization: "the constitutionally protected legal assets must be coordinated in such a way that, in the solution of the problem, all preserve their identity".⁶¹ Faced with tensions between constitutional norms, the interpreter must seek a solution that optimizes the realization of the conflicting values, without completely sacrificing any of them.
- c) Principle of proportionality: "restrictions on fundamental rights, in order to be legitimate, must be adequate, necessary and proportionate in the strict sense".⁶² The interpreter must assess whether the limitations imposed on fundamental rights are justifiable and compatible with the Constitution, avoiding excesses and arbitrariness.

CHALLENGES OF CONSTITUTIONAL HERMENEUTICS

Constitutional interpretation faces several challenges in contemporary times, which require the interpreter to have a critical and reflective posture. Among these challenges, the following stand out:

- a) The complexity and dynamism of social reality: "constitutional interpretation must be able to adapt to social changes, without losing sight of the fundamental values and

⁶⁰ BARROSO, Luís Roberto. Course in contemporary constitutional law: the fundamental concepts and the construction of the new model. São Paulo: Saraiva, 2009, p. 302.

⁶¹ HESSE, Konrad. Elementos de direito constitucional do República Federal da Germany. Translated by Luís Afonso Heck. Porto Alegre: Sergio Antonio Fabris, 1998, p. 66.

⁶² MENDES, Gilmar Ferreira; BRANCO, Paulo Gustavo Gonet. Course on constitutional law. 13. ed. São Paulo: Saraiva, 2018, p. 185.



principles of the Constitution".⁶³ The interpreter must be attentive to changes in society and adapt the reading of the Constitution to new contexts and demands.

b) The tension between democracy and constitutionalism: "constitutional jurisdiction well exercised is a guarantee for democracy rather than a risk".⁶⁴ The interpreter must seek a balance between the protection of fundamental rights and respect for popular sovereignty and the separation of powers.

c) The need for dialogue and legitimacy: "constitutional interpretation, in order to legitimize itself democratically, must be open to the participation and criticism of civil society".⁶⁵ The interpreter must be open to the participation and criticism of society, seeking to build legitimate and consensual solutions to constitutional conflicts.

d) The risk of judicial activism: "judicial activism, understood as the expansion of the Judiciary to the detriment of the other branches, can lead to a 'supremocracy' and a 'juristocracy'".⁶⁶ The interpreter must be open to the participation and criticism of society, seeking to build legitimate and consensual solutions to constitutional conflicts.

In the face of these challenges, constitutional interpretation requires from the interpreter a solid legal background, a broad humanistic culture and a keen ethical and political sensitivity. More than a technician, the constitutional interpreter must be an artist, capable of combining methodological rigor and creativity, tradition and innovation, reason and sensitivity.

As Inocêncio Mártires Coelho states⁶⁷, "to interpret the Constitution is, therefore, to choose a mode of political and social coexistence, it is to opt for a project of society, for a model of institutional organization". The art of interpreting the Constitution is, therefore, an art of commitment and responsibility, which seeks to materialize the ideals of justice, freedom and equality enshrined in our Higher Law.

FINAL CONSIDERATIONS

Constitutional hermeneutics is an essential discipline for the understanding and application of constitutional norms, seeking to unveil their meaning and scope through different interpretative methods. More than a mere technique, constitutional interpretation is a true art, which requires from the interpreter not only solid legal knowledge, but also sensitivity, creativity and ethical

⁶³ BARROSO, Luís Roberto. Course in contemporary constitutional law: the fundamental concepts and the construction of the new model. São Paulo: Saraiva, 2009, p. 306.

⁶⁴ op. cit. p. 343.

⁶⁵ HÄBERLE, Peter. Constitutional hermeneutics: the open society of the interpreters of the Constitution: contribution to the pluralist and "procedural" interpretation of the Constitution. Translated by Gilmar Ferreira Mendes. Porto Alegre: Sergio Antonio Fabris, 2002, p. 33.

⁶⁶ VIEIRA, Oscar Vilhena. The battle of powers: from democratic transition to constitutional malaise. São Paulo: Companhia das Letras, 2018, p. 179.

⁶⁷ COELHO, Inocêncio Mártires. Constitutional interpretation. 4. ed. São Paulo: Saraiva, 2011, p. 163.



commitment. Throughout this article, the fundamental concepts of constitutional hermeneutics, its various forms, and the challenges faced by interpreters in contemporary times have been explored. It became evident that constitutional interpretation transcends simple textual analysis, involving a complex interaction between the normative text and the sociopolitical reality in which it is inserted.

In this sense, constitutional hermeneutics presents itself as a field of interdisciplinary study, which dialogues with various areas of knowledge to provide a richer and more contextualized understanding of constitutional norms. Through the application of principles such as the unity of the Constitution, practical agreement and proportionality, it seeks to harmonize the values and objectives inscribed in the Magna Carta.

Faced with the challenges imposed by the complexity and dynamism of social reality, the tension between democracy and constitutionalism, the need for dialogue and legitimacy, and the risk of judicial activism, the constitutional interpreter must adopt a reflective and critical posture, combining methodological rigor and creativity. Ultimately, the art of interpreting the Constitution is an art of commitment and responsibility, which seeks to realize the ideals of justice, freedom, and equality enshrined in our Higher Law. Based on constitutional hermeneutics, the interpreter assumes the role of guardian of the Constitution and of transforming agent of social reality, contributing to the construction of a more just, democratic and solidary society.

Legal practitioners need to be prepared to deal with emerging legal complexities, combining academic rigor and social sensitivity. This requires constant updating and improvement, as well as a critical and reflective posture in the face of constitutional norms. Only in this way will it be possible to build a more just, egalitarian and democratic society, in which fundamental rights are effectively respected and promoted.



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